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**FIRST AMENDED AND RESTATED  
LIMITED PARTNERSHIP AGREEMENT  
OF  
*ESSEX WOODLANDS HEALTH VENTURES FUND VIII, L.P.*  
(A Delaware Limited Partnership)  
Dated as of February 11, 2008**

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THE LIMITED PARTNERSHIP INTERESTS REPRESENTED BY THIS LIMITED PARTNERSHIP AGREEMENT ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM AND WITH THE APPROVAL OF THE GENERAL PARTNER. INVESTORS SHOULD BE AWARE THAT THEY MAY BE REQUIRED TO BEAR THE RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

EXCEPT AS OTHERWISE PROVIDED IN THIS PARTNERSHIP AGREEMENT, A LIMITED PARTNER MAY NOT SELL, ASSIGN, TRANSFER, PLEDGE OR OTHERWISE DISPOSE OF ALL OR ANY PART OF ITS INTEREST IN THE PARTNERSHIP UNLESS THE GENERAL PARTNER (AS DEFINED HEREIN) HAS CONSENTED THERETO.

FLORIDA RESIDENTS ONLY: THE SECURITIES BEING OFFERED HAVE NOT BEEN REGISTERED WITH THE FLORIDA DIVISION OF SECURITIES. IF SALES ARE MADE TO FIVE OR MORE FLORIDA PURCHASERS, EACH SALE IS VOIDABLE BY THE PURCHASER WITHIN THREE DAYS AFTER THE FIRST TENDER OF CONSIDERATION IS MADE BY SUCH PURCHASER TO THE ISSUER, AN AGENT OF THE ISSUER OR WITHIN THREE DAYS AFTER AVAILABILITY OF THAT PRIVILEGE IS COMMUNICATED TO SUCH PURCHASER, WHICHEVER OCCURS LATER.

NEW HAMPSHIRE RESIDENTS ONLY: NEITHER THE FACT THAT A REGISTRATION STATEMENT OR AN APPLICATION FOR A LICENSE HAS BEEN FILED WITH THE STATE OF NEW HAMPSHIRE NOR THE FACT THAT A SECURITY IS EFFECTIVELY REGISTERED OR A PERSON IS LICENSED IN THE STATE OF NEW HAMPSHIRE CONSTITUTES A FINDING BY THE NEW HAMPSHIRE SECRETARY OF STATE THAT ANY DOCUMENT FILED UNDER NEW HAMPSHIRE RSA 421-B IS TRUE, COMPLETE AND NOT MISLEADING. NEITHER ANY SUCH FACT NOR THE FACT THAT AN EXEMPTION OR EXCEPTION IS AVAILABLE FOR A SECURITY OR A TRANSACTION MEANS THAT THE NEW HAMPSHIRE SECRETARY OF STATE HAS PASSED IN ANY WAY UPON THE MERITS OR QUALIFICATIONS OF, OR RECOMMENDED OR GIVEN APPROVAL TO, ANY PERSON, SECURITY, OR TRANSACTION. IT IS UNLAWFUL TO MAKE, OR CAUSE TO BE MADE, TO ANY PROSPECTIVE PURCHASER, CUSTOMER, OR CLIENT ANY REPRESENTATION INCONSISTENT WITH THE PROVISIONS OF THIS PARAGRAPH.

PENNSYLVANIA RESIDENTS ONLY:

EACH PERSON WHO ACCEPTS AN OFFER TO PURCHASE THE SECURITIES OFFERED HEREBY HAS A RIGHT TO WITHDRAW HIS ACCEPTANCE PURSUANT TO SECTION 207(M) OF THE PENNSYLVANIA SECURITIES ACT OF 1972 (70 P.S. SECTION 1-207(M)). SUCH PERSON MAY ELECT, WITHIN TWO BUSINESS DAYS FROM THE DATE OF RECEIPT BY THE ISSUER OF HIS WRITTEN BINDING CONTRACT OF PURCHASE (OR IN THE CASE OF A TRANSACTION IN WHICH THERE IS NO BINDING CONTRACT TO PURCHASE WITHIN TWO BUSINESS DAYS AFTER HE MAKES THE INITIAL PAYMENT FOR THE SECURITIES), TO WITHDRAW FROM HIS PURCHASE AGREEMENT AND RECEIVE A FULL REFUND OF ALL MONIES PAID. SUCH A WITHDRAWAL WILL BE WITHOUT ANY FURTHER LIABILITY TO ANY PERSON. TO ACCOMPLISH THIS WITHDRAWAL, A LETTER OR TELEGRAM SHOULD BE SENT TO THE GENERAL PARTNER, INDICATING THE INTENTION TO WITHDRAW.

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SUCH LETTER OR TELEGRAM SHOULD BE SENT AND POSTMARKED PRIOR TO THE END OF THE AFOREMENTIONED SECOND BUSINESS DAY.

NON-U.S. RESIDENTS ONLY: NO ACTION HAS BEEN OR WILL BE TAKEN IN ANY JURISDICTION OUTSIDE THE UNITED STATES OF AMERICA THAT WOULD PERMIT AN OFFERING OF THESE SECURITIES, OR POSSESSION OR DISTRIBUTION OF OFFERING MATERIAL IN CONNECTION WITH THE ISSUE OF THESE SECURITIES, IN ANY COUNTRY OR JURISDICTION WHERE ACTION FOR THAT PURPOSE IS REQUIRED. IT IS THE RESPONSIBILITY OF ANY PERSON WISHING TO PURCHASE THESE SECURITIES TO SATISFY HIMSELF AS TO FULL OBSERVANCE OF THE LAWS OF ANY RELEVANT TERRITORY OUTSIDE THE UNITED STATES OF AMERICA IN CONNECTION WITH ANY SUCH PURCHASE, INCLUDING OBTAINING ANY REQUIRED GOVERNMENTAL OR OTHER CONSENTS OR OBSERVING ANY OTHER APPLICABLE FORMALITIES.

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ESSEX WOODLANDS HEALTH VENTURES FUND VIII, L.P.

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**ESSEX WOODLANDS HEALTH VENTURES FUND VIII, L.P.**

**FIRST AMENDED AND RESTATED  
LIMITED PARTNERSHIP AGREEMENT**

**PRELIMINARY STATEMENT**

This FIRST AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT, dated as of this 11<sup>th</sup> day of February, 2008 by and among Essex Woodlands Health Ventures VIII, L.P., a limited partnership organized under the laws of the State of Delaware as the general partner (the “**General Partner**”); Immanuel Thangaraj as the withdrawing limited partner (the “**Initial Limited Partner**”); and those firms, corporations and other Persons listed in Schedule A hereto as limited partners who execute a counterpart of this Agreement (such limited partners, and any additional limited partners admitted to the limited partnership formed hereby after the effective date of this Agreement, being referred to herein as the “**Limited Partners**”). The General Partner and Limited Partners are referred to herein collectively as the “**Partners.**”

The General Partner and the Initial Limited Partner formed a limited partnership by executing the Limited Partnership Agreement of Essex Woodlands Health Ventures Fund VIII, L.P. dated as of February 7, 2008 and by filing with the Secretary of State of the State of Delaware a Certificate of Limited Partnership of Essex Woodlands Health Ventures Fund VIII, L.P. on February 7, 2008.

Those Persons designated as Limited Partners in Schedule A hereto who execute a counterpart of this Agreement desire to be admitted to the Partnership as Limited Partners.

The General Partner and the Initial Limited Partner desire to amend the Agreement as hereinafter provided and, in consideration of the premises and agreements herein contained and intending to be legally bound hereby, agree as follows:

A. The organizational contribution of the General Partner to the Partnership as organizational general partner shall be returned simultaneously with the General Partner’s payment of its initial capital contribution pursuant to 6.1 of this Agreement.

B. The Initial Limited Partner shall hereby withdraw from the Partnership as a limited partner; his organizational contribution to the Partnership shall be returned to him in full satisfaction of the Initial Limited Partner’s interest as organizational limited partner; and the Initial Limited Partner shall have no further claims against the Partnership with respect to such interest.

C. Effective upon the date hereof, those Limited Partners listed in Schedule A hereto who execute a counterpart of this Agreement shall hereby be admitted to the Partnership as Limited Partners, and the Agreement shall be amended and restated to read as follows:

**ARTICLE 1 — DEFINITIONS**

**1 DEFINITIONS.**

Capitalized terms used herein and not otherwise defined have the meanings assigned to them in Appendix I hereto.

## ARTICLE 2 — ORGANIZATION; POWERS

### 2.1 FORMATION OF LIMITED PARTNERSHIP.

The Partners agree to form and carry on a limited partnership (the “**Partnership**”) subject to the terms of this Agreement in accordance with the Delaware Revised Uniform Limited Partnership Act, as amended from time to time (the “**Delaware Act**”).

#### 2.1.1 Name.

The name of the Partnership is “Essex Woodlands Health Ventures Fund VIII, L.P.” The Partnership shall have the exclusive ownership and right to use the Partnership name as long as the Partnership continues.

#### 2.1.2 Address.

The principal office of the Partnership shall be located at its address set forth in Schedule A. The initial address of the Partnership’s registered office in Delaware is 2711 Centre Road, Suite 400, Wilmington, County of New Castle, and its initial registered agent at such address for service of process is Corporation Service Company. The General Partner may change the locations of the principal office and registered office of the Partnership to such other locations within the United States as the General Partner may specify from time to time in a written notice to the other Partners.

### 2.2 POWERS.

Subject to all of the provisions of this Agreement, and in furtherance of the investment objectives set forth in 4.1, the Partnership may engage in any lawful activity for which limited partnerships may be organized under the laws of the State of Delaware, and shall have all the powers available to it as a limited partnership organized under the laws of the State of Delaware.

## ARTICLE 3 — PARTNERS

### 3.1 NAMES, ADDRESSES AND SUBSCRIPTIONS.

The name, address, facsimile number, email address and Subscription of each Partner are set forth in Schedule A. The General Partner shall cause Schedule A to be revised, without the necessity of obtaining the consent of any other Partner, to reflect any changes in the identity, addresses, facsimile numbers, email addresses or Subscriptions of the Partners occurring pursuant to the terms of this Agreement.

### 3.2 LIMITED PARTNERS.

#### 3.2.1 Limited Liability.

The liability of each of the Limited Partners to the Partnership under the Delaware Act shall be limited to (a) any unpaid capital contributions that such Limited Partner agreed to make to the Partnership pursuant to Article 6, to the extent provided in Section 17-502(a) and (b) of the Delaware Act; (b) the amount of any distribution that such Limited Partner is required to return to the Partnership pursuant to Sections 17-607(b) or 17-804(c) of the Delaware Act; and (c) the unpaid balance of any other payments that such Limited Partner expressly is required, pursuant to this Agreement, to make to the Partnership.

#### 3.2.2 Effect of Death, Dissolution or Bankruptcy.

Upon the death, incompetence, bankruptcy, insolvency, liquidation or dissolution of a Limited Partner, the rights and obligations of that Limited Partner under this Agreement shall inure to the benefit of, and shall be binding upon, that Limited Partner’s successor(s), estate or legal representative, and each such

Person shall be treated as an assignee of that Limited Partner's interest for purposes of Article 11 until such time as such Person may be admitted as a Partner pursuant to that Article.

### 3.2.3 No Control of Partnership.

No Limited Partner shall have the right or power to: (a) withdraw or reduce its contribution to the capital of the Partnership except as a result of the dissolution of the Partnership (provided that Limited Partners shall have no right to withdraw or reduce their contributions on dissolution of the Partnership to the extent that the Partnership requires funds to pay its creditors) or as otherwise provided herein; (b) except as provided in 9.3, cause the dissolution and winding up of the Partnership; or (c) demand or receive property other than cash in return for its capital contribution except as otherwise provided herein. No Limited Partner, in that Person's capacity as such, shall take any part in the control of the affairs of the Partnership, or undertake any transactions on behalf of the Partnership, or have any power to sign for or otherwise to bind the Partnership.

### 3.2.4 Admission of Additional Limited Partners.

- (a) Subject to the provisions of this Agreement, during the period from the Initial Closing Date through the date that is six months thereafter (the "**Final Closing Date**"), the General Partner is authorized, but not obligated, to accept additional Subscriptions from the Partners and to select and admit other Persons to the Partnership as additional Limited Partners. Any such additional Subscriptions shall be accepted and any such additional Limited Partners shall be admitted to the Partnership only if:
  - (i) Such Partner or additional Limited Partner contributes, on the date of its additional Subscription or admission, all amounts required by 6.4;
  - (ii) No distribution has been made by the Partnership to the Partners pursuant to Article 7 prior to the date of such Partner's additional Subscription or such additional Limited Partner's admission other than a distribution described in 6.7 or 7.3.5; and
  - (iii) Immediately after the Partnership's acceptance of such additional or initial Subscriptions, the sum of (1) the aggregate Subscriptions of all Limited Partners and (2) the aggregate capital commitments of all other Essex Woodlands Group Investors to any Parallel Partnership does not exceed \$1,250,000,000.
- (b) After the Final Closing Date, the General Partner, with the consent of a majority in interest of the Limited Partners, is authorized to select and admit one or more Persons to the Partnership as additional Limited Partners or accept additional Subscriptions from the Partners. The terms of any such admission or additional Subscription shall be fixed by the General Partner at the time of such admission or such additional Subscription acceptance, with the consent of a majority in interest of the Limited Partners.
- (c) Each Person who is to be admitted as an additional or substitute Limited Partner pursuant to this Agreement shall accede to this Agreement by executing, together with the General Partner, a counterpart signature page to this Agreement providing for such admission, which shall be deemed for all purposes to constitute an amendment to this Agreement providing for such admission, but shall not require the consent or approval of any other Partner.
  - (i) The General Partner shall make any necessary filings with the appropriate governmental authorities and take such actions as are necessary under applicable law to effectuate such admission.
  - (ii) The admission of an additional or substitute Limited Partner to the Partnership shall be effective upon the execution of such counterpart signature page to this Agreement or such later effective date as is set forth in any written agreement executed by the General Partner and such newly admitted Partner.

### 3.3 MANAGEMENT AND CONTROL OF PARTNERSHIP.

- (a) As among the Partners, the management, policies and control of the Partnership shall be vested exclusively in the General Partner. Except as otherwise explicitly provided herein, the General Partner shall have the power on behalf and in the name of the Partnership to implement any and all of the objectives of the Partnership and to exercise any and all rights and powers the Partnership may possess, including without limitation the power to cause the Partnership to make any elections available to the Partnership under applicable tax or other laws.
- (b) The tax matters partner, as defined in Section 6231 of the Code, of the Partnership (the “**Tax Matters Partner**”) shall be the General Partner. All expenses incurred by the Tax Matters Partner in connection with its performance of services in that capacity shall be borne by the Partnership. The General Partner shall be entitled to exculpation and indemnification with respect to any action it takes or fails to take as Tax Matters Partner with respect to any administrative or judicial proceeding involving “partnership items” (as defined in Section 6231 of the Code) of the Partnership to the extent provided under Article 12.
- (c) The General Partner is hereby authorized to contract in its own capacity and at no cost to the Partnership with any entity controlled by one or more of the Principals that provides substantially all of its services to the Partnership or Related Entities (each a “**Service Provider**”), including, without limitation, Essex Woodlands Health Ventures, Inc., a Delaware corporation (the “**Management Company**”), for assistance in performing its duties hereunder.
- (d) No Person that is not a Partner, in dealing with the General Partner, shall be required to determine the General Partner’s authority to make any commitment or engage in any undertaking on behalf of the Partnership, or to determine any fact or circumstance bearing upon the existence of the authority of the General Partner.

### 3.4 TRANSACTIONS BETWEEN GENERAL PARTNER AND PARTNERSHIP.

- (a) The General Partner and the Principals (i) shall not enter into any transaction which, at the time of such transaction, would violate in any material way their obligations to the Partnership as described herein or which would make it impossible for the Partnership to carry on its intended activities, and (ii) shall use their best efforts to prevent any of their respective Affiliates from engaging in any transaction that would make it impossible for the Partnership to carry on its intended activities.
- (b) The Partnership shall not engage in any investment or other financial transaction with any Principal, or any partner, parent, spouse, child, sibling or Affiliate of any Principal, other than (i) transactions expressly contemplated by this Agreement or (ii) with the prior approval of the Advisory Board, transactions entered into in the ordinary course of the Partnership’s activities on terms no less favorable to the Partnership than are generally afforded to unrelated third parties in comparable transactions.

### 3.5 TIME COMMITMENTS OF GENERAL PARTNER AND PRINCIPALS.

- (a) Except as otherwise provided in this 3.5 or with the prior consent of the Advisory Board, the General Partner and the Principals shall devote substantially all of their business time to the affairs and activities of the Partnership and Related Entities until the earliest to occur of:
  - (i) The date on which the Partnership is fully invested;
  - (ii) The fifth anniversary of the Partnership’s initial investment in a Portfolio Company;or

- (iii) The date on which, pursuant to Article 10, the dissolution of the Partnership occurs; the period beginning on the Initial Closing Date and ending on such earliest date being referred to herein as the “**Commitment Period**.”
- (b) For purposes of 3.5:
  - (i) The Partnership shall be deemed to be fully invested when at least 75% of the aggregate Subscriptions of all Partners (other than Defaulting Partners) have been invested, expended, committed or reserved for future investments in entities that are at such time already Portfolio Companies or for reasonably anticipated Partnership Expenses; and
  - (ii) the term “**Related Entities**” includes *only* (A) any Portfolio Company, (B) any Service Provider and any other entity engaged in performing services for the Partnership or, at the Partnership’s request, for any Portfolio Company; (C) any entity formed to co-invest with the Partnership, or which actually co-invests with the Partnership, in any Portfolio Investment, (D) any Successor Fund, (E) any Existing Fund and (F) any Parallel Partnership.
- (c) After the expiration of the Commitment Period, the General Partner and the Principals shall devote such amount of their business time to managing the affairs and activities of the Partnership and Related Entities as is reasonably necessary to manage such affairs and activities in a prudent and thorough manner.
- (d) Without the prior written consent of a majority in interest of the Limited Partners, neither the General Partner nor any Principal shall form or act as a general partner of, or the primary source of transactions for, a limited partnership or other investment vehicle (a “**Successor Fund**”) prior to the expiration of the Commitment Period.
- (e) Nothing set forth in this 3.5 shall prevent the General Partner, the Principals or any of their respective Affiliates from forming and managing: (i) subject to compliance with 4.2.3, a partnership or other entity solely for the purpose of facilitating co-investment with the Partnership in a Portfolio Company; or (ii) a partnership or other entity serving, in effect, as a holding company in which the Partnership or a Parallel Partnership shall invest solely for the purpose of making a Portfolio Investment.
- (f) Except as otherwise permitted under the terms of the operative agreement of a Parallel Partnership with respect to entities organized as holding companies for Portfolio Investments by such Parallel Partnership, no carried interest or management fee or other fees shall be paid to the General Partner or the Principals by any entity described in clauses (i) or (ii) of 3.5(e), although the General Partner may be reimbursed by the owners of any such entity for reasonable expenses incurred in organizing and maintaining such entity.
- (g) The General Partner shall use its best efforts to ensure that, until the expiration of the Commitment Period, each Affiliate of the General Partner complies with the limitation set forth in 3.5(d).

### 3.6 OTHER ACTIVITIES OF PARTNERS.

- (a) Each Partner agrees that, subject to the provisions of this Agreement, any other Partner and its respective partners, members, stockholders, officers, directors, employees, agents and Affiliates may invest, participate, or engage in (for their own accounts or for the accounts of others), or may possess an interest in, other financial ventures and investment and professional activities of every kind, nature and description, independently or with others, including but not limited to: management of other investment partnerships; investment in, financing, acquisition or disposition of securities; investment and management counseling;

providing brokerage and investment banking services; or serving as officers, directors, managers, consultants, advisers or agents of other companies, partners of any partnership, members of any limited liability company or trustees of any trust (and may receive fees, commissions, remuneration or reimbursement of expenses in connection with these activities), whether or not such activities may conflict with any interest of the Partnership or any of the Partners.

- (b) Neither the Partnership nor any Partner shall have any rights, solely by virtue of this Agreement, in or to (i) any activities permitted by this 3.6; (ii) any fees, income, profits or goodwill derived from those activities; (iii) any Successor Fund; or (iv) any Parallel Partnership.

### **3.7 ADVISORY BOARD.**

#### **3.7.1 Appointment; Removal.**

The General Partner shall appoint a board of advisors (the “**Advisory Board**”) made up of representatives of the Essex Woodlands Group Investors (as defined below) and consisting of not less than five and up to ten members, none of whom shall be a Principal or a partner, member, officer, director, employee or Affiliate of the General Partner, the general partner of the General Partner or any Service Provider. New members shall be appointed by the General Partner to fill any vacancy on the Advisory Board. Any member of the Advisory Board may be removed at any time, with or without cause and regardless of whether such member’s term of office has expired, by resolution of, or by written consent signed by, at least a majority in interest of the Essex Woodlands Group Investors. The right of any Limited Partner to appoint a representative to the Advisory Board pursuant to this 3.7.1 shall terminate if such Limited Partner ceases to be a Limited Partner in the Partnership or becomes a Defaulting Partner.

#### **3.7.2 Meetings.**

The Advisory Board shall meet from time to time at such times as the General Partner or the Advisory Board may determine. The General Partner shall provide notice to the members of the Advisory Board of each meeting called by the General Partner. The Advisory Board shall cause the General Partner and each member of the general partner thereof to be notified of each meeting called by the Advisory Board. Meetings shall be held in the continental United States, although meetings may be held and Advisory Board members may participate in meetings by means of a telephone conference call or similar means by which each member can hear and be heard by each other member. Except as prohibited by any law applicable to a member, members of the Advisory Board shall receive from the Partnership reimbursement for any reasonable out-of-pocket travel expenses incurred in connection with their attendance at meetings of the Advisory Board, but shall receive no fees or other compensation from the Partnership.

#### **3.7.3 Duties.**

- (a) The duties of the Advisory Board (or its committees) shall be to:
- (i) Be available to offer advice to the General Partner regarding the activities of the Partnership;
  - (ii) Review and approve all transactions involving potential conflicts of interest submitted to them by the General Partner pursuant to 3.4(b), 4.2.3 or otherwise;
  - (iii) Review and approve certain investments proposed by the General Partner;
  - (iv) Review and approve valuations by the General Partner of the Partnership’s assets; and
  - (v) Undertake such other duties as are required by this Agreement or reasonably requested by the General Partner.

- (b) Notwithstanding any provision of this Agreement, the activities of the Advisory Board and each member thereof (acting in such capacity) shall be limited to those permitted under the Delaware Act for Persons who are not deemed to participate in the control of the affairs of the Partnership.
- (c) Neither the Advisory Board, nor any member thereof (acting in such capacity) shall have the power to bind the Partnership or any authority to act for the Partnership or on its behalf.
- (d) Neither the Advisory Board, nor any member thereof (acting in such capacity) or any Limited Partner shall have any fiduciary duties to the Partnership or any Partner.

#### 3.7.4 Voting; Adoption of Rules and Procedures.

All approvals, disapprovals and other actions taken by the Advisory Board shall be authorized by a majority of the Advisory Board members then holding office. The Advisory Board shall have the authority to adopt rules and procedures, not inconsistent with this Agreement, relating to the conduct of its affairs.

#### 3.7.5 Parallel Partnerships.

- (a) The General Partner may, in its sole discretion, establish on or before the Final Closing Date one or more separate investment entities or investment advisory programs (each, a “**Parallel Partnership**” and, collectively, the “**Parallel Partnerships**”) to invest in parallel with, and on substantially similar terms as, the Partnership. The Partnership and any Parallel Partnerships are sometimes collectively referred to herein as the “**Essex Woodlands Group Funds**.” The Limited Partners of the Partnership and the participants in any Parallel Partnerships (other than the General Partner or its equivalent), if organized, are sometimes collectively referred to herein as the “**Essex Woodlands Group Investors**.” The organizational documents of such Parallel Partnerships may have provisions governing distributions and allocations of income and taxation that are substantially different from the Partnership in order to accommodate the particular nature of their investors, although the economic effect of the terms of all such Parallel Partnerships and the Partnership will be substantially identical. The Essex Woodlands Group Funds will make investments in all Portfolio Companies, at the same time and on substantially similar terms and conditions, on a *pro rata* basis in proportion to their respective aggregate capital commitments; *provided, however*, that the General Partner may limit (or adjust) the amount of investment in certain Portfolio Companies by such Parallel Partnerships in the event that (1) the Essex Woodlands Group Investors in such Parallel Partnership cannot legally invest in such Portfolio Companies or (2) the potential returns to such investors would be unattractive due to certain tax, legal or other considerations. The Essex Woodlands Group Funds will generally dispose of a Portfolio Investment on a *pro rata* basis in proportion to the amount invested in such Portfolio Investment by each Essex Woodlands Group Fund to the extent practicable. The Partnership and the Parallel Partnerships will also generally make Drawdowns and distributions at the same times and in the same proportions. The Essex Woodlands Group Funds shall also share *pro rata* (based on invested capital) in any fees and expenses relating to Portfolio Investments made by them, including, without limitation, any indemnification obligations of a nature set forth in 12.2, and *pro rata* (based on committed capital) in any other common fees and expenses, including Organizational Expenses but expressly excluding any management fee expense, which management fee will be paid separately by each Essex Woodlands Group Fund.
- (b) To further the intention of the provisions of this Agreement regarding the Partnership and any Parallel Partnerships, in the event that the capital commitments to the Partnership or a Parallel Partnership should change at subsequent closings so that the ratio of such entity’s

capital commitments to the aggregate capital commitments of the Essex Woodlands Group Funds changes, the General Partner may adjust the allocation of then existing Portfolio Investments between the Partnership and the Parallel Partnerships, including by transferring securities from one entity to another, may adjust the respective amounts paid by the Partnership and the Parallel Partnerships in respect of expenses and may adjust the determination of the Contributions used to make Portfolio Investments and pay expenses so as to more closely reflect the situation which would have existed if the respective capital commitments to the Partnership and the Parallel Partnerships had always been in such post-change ratio.

- (c) The General Partner is authorized to take such other actions as it determines are reasonably necessary or appropriate, and not otherwise in contravention of this Agreement, in order to effect the intention of the provisions of this 3.7.5 and the other provisions of this Agreement relating to Parallel Partnerships in connection with the operation of the Partnership and the Parallel Partnerships.

#### ARTICLE 4 — PORTFOLIO INVESTMENTS AND LIMITATIONS

##### 4.1 INVESTMENT OBJECTIVES.

The primary objective of the Partnership is to generate significant returns for its Partners, principally through long-term capital appreciation, by making, holding and disposing of privately negotiated equity and equity-related investments (“Portfolio Investments”), principally in the healthcare industry.

##### 4.2 INVESTMENT LIMITATIONS.

###### 4.2.1 Proscribed Investments.

The Partnership shall not:

- (a) Participate in investments actively opposed by the board of directors of the potential Portfolio Company;
- (b) Participate in investments in companies undergoing bankruptcy liquidations other than follow-on investments in existing Portfolio Companies;
- (c) Participate in investments in real estate;
- (d) Participate in investments in any entity whose primary business is the exploration of oil or gas;
- (e) Participate in investments in any uncovered options or any other derivative securities, or any transaction in which securities are sold short in an uncovered transaction; *provided, however*, that nothing in this 4.2.1(e) shall prevent the Partnership from (i) acquiring options or warrants exercisable for, or other securities convertible into, equity securities or assets at a pre-determined exercise price or conversion ratio or (ii) purchasing derivative securities for the purpose of reducing the Partnership’s risk in holding publicly traded securities of Portfolio Companies;
- (f) Participate in investments in any single Portfolio Company such that the Partnership’s Total Investment in that Portfolio Company and its Affiliates exceeds 15% of the aggregate Subscriptions of all Partners;
- (g) Invest its idle funds held pending investment or distribution (“Temporary Investments”) in any instrument other than Short Term Securities;



- (h) Participate in investments in any company or other entity that is domiciled in any country that is, at the time of such investment, a participant in an international boycott illegal under United States law or opposed by the United States government;
- (i) Participate in investments in any security issued by an investment company registered under the Investment Company Act of 1940, as amended, if making such investment would cause the Partnership to be an "affiliated company" of such investment company, as defined in Section 2(a)(2) of that Act; or
- (j) Make Portfolio Investments the cost basis of which in the aggregate exceeds 110% of the aggregate Subscriptions of all Partners.

#### 4.2.2 Investments Permitted with Advisory Board Approval.

Without the written approval or, if using reasonable efforts the General Partner is unable to obtain such written approval prior to the consummation of such investment, the later ratification of the Advisory Board:

- (a) The General Partner shall not, in its capacity as General Partner, or in any other capacity, make loans or advances to, or borrow money from, or permit any of the managers of the general partner of the General Partner or other Affiliates to make any loans or advances to, or borrow money from, the Partnership;
- (b) The General Partner shall not permit any manager of the general partner of the General Partner to continue to serve on the board of directors of any Portfolio Company if (i) the securities of such Portfolio Company are Freely Tradable Securities and (ii) the Partnership no longer holds securities of such Portfolio Company; *provided, however*, that a manager of the general partner of the General Partner may continue to serve on the board of directors of such Portfolio Company until the expiration of the manager's then current term of directorship with such Portfolio Company;
- (c) The Partnership shall not acquire indebtedness of any private company from any party other than such company;
- (d) The Partnership shall not invest more than 30% of the aggregate Subscriptions of all Partners in Portfolio Companies domiciled outside of the United States;
- (e) The General Partner shall not cause the Partnership to invest in excess of 10% of the aggregate Subscriptions of all Partners in securities of an issuer or issuers in connection with the consummation of an acquisition by such issuer or issuers the return on which investments is intended to be primarily achieved through the retirement of acquisition indebtedness (as opposed to expectations of strategic or operational growth);
- (f) The Partnership shall not invest in issuers of publicly-traded securities except where the issuer (i) is a company in which the Partnership held an interest prior to the date on which such company became an issuer of publicly-traded securities, (ii) maintains a Board of Directors which includes a Principal or which will include a Principal following the Partnership's investment in such issuer or (iii) is issuing securities to the Partnership in a private placement. To the extent that securities were acquired in accordance with this 4.2.2(f), the Partnership shall be permitted to accumulate additional securities of the same issuer. In no event shall the Partnership invest in issuers of publicly-traded securities if the Partnership's Total Investment in issuers of publicly-traded securities will exceed 20% of the aggregate Subscriptions of all Partners as a result of such investment; and
- (g) The Partnership shall not invest in the securities of any other pooled investment vehicle (including but not limited to venture, buyout, mezzanine, or subordinated debt funds) with respect to which any Person is entitled to a share of profits (whether in the form of fees,

distributions or otherwise) disproportionate to its share of the contributed capital of the vehicle; *provided, however*, that nothing in this 4.2.2(g) shall prevent the Partnership from investing in operating businesses, incubators and other business development entities through a holding company structure or in special purpose partnerships or other entities described in 3.5(e);

- (h) The Partnership shall not participate in investments in any single Portfolio Company such that the Partnership's Total Investment in that Portfolio Company and its Affiliates exceeds 10% of the aggregate Subscriptions of all Partners; and
- (i) The Partnership shall not invest more than 25% of the aggregate Subscriptions of all Partners in Portfolio Companies which, as a result of their structure as limited liability companies, partnerships, trusts or other non-corporate entities, could reasonably be expected to cause any Limited Partner or partner of any Limited Partner to realize "unrelated business taxable income" (as that term is defined in section 512 of the Code).

#### 4.2.3 Limitations Intended to Avoid Conflicts of Interest.

- (a) Without the prior unanimous approval in writing of the Advisory Board, the Partnership shall not invest directly or indirectly in the securities of any entity in which the General Partner, the general partner of the General Partner, any Principal, any parent, spouse, child or sibling of any Principal or any Service Provider has a pre-existing ownership interest or any other material financial interest; *provided, however*, that the foregoing restriction shall not apply to a proposed investment in any entity which, at the time of proposed investment: (i) is already a Portfolio Company; or (ii) is an entity in which any Existing Fund or Parallel Partnership has an investment, subject to the other terms of this Agreement; or (iii) is an entity in which any of the entities described in clause (i) or clause (ii) has an investment and the pre-existing ownership interest or other material financial interest of the General Partner, the general partner of the General Partner, any Principal, any parent, spouse, child or sibling of any Principal or any Service Provider in such entity is solely an indirect interest held through the Partnership, any Existing Fund or any Parallel Partnership.
- (b) The Principals and their Affiliates may not invest for their own accounts or for the accounts of the parents, spouses, children or siblings of the Principals in the securities of any Portfolio Company; *provided, however*, that the restrictions set forth in this 4.2.3(b) shall not apply to purchases of securities of any Portfolio Company that are traded in a Public Securities Market; *provided, further, however*, that, without the approval of the Advisory Board, no Principal, nor any Affiliate of the Principals, shall sell any such securities of a Portfolio Company having an aggregate value greater than \$25,000 if the Partnership then holds any Freely Tradable Securities of such Portfolio Company. Notwithstanding anything herein to the contrary, if the Partnership sells any shares of Freely Tradable Securities of such Portfolio Company, the Principals and their Affiliates may sell the same percentage of shares of such Freely Tradable Securities owned by such Principal or Affiliate of a Principal as such sale by the Partnership represents with respect to the total number of shares of such Freely Tradable Securities held by the Partnership.
- (c) Without the approval of 66-2/3% of the Advisory Board in writing, the Partnership shall not acquire securities of any entity in which an Existing Fund owns or is acquiring securities. Any investment in an entity that is permitted under this 4.2.3(c) shall not be subject to the limitation imposed by 4.2.3(a) as a result of the General Partner's, the general partner of the General Partner's or any Principal's indirect ownership, through such Existing Fund, of interests in such entity.

- (d) The General Partner shall not cause the Partnership to purchase from or sell any securities or assets to the General Partner, members of the general partner of the General Partner or their parents, spouses, children or siblings, any Affiliates of the General Partner or members of the general partner of the General Partner, or any Existing Fund or Parallel Partnership.

#### **4.2.4 Obligations to Offer Investment Opportunities.**

The Principals and any Affiliates of the Principals shall not, directly or indirectly, invest for their own accounts or for the accounts of the parents, spouses, children or siblings of the Principals in any investment opportunity that is a potential Portfolio Investment of the Partnership unless and until such Person shall have first offered such potential Portfolio Investment to the Partnership and the General Partner shall have determined in good faith that such investment is not in the best interests of the Partnership.

#### **4.2.5 Investment in Non-United States Portfolio Companies.**

Any Portfolio Investment in a company or entity organized under the laws of any jurisdiction outside the United States shall only be made after the General Partner has obtained an opinion or written assurance of legal counsel practicing in such non-United States jurisdiction to the effect that (i) such investment should not result in liability to the Partners in excess of their respective Contributions or otherwise subject the Limited Partners to the loss of their limited liability status under the Delaware Act; and (ii) the Partnership as a whole should not be liable with respect to such investment in an amount in excess of its investment in such entity. The General Partner shall use its best efforts to cause the Partnership to conduct its activities in a manner that does not result in any Limited Partner (by virtue of being a Partner) becoming subject to a requirement to either (a) file income tax returns in any tax jurisdiction outside the United States reporting income other than income from the Partnership, or (b) pay tax in such jurisdiction with respect to the Limited Partner's income other than income from the Partnership. The General Partner agrees to use its reasonable efforts to assist any Limited Partner which so requests in making any filings or applying to obtain appropriate available exemptions from or refunds of withholding tax or other taxes which may be assessed or imposed by any such non-United States jurisdiction in respect of such Limited Partner's share of such investment.

### **4.3 RETENTION AND REINVESTMENT OF DISTRIBUTABLE PROCEEDS.**

#### **4.3.1 Retention Through End of Investment Period.**

The General Partner in its discretion may cause the Partnership to retain any Distributable Proceeds received by the Partnership at any time up to and including the end of the Investment Period, or may cause such Distributable Proceeds to be distributed to the Partners subject to subsequent Drawdown pursuant to 6.7, and may use the amounts so retained (or so distributed subject to subsequent Drawdown, if subsequently drawn down) to make Portfolio Investments, pay Partnership Expenses, make Special GP Distributions, or fund reserves for future Portfolio Investments or reasonably anticipated future Partnership Expenses or Special GP Distributions; *provided, however*, that:

- (a) The aggregate amount of Distributable Proceeds so retained (or so distributed subject to subsequent Drawdown, if subsequently drawn down) to make Portfolio Investments or to fund reserves for future Portfolio Investments shall not exceed at any time an amount equal to the sum of the aggregate amount of Partnership Expenses paid by the Partnership at or before such time and 10% of the aggregate Subscriptions of all Partners; and
- (b) After the end of the Investment Period or during any Suspension Period, no part of such retained amounts (or such amounts distributed subject to subsequent Drawdown, if subsequently drawn down) shall be used to make any Portfolio Investment, except to the extent that the General Partner would be permitted pursuant to 6.1.1.3 to call for a

Drawdown to fund such Portfolio Investment (assuming, solely for this purpose, that the Remaining Commitments of the Partners were sufficient in amount to fund such investment).

#### **4.3.2 Retention After Expiration or Termination of Investment Period.**

Notwithstanding the limitations set forth in 4.3.1, the General Partner in its discretion may cause the Partnership to retain, without regard to whether the Investment Period has elapsed, any amount of Distributable Proceeds that it reasonably deems necessary or advisable in order to enable the Partnership to satisfy its obligations to make the indemnification advances and payments required by 12.2, or to pay current and reasonably anticipated future Partnership Expenses.

#### **4.3.3 Required Distributions of Amounts Not Retained.**

##### **4.3.3.1 General.**

The Partnership shall distribute, in the manner required by Article 7, all Distributable Proceeds that are not, in accordance with this 4.3, invested or used to pay expenses or to make Special GP Distributions, and that are not reserved for future investments, expenses or Special GP Distributions, as promptly as reasonably practicable and, in any event, not later than 45 days after the event giving rise to such Distributable Proceeds occurred.

##### **4.3.3.2 Exception for administrative convenience.**

Notwithstanding the foregoing, as a matter of administrative convenience, the Partnership shall not be required to distribute any such proceeds until the aggregate amount of proceeds otherwise available to the Partnership for distribution exceeds \$1,000,000.

#### **4.3.4 Intent; Interpretation.**

The intent of this 4.3 is to ensure, to the extent practicable, that an amount equal to 110% of the aggregate Subscriptions of all Partners is available for making Portfolio Investments, and 4.3.1 shall be interpreted and applied accordingly.

### **4.4 BORROWING AND GUARANTEES.**

#### **4.4.1 Limitation on Amount Borrowed.**

The General Partner shall use its best efforts to manage the Partnership so as to avoid the necessity for borrowing money. The General Partner may, however, if the General Partner reasonably determines that such borrowing is necessary or desirable to further the purposes of the Partnership (and subject to any restrictions set forth in this Agreement), borrow money on a short-term basis at any time on behalf and in the name of the Partnership, in an aggregate amount outstanding at any time not exceeding the lesser of (a) 10% of the aggregate Subscriptions of all Partners or (b) the difference between 110% of the aggregate Subscriptions of all Partners and the Cost of all Portfolio Investments.

#### **4.4.2 Limitation on Purpose and Term of Borrowings.**

The Partnership shall not make any investments with borrowed funds, provided that the limitations set forth in this 4.4 shall not preclude the Partnership from incurring indebtedness to acquire the securities of a Portfolio Company pending the Partnership's receipt of Drawdowns of capital contributions (subject to any restrictions set forth in this Agreement) if the General Partner determines that such indebtedness is reasonably likely to be retired within 90 days after its incurrence with funds attributable to such contributions.

#### **4.4.3 Limitation on Guarantees.**

The Partnership may guarantee the indebtedness of any Portfolio Company; *provided, however*, that the total amount guaranteed by the Partnership with respect to that Portfolio Company, when added to the amount of the Partnership's investment in the securities of such Portfolio Company, shall not exceed the lesser of (a) 10% of the aggregate Subscriptions of all Partners or (b) the difference between 110% of the

aggregate Subscriptions of all Partners and the Cost of all Portfolio Investments; *subject, however*, to compliance with 15.4.

## ARTICLE 5 — FEES AND EXPENSES

### 5.1 ORGANIZATIONAL EXPENSES.

Upon completion of the Partnership's initial Drawdown, the Partnership shall reimburse the General Partner and its Affiliates for all Organizational Expenses incurred by any of them that are attributable to the organization of the Partnership and the sale of interests in the Partnership to the Limited Partners. In no event shall the amount of Organizational Expenses paid or reimbursed by the Essex Woodland Group Funds exceed \$750,000 in the aggregate. All Organizational Expenses in excess of this amount shall be borne by the General Partner or its Affiliates.

### 5.2 PARTNERSHIP EXPENSES AND MANAGEMENT FEE.

#### 5.2.1 Payment of Normal Operating Expenses by General Partner.

##### 5.2.1.1 *General.*

The General Partner agrees to assume and pay all normal operating expenses attributable to the Partnership's investment activities on the terms and conditions herein set forth.

##### 5.2.1.2 *Normal operating expenses.*

Such normal operating expenses include all recurring expenses incident to the investment activities of the Partnership; compensation and expenses of the employees of the General Partner and the Management Company and any other Service Provider, including salaries of the members of the general partner of the General Partner in their capacity as employees of any Service Provider; fees for external technical and marketing consulting services not related to a specific Portfolio Company investment or proposed Portfolio Company investment; and fees and expenses for administrative, clerical and related support services, maintenance of books and records for the Partnership, office space and facilities, utilities, telephone and travel insofar as they relate to the investment activities of the Partnership.

##### 5.2.1.3 *Partnership expenses.*

Normal operating expenses exclude, without limitation, Organizational Expenses of the Partnership up to a maximum of \$750,000; liquidation expenses of the Partnership; any sales, franchise or other taxes (except as provided below), fees or government charges which may be assessed against the Partnership; commissions or brokerage fees or similar charges incurred in connection with the purchase or sale of securities (including any merger fees payable to third parties and whether or not any such purchase or sale is consummated); expenses of members of the Advisory Board (including travel-related costs and expenses); the costs and expenses (including travel-related expenses) of hosting annual or special meetings of the Partners, or otherwise holding meetings or conferences with the Partners, whether individually or in a group; interest expense for borrowed money (if any); all expenses relating to litigation and threatened litigation involving the Partnership, including indemnification expenses; expenses attributable to normal and extraordinary investment banking, commercial banking, accounting, appraisal, legal, custodial and registration services provided to the Partnership (other than any expenses incurred in connection with any tax audit or challenge relating primarily to the Special GP Distribution, which expenses are to be borne by the General Partner) and any expenses attributable to consulting services not described in 5.2.1.2, including in each case services with respect to the proposed purchase or sale of securities by the Partnership that are not reimbursed by the issuer of such securities (whether or not any such purchase or sale is consummated); reasonable premiums for liability insurance to protect the Partnership, the General Partner, the members of the general partner of the General Partner, any Service

Provider, the members of the Advisory Board and any of their respective partners, members, stockholders, officers, directors, employees, agents or Affiliates in connection with the activities of the Partnership; and all other expenses properly chargeable to the activities of the Partnership. Any income taxes assessed against either the Partnership or the General Partner in respect of the Management Fee shall be borne by the General Partner.

## **5.2.2 Management Fee Payable to General Partner**

### **5.2.2.1 Amount.**

Subject to the limitations set forth below, the Partnership shall pay the General Partner a management fee (the "**Management Fee**") for the investment advice to be provided hereunder, commencing upon the Initial Closing Date. The Management Fee for each quarter during the period beginning on the Initial Closing Date and ending February 11, 2013 shall be an amount equal to 0.5% of the aggregate Subscriptions of all Partners at the beginning of such fiscal quarter. Beginning February 11, 2013, the quarterly Management Fee for each subsequent four-quarter period shall equal 90% of the quarterly Management Fee for the last quarter of the immediately preceding four-quarter period. Any increase in the Management Fee resulting from an increase in the aggregate Subscriptions of all Partners shall be effective as of the Initial Closing Date, and shall include interest accrued at the Prime Rate on unpaid Management Fee amounts due for the period between the Initial Closing Date and the date of such increase. Any decrease in the aggregate Subscriptions of the Partners in accordance with this Agreement occurring during any quarter shall reduce (subject to future increases in the aggregate Subscriptions of the Partners) the Management Fee payable under this 5.2.2.1 in subsequent quarters.

### **5.2.2.2 Timing of payments.**

Payments of the Management Fee shall be calculated and made quarterly in advance on the first day of each fiscal quarter of the Partnership. The first payment shall be due upon the Initial Drawdown Date. If the Initial Drawdown Date is not the first day of a fiscal quarter of the Partnership, however, the Partnership's first payment shall be for the pro rata amount due until the beginning of the first succeeding fiscal quarter of the Partnership. The Management Fee for the last quarter prior to the expiration of the term of this Agreement shall be proportionately reduced based upon the ratio the number of days in such period bears to ninety (90).

### **5.2.2.3 Adjustments.**

- (a) Director's fees, consulting fees, commitment fees, monitoring fees, investment banking fees, transaction fees, break-up fees and success fees or other remuneration (including any options, warrants or other equity securities or proceeds from the disposition thereof) paid during such year to the General Partner, to any partner or member of the general partner of the General Partner or to any officer, director or full-time employee of any Service Provider by Portfolio Companies for services rendered by such Persons ("**Portfolio Company Remuneration**") in accordance with 5.3.2 shall be used first to offset any transaction expenses advanced by such Service Provider and not reimbursed by the Partnership. Any remaining Portfolio Company Remuneration shall be used to reduce the Management Fee (but not below zero), subject to 5.2.2.3(b) and (c) and subject to proration in a manner consistent with 5.2.2.3(d) if such remuneration is paid by a Portfolio Company in which a Successor Fund and/or a Parallel Partnership also has an investment.
- (b) The amount of any Portfolio Company Remuneration to be so applied shall be applied first against the quarterly payment next following the date of the determination of such net remuneration (after offsetting any transaction expenses) and then against each successive quarterly payment until such net remuneration has been fully utilized. In the event that at liquidation of the Partnership any amount of Portfolio Company Remuneration has not been fully utilized in accordance with the prior sentence (such amount not so utilized being the

“Unapplied Offset”), the General Partner shall make a payment to the Partnership, for the benefit of, and to be distributed at liquidation solely among, those Limited Partners who expressly request return of such Unapplied Offset (the “Requesting Partners”), in an amount (the “Repayment Amount”) equal to the portion of the Unapplied Offset that would have been allocated to the Requesting Partners had the entire amount of the Unapplied Offset been additional Net Gain of the Partnership and allocated to the Capital Accounts of the Partners in accordance with 8.2.

- (c) For purposes of 5.2.2.3(b), a fee reduction shall be deemed to have occurred when Portfolio Company Remuneration is actually received by the remunerated Person and the amount of the net remuneration (and related reduction) has been determined in good faith by the General Partner.
- (d) In the event that any such Portfolio Company Remuneration is paid by any Portfolio Company in which the Partnership and any Successor Fund and/or any Parallel Partnership hold an investment, the General Partner shall determine that portion of such remuneration which is subject to offset against the Management Fee pursuant to this 5.2.2.3 based on the relative amounts invested in such Portfolio Company by the Partnership and the Successor Fund(s) and/or Parallel Partnership(s).

### 5.2.3 Special General Partner Distributions.

The Management Fee that would otherwise be paid pursuant to 5.2.2 (after giving effect to any reduction of the Management Fee pursuant to 5.2.4) shall be reduced, and the Partnership shall make a special distribution to the General Partner contemporaneously with (or within a reasonable period of time following) each payment of the Management Fee (a “Special GP Distribution”), as and to the extent described below.

- (a) Such Special GP Distribution shall, in all events, be subject to the following two requirements.
  - (i) The Special GP Distribution shall reduce the General Partner’s Capital Account, pursuant to Article 8, for all purposes under this Agreement.
  - (ii) No Special GP Distribution shall be made to the extent such distribution would (A) cause the General Partner’s Capital Account to be reduced below zero or (B) exceed, with respect to any fiscal period, an amount equal to the aggregate gross Management Fee expense allocable to the General Partner with respect to such fiscal period, determined without regard to any adjustments made pursuant to this 5.2.3 (and no adjustment shall be made to the Management Fee to the extent the Special GP Distribution is limited by the foregoing).
- (b) The Management Fee determined under 5.2.2 (determined with regard to adjustments required by 5.2.4 but without regard to this 5.2.3) shall be reduced by an amount equal to the excess, if any, of:
  - (i) The Net Gain (or Net Loss<sup>1</sup>) that would be allocable to the General Partner under Article 8 with respect to its carried interest if the Management Fee were equal to zero, *over*

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<sup>1</sup> For purposes of this computation, Net Loss shall be treated in accordance with the following examples:

If applying 5.2.3(b)(i) results in a \$10 Net Gain allocable to the General Partner and applying 5.2.3(b)(ii) results in a \$5 Net Loss allocable to the General Partner, the excess is \$15.

If applying 5.2.3(b)(i) results in a Net Loss of \$10 allocable to the General Partner and applying 5.2.3(b)(ii) results in a Net Loss of \$25 allocable to the General Partner, the excess is \$15.

- (ii) The Net Gain (or Net Loss) that would be allocable to the General Partner under Article 8 with respect to its carried interest if the Management Fee were determined under 5.2.2 and with regard to reductions in the Management Fee pursuant to 5.2.4 but without regard to this 5.2.3.
- (c) Notwithstanding the general allocation provisions of Article 8, if the Management Fee is reduced under this 5.2.3, the Partnership Expenses attributable to the Management Fee shall be allocated among the Partners to the extent necessary to ensure that the effect of any reduction in the Management Fee pursuant to 5.2.3(b) shall be reflected solely in the Capital Account of the General Partner.

#### **5.2.4 Additional Management Fee Adjustment.**

##### **5.2.4.1 General.**

If, as of any time that a quarterly payment of the Management Fee becomes payable to the General Partner pursuant to 5.2.2, the General Partner has been deemed to make capital contributions pursuant to 6.1.3, such quarterly payment shall be reduced (but not below zero) by an amount equal to the excess of the cumulative amount of such deemed capital contributions over the cumulative amount by which prior quarterly payments of the Management Fee have been reduced pursuant to this 5.2.4.1.

##### **5.2.4.2 Adjustment to Allocations.**

Notwithstanding the general allocation provisions of Article 8, if the Management Fee is reduced pursuant to this 5.2.4, allocations of items of Net Gain or gross gain of the Partnership shall first be made to the General Partner until the cumulative amount of such items of Net Gain or gross gain allocated under this 5.2.4.2 equals the cumulative amount by which the Management Fee has been reduced pursuant to 5.2.4.1.

#### **5.3 SALARIES OF PRINCIPALS.**

##### **5.3.1 No Salaries.**

The General Partner and the Principals shall receive no salaries from the Partnership other than (with respect to the General Partner) the Management Fee.

##### **5.3.2 Fees and Commissions from Portfolio Companies.**

Subject to the provisions of 5.2.2.3, the General Partner and its Affiliates (including the Principals) shall be permitted to receive fees, commissions and other compensation from entities other than the Partnership; *provided, however*, that:

- (a) The activity from which such compensation arises complies with 3.5;
- (b) Any Portfolio Company Remuneration shall be received by the General Partner, such Principal or such Affiliate in such Person's capacity as the General Partner or as a member, officer, director or employee of or consultant to the General Partner, shall be remitted to the General Partner, constitute income of the General Partner, and be reported as such for tax purposes; and
- (c) In the event that the General Partner, any Principal or any Affiliate of the General Partner or any Principal receives Portfolio Company Remuneration paid by any Portfolio Company in which the Partnership and any Existing Fund, Successor Fund or Parallel Partnership holds an investment, the General Partner shall determine that portion of such amounts to be retained by or remitted to the General Partner pursuant to 5.3.2(b) based on the relative amounts invested in such Portfolio Company by the Partnership and such Existing Fund(s), Successor Fund(s) or Parallel Partnership(s).



#### 5.4 PLACEMENT AGENT FEES.

The Partnership may pay a fee or sales commission to a placement agent in connection with a sale of an interest in the Partnership; *provided, however*, that in such case the Management Fee shall be reduced by the amount of such fees or commissions, with such reduction to be applied against the Management Fee payable on or prior to the date(s) on which such fees or commissions were paid by the Partnership. If the Management Fee is reduced pursuant to this 5.4, all references in this Agreement to the “**Management Fee**,” including without limitation in 5.2.4.1, shall mean the Management Fee as reduced pursuant to this 5.4.

### ARTICLE 6 — CAPITAL OF THE PARTNERSHIP

#### 6.1 OBLIGATION TO CONTRIBUTE.

##### 6.1.1 Drawdowns.

###### 6.1.1.1 *General.*

Each Limited Partner agrees to make payments of capital contributions to the Partnership in cash, in accordance with and subject to the terms of this Agreement, in an aggregate amount equal to such Partner’s Subscription. The General Partner agrees to make payments of capital contributions to the Partnership in accordance with 6.1.3 of this Agreement. All payments of capital contributions shall be made at such times and in such amounts as are specified by the General Partner in Call Notices issued pursuant to 6.2, in separate drawdowns (“**Drawdowns**”) as provided in this Article 6.

###### 6.1.1.2 *Drawdowns during Investment Period.*

The General Partner is authorized to make Drawdowns of capital contributions from time to time prior to the expiration or termination of the Investment Period in accordance with this Article 6 for any purpose contemplated under this Agreement.

###### 6.1.1.3 *Drawdowns after expiration or termination of Investment Period or during Suspension Period.*

After the expiration or termination of the Investment Period, or during any Suspension Period (as defined below) the General Partner shall not be authorized to make (and the Partners shall not be obligated to contribute capital pursuant to) any Drawdowns to fund new Portfolio Investments (*i.e.*, Portfolio Investments which the Partnership is not contractually obligated to make at such time) *other than* for:

- (a) Portfolio Investments during the one year period following the expiration or termination of the Investment Period upon the approval of the Advisory Board;
- (b) Portfolio Investments as to which, prior to the expiration or termination of the Investment Period or the commencement of any Suspension Period, the Partnership and the prospective Portfolio Company in which such investment is to be made (or its Affiliates) have in good faith signed a letter of intent setting forth the material terms and conditions of such investment; or
- (c) Follow-on investments in existing Portfolio Companies during the twenty-four month period (the “**Follow-On Period**”) following the expiration or termination of the Investment Period; provided, however, that the Follow-On Period may be extended by the Advisory Board.

###### 6.1.1.4 *Drawdowns after expiration or termination of Investment Period for other purposes.*

The General Partner’s authority to call for Drawdowns after the expiration or termination of the Investment Period or during any Suspension Period for purposes *other than* to fund Portfolio Investments shall not be affected by the expiration or termination of the Investment Period or the existence of a Suspension Period.

#### **6.1.1.5 Suspension Period.**

A “**Suspension Period**” shall be deemed to commence 60 days after the affirmative vote of (a) 75% in interest of the Limited Partners or (b) 66-2/3% in interest of the Limited Partners following the entry of a verdict, judgment, order or injunction against the General Partner or any of the Principals that materially impairs the ability of the General Partner or the Principals to carry out their duties relating to the Partnership and General Partner. During the 60-day period following the affirmative vote of the Limited Partners imposing a Suspension Period, the General Partner may communicate with the Limited Partners to seek reconsideration of such vote. A Suspension Period may be terminated at any time upon the affirmative vote of 66-2/3% in interest of the Limited Partners.

#### **6.1.2 Deficiency Drawdowns.**

##### **6.1.2.1 General.**

In the event that any Limited Partner fails to make a capital contribution and becomes a Defaulting Partner, the General Partner may, but shall not be obligated to, call for an additional Drawdown, in accordance with this 6.1.2, equal to such defaulted capital contribution, from Limited Partners other than the Limited Partner so in default, in the amounts determined pursuant to 6.1.2.3. Any Drawdown pursuant to this 6.1.2 is referred to as a “**Deficiency Drawdown**.”

##### **6.1.2.2 Procedure.**

If the General Partner determines to make a Deficiency Drawdown, it will either:

- (a) Amend the original or outstanding Call Notice previously sent to each Limited Partner pursuant to 6.2 in order to increase such Limited Partner’s required contribution by its proportionate share of the total Deficiency Drawdown, with such amended Call Notice to be given at least five Business Days before the Drawdown Date for such Deficiency Drawdown; or
- (b) Deliver a new Call Notice in accordance with 6.2 which shall supersede the original or outstanding Call Notice and shall include the additional Deficiency Drawdown.

##### **6.1.2.3 Amount; effect.**

The amount of any contribution with respect to a Deficiency Drawdown required to be paid by any Limited Partner pursuant to this 6.1.2 shall bear the same relationship to the aggregate contributions to be made by all Limited Partners with respect to such Deficiency Drawdown as such Limited Partner’s Subscription bears to the aggregate Subscriptions of all Limited Partners, other than any Defaulting Partner whose default gave rise to such Deficiency Drawdown. Any payment by a Limited Partner pursuant to this 6.1.2 shall be deemed to be added to such Partner’s Contribution, but shall not increase or be in excess of the Subscription of such Partner. The General Partner’s obligation with respect to a Deficiency Drawdown shall be subject to 6.1.3.

#### **6.1.3 Contribution Obligation of General Partner.**

The Contribution of the General Partner at any time shall equal not less than the aggregate Contributions of all Partners at such time multiplied by 2.0%. Notwithstanding anything to the contrary set forth in this Agreement, the General Partner’s capital contributions in satisfaction of its Subscription shall be made in cash in installments at the same times and in the same proportions (relative to the General Partner’s Subscription) as the capital contributions of the Limited Partners are made, until the General Partner has contributed in cash 50% of its Subscription. Thereafter, the General Partner shall not be required to make any actual capital contributions in satisfaction of its Subscription in cash, but instead the General Partner’s remaining capital contributions shall be deemed to have been made in installments at the same times and in the same proportions (relative to the General Partner’s Subscription) as the capital contributions of the Limited Partners are made. For avoidance of doubt, the General Partner’s capital

contributions deemed to have been made to the Partnership pursuant to the previous sentence shall increase its Contribution and reduce its Remaining Commitment, but shall not increase the General Partner's Capital Account.

**6.1.4 No Interest or Withdrawals.**

No interest shall accrue on any capital contribution made by a Partner. No Partner shall have the right to withdraw or to be repaid any of its capital contributions to the Partnership except as specifically provided in this Agreement.

**6.2 CALL NOTICES.**

**6.2.1 General.**

The General Partner shall specify the time of each Drawdown of capital contributions in a written notice (a "Call Notice") given to the Limited Partners prior to the date of such Drawdown (the "Drawdown Date").

**6.2.2 Timing.**

The General Partner shall give Call Notices to the Limited Partners by facsimile (at their respective facsimile numbers as set forth in Schedule A) at least 10 Business Days prior to each Drawdown Date and shall send by express courier a copy thereof to each Limited Partner no later than the next Business Day after the date such Call Notice is so given.

**6.2.3 Contents.**

Each Call Notice shall set forth the name of the Partnership and:

- (a) The scheduled Drawdown Date and the total amount of capital contributions to be made by all Partners on the Drawdown Date;
- (b) The required capital contribution to be made by the Limited Partner to which the notice is directed;
- (c) The Partnership account to which such capital contribution shall be paid, including wiring and routing information; and
- (d) If such capital contribution is to be applied to the acquisition of a Portfolio Investment, the anticipated nature and approximate timing of that Portfolio Investment and any other information relating to such Portfolio Investment that the General Partner in its discretion determines should be set forth in that Call Notice.

**6.2.4 Rescission; Postponement.**

Any Drawdown in respect of which a Call Notice has been delivered may be rescinded or postponed by the General Partner one or more times. The General Partner shall give prompt written notice (but in any event not later than two Business Days prior to the Drawdown Date) to each Limited Partner by facsimile of any such rescission or postponement, whereupon any rescheduled Drawdown Date shall constitute the Drawdown Date for all purposes under this Agreement. A notice of postponement shall restate the entire Call Notice and indicate to the Limited Partners any material changes in the information contained in the original Call Notice.

**6.2.5 ERISA Plan Asset Compliance.**

The General Partner may modify the above Call Notice and Drawdown procedures, including reducing to five the number of days' written notice required prior to Drawdown to the extent reasonably necessary to comply with 15.2.1.

### **6.3 AMOUNT OF CONTRIBUTIONS.**

#### **6.3.1 Apportionment among Partners.**

The General Partner shall calculate the capital contribution to be made by each Partner pursuant to a Drawdown so that such Partner's capital contribution to be made pursuant to that Drawdown bears the same relationship to such Partner's Remaining Commitment as the aggregate capital contributions to be made by all Partners pursuant to such Drawdown bears to the aggregate Remaining Commitments of all Partners, except as explicitly provided in this Agreement.

#### **6.3.2 Form.**

Except as provided in 6.1.3, all capital contributions shall be made to the Partnership by wire or other transfer of Federal or other immediately available funds by 11:00 a.m. Chicago time on the relevant Drawdown Date to the account designated by the General Partner for such purpose.

### **6.4 CONTRIBUTIONS AND PAYMENTS ON ADMISSION OF ADDITIONAL LIMITED PARTNERS.**

#### **6.4.1 Adjustment to Aggregate Subscriptions.**

Upon the admission of any additional Limited Partner in accordance with 3.2.4: (a) the General Partner shall amend or supplement Schedule A to reflect the name, address and Subscription of such additional Limited Partner; (b) the Subscription of any such additional Limited Partner shall be included thereafter in the Partnership's aggregate Subscriptions; and (c) the Subscription of the General Partner shall be increased (if necessary) to the amount then required by 6.1.3.

#### **6.4.2 Contributions on Admission.**

- (a) Each additional Limited Partner shall pay to the Partnership, by wire transfer of immediately available funds on the date of its admission as a Limited Partner, capital contributions representing the same percentage of its Subscription as the percentage which each other Partner has been required to contribute of its Subscription (including amounts deemed contributed by the General Partner pursuant to 6.1.3) prior to such date (net of any prior or contemporaneous returns to Limited Partners of their Contributions made pursuant to 6.7 or 6.4.3).
- (b) Each additional Limited Partner admitted to the Partnership more than 30 days after the Partnership's Initial Drawdown Date, shall pay to the Partnership, by wire transfer of immediately available funds on the date of its admission as a Limited Partner, an amount equal to the interest that would have been earned if the dollar amount of such additional Limited Partner's proportionate share of the aggregate Contributions of all Partners had been invested at an interest rate equal to the Prime Rate per annum, compounded annually, for the period from the Partnership's Initial Drawdown Date to the date of such additional Limited Partner's admission to the Partnership.

No payment made by any Limited Partner pursuant to 6.4.2(b) shall be treated as increasing that Partner's Contribution.

#### **6.4.3 Distributions to Other Partners.**

Upon the admission of an additional Limited Partner, the General Partner may cause the Partnership to distribute to the Limited Partners (other than any Limited Partners admitted on such admission date):

- (a) An amount equal to the initial capital contribution made by such additional Limited Partner pursuant to 6.4.2(a), which shall be apportioned among such previously admitted Limited Partners in proportion to their respective Contributions and shall increase on a dollar-for-dollar basis the Remaining Commitment, and reduce on a dollar-for-dollar basis the Contribution, of each Limited Partner receiving such distribution; and

- (b) An amount equal to the additional payment made by such additional Limited Partner pursuant to 6.4.2(b), which shall be apportioned among such previously admitted Limited Partners in proportion to their respective Contributions but shall not increase the Remaining Commitment of any Limited Partner receiving such distribution.

Such distribution shall be accompanied by written notice that such distribution is being made pursuant to this 6.4.3 and increases each Partner's Remaining Commitment as provided hereby.

#### **6.4.4 Increases in Subscriptions of Existing Partners.**

For purposes of 6.4.1, 6.4.2 and 6.4.3, the acceptance of additional Subscriptions after the Initial Drawdown Date from any existing Limited Partner that was originally admitted as a Limited Partner prior to the Initial Drawdown Date shall be treated as an admission of an additional Limited Partner after the Initial Drawdown Date.

### **6.5 FAILURE TO MAKE REQUIRED PAYMENT.**

#### **6.5.1 Delay Penalty.**

##### **6.5.1.1 General.**

Except to the extent such Limited Partner is excused pursuant to any provision of this Agreement from paying all or any part of its capital contribution pursuant to a Drawdown, upon any failure by a Limited Partner to pay in full when due the capital contribution to be paid by it on a Drawdown Date, interest will accrue at the Default Rate on the outstanding unpaid balance of such capital contribution, from and including such Drawdown Date until the earlier of the date of payment of such capital contribution or such time, if any, as such Limited Partner becomes a Defaulting Partner.

##### **6.5.1.2 Payment before notice of default given.**

If such Limited Partner fails to pay any such amount when due but pays such amount (together with any accrued interest thereon) prior to the time it becomes a Defaulting Partner, the General Partner shall reflect in the records of the Partnership the amount paid by such Partner, with such amount treated as payment first of accrued interest to the extent thereof; *provided, however*, that no such payment of interest shall increase such Partner's Contribution or reduce its Remaining Commitment.

##### **6.5.1.3 Designation as Defaulting Partner.**

A Limited Partner that has failed to make a payment in satisfaction of such Partner's Subscription (together with any interest or other amounts due) pursuant to a Call Notice by the close of business on the date that is three Business Days after the relevant Drawdown Date, and has also failed to make such payment on or before the date that is five Business Days after the General Partner has given written notice to such Limited Partner of its failure to make such payment (which such notice shall be given no later than 30 days after the date of such default), shall be deemed by the General Partner in its sole discretion to be a "Defaulting Partner."

#### **6.5.2 Default Charge.**

##### **6.5.2.1 Imposition.**

The Partners agree that the damages suffered by the Partnership as the result of any failure by a Partner to make a capital contribution or other payment to the Partnership that is required by this Agreement cannot be estimated with reasonable accuracy. As liquidated damages for such default (which each Partner hereby agrees are reasonable), the Contribution and Capital Account of a Defaulting Partner shall be reduced by an amount equal to 50% of such Defaulting Partner's Subscription at the time of the default (the "Default Charge").

**6.5.2.2 Reallocation.**

- (a) The amount of any Default Charge levied upon a Defaulting Partner shall immediately become unrestricted funds of the Partnership and shall be allocated:
  - (i) As to the Contribution amount, to and among the respective Contributions of the non-defaulting Partners in proportion to their respective Contributions; and
  - (ii) As to the Capital Account amount, to and among the respective Capital Accounts of the non-defaulting Partners in proportion to the positive balances in their respective Capital Accounts.
- (b) For purposes of 6.5.2.2(a):
  - (i) The amount by which a Defaulting Partner's Contribution or Capital Account is reduced shall in no case exceed the Defaulting Partner's Contribution or the positive balance in such Defaulting Partner's Capital Account, respectively, immediately before the reduction;
  - (ii) If either the Contribution or the Capital Account of the Defaulting Partner otherwise would be reduced below zero by the imposition of the full amount of any Default Charge, that Contribution or the balance in that Capital Account shall be reduced to zero and any excess of the full amount of the Default Charge over the amount of the Defaulting Partner's Contribution or the positive balance in its Capital Account immediately before such reduction, as appropriate, shall be carried over and applied to reduce such Defaulting Partner's Contribution or the balance in its Capital Account, as appropriate, at such subsequent time or times as that Contribution is greater than zero or that Capital Account has a positive balance; and
  - (iii) Any increase in the Contributions or Capital Accounts of non-defaulting Partners as the result of the imposition of a Default Charge shall occur only at such time or times as the corresponding reduction in the Defaulting Partner's Contribution or Capital Account occurs.

**6.5.3 Limitation on Distributions to Defaulting Partner.**

The General Partner, in its sole discretion, may cause the Partnership to withhold any distributions that otherwise would be made to a Defaulting Partner; *provided, however*, that if, on or before the date that is five Business days after notice of a default was given to such Partner, such Partner has paid to the Partnership all amounts then due and payable, any distributions so withheld shall be delivered to such Partner at the end of that five Business Day period. In the event that any Defaulting Partner does not make full payment to the Partnership of all amounts due and payable on or before the date that is five Business Days after notice of a default was given to such Partner, then, notwithstanding any other provision of this Agreement, the General Partner, in its sole discretion, may cause the Partnership to retain, and use for any purpose, any amounts otherwise distributable to such Defaulting Partner until such time as the Partnership makes its final liquidating distribution. If the General Partner has withheld distributions from a Partner pursuant to this 6.5.3 and subsequently determines to pay the withheld distributions to such Partner, it may elect to (1) pay cash to such Partner in lieu of any distributions which were made to the non-defaulting Partners in kind and withheld from such Partner, but shall not, in such event, be liable for any subsequent increase in the value of any securities which would have inured to such Partner's benefit had such Partner not defaulted or (2) deliver to such Partner the securities such Partner would have received had the distribution to such Partner not been withheld, but shall not, in such event, be liable for any diminution in the value of such securities subsequent to the date such securities would have been distributed. Any losses incurred by the Partnership upon the disposition of investment assets that would otherwise have been distributed to the Defaulting Partner in kind shall be for the account of the Defaulting Partner.

#### **6.5.4 Effect of Default on Remaining Interest in Partnership.**

- (a) The application of the aforesaid liquidated damages provisions shall not relieve any Defaulting Partner of such Partner's obligation to make all payments of its capital contributions pursuant to Drawdowns when due. The General Partner, in its sole discretion, may determine that no additional capital contribution shall be accepted from the Defaulting Partner, in which case the General Partner shall so notify such Defaulting Partner in writing. As of the date that such notice is sent to the Defaulting Partner, such Defaulting Partner's Remaining Commitment shall be reduced to zero.
- (b) In the event that each of the Defaulting Partner's Contribution and the balance in its Capital Account have been reduced to zero and either (i) the Remaining Commitment of each Partner (other than any Defaulting Partner) has been reduced to zero, or (ii) the General Partner has determined that such Defaulting Partner shall not be permitted to make any further capital contributions to the Partnership, such Defaulting Partner's interest in the Partnership shall be extinguished completely and the Partnership shall have no further obligation of any nature to such Person.
- (c) Notwithstanding any reduction in the Defaulting Partner's Contribution pursuant to 6.5.2.1 or any reduction in its unpaid Subscription pursuant to this 6.5.4, if the Defaulting Partner continues as a Limited Partner, subsequent allocations of Net Gain, Net Loss or items in the nature of gross income, gain or loss made to such Defaulting Partner shall be adjusted (in addition to any adjustment resulting from the imposition of a Default Charge) to the extent necessary so that the aggregate allocations made to the Defaulting Partner, over the life of the Partnership, shall not exceed the allocations that would have been made to a non-defaulting Limited Partner with a Subscription equal to the lesser of (1) the Defaulting Partner's Subscription reduced by the amount of any Default Charge that has been imposed or (2) the amount previously contributed to the Partnership by the Defaulting Partner; *provided, however*, that (i) any allocations of Net Loss (or items of gross loss and expense) that are intended to offset allocations of Net Gain (or items of gross income and gain) made prior to the default shall be made to the Defaulting Partner as if it at all times had a Subscription equal to its Subscription prior to the default, and (ii) if, prior to its default, the Defaulting Partner had been allocated Net Loss (and items of gross loss and expense) in excess of Net Gain (and items of gross income and gain), then the subsequent allocations otherwise required by this 6.5.4 shall be adjusted so that the Defaulting Partner shall not be relieved of that portion of the losses allocated to it for the period prior to the default that exceeds its proportionate share of the losses of the Partnership for such period, determined based on its post-default share of allocations calculated in the manner required by the other provisions of this 6.5.4(c).

#### **6.5.5 Other Remedies.**

The Partnership shall have all other remedies available under law to a limited partnership organized under the Delaware Act to enforce the collection from the Defaulting Partner of any unpaid capital contributions for which a Drawdown Notice has been issued, any interest owed by such Partner as provided in 6.5.1.1, all costs of collection (including attorneys' fees), and interest at the Default Rate on all such costs from the date paid. All such other remedies shall be cumulative.

### **6.6 DEFAULT DUE TO CHANGE IN LAW.**

#### **6.6.1 General.**

If, at any time before a Drawdown Date, a Limited Partner shall obtain and deliver to the Partnership an opinion of counsel reasonably acceptable (as to form, substance and choice of counsel) to the General Partner to the effect that all future payments by such Limited Partner of its Remaining Commitment (including, but not limited to, any part of the Drawdown due on such date) will be unlawful or that there

is a material and substantial likelihood that all such payments will be unlawful, in each case as a result of changes in laws or regulations applicable to such Limited Partner occurring after the date of such Limited Partner's admission to the Partnership, then such Limited Partner shall have no further right or obligation to pay any part of its Remaining Commitment.

#### **6.6.2 Effect of Permitted Nonpayment.**

In the event that any Limited Partner is excused, pursuant to 6.6.1, from its obligation to make additional payments to the Partnership:

- (a) Such Limited Partner shall not, by reason of its failure to pay such portion, be deemed to be a Defaulting Partner for purposes of 6.5;
- (b) Such Limited Partner's Remaining Commitment shall be reduced to zero; and
- (c) The General Partner, in its sole discretion, may adjust subsequent Partnership allocations and distributions as necessary to ensure that, to the extent possible, the aggregate amounts allocated and distributed by the Partnership to such Partner over the term of the Partnership are equal to the aggregate amounts that would have been so allocated and distributed if such Partner's initial Subscription had at all times been equal to its Contribution after giving effect to this 6.6.2.

### **6.7 RETURN OF CONTRIBUTIONS SUBJECT TO SUBSEQUENT DRAWDOWN.**

#### **6.7.1 Contributions Unused After 90 Days.**

In the event that the Partners have made capital contributions subject to Drawdowns and the General Partner in its sole discretion determines that any portion of such capital contributions is not likely to be invested in one or more Portfolio Investments or applied to the payment or reimbursement of expenses or other Partnership purposes within a reasonable period of time (but in no event longer than 90 days after the relevant Drawdown Date), then the General Partner shall cause the Partnership to distribute part or all of the amount of any such capital contributions which have not been so invested or applied, together with any income earned thereon from Temporary Investments made with such capital contributions, to the Partners who made such capital contributions, in proportion to each such Partner's capital contribution made pursuant to the relevant Call Notice. Such distribution shall be accompanied by written notice that such distribution is being made pursuant to this 6.7.1 and increases each Partner's Remaining Commitment as provided in 6.7.2.

#### **6.7.2 Effect of Return of Contributions.**

The Contribution of any Partner receiving a payment or distribution pursuant to 6.7.1 or 6.7.6 shall be reduced (but not below zero) by the amount of its Contribution returned to such Partner, and such Partner's Remaining Commitment shall be increased, on a dollar-for-dollar basis, by the amount of that reduction. No Partner's Remaining Commitment shall be increased, however, by any amounts paid or distributed to such Partner pursuant to 6.7.1 that are attributable to interest or other income or gains ("**Partner Interest**") attributable to Temporary Investments made by the Partnership with such capital contributions prior to their return to the contributing Partner. Any part of its Contribution returned to any Partner pursuant to this 6.7 shall be available to the Partnership for subsequent Drawdowns, subject to the limitations set forth in this Agreement.

#### **6.7.3 Form of Returns.**

Any amounts returned to the Partners pursuant to this 6.7 shall be paid to them by wire or other transfer of Federal or other immediately available funds; *provided, however*, that: (a) no payment by transfer of Federal or other immediately available funds need be made hereunder to a Limited Partner unless such Limited Partner has provided appropriate transfer instructions to the General Partner not less than two Business Days prior to the date proposed for payment, with instructions that all such amounts shall be



sent to such Limited Partner by wire transfer; (b) such Limited Partner shall also be responsible for informing the General Partner in writing of any changes in such transfer instructions; and (c) the General Partner shall have no liability for transferring any such amount in accordance with the most recent instructions received from such Limited Partner. Any payment to a Limited Partner required by this 6.7 that is not made by transfer of Federal or other immediately available funds because appropriate transfer instructions were not provided to the General Partner in accordance with clause (a) of this 6.7.3 shall be made by check payable to the order of such Limited Partner.

#### **6.7.4 Returns to Fund Permitted Reinvestments.**

In the event that the General Partner, in its sole discretion, determines that all or any portion of a distribution of Distributable Proceeds should be subject to subsequent Drawdown in order to enable the Partnership to invest 110% of the aggregate Subscriptions of all Partners in Portfolio Investments (pursuant to 4.3), the General Partner shall deliver written notice to each Partner within five Business Days after such distribution of the percentage of the distribution made to such Partner that is subject to subsequent Drawdown (which percentage shall be uniform for all Partners receiving such distribution), and that percentage of such distribution shall be treated for purposes of 6.7.2 as a return of such Partner's Contribution.

#### **6.7.5 General Partner's Deemed Contribution.**

If any contributions are returned pursuant to 6.7.1 or 6.4.3, and a portion of such returned contributions relates to the General Partner's contributions that were deemed to have been made pursuant to 6.1.3, the General Partner shall make such adjustments that it deems appropriate in order to effectuate the economic arrangements set forth in 5.2.3, 6.1.3 and this 6.7 (provided that such adjustments do not reduce the amount distributable to the Limited Partners pursuant to 6.7.1 or 6.4.3, or increase the amount allocable to the General Partner pursuant to 6.1.3).

#### **6.7.6 Returns on Admission of New Partners.**

Partners' capital contributions also may be returned when new Partners are admitted to the Partnership or the Subscriptions of existing Partners are increased, as provided in 6.4.3.

## **ARTICLE 7 — DISTRIBUTIONS**

### **7.1 AMOUNT, TIMING AND FORM.**

#### **7.1.1 General.**

- (a) Except as otherwise provided in this Agreement, the General Partner shall determine the amount, timing and form (whether in cash or in kind) of all distributions made by the Partnership.
- (b) Notwithstanding anything to the contrary in this Article 7, the General Partner, in its sole discretion, may elect not to receive part or all of any distribution to which it otherwise would be entitled under this Agreement and cause that amount to be distributed to all Partners in proportion to their respective Contributions; *provided, however*, that the General Partner, in its discretion, may subsequently distribute to itself, out of funds available therefor, any amounts that it has previously elected not to receive pursuant to this 7.1.1(b), without regard to the other provisions of this Article 7 (other than 7.5 (b)), but subject to any restoration obligation of the General Partner described in 7.6.

## 7.1.2 Distributions in Kind.

### 7.1.2.1 *Freely Tradable Securities.*

Except as authorized by the General Partner and approved in advance by the Advisory Board, all distributions made before the commencement of the liquidation of the Partnership's assets pursuant to Article 10 shall consist of cash or Freely Tradable Securities.

### 7.1.2.2 *Apportionment of distributions.*

Each class of securities to be distributed in kind shall be distributed to the Partners in proportion to their respective shares of the proposed distribution as provided in Article 7 or Article 10, as the case may be, except to the extent that a disproportionate distribution of such securities is necessary in order to avoid distributing fractional shares. For purposes of the preceding sentence, each lot of stock or other securities having a separately identifiable tax basis or holding period shall be treated as a separate class of securities.

### 7.1.2.3 *Distribution of Freely Tradable Securities.*

The General Partner will cause the Partnership to distribute to the Partners from time to time any Freely Tradable Securities it holds; provided that:

- (a) The Partnership may retain Freely Tradable Securities if, in the reasonable discretion of the General Partner, it is in the best interest of the Partnership to do so (*provided* that in the case of Freely Tradable Securities in a Portfolio Company that were acquired by the Partnership prior to the date on which such Portfolio Company became an issuer of publicly-traded securities, except with the consent of the Advisory Board, such Freely Tradable Securities may not be retained pursuant to this clause (a) for a period extending beyond the second anniversary of the date on which such securities became Freely Tradable Securities);
- (b) No distribution in kind may be made unless immediately after the distribution the fair market value of the Partnership's assets will equal or exceed the liabilities of the Partnership; and
- (c) If the Freely Tradable Securities have been held for less than two years as of the date of such distribution, the General Partner shall delay such distribution until all of the shares of such Freely Tradable Security distributed by the Partnership may be sold by all of the Partners in the three-month period commencing on the date of distribution under the volume limitations of the Securities and Exchange Commission Rule 144.

## 7.2 DISCRETIONARY DISTRIBUTIONS.

### 7.2.1 General.

Except as otherwise explicitly provided in this Agreement, all distributions prior to the commencement of the liquidation of the Partnership's assets pursuant to Article 10 shall be made in accordance with this 7.2. All distributions made pursuant to this 7.2, other than Tax Distributions, are referred to herein as "Discretionary Distributions."

### 7.2.2 Fair Value Test Not Satisfied.

All Discretionary Distributions made when the Fair Value Test is *not* satisfied shall be made to the Partners in proportion to their respective Contributions, determined at the time of distribution.

### 7.2.3 Fair Value Test Satisfied.

All Discretionary Distributions made when the Fair Value Test *is* satisfied shall be made as follows:

- (a) First, to all Partners in proportion to their respective Priority Return Amounts until each Partner has received aggregate distributions of Distributable Proceeds equal to such Partner's Priority Return Amount;

- (b) Second, to all Partners in the amounts and proportions necessary to ensure, as promptly as possible and to the extent feasible, that the General Partner has received Discretionary Distributions in cash or in kind equal in the aggregate to 20% of the Partnership's Cumulative Net Gain and that all Discretionary Distributions in excess of 20% of the Partnership's Cumulative Net Gain shall have been distributed to all Partners in proportion to their respective Contributions.

#### **7.2.4 Fair Value Test; Operational Rules.**

- (a) The "**Fair Value Test**" will be satisfied as of the time of a proposed Discretionary Distribution if, as of that time, the aggregate fair market value of the assets of the Partnership, determined in accordance with 14.4 (net of liabilities, and excluding the proposed distribution) and subject to approval by the Advisory Board as provided in 14.4.4, is equal to or greater than 150% of the excess (if any) of (i) the Limited Partners' aggregate Contributions over (ii) the aggregate amount of distributions, including Tax Distributions and the proposed distribution (determined as if Fair Value Test were satisfied), made to the Limited Partners since the inception of the Partnership. The Fair Value Test will also be satisfied if, at the time of a proposed Discretionary Distribution, each Limited Partner has received distributions, including Tax Distributions, at least equal in the aggregate to such Limited Partner's Contribution.
- (b) For purposes of 7.2.2 and 7.2.3:
  - (i) Distributions made to any Partner pursuant to 6.7 shall be disregarded;
  - (ii) If distributions to which a Defaulting Partner otherwise would have been entitled have been withheld pursuant to 6.5.3, the amounts so withheld shall be treated for such purposes as having been distributed to such Partner;
  - (iii) Tax Distributions made to any Partner shall be taken into account as if distributions of equivalent amounts had been made to such Partner pursuant to 7.2.2 or 7.2.3 as Discretionary Distributions rather than 7.3;
  - (iv) All distributions made to any Partner's predecessors in interest shall be treated as having been made to such Partner;
  - (v) Amounts treated as distributed to any Partner pursuant to 7.4 shall be taken into account as if distributions of equivalent amounts had been made to such Partner pursuant to 7.2.2 or 7.2.3 rather than 7.4; and
  - (vi) The amount of any distribution of securities made in kind shall be equal to the fair market value of those securities determined pursuant to 14.4.

### **7.3 TAX DISTRIBUTIONS; OTHER SPECIAL DISTRIBUTIONS.**

#### **7.3.1 Tax Distributions — General.**

Except as provided in 7.3.2, the Partnership shall distribute to each Partner in cash, with respect to each fiscal year, either during such year or within 90 days thereafter, an amount (a "**Tax Distribution**") equal to the aggregate federal, state and local income tax liability such Partner would have incurred as a result of such Partner's ownership of an interest in the Partnership, determined:

- (a) As if such Partner were a natural person resident in the Designated Jurisdiction;
- (b) As if such Partner were subject to tax on all taxable income and gains allocated to such Partner by the Partnership with respect to such fiscal year (net of all items of deductible loss or expenses so allocated but excluding expenses otherwise deductible by a natural person only under Section 212 of the Code) at the highest marginal rates provided for under applicable federal and Designated Jurisdiction income tax laws (taking into account, in

determining federal taxable income, any allowable deduction for Designated Jurisdiction taxes), as determined from time to time by the General Partner and calculated with respect to the character of items of income, gain, loss, deduction and credit at the Partnership level;

- (c) As if all allocations to such Partner of Partnership capital losses for prior years (to the extent not offset, to the maximum extent permitted under applicable law, against allocations to such Partner of Partnership capital gains for such prior years) had been carried forward by such Partner and applied to reduce, to the maximum extent permitted under applicable law, such Partner's tax liability with respect to Partnership capital gains allocated to such Partner in such year;
- (d) As if any increase in such tax liability as a result of any audit adjustment with respect to Partnership tax items for prior years (and any liability for interest and penalties attributable to such adjustment) constituted a tax liability of such Partner with respect to the current year; and
- (e) Except as provided in 7.3.1(c), without regard to the carryover of items of loss, deduction and expense previously allocated by the Partnership to such Partner.

#### **7.3.2 Tax Distributions — Limitations.**

- (a) The aggregate amount of Tax Distributions may be reduced or not made with respect to any fiscal year if and to the extent determined by the General Partner in its sole discretion.
- (b) The amount of any Tax Distributions shall be determined without regard to (i) any items of income, gain, loss or expense specially allocated to the Partners pursuant to 8.3 or 5.2.4.2, since it is intended that the net amount of any such income and expense allocated to any Partner (if a positive number) will be distributed to that Partner pursuant to 7.3.5, or (ii) any adjustments made pursuant to 5.2.3.

#### **7.3.3 Advances to Pay Estimated Taxes.**

The Partnership may make Tax Distributions to all Partners (including any Tax-Exempt Partners) during any Partnership fiscal year to enable them to satisfy their liability to make estimated tax payments with respect to such fiscal year or the preceding fiscal year based on calculations of the Partners' estimated tax liability made pursuant to 7.3.1 as of such dates as the General Partner in its discretion may determine, subject to the following:

- (a) If the aggregate amount of Tax Distributions made to the General Partner with respect to any fiscal year exceeds the tax liability of the General Partner with respect to such fiscal year (calculated as of the end of such fiscal year pursuant to 7.3.1), the General Partner shall treat such excess as an advance and return such excess to the Partnership without interest within 20 Business Days after the Partnership's accountants have determined that such excess Tax Distribution has been made; and
- (b) The Capital Account of the General Partner shall be increased by any amount returned by the General Partner to the Partnership pursuant to 7.3.3(a), but the Contribution of the General Partner shall not be affected by any such return.

#### **7.3.4 Coordination of Tax Distributions and Other Distributions.**

Discretionary Distributions made to any Partner in cash pursuant to 7.2 during any fiscal year shall reduce dollar-for-dollar the amount of distributions that may be considered Tax Distributions to which such Partner would have been entitled pursuant to 7.3.1 with respect to such fiscal year if the General Partner had exercised its discretion to make such Tax Distributions.

### 7.3.5 Other Special Distributions.

- (a) Distributions of cash corresponding to amounts of Partnership income and gains (net of Partnership expenses and losses) that have been specially allocated to the Partners pursuant to 8.3 shall be made, at such time or times as the General Partner in its discretion shall determine and subject to the availability of funds therefor, to the Partners to whom net positive amounts of such income and gains have been allocated, in proportion to such allocations. No distributions shall be made pursuant to this 7.3.5 to the extent that such distributions have already been made pursuant to 6.4.3.
- (b) All distributions required by 5.2.3 will be made at the times and in the amounts provided for therein.
- (c) No distribution made to any Partner pursuant to 7.3.5(a) shall be taken into account for purposes of 7.2.2 or 7.3.4 in determining the amount previously distributed to such Partner (it being intended that all amounts so allocated and distributed effectively shall be treated for this purpose as if such amounts had been earned outside the Partnership by the Partners receiving such allocations), and no distribution made pursuant to 5.2.3 shall be taken into account for such purposes.
- (d) All distributions required by 6.4.3 will be made at the times and in the amounts provided for therein.

## 7.4 TAX LIABILITY MATTERS.

### 7.4.1 General.

If the Partnership incurs any obligation to pay directly any amount in respect of taxes, including but not limited to withholding taxes imposed on any Partner's or former Partner's share of the Partnership gross or net income and gains (or items thereof), income taxes, and any interest, penalties or additions to tax ("Tax Liability"), or the amount of cash or other property to which the Partnership otherwise would be entitled is reduced as a result of withholding by other parties in satisfaction of any such Tax Liability:

- (a) All payments by the Partnership in satisfaction of that Tax Liability and all reductions in the amount of cash or fair market value of property to which — but for such Tax Liability — the Partnership would have been entitled shall be treated, pursuant to this 7.4, as distributed to those Partners or former Partners to which the related Tax Liability is attributable;
- (b) Notwithstanding any other provision of this Agreement, subsequent distributions to the Partners shall be adjusted by the General Partner in an equitable manner so that, after all such adjustments have been made and to the extent feasible, the burden of non-United States taxes withheld at the source or paid by the Partnership is borne by those Partners to which such tax obligations are attributable (determined pursuant to 7.4.3); and
- (c) The General Partner in its sole discretion may cause any amount treated pursuant to 7.4.1(a) as distributed to any Partner or former Partner at any time that exceeds the amount (if any) of distributions to which such Person is then entitled under any provision of this Agreement to be treated for all purposes of this Agreement as if that excess amount had been loaned to such Person, in which event the General Partner shall cause the Partnership to give prompt written notice to such Person of the date and amount of such loan.

### 7.4.2 Repayment of Any Amounts Treated as Loans.

Each Partner covenants, for itself, its successors, assigns, heirs and personal representatives, that such Person shall pay any amount due to the Partnership at any time after notice of any loan described in 7.4.1(c) has been given, but not later than 30 days after the Partnership delivers a written demand to such Person for such repayment (which demand may be made at any time prior to or after the dissolution of

the Partnership or the General Partner or the withdrawal of such Person or its predecessors from the Partnership); *provided, however*, that if any such repayment is not made within such 30-day period:

- (a) Such Person shall pay interest to the Partnership at the Prime Rate for the entire period commencing on the date on which the Partnership paid such amount and ending on the date on which such Person repays such amount to the Partnership together with all accrued but previously unpaid interest; and
- (b) The Partnership, at the discretion of the General Partner, shall (i) collect such unpaid amounts (including interest) from any distributions that otherwise would be made by the Partnership to such Person and/or (ii) subtract from the Capital Account of such Person, no later than the day prior to the Partnership's initial liquidating distribution, the amount of any such tax withholding (plus unpaid interest) not so collected, in each case treating the amount so collected or subtracted as having been distributed to such Person at the time of such collection or subtraction.

#### **7.4.3 Operational Rules.**

The General Partner, after consulting with the Partnership's accountants or other advisers, shall determine the amount (if any) of any Tax Liability attributable to any Partner taking into account any differences in the Partners' status, nationality or other characteristics. Any such determination regarding the amount of Tax Liability attributable to particular Partners shall be based on the manner in which the jurisdiction imposing the related tax would attribute that Tax Liability and, in making any such determination, the General Partner shall be entitled to treat any Partner as ineligible for an exemption from or reduction in rate of such foreign tax under a tax treaty or otherwise except to the extent that such Partner provides the General Partner with such written evidence (including but not limited to forms or certificates executed by its managers and/or beneficial owners) as the General Partner or the relevant tax authorities may require to establish such Partner's (or some or all of its beneficial owners') entitlement to such exemption or reduction. The intent of this 7.4 is to ensure, to the maximum extent feasible, that the burden of any taxes withheld at the source or paid by the Partnership is borne by those Partners to which such tax obligations are attributable, and this 7.4 shall be interpreted and applied accordingly.

#### **7.4.4 Partnership Obligation.**

For purposes of this 7.4, any obligation to pay any amount in respect of any Tax Liability (including any interest, penalties or additions to tax) incurred by the General Partner with respect to income or distributions made to any other Partner or former Partner shall constitute a Partnership obligation.

#### **7.5 CERTAIN DISTRIBUTIONS PROHIBITED.**

Anything in this Article 7 to the contrary notwithstanding:

- (a) No distribution shall be made to any Partner if, and to the extent that, such distribution would not be permitted under Sections 17-607(a) or 17-804(a) of the Delaware Act; and
- (b) No distribution other than a Tax Distribution shall be made to any Partner to the extent that such distribution, if made, would cause the deficit balance, if any, in the Capital Account of such Partner (determined without regard to any allocations made pursuant to Section 1 of Appendix II, other than subsection 1.1 thereof) to exceed such Partner's Restoration Amount or would further reduce an existing balance (as so determined) that is already negative in an amount exceeding such Partner's Restoration Amount.

## 7.6 RETURN BY GENERAL PARTNER OF CERTAIN DISTRIBUTIONS.

### 7.6.1 General.

In the event that, as of the date of the Partnership's final liquidating distribution, it is determined that the General Partner has received distributions from the Partnership in aggregate amounts exceeding the Target Amount, the General Partner shall return such excess distributions to the Partnership, subject to the limitation set forth in 7.6.3.

### 7.6.2 Target Amount.

The "Target Amount", with respect to distributions to the General Partner (that is, the aggregate amount distributed to the General Partner that the General Partner is entitled under this Agreement to *retain*), is the sum of:

- (a) An amount equal to the excess of (1) the aggregate amount of distributions that the General Partner would have received from the Partnership since its inception if the General Partner had timely made all of its contributions to the Partnership pursuant to Drawdowns as a Limited Partner (and had timely contributed in cash, as a Limited Partner pursuant to such Drawdowns, any amounts deemed contributed pursuant to 6.1.3) and held no interest as a general partner (and another Person had served as General Partner under this Agreement without making a capital contribution) over (2) the aggregate amount of capital contributions deemed to have been made by the General Partner pursuant to 6.1.3; and
- (b) An amount equal to 20% of the Partnership's Cumulative Net Gain for all fiscal periods since its inception; and
- (c) The aggregate amount of Special GP Distributions that the General Partner has received from the Partnership since its inception; and
- (d) The aggregate amount of Net Gain allocated to the General Partner pursuant to 5.2.4.2.

### 7.6.3 Limitation.

- (a) In no event shall the General Partner be required to return to the Partnership, pursuant to 7.6.1 or any other provision of this Agreement (including 10.5.3), an amount greater than the aggregate amount of distributions previously received by the General Partner from the Partnership, *reduced by* the sum of (i) the amount described in 7.6.2(a), (ii) all Special GP Distributions that the General Partner received from the Partnership since its inception and (iii) all Tax Distributions for each fiscal period since the Partnership's inception to which the General Partner would have been entitled pursuant to 7.3.1 (determined without regard to any allocations of taxable income, gains or losses made to the General Partner with respect to its Contribution) if all such distributions had been made and no reductions in the amount of any such distribution had occurred pursuant to 7.3.2(a), 7.3.4 or any other provision of this Agreement; *provided, however*, that the determination of the aggregate amount of Tax Distributions to which the General Partner would have been entitled shall take into account the tax liability that the General Partner would have incurred, determined in a manner consistent with 7.3.1, on any gains that the General Partner would have realized (net of any capital loss carryforwards calculated in the manner contemplated by 7.3.1(c)) if all property distributed in kind by the Partnership to the General Partner had been sold by the General Partner for its fair market value immediately after its distribution to the General Partner. The Partners intend that, after the Partnership's final liquidating distribution and before the returns otherwise required of the General Partner pursuant to this 7.6, the General Partner shall have a negative Capital Account balance equal to the amount (if any) that it is required pursuant to 7.6 to return, and this Agreement shall be interpreted and applied accordingly.

- (b) The limitation set forth in 7.6.3(a) on the General Partner's obligation to return distributions shall become effective only *after* the General Partner has returned to the Partnership all distributions it has previously received *other than* the amount described in 7.6.2(a), the amount described in 7.6.2(d), Special GP Distributions and the Tax Distribution amounts determined in the manner contemplated by 7.6.3(a).

**7.6.4 Timing; Apportionment; Other Rules.**

- (a) On or before the 90th day after the Partnership makes its final liquidating distribution, the General Partner shall return to the Partnership, in cash, the full amount that, pursuant to 7.6.1, the General Partner is required to return.
- (b) Any amount returned by the General Partner shall be distributed to the Limited Partners in proportion to their respective Contributions.
- (c) In the unlikely event that the Partnership does not have the appropriate mix of items of income, gain and loss to ensure that the Capital Accounts of the Partners reflect their economic agreement with respect to amounts returned by the General Partner as set forth in 7.6.4(a) and 7.6.4(b), then, notwithstanding any other provision of this Agreement (including but not limited to 7.5(b) and 10.2), returns by the General Partner pursuant to 7.6.4(a) and distributions to the Partners pursuant to 7.6.4(b) shall be made in the manner required by those provisions and shall be deemed to have occurred prior to the calculation of the Partners' final Capital Account balances for purposes of distributions that otherwise would be made pursuant to 10.2.
- (d) The General Partner shall cause each of the members of the general partner of the General Partner to agree in writing to be jointly and severally liable for the General Partner's obligations to return distributions pursuant to 7.6.1, 7.6.5 and 10.5.3.

**7.6.5 Interim Clawback.**

- (a) If, as of the last day of any fiscal year the General Partner has received distributions (other than Special GP Distributions and distributions made to the Partners in proportion to their respective Contributions, including for the avoidance of doubt contributions that the General Partner is deemed to have made pursuant to 6.1.3) in an amount exceeding 20% of the Distributed Profit of the Partnership as of such date, then, subject to the limitation set forth in 7.6.5(d), the General Partner shall return to the Partnership the Interim Clawback Amount within 90 days of the last day of such fiscal year and such amount shall be distributed to all Limited Partners in proportion to their respective Contributions.
- (b) The "**Interim Clawback Amount**" as of the last day of any fiscal year shall be the amount the General Partner would be required to return to the Partnership pursuant to 7.6.1 if the Partnership sold all its assets for their fair market values, determined in accordance with 14.4 and subject to approval by the Advisory Board as provided in 14.4.4, and liquidated in accordance with 10.2 on such date, reduced by the aggregate amount of Management Fee reductions pursuant to 5.2.4.1 with respect to which the General Partner has not received an allocation of Net Gain pursuant to 5.2.4.2.
- (c) The General Partner shall use commercially reasonable efforts to calculate the Interim Clawback Amount within 60 days of the last day of any fiscal year.
- (d) In no event shall the General Partner be required to return to the Partnership, pursuant to this 7.6.5, an amount greater than the amount by which the aggregate amount of distributions previously received by the General Partner from the Partnership exceeds the greater of (i) the Target Amount or (ii) the sum of the amounts described in 7.6.3(a)(i) through (iii).



- (e) Any amount that the General Partner is required to return to the Partnership pursuant to this 7.6.5 shall be deemed for all purposes of this Agreement to reduce the amount of distributions otherwise treated as distributed to the General Partner. Further, any amount distributed to a Partner pursuant to this 7.6.5 shall be deemed for all purposes of this Agreement as having been distributed to such Partner pursuant to 7.2.2.

## ARTICLE 8 — ACCOUNTS; ALLOCATIONS

### 8.1 CAPITAL ACCOUNTS.

#### 8.1.1 Creation and Maintenance.

There shall be established on the books of the Partnership a capital account for each Partner (such Partner's "**Capital Account**") that shall be:

- (a) *Increased* by (i) any capital contributions made to the Partnership by such Partner pursuant to this Agreement, (ii) any part of a Default Charge added to the Capital Account of such Partner pursuant to 6.5.2, (iii) any amounts in the nature of income or gain added to the Capital Account of such Partner pursuant to 8.2, 8.3, 8.4 or 8.5 or Appendix II, and (iv) any items of Net Gain allocated to the General Partner pursuant to 5.2.4.2; and
- (b) *Decreased* by (i) any distributions made to such Partner, (ii) any Default Charge subtracted from the Capital Account of such Partner pursuant to 6.5.2; and (iii) any amounts in the nature of loss or expense subtracted from the Capital Account of such Partner pursuant to 8.2, 8.3, 8.4 or 8.5 or Appendix II.

#### 8.1.2 Accounting for Distributions in Kind.

For purposes of maintaining Capital Accounts when Partnership property is distributed in kind:

- (a) The Partnership shall treat such property as if it had been sold for its fair market value on the date of distribution as determined in accordance with 14.4;
- (b) Any difference between the fair market value as so determined and the Cost of such property shall constitute Net Gain or Loss and shall be allocated to the Capital Accounts of the Partners pursuant to 5.2.3(c), 8.2 or 8.3; and
- (c) The Capital Account of any Partner receiving a distribution in kind shall be reduced by an amount equal to the fair market value of such property on the date of distribution (net of any liabilities secured by such distributed property that such Partner is considered to assume or take subject to under Section 752 of the Code).

#### 8.1.3 Compliance with Treasury Regulations.

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 Treasury Regulations Section 1.704-1(b), and shall be interpreted and applied in a manner consistent with such regulations. In the event that the General Partner shall determine 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 modification, provided that it is not likely to have a material effect on the amounts distributable to any Partner pursuant to Articles 7 or 10 or the timing of such distributions.

## **8.2 ALLOCATIONS OF NET GAIN OR LOSS.**

### **8.2.1 Net Gain.**

As of the end of each fiscal year of the Partnership and after giving effect to the special allocations set forth in 5.2.4.2, 5.2.3, 8.3, 8.4 and 8.5 and Appendix II, the Net Gain (if any) of the Partnership for such fiscal year shall be allocated to the Capital Accounts of the Partners as follows:

- (a) First, to all Partners, in proportion to the respective amounts of Net Loss (if any) previously allocated to each such Partner pursuant to 8.2.2(b) and not offset by prior allocations of Net Gain made pursuant to this 8.2.1(a), an amount of Net Gain equal to the aggregate amount of such Net Loss;
- (b) Second, to all Partners in the amounts and proportions necessary to ensure, as promptly as possible and to the extent feasible, that the Cumulative Net Gain of the Partnership for all periods since its inception shall have been allocated 80% to all Partners in proportion to their respective Contributions and 20% to the General Partner.

### **8.2.2 Net Loss.**

As of the end of each fiscal year of the Partnership and after giving effect to the special allocations set forth in 5.2.4.2, 5.2.3, 8.3, 8.4 and 8.5 and Appendix II, the Net Loss (if any) of the Partnership for such fiscal year shall be allocated to the Capital Accounts of the Partners as follows:

- (a) First, to all Partners, in proportion to the respective amounts of Net Gain (if any) previously allocated to each such Partner pursuant to 8.2.1(b) and not offset by prior allocations of Net Loss made pursuant to this 8.2.2(a), an amount of Net Loss equal to the aggregate amount of such Net Gain (if any);
- (b) Second, to all Partners in proportion to their respective Contributions.

### **8.2.3 Allocations Following a Default.**

Following the failure of a Limited Partner to make a contribution when due or an excused non-payment of a capital contribution by a Limited Partner, allocations otherwise prescribed by this 8.2 shall be modified as set forth in 6.5.4(c) or 6.6.2(c), as the case may be.

## **8.3 OTHER SPECIALLY ALLOCATED ITEMS.**

As of the end of each fiscal year of the Partnership and after giving effect to the special allocations set forth in Appendix II, the following items shall be specially allocated in the manner set forth below.

### **8.3.1 Delayed Payment Interest.**

The Delayed Payment Interest (if any) of the Partnership for such fiscal year shall be allocated to all Partners other than the Partner liable to pay such interest in proportion to their respective Contributions.

### **8.3.2 Transfer Expenses.**

The unpaid Transfer Expenses (if any) of the Partnership for such fiscal year shall be allocated to the transferor or the transferee of the Partnership interest involved to the extent required by 11.2.6.2.

### **8.3.3 Partner Interest.**

The Partner Interest (if any) of the Partnership for such fiscal year shall be allocated to those Partners who made capital contributions that were used to acquire the Temporary Investments giving rise to such Partner Interest, in proportion to the relative amounts of their capital contributions that were so used.

### **8.3.4 Other Items.**

Placement fees (if any) paid by the Partnership with respect to any Partner's interest shall be specially allocated to such Partner at the time of payment.

#### 8.4 ALLOCATIONS WHEN INTERESTS CHANGE.

##### 8.4.1 General.

If any Person is admitted to the Partnership (or the Subscription of any existing Partner is increased) after the Initial Closing Date, the General Partner shall adjust subsequent allocations of items of Partnership income, gain, loss and expense otherwise provided for in this Article 8 and Appendix II as necessary so that, after such adjustments have been made each Partner (including but not limited to any Partners admitted after the Initial Closing Date and all Partners whose Subscriptions have been increased after the Initial Closing Date) shall have been allocated an aggregate amount of such items equal in an amount to the aggregate amount of such items such Partner would have been allocated if it had been admitted to the Partnership on the Initial Closing Date with a Subscription equal to that set forth in Schedule A after such schedule has been revised to reflect such Partner's admission or the increase in its Subscription.

##### 8.4.2 Limitations.

The allocations otherwise required by 8.4.1 shall be limited to the extent necessary to ensure that:

- (a) No item of income, gain or deductible loss realized (or deemed to have been realized on a distribution in kind) before the admission of any new Partner shall be allocated to such Partner pursuant to 8.4.1; and
- (b) Allocations to any existing Partner of income, gain or deductible loss realized (or deemed to have been realized on a distribution in kind) prior to the increase in the Subscription of such Partner shall be limited to those permitted by Section 706 of the Code.

#### 8.5 LIMITATION ON LOSS ALLOCATIONS.

##### 8.5.1 General.

- (a) If and to the extent that any allocation of Partnership items in the nature of loss or expense to any Partner would cause such Partner's Capital Account to be negative in an amount which exceeds such Partner's Restoration Amount or would further reduce an existing balance that is already negative in an amount that exceeds such Partner's Restoration Amount, then such item(s) shall be allocated first to the Capital Accounts of the other Partners in proportion to the positive balances in their respective Capital Accounts until all such Capital Accounts are reduced to zero, then to the Capital Accounts of Partners with Restoration Amounts, in proportion to their respective Restoration Amounts, until each such Partner's Capital Account is negative in an amount equal to such Partner's Restoration Amount, and then to the Capital Account of the General Partner.
- (b) An allocation pursuant to 8.5.1(a) shall be made only if and to the extent that the deficit in such Partner's Capital Account would exceed such Partner's Restoration Amount after all allocations required by 5.2.4.2, 5.2.3 and this Article 8 have been made tentatively as if 8.5 and Appendix II were not included in this Agreement.

##### 8.5.2 Offset.

In the event that any special allocations of losses or expenses are made pursuant to 8.5.1, items of gross Partnership income and gain from subsequent periods shall be specially allocated to offset, to the extent feasible and as promptly as possible, such special allocations of loss or expense.

#### 8.6 TIMING OF ALLOCATIONS.

##### 8.6.1 Year-End Allocations.

The General Partner shall cause the allocations required by this Agreement to be made no less frequently than annually.

### 8.6.2 Gains and Losses on Distributions in Kind.

- (a) Any Net Gain or Loss deemed to have been realized pursuant to 8.1.2 on a distribution of property in kind shall be allocated, immediately prior to the time such distribution is made, to and among the Partners' Capital Accounts on the same basis as an equivalent amount of Net Gain or Loss would be allocated for a hypothetical fiscal year ending immediately prior to such distribution.
- (b) For this purpose, there shall be taken into account any Net Gain or Loss attributable to distributions in kind previously made during the fiscal year but, for administrative convenience, there shall not be taken into account other items of Partnership income, gain, loss or deduction realized or incurred since the end of the prior fiscal year except as provided in 8.6.3.

### 8.6.3 Adjustment in Timing of Allocations.

The General Partner, in its discretion, may cause the Partnership to make the allocations described in Article 8 (other than allocations for tax purposes pursuant to Part 4 of Appendix II) at a time other than as of the end of a fiscal year on the basis of an interim closing of the Partnership's books at such time. In that event, each short fiscal period attributable to any such interim closing shall constitute a fiscal year for purposes of this Article 8.

## ARTICLE 9 — DURATION OF THE PARTNERSHIP

### 9.1 TERM OF PARTNERSHIP.

The Partnership shall continue until the tenth anniversary of the Initial Closing Date, unless its term is extended as provided in 9.4, or unless it is sooner dissolved as provided in 9.2 or 9.3 or 9.5 or by operation of law.

### 9.2 DISSOLUTION UPON WITHDRAWAL OF GENERAL PARTNER.

- (a) The Partnership shall be dissolved if there shall occur with respect to the General Partner any of the events of withdrawal described in Sections 17-402(a)(2) through 17-402(a)(11) of the Delaware Act; *provided, however*, that the General Partner may not voluntarily withdraw as the general partner of the Partnership without the consent of at least 80% in interest of the Limited Partners.
- (b) If the General Partner suffers an event that, with the passage of the period specified in the Delaware Act, becomes an event of withdrawal under Section 17-402(a)(4) or (5) of the Delaware Act, the General Partner shall notify each Limited Partner of the occurrence of such event within 30 days after the occurrence of such event (or within the maximum time then permitted under the Delaware Act).
- (c) The Partnership shall not be dissolved in the event of the dissolution, death, bankruptcy, insolvency, incompetence, disability, substitution or admission of any Limited Partner, or any other similar event involving the existence, status or organization of a Limited Partner.

### 9.3 DISSOLUTION BY PARTNERS.

- (a) The General Partner, with the consent of a majority in interest of the Limited Partners, may dissolve the Partnership at any time on not less than 90 Business Days' prior written notice of such dissolution to the other Partners.
- (b) The Investment Period may be terminated or the Partnership may be dissolved by the election of 66-2/3% in interest of Limited Partners at any time following:

- (i) The adjudication that the General Partner or any of the Principals has committed fraud against the Partnership or the adjudication that the General Partner or any of the Principals has committed fraud against any other Person;
  - (ii) The conviction (or the pleading of guilty or *nolo contendere*) of the General Partner to a felony;
  - (iii) The conviction (or the pleading of guilty or *nolo contendere*) of any of the Principals to a felony against the Partnership or the conviction (or the pleading of guilty or *nolo contendere*) of any of the Principals to any other felony;
  - (iv) The General Partner having become a “debtor” as defined in the Federal Bankruptcy Code in any case commenced thereunder and at any time during the pendency of such case there shall be appointed a trustee with respect to the General Partner under Sections 701, 702 or 1104 of such Federal Bankruptcy Code (or any successor provisions thereto), or an examiner having expanded powers beyond those specifically enumerated in Section 1104(b) of such Federal Bankruptcy Code;
  - (v) Any willful and material breach by the General Partner of any term of this Agreement;
  - (vi) Any failure by the General Partner to make a capital contribution as required by Article 6, if such failure is not cured within ten (10) days of the due date of such required contribution;
  - (vii) The failure by the General Partner, for a period of not less than six (6) months, to make investments, manage portfolio companies or otherwise actively conduct the investment activities of the partnership;
  - (viii) A Second Notice Date (as defined in 9.5);
  - (ix) The entry of a verdict, judgment, order or injunction against the General Partner or any of the Principals that materially impairs the ability of any of the Principals or the General Partner to carry out its duties relating to the Partnership or the General Partner; *provided* that if the offending Principal is removed from the General Partner within 30 days of such entry, this provision shall not apply; or
  - (x) Any breach by the General Partner of its fiduciary duty to the Partnership.
- (c) Limited Partners constituting in the aggregate at least 75% in interest of the Limited Partners may dissolve the Partnership at any time, as of the date they deliver written notice of such dissolution to the General Partner.

#### 9.4 EXTENSION OF TERM.

- (a) It is contemplated by the Partners that the Partnership shall dissolve and commence its winding up on the tenth anniversary of the Initial Closing Date, without any further action being required by any of the Partners, unless sooner dissolved pursuant to 9.2, 9.3 or 9.5(c) or by operation of law.
- (b) Notwithstanding the foregoing, the term of the Partnership may be extended for up to three additional one-year periods by the General Partner with the consent of a majority in interest of the Limited Partners. Any such extension shall be subject to the rights of the Partners to dissolve the Partnership as provided in 9.3.

#### 9.5 WITHDRAWAL OF KEY PRINCIPALS.

- (a) If at any time during the term of this Partnership (i) any three or more of Immanuel Thangaraj, Martin P. Sutter, Mark Pacala, Jeff Himawan, Petri Vainio, MD, PhD, Guido

Neels, Ron Eastman and Steve Wiggins (each, a “**Key Principal**”) or (ii) any two or more of Messrs. Thangaraj, Sutter, Pacala, Himawan and Vainio have ceased to comply with their obligations under 3.5 or otherwise ceased to be actively involved in the affairs of the General Partner, the Partnership shall promptly inform the Limited Partners of such fact by telephone and registered mail and shall not commit any Uncommitted Funds to any investment until at least one (two, if three of such persons have ceased to be Key Principals) successor Key Principal has been appointed in accordance with this 9.5. For this purpose, “**Uncommitted Funds**” means funds of the Partnership (or funds which may be called for by the General Partner pursuant to Article 6) which have not been invested or committed for investment in any Portfolio Company, or which are not reasonably determined by the General Partner (with the consent of a majority of the members of the Advisory Board) to be required or desirable for “add-on” or “later-stage” investments in portfolio companies in which the Partnership has investments (“**Follow-on Investments**”).

- (b) The General Partner shall, within 180 days after the date of the sending of the notice by registered mail pursuant to 9.5(a) (the “**Notice Date**”), appoint the required number of successor Key Principals, subject in each case to the approval (in their sole discretion) of 66-2/3% in interest of the Limited Partners. If the General Partner fails to appoint the required number of successor Key Principals which appointment is approved by 66-2/3% in interest of the Limited Partners, within such 180 day period, then the General Partner shall, prior to 200th day following the Notice Date (the “**Second Notice Date**”), give further notice to each Limited Partner stating that the required number of successor Key Principals has not been appointed and approved and setting forth: (i) the aggregate amount of Uncommitted Funds (the “**Uncommitted Amount**”), (ii) the amount (the “**Reserve Amount**”) of such Uncommitted Funds which, as determined in good faith by the General Partner, is necessary to meet on-going Management Fee and other continuing expenses to be incurred by the Partnership, (iii) the amount of funds drawn down for investment which have not yet been invested, (iv) the investments to which any such drawn down but uninvested funds are committed and (v) the amount of funds reasonably anticipated by the General Partner, and agreed to by a majority of the members of the Advisory Board, to be necessary for Follow-on Investments, listed by Portfolio Company (the excess of the Uncommitted Amount over the Reserve Amount is herein called the “**Available Amount**”). Between the 30th and 60th days immediately following the Second Notice Date, each Limited Partner may, by written notice to the General Partner, elect to reduce its Subscription by an amount (the “**Reduction Amount**”) equal to such Limited Partner’s pro rata share as of the Second Notice Date (based on such Limited Partner’s relative pre-existing Subscription) of the Available Amount. Within 30 days after receipt of any such notice from a Limited Partner, the Partnership shall distribute to such Limited Partner in cash or Freely Tradable Securities an amount equal to that portion of such Limited Partner’s Reduction Amount represented by funds which have been contributed to the Partnership by such Limited Partner. Upon any reduction in the aggregate Subscriptions of the Limited Partners, the General Partner’s Subscription shall be reduced proportionately and the amount of the Management Fee payable to the General Partner in subsequent quarters pursuant to 5.2.2.1 shall be reduced to reflect such reduction in the aggregate Subscriptions of the Limited Partners. In addition, following the Second Notice Date, 66-2/3% in interest of Limited Partners may elect to terminate (i) the Investment Period or (ii) the Partnership pursuant to 9.3(b)(viii).
- (c) Except as set forth in this 9.5, the general partner of the General Partner shall not permit the admission to the general partner of the General Partner as a manager of any person other than Mark Pacala, Martin P. Sutter, Jeff Himawan, PhD, Immanuel Thangaraj, Petri Vainio, MD,

PhD, Guido Neels, Ron Eastman or Steve Wiggins, or permit transfers of its membership interests, which would result in Messrs. Pacala, Sutter, Himawan, Thangaraj, Vainio, Neels, Eastman and Wiggins (together with any trusts, retirement plans or other similar entities formed for their benefit or the benefit of their immediate families) failing to control a majority of the membership interests of the general partner of the General Partner. If at any time Messrs. Pacala, Sutter, Himawan, Thangaraj, Vainio, Neels, Eastman and Wiggins (together with any trusts, retirement plans or other similar entities formed for their benefit or the benefit of their immediate families) fail to control a majority of the membership interests of the general partner of the General Partner, or if at any time fewer than four of Messrs. Pacala, Sutter, Himawan, Thangaraj and Vainio (or trusts, retirement plans or other similar entities formed for their benefit or the benefit of their immediate families) own membership interests of the general partner of the General Partner, 66-2/3% in interest of the Limited Partners may elect to terminate (i) the Investment Period or (ii) the Partnership.

## ARTICLE 10 — LIQUIDATION OF ASSETS ON DISSOLUTION

### 10.1 GENERAL.

Following dissolution, the Partnership's assets shall be liquidated in an orderly manner. The General Partner shall be the liquidator to wind up the affairs of the Partnership pursuant to this Agreement; *provided, however*, that if there shall be no remaining General Partner at that time, a majority in interest of the Limited Partners may designate one or more other Persons to act as the liquidator(s) instead of the General Partner; *provided, further, however*, that if the Partnership is being dissolved pursuant to 9.3(b), a majority in interest of the Limited Partners may designate one or more other Persons to act as the liquidator(s) instead of the General Partner. Any such liquidator, other than the General Partner, shall be a "liquidating trustee" within the meaning of Section 17-101(9) of the Delaware Act.

### 10.2 LIQUIDATING DISTRIBUTIONS.

- (a) The liquidator(s) shall pay or provide for the satisfaction of the Partnership's liabilities and obligations to creditors. In performing their duties, the liquidator(s) are authorized to sell, exchange or otherwise dispose of the assets of the Partnership in such reasonable manner as the liquidator(s) shall determine to be in the best interest of the Partners.
- (b) Any Net Gain or Loss or other items realized in connection with the liquidation of the Partnership's assets shall be allocated among the Partners pursuant to Article 8, and the remaining assets of the Partnership shall then be distributed to the Partners in cash (to the extent feasible) or in kind in proportion to the positive balances in their respective Capital Accounts (and, if a distribution in kind is necessary, after allocating any Net Gain or Loss, realized or unrealized, that is attributable to such distribution).
- (c) Any Unapplied Offset pursuant to 5.2.2.3(b) shall be allocated solely to the Requesting Partners in such amounts as would have been allocated to the Requesting Partners had the entire amount of the Unapplied Offset been additional Net Gain of the Partnership and allocated to the Capital Accounts of the Partners in accordance with 8.2 and such amounts allocated to the Requesting Partners hereunder shall then be distributed to the Requesting Partners in cash.
- (d) During the liquidation of the Partnership, the liquidator(s) shall furnish to the Partners the financial statements and other information specified in 14.3.

**10.3 EXPENSES OF LIQUIDATOR(S).**

- (a) The expenses incurred by the liquidator(s) in connection with winding up the Partnership, all other losses or liabilities of the Partnership incurred in accordance with the terms of this Agreement, and reasonable compensation for the services of the liquidator(s) shall be borne by the Partnership.
- (b) If the General Partner serves as the liquidator, it shall not be entitled to additional compensation for providing services in such capacity as long as the Management Fee is paid to the General Partner.

**10.4 DURATION OF LIQUIDATION.**

- (a) A reasonable time shall be allowed for the winding up of the affairs of the Partnership in order to minimize any losses otherwise attendant upon such a winding up.
- (b) The liquidator(s) shall use their best efforts to carry out the liquidation in conformity with the timing requirements of Treasury Regulation Section 1.704-1(b)(2)(ii)(g), but will not be bound to do so or liable in any way to any Partner for failure to do so.

**10.5 NO LIABILITY FOR RETURN OF CAPITAL.**

**10.5.1 General.**

The liquidator(s), the General Partner and their respective partners, members, stockholders, officers, directors, managers, employees, agents and Affiliates shall not be personally liable for the return of the capital contributions of any Partner to the Partnership.

**10.5.2 No Limited Partner Deficit Restoration Obligation.**

No Limited Partner shall be obligated to restore to the Partnership any amount with respect to a negative Capital Account; *provided, however*, that this provision in no way shall affect the obligations of Partners to make their agreed-upon capital contributions and other payments to the Partnership.

**10.5.3 General Partner Deficit Restoration Obligation.**

- (a) The General Partner shall upon completion of liquidation of the Partnership be liable for the repayment to the Partnership, in cash, of the amount (if any) by which the balance in the General Partner's Capital Account is less than zero, subject to 7.6.3.
- (b) Any such repayment shall be made within 90 days after the date of the liquidation of the Partnership. For this purpose, (i) the date of the liquidation of the Partnership shall be the date on which the Partnership has ceased to be a going concern, and (ii) the Partnership shall not be deemed to have ceased to be a going concern until it has sold, distributed or otherwise disposed of all of its Portfolio Investments.
- (c) Amounts returned by the General Partner to the Partnership pursuant to this 10.5.3 shall be paid to creditors of the Partnership or distributed to other Partners in accordance with the positive balances in their respective Capital Accounts.
- (d) In no event shall this 10.5.3 be enforceable for the benefit of any Person other than the Limited Partners, their successors and their assigns.



## ARTICLE 11 — LIMITATIONS ON TRANSFERS AND WITHDRAWALS OF PARTNERSHIP INTERESTS

### 11.1 NO TRANSFER OF GENERAL PARTNER'S INTEREST.

The General Partner shall not assign, pledge, mortgage, hypothecate, give, sell or otherwise dispose of or encumber (collectively, "Transfer") all or any part of its general partnership interest. Any attempted Transfer of the General Partner's interest shall be void.

### 11.2 TRANSFERS OF LIMITED PARTNERSHIP INTERESTS.

#### 11.2.1 General.

- (a) No Transfer of a Limited Partner's interest in the Partnership, in whole or in part, shall be made other than pursuant to this 11.2. Any attempted Transfer of all or any part of the interest in the Partnership of a Limited Partner without compliance with this Agreement shall be void.
- (b) Every Transfer shall be subject to all of the terms, conditions, restrictions and obligations set forth in this Agreement.
- (c) Each Transfer shall be evidenced by a written agreement, in form and substance satisfactory to the General Partner, that is executed by the transferor, the transferee(s) and the General Partner.

#### 11.2.2 Consent of General Partner.

The prior written consent of the General Partner, which may be granted or withheld in its absolute discretion (except as otherwise provided in this 11.2.2), shall be required for any Transfer of part or all of any Limited Partner's economic interest in the Partnership. Prior to approving any proposed Transfer, the General Partner shall consult with the Partnership's tax advisors to determine whether consenting to such Transfer would cause the Partnership to undergo a technical termination for United States federal income tax purposes and, if so, whether such termination would be likely to cause material adverse United States federal income tax consequences, or the incurrence of material additional expense, by the Partnership or the Partners. The General Partner shall not unreasonably withhold its consent to a Transfer if such Transfer does not violate 11.2.3, 11.2.4, or 11.2.5 and if such Transfer is:

- (a) A Transfer from a Limited Partner that is a corporation to an assignee that is, directly or indirectly, either (i) the holder of outstanding capital stock of such Limited Partner having voting power to elect a majority of the board of directors of such Limited Partner; (ii) a Subsidiary of such holder; or (iii) a Subsidiary of such Limited Partner;
- (b) A Transfer from a Limited Partner to another Limited Partner; or
- (c) In the case of any Limited Partner acting in a fiduciary capacity, a Transfer from such Limited Partner to a successor trustee, investment adviser or other fiduciary reasonably acceptable to the General Partner.

#### 11.2.3 Publicly Traded Partnership Provisions.

##### 11.2.3.1 General.

In order to permit the Partnership to qualify for the benefit of a "safe harbor" under Section 7704 of the Code, the General Partner shall not cause or permit any offering of interests in the Partnership to be registered under the Securities Act or to become "traded on an established securities market," and shall withhold its consent to any Transfer that, to the General Partner's knowledge after reasonable inquiry, would otherwise be accomplished by a trade on a "secondary market (or the substantial equivalent

thereof),” in each case within the meaning of Sections 7704 or 469(k) of the Code and the applicable Treasury Regulations.

**11.2.3.2 No recognition of non-permitted Transfers.**

No Transfer of any Partnership interest (as defined in Treasury Regulation Section 1.7704-1(a)(2)) or portion thereof shall be permitted or recognized (within the meaning of Treasury Regulation Section 1.7704-1(d)) by the Partnership or the General Partner if and to the extent that (a) if such Transfer were made, such Transfer would fail to qualify as a “transfer not involving trading” pursuant to Treasury Regulation Section 1.7704-1(e), and (b) immediately after such Transfer, if made, the Partnership, either as a result of such Transfer or otherwise, would fail to qualify for the safe harbor for “private placements” set forth in Treasury Regulation Section 1.7704-1(h), and (c) immediately after such Transfer, if made, the Partnership, either as a result of such Transfer or otherwise, would fail to qualify for the “lack of actual trading” safe harbor set forth in Treasury Regulation Section 1.7704-1(j), unless the General Partner determines that such Transfer would not otherwise cause the Partnership to be treated as a publicly traded partnership under Section 7704(b) of the Code.

**11.2.3.3 Required representations by parties.**

- (a) The transferor and transferee shall provide the General Partner, in connection with any proposed Transfer, written representations to the effect that:
  - (i) The proposed Transfer will not be effected on or through (A) a United States national, regional or local securities exchange, (B) a foreign securities exchange or (C) an interdealer quotation system that regularly disseminates firm buy or sell quotations by identified brokers or dealers (including, without limitation, Nasdaq); and
  - (ii) Such Person is not, and its proposed Transfer or acquisition (as the case may be) will not be made by, through or on behalf of (A) a Person, such as a broker or a dealer, making a market in interests in the Partnership, or (B) a Person who makes available to the public bid or offer quotes with respect to interests in the Partnership.
- (b) The transferor and transferee(s) shall provide such additional written representations as the General Partner reasonably may request.
- (c) The General Partner and counsel to the Partnership shall be permitted to rely upon any representations made by the transferor and transferee(s) pursuant to 11.2.3.3(a) or 11.2.3.3(b), and on written representations from other Partners made prior to or contemporaneously with such proposed Transfer. The General Partner, in its sole discretion, may waive its right to obtain any representations otherwise required by 11.2.3.3(a).

**11.2.4 Other Prohibited Legal Consequences.**

No Transfer shall be permitted, and the General Partner shall withhold its consent with respect thereto, if such Transfer would:

- (a) Result in the Partnership’s assets becoming “plan assets” of any ERISA Partner within the meaning of the Plan Assets Regulation;
- (b) Result in violation of the registration requirements of the Securities Act;
- (c) Require the Partnership to register as an investment company under the United States Investment Company Act of 1940, as amended;
- (d) Require the General Partner to register as an investment adviser under the United States Investment Advisers Act of 1940, as amended;
- (e) Result in the Partnership being classified for United States federal income tax purposes as an association taxable as a corporation; or

- (f) Result in the Partnership being subject to United States federal income tax at the entity level under Section 7704 of the Code.

#### **11.2.5 Opinion of Counsel.**

Any Transfer otherwise permitted hereunder shall be made only upon receipt by the Partnership of a written opinion of counsel for the Partnership, or of other counsel reasonably satisfactory to the Partnership, in form and substance satisfactory to the General Partner (which opinion shall be obtained at the expense of the transferor), as to compliance with 11.2.3 and 11.2.4 hereof and such other legal matters as the General Partner may reasonably request. The General Partner may, in its sole discretion, waive the requirement to deliver an opinion pursuant to this 11.2.5.

#### **11.2.6 Transfer Expenses.**

##### ***11.2.6.1 Required reimbursement.***

The transferor of any interest in the Partnership hereby agrees to reimburse the Partnership, at the request of the General Partner, for any expenses reasonably incurred by the Partnership in connection with such Transfer, including any legal, accounting and other expenses (“Transfer Expenses”), whether or not such Transfer is consummated.

##### ***11.2.6.2 Collection.***

- (a) At its election, the General Partner may seek reimbursement of such Transfer Expenses either through a direct reimbursement by the transferor or through a charge to the transferor’s Capital Account.
- (b) If the transferor has not reimbursed the Partnership for any Transfer Expenses incurred by the Partnership in consummating a Transfer within 30 days after the General Partner has delivered to such Partner written demand for payment, the General Partner, in its sole discretion, may charge the transferee’s Capital Account with any such Transfer Expenses.

#### **11.2.7 Admission of Substituted Limited Partners.**

Any transferee of a Partnership interest transferred in accordance with the provisions of this Article 11 shall be admitted as a substituted Limited Partner only with the General Partner’s prior written consent to such substitution (which may be withheld for any reason or for no reason). Without the prior written consent of the General Partner to such substitution and the written opinion of counsel required by 11.2.5 (or waiver thereof by the General Partner), no transferee of a Partnership interest shall be admitted as a substituted Limited Partner. The transferee of an interest in the Partnership transferred pursuant to Article 11 that is admitted to the Partnership as a substituted Limited Partner shall succeed to the rights and liabilities of the transferor Limited Partner and, after the effective date of such admission, the Subscription, Contribution and Capital Account of the transferor shall become the Subscription, Contribution and Capital Account, respectively, of the transferee, to the extent of the interest transferred.

#### **11.2.8 Status of Transferee Not Admitted as Partner.**

- (a) Any transferee in a Transfer made in accordance with this Article 11 shall have all the economic rights of a Limited Partner with respect to the interest transferred, to the maximum extent permitted by the Delaware Act and the Code.
- (b) Until and unless the transferee of part or all of the interest of a Limited Partner is admitted to the Partnership as a substituted Limited Partner pursuant to 11.2.7, however, (i) that transferee shall have no right to participate with the Limited Partners in any votes taken or consents granted or withheld by the Limited Partners hereunder, and (ii) the transferor shall remain liable to the Partnership for all contributions and other amounts payable with respect to the transferred interest to the same extent as if no Transfer had occurred.

- (c) Unless and until all requirements set forth in this Article 11 have been satisfied with respect to a proposed Transfer, the General Partner shall use its best efforts to ensure that the Partnership continues to treat the transferor as the sole owner of the interest in the Partnership purportedly transferred, makes no distributions to the purported transferee and does not furnish to such Person any tax or financial information regarding the Partnership, and shall otherwise use its best efforts to ensure that the Partnership does not treat the purported transferee as an owner of any interest in the Partnership (either legal or equitable), unless otherwise required by law. The Partnership shall be entitled to seek injunctive relief, at the expense of the putative transferor, to prevent any such purported Transfer.

#### **11.2.9 Multiple Ownership; Other Provisions.**

In the event of any Transfer which shall result in multiple ownership of any Limited Partner's interest in the Partnership, the General Partner may require one or more trustees or nominees to be designated as representing a portion of or the entire interest transferred for the purpose of receiving all notices which may be given, and all payments which may be made, under this Agreement and for the purpose of exercising all rights which the transferor as a Limited Partner has pursuant to the provisions of this Agreement. Each Limited Partner agrees with all other Partners that it will not make any Transfer of all or any part of its interest in the Partnership except in accordance with the provisions of this Article 11.

#### **11.3 NO WITHDRAWAL RIGHTS.**

No Partner shall have the right to withdraw its capital and profits from the Partnership, or to demand and receive any Partnership property in exchange for such Partner's interest in the Partnership, except to the extent explicitly set forth in this Agreement.

### **ARTICLE 12 — EXCULPATION AND INDEMNIFICATION**

#### **12.1 EXCULPATION.**

##### **12.1.1 General.**

- (a) No Covered Person shall be liable to the Partnership or any Partner for any loss suffered by the Partnership or any Partner which arises out of any investment or any other action or omission of such Covered Person if (i) such Covered Person determined, in good faith, that such course of conduct was in, or not opposed to, the best interest of the Partnership and, with respect to any criminal action or proceeding, had no reasonable cause to believe such Person's conduct was unlawful, and (ii) such course of conduct did not constitute a breach of such Person's fiduciary duty to the Partnership or a material breach of this Agreement, or gross negligence, fraud or willful misconduct of such Covered Person.
- (b) For purposes of 12.1.1(a), "Covered Person" shall mean the General Partner (including without limitation the General Partner acting as Tax Matters Partner or as liquidator), the general partner of the General Partner and its other partner(s), each Principal, the Management Company and each other Service Provider, and each partner, member, officer, director, manager, employee, agent or Affiliate of any of the foregoing.

##### **12.1.2 Activities of Others.**

No Covered Person shall be liable for the negligence, whether of omission or commission, dishonesty or bad faith of any employee, broker or other agent of the Partnership selected and supervised by any Covered Person with reasonable care. To the extent that the Partnership suffers a material loss due to the negligence, dishonesty or bad faith of a third party not affiliated with the Partnership (including any accountants, investment bankers or legal counsel retained by the Partnership), the General Partner shall use reasonable efforts on behalf of the Partnership to recover against any such third party for such loss.

### **12.1.3 Advisory Board Members; Liquidators.**

#### **12.1.3.1 Advisory Board Members.**

No member of the Advisory Board or any Limited Partner he or she represents shall be liable to the Partnership or any Partner for any loss suffered by the Partnership or any Partner which arises out of any action or omission of such member, provided that such member determined, in good faith, that such course of conduct was in, or was not opposed to, the best interest of the Partnership and, with respect to any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful.

#### **12.1.3.2 Liquidator(s).**

No Person (other than the General Partner) that serves as liquidator pursuant to Article 10 shall be liable to the Partnership or any Partner for any loss suffered by the Partnership or any Partner which arises out of any action or omission of such Person, provided that such Person determined, in good faith, that such course of conduct was in, or was not opposed to, the best interest of the Partnership and, with respect to any criminal action or proceeding, had no reasonable cause to believe that such Person's conduct was unlawful; *provided, however*, that this 12.1.3.2 shall not affect the General Partner's right to exculpation pursuant to 12.1.1.

#### **12.1.4 Advice of Experts.**

No Covered Person, no Advisory Board Indemnitee (as defined below) and no Person serving as liquidator shall be liable to the Partnership or any Partner with respect to any action or omission taken or suffered by any of them in good faith if such action or omission is taken or suffered in reliance upon and in accordance with the opinion or advice as to matters of law of legal counsel, or as to matters of accounting of accountants, or as to matters of valuation of investment bankers or appraisers, *provided that* any such professional or firm is selected by any such Person with reasonable care.

## **12.2 INDEMNIFICATION.**

### **12.2.1 General.**

The General Partner, the general partner of the General Partner and its other partners, members, managers, employees and agents, each Principal, the Management Company and each other Service Provider, each liquidating trustee (if any), each member of the Advisory Board and any Limited Partner he or she represents, and each partner, member, stockholder, director, officer, manager, employee, agent and Affiliate of any of the foregoing (each, an "Indemnitee") shall be indemnified, subject to the other provisions of this Agreement, by the Partnership (only out of Partnership assets, including the proceeds of liability insurance) against any claim, demand, controversy, dispute, cost, loss, damage, expense (including attorneys' fees), judgment and/or liability (collectively, "Losses") incurred by or imposed upon the Indemnitee in connection with any action, suit or proceeding (including any proceeding before any administrative or legislative body or agency), to which the Indemnitee may be made a party or otherwise involved or with which the Indemnitee shall be threatened, by reason of the Indemnitee's being at the time the cause of action arose or thereafter, the general partner of the General Partner, the General Partner (including without limitation the General Partner acting as Tax Matters Partner), a partner, member, employee or agent of the General Partner or the general partner of the General Partner, a Principal, a Service Provider, a liquidating trustee (if any), a member of the Advisory Board, a partner, member, stockholder, director, officer, manager, employee, agent or Affiliate of any of the foregoing, or a partner, member, director, officer, manager, employee, consultant or agent of any other organization in which the Partnership owns or has owned an interest or of which the Partnership is or was a creditor, which other organization the Indemnitee serves or has served as a partner, member, director, officer, manager, employee, consultant or agent at the request of the Partnership (whether or not the Indemnitee continues to serve in such capacity at the time such action, suit or proceeding is brought or threatened).

Notwithstanding the foregoing, an Indemnitee shall not be entitled to be indemnified by the Partnership under this 12.2.1 for any Losses incurred by or imposed upon the Indemnitee in connection with any action, suit or proceeding (including any proceeding before any administrative or legislative body or agency), to which the Indemnitee may be made a party or otherwise involved or with which the Indemnitee shall be threatened, by reason of the Indemnitee's being at the time the cause of action arose a partner, member, director, officer, manager, employee, consultant or agent of any other organization in which the Partnership formerly owned an interest to the extent that such Losses relate to the period after the date which the Partnership ceased to hold an interest in such organization (the "**Disposed Investment Date**"); *provided, however*, that with respect to any Losses incurred by or imposed upon the Indemnitee in connection with any action, suit or proceeding (including any proceeding before any administrative or legislative body or agency), to which the Indemnitee may be made a party or otherwise involved or with which the Indemnitee shall be threatened, by reason of the Indemnitee's being at the time the cause of action arose a director of such other organization, the Indemnitee shall be entitled to be indemnified by the Partnership under this 12.2.1 for any Losses to the extent that such Losses relate to the period beginning on the Disposed Investment Date and ending on the earlier of the (i) date of the expiration of the Indemnitee's then current term of directorship with such organization, (ii) next annual meeting of shareholders of such organization and (iii) the one year anniversary of the Disposed Investment Date.

#### **12.2.2 Effect of Judgment.**

An Indemnitee, other than an Advisory Board Indemnitee (as defined below), shall not be indemnified with respect to matters as to which the Indemnitee shall have been (a) adjudicated in any action, suit or proceeding not to have acted in good faith and in the reasonable belief that the Indemnitee's action was in accordance with such Person's obligations to the Partnership, or to have acted with gross negligence, fraud or a willful disregard of his duties, or in breach of his fiduciary obligations to the Partnership or in material breach of this Agreement, or (b) convicted of (or pleaded guilty or *nolo contendere* to) any crime. An Indemnitee which is a member of the Advisory Board or any Limited Partner he or she represents (an "**Advisory Board Indemnitee**") shall not be indemnified with respect to matters as to which the Advisory Board Indemnitee shall have been adjudicated in any action, suit or proceeding not to have acted in good faith.

#### **12.2.3 Effect of Settlement.**

In the event of settlement of any action, suit or proceeding brought or threatened involving an Indemnitee (other than an Advisory Board Indemnitee), such indemnification shall apply to all matters covered by the settlement except for matters (a) as to which the Partnership is advised by counsel (who may not be counsel regularly retained to represent the Partnership) that the Person seeking indemnification, in the opinion of counsel, did not act in good faith, or acted with gross negligence, fraud or a willful disregard of such Person's duties, or in breach of such Person's fiduciary obligations to the Partnership, or in material breach of this Agreement, or (b) with respect to any criminal action or proceeding, such settlement included the payment of monetary damages by the Person seeking indemnification. In the event of settlement of any action, suit or proceeding brought or threatened involving an Advisory Board Indemnitee, such indemnification shall apply to all matters covered by the settlement except for matters as to which the Partnership is advised by counsel (who may not be counsel regularly retained to represent the Partnership) that the Person seeking indemnification, in the opinion of counsel, did not act in good faith.

#### **12.2.4 Advance Payment of Expenses.**

The Partnership may pay the expenses incurred by an Indemnitee in defending a civil or criminal action, suit or proceeding, or in opposing any claim arising in connection with any potential or threatened civil or criminal action, suit or proceeding, in advance of the final disposition of such action, suit or proceeding, upon receipt of an enforceable undertaking by such Indemnitee to repay such payment if the Indemnitee shall be determined to be not entitled to indemnification for such expenses pursuant to this

Article 12; *provided, however*, that in such instance the Indemnitee (other than an Indemnitee who is a member of the Advisory Board) is not defending an actual or threatened claim, action, suit or proceeding against the Indemnitee by the Partnership, the general partner of the General Partner, the General Partner, any Service Provider and/or a majority in interest of the Limited Partners (or by the Indemnitee against the Partnership, the general partner of the General Partner, the General Partner and/or any Service Provider).

#### **12.2.5 Insurance.**

##### ***12.2.5.1 General.***

At its election, the General Partner, on behalf of the Partnership, may cause the Partnership to purchase and maintain insurance, at the expense of the Partnership and to the extent available, for the protection of the General Partner, the general partner of the General Partner, any partner, member, officer, director, manager, employee, agent or Affiliate of the General Partner, any Principal, any Service Provider, any liquidating trustee, any member of the Advisory Board or any partner, member, stockholder, officer, director, manager, employee, agent or Affiliate of any of the foregoing against any liability incurred by such Person in any such capacity or arising out of his status as such, whether or not the Partnership has the power to indemnify such Person against such liability.

##### ***12.2.5.2 Portfolio Company managers.***

The General Partner may purchase and maintain insurance on behalf of the Partnership for the protection of any member of the general partner of the General Partner, partner, officer, director, manager, employee or other agent of any other organization in which the Partnership owns an interest or of which the Partnership is a creditor against similar liabilities, whether or not the Partnership has the power to indemnify any Person against such liabilities.

#### **12.2.6 Other Provisions.**

##### ***12.2.6.1 Successors.***

The foregoing right of indemnification shall inure to the benefit of the executors, administrators, personal representatives, successors or assigns of each such Indemnitee.

##### ***12.2.6.2 Rights to indemnification from other sources.***

- (a) The rights to indemnification and advancement of expenses conferred in this 12.2 shall not be exclusive and shall be in addition to any rights to which any Indemnitee may otherwise be entitled or hereafter acquire under any law, statute, rule, regulation, charter document, by-law, contract or agreement.
- (b) Each Indemnitee shall first use reasonable efforts to pursue indemnification from the Portfolio Companies (if any) or third parties involved or any applicable insurance policy before pursuing a claim for indemnification against the Partnership under this Article 12.

##### ***12.2.6.3 Sharing of expenses with related funds.***

- (a) With regard to any claim for indemnification pursuant to 12.2 which relates to a common activity of the Partnership, any Existing Fund, any Successor Fund or any Parallel Partnership, it is intended that the Partnership shall be required to pay only its proportionate share of the total amounts actually paid with respect to such claim by any or all of the Partnership, any Existing Fund, any Successor Fund or any Parallel Partnership.
- (b) For purposes of 12.2.6.3(a), (i) the Partnership's proportionate share of any such claim attributable to a Portfolio Investment shall be equal to its proportionate share of the total amounts invested by the Partnership and such other funds in such Portfolio Investment, and (ii) its proportionate share of any other claim shall be determined based on the aggregate

commitments to the capital of the Partnership relative to the aggregate commitments to the capital of such other funds.

- (c) In the event that any claim for indemnification relates only to or is caused solely by the activities or existence of only one of the Partnership or such other funds or entities, any liability to make payments in satisfaction of such claim shall be borne fully by that party.
- (d) The General Partner and each Principal agree to use their best efforts to cause any Existing Fund, Successor Fund or Parallel Partnership to adhere to the principles of shared indemnification set forth in this 12.2.6.3.

**12.2.6.4 Discretionary limitation by General Partner.**

Notwithstanding 12.2.1, the General Partner in its sole discretion may limit or eliminate indemnification payments that otherwise would be made by the Partnership to any Indemnitee *other than* a member of the Advisory Board or a Person serving as liquidator pursuant to Article 10.

**12.3 LIMITATION BY LAW.**

If any Covered Person or Indemnitee or the Partnership itself is subject to any federal or state law, rule or regulation which restricts the extent to which any Person may be exonerated or indemnified by the Partnership, then the exoneration provisions set forth in 12.1 and the indemnification provisions set forth in 12.2 shall be deemed to be amended, automatically and without further action by the General Partner or the Limited Partners, to the minimum extent necessary to conform to such restrictions.

**ARTICLE 13 — AMENDMENTS, VOTING AND CONSENTS**

**13.1 AMENDMENTS.**

**13.1.1 Consent of Partners.**

Except as otherwise provided in this Agreement, the terms and provisions of this Agreement may be waived, modified, terminated or amended, during or after the term of the Partnership, with the prior written consent of the General Partner and 66-2/3% in interest of the Limited Partners; *provided, however,* that any provision of this Agreement requiring the written vote or consent of a greater percentage in interest of the Limited Partners may be waived, modified or amended only with the vote or written consent of the General Partner and such greater percentage in interest of the Limited Partners as is required by such provision; *provided, further, however,* that the terms and provisions of 5.2, Article 9 and Article 12 of this Agreement may be waived, modified or amended, during or after the term of the Partnership, only with the prior written consent of the General Partner and 75% in interest of the Limited Partners.

**13.1.2 Limitations.**

**13.1.2.1 Consent of each Partner.**

- (a) No amendment shall dilute the relative interest of any Partner in the profits or capital of the Partnership or in allocations or distributions attributable to the ownership of such interest without the prior written consent of such Partner (except such dilution as may result from additional Subscriptions from the Limited Partners or the admission of additional Limited Partners pursuant to this Agreement).
- (b) This 13.1.2.1 shall not be amended without the unanimous consent of all Partners.

**13.1.2.2 Consent to amend special provisions.**

Without the prior written consent of the Partners indicated, the following provisions shall not be amended:



- (a) 15.2 or this 13.1.2.2(a) without the prior written consent of a majority in interest of all ERISA Partners;
- (b) 15.2 (as that provision applies to Public Plan Partners), 15.3.1 or this 13.1.2.2(b) without the prior written consent of 66-2/3% in interest of all Public Plan Partners;
- (c) 15.2 (as that provision applies to Tax-Exempt Partners), 15.3.2, or this 13.1.2.2(c) without the prior written consent of a majority in interest of all Tax-Exempt Partners;
- (d) 15.2 (as that provision applies to Foundation Partners), 15.3.3, or this 13.1.2.2(d) without the prior written consent of a majority in interest of all Foundation Partners; and
- (e) 15.6 or this 13.1.2.2(e) without the prior written consent of a majority in interest of all BHC Partners.

### 13.1.3 Notice of Amendments.

The General Partner shall furnish copies of any amendments to this Agreement to all Partners, other than changes in Schedule A to reflect the admission, withdrawal or substitution of Partners, changes in the addresses or facsimile numbers of Partners and changes in the Subscriptions of Partners (in each case occurring pursuant to this Agreement) which shall not require the consent of or notice to any Limited Partner.

### 13.1.4 Corrective Amendments.

Notwithstanding the other provisions of this Article 13, the General Partner, without the consent of any other Partner, may amend any provisions of this Agreement (a) to add to the duties or obligations of the General Partner or surrender any right granted to the General Partner herein; (b) to cure any ambiguity or correct or supplement any provision herein which may be inconsistent with any other provision herein or to correct any printing, stenographic or clerical errors or omissions in order that this Agreement shall accurately reflect the agreement among the Partners; and (c) to amend Schedule A to provide any necessary information regarding any additional Limited Partner or substituted Limited Partner; provided that no amendment shall be made pursuant to this 13.1.4 unless the General Partner reasonably shall have determined that such amendment will not subject any Limited Partner to any material adverse economic consequences, alter or waive the right to receive allocations and distributions that otherwise would be made to any Limited Partner, or alter or waive in any material respect the duties and obligations of the General Partner to the Partnership or the Limited Partners.

## 13.2 VOTING AND CONSENTS.

Whenever action is required by this Agreement to be taken by a specified percentage in interest of the Limited Partners, such action shall be deemed to be valid if taken upon the written vote or written consent of those Limited Partners whose Contributions represent the specified percentage of the aggregate Contributions of all Limited Partners at the time. Similarly, whenever action is required by this Agreement to be taken by a specified percentage in interest of a specified class or group of Limited Partners, such action shall be deemed to be valid if taken upon the written vote or written consent of those Limited Partners of such class or group whose Contributions represent the specified percentage of the aggregate Contributions of all Limited Partners of such class or group at the time. Neither the General Partner (and Affiliates thereof) nor the Principals (and Affiliates thereof) may vote any Limited Partner interests that they hold or control, and the Contributions attributable to such interests shall not be counted in determining the aggregate Contributions of the Limited Partners required to approve an action. In any case, the requisite percentage in interest shall be determined on the basis of the interests held by those Limited Partners which are in good standing and eligible to so vote or act with respect to the subject matter. Prior to the Initial Drawdown Date, all actions shall be based on the vote or consent of the specified percentage of the aggregate Subscriptions, and not Contributions, of the Limited Partners.

## ARTICLE 14 — ADMINISTRATIVE PROVISIONS

### 14.1 KEEPING OF ACCOUNTS AND RECORDS; CERTIFICATE OF LIMITED PARTNERSHIP.

#### 14.1.1 Accounts and Records.

At all times the General Partner shall cause to be kept proper and complete books of account, in which shall be entered fully and accurately the transactions of the Partnership. Such books of account shall be kept on the accrual method of accounting in accordance with generally accepted accounting principles consistently applied in accordance with the terms of this Agreement. The General Partner shall also maintain: (a) an executed copy of this Agreement (and any amendments hereto); (b) the Certificate of Limited Partnership of the Partnership (and any amendments thereto); (c) executed copies of any powers of attorney pursuant to which any certificate has been executed by the Partnership; (d) a current list of the full name, taxpayer identification number (if any) and last known address of each Partner set forth in alphabetical order; (e) copies of all tax returns filed by the Partnership for each of the prior six years; and (f) all financial statements of the Partnership for each of the prior six years. These books and records shall at all times be maintained at the principal office of the Partnership.

#### 14.1.2 Certificate of Limited Partnership.

The General Partner shall file for record with the appropriate public authorities and, if required, publish the Certificate of Limited Partnership of the Partnership and any amendments thereto and take all such other action as may be required to preserve the limited liability of the Limited Partners in any jurisdiction in which the Partnership shall conduct operations.

### 14.2 INSPECTION RIGHTS.

#### 14.2.1 General.

- (a) At any time while the Partnership continues and until its complete liquidation and subject to 14.2.2, each Limited Partner may (a) fully examine and audit the Partnership's books, records, accounts and assets, including bank balances, and (b) examine, or request that the General Partner furnish, such additional information (including such information as the Limited Partners are otherwise entitled to pursuant to 14.3) as is reasonably necessary to enable the requesting Partner to review the state of the investment activities of the Partnership.
- (b) Any such examination or audit may be undertaken either by such Limited Partner or a designee thereof. All expenses attributable to any such examination or audit shall be borne by such Limited Partner.

#### 14.2.2 Limitations.

- (a) Any examination or audit undertaken pursuant to 14.2.1 shall be made (i) only upon 5 Business Days' prior written notice to the General Partner, (ii) during normal business hours, and (iii) without undue disruption.
- (b) The General Partner shall have the benefit of the confidential information provisions of Section 17-305(b) of the Delaware Act.

### 14.3 FINANCIAL REPORTS.

#### 14.3.1 Annual Reports; Semi-Annual Reports.

##### 14.3.1.1 Annual financial statements.

The General Partner shall transmit to each Partner, within 90 days after the close of each fiscal year, the financial statements of the Partnership for such fiscal year. Such financial statements shall include balance sheets of the Partnership as of the end of such fiscal year and of the preceding fiscal year,

statements of income and loss of the Partnership for such fiscal year and the preceding fiscal year, and statements of changes in capital for such fiscal year and for the preceding fiscal year, all prepared in accordance with U.S. generally accepted accounting principles consistently applied in accordance with the terms of this Agreement and audited by Deloitte and Touche LLP (or another nationally recognized firm of independent public accountants selected by the General Partner). Such independent public accountants shall also deliver a report of procedures agreed upon between such accountants and the General Partner with respect to allocations made pursuant to Article VIII of this Agreement with respect to such year, distributions made pursuant to Article VII of this Agreement during such fiscal year, and the Management Fee paid during such year pursuant to Article V of this Agreement.

#### ***14.3.1.2 Tax information.***

The General Partner shall also transmit to each Partner, within ninety (90) days after the close of each fiscal year, such Partner's Schedule K-1 (Internal Revenue Service Form 1065) or an equivalent report indicating such Partner's share of all items of income or gain, expense, loss or other deduction and tax credit of the Partnership for such year, as well as the status of its Capital Account as of the end of such year, and such additional information as it reasonably may request to enable it to complete its tax returns or to fulfill any other reporting requirements.

#### ***14.3.1.3 Identity and value of investments.***

For information purposes, the General Partner shall also furnish to each Partner semi-annually, as promptly as practicable after June 30 and the close of each fiscal year, a list of the Partnership's investments, valued at fair market value as determined in accordance with 14.4 as of the end of such fiscal year.

#### ***14.3.1.4 Section 1045 Rollovers.***

Each Limited Partner agrees that (a) with respect to its limited partnership interest, it will not require the Partnership to elect, and the Partnership shall not be required to elect, the application of Section 1045 of the Code (dealing with rollovers of gains realized on the disposition of "qualified small business stock" as defined in Section 1202 of the Code) or any similar provisions of any state income tax law; (b) without the prior written consent of the General Partner, such Limited Partner will not make any election referred to in the preceding clause (a) if such election would impose on the Partnership or the General Partner any obligation (including, but not limited to, any obligation to furnish information, maintain records or file returns or other documents); and (c) the Partnership shall not be required to comply with any tax reporting or accounting requirements (including, but not limited to, those relating to the adjustment of the tax basis of any asset of the Partnership or the interest in the Partnership of any Partner) that may be imposed under Section 1045 of the Code, and shall not be required to provide any information necessary to enable such Limited Partner to comply with or elect the application of Section 1045 of the Code, in each case with respect to rollovers of qualified small business stock by the Partnership or by or on behalf of any Partner.

#### **14.3.2 Quarterly Reports.**

Each Partner shall be furnished, within 45 days after the end of each of the first three fiscal quarters of each fiscal year of the Partnership, unaudited financial statements of the Partnership for the quarter then ended, which statements shall contain data sufficient to inform each Partner as to the current financial status of the Partnership and its investments including a summary of acquisitions and dispositions of investments made by the Partnership during such quarter, and a list of investments then held, together with a valuation of such investments and the corresponding values of the Partners' Capital Accounts.

#### **14.3.3 Reports on Initial Investments.**

Following the initial investment by the Partnership in a Portfolio Company, the General Partner shall furnish to each Limited Partner an investment memorandum containing an overview of the company's

line of business, a description (in summary form) of its products and market, and a brief analysis of the Partnership's reasons for making the investment, in each case to the extent that the furnishing of such information is not inconsistent with any confidentiality agreement between the Partnership, the General Partner, the general partner of the General Partner, any Principal or any Service Provider and such company.

#### **14.3.4 Special Reports.**

- (a) The General Partner shall also provide each Limited Partner with written notice of:
  - (i) Significant changes in the administration and/or structure of the Partnership including material staffing changes;
  - (ii) Significant changes in the original investment strategy of the Partnership;
  - (iii) Any event described in Sections 9.2 and 9.3(a);
  - (iv) Any material change in beneficial ownership of equity securities of the General Partner; and
  - (v) Any material litigation against the Partnership or the General Partner;
- (b) The General Partner shall use its best efforts to transmit to each ERISA Partner within 45 days after the close of each "annual valuation period" selected by the Partnership pursuant to subsection (d) of the Plan Assets Regulations, a certification (the "**VCOC Certification**") that during the period since the last day of the previous "annual valuation period" or, in the case of the first VCOC Certification, during the period since the Initial Investment Date, the Partnership has operated as a "venture capital operating company" within the meaning of the Plan Asset Regulations (or otherwise operated so that the assets of the Partnership will not be deemed "plan assets" as defined in ERISA).
- (c) In the event that the General Partner determines that the assets of the Partnership are "plan assets" within the meaning of the Plan Asset Regulations, or the Department of Labor asserts to the General Partner, on audit, that the assets are "plan assets," the General Partner shall promptly notify all ERISA Partners of such fact in writing and shall cooperate with all such ERISA Partners in satisfying their reporting and disclosure requirements under ERISA.

### **14.4 VALUATION.**

#### **14.4.1 Valuation by General Partner.**

Whenever valuation of Partnership assets or net assets is required by this Agreement, the General Partner shall determine the fair market value thereof in good faith in accordance with this 14.4, subject to approval by the Advisory Board as provided in 14.4.4.

#### **14.4.2 Fair Market Value.**

##### **14.4.2.1 Freely Tradable Securities.**

- (a) For purposes of Financial Reports under 14.3 (and for all other purposes except as set forth in 14.4.2.1(b)), the fair market value of any security owned by the Partnership that is a Freely Tradable Security shall be determined as of the close of trading on the date as of which the value is being determined and shall be equal to the last reported trade price of such security on such date on the exchange where it is primarily traded or, if such security is not traded on an exchange, such security shall be valued at the last reported sale price on The Nasdaq Stock Market ("**Nasdaq**") or, if such security is not traded on an exchange or reported on Nasdaq, such security shall be valued at the reported closing bid price (or average of bid prices) last quoted on such date as reported by an established quotation service for over-the-counter securities.

- (b) For purposes of valuing any distribution in kind under 8.1.2, the fair market value of any security owned by the Partnership that is a Freely Tradable Security shall be determined as of the close of trading on the date as of which the value is being determined (the “**Valuation Date**”) and shall be equal to:
- (i) The average of the last reported sales price (or the average of the bid and asked prices last quoted) of such security during the five-day trading period commencing with the date which is four days prior to the Valuation Date on the exchange where it is primarily traded; or
  - (ii) If such security is not traded on an exchange, such security shall be valued at the average of the last reported sales price (or the average of the bid and asked prices last quoted) of such security during the five-day trading period commencing with the date which is four days prior to the Valuation Date on Nasdaq; or
  - (iii) If such security is not reported on Nasdaq, such security shall be valued at the average of reported closing bid prices last quoted on the dates during the five-day trading period commencing with the date which is four days prior to the Valuation Date as reported by an established quotation service for over-the-counter securities.
- (c) For purposes of 14.4.2.1(a) and (b), the “last reported” trade price or sale price or “closing” bid price of a security on any trading day: (i) with respect to securities traded primarily on the New York Stock Exchange, the American Stock Exchange or Nasdaq shall be deemed to be the last reported trade price or sale price, as the case may be, as of 4:00 p.m., New York time, on that day, and (ii) for securities listed, traded or quoted on any other exchange, market, system or service, the market price as of the end of the “regular hours” trading period that is generally accepted as such by such exchange, market, system or service. If, after the Initial Closing Date, the benchmark times generally accepted in the securities industry for determining the market price of a stock as of a given trading day shall change from those set forth above, the fair market value of a security as of a given trading day shall be determined as of such other generally accepted benchmark times.

#### **14.4.2.2 Other assets.**

The determination of the fair market value of all other assets of the Partnership shall be based upon all relevant factors, including, without limitation, such of the following factors as may be deemed relevant by the General Partner: current financial position and current and historical operating results of the issuer; sales prices of recent public or private transactions in the same or similar securities, including transactions on any securities exchange on which such securities are listed or in the over-the-counter market; general level of interest rates; recent trading volume of the security; restrictions on transfer, including the Partnership’s right, if any, to require registration of its securities by the issuer under the securities laws; significant recent events affecting the Portfolio Company or issuer, including any pending private placement, public offering, pending mergers or acquisitions; the price paid by the Partnership to acquire the asset; the percentage of the issuer’s outstanding securities that is owned by the Partnership; and all other factors affecting value.

#### **14.4.3 Goodwill and Intangible Assets.**

- (a) In making any determination of the fair market value of the assets of the Partnership, no allowance of any kind shall be made for goodwill or the name of the Partnership or of the General Partner, the Partnership’s office records, files and statistical data or any intangible assets of the Partnership in the nature of or similar to goodwill.
- (b) The Partnership’s name and goodwill shall, as among the Partners, be deemed to have no value and shall belong to the Partnership, and no Partner shall have any right or claim individually to the use thereof.

- (c) At the time of the Partnership's final liquidating distribution, the right to the name of the Partnership and any goodwill associated with the Partnership's name shall be assigned to the General Partner.

#### **14.4.4 Objection to Valuation**

If the General Partner determines a valuation for Partnership assets or net assets which is rejected by the Advisory Board, and if the Advisory Board does not, within twenty Business Days following the submission by the General Partner of its initial valuation, approve any subsequent valuation submitted by the General Partner, the valuation shall be determined by a nationally recognized independent investment banking firm or other appraisal and valuation firm with experience valuing companies in the Partnership's targeted investment industries selected by the General Partner and approved by the Advisory Board, whose determination shall be binding upon all Partners. The cost of the services provided by such investment banking or other appraisal and valuation firm shall be borne by the Partnership.

#### **14.5 ANNUAL MEETINGS.**

The Partnership may hold annual meetings offering Limited Partners the opportunity to review and discuss the Partnership's investment activity and portfolio. At the General Partner's discretion, individual meetings may be held in lieu of, or in addition to, an annual meeting.

#### **14.6 NOTICES.**

##### **14.6.1 Delivery.**

Except where otherwise specifically provided in this Agreement, all notices, requests, consents, approvals and statements shall be in writing and, if properly addressed to the recipient in the manner required by 14.6.2, shall be deemed for purposes of this Agreement to have been delivered: (a) on the date of actual receipt if delivered personally to the recipient; (b) three Business Days after mailing by first class mail, postage prepaid; (c) one Business Day after the date of transmission by electronic facsimile transmission; or (d) one Business Day after deposit with a reputable overnight courier service.

##### **14.6.2 Addresses.**

A written document shall be deemed to be properly addressed, if to the Partnership or to any Partner, to such Person at such Person's address as set forth in Schedule A, or to such other address or addresses as the addressee previously may have specified by written notice given to the other parties in the manner contemplated by 14.6.1.

#### **14.7 ACCOUNTING PROVISIONS.**

##### **14.7.1 Fiscal Year.**

The fiscal year of the Partnership shall be the calendar year, or such other year as may be required by the Code.

##### **14.7.2 Accounting Method.**

The Partnership shall use the accrual method of accounting for United States federal income tax purposes.

##### **14.7.3 Independent Accountants.**

The Partnership's independent public accountants initially shall be Deloitte and Touche LLP, but the General Partner may change accounting firms to another nationally recognized independent public accounting firm at any time.

#### **14.7.4 Organizational Expenses.**

The Organizational Expenses of the Partnership shall be amortized for United States federal income tax purposes over a 180-month period to the extent permitted by Section 709 of the Code.

### **14.8 GENERAL PROVISIONS.**

#### **14.8.1 Power of Attorney.**

##### ***14.8.1.1 General.***

Each of the undersigned by execution of this Agreement constitutes and appoints the General Partner as its true and lawful representative and attorney-in-fact, in its name, place and stead, to make, execute, sign, acknowledge and deliver or file (a) the Certificate of Limited Partnership and any other instruments, documents and certificates which may from time to time be required by any law to effectuate, implement and continue the valid and subsisting existence of the Partnership, (b) all instruments, documents and certificates that may be required to effectuate the dissolution and termination of the Partnership in accordance with the provisions hereof and the Delaware Act, (c) all other amendments of this Agreement or the Certificate of Limited Partnership contemplated by this Agreement including, without limitation, amendments reflecting the withdrawal of the General Partner, or the return, in whole or in part, of the capital contributions of any Partner, or the addition, substitution or increased capital contributions of any Partner, or any action of the Partners duly taken pursuant to this Agreement whether or not such Partner voted in favor of or otherwise approved such action, and (d) any other instrument, certificate or document required from time to time to admit a Partner, to effect its substitution as a Partner, to effect the substitution of the Partner's assignee as a Partner, or to reflect any action of the Partners provided for in this Agreement.

##### ***14.8.1.2 Limitation.***

No actions shall be taken by the General Partner under the power of attorney granted pursuant to this 14.8.1 that would have any adverse effect on the limited liability of any Limited Partner.

##### ***14.8.1.3 Survival.***

The foregoing grant of authority (a) is a special power of attorney coupled with an interest in favor of the General Partner and as such shall be irrevocable and shall survive the death or disability of a Partner that is a natural person or the merger, dissolution or other termination of the existence of a Partner that is a corporation, association, partnership, limited liability company or trust, and (b) shall survive the assignment by the Partner of the whole or any portion of its interest, except that where the assignee of the whole thereof has furnished a power of attorney, this power of attorney shall survive such assignment for the sole purpose of enabling the General Partner to execute, acknowledge and file any instrument necessary to effect any permitted substitution of the assignee for the assignor as a Partner and shall thereafter terminate.

#### **14.8.2 Execution of Additional Documents.**

Each Partner hereby agrees to execute all certificates, counterparts, amendments, instruments or documents that may be required by laws of the various jurisdictions in which the Partnership conducts its activities, to conform with the laws of such jurisdictions governing limited partnerships.

#### **14.8.3 Binding on Successors.**

This Agreement shall be binding upon and shall inure to the benefit of the respective heirs, successors, assigns and legal representatives of the parties hereto.

#### **14.8.4 Governing Law.**

This Agreement shall be governed by and construed in accordance with the internal laws of the State of Delaware.

#### **14.8.5 Waiver of Partition.**

Each Partner hereby irrevocably waives any and all rights that it may have to maintain an action for partition of any of the Partnership's property.

#### **14.8.6 Securities Law Matters.**

Each Partner understands that in addition to the restrictions on transfer contained in this Agreement, it must bear the economic risks of its investment for an indefinite period because the Partnership interests have not been registered under the Securities Act or under any applicable securities laws of any state or other jurisdiction and, therefore, may not be sold or otherwise transferred unless they are registered under the Securities Act and any such other applicable securities laws or an exemption from such registration is available. Each Partner agrees with all other Partners that it will not sell or otherwise transfer its interest in the Partnership unless such interest has been so registered or in the opinion of counsel for the Partnership, or of other counsel reasonably satisfactory to the Partnership, such an exemption is available.

#### **14.8.7 Classification as Partnership.**

The General Partner agrees that it (a) will not cause or permit the Partnership to elect (i) to be excluded from the provisions of Subchapter K of the Code or (ii) to be treated as a corporation for federal income tax purposes; (b) will cause the Partnership to make any election reasonably determined to be necessary or appropriate in order to ensure the treatment of the Partnership as a partnership for federal income tax purposes; (c) will cause the Partnership to file any required tax returns in a manner consistent with its treatment as a partnership for federal income tax purposes; and (d) has not taken, and will not take, any action that would be inconsistent with the treatment of the Partnership as a partnership for such purposes.

#### **14.8.8 Contract Construction; Headings; Counterparts.**

- (a) Whenever the content of this Agreement permits, the masculine gender shall include the feminine and neuter genders, and reference to singular or plural shall be interchangeable with the other.
- (b) The invalidity or unenforceability of any one or more provisions of this Agreement shall not affect the other provisions, and this Agreement shall be construed and reformed in all respects as if any such invalid or unenforceable provision(s) were omitted in order to give effect to the intent and purposes of this Agreement.
- (c) References in this Agreement to particular sections of the Code, the Delaware Act or any other statute shall be deemed to refer to such sections or provisions as they may be amended after the date of this Agreement.
- (d) Captions in this Agreement are for convenience only and do not define or limit any term of this Agreement.
- (e) This Agreement or any amendment hereto may be signed in any number of counterparts, each of which when signed by the General Partner shall be an original, but all of which taken together shall constitute one agreement (or amendment, as the case may be).

#### **14.9 CONFIDENTIALITY.**

Each Partner agrees and covenants to maintain the confidentiality of information that is non-public information furnished by the General Partner regarding the General Partner and the Partnership, including any information concerning any Portfolio Company and information concerning the investment activities and proposed transactions of the Partnership, with such information to be kept confidential in the same manner and in accordance with such procedures and policies as such Partner applies generally to non-public information received by it in the ordinary course of its business and investment activities generally; and, accordingly, each Partner agrees that any such non-public information relating to the



Partnership or any Portfolio Company shall be used solely in respect of such Partner's participation as an investor in the Partnership and shall not be disclosed to any other parties or used for any other purposes, *except* (i) as otherwise required by law or governmental or regulatory agencies (including tax authorities and any investigation or audit by a regulatory agency), any self-regulating body, or by litigation in which the Partner is a named party, or (ii) to employees, directors, members, representatives, advisors and/or other professionals working with or for such Partner, and if the Partner is itself a collective fund-of-funds or other flow-through entity, as necessary to satisfy its reporting obligations to its separate investors, in each case on a "need-to-know" basis and *provided that* each Partner making any such disclosure also shall undertake to inform such other Persons as to the confidential nature of the information being disclosed. Except as otherwise required by law or governmental or regulatory agencies (including tax authorities and any investigation or audit by a regulatory agency), any self-regulating body, or by litigation in which the Partner is a named party, each Partner agrees to cooperate with such procedures and restrictions as may be reasonably developed by the General Partner from time to time in connection with the disclosure of non-public information concerning the Partnership, its investment activities and any Portfolio Company, as determined by the General Partner to be reasonably necessary and advisable to maintain and promote compliance with legal and other regulatory matters applicable to the Partnership and its Partners, including securities law and regulation, and agrees that the General Partner may withhold certain information, or redact certain data or delay the release of certain information or otherwise condition disclosure to the Partners upon an affirmation of their respective confidentiality obligations hereunder, all as the General Partner deems appropriate in light of securities regulations affecting the Partners and/or the Partnership. The obligations and undertakings of each Partner under this 14.9 shall be continuing and shall expire upon the second anniversary of the termination of the Partnership.

## ARTICLE 15 — SPECIAL PROVISIONS

### 15.1 NOTICE TO PARTNERS IF 25% OF SUBSCRIPTIONS HAVE BEEN EXCUSED.

In the event that, as a result of the application of 6.5, 6.6 or this Article 15, the aggregate Subscriptions of all Partners are reduced to 75% or less of the aggregate Subscriptions of all Partners as of the Final Closing Date, the General Partner shall promptly provide each Limited Partner with notice of the occurrence of such event. Each Limited Partner shall then have the option, which option must be exercised, if at all, within 90 days of such notice, to elect to have the terms and provisions of 15.2 apply to such Limited Partner as if it were an ERISA Partner and had delivered the opinion otherwise required by 15.2.

### 15.2 ERISA PARTNER PROVISIONS.

#### 15.2.1 ERISA Compliance Obligations.

##### 15.2.1.1 General.

The General Partner shall use reasonable best efforts to cause the Partnership to conduct its affairs so that:

- (a) The assets of the Partnership will not be treated as "plan assets" of any ERISA Partner, within the meaning of the Plan Assets Regulation; and
- (b) Without limiting the generality of the foregoing, at all times on and after the Initial Investment Date the Partnership will qualify as a "venture capital operating company" within the meaning of paragraph (d) of the Plan Assets Regulation.

**15.2.1.2 Distributions in kind to ERISA Partners.**

If a distribution proposed to be made in kind under any provision of this Agreement, including a liquidating distribution pursuant to 10.2(b), would result in the receipt by an ERISA Partner of securities or other property which such ERISA Partner could not hold without violating ERISA, then such ERISA Partner shall so notify the General Partner, and the General Partner shall use reasonable efforts, consistent with its obligations to the other Partners, to make an alternative distribution to such ERISA Partner which would not result in such a violation.

**15.2.2 ERISA Withdrawal.**

**15.2.2.1 General.**

Notwithstanding any provision in this Agreement to the contrary, any Limited Partner which is an ERISA Partner may elect, upon written notice of such election to the General Partner, to withdraw from the Partnership, or upon written demand by the General Partner shall withdraw from the Partnership, at the time and in the manner hereinafter provided, if either such ERISA Partner or the General Partner shall obtain and deliver to the other an opinion of counsel (which counsel shall be reasonably acceptable to both such ERISA Partner and the General Partner) to the effect that there is a material likelihood that:

- (a) Such ERISA Partner (or any employee benefit plan subject to ERISA that is an investor, directly or indirectly in such ERISA Partner) or the Partnership, as a result of a change in applicable law occurring after the date of this Agreement, would be in material violation of ERISA if such ERISA Partner were to continue as a Limited Partner of the Partnership; or
- (b) All or any portion of the assets of the Partnership would constitute assets of such ERISA Partner for the purposes of ERISA, and would be subject to the provisions of ERISA to substantially the same extent as if owned directly by the ERISA Partner.

The costs of obtaining or seeking an opinion of counsel for purposes of this 15.2.2.1 shall be borne by the ERISA Partner.

**15.2.2.2 Notice of withdrawal.**

In the event of the issuance and delivery of the opinion of counsel referred to in 15.2.2.1, the General Partner shall promptly provide to each Partner a copy of such opinion, together with a copy of the written notice of the election of such ERISA Partner to withdraw or the written demand of the General Partner for withdrawal, as the case may be.

**15.2.2.3 Cure period.**

The General Partner shall have, in its sole discretion, a period of 90 days following receipt of such counsel's opinion (or delivery of notice by the General Partner to such ERISA Partner demanding its withdrawal, if applicable) to attempt to eliminate the necessity for such withdrawal to the reasonable satisfaction of such ERISA Partner and the General Partner, whether by correction of the condition giving rise to the necessity of such ERISA Partner's withdrawal, by amendment of this Agreement, by effectuation of a transfer of such ERISA Partner's interest in the Partnership to a substituted Limited Partner, or otherwise. If requested to do so by such ERISA Partner, the General Partner shall use reasonable efforts to locate a purchaser of such ERISA Partner's interest in the Partnership.

**15.2.2.4 Time of withdrawal.**

If such cause for withdrawal is not cured within such 90-day period, then such ERISA Partner shall withdraw from the Partnership as of the last day of the fiscal quarter of the Partnership during which such 90-day period expires or as of such earlier date as may be agreed to by the General Partner, in its sole discretion (such date being herein referred to as the "ERISA Withdrawal Date").

**15.2.2.5 Effects of withdrawal.**

Effective upon the ERISA Withdrawal Date, such ERISA Partner shall cease to be a Partner of the Partnership for all purposes and, except for its right to receive payment for its Partnership interest as hereinafter provided, shall no longer be entitled to the rights of a Partner under this Agreement, including without limitation the right to receive distributions during the term of the Partnership pursuant to Article 7 and upon liquidation of the Partnership pursuant to Article 10, the right to receive allocations pursuant to Article 8 and the right to vote on Partnership matters as provided in this Agreement.

**15.2.2.6 Distributions to Withdrawing ERISA Partner.**

- (a) As promptly as practicable following the ERISA Withdrawal Date, there shall be distributed to such ERISA Partner, in full payment and satisfaction of its interest in the Partnership, an amount equal to the amount which such ERISA Partner would have been entitled to receive pursuant to Article 10 if the Partnership had been liquidated on and as of the ERISA Withdrawal Date and each of the Partnership's assets had been sold on such date for its fair market value determined pursuant to 14.4. No approval of the Advisory Board or of the Partners shall be required prior to the making of such distribution.
- (b) For purposes of determining the amount of the distribution to be made to such ERISA Partner, and the value of each of the Partnership's assets, the Partnership's annual or quarterly financial statements, as the case may be, prepared in accordance with 14.3.1 and 14.3.2, respectively, for the period ending on the ERISA Withdrawal Date shall be deemed to be conclusive unless either the withdrawing ERISA Partner or the General Partner notifies the other in writing, either before the ERISA Withdrawal Date or not less than 20 Business Days thereafter, of such Person's objection to such valuation, indicating briefly the reason(s) therefor. If within 20 Business Days after such an objection to a determination of value has been made, a substitute value has not been agreed upon by the General Partner and such withdrawing ERISA Partner, the General Partner shall submit the dispute to an independent appraiser selected by the General Partner and approved by the withdrawing ERISA Partner. If there shall be more than one Limited Partner that is a withdrawing ERISA Partner, the independent appraiser referred to in the preceding sentence shall be approved by a majority in interest of such withdrawing ERISA Partners.
- (c) Any distribution to the withdrawing ERISA Partner(s) pursuant to this 15.2.2.6 shall be made in cash, cash equivalents or securities of Portfolio Companies as determined by the General Partner in its sole discretion taking into account the interest of all Partners. If securities of Portfolio Companies are being distributed, such securities shall be distributed in a manner consistent with 7.1.2.2 to the extent practicable, unless otherwise required by law or contract. In the event that any distributions in kind are to be made, the General Partner and such withdrawing ERISA Partner(s) shall cooperate to minimize, to the extent reasonably practicable, the risk that any of them will be treated as engaging in a "prohibited transaction" within the meaning of Section 406 of ERISA or Section 4975 of the Code as a result of such distribution.

**15.2.2.7 Conforming Amendment.**

Upon the withdrawal of any ERISA Partner from the Partnership pursuant to this 15.2.2, the Partners (including the withdrawing ERISA Partner) shall enter into an amendment to this Agreement reflecting such withdrawal and amending such provisions of this Agreement, including without limitation the provisions regarding allocations and distributions during the term of the Partnership and upon its liquidation, as may be appropriate, so that the intent, spirit, operation and effect of such allocation, distribution and other provisions shall, to the maximum extent possible, be preserved after taking into account the withdrawal of such ERISA Partner.

### 15.3 PROVISIONS APPLICABLE TO OTHER REGULATED PARTNERS.

#### 15.3.1 Public Plan Partners.

For purposes of 15.2 and 14.3.4(b) and (c), each Limited Partner that is, or has a partner that is, a “governmental plan” within the meaning of Section 3(32) of ERISA (a “**Public Plan Partner**”) shall be treated as an ERISA Partner, provided in determining whether there is a violation of ERISA with respect to such Limited Partner, ERISA shall be deemed to include the state or local laws applicable to such Limited Partner, and all references in such provisions to ERISA shall be deemed to refer to such applicable laws and/or regulations regarding any Public Plan Partner. Furthermore, with respect to any Public Plan Partner, the withdrawal conditions of 15.2.2 will be deemed to have been complied with if the aforesaid opinion of counsel is to the effect that if such Public Plan Partner were subject to or chose to comply with ERISA (whether or not such is the case), then the conditions set forth in 15.2.2 above would occur.

#### 15.3.2 Tax-Exempt Partner Withdrawals.

If any Limited Partner that is a Tax-Exempt Partner shall obtain an opinion of counsel (which opinion shall be reasonably acceptable, as to form, substance and choice of counsel, to the General Partner) to the effect that, as a result of a change in law or applicable regulation, there is a material likelihood that the continuation of such Tax-Exempt Partner, as the case may be, as a Limited Partner of the Partnership will result in a material violation of, or a material breach of any federal or state law applicable to such Limited Partner, or any rule or regulation adopted thereunder by any agency commission or authority having jurisdiction, then such Limited Partner may completely or partially withdraw from the Partnership in accordance with the provisions of this Article 15 as if such Limited Partner were an ERISA Partner; *provided, however*, that if such Limited Partner so proposes, the General Partner shall use reasonable efforts (taking into consideration the need to act quickly to prevent or cure the adverse consequences referred to above) to locate a buyer for all or a portion of such Limited Partner’s interest in the Partnership.

#### 15.3.3 Foundation Partner Withdrawals.

If any Tax-Exempt Partner that is a private foundation (a “**Foundation Partner**”) shall obtain an opinion of counsel (which opinion and counsel shall be reasonably acceptable, as to form, substance and choice of counsel to the General Partner), to the effect that, as a result of a change in law or the exercise of the Limited Partner rights to reduce Remaining Commitments pursuant to 6.6 or withdrawal rights pursuant to 15.2.2 or this 15.3, there is a material likelihood that the continuation of the Foundation Partner as a Limited Partner of the Partnership will result in (a) the imposition of excise taxes pursuant to Subchapter A of Chapter 42 of the Code (other than Sections 4940, 4942, 4947 and 4948 thereof), or (b) a material violation of, or a material breach of the fiduciary duties of its trustees or governing board under, any federal or state law applicable to private foundations or any rule or regulation adopted thereunder by any agency, commission or authority having jurisdiction, then such Foundation Partner may completely or partially withdraw from the Partnership in accordance with the provisions of this Article 15 as if such Foundation Partner were an ERISA Partner to the minimum extent necessary to avoid such excise taxes or such violation; *provided, however*, that if such Foundation Partner so proposes, the General Partner shall use reasonable efforts (taking into consideration the need to act quickly to prevent or cure the adverse consequences referred to above) to locate a buyer for all or a portion of such Foundation Partner’s interest in the Partnership.

### 15.4 OPT-OUT WITH RESPECT TO DISTRIBUTIONS IN KIND.

Securities distributed in kind shall be subject to such conditions and restrictions as the General Partner determines are legally required or appropriate. Whenever types or classes of securities are distributed in kind, each Partner shall receive its ratable portion of each class or portion of such type or class of securities distributed in kind; provided, however, if any Limited Partner would receive an amount of any

security that would cause such Limited Partner to own or control in excess of the amount of such security that it may lawfully own or control or may own or control without tax penalty, then, upon receipt of notice to such effect from a Limited Partner, the General Partner shall vary the method of distribution, in an equitable manner, so as to avoid such excessive ownership or control. With respect to BHC Partners, this 15.4 shall be interpreted without regard to Section 4(k) of the Bank Holding Company Act.

## **15.5 INVESTMENTS IN COMPANIES REGULATED BY FEDERAL COMMUNICATIONS COMMISSION.**

### **15.5.1 Qualification of Interests as “Non-Attributable” for FCC Purposes.**

This 15.5 is included in this Agreement in order to ensure, to the extent feasible, that each Limited Partner has a “non-attributable interest” in the Partnership (a “**Non-Attributable Interest**”), as that term is defined by the Federal Communications Commission. In general, Limited Partners that are not materially involved, directly or indirectly, in the management or operation of the media-related activities of the Partnership will be deemed to hold Non-Attributable Interests.

### **15.5.2 Limitations on Activities.**

No Limited Partner (and, if such Limited Partner is not a natural person, none of such Limited Partner’s directors, officers, partners (or Persons holding equivalent positions) or Persons holding 5% or more of the voting stock or voting equity of such Limited Partner) shall:

- (a) Act as an employee of (a) the Partnership, if his or her functions, directly or indirectly, relate to the media enterprises of the Partnership, or (b) any Portfolio Company, if his or her functions, directly or indirectly, relate to the media enterprises of such Portfolio Company;
- (b) Serve, in any material capacity, as an independent contractor or agent with respect to the media enterprises of the Partnership or of any Portfolio Company;
- (c) Communicate with the General Partner or any Portfolio Company on matters pertaining to the day-to-day operation of the General Partner’s or any Portfolio Company’s media-related activities;
- (d) Vote on the admission of new or additional general partners to the Partnership unless such admission may be rejected by the General Partner;
- (e) Perform any services for the Partnership or any Portfolio Company materially related to the Partnership’s or any Portfolio Company’s media-related activities, with the exception of making loans to, or acting as surety for, their media-related activities; or
- (f) Become actively involved in the management or operation of the media-related activities of the Partnership or of any Portfolio Company.

### **15.5.3 Required Notice of Proscribed Activities.**

In the event that, notwithstanding the foregoing provisions of 15.5, any Limited Partner (and, if such Limited Partner is not a natural person, any of such Limited Partner’s directors, officers, partners or Persons holding equivalent positions) should become actively involved in the management or operation of the media-related activities of the Partnership or of any Portfolio Company (in the manner contemplated by any clause of 15.5.2 or otherwise), such Limited Partner shall (and, if such Limited Partner is not a natural person, shall use its best efforts to cause any of its directors, officers, partners or Persons holding equivalent positions who are so involved to) promptly so notify the General Partner.

### **15.5.4 Effect on Activities of Advisory Board.**

Notwithstanding any provision of this Agreement, the activities of the Advisory Board and each member thereof (acting in such capacity) shall be limited to those permitted under the rules and policies of the FCC without causing any Limited Partner to have an interest in the Partnership that is not a Non-Attributable Interest.

## 15.5.5 Additional Provisions Related to FCC and Other Regulatory Filings.

### 15.5.5.1 General.

Each Limited Partner agrees to deliver to the General Partner, promptly upon receipt of the General Partner's request therefor, the following:

- (a) All non-confidential information requested by the FCC or which the General Partner reasonably deems necessary to enable the Partnership to respond to any request by the FCC or to make any FCC filing that the General Partner reasonably deems necessary or advisable in order to enable the Partnership to make, manage and dispose of actual or potential Portfolio Investments; and
- (b) All information requested by any other governmental agency if, in the good-faith judgment of the General Partner, there is a material likelihood that the General Partner's or the Partnership's inability or failure to provide such information (i) would result in the imposition of sanctions (including but not limited to taxes, interest or penalties) on the Partnership or any Partner (unless the General Partner determines that the imposition of any such sanction would affect only the Partner about whom such information is requested), (ii) would cause the Partnership to be denied access to opportunities to acquire or dispose of Portfolio Investments on favorable terms or (iii) would otherwise result in a violation of applicable law and/or the rules and regulations of a governmental agency.

### 15.5.5.2 Confidentiality.

The General Partner shall, to the maximum extent practicable, request any governmental agency seeking any information from the General Partner regarding any Partner to keep confidential any such information provided by the General Partner.

## 15.6 BANK HOLDING COMPANIES.

### 15.6.1 Non-Voting Interests.

The portion of any interest in the Partnership held for its own account by a BHC Partner whose limited partnership interest is determined, at any time, to be in excess of 4.99% of the total outstanding aggregate voting interests of all Limited Partners (or such greater or lesser percentage as may be permissible hereafter under the Bank Holding Company Act and Regulation Y promulgated thereunder without regard to Section 4(k) of the Bank Holding Company Act), excluding any other interests that are Non-Voting Interests, shall constitute a Non-Voting Interest to the extent of such excess above 4.99% (or such permissible percentage), whether or not subsequently transferred in whole or in part to any other Person. Each BHC Partner irrevocably waives its right to vote its Non-Voting Interest (a) on the selection of a successor general partner under Section 17-801 of the Delaware Act, which waiver will be binding upon such BHC Partner and any entity which succeeds in whole or in part to its interest in the Partnership or (b) on the selection of a liquidating trustee pursuant to 10.1.

### 15.6.2 Opt-Out Election.

Notwithstanding any contrary provision in this 15.6, any BHC Partner may elect (an "**Opt-Out Election**"), by providing written notice thereof to the General Partner, not to be governed by 15.6.1, in which case none of the interests held by such electing BHC Partner will constitute Non-Voting Interests. Any Opt-Out Election made by a BHC Partner may be rescinded at any time by providing a further written notice thereof to the General Partner, and any such rescission will be irrevocable for the entire term of this Agreement.

**15.6.3 No "Control" Presumption.**

No BHC Partner shall be required to make any Contribution to the Partnership to the extent that such Contribution would result in such BHC Partner contributing more than 24.99% of all capital contributed to the Partnership.

**15.6.4 BHC Partner Withdrawals.**

If any Limited Partner that is a BHC Partner shall obtain an opinion of counsel (which opinion shall be reasonably acceptable, as to form, substance and choice of counsel, to the General Partner) to the effect there is a material likelihood that (i) any required capital contribution of the BHC Partner to the Partnership pursuant to Article 6 or (ii) the continuation of such BHC Partner as a Limited Partner of the Partnership will result in a material violation of, or a material breach of, the Bank Holding Company Act and Regulation Y promulgated thereunder (without regard to Section 4(k) of the Bank Holding Company Act), then such BHC Partner may completely or partially withdraw from the Partnership in accordance with the provisions of this Article 15 as if such BHC Partner were an ERISA Partner to the minimum extent necessary to avoid such material violation or material breach; *provided, however*, that if such BHC Partner so proposes, the General Partner shall use reasonable efforts (taking into consideration the need to act quickly to prevent or cure the adverse consequences referred to above) to locate a buyer for all or a portion of such BHC Partner's interest in the Partnership.

**15.7 OPERATIVE RULES FOR CERTAIN PARTIAL WITHDRAWALS.**

In the event of any partial withdrawal of a Tax-Exempt Partner pursuant to 15.3.2, a Foundation Partner pursuant to 15.3.3 or a BHC Partner pursuant to 15.6.4, the General Partner shall make such adjustments to the provisions of this Agreement (including but not limited to those provisions dealing with Drawdowns, allocations and distributions) as the General Partner in its sole discretion determines are necessary or advisable to reflect such partial withdrawal while preserving, to the maximum extent feasible, the economic agreements among the Partners as reflected in this Agreement.

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IN WITNESS WHEREOF, the undersigned have executed this First Amended and Restated Limited Partnership Agreement of Essex Woodlands Health Ventures Fund VIII, L.P. as of the day, month and year first above written.

GENERAL PARTNER:

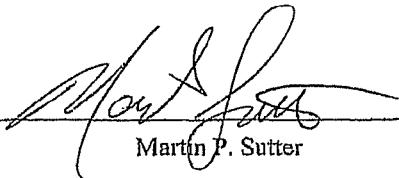
ESSEX WOODLANDS HEALTH VENTURES VIII, L.P.  
BY: ESSEX WOODLANDS HEALTH VENTURES VIII, LLC  
ITS GENERAL PARTNER

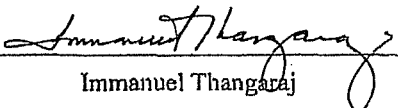
By: *Immanuel Hangeray*  
Title: Manager

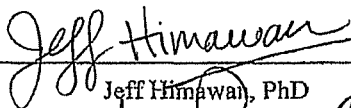


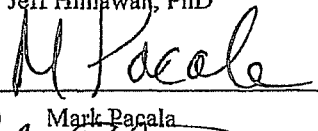
**ACCESSION AGREEMENT OF PRINCIPALS**

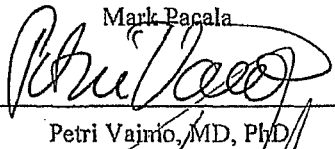
The undersigned Principals, who are managers of the general partner of Essex Woodlands Health Ventures VIII, L.P., the General Partner of Essex Woodlands Health Ventures Fund VIII, L.P., hereby severally agree, in their capacities as such, to be bound by the provisions of this Agreement so long as they serve as Principals and managers of the general partner of the General Partner to the extent that such provisions are expressly applicable to Principals. The undersigned Principals hereby agree to be jointly and severally liable for the General Partner's obligations to return distributions to the Partnership pursuant to 7.6.1, 7.6.5 and 10.5.3 of this Agreement. The Limited Partners shall be third party beneficiaries of this undertaking. The undersigned also agree to require any Person admitted as a manager of the general partner of Essex Woodlands Health Ventures VIII, L.P. and named as a Principal pursuant to this Agreement to execute an agreement substantially similar to that set forth in this paragraph as a condition of such admission. This Accession Agreement of Principals may only be waived, modified, terminated or amended with the prior written consent of the General Partner and 66-2/3% in interest of the Limited Partners.

  
Martin P. Sutter

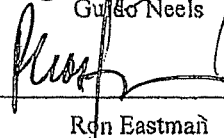
  
Immanuel Thangaraj

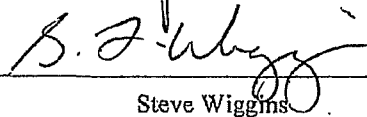
  
Jeff Himawan, PhD

  
Mark Pacala

  
Petri Vainio, MD, PhD

  
Guido Neels

  
Ron Eastman

  
Steve Wiggins

## ESSEX WOODLANDS HEALTH VENTURES FUND VIII, L.P.

## DEFINITIONS

For purposes of this Agreement, the following terms shall have the meanings set forth below (such meanings to be equally applicable to both singular and plural forms of the terms so defined). Additional defined terms are set forth in the provisions of this Agreement to which they relate:

<b>Advisory Board</b>	As set forth in 3.7.
<b>Advisory Board Indemnatee</b>	As set forth in 12.2.2.
<b>Affiliate</b>	With respect to the Person to which it refers, a Person that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, such subject Person. For this purpose, each Principal shall be deemed to be an Affiliate of the General Partner.
<b>Available Amount</b>	As set forth in 9.5(b).
<b>Bank Holding Company Act</b>	The United States Bank Holding Company Act of 1956 and the rules and regulations promulgated thereunder, as amended from time to time, or any successor statute thereto.
<b>BHC Partner</b>	Any Limited Partner subject to the Bank Holding Company Act; <i>provided, however,</i> that any Limited Partner that is also a “financial holding company” or an Affiliate thereof as defined in the Gramm-Leach-Bliley Act shall not be considered a BHC Partner if such Limited Partner notifies the General Partner that it has the merchant banking powers provided by the Gramm-Leach-Bliley Act.
<b>Business Day</b>	Each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions in Palo Alto, California, are required by law to remain closed.
<b>Call Notice</b>	As set forth in 6.2.1.
<b>Capital Account</b>	As set forth in 8.1.1.
<b>Code</b>	The United States Internal Revenue Code of 1986, as amended from time to time, or any successor statute thereto.
<b>Commitment Period</b>	As set forth in 3.5(a).
<b>Contribution</b>	With respect to any Partner and at any time, the aggregate amount of capital contributions made to the Partnership by such Partner in cash at or before such time pursuant to this Agreement (plus, with respect to the General Partner, the aggregate amount of capital contributions deemed made pursuant to 6.1.3), (a) <i>increased</i> , at the time that any part of a Default Charge is added to the Contribution of such Partner pursuant to 6.5, by the amount so added; and (b) <i>decreased</i> : <ul style="list-style-type: none"> <li>(i) At the time that any amount treated as a partial return of such Partner’s Contribution pursuant to 6.4.3 or 6.7 is distributed to such Partner, by the amount so treated; and</li> <li>(ii) At the time that all or any part of a Default Charge is subtracted from the Contribution of such Partner pursuant to 6.5, by the amount so subtracted.</li> </ul>

Except as provided in the preceding sentence, a Partner's Contribution shall not be reduced on account of any distributions of capital to such Partner or for any other reason.

<b>Cost</b>	With respect to Partnership assets and unless the context otherwise requires, the Partnership's adjusted tax basis in such assets for federal income tax purposes, <i>provided, however</i> , that, if the Partnership has made an election under Section 754 of the Code, such tax basis shall be determined after giving effect to adjustments made under Section 734 of the Code but (except as provided in Treasury Regulations Section 1.734-2(b)(1)) without regard to adjustments made under Section 743 of the Code.
<b>Covered Person</b>	As set forth in 12.1.1.
<b>Cumulative Net Gain</b>	As of the time of any determination, the excess (if any) of the cumulative Net Gain of the Partnership from its inception through and including such time over the cumulative Net Loss of the Partnership over that period (in each case determined without regard to items of Net Gain specially allocated to the General Partner pursuant to 5.2.4).
<b>Default Charge</b>	As set forth in 6.5.2.1.
<b>Default Rate</b>	With respect to any fiscal period, the lesser of (a) the Prime Rate for such fiscal period plus 6%, or (b) the highest interest rate for such fiscal period permitted under applicable law.
<b>Defaulting Partner</b>	As set forth in 6.5.1.3.
<b>Deficiency Drawdown</b>	As set forth in 6.1.2.1.
<b>Delaware Act</b>	As set forth in 2.1.
<b>Delayed Payment Interest</b>	Partnership income attributable to (a) interest paid by any Limited Partner pursuant to 6.5.1.1 on delayed payments of its capital contributions; (b) interest paid by any Defaulting Partner pursuant to 6.5.5 on costs of collecting unpaid capital contributions; (c) interest paid by any Limited Partner pursuant to 7.4.2 (relating to withholding taxes); and (d) interest-equivalent payments made by any newly admitted Limited Partner (or Partner increasing its Subscription) pursuant to 6.4.2.
<b>Designated Jurisdiction</b>	From time to time, that combination of U.S. state, county, city and other taxing jurisdictions in which the General Partner or any member of the general partner of the General Partner resides or is domiciled that, at such time, collectively imposes the highest marginal rate of income tax on its residents or domiciliaries, as determined by the General Partner after consultation with the Partnership's accountants and other advisors.
<b>Discretionary Distribution</b>	As set forth in 7.2.1.
<b>Disposed Investment Date</b>	As set forth in 12.2.1.
<b>Disposed Investments</b>	As of any time of determination, all Portfolio Securities that have been sold, distributed to the Partners, written off as worthless securities, or otherwise disposed of, in whole or in part, to the extent so distributed or disposed of at or prior to the date of determination; provided, however, that any exchange of any securities of a Portfolio Company for other securities or property (other than cash or cash equivalents) shall not constitute a disposition of the original

securities. For this purpose, the following events shall be treated as partial dispositions of securities:

- (a) Each principal payment (or portion thereof) on any security that constitutes a debt instrument for federal income tax purposes shall be treated as a disposition of a portion of such security that is equivalent on a percentage basis to the portion of the original principal amount of such debt instrument represented by such principal payment;
- (b) In the event that the Partnership agrees to capitalize any interest that is accrued but remains unpaid on any security that constitutes a debt instrument for federal income tax purposes and to add such interest to principal, the amount so capitalized shall be treated, solely for purposes of determining whether payments subsequently made to the Partnership with respect to such security constitute Distributable Proceeds, as a follow-on investment in the debt securities of the issuer, and any determination regarding the extent to which subsequent payments made to the Partnership with respect to the original or any such follow-on investment in debt securities is properly treated as a payment of principal shall be made in accordance with federal income tax principles;
- (c) Each payment (or portion thereof) made to the Partnership in redemption of any security constituting stock for federal income tax purposes that is treated for such purposes as a distribution in part or full payment in exchange for such stock (rather than, for example, a dividend paid on such security) shall be treated as a disposition of the portion of such security treated for such purposes as having been exchanged;
- (d) Any partial repurchase by the issuer and any lapse or other termination of part of any security constituting an option or warrant for federal income tax purposes shall be treated as a disposition of a portion of such security that is equivalent on a percentage basis to the portion of the Partnership's investment in such security (as reflected in the Partnership's financial records maintained in accordance with federal income tax principles) represented by the portion of such security that was repurchased, lapsed or terminated; and
- (e) With respect to any Portfolio Investment that is subject to a Net Write-Down, such Portfolio Investment shall be treated as a Disposed Investment to the extent of such Net Write-Down while such Net Write-Down is in effect.

In the event that the General Partner determines, pursuant to 4.3, to cause a portion of the Distributable Proceeds attributable to the disposition of any Portfolio Securities to be retained by the Partnership and invested in other Portfolio Securities, then, for purposes of determining the Partners' Priority Return Amounts, the following portion of the original Portfolio Securities shall not be treated as Disposed Investments: the entire amount of such original Portfolio Securities multiplied by a fraction, the numerator of which is the amount of such Distributable Proceeds reinvested in new Portfolio

<b>Distributable Proceeds</b>	Securities and the denominator of which is the total amount of Distributable Proceeds attributable to the disposition of such original Portfolio Securities.  All cash received by the Partnership that is attributable to any Portfolio Investment and has not previously been distributed to the Partners, including payments in cash of interest, dividends and principal and proceeds from the sale of any Portfolio Investment, and any other cash that the General Partner determines is otherwise available for distribution to the Partners — but specifically excluding any amounts distributable pursuant to 7.3.5 — after the payment or provision for payment by the Partnership of all expenses incurred by the Partnership in connection with disposing of such Portfolio Investment, including but not limited to brokers' fees and other selling expenses, and in collecting any amounts then owed to the Partnership and so attributable. Distributable Proceeds shall also include any Portfolio Securities that the General Partner in its discretion has determined to distribute in kind.
<b>Distributed Profit</b>	As of any time of determination, the excess of (i) the aggregate amount of all distributions (other than Special GP Distributions) made to Partners (including the General Partner) since the inception of the Partnership; over (ii) the Partners' cumulative Priority Return Amounts determined as if the Partners had received no prior distributions.
<b>Drawdown</b>	As set forth in 6.1.1.1.
<b>Drawdown Date</b>	As set forth in 6.2.1.
<b>Essex Woodlands Group Funds</b>	As set forth in 3.7.5(a).
<b>Essex Woodlands Group Investors</b>	As set forth in 3.7.5(a).
<b>ERISA</b>	The United States Employee Retirement Income Security Act of 1974 and (unless the context otherwise requires) the rules and regulations promulgated thereunder, as amended from time to time, or any successor statute thereto.
<b>ERISA Partner</b>	Any Limited Partner which is (a) an "employee benefit plan" within the meaning of Section 3(3) of ERISA and subject to Part 4 of Title I of ERISA, (b) a "plan," as defined in Section 4975(e)(1) of the Code, to which the provisions of section 4975 of the Code are applicable, or (c) any other Person, any of the assets of which constitute "plan assets," within the meaning of the Plan Assets Regulation, of a plan described in (a) or (b) above.
<b>ERISA Withdrawal Date</b>	As set forth in 15.2.2.4.
<b>Excluded Investment</b>	As set forth in 15.1.1
<b>Existing Funds</b>	Essex Venture Partnership, L.P. Fund I, an Illinois limited partnership, Essex Venture Partnership, L.P. Fund II, a Delaware limited partnership, The Woodlands/Essex Venture Fund III, L.P., a Delaware limited partnership, Woodlands Venture Fund, L.P., a Delaware limited partnership, Essex Woodlands Health Ventures Fund IV, L.P., a Delaware limited partnership, Essex Woodlands Health Ventures Fund V, L.P., a Delaware limited partnership, Essex Woodlands Health Ventures Fund VI, L.P., a Delaware limited partnership and Essex Woodlands Health Ventures Fund VII, L.P., a Delaware limited partnership.

<b>Fair Value Test</b>	As set forth in 7.2.4(a).
<b>FCC</b>	The United States Federal Communications Commission or any successor governmental agency.
<b>Final Closing Date</b>	As set forth in 3.2.4.
<b>Follow-on Investment</b>	As set forth in 9.5(a).
<b>Follow-on Period</b>	As set forth in 6.1.1.3(c).
<b>Foundation Partner</b>	As set forth in 15.3.3.
<b>Freely Tradable Security</b>	Any security that satisfies the following conditions: <ul style="list-style-type: none"> <li>(a) The Partnership's entire holding of such securities can be immediately sold by the Partnership to the general public without the necessity of any federal, state or local government consent, approval or filing (other than any notice filings of the type required pursuant to Rule 144(h) under the Securities Act), and</li> <li>(b) Such securities are either (i) traded on a national securities exchange or the Nasdaq National Market or (ii) traded on the Nasdaq Small Cap Market and the General Partner reasonably determines that an active trading market exists for such securities on the Nasdaq Small Cap Market.</li> </ul> <p>If only a portion of the Partnership's holdings of securities satisfies the requirements of the preceding sentence, that portion of the Partnership's holdings of such securities shall constitute Freely Tradable Securities. In addition to the foregoing, in the case of a distribution of securities in kind, such securities shall also constitute Freely Tradable Securities if the entire portion of the distribution made to the Limited Partners can be immediately sold by them under the terms provided for in clause (a) of this definition and the condition provided for in clause (b) of this definition is satisfied, assuming for purposes of this sentence that no Limited Partner is an Affiliate of the issuer of such securities.</p>
<b>General Partner</b>	Essex Woodlands Health Ventures VIII, L.P., a Delaware limited partnership, and any successor general partner under this Agreement.
<b>Indemnitee</b>	As set forth in 12.2.1.
<b>Initial Closing Date</b>	The date on which investors (other than one or more of the Principals) are first admitted to the Partnership as Limited Partners.
<b>Initial Drawdown Date</b>	The due date of the Partnership's first Drawdown.
<b>Initial Investment Date</b>	The date on which the Partnership first makes "an investment that is not a short-term investment of funds pending long-term commitment" within the meaning of paragraph (d)(5)(i)(b) of the Plan Assets Regulation.
<b>Interim Clawback Amount</b>	As set forth in 7.6.5(b).
<b>Investment Period</b>	Unless earlier terminated pursuant to 9.5(c), the period commencing upon the execution of this Agreement and ending on the earliest to occur of (a) the date on which the aggregate Cost of all Portfolio Investments previously made by

the Partnership, when added to amounts reserved by the Partnership for future investments in existing Portfolio Companies or for reasonably anticipated Partnership expenses, equals the aggregate Subscriptions of all Partners, and (b) the fifth anniversary of the Initial Closing Date.

<b>Key Principal</b>	As set forth in 9.5(a).
<b>Limited Partners</b>	Those Persons listed in <u>Schedule A</u> as limited partners, together with any additional or substituted limited partners admitted to the Partnership after the date hereof.
<b>Losses</b>	As set forth in 12.2.1.
<b>Management Company</b>	As set forth in 3.3(c).
<b>Management Fee</b>	As set forth in 5.2.2.1.
<b>Nasdaq</b>	As set forth in 14.4.2.1.
<b>Net Gain or Loss</b>	<p>With respect to any fiscal year, the sum of the Partnership's:</p> <ul style="list-style-type: none"><li>(a) Net gain or loss attributable to the sale or exchange of Portfolio Securities during such fiscal year;</li><li>(b) Net gain or loss deemed to have been realized by the Partnership, pursuant to 8.1.2, on a distribution in kind during such fiscal year of Portfolio Securities;</li><li>(c) Dividend and interest income for such fiscal year (if any) that is attributable to investments in Portfolio Securities;</li><li>(d) Other items of income and gain for such fiscal year that are not included in (a), (b) or (c), including any income exempt from federal income tax; and</li><li>(e) A negative number equal to all Partnership losses for such fiscal year not taken into account under clauses (a) or (b) above, and all expenses properly chargeable to the Partnership for such fiscal year (whether deductible or non-deductible and whether described in Section 705(a)(2)(B) of the Code, treated as so described pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(i), or otherwise).</li></ul> <p>For this purpose, Net Gain or Loss shall be determined in accordance with tax accounting principles rather than generally accepted accounting principles, and the following items shall be disregarded:</p> <ul style="list-style-type: none"><li>(i) All items specially allocated pursuant to 8.3, 8.4 or 8.5 or <u>Appendix II</u>;</li><li>(ii) Expenses required to be capitalized and included in the Partnership's adjusted tax basis in any asset or which reduce the amount realized by the Partnership on the disposition of any asset; and</li><li>(iii) All reductions in the Management Fee and all special allocations of Management Fee expense occurring pursuant to 5.2.3.</li></ul>
<b>Net Write-Down</b>	As of any time, the sum of the amounts by which any Portfolio Security that is not a Disposed Investment in its entirety has been written down on the Partnership's books in accordance with the rules set forth below to less than its Cost, but only to the extent that such write-down has not previously been offset by a corresponding write-up.

- (a) In the case of any Portfolio Security for which market quotations are readily available, then, solely for purposes of determining the apportionment of distributions among the Partners:
  - (i) the General Partner shall adjust the value of such investment as shown in the Partnership's financial records to the lower of its fair market value (determined in accordance with Section 14.4) at the beginning of the fiscal period in question and its fair market value at the end of such period, and
  - (ii) if the fair market value of any such Portfolio Security that previously has been subject to a downward adjustment subsequently increases, the General Partner shall adjust the value of such investment as shown in the Partnership's financial records to the higher of the fair market value at the beginning of the period in question and its fair market value at the end of such period.
- (b) In the case of any Portfolio Security for which market quotations are not readily available:
  - (i) if the General Partner shall determine in the good faith exercise of its discretion that there has been a significant decline as of the end of any fiscal period in the fair market value of such Portfolio Security, then, solely for purposes of determining the apportionment of distributions among the Partners, the General Partner shall write down the value of such investment in the Partnership's financial records by the amount of such decline not previously taken into account in making such a downward adjustment; and
  - (ii) if the General Partner shall determine in the good faith exercise of its discretion (after consultation with the Partnership's independent accountants) that as of the end of any fiscal period there has been a significant reversal or mitigation of circumstances previously giving rise to a write-down in the value of such Portfolio Security, then, solely for purposes of determining the apportionment of distributions among the Partners, the General Partner shall write up the value of such investment by any amount (as determined in its sole discretion) not previously taken into account in making such an upward adjustment; and
  - (iii) In the case of any such Portfolio Security that is a debt obligation,
    - (A) the determination by the General Partner of the decline in such fair market value shall take into account only changes in the creditworthiness of the issuer of the obligation and not any changes which may have taken place in general interest rate levels, and
    - (B) any such determination of creditworthiness may be made by reference to the rating of the issuer's outstanding debt by Standard & Poor's Corporation, Moody's Investor



Service, Inc. or any other nationally-recognized rating organization in the United States, the issuer's NAIC rating, and such other information as the General Partner may deem relevant.

(c) In no event shall any Portfolio Security shall be written up for these purposes to an amount exceeding the Cost of that security.

<b>Non-Attributable Interest</b>	As set forth in 15.5.1.
<b>Non-Voting Interest</b>	A limited partnership interest in the Partnership that does not entitle the holder to vote, consent or withhold consent with respect to any Partnership matter. Contributions attributable to Non-Voting Interests shall be disregarded, for purposes of 13.2, in determining both the aggregate Contributions of all Limited Partners and the aggregate Contributions of those Limited Partners voting in favor of or against a particular proposal. Except as otherwise explicitly provided in this Agreement, any interest held by any Person as a Non-Voting Interest shall be identical to all other limited partnership interests in all respects <i>other than</i> with regard to votes and consents.
<b>Notice Date</b>	As set forth in 9.5(b).
<b>Opt-Out Election</b>	As set forth in 15.6.2.
<b>Organizational Expenses</b>	With respect to any fiscal year, all Partnership expenses for such fiscal year that are attributable to organization of the Partnership and the sale of interests in the Partnership to the Limited Partners, but excluding any fees paid to any placement agents in connection with the sale of interests in the Partnership.
<b>Parallel Partnership</b>	As set forth in 3.7.5(a).
<b>Parallel Partnerships</b>	As set forth in 3.7.5(a).
<b>Partner Interest</b>	As set forth in 6.7.2.
<b>Partners</b>	The General Partner and the Limited Partners.
<b>Partnership</b>	Essex Woodlands Health Ventures Fund VIII, L.P., a Delaware limited partnership.
<b>Partnership Expenses</b>	All expenses properly borne by the Partnership hereunder, including the Management Fee and Organizational Expenses not in excess of \$750,000, but specifically excluding all expenses properly borne by the General Partner pursuant to 5.2.1.2.
<b>Person</b>	Any individual, general partnership, limited partnership, limited liability partnership, limited liability company, corporation, joint venture, trust, business trust, cooperative or association and the heirs, executors, administrators, legal representative, successors and assigns of such Person where the context so admits.
<b>Plan Assets Regulation</b>	The regulation concerning the definition of "plan assets" under ERISA adopted by the United States Department of Labor and codified in 29 C.F.R. §2510.3-101.
<b>Portfolio Company</b>	Any entity in which the Partnership holds an investment other than a Temporary Investment.
<b>Portfolio Company</b>	As set forth in 5.2.2.3.

<b>Remuneration</b>	
<b>Portfolio Investment</b>	As set forth in 4.1.
<b>Portfolio Security</b>	Any security issued by a Portfolio Company.
<b>Prime Rate</b>	With respect to any fiscal period, the prime rate for such fiscal period as reported in The Wall Street Journal.
<b>Principal</b>	Mark Pacala, Martin P. Sutter, Jeff Himawan, PhD, Immanuel Thangaraj, Petri Vainio, MD, PhD, Guido Neels, Ron Eastman, Steve Wiggins and any other individual serving from time to time as a manager of the general partner of the General Partner and while such individual continues to serve in such capacity.
<b>Priority Return Amount</b>	<p>With respect to any Partner and at any time, an amount which, if distributed to such Partner at such time, would cause the aggregate amount of distributions made by the Partnership to such Partner and such Partner's predecessors in interest from the inception of the Partnership through such time to equal but not exceed that portion of such Partner's Contribution that, at or prior to the time of determination, is reflected in the Partnership's books as having been used by the Partnership:</p> <ul style="list-style-type: none"> <li>(a) To acquire any Portfolio Investments that, as of such time, are Disposed Investments (including any investments that are subject to a Net Write-Down, to the extent provided for in clause (e) in the definition of "Disposed Investments"), or</li> <li>(b) To pay any expenses properly borne by the Partnership under this Agreement (including but not limited to the Management Fee, Organizational Expenses not in excess of \$750,000 and indemnification expenses, if any), but only: <ul style="list-style-type: none"> <li>(i) To the extent of such Partner's proportionate share (based on its relative Contribution) of the amount of such expenses attributable to investments that, at such time, are Disposed Investments; and</li> <li>(ii) To the extent that the Partnership has not, subsequent to the payment of such expenses but prior to the time of determination, used Distributable Proceeds to acquire additional Portfolio Securities, as permitted under 4.3, at least equal in cost to the expenses so paid (in which event the Partners' Contributions that were actually used to pay such expenses shall be deemed, for purposes of determining their Priority Return Amounts, to have been used to acquire such additional Portfolio Securities).</li> </ul> </li> </ul> <p>For purposes of this definition, (A) any expenses borne by the Partnership shall be deemed to have been paid with Partnership funds <i>other than</i> the Partners' Contributions to the extent that the Partnership has such other funds available to pay such expenses; (B) the aggregate amount of the Partnership's expenses from inception through any date of determination that have been paid with the Partners' Contributions shall be apportioned among all Portfolio Investments (and the amounts so apportioned shall be deemed to be attributable to such Portfolio Investment) that were acquired by the Partnership since inception with the Partners' Contributions in proportion to the relative Cost of such investments except that, to the extent that a particular</p>

Portfolio Investment has become a Disposed Investment, no further Partnership expenses shall be deemed to be attributable to that investment; (C) for purposes of the preceding clause (B), the General Partner may use any reasonable method (including but not limited to a quarterly or monthly convention) to determine the amount of expenses incurred from the Partnership's inception through such date of determination; (D) in no event shall the Limited Partners' aggregate Priority Return Amounts exceed, at any time, their aggregate Contributions at such time reduced (but not below zero) by the aggregate amount of Distributable Proceeds previously distributed to them; and (E) the amount of Partnership expenses shall be determined without regard to any adjustments to the Management Fee made pursuant to 5.2.3 or 5.2.4.

<b>Public Plan Partner</b>	As set forth in 15.3.1.
<b>Public Securities Market</b>	Any United States national or regional securities exchange, including but not limited to the New York Stock Exchange, the American Stock Exchange, and regional United States exchanges and any recognized automated quotation system, listing service or other form of securities exchange or trading forum, including but not limited to Nasdaq; and the phrase " <i>traded on a Public Securities Market</i> " means publicly traded on or through any such exchange, system, listing service or forum.
<b>Reduction Amount</b>	As set forth in 9.5(b).
<b>Regulatory Allocations</b>	As set forth in Part 1.4 of <u>Appendix II</u> .
<b>Related Entities</b>	As set forth in 3.5(b)(ii).
<b>Remaining Commitment</b>	With respect to any Partner, its Subscription; <ul style="list-style-type: none"> <li>(a) <i>Reduced</i> by the amount of all capital contributions made by such Partner (or its predecessors in interest) pursuant to this Agreement (including any capital contributions that such Partner is deemed to have made pursuant to 6.1.3) and the amount of any reduction in such Partner's Remaining Commitment pursuant to 6.5.4(a) or 6.6.2; and</li> <li>(b) <i>Increased</i> by any capital contributions returned to such Partner by the Partnership that, under 6.7.3, result in a corresponding increase in such Partner's Remaining Commitment.</li> </ul>
<b>Repayment Amount</b>	As set forth in 5.2.2.3(b).
<b>Requesting Partners</b>	As set forth in 5.2.2.3(b).
<b>Reserve Amount</b>	As set forth in 9.5(b).
<b>Restoration Amount</b>	With respect to any Partner and at any time, such Partner's Remaining Commitment at such time (but not including any portion of the General Partner's Remaining Commitment that will be satisfied by deemed contributions pursuant to 6.1.3) and, solely with respect to the General Partner and at such time, an additional amount equal to the amount that the General Partner would be required to return to the Partnership at that time (or within 90 days thereafter) pursuant to 7.6.1 if each asset of the Partnership were sold at such time for amount equal to its Cost, all of the Partnership's liabilities to Persons other than Partners were satisfied (to the extent possible) with Partnership funds, all items of Partnership income, gain, loss or expense were

allocated to the Partners in accordance with Article 8, and any remaining cash was distributed to the Partners pursuant to Article 7. For purposes of determining the General Partner's Restoration Amount, all adjustments occurring pursuant to 5.2.3 shall be disregarded.

<b>Second Notice Date</b>	As set forth in 9.5(b).
<b>Securities Act</b>	The United States Securities Act of 1933, as amended from time to time, or any successor statute thereto.
<b>Service Provider</b>	As set forth in 3.3(c).
<b>Short Term Securities</b>	Investments with a maturity of one year or less in (a) direct and general obligations of, or obligations fully and unconditionally guaranteed by, the United States; (b) certificates of deposit or bankers acceptances of any bank, trust company or national banking association which has capital and surplus of at least \$250 million, (b) commercial paper or master notes rated "Prime-1" by Moody's Investors Service, Inc. or "A-1" by Standard & Poor's Corporation; (d) collateralized repurchase agreements; or (e) bank money market accounts or money market mutual funds. Short Term Securities shall not include investments in publicly traded equity securities which are intended to be held for more than three months and for which the primary return is expected to be capital appreciation, nor investments made in companies in which the Partnership has, or is expected to make, a long term investment.
<b>Special GP Distribution</b>	As set forth in 5.2.3.
<b>Subscription</b>	With respect to any Partner, the total amount that such Partner has agreed to contribute to the Partnership as reflected, with respect to each Partner, in <u>Schedule A</u> opposite such Partner's name in under the column headed "Total Subscription."
<b>Subsidiary</b>	With respect to any corporation (the "Parent"), any other corporation of which the Parent owns, directly or indirectly, the outstanding capital stock having voting power to elect a majority of the board of directors of such other corporation.
<b>Successor Fund</b>	As set forth in 3.5(d).
<b>Suspension Period</b>	As set forth in 6.1.1.5.
<b>Target Amount</b>	As set forth in 7.6.2.
<b>Tax Distribution</b>	As set forth in 7.3.1.
<b>Tax Liability</b>	As set forth in 7.4.1.
<b>Tax Matters Partner</b>	As set forth in 3.3(b).
<b>Tax-Exempt Partner</b>	Any Partner generally exempt from federal income taxation under Section 501 of the Code, including any Partner that is a partnership if any partner of such partnership is so exempt; <i>provided, however</i> , that no Partner shall be treated as a Tax-Exempt Partner prior to the date on which it has notified the General Partner in writing of its status as such.
<b>Temporary Investments</b>	Short-term investments of cash pending distribution or use by the Partnership to pay expenses or make Portfolio Investments.
<b>Total Investment</b>	With respect to any Portfolio Company and at any time, the sum of (a) the Partnership's adjusted tax basis in any securities of such Portfolio Company

held by the Partnership at such time, as determined for federal income tax purposes but without regard to (i) any increases in such adjusted tax basis attributable to accrued but unpaid interest, or (ii) whether the Partnership has made an election under Section 754 of the Code, and (b) the aggregate outstanding amount of the obligations of such Portfolio Company for which the Partnership would be liable at such time under any guarantee of such obligations issued by the Partnership if that Portfolio Company defaulted in its performance of such obligations and the obligee called upon the Partnership to perform under that guarantee.

<b>Transfer</b>	As set forth in 11.1.
<b>Transfer Expenses</b>	As set forth in 11.2.6.1.
<b>Treasury Regulations</b>	The regulations promulgated by the United States Department of the Treasury under the Code, as amended.
<b>Unapplied Offset</b>	As set forth in 5.2.2.3(b).
<b>Uncommitted Amount</b>	As set forth in 9.5(b).
<b>Uncommitted Funds</b>	As set forth in 9.5(a).
<b>United States</b>	The United States of America.
<b>United States Person</b>	The meaning given to that term in Section 7701(a)(30) of the Code.
<b>Valuation Date</b>	As set forth in 14.4.2.1.
<b>VCOC Certification</b>	As set forth in 14.3.4(b).

**REGULATORY AND TAX ALLOCATIONS****1. Regulatory Allocations.**

The following provisions are included in order to comply with tax rules set forth in the Code and to permit the Partnership to obtain the benefits of a "safe harbor" provided by Treasury Regulations Section 1.704-1(b)(2)(ii)(d).

**1.1 Qualified Income Offset.**

If any Partner unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), and such adjustment, allocation or distribution causes such Partner to have a deficit balance in such Partner's Capital Account which exceeds such Partner's Restoration Amount or further reduces a balance in such Partner's Capital Account that already has a deficit balance exceeding such Partner's Restoration Amount, there shall be allocated to such Partner items of income and gain (consisting of a pro rata portion of each item of Partnership income, including gross income, and gain for such fiscal period) in an amount and manner sufficient to eliminate such Partner's deficit Capital Account balance, to the extent required by Treasury Regulations Section 1.704-1(b)(2)(ii)(d), as quickly as possible, provided that an allocation pursuant to this 1.1 shall be made only if and to the extent that the deficit in such Partner's Capital Account would exceed such Partner's Restoration Amount after all allocations provided for in Article 8 of the Agreement and in this Appendix II have been made tentatively as if this 1.1 were not included in this Agreement. The foregoing sentence is intended to constitute a "qualified income offset" provision as described in Treasury Regulations Section 1.704-1(b)(2)(ii)(d), and shall be interpreted and applied in all respects in accordance with that Section.

**1.2 Gross Income Allocation.**

In the event that any Partner has a negative Capital Account at the end of any Partnership fiscal year which is in excess of such Partner's Restoration Amount, there shall be allocated to such Partner items of Partnership income (including gross income) and gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this 1.2 shall be made only if and to the extent that the deficit in such Partner's Capital Account would exceed such Partner's Restoration Amount after all allocations provided for in Article 8 of the Agreement and in this Appendix II have been made tentatively as if 1.1 and this 1.2 were not included in this Appendix II.

**1.3 Minimum Gain Chargeback.**

Notwithstanding any other provision of this Agreement, in the event there is a net decrease in Partnership Minimum Gain of the Partnership during a taxable year of the Partnership, the Partners shall be allocated items of income and gain in accordance with Treasury Regulations Section 1.704-2(f). For purposes of this Agreement, the term "Partnership Minimum Gain" shall have the meaning set forth in Treasury Regulations Section 1.704-2(b)(2), and any Partner's share of Partnership Minimum Gain shall be determined in accordance with Treasury Regulations Section 1.704-2(g)(1). This 1.3 is intended to comply with the minimum gain charge-back requirement of Treasury Regulations Section 1.704-2(f) and shall be interpreted and applied in a manner consistent therewith.

**1.4 Special Allocation of Non-recourse Deductions.**

Notwithstanding any other provision of this Agreement, Non-recourse Deductions shall be allocated to the Partners in proportion to their Contributions. "Non-recourse Deductions" shall have the meaning set forth in Treasury Regulations Section 1.704-2(b)(1). This 1.4 is intended to comply with Treasury Regulations Section 1.704-2(e) and shall be interpreted and applied in a manner consistent therewith.

### **1.5 Partner Non-recourse Minimum Gain Chargeback.**

Notwithstanding any other provision of this Agreement, to the extent required by Treasury Regulations Section 1.704-2(i), any tax items of the Partnership that are attributable to a non-recourse debt of the Partnership that constitutes "partner non-recourse debt" as defined in Treasury Regulations Section 1.704-2(b)(4) shall be allocated in accordance with the provisions of Treasury Regulations Section 1.704-2(i). This 1.5 is intended to satisfy the requirements of Treasury Regulations Section 1.704-2(i) (including the partner non-recourse minimum gain chargeback requirements) and shall be interpreted and applied in a manner consistent therewith.

### **1.6 Adjustments to Reflect 754 Election.**

To the extent that an adjustment to the adjusted tax basis of any Partnership asset pursuant to Section 734(b) or Section 743(b) of the Code is required, pursuant to Treasury Regulations Section 1.704-1(b)(2)(iv)(m), to be taken into account in determining Capital Accounts, the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be specially allocated to the Partners in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to such of the Treasury Regulations.

### **1.7 Offsetting Allocations.**

The allocations set forth in 1.1, 1.2 and 1.6 of this Appendix II (the "Regulatory Allocations") are intended to comply with certain requirements of Treasury Regulations Section 1.704-1(b). Notwithstanding any other provisions of Article 8 of the Agreement and of this Appendix II (other than the Regulatory Allocations), the Regulatory Allocations shall be taken into account in allocating subsequent items of income, gain, loss and expense among the Partners so that, to the extent possible, the net amount of such allocations of subsequent items of income, gain, loss and expense and the Regulatory Allocations to each Partner shall be equal to the net amount that would have been allocated to each such Partner pursuant to the provisions of Article 8 of the Agreement and this Appendix II if the Regulatory Allocations had not occurred.

For purposes of applying the foregoing sentence, allocations pursuant to this 1.7 shall be made with respect to allocations pursuant to 1.6 of this Appendix II only to the extent the General Partner reasonably determines that such allocations will otherwise be inconsistent with the economic agreement among the Partners. Further, if allocations to the General Partner include or are affected by Regulatory Allocations or allocations pursuant to this 1.7 that are intended to offset such Regulatory Allocations, the General Partner, after consulting with the Partnership's accountants and other advisors, shall have discretion to make such adjustments to subsequent allocations that the General Partner deems reasonably necessary or appropriate to effectuate the economic arrangements of the Partners.

### **1.8 Minimum Allocations to General Partner.**

Subject only to the "qualified income offset" provisions of 1.1 of this Appendix II, the General Partner shall be allocated at least 1.0% of each material item of Partnership income, gain, loss, deduction or credit at all times during the existence of the Partnership. To the extent that any allocation is made pursuant to this 1.8, such allocation shall be treated as a Regulatory Allocation for purposes of 1.7; *provided, however*, that in the event of any conflict between 1.7 and this 1.8, this 1.8 shall govern.

## **2. Adjustments to Reflect Changes in Interests.**

With respect to any fiscal period during which any Partner's interest in the Partnership changes, whether by reason of the admission of a Partner, the withdrawal of a Partner, a non-pro rata contribution of capital to the Partnership or any other event described in Section 706(d)(1) of the Code and regulations issued thereunder, allocations of Net Gain, Net Loss and other items of Partnership income, gain, loss and expense shall be adjusted appropriately to take into account the varying interests of the Partners during

such period; *provided, however*, that allocations on subsequent closings shall be made in the manner required by 8.4 of the Agreement. The General Partner shall consult with the Partnership's accountants and other advisors and shall select the method of making such adjustments, which method shall be used consistently thereafter.

**3. Special Allocations of Gross Gains and Losses.**

In making allocations of Net Gain or Net Loss pursuant to this Article 8, the General Partner, after consulting with the Partnership's tax advisors, is authorized to separate these aggregate amounts into their components and allocate the components separately in order to further the intent of such provisions of the Agreement. For example, if with respect to a particular fiscal period the Partnership realizes a gross loss of \$100 on a sale of Portfolio Securities and a gross gain of \$200 on a sale of other Portfolio Securities resulting in a Net Gain of \$100 (\$200 gross gain minus \$100 gross loss = \$100 Net Gain), the General Partner may allocate the \$100 gross loss as a \$100 Net Loss in the manner required by 8.2.2, and then allocate the \$200 gross gain as a \$200 Net Gain in the manner required by 8.2.1, if advised by the Partnership's tax advisors that such special allocations will cause the Capital Accounts of the Partners to reflect more closely the Partners' relative economic interests in the Partnership.

**4. Tax Allocations.**

For federal, state and local income tax purposes, Partnership income, gain, loss, deduction or credit (or any item thereof) for each fiscal year shall be allocated to and among the Partners in order to reflect the allocations made pursuant to the provisions of Article 8 of the Agreement and the provisions of this Appendix II for such fiscal year (other than allocations of items which are not deductible or are excluded from taxable income), taking into account any variation between the adjusted tax basis and book value of Partnership property in accordance with the principles of Section 704(c) of the Code. However, in the event that the Partnership is required to recognize income or gain for income tax purposes under Section 684 of the Code (or a similar provision of state or local law) in respect of an in-kind distribution to a Limited Partner, then, solely for such income tax purposes, to the maximum extent permitted by applicable law (as determined by the General Partner in its reasonable discretion), the income or gain shall be allocated entirely to such Limited Partner.