

DRAFT PARTNERSHIP
AGREEMENT
Relating to [*Name of ECF*]
Amending and restating a
partnership agreement dated
[*Date*]

Dated

[*General Partner*] (1)

[*Founder Partner*] (2)

*The Secretary of State for Business, Innovation and
Skills* (3)

[*Investor*] (4)

[*Investor*] (5)

[*Investor*] (6)

Notes:

- (1) This draft agreement assumes the partnership will have been established prior to this agreement coming into force, by the general partner and the carried interest partner (the “Founder Partner”). This Agreement is signed on first closing.
- (2) This is an example only, subject to further review and amendment by BIS and subject to any bid and to any subsequent negotiation.
- (3) This agreement assumes that the ECF will be operated by a third-party FSA-authorized fund manager. A separate draft agreement is available for ECFs with unregulated managers where all private investors will be able to participate in the management of the general partner.

TABLE OF CONTENTS

PARTIES TO THIS DEED	1
INTRODUCTION	1
DEFINITIONS	1
OPERATIVE PROVISIONS	10
1 Nature and Purpose	10
1.1 Nature	10
1.2 Purpose	10
1.3 Name	11
1.4 Principal Place of Business	11
1.5 Commencement and Duration	11
1.6 Currency	11
1.7 Commitments	11
2 Admission of Further Partners	12
2.1 Further Partners	12
2.2 Increase in Commitment of Existing Investor	12
2.3 Equalisation Payment by Subsequent Investors	12
2.4 Equalisation of General Partner's Share	13
2.5 Treatment of Additional Amounts	13
2.6 Associated Investors	13
2.7 Reputational Issues	13
3 Capital Contributions	13
3.1 The Founder Partner	13
3.2 Investors	13
3.3 Interest	14
3.4 Repayment	14
4 Loan Commitments	14
4.1 Investors	14
4.2 Other Partners	15
4.3 Interest	15
4.4 Failure to Comply with Drawdown Notice	15
4.5 Repayment of the Outstanding Loans	17
4.6 Suspension of Investment	17
5 Operation and Management of the Partnership	18
5.1 Appointment of a Manager	18
5.2 Restriction on the Limited Partners	19
5.3 Authority and Powers of the Manager	19
5.4 Termination of the Manager's Appointment	21
5.5 Authority and Powers of the General Partner	21
5.6 Restrictions on the General Partner	22
5.7 Separate Liabilities of the General Partner	22
5.8 Restrictions on Marketing	22
5.9 Side Letters	22
5.10 Expenses and Fees	22
5.11 Prohibited Investments	23
6 Debts and liabilities of the Partnership	24
7 Partnership Accounts and Tax Information	24
7.1 Preparation of Annual Accounts	24
7.3 Partner's Accounts	24
8 General Partner's Share	25

8.1	Allocation of the General Partner's Share	25
8.2	Calculation of the General Partner's Share	25
8.3	Provisions relating to General Partner's Share	25
8.4	Deficiency in General Partner's Share	26
8.5	Adjustment between Investors' Accounts	26
9	Allocation of Remaining Profits and Losses between Partners	26
9.1	Allocations	26
9.2	Disposal of Investments after Repayment Date	26
9.3	Distributions in Specie	26
9.4	Adjustments upon Final Closing	27
10	Distributions of Capital Proceeds and Income between Partners	27
10.1	Application of Cash	27
10.2	Restriction on Distributions to the Founder Partner	28
10.3	Timing of Distributions	29
10.4	Re-investment	29
10.5	Limitations on Distributions	30
10.6	Distributions in specie	30
10.7	Tax Credits	30
10.8	Drawings by the General Partner	31
11	Transfer or Assignment of Interests or Shares	31
11.1	Assignment of Rights and Obligations and Retirement of the General Partner	31
11.2	Restriction on Assignment of Interest of Limited Partners	31
11.3	Position of Substitute Investors	32
11.4	Assignment of Interests or Shares in Violation of this Clause	32
12	Meetings of the Partnership	32
13	Termination and Liquidation	33
13.1	Termination	33
13.2	Extension of Life of the Partnership	33
13.3	Continuation of the Partnership	33
13.4	Removal of the General Partner	33
13.5	Liquidation of Interests of Partners	34
14	Reports and Valuation	35
14.1	Reports	35
14.3	Private Investor	37
15	Exculpations and Indemnities	37
15.1	Exculpation	37
15.2	Indemnity	37
16	Miscellaneous	37
16.1	Exclusivity and Conflicts of Interest	38
16.2	Confidential Information	38
16.4	Previous Agreements	40
16.5	Variation of Partnership Agreement [and conflict with Information Memorandum]	40
16.6	Notices	41
16.7	Auditors	41
16.8	Non-Recognition of Trust Arrangements	41
16.9	Agreement Binding Upon Successors and Assigns	42
16.10	Execution in Counterpart	42
16.11	Governing Law	42
16.12	Agent for service of process	42
16.13	No Right to Partition	42
16.14	Severability	42

16.15	Contracts (Rights of Third Parties) Act 1999	43
16.16	Waiver	43
16.17	Reproduction of Documents	43
SCHEDULE 1		44
	Investment Policy	44
SCHEDULE 2		48
	Form of Drawdown Notice	48
SCHEDULE 3		49
	Deed of Adherence for Investors wishing to become Limited Partners	49
ATTESTATIONS		55

DATED

[Date]

PARTIES TO THIS DEED

- (1) [General Partner] whose [registered office/principal place of business] is at [address] ("XYZ");
- (2) [Founder Partner] whose [registered office/principal place of business] is at [address] ("DEF");
- (3) The Secretary of State of Trade and Industry, c/o [] ("the Preferred Partner");
- (4) [Investor] of [address] ("Investor A");
- (5) [Investor] of [address] ("Investor B"); and
- (6) [Investor] of [address] ("Investor C").

INTRODUCTION

- (A) The Partnership was constituted by an agreement entered into between [XYZ] and [DEF] on [Date] under the name [Name of ECF] to carry on the business of an investor and, in particular, of identifying, negotiating, making, monitoring and realising investments and to carry out all functions and acts in connection therewith.
- (B) The Partnership has been registered as a limited partnership in England under the Limited Partnerships Act 1907 with number LP [Number].
- (C) The Founder Partner has subscribed £[1000] of partnership capital in the Partnership, as a founder limited partner. Each of [Investor A], [Investor B], and [Investor C] have made Commitments to the Partnership of £[Amount], [Amount] and [Amount] respectively. The Preferred Partner has made a Commitment of £[Amount].
- (D) Commitments in the Partnership are being sought from further investors who will, upon acceptance by the Manager of a Deed of Adherence signed and delivered by such investors, become Limited Partners and be treated as parties to this Agreement.
- (E) The parties have agreed to execute this Agreement updating and incorporating agreed changes to the agreement dated [Date] referred to in paragraph (A) above.

DEFINITIONS

- (1) In this Agreement (including the Introduction, the Schedules and any Annexes), unless the context otherwise requires, the following words and expressions have the meanings shown:

Abort Costs	all costs and disbursements properly incurred by the Partnership, Manager or General Partner in connection with investment proposals which do not proceed to completion
Abort Fees	any fees or commissions of any description whatsoever received by the General Partner, Manager, any of their Associates and/or the Partnership in connection with proposed transactions by the Partnership which do not proceed to completion
Accounting Date	31 March 200[] and 31 March in each year thereafter or (in the case of the final Accounting Period of the Partnership) the date when the Partnership is ultimately dissolved

Accounting Period	a period ending on and including an Accounting Date and beginning on the day following the immediately preceding Accounting Date or, in the case of the first Accounting Period, on the date of establishment of the Partnership
Acquisition Cost	the acquisition cost of an Investment together with any expenses related to such acquisition which are properly borne by the Partnership in accordance with the terms of this Agreement
the Act	the Limited Partnerships Act 1907, as amended from time to time
this Agreement	this deed of Limited Partnership Agreement, as amended from time to time
Associate	<p>(a) any corporation or undertaking which in relation to the person concerned is a holding company, a parent undertaking or a subsidiary undertaking, or a subsidiary undertaking of any such holding company or parent undertaking or any partnership which is a subsidiary undertaking of the person concerned or of any such holding company;</p> <p>(b) where the context so admits in respect of any individual, such person's spouse, a relative of such person or of such person's spouse, the spouse of such a relative, or any trust of which any such person is a settlor, and "relative" for these purposes means a brother, sister, ancestor or lineal descendant;</p> <p>(c) any investment fund, investment trust, venture capital trust or collective investment scheme managed or advised (either directly or as a director, officer or employee of any management or advisory company) by any of: the person concerned, the directors, officers, employees or shareholders of the person concerned (in the case of a company), or any person who would fall within parts (a) or (b) of the definition of Associate in respect of such person, or such directors, officers, employees or shareholders; and</p> <p>(d) in relation to the General Partner, the Manager or the Founder Partner, the Named Executives</p>
Associated Investors	any Investor and any Associate of such Investor which is also an Investor, any Investors which are under common management, ownership or control and any Investors acting in concert within the meaning of the City Code on Takeovers and Mergers (excluding, for the avoidance of doubt, the Preferred Partner)

Auditors	[] or such other auditors as may be selected by the Manager pursuant to clause 16.7
Authorised Person	an authorised person within the meaning of FSMA
Bidding Materials	all documentation, information, records, analysis, projections, budgets, forecasts, references, statements and other materials provided by the Manager, any of its Associates or any of its or their officers or employees to the Preferred Partner prior to the date hereof
Business Day	a day (not being a Saturday or Sunday or a public holiday) on which banks are generally open for non-automated business in London
Capital Contribution	in relation to a Partner, the amount contributed by such Partner to the capital of the Partnership being such proportion of £ 1,000 as is equal to the proportion to which it is entitled to distributions pursuant to clause 10.1.1(f)
Capital Gain	the amount (if any) by which the proceeds of disposal of an Investment (after deduction of expenses of the Partnership associated with the disposal and which are properly borne by the Partnership in accordance with the terms of this Agreement) exceed the Acquisition Cost thereof
Capital Loss	the amount (if any) by which the Acquisition Cost exceeds the proceeds of disposal of an Investment after deduction of expenses of the Partnership associated with the disposal
Capital Proceeds	amounts determined by the Manager to be in the nature of capital proceeds and available for distribution by the Partnership or (as the case may be) already distributed by the Partnership, including the Value of any assets of the Partnership distributed in specie
Carried Interest Share	[]% as amended pursuant to clause 13.4
Commitment	in relation to an Investor, the amount committed by it to the Partnership equal to the aggregate of the amount subscribed by it as an Investor as capital (the Capital Contribution) and the amount agreed to be advanced by it as an Investor as loan (the Loan Commitment) (and whether or not such amount has been advanced in whole or in part and whether or not it has been repaid to the Investor in whole or in part) to the Partnership and in relation to the Founder Partner the amount committed by it to the Partnership as capital
Deed of Adherence	the deed of adherence in the form set out in Schedule 3 hereto
Defaulting Investor	the meaning given in clause 4.4
Deposit Interest	all interest earned on the Partnership's cash funds from time to time (including without limitation interest on sums held pursuant to clauses 4.1.5 and 10.3.3)

Direct Acquisition Cost	the acquisition cost of an Investment excluding any expenses related to such acquisition
Drawdown Notice	a notice given to the Investors by the Manager pursuant to clause 4.1 in the form set out in Schedule 2
Final Closing Date	the latest to occur of: <ul style="list-style-type: none"> (a) the date upon which the last Investor is admitted to the Partnership pursuant to clause 2; or (b) the last date on which an existing Investor increases the amount of its Commitment pursuant to clause 2; provided that such date shall not be later than the expiry of six months from the First Closing Date and if neither (a) nor (b) occurs, the Final Closing Date shall be the First Closing Date
First Closing Date	the date of this Agreement
First Drawdown Date	in relation to each Investor, the date upon which the first draw down of its Loan Commitment is made pursuant to clause 4.1.1 or, in the case of a Subsequent Investor, clause 2.3
Founder Partner	[DEF] in respect of its Capital Contribution referred to in paragraph (C) of the Introduction as adjusted pursuant to clause 3.1 and only in respect of its aforesaid Capital Contribution and not in respect of any Commitment made as an Investor
FSA	the Financial Services Authority
FSMA	the Financial Services and Markets Act 2000
Fund Investor	any person who is, in the reasonable opinion of the Preferred Partner, itself a fund which is intended to make direct private equity or venture capital investments (other than a fund of funds)
General Partner	[XYZ] [(as constituted from time to time)] or its successor for the time being as general partner of the Partnership
General Partner's Share	the amount referred to in clause 8.2
Income	amounts determined by the Manager to be in the nature of income proceeds and available for distribution by the Partnership or (as the case may be) already distributed by the Partnership
Indemnified Individual	any officer, director, shareholder, agent, partner or employee of the General Partner, the Manager or any of their Associates, a Nominated Director or any member of the Investor Committee
Indemnified Person	any of the General Partner, the Manager or any of their Associates and any Indemnified Individual

Information Memorandum	the information memorandum dated [date] relating to the placing of Commitments, as amended and supplemented from time to time
Interest	the interest of a Partner in the Partnership including its Share and its Commitment (if any) and all other rights which it has in the Partnership, including its rights to vote and inspect the books and records of the Partnership
Investment(s)	an investment or investments acquired by the Partnership (either directly or indirectly) including but not limited to shares, debentures, convertible loan stock, options, warrants or other securities and loans (whether secured or unsecured) made to any Portfolio Company
Investment Period	the period from the First Closing Date to the earlier of: <ul style="list-style-type: none"> (a) the fifth anniversary of the First Closing Date; (b) the date when there are no Undrawn Loan Commitments and no further Undrawn Loan Commitments can arise; (c) the date determined pursuant to clause 4.6.3; or (d) the date determined pursuant to clause 13.3.1
Investment Policy	the investment policy of the Partnership as set out in Schedule 1
Investment Related Fees	all agency, directors' fees and benefits, monitoring fees and management fees received by the General Partner, Manager and/or any of their Associates directly in connection with the holding of an Investment by the Partnership
Investor	[Founder Partner] (in respect of its Commitment) [(but, in relation to [Founder Partner], not in respect of its separate Capital Contribution in its capacity as the founder partner)], the Preferred Partner, each of [Investor A], [Investor B] and [Investor C] and any person who becomes a Limited Partner by signing a Deed of Adherence pursuant to clause 2 and any Substitute Investor who acquires rights and assumes obligations in succession to an Investor (for so long as such person or Substitute Investor remains a Limited Partner)
Investor Committee	a committee comprising representatives of certain investors in the Partnership as described in clause 16.3
Investors' Consent	the written consent (which may consist of one or more documents each signed by one or more of the Investors) of both the Preferred Partner and of such of the other Investors who hold Commitments which in aggregate equal or exceed 50% of Total Commitments other than the Preferred Partner's Commitment, excluding from such consent and from Total Commitments the Commitment (if

	any) of the General Partner, the Manager of any of their Associates
LIBOR	the London Interbank Offered Rate for 6 month Sterling deposits as quoted by the Financial Times from time to time during the period in question or, if the Financial Times is not published or does not quote a rate, as quoted by a lending bank selected by the Manager
Limited Partner	the Founder Partner, the Preferred Partner, each of [<i>Investor A</i>], [<i>Investor B</i>] and [<i>Investor C</i>] and any person who is admitted to the Partnership as a limited partner by signing a Deed of Adherence and any Substitute Investor who acquires rights and assumes obligations in succession to an Investor (for so long as such person or Substitute Investor remains a limited partner)
Loan Commitment	in relation to an Investor, the loan agreed to be advanced by it to the Partnership pursuant to clause 4 (whether or not such loan has been advanced to the Partnership or repaid to the Investor, in whole or in part) being equal to such Investor's Commitment less its Capital Contribution
Management Agreement	the management agreement referred to in clause 5.5 as amended or substituted from time to time
Manager	[x] or its successor for the time being as manager of the Partnership
Named Executive	each of [<i>Name of Keyman</i>] and [<i>Name of Keyman etc</i>] and any persons approved pursuant to clause 4.6.4
Net Income	the amount greater than zero equal to the gross income of the Partnership, being amounts (other than Capital Gains) determined by the Manager to be in the nature of income, reduced by expenses of the Partnership (other than expenses included in the Acquisition Costs of Investments and expenses associated with the disposal of Investments), excluding any Deposit Income
Net Income Loss	the amount determined where the calculation of Net Income produces an amount less than zero
New Investments	investments in companies in which, or in the Associates of which, the Partnership has not previously invested either directly or indirectly
Nominated Director	any person nominated by the Partnership or the Manager (or any Associate) to be a director (or equivalent) of any company in which the Partnership holds an Investment
Other Fees	all fees (other than Transaction Fees, Investment Related Fees and Abort Fees) received by the General Partner, Manager and/or any of their Associates arising out of the making of any Investment by the Partnership including without limitation corporate finance fees and advisory fees

Outstanding Loan	in relation to an Investor, the amount of its Loan Commitment which, at the relevant time, has been drawn down and has not been repaid (or deemed to be repaid) in accordance with clauses 10.1 10.6, 10.7 or 13
Partner	the General Partner and/or any of the Limited Partners, as the context requires
Partnership	[<i>Name of ECF</i>] being the limited partnership established by an agreement dated [<i>date</i>] between [<i>XYZ</i>] and [<i>DEF</i>], the activities and operation of which shall be governed by the terms and conditions of this Agreement
Partnership Assets	all or any of the assets of the Partnership
Portfolio Company	any limited company or limited liability partnership in which the Partnership holds Investments
Preferred Return	such amount, determined at any Repayment Date, as is equal to interest at an annual rate of []% (compounded annually) on the daily amount of the Outstanding Loans (calculated on the basis of a 365 day year)
Preferred Partner's Profit Share	[]% [The Preferred Partner's share of profits]
Previous Investor	the meaning given in clause 2.3
Prioritised Return	an amount equal to interest at the rate of 4.5% (compounded annually) on the daily amount of the excess (if any) of the Preferred Partner's drawn down Loan Commitments over the aggregate distributions made to it (calculated on the basis of a 365 day year) [Rate to be determined and fixed on launch of bidding process, set at or close to the prevailing ten-year gilt rate at such time]
Private Investor	a Limited Partner that would be a retail client as defined in the Glossary to the Handbook of Rules and Guidance maintained by the FSA if it were a client of the Manager
Prohibited Investments	Investments which do not fall within the Investment Policy
Quotation	the admission of an Investment to any recognised stock exchange or the granting of permission for an Investment to be quoted or dealt in on a recognised market which in the opinion of the Manager is an appropriate stock exchange or market
Relevant Drawdown	the meaning given in clause 2.3
Repayment Date	any date or time when the Outstanding Loans are repaid (or deemed to have been repaid) in full pursuant to clauses 10.1, 10.6, 10.7 or 13 and the Preferred Return (as determined on that date) is paid to Investors in accordance with clause 10.1 and no amount in respect thereof remains outstanding
Retained Account	the meaning given in clause 10.2.1

Share	<p>in relation to a Partner, its financial share in the profits of the Partnership, comprising all or any part of such Partner's entitlement under this Agreement to:</p> <p>(a) its share of the profits, including Capital Gains and Net Income, of the Partnership and the right to repayment of Outstanding Loan (if any); and</p> <p>(b) its share of the Partnership Assets upon the dissolution of the Partnership and, for the purposes of ascertaining that share, to an account as from the date of the dissolution;</p> <p>but excluding any entitlement to interfere in the management or administration of the Partnership's business or affairs, or to require any accounts of the Partnership's transactions, or to inspect the Partnership's books</p>
Sterling or £	the official currency of the United Kingdom from time to time which is used as the reference accounting unit of the Partnership
Subsequent Investor	an Investor admitted after the First Closing Date pursuant to clause 2.1 or any Investor who increases their Commitment pursuant to clause 2.2 (provided however that in the latter case such Investor shall only be a Subsequent Investor in respect of their increased Commitment)
Substitute Investor	a person admitted pursuant to clause 11 as a Limited Partner as the successor to all, or part of, the rights and liabilities of an Investor in respect of such Investor's Interest
Suspension Event	the meaning given in clause 4.6
Taxation	any form of taxation together with interest or penalties (if any) thereon and any reasonable costs incurred in resisting claims therefor
Tax Credits	the meaning given in clause 10.7
Total Commitments	the aggregate amount of all of the Commitments as at the Final Closing Date
Total Initial Investment	<p>the sum of:</p> <p>(a) the Direct Acquisition Cost of all Investments in a Portfolio Company and its Associates, acquired or Agreed to be acquired by the Partnership at the time of, or in relation to, the acquisition of its first Investment into such Portfolio Company; and</p> <p>(b) the Direct Acquisition Cost of all Investments into such Portfolio Company and its Associates acquired, or known or believed by the Manager to have been agreed to be acquired, by any investor</p>

in such Portfolio Company or its Associates other than the Partnership (excluding any investor providing only debt finance with no actual or potential interest in the equity share capital) at the time of, or in relation to, the Partnership's first Investment into such Portfolio Company

Total Subsequent Investment	the sum of: (a) the Direct Acquisition Cost of all Investments in a Portfolio Company and its Associates, acquired or Agreed to be acquired by the Partnership after the time of the acquisition of its first Investment into such Portfolio Company; and (b) the Direct Acquisition Cost of all Investments into such Portfolio Company and its Associates acquired, or known or believed by the Manager to have been Agreed to be acquired, by any investor in such Portfolio Company or its Associates other than the Partnership (excluding any investor providing only debt finance with no actual or potential interest in the equity share capital) after the time of the Partnership's first Investment into such Portfolio Company
Transaction Fees	all arrangement fees, syndication fees and any other transaction fees received by the General Partner, Manager and/or any of their Associates, agreed upon at the time of and directly referable to the making of an Investment
Transfer	the meaning given in clause 11.2
Undrawn Loan Commitment	in relation to an Investor, the amount of its Loan Commitment which, at the relevant time, remains available for draw down pursuant to clause 4
Value	except where otherwise expressly stated shall mean, in relation to any Investment, such value as shall be determined by the Manager following the International Private Equity and Venture Capital Valuation Guidelines produced by the European Venture Capital Association in effect at the date hereof (or as otherwise agreed by an Investors' Consent) or any alternative basis as may be notified to the Manager by the Preferred Partner from time to time
VAT	United Kingdom Value Added Tax and/or any other value added tax or sales tax applicable in the United Kingdom or any other country

- (2) The terms "subsidiary" and "holding company" bear the respective meanings attributed to them in section 1159 of the Companies Act 2006 (and "subsidiaries" shall also include any partnerships which are subsidiary undertakings of the person concerned), and "subsidiaries" and "holding companies" are to be construed accordingly and "group" shall mean in relation to a company all

subsidiaries and holding companies of that company and all subsidiaries of its holding companies. The terms “parent undertaking”, “subsidiary undertaking” and “undertaking” bear the respective meanings attributed to them in section 1162 of the UK Companies Act 2006, and “parent undertakings”, “subsidiary undertakings” and “undertakings” are to be construed accordingly.

- (3) References to the parties, the Introduction, clauses, Schedules and Annexures are respectively to the parties, the Introduction, the clauses, the Schedule and the Annexures of and to this Agreement.
- (4) Any reference to a statutory provision shall include any subordinate legislation and rules made from time to time under or pursuant to that provision or under that subordinate legislation.
- (5) Any reference to a statutory provision shall include that provision as from time to time modified or re-enacted whether before or after the date of this Agreement so far as such modification or re-enactment applies or is capable of applying to any transactions entered into prior to the date hereof and (so far as liability thereunder may exist or can arise) shall include also any past statutory provision (as from time to time modified and re-enacted) which such provision has directly or indirectly replaced.
- (6) Unless the contrary intention appears:
 - (a) words importing the masculine gender include the feminine;
 - (b) words importing the feminine gender include the masculine;
 - (c) words in the singular include the plural and words in the plural include the singular;
 - (d) all references to an enactment include an enactment comprised in subordinate legislation whenever made; and
 - (e) references to a “person” include references to bodies of persons corporate or unincorporate.
- (7) The term "Agreed", where used in respect of an investment in a Portfolio Company or any of its Associates shall include, without limitation, any form of agreement, undertaking or offer to invest in, subscribe for or otherwise acquire shares or other securities, whether written, oral, electronic or otherwise, formal or informal, conditional or unconditional and whether or not legally binding.

OPERATIVE PROVISIONS

1 Nature and Purpose

1.1 Nature

The Partnership is a limited partnership and has been registered pursuant to the Act and any change which may occur in the particulars to be furnished thereunder shall forthwith be notified by the Manager to the appropriate Registrar of Companies in a statement specifying the date and nature of such change and the amounts referred to in clause 3 shall be registered as the amounts of capital contributed by the Limited Partners. In the event that the Partnership is unable to pay its debts, liabilities or obligations, the liability of a Limited Partner will be limited to the amount of its Capital Contribution. Nothing in this clause affects the provisions of clauses 4 and 10 and accordingly a Limited Partner may be required to advance funds to the Partnership pursuant to its Loan Commitment and may not be repaid its Outstanding Loan notwithstanding the limitation of liability contained in this clause.

1.2 Purpose

- 1.2.1 The purpose of the Partnership is to carry on the business of an investor as an “enterprise capital fund” and in particular but without limitation to identify, research, negotiate, make and monitor the

progress of and sell, realise, exchange or distribute investments which shall include but shall not be limited to the purchase, subscription, acquisition, sale and disposal of shares, debentures, convertible loan stock and other securities in unquoted companies and the making of loans whether secured or unsecured to such companies in connection with equity or equity related investments, provided that all such Investments shall fall within the Investment Policy, with the principal objective of providing Partners with a high overall rate of return.

1.2.2 The Manager shall ensure that all Investments fall within the Investment Policy.

1.3 Name

The business of the Partnership shall be carried on under the name of "[Name of ECF]" or such other name as is determined by the Manager. At no time shall the name of the Partnership contain any reference to HM Government or any governmental body or any reference which could be construed as suggesting any form of endorsement by HM Government or any governmental body. The name may, however, include the phrase "Enterprise Capital Fund" or the acronym "ECF".

1.4 Principal Place of Business

The principal place of business of the Partnership shall be at [address] or such other place as the Manager may from time to time determine.

1.5 Commencement and Duration

1.5.1 The Partners other than [XYZ] and [DEF] shall be partners in the Partnership as from the date of this Agreement or, if later, the date of their admission to the Partnership. [XYZ] and [DEF] have been partners in the Partnership since its establishment on [date].

1.5.2 Each of the Investors, other than the Preferred Partner, hereby makes and gives the statements, declarations, representations and warranties set out in paragraphs 3, 4, 5, 7, 8, , 9,10 and 11 of the Deed of Adherence contained in Schedule 3 on the date of their admission to the Partnership, save as previously disclosed in writing to the Manager and the Preferred Partner.

1.5.3 The General Partner and Founder Partner each hereby represent, warrant and confirm to the Preferred Partner that the contents of the Bidding Materials are true, accurate and not misleading at the date hereof and have been prepared with appropriate care, skill and diligence. **[A separate such representation will be required from the Manager.]**

1.5.4 Subject to the provisions of clause 13.2 hereof, the Partnership shall continue until the expiry of ten years from the First Closing Date.

1.6 Currency

All advances by and distributions to Partners, all calculations pursuant to the terms of this Agreement and all accounts of the Partners or the Partnership shall be made or prepared (as the case may be) in Sterling (or such other currency as shall be the legal currency of the United Kingdom from time to time).

1.7 Commitments

1.7.1 The Preferred Partner hereby makes a Commitment of £[Amount] to the Partnership as an Investor on the terms set out herein applying to the Preferred Partner.

1.7.2 The [General Partner/Founder Partner] hereby makes a Commitment of £[Amount] to the Partnership as an Investor.

1.7.3 Each of [*Investor A*], [*Investor B*] and [*Investor C*] hereby make Commitments of £[*Amount*], £[*Amount*] and £[*Amount*] respectively to the Partnership as Investors.

2 Admission of Further Partners

2.1 Further Partners

Subject to clause 2.6 further Partners may be admitted as Limited Partners (provided that they are not Fund Investors) by the Manager at any time up to the expiry of six months after the First Closing Date provided that they each sign and deliver to the Manager a Deed of Adherence upon acceptance of which by the Manager they each shall be admitted to the Partnership and treated as an "Investor" and "Limited Partner" for all purposes of this Agreement. For the avoidance of doubt, such Investors shall not be considered Preferred Partners. The Manager shall, in relation to each such Investor, comply with all anti money laundering and related laws and regulations and all rules and regulations required by the FSA or otherwise.

2.2 Increase in Commitment of Existing Investor

Subject to clause 2.6 existing Investors may be permitted at the absolute discretion of the Manager to increase the amount of their Commitments at any time up to the expiry of six months after the First Closing Date, provided that they each sign and deliver to the Manager an amended Deed of Adherence (or other document satisfactory to the Manager) reflecting such increase of Commitment, and such Investors shall be treated as though they were Subsequent Investors in respect of the increased amount of their Commitments for the purposes of this clause 2 and for all other purposes of this Agreement.

2.3 Equalisation Payment by Subsequent Investors

This clause 2.3 shall apply to a Subsequent Investor who is admitted to the Partnership after the First Closing Date pursuant to the provisions of clause 2.1 or who has increased their Commitment pursuant to clause 2.2, and where Loan Commitments have been drawn down ("the Relevant Drawdown") from existing Investors ("Previous Investors") on or after the First Closing Date but prior to the First Drawdown Date of the Subsequent Investor (otherwise than in respect of Commitments drawn down to meet any General Partner's Share and in respect of such drawdowns the provisions of clause 2.4 shall apply). Such Subsequent Investor shall contribute to the Partnership on its First Drawdown Date by way, in respect of sub-clause 2.3(a), of drawdown of its Loan Commitment an amount (which for the avoidance of doubt shall include its share of organisational expenses) equal to:

- (a) the amount notified to such Subsequent Investor by the Manager as being necessary to equalise (in percentage terms) the net amount drawn down from all Investors (excluding any drawdowns in respect of the General Partner's Share) after taking into account any amounts (other than any amounts equal to interest) distributed to Previous Investors as set out in this clause 2; plus
- (b) an additional amount calculated thereon during the period commencing on the date of the first Relevant Drawdown and ending on the First Drawdown Date of such Subsequent Investor equal to interest at the rate of LIBOR plus 2% per annum for the period from the date when such amount (or the relevant portion thereof) would have been drawn down had such Subsequent Investor been an Investor since the First Closing Date to the date of its admission.

The amounts payable by a Subsequent Investor as aforesaid shall be distributed to Previous Investors pro rata to their respective Outstanding Loans as soon as is practicable after receipt from Subsequent Investors so that immediately thereafter the amounts of all Investors' Undrawn Loan Commitments will bear the same proportion to their respective Loan Commitments. The amount

so distributed (but excluding the additional amount referred to in clause 2.3(b) above) will be in partial repayment of the Outstanding Loans of the Previous Investors and will increase their Undrawn Loan Commitments and thereby be available for drawdown again.

2.4 Equalisation of General Partner's Share

The Subsequent Investor shall also contribute to the Partnership an amount equal to the General Partner's Share on its Commitment from the First Closing Date to the First Drawdown Date of the Subsequent Investor together with an additional amount equal to interest at the rate of LIBOR plus 2% per annum for the period from the date when such amount (or the relevant portion thereof) would have been drawn down had such Subsequent Investor been an Investor since the First Closing Date to the date of its admission and such amount (including such amount equal to interest) will be distributed to the General Partner.

2.5 Treatment of Additional Amounts

Where additional amounts equal to interest are payable by a Subsequent Investor pursuant to clause 2.3(b) and clause 2.4, such amounts shall be payable in addition to the Commitment of such Subsequent Investor, shall not be reflected in the capital account or loan account of such Subsequent Investor and shall not be treated as a distribution for any purposes of this Agreement.

2.6 Associated Investors

Notwithstanding clauses 2.1, 2.2 and 11.2.1, the Commitment of any single Investor (other than the Preferred Partner) or the aggregate Commitments of any Associated Investors may at no time equal or exceed 50% of Total Commitments excluding the Commitment of the Preferred Partner unless the General Partner and Manager are wholly independent from all such Associated Investors. The General Partner and Manager shall not be considered independent if any Associated Investor, or person who would be an Associated Investor with such persons were they to become an Investor themselves, holds, directly or indirectly, shares, options or warrants in respect of the General Partner, the Manager or any of their Associates, or holds the office of, or have the right to appoint a, director of the General Partner, the Manager or any of their Associates. Any admission of an Investor or increase in the Commitment of an Investor in contravention of this clause 2.6 shall be void.

2.7 Reputational Issues

In deciding whether or not to admit any prospective Limited Partner to the Partnership, the Manager shall have regard to the reputation of such person and whether the admission of such person could be detrimental to the reputation of the Preferred Partner and will not admit any such person to the Partnership unless, in its reasonable opinion, no such detriment would occur.

3 Capital Contributions

3.1 The Founder Partner

The Founder Partner has contributed or agreed to contribute the amount of capital to the Partnership as stated in paragraph (C) of the Introduction.

3.2 Investors

3.2.1 Each Investor shall contribute the amount of its Capital Contribution on its admission as a Partner.

3.2.2 On the Final Closing Date the Investors shall each be required to increase or shall be repaid part of their Capital Contributions so that from and after the Final Closing Date the Capital Contribution of the Preferred Partner shall equal the proportion of the Founder Partner's Capital Contribution which the Preferred Partner's Profit Share bears to the Carried Interest Share and the aggregate amount of the Capital Contributions subscribed by each of the other Investors equals the

proportion of the total Capital Contributions subscribed to the Partnership at the Final Closing Date equal to their aggregate proportionate entitlements to distributions pursuant to clause 10.1.1(f) and as between such other Investors shall be pro rata to their Commitments.

3.3 Interest

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

3.4 Repayment

Subject as provided in clauses 3.1 and 4.4, Capital Contributions shall only be repaid on the termination or liquidation of the Partnership.

4 Loan Commitments

4.1 Investors

4.1.1 Each Investor:

- (a) shall be required to advance interest free loans to the Partnership up to an aggregate amount equal to its Loan Commitment; and
- (b) may be required to re-advance (subject as provided in this clause), as an increase to or to create an Outstanding Loan, that part of any amount distributed to it pursuant to this Agreement where and only to the extent that such distribution is or is attributable to:
 - (i) the repayment of sums drawn down for a proposed Investment which does not proceed to completion (and the Manager is hereby authorised to repay such sums); or
 - (ii) payments to Previous Investors which are added to their Undrawn Loan Commitments pursuant to clause 2; or
 - (iii) amounts of Net Income or Capital Gains which are allocated to the General Partner in satisfaction of loans (including drawings) made to the General Partner in respect of the General Partner's Share pursuant to clause 8.4 when such loans have been funded by draw down of Loan Commitments from Investors;

and that part of any such distribution shall:

- (A) to the extent of such Investor's Outstanding Loan, be in repayment of such Outstanding Loan; and
- (B) increase such Investor's Undrawn Loan Commitment so that any such amount re-advanced shall be and shall be treated as part of the Outstanding Loan for all purposes of this Agreement,

but so that such Investor's Outstanding Loan shall not at any time exceed the amount of its Loan Commitment.

Loan Commitments shall be advanced in such tranches and on such dates as shall be determined by the Manager and specified in a Drawdown Notice given by the Manager to the Investors not less than 10 business days prior to the date so specified. Each Drawdown Notice shall contain summary details of any proposed Investment to which it relates (if any), including the nature of the business carried on by the proposed Portfolio Company and confirmation by the Manager that the proposed Investment falls within the Investment Policy, if necessary giving reasons for such conclusion.

The Manager (save as provided in clause 2) shall draw down loans from Investors pro rata to their respective Loan Commitments (disregarding the Loan Commitment of any Investor whose Capital Contribution shall have been forfeited pursuant to clause 4.4).

- 4.1.2 Undrawn Loan Commitments (if any) may be drawn down after the end of the Investment Period only for the purpose of paying any obligation of or any of the expenses and liabilities of the Partnership and the General Partner's Share (or advances in respect thereof) and for the purpose of making investments other than New Investments or completing contracts entered into before that date provided that the amounts drawn down for the purpose of making Investments other than New Investments but excluding amounts required for contracts already entered into shall not exceed [to be specified in bid]% of the Total Commitments.
- 4.1.3 The Manager may, by giving prior written notice to the Investors at any time after the Investment Period has ended, determine that part or all of the Investors' Undrawn Loan Commitments shall be cancelled. Any amount of Undrawn Loan Commitment so cancelled shall not be available for draw down. Total Commitments and each Limited Partner's Commitment for the purposes of clauses 8.2, 10.1.1, 10.2.3 and 16.1.1 shall be deemed to be reduced by the amount of any such cancelled Undrawn Loan Commitment.
- 4.1.4 The Manager intends that the Partnership shall acquire Investments with an Acquisition Cost of at least £[to be specified in bid] per annum during the Investment Period, although, for the avoidance of doubt, neither the Manager nor the Partnership shall be required to do so. If the Partnership has acquired Investments in fewer than [to be specified in bid] Portfolio Companies, or has acquired Investments with an aggregate Acquisition Cost of less than £[to be specified in bid] by the [to be specified in bid] anniversary of the Final Closing Date, Investors, by an Investors' Consent, may elect to reduce the General Partner's Share by [to be specified in bid].
- 4.1.5 Any sums advanced by Investors shall be placed in an account with a United Kingdom clearing bank or, with the consent of the Preferred Partner, another financial institution until used by the Partnership or returned to Investors.
- 4.2 Other Partners
- The General Partner and the Founder Partner shall not be required to advance any loan to the Partnership save in the Founder Partner's separate capacity as an Investor.
- 4.3 Interest
- The Outstanding Loans will not carry interest.
- 4.4 Failure to Comply with Drawdown Notice
- 4.4.1 Notwithstanding any provision of this Agreement to the contrary but subject to clause 11.2.3, if any Investor fails to advance to the Partnership the amount which is the subject of a Drawdown Notice on or before the date of expiry of such Drawdown Notice then the Manager shall, as soon as reasonably practicable thereafter, give notice to such Investor requiring it to remedy such default and to pay interest to the Partnership on the amount outstanding for the period from the date of expiry of the Drawdown Notice up to the date of payment (or, if earlier the date of forfeiture of such Defaulting Investor's Interest as set out below) thereof at the rate of LIBOR plus 4%, on or before the expiry of 30 days from the date of such notice from the Manager.
- If the Investor has not remedied such default and paid all interest at the expiry of 30 days from the date of such notice, the Manager shall, unless each of the Investors (other than the potential Defaulting Investor) otherwise agree, deem such Investor to be a "Defaulting Investor".

The Manager shall without prejudice to any other rights it or the Partnership may have (and so that interest as set out above shall continue to accrue after such period of 30 days), as soon as reasonably practicable after the expiry of such period of 30 days either:

- (a) cause the Capital Contribution (and the income and capital accounts) of such Defaulting Investor to be forfeited (in which event the amount of such Capital Contribution (and income and capital accounts) shall continue to form part of the Partnership Assets) and the rights of such Defaulting Investor shall thereafter be limited only to the right of repayment of its Outstanding Loan as provided in this Agreement (subject to such further deduction as the Manager may consider necessary to compensate the other Partners in respect of any additional tax or other liability or expense that they may thereby suffer) on or immediately prior to the termination of the Partnership conditionally upon all other Investors having received full repayment of their Outstanding Loans and the Preferred Return and such Defaulting Investor shall cease to be a Partner for all purposes as at the date that the Capital Contribution of such Defaulting Investor is forfeited as provided above. In the event of forfeiture of the Capital Contribution of any Defaulting Investor, the Founder Partner shall be repaid part of its Capital Contribution so that the amount of its Capital Contribution as a Founder Partner shall continue to equal the Carried Interest Share of the total Capital Contributions subscribed in the Partnership immediately following such forfeiture; or
- (b) the Manager may offer the whole or part of the Interest of the Defaulting Investor to such person or persons as the Manager shall determine provided that the Manager shall first offer existing non-Defaulting Investors in the Partnership 30 days in which to acquire the Defaulting Investor's Interest (and pro rata between them in the case of competition) before the Manager, any of its Associates or any third party may acquire such Interest, (each a "Purchaser"), for such price(s) as may be determined by the Manager, in its absolute discretion, to be reasonable in the circumstances (and who in setting such price shall act with regard to the interests of the Partnership and the non-Defaulting Investors) provided that no such third party, the Manager or any of its Associates shall acquire such Interest for a price lower than that offered to the existing non-Defaulting Investors pursuant to this clause 4.4.1(b). For the purpose of this clause, the Manager may determine that the purchase price may be paid immediately by the Purchaser, or by the issue to the Defaulting Investor of non-recourse promissory notes or similar pursuant to which the Defaulting Investor shall be entitled to receive amounts up to such price when and to the extent that the Purchaser receives distributions from the Partnership. The Purchaser shall, on completion of the transfer, be treated as a Substitute Investor. The following provisions shall also apply to such transfer:
 - (A) in the absence of fraud on their part, none of the Manager, the General Partner, or any of the Limited Partners shall be liable to a Defaulting Investor whose Interest is being transferred, or to a Limited Partner purchasing an Interest pursuant to this clause;
 - (B) the Manager shall be constituted the agent for the sale of the Defaulting Investor's Interest and each of the Investors hereby irrevocably appoints each of the Manager and General Partner as their true and lawful attorney to execute any documents required in connection with such transfer if they shall become a Defaulting Investor and each such Investor undertakes to ratify whatever the Manager or General Partner shall lawfully do pursuant to such power of attorney and to keep the Manager or General Partner indemnified against any claims, costs and expenses which the Manager or General Partner may suffer as a result thereof;

- (C) the receipt by the Manager, General Partner, or Partnership of the sale proceeds shall constitute a good and valid discharge to the Purchaser of the Defaulting Investor's Interest; or
- (D) the Manager and General Partner shall not be required to pay the purchase money to the Defaulting Investor until the Defaulting Investor has delivered to them any and all documents of title as may be required by the Manager in respect of its Interest and confirmation that the Defaulting Investor has no claims against the Manager, General Partner, Partnership or Purchaser.

If the transfer is not completed within 90 days of the due date specified in the original Drawdown Notice, the interest of the Defaulting Investor shall be forfeited without any further action pursuant to clause 4.4.1(a) above.

Pending the forfeiture or transfer of the Defaulting Investor's Interest pursuant to sub-clauses 4.4.1(a) or (b) above, the Manager shall be entitled to suspend indefinitely the right of such Defaulting Investor to receive any distributions from the Partnership.

The Manager shall also take any action as the Manager may think reasonably necessary to enforce the obligations of the Defaulting Investor to make payment of any sums required pursuant to its Commitment.

4.4.2 If Investors representing more than 25% of Total Commitments (excluding the Commitment of the Preferred Partner) have become Defaulting Investors, the Investors may, by an Investors' Consent, elect to either:

- (a) suspend the ability of the Partnership to make new Investments as if a Suspension Event had occurred pursuant to clause 4.6; or
- (b) terminate the Partnership or the Investment Period.

4.5 Repayment of the Outstanding Loans

The Outstanding Loans shall be repaid in accordance with the terms of clause 10 subject to the provisions of clauses 13.5.5 and 13.5.6. Each of the Investors shall be a creditor in respect of the Outstanding Loan advanced by it on and subject to the terms of this Agreement to the intent that, subject as aforesaid, the holder of the Outstanding Loan in question may sue for debt in respect of its Outstanding Loan and is not limited to a remedy by way of account. For the avoidance of doubt, no Partner shall be entitled to demand the repayment or to be repaid its Outstanding Loan other than in accordance with the provisions of this Agreement.

4.6 Suspension of Investment

4.6.1 Notwithstanding the provisions of clause 4.1.1 and subject as provided in clauses 4.6.2, if:

- (a) one or more of the Named Executives cease to devote the amount or proportion of their business time specified in [the Annex hereto] to the affairs of the Partnership, (when averaged over any 12 week period), or becomes incapable for any reason of devoting such time;
- (b) the Auditors do not or cannot provide the statement referred to in clause 7.1 within the time period specified therein;
- (c) the Manager, or any of the Named Executives, are convicted of any criminal offence (other than a minor road traffic offence);

- (d) the Manager, or any of the Named Executives, are charged with any criminal offence which, on conviction could result in a sentence of greater than six months imprisonment or any offence involving dishonesty;
- (e) the Commitment of the Preferred Partner at any time exceeds two-thirds of Total Commitments (whether following default of an Investor pursuant to clause 4.4.1, the death or insolvency of any Investor, or otherwise) unless the Manager and the Preferred Partner have previously agreed otherwise (and such agreement may, for the avoidance of doubt, include a time period or conditions for the reduction of the Preferred Member's proportionate Commitment or otherwise, failing which a Suspension Event shall occur);
- (f) if the Preferred Partner determines in its absolute discretion that the Manager is not taking sufficient steps to recover any sums required to be recovered pursuant to clause 5.12.2; or
- (g) [●] at any time ceases to own or control at least 75 (seventy-five) per cent of the ordinary share capital and/or voting rights of either the General Partner or Manager without the prior approval of the Investors by an Investors Consent,

(any such event being referred to in this clause as a "Suspension Event") then the Manager shall not cause the Partnership to acquire any further Investments other than where the Partnership had entered into a legally binding commitment to acquire an Investment prior to the Suspension Event. The Manager shall notify the Investors of any Suspension Event.

4.6.2 Where the acquisition of Investments has been suspended pursuant to clause 4.6.1 the Investors, by an Investors' Consent, may consent at any time prior to the termination of the Investment Period pursuant to clause 4.6.3 to the resumption of the acquisition of New Investments and/or may consent to the resumption of the acquisition of further Investments other than New Investments, in either case with such conditions applying as the Investors may, by Investors' Consent, agree. If, in the case of sub-clause 4.6.1(d), the Manager or Named Executive are acquitted of all charges brought against them, or such person receives notice that criminal proceedings will not be brought, then, the Manager may acquire further Investments including, provided the Investment Period has not terminated, New Investments. In the case of suspension pursuant to sub-clauses 4.6.1(e) or (f), the Preferred Partner may alone at any time consent to the issue of further Drawdown Notices for New Investments, provided that the Investment Period has not terminated.

4.6.3 If, after six months from the date of the suspension of the acquisition of Investments pursuant to sub-clauses 4.6.1(a) to (c), (e) or (f), the acquisition of further Investments has not been resumed pursuant to clause 4.6.2 then the Investment Period shall terminate.

4.6.4 The Investors, by an Investors' Consent, may approve any person suggested by the Manager as an additional or replacement Named Executive.

5 Operation and Management of the Partnership

5.1 Appointment of a Manager

5.1.1 The General Partner shall be responsible for ensuring that the Partnership is always managed and operated, and that its investment portfolio is always managed on a discretionary basis (under the supervision and authority of the General Partner), by an Authorised Person permitted to do so under FSMA. The General Partner shall have full discretion and authority to select and/or terminate the appointment of any manager subject to clause 5.1.2. If appointed, the Manager shall manage or operate the Partnership, and shall manage its investment portfolio, in all cases under the supervision and authority of the General Partner who shall be responsible for supervising the Manager's performance of its obligations. The General Partner, if it decides to do so, may operate

and manage the Partnership itself (in which case the General Partner shall itself assume the obligations and powers herein attributed to the Manager) provided that the General Partner shall only do so if it becomes and for so long as it remains an Authorised Person permitted to do so under FSMA. The appointment of the Manager shall be without further charge to the Partnership. The Manager shall have no rights against the Partnership in respect of any management fees payable to the Manager.

5.1.2 Accordingly, [XYZ] and each succeeding general partner of the Partnership shall procure for so long as it remains a general partner of the Partnership that an Associate of the General Partner (or, if the General Partner so decides, but subject to clause 5.6, the General Partner itself) which is then an Authorised Person permitted under FSMA to act as manager, shall agree to act as manager of the Partnership on terms acceptable to the Partnership (acting through the General Partner). The Partnership (acting through the General Partner) shall appoint as manager any such Associate from time to time selected as manager by the General Partner and shall enter into the Management Agreement with each succeeding manager, as provided in clause 5.5.1(a). The General Partner hereby confirms that an Authorised Person permitted under FSMA to manage and operate collective investment schemes and manage their investment portfolios has been selected as the first manager and the Partners hereby authorise the General Partner to enter into the Management Agreement with the Manager on behalf of the Partnership in such form as provided for in clause 5.5.1(a).

5.1.3 The Partnership shall not carry on any business or operations unless and until in relation to any business being carried on and which requires a manager which is an Authorised Person, it has appointed such a manager under clause 5.1.2, or at any time thereafter when no such manager is in office (unless the General Partner is an Authorised Person and acts as manager of the Partnership pursuant to clause 5.1.1).

5.2 Restriction on the Limited Partners

5.2.1 The Limited Partners shall take no part in the operation of the Partnership or the management or control of its business and affairs, and shall have no right or authority to act for the Partnership or to take any part in or in any way to interfere in the conduct or management of the Partnership or to vote on matters relating to the Partnership other than as provided in the Act or as set forth in this Agreement.

5.2.2 Each of the Limited Partners shall, subject to having given reasonable notice, have access to and the right to inspect during normal business hours the books and accounts of the Partnership. For the avoidance of doubt, nothing in this Agreement shall give any of the Limited Partners a right of access to any Portfolio Company.

5.2.3 The Manager and General Partner shall also provide the rights set out in clause 5.2.2 to any representative, employee or agent of the National Audit Office or the European Court of Auditors and shall at all times fully co-operate with and comply with any request of such bodies.

5.3 Authority and Powers of the Manager

The Manager shall have full power and authority, on behalf of the Partnership and so as to bind the Partnership thereby:

- (a) to identify, evaluate and negotiate investment opportunities, to prepare and approve investment agreements and to (or to agree to) subscribe, purchase or otherwise acquire, alone or together with others, investments falling within the Investment Policy, and to sell, exchange or otherwise dispose of Investments for the account of the Partnership, and to enter into investment agreements or execute investment agreements on behalf of the Partnership accordingly (in each case whether personally or through an attorney or

other agent) and, where appropriate, to give warranties and indemnities in connection with any such acquisition, sale, exchange or other disposal (or, as it may decide in its sole discretion at any time, in each case to direct the Partnership, acting through the General Partner, to do so itself);

- (b) to monitor the performance of and, where appropriate, to nominate directors of Portfolio Companies, to exercise all rights conferred upon the Partnership under the terms of any investment agreement or otherwise in respect of a Portfolio Company and to liaise with, consult, assist or procure assistance to be given to Portfolio Companies and generally to take any action the Manager considers appropriate for the protection of Partnership Assets;
- (c) to accept applications by and require the Partnership to admit prospective Limited Partners and to issue Drawdown Notices;
- (d) to enter into, make and perform such deeds, powers of attorney, contracts, agreements and other undertakings, in connection with Investments or proposed Investments and to do all such other acts or things as it may deem necessary and/or advisable, for or as may be incidental to the conduct of the business of the Partnership (or in each case to direct the Partnership acting through the General Partner to do so itself);
- (e) to borrow money on a short-term basis (being less than three months) for any of the purposes of the Partnership (provided that the aggregate of borrowings under this paragraph (e) shall not at any time exceed the lesser of 15% of Total Commitments and the aggregate Undrawn Commitments) and as determined by the Manager and in connection therewith to make, issue, accept, endorse and execute promissory notes, drafts, bills of exchange, guarantees and other instruments and evidences of indebtedness and to secure the payment thereof by mortgage, charge, pledge or assignment of or security interest in all or any part of the Partnership Assets (or in each case to direct the Partnership acting through the General Partner to do so itself) provided that the Partnership may not borrow from the Manager or its Associates;
- (f) to commence, conduct, settle or defend litigation that pertains to the Partnership or to any of the Partnership Assets (or to direct the Partnership acting through the General Partner to do so itself) provided that such actions may not be taken in connection with any material litigation without an Investors' Consent;
- (g) to maintain records and books of account of and in the name of the Partnership at the Partnership's principal place of business;
- (h) to open accounts with banks or with custodians, for and in the name of the Partnership, maintain such accounts, give payment and other instructions (including instructions in respect of the payments referred to below in this clause 5.3) to banks in respect of such accounts and receive and pay into such accounts Capital Contributions, Loan Commitments advanced by Investors, investment income or other sums arising from or on the disposal of Investments and any other income of the Partnership and any fees to which the Partnership is entitled;
- (i) to make distributions to the Partners in accordance with the terms of this Agreement;
- (j) to grant and make payments in respect of indemnities in accordance with clause 15.2;
- (k) to pay all of the fees and expenses referred to in clause 5.10.1 to the extent specified therein and to provide against present or future contemplated obligations and contingencies;

- (l) to furnish reports and valuations to the Partners in accordance with the provisions of clause 14;
- (m) to admit Substitute Investors to the Partnership in accordance with the provisions of clause 11;
- (n) to appoint a custodian or custodians of the Partnership Assets (which for the avoidance of doubt may be the Manager or an Associate and to give settlement and other instructions to any custodian of the Partnership Assets);
- (o) to register and publish (or cause the General Partner to register and publish) all such notices, statements or other instruments as may be required pursuant to the Act to be registered and published in relation to the establishment of the Partnership and in relation to any changes occurring in relation to the Partnership as specified in Sections 9 and 10 of the Act;
- (p) pending the application of monies drawn down pursuant to this Agreement in making Investments, meeting liabilities of the Partnership or paying the General Partner's Share and pending distribution pursuant to the terms of this Agreement, to place amounts drawn down or realised (as the case may be) in deposit accounts in the name of the Partnership with a United Kingdom clearing bank or, with the consent of the Preferred Partner, another financial institution;
- (q) generally to communicate with the Partners and to report to the Partners at such times as it shall think fit or as are required in this Agreement;
- (r) to exercise such of the authorities and powers set out in paragraph (b) of clause 5.5.1 below as it may from time to time decide as referred to therein (whether instead of or concurrently with the General Partner); and
- (s) to do all or any other acts as are required of the Manager by this Agreement or as are reasonably necessary or desirable in the reasonable opinion of the Manager in furtherance of the foregoing powers and consistent with the terms of this Agreement.

5.4 Termination of the Manager's Appointment

The events on which the appointment of the Manager shall terminate shall be set out in the Management Agreement and shall include:

- (a) the removal or withdrawal of the General Partner;
- (b) the Manager ceasing to be an Authorised Person permitted under FSMA to manage or operate the Partnership or to act as manager of the Partnership's investment portfolio; and
- (c) a decision by the General Partner, acting on behalf of the Partnership, to terminate the appointment of the Manager.

The Preferred Partner shall be immediately notified of the termination of the Manager's appointment.

5.5 Authority and Powers of the General Partner

- 5.5.1 Unless and except to the extent that the General Partner decides that the Manager should exercise exclusively (instead of concurrently with the General Partner) any of the powers in paragraphs (b) to (d) below, the General Partner shall have full power and authority to do each of the following acts or things (on behalf of the Partnership and so as to bind the Partnership thereby):

- (a) sign a management agreement with the Manager and with each succeeding manager in such form as it may approve ("the Management Agreement") which shall reflect the provisions of this Agreement in relation to the management and operation of the Partnership and shall not contain any provision imposing any liability on the Partnership or the Partners except as a result of transactions or activities contemplated in this Agreement;
- (b) execute any deed or document or do any other act or thing which the Manager may direct the Partnership and/or the General Partner to execute or do under the provisions of clause 5.3 or any other provision of this Agreement or the Management Agreement;
- (c) veto the choice by the Manager of a custodian or custodians of the Partnership Assets; and
- (d) generally, as a partner, represent the Partnership in its dealings with the Manager, or in relation to the protection of Partnership Assets, or in any other respect, except where the power to do so is conferred on the Manager under clause 5.3 or has been assumed by the Manager under the earlier provisions of this clause 5.5.1.

5.5.2 Without prejudice to clause 5.5.1 the General Partner shall do all things and discharge all duties or requirements of or imposed on a general partner by the Act (whether or not on behalf of the Partnership) and in particular so as to ensure, so far as it is able, that the liability of the Limited Partners is and remains limited as provided in the Act; where it is to do so on behalf of the Partnership it is hereby expressly authorised to do so accordingly.

5.6 Restrictions on the General Partner

Notwithstanding anything in this Agreement to the contrary, the General Partner shall not do or be authorised to do anything (including acting or offering or agreeing to act as Manager or custodian of Partnership Assets) which might constitute a regulated activity for the purposes of FSMA unless it is an Authorised Person permitted to do so.

5.7 Separate Liabilities of the General Partner

The General Partner hereby undertakes that it shall at all times duly and punctually pay and discharge its separate and private debts and engagements whether present or future incurred or assumed by it as principal and other than in its capacity as general partner of the Partnership and shall keep the Partnership Assets and the Limited Partners and their personal representatives, estates and effects indemnified therefrom and from all liabilities, actions, proceedings, costs, claims and demands in respect thereof.

5.8 Restrictions on Marketing

Notwithstanding anything in this Agreement to the contrary, it is hereby agreed that no prospective investor in the Partnership shall be solicited by the Manager or any other Authorised Person in contravention of section 238 of FSMA.

5.9 Side Letters

Neither the General Partner nor the Manager may enter into any side letter, side agreement or other special arrangement with any Investor or prospective Investor without the prior disclosure to all Investors and the written consent of the Preferred Partner.

5.10 Expenses and Fees

5.10.1 The Partnership shall be responsible for:

[Applicants will be asked to specify whether, and the extent to which, establishment and ongoing costs will be borne by the fund rather than come out of the management fee]

5.10.2 The General Partner, the Manager and their Associates shall be entitled to accept and retain for their own account:

- (a) Transaction Fees;
- (b) Investment Related Fees;
- (c) Abort Fees; and
- (d) Other Fees,

provided that any Transaction Fees, Investment Related Fees, Abort Fees and Other Fees (net of any VAT or similar tax related thereto) which are charged shall, to the extent provided in clause 8, be credited against and reduce the General Partner's Share.

5.10.3 The Manager shall not charge any other fees in respect of its activities.

[Bidders may suggest other arrangements for charging such fees but any fees charged should accrue to the Fund.]

5.11 Prohibited Investments

Where the Partnership acquires any Prohibited Investments, the Manager shall use its best efforts to sell such Prohibited Investments as soon as possible thereafter for the best price achievable in the circumstances.

5.12 State Aid Issues

5.12.1 The Manager will notify all Portfolio Companies, prior to the acquisition of the first Investment by the Partnership in each such company, that:

- (a) the Partnership is an "Enterprise Capital Fund"; and
- (b) for such time as the Partnership holds an Investment in such Portfolio Company, when applying for any form of governmental support via any regional or SME support scheme considered by the European Commission as containing an element of State aid, such Portfolio Company:
 - (i) will be required to declare in any such application that it has received investment from an Enterprise Capital Fund and accordingly, indirectly from a government source; and
 - (ii) will have their entitlement to aid under any such scheme capped at 70% of the level of aid which would otherwise have been deemed permissible by the European Commission.

5.12.2 In the event that an Investment is found to constitute or contain any element of unlawful State aid, the Manager shall recover any sums which the Preferred Partner is required to recover pursuant to a decision of the Commission of the European Communities, European Court of Justice or any other competent authority including for the avoidance of doubt any interest at the rate set by such authority. The Manager will ensure whenever an Investment is acquired that it is able to require the repayment of any sums so invested which are capable of being required pursuant to this clause.

5.12.3 The Manager, General Partner and Founder Partner shall indemnify and keep indemnified the Limited Partners other than the Founder Partner, the Partnership and the Portfolio Companies from any loss, damage, cost or expense incurred by any of them by reason of an Investment being

outside the Investment Policy or outside the terms of any State aid clearance, including any such loss, damage, cost or expense resulting from the operation of clause 5.12.2.

6 Debts and liabilities of the Partnership

The Limited Partners shall have no personal obligation for the debts or liabilities of the Partnership, except as provided in this Agreement and in the Act. The General Partner shall be fully liable for such of the Partnership's debts, liabilities and obligations as exceed the Partnership Assets.

7 Partnership Accounts and Tax Information

7.1 Preparation of Annual Accounts

The Manager shall, in addition to performing its obligations under clause 14, prepare accounts of the Partnership for each Accounting Period in accordance with the principles agreed with the Auditors from time to time, including a balance sheet, profit and loss account, a statement of the amount of the income account, capital accounts and loan accounts of each Partner and a summary of movements in such accounts. The Manager shall cause such accounts to be audited by the Auditors. A copy of the audited accounts including the report of the Auditors and a statement of accounting policies shall be despatched to each Partner as soon as possible and in any event not later than 90 days following each Accounting Date. The Manager shall request the Auditors to include with such accounts a statement that, in their opinion:

- (a) all amounts allocated or distributed to Investors have been so allocated or distributed in accordance with the provisions of this Agreement; and
- (b) the Investments acquired by the Partnership fall within the Investment Policy, insofar as the Investment Policy contains objective criteria for assessment.

Where the Auditors are unable to include such a statement in the Accounts the Manager shall require the Auditors to give both the Manager and Preferred Partner a comprehensive written explanation of the reasons why the Auditors are unable to include such a statement, including, where appropriate:

- (c) which amounts allocated or distributed to investors have not, or may not have, been so allocated or distributed in accordance with the provisions of this Agreement; and/or
- (d) which Investments acquired by the Partnership do not, or may not, fall within the Investment Policy, insofar as the Investment Policy contains objective criteria for assessment.

7.2 The Preferred Partner may at any time require the Manager to instruct the Auditors to conduct a special audit of the Partnership and Partnership Assets in order to ascertain whether the Investments fall within the Investment Policy. A copy of the report of the Auditors shall be despatched to the Preferred Partner no later than 90 days following the date of the request of the Preferred Partner. The costs and expenses incurred in the proportion of such special audit shall be borne by the Partnership.

7.3 Partner's Accounts

Each Partner shall have, inter alia, a capital contribution account, a loan account (if applicable), an income account and a capital account which will be operated as follows:

- (a) the Capital Contribution of each Partner shall be credited to its capital contribution account;
- (b) the Loan Commitment draw downs shall be credited to its loan account and repayments of Outstanding Loan pursuant to clause 10.1 or otherwise pursuant to this Agreement shall be debited to such account; and

- (c) the Net Income, Net Income Losses, Capital Gains and Capital Losses allocated to each Partner pursuant to clause 8 or 9 shall be credited or debited as the case may be to that Partner's income account or capital account: distributions to each Partner pursuant to clause 10 (other than repayments of Outstanding Loan) shall be debited to that Partner's income account or capital account.

8 General Partner's Share

8.1 Allocation of the General Partner's Share

The General Partner shall be entitled to receive and, as a first charge on Net Income and Capital Gains, there shall be allocated to the General Partner in respect of each Accounting Period an amount equal to the General Partner's Share for that Accounting Period and pro rata in respect of Accounting Periods of more or less than one year.

8.2 Calculation of the General Partner's Share

[This clause specifies a possible structure for the general partner's share, but applicants may specify alternatives].

The General Partner's Share for each Accounting Period shall be an amount equal to:

- (a) until the end of the Investment Period the sum of []% per annum of the sum of Total Commitments less the Acquisition Cost of any Prohibited Investments; and
- (b) thereafter, []% per annum of the aggregate Acquisition Cost of Investments held by the Partnership (excluding any Prohibited Investments). For this purpose, the winding up of any company in which an Investment is held or the permanent write off of an Investment shall be treated as a realisation;

in each case calculated by reference to the daily balances thereof during such period and including, in respect of the period prior to the Final Closing Date, the Loan Commitments of Subsequent Investors which shall, for the above purposes, be treated as having arisen as of the First Closing Date.

The General Partner's Share in any Accounting Period shall be reduced by any Transaction Fees, Investment Related Fees, Abort Fees and Other Fees earned and retained by the General Partner, the Manager and any Associate of either of them during the previous Accounting Period net of any VAT or similar tax related thereto. Where the General Partner's Share is reduced to zero in any Accounting Period any Transaction Fees, Investment Related Fees, Abort Fees and Other Fees not applied in reduction of the General Partner's Share in such Accounting Period shall be carried forward and shall reduce the General Partner's Share in the next Accounting Period. If, on termination of the Partnership, any such fees remain which have not been applied in reduction of the General Partner's Share in any Accounting Period they shall be distributed pro rata to all Limited Partners, other than Limited Partners who opt to waive such rights.

8.3 Provisions relating to General Partner's Share

The following provisions shall apply in relation to the allocation of the General Partner's Share:

- (a) the General Partner's Share shall rank as a first charge on Net Income in any Accounting Period;
- (b) if Net Income in any Accounting Period shall exceed the share thereof to be allocated to the General Partner hereunder, the General Partner shall be entitled to elect, so far as practicable, which items of Net Income shall form the whole or a part of the share of Net Income allocated to the General Partner; and

- (c) if Net Income in any Accounting Period shall be less than the General Partner's Share, there shall be allocated to the General Partner as a first charge on all or against any surplus of Capital Gains over Capital Losses in such Accounting Period an amount not exceeding the amount of the General Partner's Share which remains unsatisfied out of Net Income;

provided that, instead of the order of priority set out in paragraphs (a), (b) and (c) above, the General Partner shall be entitled to allocate the General Partner's Share against such items of Income or Capital Gains as it may select.

8.4 Deficiency in General Partner's Share

If Net Income and Capital Gains less Capital Losses in any Accounting Period shall be less than the General Partner's Share, any deficiency to the extent not already drawn by the General Partner under clause 10.8 shall be paid to the General Partner as an interest free loan but such payment shall not extinguish the amount of the General Partner's Share outstanding which shall be carried forward to subsequent accounting periods: in the event that any part of the General Partner's Share then unpaid can subsequently be satisfied by an allocation of Net Income or Capital Gains to the General Partner such allocation shall be applied in the discharge of an equivalent amount of such loan; in no circumstances shall such loan be recoverable from the General Partner other than by an allocation of Net Income or Capital Gains in accordance with this paragraph.

8.5 Adjustment between Investors' Accounts

For the avoidance of doubt, the amount of the General Partner's Share and all expenses of the Partnership from the date of commencement of the Partnership which are charged to any Investor pursuant to this Agreement shall not be affected by the date upon which such Investor became a Partner and the Manager shall be entitled to make such adjustment between Investors' accounts as it shall consider reasonable to reflect this.

9 Allocation of Remaining Profits and Losses between Partners

9.1 Allocations

9.1.1 Every Partner has an interest in every asset of the Partnership. Net Income, Net Income Loss, Capital Gain and Capital Loss shall be allocated to the Partners in a manner consistent with their entitlements to distributions pursuant to clause 10.1.1, and with the previous sentence of this clause 9.1.1.

9.1.2 Notwithstanding clause 9.1.1, all Deposit Interest shall be allocated only to the Investors, pro rata to their Outstanding Loans, or if the Outstanding Loans are zero, their Commitments.

9.2 Disposal of Investments after Repayment Date

For the avoidance of doubt where on the disposal of any Investment or Investments at any time, there is realised more than the amount required to repay the amount of the Outstanding Loan and the Preferred Return, such part of the income or proceeds of disposal as is in excess of the amount required to repay the Outstanding Loans and Preferred Return shall be treated as having been realised after the Repayment Date.

9.3 Distributions in Specie

If a decision is made to distribute any Partnership Assets in specie in accordance with clause 10.6, those assets shall be deemed to be realised for the purposes of computing Capital Gains and Capital Losses at their value arrived at in accordance with that clause.

9.4 Adjustments upon Final Closing

In the event that any Net Income, Net Income Loss, Capital Gains or Capital Losses arise prior to the Final Closing Date then the Manager shall be entitled to make such adjustment between the relevant Partner's accounts as it shall reasonably consider necessary in the circumstances so that each Investor shall have an interest in each such item pro rata to the size of its Commitment in the Partnership as at the Final Closing Date.

10 Distributions of Capital Proceeds and Income between Partners

10.1 Application of Cash

10.1.1 Subject to clauses 8, 10.1.2, 10.1.3, 10.2, 10.3, 10.4, 10.5 and 10.7 all Income and Capital Proceeds of the Partnership shall be distributed in the following order of priority (after payment of the expenses and liabilities of the Partnership):

- (a) first, in payment of the General Partner's Share (less any amounts already drawn in respect of the General Partner's Share under clause 10.8);
- (b) second, to the Preferred Partner until it has received an amount equal to the Prioritised Return;
- (c) third, to the Partners (pro rata to their Commitments) until the Investors have received an amount equal to at least 85% of their Commitments and have been repaid their Outstanding Loans to the extent that the aggregate commitments drawn down exceed 85% of Total Commitments; **[Applicants may specify alternative terms that provide adequate protection the government.]**
- (d) fourth, to the Partners other than the Founder Partner (pro rata to their respective entitlements to distributions pursuant to clause 10.1.1(f)) in payment of an amount equivalent to the Preferred Return;
- (e) fifth, as to **[to be specified in bid]**% to the Founder Partner, as to the Preferred Partner's Profit Share to the Preferred Partner, and as to the remainder to the Investors excluding the Preferred Partner (pro rata to the amount of their respective Capital Contributions) until (after taking account of any distributions to it pursuant to (b) to (c) above) the Founder Partner has received an amount equal to **[catch-up percentage derived from Carried Interest Share]**% of the Preferred Return **[Note: Applicants may suggest alternative arrangements, so long as the Preferred Partner receives its full profit share];**
- (f) sixth, as to the Preferred Partner's Profit Share to the Preferred Partner, the Carried Interest Share to the Founder Partner and the remainder to the Investors other than the Preferred Partner (pro rata to the amount of their respective Commitments); and
- (g) finally, at the end of the life of the Partnership, any balance remaining after the payments referred to above, in repayment of Capital Contributions in accordance with clause 13.5.

Distributions to Investors pursuant to this clause 10.1.1 shall be applied first in repayment of their Outstanding Loans (if any), save that distributions to the Preferred Partner shall be applied in payment of the Prioritised Return prior to the repayment of Outstanding Loan. Any date or time when the Outstanding Loans at that date or time shall have been repaid and the Preferred Return determined at such date or time shall have been paid shall be a Repayment Date and when any further tranches of Loan Commitment are drawn down after a Repayment Date, any payments made to Investors after that Repayment Date shall be treated as having been applied first in paying the Prioritised Return, then in repaying the Outstanding Loans and then in paying the Preferred Return for the purpose of determining the amount of the Preferred Return and the next Repayment Date. Where the application of clause 10.1.1(c) results in Investors receiving an

amount in excess of their Outstanding Loan, any such excess shall be applied to reduce the aggregate Outstanding Loan on any subsequent drawdown.

10.1.2 Notwithstanding the provisions of clause 10.1.1, the amount to which the Founder Partner would be entitled pursuant to clause 10.1.1 shall be reduced by an amount equal to the Carried Interest Share applied to:

(a) the aggregate of all Net Income and Capital Proceeds deriving from any Prohibited Investment; less

(b) the Acquisition Cost of such Investment,

or, where such sum is less than zero, the amount to which the Founder Partner would be entitled pursuant to clause 10.1.1 shall be reduced by the whole of (b) minus (a) above.

10.1.3 Notwithstanding clause 10.1.1, all Deposit Income shall be distributed only to the Investors, pro rata to their Outstanding Loans, or if the Outstanding Loans are zero, their Commitments.

10.2 Restriction on Distributions to the Founder Partner and the Preferred Partner

10.2.1 Notwithstanding the provisions of clause 10.1.1 the Manager shall retain within the Partnership such part of the Income and Capital Proceeds which would have been distributable to the Founder Partner pursuant to clause 10.1.1 and such amounts shall be placed in a separate account for the benefit of the Founder Partner ("the Retained Account") and shall only be released in accordance with clauses 10.2.2, 10.2.3 and/or 10.2.4.

10.2.2 The Founder Partner shall be entitled to have distributed to it as Founder Partner cash from the Retained Account in such amount certified by the Auditors as is necessary to satisfy any charge to Taxation which has been made against it or any partner of it (or any beneficiary or settlor thereof) or against any assignee of all or part of its Share (as permitted pursuant to clause 11.1) by the Inland Revenue or any relevant tax authority in respect of any allocation to it or any such person of Net Income or Capital Gains pursuant to this Agreement (including for the avoidance of doubt any charge to taxation made in respect of any interest on the Retained Account) or otherwise pursuant to applicable law which are not distributed to the Founder Partner due to the application of clause 10.2.1, and any distribution made pursuant to this clause 10.2.2 shall not be repayable by the Founder Partner or any other person.

10.2.3 The Founder Partner shall be entitled to have distributed to it as Founder Partner cash from the Retained Account up to an amount equal to the Carried Interest Share applied to the excess (if any) of:

(i) all distributions to Partners (including those which would have been distributed but for this clause 10.2); over

(ii) Total Commitments,

after taking account of any adjustment pursuant to clause 10.1.2.

10.2.4 Upon the termination of the Partnership, if the amount in the Retained Account is greater than the entitlement of the Founder Partner under clause 10.2.3, then such part of the amount in the Retained Account (plus any interest thereon) as is greater than such entitlement of the Founder Partner shall be released and distributed to the Partners in the order set out in clause 10.1.1.

10.2.5 Any amount which would have been distributed to the Founder Partner pursuant to clause 10.1 but for the application of clause 10.2.1 shall nevertheless be taken into account in determining the balances on the income and capital accounts of the Founder Partner as if such amount shall have been distributed and such amount shall be credited to a special reserve account from which payments pursuant to clause 10.2.2 and clause 10.2.3 shall be debited.

10.2.6 Notwithstanding the provisions of clause 10.1.1 the Manager may, with the approval of the Preferred Partner, retain within the Partnership part of the Income and Capital Proceeds which would have been distributable to the Preferred Partner pursuant to clause 10.1.1 equal to the amount by which the amount so distributable exceeds the amount which would have been distributable to the Preferred Partner if clause 10.1.1(c) had referred only to the repayment of the Outstanding Loans to the Investors. Such amounts shall be placed in a separate account for the benefit of the Preferred Partner (“the Preferred Partner’s Account”). Upon the termination of the Partnership, clause 10.1.1(c) shall be deemed to be amended so as to refer only to the repayment of Outstanding Loans to Investors and, to the extent that the Preferred Partner has, including the amounts in the Preferred Partner’s Account, received an amount in excess of the amount it would have been entitled to pursuant to clause 10.1.1 had such clause included such amended clause 10.1.1(c) (“the Surplus”) then, to the extent possible, the Surplus shall be distributed to those other Partners who would have been entitled to receive such sums pursuant to such amended clause 10.1.1(c) and any balance shall be distributed to the Preferred Partner. Any interest on sums in the Preferred Partner’s Account shall be distributed pro rata to those Partners entitled to distributions from such account.

10.3 Timing of Distributions

10.3.1 Distribution of Income

Subject to the provisions of clauses 10.2 and 10.5, Income of the Partnership shall be distributed in accordance with clause 10.1, in Sterling, as soon as practicable after 31 March, 30 June, 30 September and 31 December in each year in respect of the quarters ended on such dates, or more frequently at the discretion of the Manager.

10.3.2 Distributions of Capital

Subject to the provisions of clauses 10.2, 10.4 and 10.5, Capital Proceeds shall be distributed in accordance with clause 10.1.1, in Sterling, as soon as practicable after the relevant amounts have been received by the Partnership.

10.3.3 Bank Account

Pending distribution of sums pursuant to clauses 10.3.1 and 10.3.2 above, all such amounts shall be placed in an account with a United Kingdom clearing bank or, with the consent of the Preferred Partner, another financial institution.

10.4 Re-investment

The Manager shall not be obliged to cause the Partnership to distribute Income and Capital Proceeds where the Partnership is entitled to re-invest these amounts. The Manager shall be entitled to cause the Partnership to re-invest:

- (a) amounts of Net Income or Capital Gains which are allocated to the General Partner in satisfaction of loans (including drawings) made to the General Partner in respect of the General Partner’s Share pursuant to clause 9.4 when such loans have been funded by draw down of Loan Commitments from Investors; and
- (b) the proceeds of deposits or short-term negotiable instruments made or acquired pursuant to clause 5.3(p) pending the application of monies drawn down pursuant to this Agreement in making Investments, meeting liabilities of the Partnership or paying the General Partner's Share.

10.5 Limitations on Distributions

The Manager shall not be obliged to cause the Partnership to make any distribution pursuant to this clause 10:

- (a) unless there is sufficient cash available therefor;
- (b) which would render the Partnership insolvent; or
- (c) which, in the opinion of the Manager, would or might leave the Partnership with insufficient funds or profits to meet any future contemplated obligations, liabilities or contingencies (including, without limitation, the General Partner's Share in respect of any Accounting Period).

10.6 Distributions in specie

10.6.1 Where Investments have achieved a Quotation, the Manager shall be entitled, where such Investments are freely tradable and not subject to any lock up or other dealing restrictions on sale, transfer or any such distribution, to make a distribution of assets in specie in relation to the Investment concerned, on the basis set out in this clause 10.6 at the Value attributable to such assets. Any Investments which would otherwise be distributed to the Preferred Partner pursuant to this clause 10.6.1 shall instead be sold for the best price readily obtainable and the proceeds thereof distributed to the Preferred Partner.

10.6.2 Distributions in specie of securities of any class shall be made on the same basis as distributions of Capital Proceeds such that each Partner entitled to receive such distribution shall receive a proportionate amount of the total securities of such class available for distribution, or (if such method of distribution is for any reason impracticable) such that each Partner shall receive as nearly as possible a proportionate amount of the total securities of such class available for distribution together with a balancing payment in cash in the case of any Partner who shall not receive the full proportionate amount of securities to which he would otherwise be entitled hereunder. Any such distribution in specie shall be applied in the order set out in clause 10.1 at the Value of the Investment concerned. Where the distribution in specie is made contemporaneously with the Investment achieving a Quotation, the Value of the Investment concerned shall be the listing price of the Investment. Where a distribution in specie is made of securities which are already quoted on a stock exchange the Value of such securities shall be the weighted average of the quoted mid-market closing price of those securities in the five previous trading days prior to such distribution (or if shorter the period from the date of listing) and the five trading days following such distribution.

10.6.3 The provisions of this clause 10.6 apply to distributions in specie during the life of the Partnership and shall be without prejudice to the provisions of clause 13.5.

10.7 Tax Credits

For the purposes of clause 9 and this clause 10, the amount of income allocated or distributed to Partners shall be deemed to be the aggregate of such income and any United Kingdom income tax withheld from or tax credits attached to dividends or interest ("Tax Credits"), provided that where in the case of the General Partner any part of the General Partner's Share paid pursuant to clause 10.1 includes Tax Credits it shall be entitled to an interest free loan from the Partnership of an amount equal to the amount of such Tax Credits until such time as the General Partner obtains repayment from the tax authorities of an amount equal to the Tax Credits or it (or its partners) receives an equivalent benefit or, if earlier, the date on which the General Partner (or its partners) is liable to pay corporation tax on that income, at which time it shall repay such loan.

10.8 Drawings by the General Partner

- 10.8.1 The General Partner shall be entitled to make drawings out of the Partnership's cash funds, on the First Closing Date in respect of the period from such First Closing Date up to the first quarter date thereafter and thereafter on, or on the first Business Day following, 31 March, 30 June, 30 September and 31 December in each year, on account of the General Partner's Share for the quarter commencing on that date. If at any time during or after a relevant Accounting Period it should be discovered that drawings made in respect of that relevant Accounting Period are less or more than the amount that the General Partner is entitled to receive (whether by profit share pursuant to clause 8.1 or by interest-free loan pursuant to clause 8.4) pursuant to this Agreement then additional drawings shall be made to make good the shortfall or the excess shall promptly be repaid to the Partnership, as the case may be.
- 10.8.2 In no circumstance (except to the extent of any excess drawings as stated in clause 10.8.1 above) shall any drawings made pursuant to this clause 10.8 be repayable by the General Partner other than by a set-off against allocations of Net Income and Capital Gains.

11 Transfer or Assignment of Interests or Shares

11.1 Assignment of Rights and Obligations and Retirement of the General Partner

The General Partner shall not sell, assign, transfer, exchange, pledge, encumber or otherwise dispose of all or any part of its rights and obligations as a general partner, other than to an Associate of the Manager or the General Partner (whereupon in the case of an assignment or transfer, such Associate shall become the General Partner in place of the transferor), or voluntarily withdraw as the general partner of the Partnership, without the approval of Investors by an Investors' Consent.

11.2 Restriction on Assignment of Interest of Limited Partners

- 11.2.1 No sale, assignment, transfer, exchange, pledge, encumbrance or other disposition (including the granting of any participation) ("Transfer") of all or any part of the Interest or Share of a Limited Partner other than the Preferred Partner, whether direct or indirect, voluntary or involuntary (including, without limitation, to an Associate or by operation of law, save to the extent set out in clause 11.2.3), shall be valid or effective except with the prior written consent of the Manager (which consent can be given or withheld in their sole and absolute discretion for any reason whatsoever) and provided that the transferee is not a Fund Investor. In deciding whether or not to admit any prospective Limited Partner to the Partnership, the Manager shall have regard to the reputation of such person and whether the admission of such person could be detrimental to the reputation of the Preferred Partner and will not admit any such person to the Partnership unless, in its reasonable opinion, no such detriment would occur. The Preferred Partner shall notify the Manager of any sale, assignment or transfer of all or part of its Interest in the Partnership. The Manager shall, in relation to each such transferee comply with all anti money laundering and related laws, rules and regulations required by the FSA or otherwise.
- 11.2.2 The Transfer of any Interest or Share in the Partnership shall not cause the dissolution of the Partnership.
- 11.2.3 On the death of any Limited Partner, being a natural person, such Limited Partner's personal representatives shall automatically become Limited Partners in his or her place and shall not be considered to be Defaulting Investors pursuant to clause 4.4 and may, on or before the later of (i) the expiry of six months from the decease of such Limited Partner or (ii) one month following the Grant of Representation in respect of the estate of such Limited Partner, elect to assume all the rights and obligations of such Limited Partner and pay all amounts then due from such Limited Partner to the Partnership, or in default of such election and payment:

- (a) such Limited Partner shall not be required to advance its proportion of the Loan Commitment relating to the Acquisition Cost of further Investments or the payment of expenses or loans on account of the General Partner's Share;
- (b) such Limited Partner shall not be allocated or be entitled to receive any distribution of Income or Capital Proceeds in respect of any Investment in which it does not participate pursuant to sub-paragraph (a) above;
- (c) the Net Income and Capital Gains derived from Investments made thereafter shall not be applied towards the General Partner's Share; and
- (d) the Repayment Date, the allocation of profits and losses pursuant to clauses 8 or 9 and the distributions pursuant to clause 10 in respect of previous Investments shall be determined and applied in respect of such Investor as if it had participated in a separate partnership which had not made further Investments,

and the Manager shall be permitted to make such reasonable adjustment to the accounts of the Partners to deal equitably between them in relation to such Limited Partners as it may consider necessary.

11.3 Position of Substitute Investors

Each Substitute Investor shall be bound by all the provisions of this Agreement and, as a condition of giving its consent to any Transfer to be made in accordance with the provisions of this clause 11, the Manager shall require (and the transferring Investor shall take all necessary steps to ensure) that the proposed Substitute Investor acknowledges its assumption (in whole or, if the substitution is in respect of part only, in the proportionate part) of the obligations of the transferring Investor by agreeing to be bound by all the provisions of this Agreement and becoming a Partner and undertakes to indemnify the Partnership, General Partner and Manager in respect of any legal costs, taxes and expenses associated with such Transfer. The Substitute Investor shall not become a Partner and none of the Partnership, the General Partner or the Manager shall incur any liability for allocations and distributions made in good faith to the transferring Investor until the written instrument of transfer has been received by the Partnership and recorded in its books and the effective date of the transfer has passed.

11.4 Assignment of Interests or Shares in Violation of this Clause

No transfer of an Interest or Share in violation of this clause shall be valid or effective, and the Partnership shall not recognise the same, for the purposes of making distributions of Income or Capital Proceeds or repayments of Outstanding Loan or otherwise with respect to interests in the Partnership.

11.5 Withdrawal

Except as provided in this clause 11, no Limited Partner shall have the right to withdraw from the Partnership.

12 Meetings of the Partnership

The Manager shall convene annual meetings of the Partnership and may, whenever it thinks fit, convene other meetings of the Partnership, in any case on not less than 14 days' written notice in advance. Any Investors whose Commitments in aggregate represent 25% or more of the Total Commitments, or the Preferred Partner acting alone, may by notice in writing requisition the Manager to call a meeting of the Partnership and the Manager shall convene such a meeting for a date no later than 21 days from the date of that notice.

13 Termination and Liquidation

13.1 Termination

For so long as there are at least two Partners, the death, bankruptcy, insolvency, dissolution, liquidation or withdrawal of a Limited Partner shall not operate to terminate the Partnership and the estate or trustee in bankruptcy or receiver or liquidator of a deceased, bankrupt, insolvent or dissolved Limited Partner shall not have the right to withdraw the balances on such Limited Partner's partnership accounts or require repayment of such Limited Partner's Outstanding Loan otherwise than in accordance with this Agreement. For so long as there are at least two Limited Partners no Partner shall be entitled to dissolve the Partnership by notice. Subject as provided in clause 13.2, the Partnership shall terminate on the expiry of 10 years from the First Closing Date or shall terminate prior to such date upon the happening of any of the following events without any further action on the part of the Partners:

- (a) the bankruptcy, insolvency, expulsion, resignation, dissolution, liquidation, removal or withdrawal of the General Partner (other than pursuant to clause 13.4), unless the Partnership is reconstituted pursuant to clause 13.3; or
- (b) the agreement as to such termination by the General Partner, the Preferred Partner and of the Investors by an Investors' Consent; or
- (c) the removal of the General Partner pursuant to clause 13.4 unless, in any such case, the Partnership is reconstituted pursuant to clause 13.3.

13.2 Extension of Life of the Partnership

The life of the Partnership may be extended, by the agreement of the General Partner and of the Investors by an Investors' Consent, by up to two additional one year periods. **[Applicants are asked to specify whether any General Partner's Share shall be payable in respect of any such extension of the Partnership].** Any such election shall be without prejudice to the earlier termination of the Partnership for a reason specified in clause 13.1.

13.3 Continuation of the Partnership

13.3.1 If the Partnership would otherwise be terminated pursuant to clause 13.1(a) or (c) the Partnership may be reconstituted and its business continued pursuant, in the case of termination pursuant to clause 13.1(a), to the unanimous written consent of the Limited Partners or, in the case of termination pursuant to clause 13.1(c) pursuant to an Investors Consent, electing to continue the Partnership and electing a new General Partner, which consent must be obtained within [60] days after all Partners have been notified of the event of termination, whereupon the existing General Partner shall cease to be the General Partner and, subject to the provisions of clause 13.4, shall not be entitled to any compensation whatsoever in respect of the General Partner's Share, provided that the General Partner has received all payments to which it is entitled under clauses 9, 10.1 and 10.8 up to the date of its ceasing to be the General Partner. Notwithstanding any consent granted pursuant to this clause 13.3, on any reconstitution of the Partnership the Investment Period shall be deemed to have terminated except to the extent unanimously agreed by all Investors.

13.3.2 The General Partner, the Manager, their respective Associates and any directors or members of any such persons, shall be excluded from any vote, and their Commitments shall be excluded from Total Commitments for the purpose of any vote, pursuant to this clause 13.3.

13.4 Removal of the General Partner

13.4.1 After the first anniversary of the First Closing Date, Investors, by an Investors' Consent, may remove the General Partner. Subject as provided in clause 13.4.2, such removal of the General

Partner shall be without prejudice to the right of the General Partner to compensation for termination of its appointment in the amount of the General Partner's Share for the six months preceding removal, provided that, if such removal occurs or is only to take effect after a six month or greater suspension period pursuant to clause 4.6.3, no further compensation shall be payable.

13.4.2 The General Partner may be removed in like manner, or by the Preferred Partner alone, at any time without compensation for termination of its office:

- (a) if such termination is as a result of the General Partner's or Manager's fraud, negligence, wilful misconduct, bad faith or reckless disregard of its obligations and duties as General Partner or Manager (as applicable) of the Partnership (including, in each case, such conduct in relation to the Partnership by their respective Associates, members, directors or employees); or
- (b) following the conviction of any of the Named Executives of any criminal offence (other than a minor road traffic offence); or
- (c) following any material breach of the Investment Policy by the Manager (which, for the purposes of this clause 13.4.2(c), includes, without limitation, causing the Partnership to acquire two or more Investments falling outside the Investment Policy during the life of the Partnership but does not include causing the Partnership to make only one Investment falling outside the Investment Policy if, at the time of investment, the Manager believed on reasonable grounds and having made proper enquiries that the Investment was within the Investment Policy); or
- (d) following a failure to comply with a Drawdown Notice by the General Partner, the Founder Partner or any Associate of the General Partner or Founder Partner;
- (e) following any material breach of this Agreement or the Management Agreement by the General Partner or the Manager respectively;
- (f) following any material breach by the Manager, or its Associates, members, directors or employees, of the rules of the FSA.

13.4.3 Immediately following the removal of the General Partner pursuant to clause 13.4.1 above, the Carried Interest Share shall be reduced to a percentage of the original Carried Interest Share, calculated as follows:

- (a) 12% cumulatively for each calendar year or part calendar year which has passed from the First Closing Date up to the fifth anniversary of the First Closing Date; and thereafter
- (b) 8% cumulatively for each calendar year or part calendar year thereafter

up to a maximum total of 100%.

13.4.4 Immediately following the removal of the General Partner pursuant to clause 13.4.2 above the Carried Interest Share shall be reduced to zero and the Founder Partner shall thereafter no longer be entitled to distributions (other than in its separate capacity, if any, as an Investor).

13.4.5 The General Partner, the Manager, their respective Associates and any directors or members of any such persons, shall be excluded from any vote, and their Commitments shall be excluded from Total Commitments for the purposes of any vote, pursuant to clause 13.4.

13.5 Liquidation of Interests of Partners

13.5.1 Save as provided in clauses 3.1 and 4.4, a Partner shall not have the right to the return of its Capital Contribution except upon the liquidation of the Partnership.

- 13.5.2 Subject to clause 13.5.6, the General Partner shall not be personally liable to any other Partner for the return of Capital Contributions or Outstanding Loans.
- 13.5.3 Upon termination or liquidation of the Partnership (unless reconstituted under clause 13.3) no further business shall be conducted except for such action as shall be necessary for the orderly winding-up of the affairs of the Partnership, the protection and realisation of the Partnership Assets and the distribution of the Partnership Assets amongst the Partners. The Manager shall act as liquidating trustee provided however that if the Partnership is terminated for a reason set forth in clause 13.1(a) or (c), unless the Partnership is reconstituted pursuant to clause 13.3, the Limited Partners shall designate some other Authorised Person to act as a liquidating trustee or trustees. In either case, the liquidating trustee or trustees shall receive such remuneration for so acting as Investors by an Investors' Consent shall agree.
- 13.5.4 Upon termination of the Partnership, the liquidating trustee or trustees may sell any or all of the Partnership Assets on what it considers to be the best terms available or may, at its or their discretion and whether or not the same are subject to a Quotation, distribute all or any of the Partnership Assets in specie in accordance with clause 10 at the Value determined by the Manager. The liquidating trustee or trustees shall cause the Partnership to pay all debts, obligations and liabilities of the Partnership and all costs of liquidation and shall make adequate provision for any present or future contemplated obligations or contingencies in each case to the extent of the Partnership Assets. The remaining proceeds and assets (if any) shall be distributed amongst the Partners on the basis set out in clause 10. Partners receiving a distribution of Partnership Assets in specie shall be bound by the provisions of any agreements relating to such Partnership Assets, to the extent such agreements so provide. Any Investments which would otherwise be distributed to the Preferred Partner pursuant to this clause 13.5.4 shall instead be sold for the best price readily obtainable and the proceeds thereof distributed to the Preferred Partner.
- 13.5.5 Upon termination of the Partnership, no Partner shall, subject to clause 13.5.6, be liable to any other Partner for repayment of such other Partner's Outstanding Loan.
- 13.5.6 Notwithstanding the provisions of clauses 13.5.2 and 13.5.5 a Partner who has an Outstanding Loan may sue the Partnership in debt for repayment of its Outstanding Loan if:
- (a) repayment of its Outstanding Loan has become due in accordance with clause 10; and
 - (b) there has been a failure to make such repayment; and
 - (c) there are gross assets of the Partnership which should have been used in repayment of its Outstanding Loan in accordance with the provisions hereof which have not been so used;

but in such a case the liability of the Partnership to the Partner suing shall be limited to the gross assets of the Partnership referred to in clause 13.5.6(c) above.

14 Reports and Valuation

14.1 Reports

As soon as practicable after and in any event within 60 days of the end of each quarter ending on 31 March, 30 June, 30 September and 31 December in each year the Manager shall prepare and send to each Limited Partner a report in the form and containing the information provided for in the reporting template set out as Appendix 1 of the BVCA Reporting Guidelines effective from 1 August 2003, subject to such amendments as are agreed by an Investors' Consent and in any event containing:

- (i) a measure of the performance of the Portfolio Company compared with the Manager's forecasts, together with a brief analysis of any significant deviation;
- (ii) for each Investment in each Portfolio Company, the length of time since the date of acquisition of such Investment;
- (iii) details of the Investments purchased and of Investments sold and otherwise disposed of during the relevant period; and
- (iv) a statement of the Investments and other property and assets of the Partnership together with a brief commentary on the progress of Investments including any significant developments or events affecting Portfolio Companies;
- (v) the Manager's unaudited Valuation of each Investment and a portfolio Valuation as at the end of the relevant quarter together with, in the case of the Preferred Partner, the Valuation of the Preferred Partner's Interest in the Partnership on such basis as may be agreed with the Preferred Partner; and
- (vi) in the case of the Preferred Partner alone, details of all prospective Investments and investment opportunities considered by the Manager since the date of the last such report including each of those items set out in clause 14.3; and
- (vii) such other information as the Preferred Partner may reasonably require.

The Manager will ensure that all such information received from Portfolio Companies may be disclosed to the Preferred Partner, including obtaining any necessary waivers or consents in respect of any confidentiality undertakings, any Data Protection Act 1998 (as amended or replaced from time to time) requirements or in respect of any other related legislation.

14.2 On or prior to the end of each month the Manager shall prepare and send to each Investor a forecast of the projected funding requirements of the Partnership for the following three months and the intended use of any sums expected to be advanced.

14.3 In respect of each Investment acquired by the Partnership, the Manager shall as soon as reasonably practicable and in any event within 30 days of the date of acquisition send to the Preferred Partner (or its representative) the following information in respect of the Portfolio Company in question:

- Portfolio Company name
- Portfolio Company postcode
- Management team; listing name, years in sector and previous business ownership
- Companies House Company Registration Number (CRO), or VAT Registration Number
- Product/service description and 4 digit Standard Industrial Classification (SIC) code(s)
- Date of inception / start up
- Current revenues (dated)
- Number of full time staff at time of application
- Brief company plans for the new capital
- Confirmation that the Manager has given the Portfolio Company written notice that the Government or its agent may contact the Portfolio Company as required for any future evaluation of the ECF programme

- Agreement that a non-confidential Business Plan may be used for any future Government evaluation of the Enterprise Capital Fund programme
- The number of the Portfolio Company's directors who are from an ethnic minority (such information the Manager shall request but not require)
- The number of the Portfolio Company's directors who are female (such information the Manager shall request but not require)

14.4 Private Investor

Each Partner which is not a Private Investor located in the United Kingdom confirms that it requires the reports referred to in clause 14.1 instead of any periodic statements or other reports which might otherwise from time to time be required by the FSA. Each Partner which is or which may in future become a Private Investor located in the United Kingdom confirms that any periodic statement or other report from time to time required by the FSA shall be provided annually (or at such other intervals as may from time to time be the longest permitted by the FSA).

15 Exculpations and Indemnities

15.1 Exculpation

None of the Indemnified Persons shall have any liability for any loss to the Partnership or the Partners arising in connection with the services to be performed hereunder or pursuant hereto, or under or pursuant to any management Agreement or other agreement relating to the Partnership or its respect of services as a Nominated Director or which otherwise arise in relation to the operation, business or activities of the Partnership save in respect of any matter resulting from such Indemnified Person's fraud, wilful misconduct, bad faith or reckless disregard for their obligations and duties in relation to the Partnership or, save in the case of Indemnified Individuals, their negligence, or, in the case of the Manager, any matter resulting from a breach of any duty it may have, or any liability it may incur, to the Partnership or any Investor under the rules of the FSA, FSMA, or any regulations or legislation created thereunder.

15.2 Indemnity

The Partnership agrees to indemnify and hold harmless out of Partnership Assets the Indemnified Persons against any and all liabilities, actions, proceedings, claims, costs, demands, damages and expenses (including legal fees) incurred or threatened arising out of or in connection with or relating to or resulting from the Indemnified Person being or having acted as a general partner or manager in respect of the Partnership or arising in respect of or in connection with any matter or other circumstance relating to or resulting from the exercise of its powers as a general partner or manager or from the provision of services to or in respect of the Partnership or under or pursuant to any management agreement or other agreement relating to the Partnership or in respect of services as a Nominated Director or which otherwise arise in relation to the operation, business or activities of the Partnership provided however that any Indemnified Person shall not be so indemnified with respect to any matter resulting from their fraud, wilful misconduct, bad faith or reckless disregard for their obligations and duties in relation to the Partnership or, save in the case of Indemnified Individuals, their negligence, or, in the case of the Manager, any matter resulting from a breach of any duty it may have, or any liability it may incur, to the Partnership or any Investor under the rules of the FSA, FSMA, or any regulations or legislation created thereunder.

16 Miscellaneous

[The provisions below may not be suitable for all potential ECF Managers. Where these provisions are not suitable, applicants should indicate and justify the alterations proposed and demonstrate that the interests of all investors (including the government) will be protected.]

16.1 Exclusivity and Conflicts of Interest

16.1.1 Neither the General Partner nor the Manager shall, without an Investors' Consent, close or manage a new equity investment fund having an investment policy substantially similar to that of the Partnership prior to:

- (a) 70% of the Total Commitments being invested, committed or allocated for specific investments or further financings of Portfolio Companies;
- (b) the end of the Investment Period; or
- (c) the termination of the Partnership.

whichever shall be soonest, provided that this clause 16.1.1 shall only apply if and for so long as [XYZ] or one of its Associates remains as general partner of the Partnership or [GHI] or one of its Associates remains as manager of the Partnership.

16.1.2 The Manager hereby agrees that, until the end of the Investment Period or, if earlier, the date the Partnership ceases to make New Investments, it shall procure that all investment opportunities received by the Manager or its Associates falling within the Investment Policy will first be offered to the Partnership to the fullest extent deemed prudent (and in the best interests of the Partnership) by the Manager.

16.1.3 **[Applicants may specify alternative arrangements: for example, an automatic policy of co-investment where a deal falls within the Investment Policy of both the ECF and another fund].** The Partnership shall not invest in any Portfolio Company in which any of the Manager, the General Partner, any of their Associates, any of their respective directors, officers or employees or any family member of such person, or any funds which any such persons manage or advise, hold securities or have the right to acquire securities, save:

- (a) on the same terms and conditions, and at the same time, as an unrelated third party investor who is acquiring securities whose cost is at least 50% of the Acquisition Cost of the equivalent Investments which are to be acquired by the Partnership; or
- (b) where such conflict of interest has been approved by an Investors' Consent.

16.1.4 The General Partner and Manager shall not, and shall procure that none of their Associates or any of their respective directors, officers or employees or any family member of such person shall acquire any securities in any Portfolio Company, or buy Investments from or sell Investments to the Partnership, other than as set out in clause 5.11 or as otherwise agreed by an Investors' Consent.

16.2 Confidential Information

16.2.1 Subject to clause 16.2.2 the Limited Partners shall not, and each Limited Partner shall use all reasonable endeavours to procure that every person connected with or associated with such Partner shall not, disclose to any person, firm or corporation or use to the detriment of the Partnership or any of the Partners (other than in connection with claims against such parties in respect of any breach of their obligations and duties under this Agreement) any confidential information which may have come to its or their knowledge concerning the affairs of the Preferred Partner, HM Government, the Partnership or Portfolio Companies or proposed investments, unless required to do so by law or by a court of law or by the regulations of any relevant stock exchange or the FSA or any other regulatory authority to which any of the Partners or any such person connected or associated with a Partner is subject provided however that in respect of each Partner the foregoing obligation shall not apply to information which:

- (a) is possessed by such Partner prior to the receipt thereof from the Manager; or

- (b) becomes known to the public other than as a result of a breach of such obligations by such Partner; or
- (c) the Manager (acting reasonably) believes it is necessary to disclose to enable the Partnership to make any particular Investment; or
- (d) in the case of the Preferred Partner, is disclosed to the National Audit Office, the European Court of Auditors, any replacement body for either such organisation or any governmental body or department, or is otherwise used or disclosed by HM Government in the assessment or publication of details relating to enterprise capital funds including the disclosure to and use by third party researchers of such information in relation to the evaluation of the Partnership or the Enterprise Capital Fund programme generally and the publication of the results thereof, or other disclosure reasonably required by HM Government.

16.2.2 It is agreed that the disclosures by the Preferred Partner permitted pursuant to clause 16.2.1(d) shall include details of the geographical background, industry sectors, size or turnover of Portfolio Companies and details of the founders and management of such Portfolio Companies either on an individual or aggregated basis and similar Portfolio Company details, but, subject to this, the Preferred Partner shall not publicly disclose (other than to the National Audit Office, the European Court of Auditors, any replacement body for such organisation or other governmental body or department) any confidential information regarding a Portfolio Company which, following consultation with the Manager, the Preferred Partner considers to be potentially detrimental to such Portfolio Company.

16.2.3 Notwithstanding clause 16.2.1, a Partner shall be entitled to disclose information received by it pursuant to clauses 7.1 and 14 concerning the business or affairs of the Partnership to:

- (a) its shareholders;
- (b) its bona fide advisers and auditors;
- (c) to any governmental, regulatory or tax authorities to which such Partner is accustomed or required to report; or
- (d) if the Investor is a fund of funds (or equivalent) to such Investor's investors provided that such investors are bound by an obligation of confidentiality in respect of the use and dissemination of such information.

16.3 Investor Committee

16.3.1 Membership

The Partnership shall have an Investor Committee comprising at least two and up to [to be specified in bid] members. The Manager, in its absolute discretion, shall have power to determine the membership of the Investor Committee from time to time provided however that the members of the Investor Committee shall not include any officer, employee or executive of the General Partner, Manager or any Associate. The Manager may agree with certain Investors that the Manager will appoint persons nominated by such Investors provided that such persons shall act as members of the Investors Committee and not as agents of such Investors. The Preferred Partner shall be entitled to appoint a representative to the Investor Committee.

16.3.2 Convening of Meetings

The members of the Investor Committee shall be invited by the Manager to attend a meeting at least twice annually as the Manager may determine provided that any two members of the Investor Committee may convene further meetings. Where a meeting is convened by the Manager a report

will be circulated to the members of the Investor Committee at least one week in advance of the meeting. This report will cover the Manager's assessment of the performance of the Fund and include, inter alia, commentary on dealflow, marketing activity, investment and disposal activity, progress of portfolio companies and fund administration (including time commitments, resources deployed, conflicts of interest, complaints, compliance). The members of the Investor Committee shall be reimbursed by the Partnership for reasonable expenses incurred while acting in that capacity but shall not be otherwise compensated for their services as Investor Committee members. Representatives of the Manager shall be entitled to attend and speak at meetings of the Investor Committee.

16.3.3 Function

The function of the Investor Committee shall be to be consulted by the Manager on general policies and guidelines, prospective investment sectors, conflicts of interest in respect of the Partnership and the Investment Policy, including whether, in its opinion, a proposed investment falls within the Investment Policy. The members of the Investor Committee shall not take part in the management of the Partnership's business, nor shall they in their capacity as members of the Investor Committee carry on any regulated activity as such term is defined for the purposes of FSMA.

16.3.4 Operation

Minutes shall be taken of meetings of the Investor Committee and circulated to each member of the Investor Committee and to each Investor as soon as reasonably practicable following the meeting. Where the opinion of the Investor Committee is sought in respect of the making or disposal of any particular Investment, such opinion of the Investor Committee does not commit the Partnership to making the Investment, or allowing the disposal to occur or prohibit any such activities. Any such commitment can only be made pursuant to a decision of the Manager in accordance with the terms of this Agreement.

16.4 Previous Agreements

This Agreement supersedes and replaces the agreement dated [date] between [XYZ] and [DEF]. The Partnership is continuous with the partnership established by the said agreement of [date].

16.5 Variation of Partnership Agreement [and conflict with Information Memorandum]

16.5.1 This Agreement and the Investment Policy may only be amended (whether in whole or in part) by the written consent of the General Partner and of the Investors by an Investors' Consent, provided however that no such variation shall be made which:

- (a) shall impose upon any Partner any obligation to make any further payment to the Partnership beyond the amount of its Capital Contribution and of its Loan Commitment (if any); or
- (b) otherwise materially adversely affects the rights and interests of any Limited Partner, including without limitation any change in the distribution or in the allocation of Net Income, Net Income Loss, Capital Gain and Capital Loss;

without the affirmative consent of all Partners adversely affected thereby. This clause itself may not be amended.

16.5.2 [In the event of any conflict between this Agreement and the Information Memorandum, the terms of this Agreement shall prevail.]

16.6 Notices

16.6.1 Notices which may be or are required to be given hereunder by any party to another shall, unless otherwise stated herein, be in writing and shall be deemed to have been properly given if delivered in person or if sent by express courier service or by facsimile, to the relevant party at the address given in this Agreement or such other address as may from time to time be designated by any party hereto by notice addressed to the General Partner (in the case of notice by the Limited Partners) and to each Limited Partner (in the case of notice by the General Partner or the Manager). The first address and facsimile number for each Limited Partner shall be those specified at the beginning of the Agreement or, if applicable, in its Deed of Adherence entered into pursuant to clause 2. The first addresses and facsimile numbers for the General Partner and the Manager shall be as follows:

Address for General Partner

[address and facsimile number to be inserted]

Address for Manager

[address and facsimile number to be inserted]

16.6.2 Any notice will be effectively served and shall be deemed to be received:

- (a) on the day of receipt where any hand-delivered letter is delivered on a Business Day before or during normal working hours;
- (b) on the following Business Day, where any hand-delivered letter is delivered either on a Business Day after normal working hours or on any other day;
- (c) on the second Business Day following the day of posting from within the United Kingdom of any letter sent by post office inland first class recorded delivery mail postage prepaid;
- (d) on the [third] Business Day following the day of posting to an overseas address of any prepaid [registered] letter;
- (e) on the day of transmission where any facsimile or, where applicable, any email is transmitted on a Business Day before or during normal working hours; or
- (f) on the following Business Day where any facsimile or, where applicable, any email is transmitted either on a Business Day after normal working hours or on any other day.

16.7 Auditors

16.7.1 The Auditors may resign from office or be removed at any time by the Manager.

16.7.2 In the event of resignation or removal, the Manager shall invite the outgoing Auditors to send a written notice to each of the Limited Partners stating that there are no circumstances connected with their resignation or removal which they consider should be brought to the attention of the Limited Partners or a statement of any such circumstances.

16.7.3 The Manager shall appoint such firm of Chartered Accountants which are part of an internationally recognised accounting firm as it may in its discretion think fit to fill any vacancy arising in the office of the Auditors to the Partnership.

16.8 Non-Recognition of Trust Arrangements

The General Partner shall treat those Limited Partners registered as the Limited Partners of this Partnership under the Act as the Limited Partners of the Partnership under this Agreement and shall not (other than as agreed otherwise herein) recognise any trust arrangement or other

arrangement under which any such Limited Partner may hold its interest in the Partnership whether or not such arrangement shall have been notified to it.

16.9 Agreement Binding Upon Successors and Assigns

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

16.10 Execution in Counterpart

This Agreement may be executed in any number of counterparts, each of which taken together shall be deemed to constitute one and the same agreement and each of which individually shall be deemed to be an original, with the same effect as if the signature on each counterpart were on the same original.

16.11 Governing Law

This Agreement and the rights, obligations and relationships of the parties hereto under this Agreement [and in respect of the Information Memorandum] shall be governed by and construed in accordance with the laws of England and all the parties irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement [or the Information Memorandum] or the acquisition of Commitments, whether or not governed by the laws of England, and that accordingly any suit, action or proceedings arising out of or in connection with this Agreement [or the Information Memorandum] or the acquisition of Commitments shall be brought in such courts. The parties hereby waive, to the extent not prohibited by applicable law, and agree not to assert by way of motion, as a defence or otherwise, in any such proceeding, any claim that it is not subject personally to the jurisdiction of such courts, that any such proceeding brought in such courts is improper or that this Agreement [or the Information Memorandum], or the subject matter hereof or thereof, may not be enforced in or by such court.

16.12 Agent for service of process

Unless otherwise agreed by the Manager each of the Investors not resident in the United Kingdom shall, by signing a Deed of Adherence, be treated as having appointed the General Partner as its agent for the service of process in England for any matter or dispute arising out of or in connection with this Agreement (other than a matter or dispute to which such Investor and the General Partner are opposing parties), service upon whom shall be deemed completed whether or not forwarded to or received by the relevant appointor. Without prejudice to the foregoing, the General Partner shall, forthwith upon being in receipt of service of process in its capacity as such agent, send a copy of all documents so served on it by courier to the relevant appointor.

Nothing contained in this Agreement shall affect the right to serve process in any other manner permitted by law or the right to bring proceedings in any other jurisdiction for the purposes of the enforcement or execution of any judgement or other settlement in any of the courts.

16.13 No Right to Partition

Each Partner irrevocably waives during the term of the Partnership any and all rights to maintain an action (whether by law or equity) for partition with respect to any or all of the Partnership Assets.

16.14 Severability

If any clause or provision of the Agreement shall be held to be invalid or unlawful in any jurisdiction, such clause or provision shall only be ineffective to the extent of such invalidity or

unenforceability. The remainder of this Agreement shall not be affected thereby and shall remain in full force and effect and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

16.15 Contracts (Rights of Third Parties) Act 1999

Nothing in this Agreement confers any right on any person (other than the parties hereto) pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise.

16.16 Waiver

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

16.17 Reproduction of Documents

This Agreement and all documents relating thereto, including, without limitation, any consents, waivers, amendments and modifications which may hereafter be executed, and certificates and other information previously or hereafter furnished to any Partner, may be reproduced by it by any photographic, microfilm, micro card, miniature photographic or other similar process, and any Partner may destroy any original document so reproduced. The Partnership, the General Partner and each Limited Partner agree and stipulate that any such reproduction shall be as admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by a Partner in the regular course of business) and that enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

This limited partnership agreement is executed as a deed by the parties and is delivered and takes effect on the date at the beginning of this limited partnership agreement.

SCHEDULE 1

Investment Policy

[THIS DRAFT SCHEDULE SETS OUT THE MANDATORY CONDITIONS THAT WILL APPLY TO ALL ECFS. IN ADDITION, THE GOVERNMENT WILL WISH TO INCLUDE ADDITIONAL PROVISIONS TO ENSURE THAT ECFS ARE BOUND TO ADHERE TO THE INVESTMENT MANDATE THEY SPECIFIED IN THEIR BIDS. SOME SCENARIOS AND EXAMPLE PROVISIONS ARE INCLUDED AT THE END OF THIS SCHEDULE]

1 *Specific Criteria*

1.1 [TO BE SPECIFIED IN BIDDING MATERIALS]

1.2 Investments will be made within the guidelines, descriptions and proposals set out in the Bidding Materials and shall only be acquired by the Partnership where there is a realistic and significant prospect that the Investment will earn a material capital gain for the Partnership.

1.3 Investments must be made within the terms of the State aid clearance given in respect of the Commitment of the Preferred Partner to the Partnership and disclosed to the Manager.

2 *Investment Size*

2.1 The Partnership may only acquire Investments in a Portfolio Company where the Total Initial Investment does not exceed £2 million (including for the avoidance of doubt any bridging or underwriting investments).

2.2 Initial Investments in any Portfolio Company shall only be acquired where supported by a business plan that demonstrates, insofar as is foreseeable to the Manager acting in good faith and having made reasonable enquiry, that the Portfolio Company will not require further funding from third-party sources within six months of the date of acquisition of the initial Investment (other than debt finance with no actual or potential interest in the equity share capital).

2.3 The Partnership may not acquire further Investments in a Portfolio Company or any of its Associates within six months of the date of acquisition of the Partnership's first Investment in such Portfolio Company, unless the aggregate of the Total Initial Investment and Total Subsequent Investment immediately after such further Investment would not exceed £2 million.

2.4 The General Partner and Manager shall each procure that neither their Associates nor the Named Executives nor their Associates shall acquire any Investment in any Portfolio Company within a period of six months of the date of acquisition by the Partnership of its first Investment in such Portfolio Company, unless such Investment is acquired at the same time and on the same terms as , or if on different terms, then terms no better, in the reasonable opinion of the Manager than, the Investment by the Partnership.

2.5 After a period of six months has elapsed following the date of acquisition by the Partnership of its first Investment in any Portfolio Company, the Partnership may not acquire further Investments in such Portfolio Company or any of its Associates unless the total Direct Acquisition Cost of all Investments in such Portfolio Company and its Associates acquired at any time by the Partnership will not exceed £4 million, and either:

- (a) the total Direct Acquisition Cost of all the Investments acquired by the Partnership in such Portfolio Company and its Associates will not exceed £2 million; or
- (b) The total Direct Acquisition Cost of all the Partnership's Investments in the Portfolio Company will not exceed 10% of Total Commitments and the acquisition of the

Investment by the Partnership is necessary in the reasonable opinion of the Manager, based on reasonable grounds, to prevent or reduce dilution of the Partnership's proportion of the equity share capital of the Portfolio Company where such dilution would be brought about by an investor who is not an Associate of an Investor of the Partnership.

2.6 The Partnership shall only acquire Investments in Portfolio Companies which meet the definition of a Micro, Small or Medium-Sized Enterprise pursuant to the European Commission Recommendation of 6 May 2003 as described in the Official Journal of the European Union of 20 May 2003 under reference L124, and are expected following such Investment to continue to so qualify. For the avoidance of doubt, any special purpose vehicle used by the Partnership in the acquisition of Investments shall be disregarded for this purpose.

3 *Investment Types*

3.1 The Partnership shall not acquire Investments in any Portfolio Company that, at the time of acquisition of such Investment, operates in any of the restricted sectors referred to below or is expected to operate in any of such restricted sectors in the future:

- (a) synthetic fibres and yarns;
- (b) motor vehicles;
- (c) ship building;
- (d) steel (European Community) products;
- (e) steel (non-European Community) products;
- (f) coal;
- (g) transport; and
- (h) the production (including the relevant means of productions in fisheries and aquaculture sectors), processing or marketing of products listed in [Annex I referred to in Article 32 of the EC Treaty.]

3.2 Investments by the Partnership shall be in businesses whose principal place of business is in the United Kingdom, or where the Investment by the Partnership is predominantly related to, or demonstrably for the benefit of, the economy of the United Kingdom in each case at the time of the acquisition of the first Investment by the Partnership.

3.3 Notwithstanding the above, the Partnership may not acquire any Investment in any Portfolio Company which, at the time of acquisition of such Investment, contravenes the law or accepted standards of moral or ethical behaviour, or is associated with such activities. In the case of doubt, the Manager may consult with the Investor Committee as to the type of Investment proposed to be made, and the Manager and the Partnership shall not be considered to be in breach of this restriction when following the guidance subsequently provided by the Investor Committee.

3.4 Investments acquired by the Partnership shall take the form of the subscription, commitment or advance of additional funds to a Portfolio Company and not the purchase of securities from existing shareholders, creditors or other investors, save where the Partnership is supplying finance to support a change of ownership of the Portfolio Company (being a situation where not less than 80% of the issued equity share capital of the Portfolio Company will thereafter be held by persons who were not, directly or indirectly, shareholders immediately prior thereto).

3.5 The Partnership shall not acquire Investments directly, or via a special purpose vehicle, in any Portfolio Company that, at the time of acquisition of such Investment, does not carry on a

“qualifying trade” as defined in paragraph 4 of schedule 28B to the Income and Corporation Taxes Act 1988, as amended from time to time.

- 3.6 Notwithstanding any other provision of this Agreement, the Partnership may not acquire Investments in a Portfolio Company:
- (a) which is not an "unlisted company" as defined in the Financial Services and Markets Act 2000 (Financial Promotion) Order 2005 (and for the avoidance of doubt such definition shall apply to any of the shares of such Company and shall exclude any Portfolio Company where any securities of such Portfolio Company are admitted to trading on Plus Markets;
 - (b) in any hostile transaction, where the investment is opposed by the majority of directors or shareholders of the Portfolio Company;
 - (c) in derivatives and similar securities; and
 - (d) in loan finance or debt instruments with no associated equity investment or warrants or other rights to acquire equity securities in the Portfolio Company which are acquired with the reasonable expectation that such warrants or other rights will be exercised.

[THE FOLLOWING ARE EXAMPLES OF ADDITIONAL PROVISIONS THAT APPLICANTS MIGHT SPECIFY IN THEIR BIDS, TO ASSURE THE GOVERNMENT THAT THE PROPOSED INVESTMENT STRATEGY WILL BE ADHERED TO IN PRACTICE.]

Scenario 1: *An applicant proposes to invest in early-stage businesses in the healthcare sector in a particular area of the UK. It plans to undertake initial investments of no more than £1 million. However, during the course of its business, it is likely to see some interesting business plans that fall outside this remit, for example because they are seeking more than £1 million, or because they are in businesses that are seeking expansion capital.*

In this case, the applicant might propose additional provisions in the Investment Policy, such as:

- (a) *no more than [10]% of Total Commitments will be invested in Portfolio Companies that, at the time of acquisition of the Partnership’s first Investment, were not ‘early stage’ companies (as defined by the British Venture Capital Association);*
- (b) *in Schedule 1, (the Investment Policy), all references to “£2 million” will be changed to “£1 million”, save that up to [10]% of Total Commitments may be invested in Portfolio Companies above the amounts set out in Schedule 1 as so amended, subject to the provisions of the original Schedule 1 being met in relation to those Investments;*
- (c) *investments will be made only in Portfolio Companies that operate in the healthcare sector; and*
- (d) *no more than [10]% of Total Commitments will be invested in Portfolio Companies that are not active in the [specified] geographical area.*

NB: additional provisions that breach those set out in paragraphs 1, 2, 3 of Schedule 1 will not be permitted.

Scenario 2: *An applicant proposes to invest in a balanced portfolio of companies in a range of sectors throughout the UK, with broad targets for:*

15% of funds to be invested in ‘seed’ companies, with an upper initial investment limit of £1m

35% in other ‘early-stage’ companies, with an upper initial investment limit of £1m

35% in ‘expansion’ capital, with an upper initial investment limit of £2m

15% in MBO/MBI/others, with an upper initial investment limit of £2m

However, these are only broad targets, and the fund will need an element of flexibility to respond to the areas in which quality deal flow is strongest.

The applicant might propose additional provisions to cover:

- (a) at least 10% of the Direct Acquisition Cost of initial Investments [will/are expected to] be made in 'seed' companies (as defined by the British Venture Capital Association);*
- (b) at least 30% of the Direct Acquisition Cost of initial Investments [will/are expected to] be made in 'early-stage' companies (as defined by the British Venture Capital Association); and*
- (c) no more than 60% of the Direct Acquisition Cost of initial Investments will be made in companies that are not 'seed' or 'early-stage' as set out above.*

SCHEDULE 2

[Form of Drawdown Notice]

To: [Investor]
[Address]

For the attention of: []

Date: 200[]

[Name of ECF]
[Name of Manager]
[Address]

Dear Sirs

Pursuant to clause 4.1 of the Partnership Agreement relating to [Name of ECF] dated [] 200[], you are hereby to required advance the sum set out below to the account of the Partnership set out below, on or before the date set out below, being at least 10 business days from the date hereof.

Sum required: £[]

Payment Date: [] 200[]

Bank name and address: []

Account number: []

Sort code: []

The sums so advance by limited partners will be used as follows:

.....
.....
.....

[Set out summary details of the proposed investment (if any), including the nature of the business of the prospective Portfolio Company.]

We hereby confirm that the proposed Investment described above (if any) falls within the Investment Policy.

[Give reasons if not otherwise apparent from the information set out above.]

.....
For and on behalf of
[Manager]

SCHEDULE 3

[Name of ECF]

Deed of Adherence for Investors wishing to become Limited Partners

To: ***[General Partner and Manager]***

APPLICANT DETAILS

Name of Applicant (full legal name)	
Commitment (insert amount in Sterling) (see paragraph 4 below)	£
Applicant 's Postal Address	
Name of Principal Contact	
Telephone	
Facsimile	
Bank Account Details for distributions	Bank Branch Account Number Sort Code

- 1 The Applicant hereby irrevocably applies to become a limited partner in *[Name of ECF]* ("the Partnership"), a limited partnership registered under the Limited Partnerships Act 1907, on the terms of the Partnership Agreement sent to the Applicant prior to the Applicant's admission to the Partnership, being the final agreed form limited partnership agreement which the Applicant has received and read under which the Partnership is constituted, as amended, restated or substituted pursuant to its terms from time to time ("the Partnership Agreement")-2 The Manager's acceptance of this Deed shall constitute the Applicant as a Limited Partner and an Investor on the terms of the Partnership Agreement as if the Applicant were a party to it. The Applicant acknowledges that the Manager shall, in its sole discretion, be entitled to accept this Deed of Adherence for only part of the Commitment.
- 3 The Applicant acknowledges that their Commitment shall be comprised a Capital Contribution of an amount notified by the Manager and a Loan Commitment the balance of their Commitment set out above.
- 4 The Applicant agrees to pay all of the Capital Contribution in respect of the Commitment invested by the Applicant, and accepted by the Manager on application, in accordance with the provisions of the Partnership Agreement. The Applicant agrees to pay the balance of the Commitment

invested by the Applicant, and accepted by the Manager, by way of loan in such amounts and in such tranches as set out in the Partnership Agreement.

Please tick either Box A or Box B below. If you tick Box B please provide details of beneficial holder(s):

5 The Applicant confirms that it will hold the Commitment applied for by it for itself beneficially and not as a nominee for another. A

OR

The Applicant confirms that it will hold the Commitment applied for by it as nominee for another (please provide details of the beneficial holder(s) below) B

Name of Beneficial Holder(s):

Address:

6 If the Applicant has ticked Box B in question 5 above the Applicant hereby acknowledges that the confirmations, representations and warranties given by the Applicant pursuant to this Deed are given both on behalf of itself and also separately on behalf of each of the Beneficial Holder(s) and consequently, where appropriate, references to the Applicant in this Deed shall be read as references to each of the Beneficial Holder(s).

7 The Applicant hereby declares, represents and warrants that, under the law of the jurisdiction in which the Applicant is constituted, the Applicant is a single legal entity and will, as a result, be regarded as a single legal entity in the Partnership.

8 The Applicant confirms that its subscription for a Commitment in the Partnership is made solely on the basis of the information contained in the Partnership Agreement [and the Information Memorandum issued in connection with the placing of Commitments in the Partnership] and not in reliance on any other information, statements, representations or warranties, whether oral or written whatsoever. The Applicant understands and acknowledges that the Partnership is in no way warranted, endorsed or guaranteed by the Department of Trade and Industry or HM Government. The Applicant understands and has evaluated the risks connected with a purchase of a Commitment in the Partnership.

Please tick either Box A or Box B. If you tick Box B please provide details of the Applicant's country of tax residence;

9 The Applicant confirms that it is resident in the United Kingdom for tax purposes. A

OR

The Applicant confirms that it is not resident in the United Kingdom for tax purposes and it is resident in for tax purposes. B

10 The Applicant will provide the Manager with such information as it reasonably requests from time to time with respect to its identity, citizenship, residency, ownership, tax status, business or control so as to permit the Manager to evaluate and comply with any regulatory and tax requirements applicable to the Partnership, the Investors or any Investments or proposed investments of the Partnership, provided that any confidential information so provided shall be kept confidential by the Partnership and the Manager and shall not be disclosed to any third party unless required by law or by any court of law or by any regulatory authority.

11 The Applicant hereby declares, represents and warrants that:

- (a) it has the financial ability to bear the economic risk of its investment, has adequate means for providing for its current needs and possible contingencies and has no need for liquidity with respect to its investment in a Commitment in the Partnership;
- (b) it has such knowledge and experience in financial and business matters as to be capable of evaluating the merits of, and it is able to bear the economic risk of, investment in the Partnership;
- (c) it has been given the opportunity to ask questions of, and receive answers from, the Partnership with respect to the business to be conducted by the Partnership, the financial condition and capital of the Partnership, the terms and conditions of the offering and other matters pertaining to investment in the Partnership [and has been given the opportunity to obtain such additional information necessary to verify the accuracy of the information contained in the Information Memorandum] in order for it to evaluate the merits and risks of investment in the Partnership to the extent that the Partnership possesses such information or can acquire it without unreasonable effort or expense;
- (d) it has read carefully and is purchasing a Commitment in the Partnership relying solely on the information contained in the [Information Memorandum and the] Partnership Agreement in determining to make its investment, and not on any other oral or written statement with respect to the offering of Commitments in the Partnership by the Partnership, the Manager, the General Partner, the Founder Partner, any placing agent or any partner, officer, director, employee, shareholder or affiliate of any of them;
- (e) it is aware that an investment in the Partnership involves substantial risks and have determined that a Commitment is a suitable investment for it and that, at this time, the Applicant could bear a complete loss of its investment therein;
- (f) with regard to the tax, legal, currency and other economic considerations related to this investment, it has only relied on the advice of, or has only consulted with, its own professional advisers;
- (g) it understands that under the Partnership Agreement, Limited Partners cannot withdraw from the Partnership and Commitments cannot be transferred, except as provided in the Partnership Agreement, and, consequently, it acknowledges and it is aware that it may have to bear the economic risk of investment in the Partnership until such time as the Partnership is terminated in accordance with the Partnership Agreement, which could be as late as [] years from acceptance of this application;
- (h) it is duly authorised and qualified to become a Limited Partner in, and authorised to make its Capital Contributions and Loan Commitments to, the Partnership and the individual or individuals signing this Deed and giving these warranties, as the case may be, on behalf of it has been duly authorised by it to do so and this application is, and upon acceptance by the Manager the Partnership Agreement will be, a legal, valid and binding obligation, enforceable against the Applicant in accordance with its terms;
- (i) it is not a Fund Investor as defined in the Partnership Agreement
- (j) the execution and delivery of this Deed of Adherence, its acquisition of a Commitment in the Partnership, the performance by it of its obligations under the Partnership Agreement and the consummation of the transactions contemplated hereby and thereby will not conflict with, or result in any violation of or default under, any provision of any governing instrument applicable to it, or any material agreement or other instrument to which it is a

party or by which it or any of its properties is bound, or any permit, franchise, judgement, decree, statute, rule or regulation applicable to it or its properties;

- (k) any information that it has provided or which it subsequently provides in this Deed of Adherence to the Manager with respect to its name, legal nature, financial position and business experience, is true, correct and complete as of the date of this application, or if later the date of provision, and has been relied on by the Manager and may be relied on by other Limited Partners and if there should be any change in such information it will immediately furnish in writing such revised or corrected information to the Manager; and
- (l) where the Applicant has ticked Box B of question 5 of this Deed the Applicant is duly authorised and qualified to give the representations and warranties set out in this Deed on behalf of each of the Beneficial Holder(s).

12 This Deed of Adherence and the rights, obligations and relationships of the parties under this Deed of Adherence and the Partnership Agreement [and in respect of the Information Memorandum] shall be governed by and construed in accordance with the laws of England.

13 The Applicant irrevocably agree that the courts of England are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Deed of Adherence, the Partnership Agreement, [the Information Memorandum,] or the acquisition of Commitments whether or not governed by the laws of England, and that accordingly any suit, action or proceedings arising out of or in connection with this Deed of Adherence, the Partnership Agreement, [the Information Memorandum], or the acquisition of Commitments shall be brought in such courts. The Applicant hereby waives, to the extent not prohibited by applicable law, and agree not to assert by way of motion, as a defence or otherwise, in any such proceeding, any claim that the Applicant is not subject personally to the jurisdiction of such courts, that any such proceeding brought in such courts is improper or that this Deed of Adherence, the Partnership Agreement [or the Information Memorandum], or the subject matter hereof or thereof, may not be enforced in or by such court.

14 Words and expressions used in the Deed of Adherence shall bear the same meanings as in the Partnership Agreement.

This deed of adherence is executed as a deed by the parties and is delivered and takes effect on the date at the end of this deed of adherence.

EXECUTED and unconditionally)
delivered as a Deed by)
)
in the presence of)
)

[for use where Applicant is an individual]

EXECUTED and unconditionally)
delivered as a Deed by)
)
and)
)
for and on behalf of)
)

[For use where Applicant is signing by its directors or officers]

THE COMMON SEAL of)
[])
was HEREBY AFFIXED)
the presence of [])
and [])
)

[For use where Applicant is signing by its common seal]

Date: _____

SCHEDULE 4

Working commitments of Named Executives

[During the first year of the Investment Period:]

[in the second and subsequent years of the Investment Period:]

[after the Investment Period:]

[or such other percentages as may be agreed by an Investor Consent.]

ATTESTATIONS

Executed as a Deed by)
[General Partner])
acting by)
and)
)

Executed as a Deed by)
[Founder Partner])
acting by)
and)
)

Executed as a Deed by)
[The Secretary of State for Business,)
Innovation and Skills)
acting by its attorney Capital for)
Enterprise Limited])
acting by)
)

Executed as a Deed by)
[Investor])
acting by)
and)
)

Executed as a Deed by)
[Investor])
acting by)
and)
)

Executed as a Deed by)
[Investor])
acting by)
and)
)