



Saïd Business School cases

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TopInvest II

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Introduction

Jack Edmondson sat in his office at Oxford University Endowment Management Ltd (“OUEM”) looking again at the draft Limited Partnership Agreement (LPA) for TopInvest II LP (“the Fund”). This was the second vehicle to be launched by the curiously named Three Musketeers, who were the General Partners of the Fund. Jack, as investment director responsible for private equity investments, had been evaluating funds focused on European private equity for several months and TopInvest had made it onto the shortlist. But he hadn’t yet begun analysing the detail of the LPA, and needed to do so before attempting to negotiate an acceptable position for Oxford in this document, and to obtain final approval for the investment from his CIO.

Jack had completed most of his commercial and financial due diligence on TopInvest I prior to examining the legal documents. He was satisfied that the market opportunity in Europe, coupled with the experience and skills of The Three Musketeers, presented an attractive investment for the Oxford Endowment Fund. His due diligence had included macro work on the European opportunity, extensive track record analysis of The Three Musketeers, numerous visits to the team and their current portfolio companies, and significant referencing of the parties involved. Internal diligence documents had been prepared at OUEM for the broader investment team’s discussion, and for ultimate approval by Oxford’s CIO.

Jack knew that committing to TopInvest II was not just an investment, it was the formal entering into of a legal partnership by Oxford with the General Partner and the other Limited Partners who might invest. The LPA was critical to get right, as it formally delineated how this partnership was to operate in all its facets. All the potential members of the partnership were likely to have competing preferences and views when structuring this LPA, and finding an acceptable position for the final document was often difficult.

For example, in TopInvest II, Jack wanted a motivated GP in The Three Musketeers, who would be encouraged to operate to their best commercial ability to produce returns for the partnership. This was primarily about structuring the appropriate incentives. But Oxford also needed to protect its interests in the event of future problems. Whilst most private equity partnerships do not result in difficulties, it was important to have the right safeguards in the event that the partnership began to fail. This was primarily about structuring the appropriate protections.

Ultimately, Jack needed to present an acceptable LPA to his CIO that would achieve the right balance of these. This was likely to be a difficult job.

Tackling the LPA

Having negotiated many LPAs before, Jack knew what he was likely to be looking for, and also what was “market standard” in the current climate in terms of the competitive tension between LPs and GPs. Jack’s approach would concentrate on several key areas, all ultimately seeking to maximise the health of the relationship between the GP and LPs, whilst also giving Oxford appropriate rights in the event of problems.

To start with, there were the very basic structural elements of the partnership: its scope and duration, the activities and risks the GP could undertake, and the obligations and liabilities that all the partners had to each other for the full life of the partnership. Then there was the optimisation of the economic and legal relationship between the GP and LPs. Jack was keen to make sure that the GPs were 100% focussed on TopInvest II and its success, and were incentivised in a number of ways to make it perform across its full term, and for all partners, come what may. Structuring how returns were received by the various types of partner, and at what times, was critical to this.

Oxford also had to make sure that LPs had sufficient rights in order to protect their interests, but not too much so that they interfered with the GP's main job of investment. What rights should LPs have and in what circumstances? Additionally, were there particular rights that Oxford should ask for separately from other LPs, and was this either realistic or fair?

Finally there was the whole area of looking at what protections and powers the various partners should have if the partnership went wrong. Ultimately Oxford was backing specific individuals to be focussed on Top Invest II; if this situation was to change, or if other Limited Partners reneged on their obligations, what changes could be made, and who should be able to make these changes?

The problem was complex but Jack knew that getting this right was key to the success of the investment. Jack would make his representations to the GP, and through these interactions, and those of the lawyers assisting him, he would also learn how other LPs were approaching the issues, perhaps both positively and negatively for Oxford. The situation over the coming weeks would be a dialogue between all these parties, so that an appropriate position could be reached. Inevitably this would be about deciding what was essential, and then what was only desirable, in each party's case. Jack also knew that as well as the LPA, in certain circumstances he could ask for a "side letter", which would be a specific agreement with Oxford on a particular issue on a bilateral basis with the GP. This was appropriate in some circumstances. In general other LPs were wise to this being used in negotiations with GPs and would probably ask to see the content of these, and indeed ask to receive commensurate benefits if appropriate. They were highly unlikely to be a private "free ride".

To start with, Jack decided to draw up his list of the top ten issues that would need to be addressed, classified according to whether they were "deal-breakers" or "nice to haves". In each case he would propose a new clause or wording. This would act as his agenda for the next call with the Three Musketeers and his lawyers, and would begin the process of reaching a final, agreed LPA that he could present to his CIO for sign off.

**Limited Partnership Agreement
of
TOP INVEST FUND II L.P.**

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Article 1
Formation of the Partnership

Section 1
Formation, Commencement

(1) Formation

On May 2011 the following persons (and all those who adhere to this Partnership):

- Mr. X as Founding Limited Partner,
- The Three Musketeers, a limited liability company established in Jersey, as Managing General Partner, (the “GP”)
- The Three Musketeers CARRY COLLECTOR L.P., established in Jersey, as Founding General Partner,

formed this limited partnership (the “Partnership”) according to the laws of Jersey. As of the date of signing hereof, this Agreement shall become effective.

(2) Commencement

The Partnership shall commence as of the date of acceptance by the Managing General Partner of subscriptions for capital commitments to the Partnership and the Parallel Pools as defined in Section 4 subsection (4) in the aggregate amount of Euro 50 million.

Section 2
Name

The Partnership shall have the name:

TOP INVEST FUND II L.P.

Section 3

Purpose of the Partnership

The purpose of the Partnership is to build, hold and manage a portfolio of venture capital investments predominantly in countries belonging to the European Union.

Section 4

Limitation of Purpose, Investment Policies, Conflicts of Interest

(1) Limitation of Purpose

- a) The purpose of the Partnership shall be, inter alia, to build, hold and manage a portfolio of equity and equity related venture capital investments in various companies (the "**Portfolio Companies**") across various industry sectors. The Partnership shall not itself assume management functions or other entrepreneurial functions in Portfolio Companies.
- b) The Managing General Partner shall ensure that the Partnership mainly invests in Portfolio Companies which, at the time of the Partnership's initial investment, are companies with high growth potential.

(2) Investment Policies

The Partnership's investment mandate shall comprise the spectrum of privately negotiated investments in different segments. The Partnership shall invest predominantly in countries of the European Union.

The portfolio shall predominantly consist of equity and equity-related investments in Portfolio Companies. The investments may include ordinary shares, preference shares and debt investments with or without the right to convert the debt instruments into equity instruments.

Without the consent of the Investor Committee the amount invested in one single Portfolio Company shall, in the aggregate, not exceed 30 % of the total capital commitments to the Partnership.

The investments shall be monitored through the exercise of statutory and contractual shareholder rights. It is intended to obtain in appropriate cases a seat on the board of Portfolio Companies. The Partnership and its representatives shall not be involved in the day-to-day management of Portfolio Companies.

The Partnership (acting through the Managing General Partner or persons authorized on behalf of the Partnership) may execute, deliver and perform all contracts and other undertakings and engage in all activities and transactions as may in the opinion of the Managing General Partner be necessary or advisable in order to carry out the foregoing purposes and objectives, subject to and in accordance with the provisions of this Agreement.

(3) Co-Investments with Other Funds

The Managing General Partner or its affiliates, and mesrs. Athos and Aramis (all together "**TOP INVEST**") may, currently and in the future act as manager, advisor or in a similar capacity for other investor funds pursuing the same or similar investment objectives (collectively, the "**Other Funds**").

As a consequence, potential conflicts of interest may come into existence between the Partnership and the Other Funds. As a rule, potential conflicts of interest will be submitted to the Investor Committee. In order to avoid potential conflicts of interest the Managing General Partner has defined the following rules to be applied to the following situations:

- (i) TOP INVEST shall not establish a new pool for investments unless at least 50 % of the Partnership's committed capital has been invested or has been committed for investments or has been reserved for follow-on investments in existing Portfolio Companies (the "**Investment Threshold**").

- (ii) Until the Investment Threshold has been reached, TOP INVEST shall pursue investment opportunities which meet the Partnership's investment criteria exclusively for the Partnership.
- (iii) The Partnership shall not acquire investments from pools managed by TOP INVEST and shall not invest in companies in which other pools managed by TOP INVEST already hold an investment.

(4) Parallel Pools

The Managing General Partner shall have the right to establish one or more Parallel Pools to the Partnership to accommodate the particular needs of special investor groups – including, but without limitation, non-resident investors or investors subject to regulatory restrictions. Parallel Pools within the meaning of this subsection (4) shall not qualify as Other Funds within the meaning of subsection (3) of this Section 4. The Parallel Pools shall co-invest and divest with the Partnership at similar investment terms and conditions. Investment opportunities shall be allocated to the Partnership and the Parallel Pools in the Managing General Partner's directions.

Section 5

Fiscal Year, Statutory Seat, Currency

(1) Fiscal Year

The fiscal year of the Partnership shall be the calendar year. The first fiscal year of the Partnership shall commence on the date on which Partnership operations shall commence pursuant to Section 1 subsection (2) and shall terminate on December 31, 2011.

(2) Statutory Seat

The Partnership shall have its statutory seat in Jersey.

(3) Currency

The Partnership shall be denominated in Euro.

Article 2**Partnership and Partnership Assets****Section 6****Partners, Capital, Capital Commitments, Admission****(1) Partners**

Partners in addition to the persons listed in Section 1 (1) shall be the persons admitted in accordance with the provisions of subsection (3) below, shall be Limited Partners without management authority, but with the rights set forth herein.

(2) Capital

The Partnership has adopted a variable capital structure. The Partnership capital is divided in Units of EUR 1.00 each. The amount of the Partnership shall at all times be equal to its net asset value.

(3) Capital Commitments

- a) The Managing General Partner has committed to invest an amount of Euro 1,000.

- b) The Founding General Partner has committed himself to invest an amount of Euro 1,000.
- c) Each Limited Partner shall subscribe a capital commitment in the amount set out in such Limited Partner's subscription certificate. The minimum capital commitment shall not be less than Euro 1 million for individuals and 3 million for institutional investors; provided, however, that the Managing General Partner shall have the right – exercisable in its sole discretion – to accept subscriptions of capital commitments for a lesser amount, however, not less than Euro 125,000. All capital commitments shall be divisible by full Euro 100,000.

The capital commitments of the Managing General Partner, the Founding General Partner and the Limited Partners are hereinafter collectively referred to as "**Capital Commitments**".

(4) Admission

Admission of Limited Partners shall be accomplished as follows:

- a) Each person seeking to be admitted as a Limited Partner to the Partnership shall sign the subscription certificate setting out the amount of such person's Capital Commitment and further setting out such person's agreement to become a Limited Partner upon the terms and conditions of this Agreement. The Managing General Partner shall accept such admission in its sole and absolute discretion; upon acceptance of the subscription certificate the person seeking admittance shall commit itself to make payments of its capital commitment as stipulated in Section 7 hereof.
- b) The signature page to this Agreement shall be signed to reflect such person being bound by the terms and conditions of this Agreement.
- c) The admission shall become effective in relation between the Partners upon acceptance of the subscription certificate by the Managing General Partner and in

relation to third parties upon registration of the new Limited Partner with the Partnership's limited partner register.

Limited Partners may be admitted to the Partnership until expiry of the subscription period according to Section 7 subsection (1).

(5) Side Letters

Notwithstanding the provisions of this Agreement (including Section 2, (1) d), it is hereby acknowledged and agreed that the Managing General Partner, on its own behalf and/or on behalf of the Partnership, and without the approval of any Partner, may enter into a side letter or similar agreement with one or more Limited Partners that has the effect of altering or supplementing the terms hereof with respect to such Limited Partner. The Partners agree that any terms contained in a side letter or similar agreement with a Limited Partner shall govern the relationship with respect to such Limited Partner notwithstanding the provisions of this Agreement, provided that any side letter may be disclosed to the Limited Partners.

Section 7

Subscription Period, Contributions, Key Persons, Investment Period

(1) Subscription Period

A first closing (the "**First Closing**") will be held after the Managing General Partner has legally binding accepted subscriptions for capital commitments in the aggregate amount of at least Euro 50 million (this shall include the capital commitments to the Parallel Pools). The subscription period will expire on the earlier of (i) the date when the maximum total capital commitments of Euro 100 million (including the capital commitments to the Parallel Pools) has been reached and (ii) 12 months after the First Closing unless terminated earlier or prolonged by the Managing General Partner in its sole directions.

(2) Capital Contributions

The Managing General Partner and the Founding General Partner shall pay their entire capital commitments on the First Closing. Each Limited Partner shall pay its capital commitment in installments upon not less than 5 working days' advance notice from the Managing General Partner; days on which banks in Jersey are open for the public shall constitute working days for purposes of this Agreement. Payments shall be made by bank-transfer, free of charge or cost, to the bank account of the Partnership designated by the Managing General Partner in its advance notice. Capital commitments will be drawn down as follows: Capital contributions to fund prepayments in respect of the profit priority allocation pursuant to Section 2.2 of this Agreement will be generally called on a quarterly basis. Capital contributions to fund investments and other expenses will be called by the Managing General Partner on an as needed basis. Any draw down shall in particular include (if relevant) the due date, split of drawn down amount on (i) amounts to be invested in a Portfolio Company, (ii) Priority Profit Share and (iii) other costs and amounts drawn down from the Limited Partners.

Limited Partners admitted to the Partnership after the First Closing will pay as their initial contribution their proportionate share of all Capital Commitments already drawn down from the Limited Partners admitted on the First Closing together with a compensatory interest on their initial contribution calculated at the Reference Rate (as hereinafter defined) for the number of days elapsed since the dates on which the Capital Commitments previously drawn-down were due for payment; the Reference Rate shall mean 4 % over the EURIBOR for three months deposits p.a. The late entry interest shall be allocated to the existing partners pro rata in proportion to their capital commitments and shall be distributed to the existing partners forthwith upon receipt of the late entry interest by the Partnership.

(3) Default

If a Limited Partner fails to make a payment when due, such Limited Partner shall be deemed to be in default without the requirement of a reminder. In addition to the stat-

tory remedies upon default of payment, the remedies set forth in this subsection (3) shall be applicable.

If a Limited Partner fails to make a payment when due, a second notice requesting payment shall be sent to the defaulting Limited Partner. If the defaulting Limited Partner does not pay the outstanding amount within 15 calendar days after dispatch of such second notice, in addition to the statutory rights upon default of payment the Managing General Partner may take any one of the following actions:

- a) The Partnership may commence legal proceedings against the defaulting Limited Partner to collect the due and unpaid amount plus the expenses of collection, including attorney's fees, such legal proceedings to be initiated at the regular courts.
- b) Prior to the exercise of the right to remove the defaulting Partner pursuant to the provisions set forth in lit b) of this subsection (3), the Managing General Partner may offer the defaulting Partner's interest in the Partnership for acquisition at fair market value as reasonably determined by the Managing General Partner and the assumption of the unpaid balance of the Defaulting Partner's Capital Commitment. The Managing General Partner shall be entitled to deduct from the purchase price for the benefit of the Partnership (i) all expenses incurred and damages suffered by the Partnership as a consequence of the default and (ii) a contractual penalty equal to the excess of the purchase price over the aggregate amount referred to in (i). The Limited Partners shall have a right of first refusal in respect of the Defaulting Partner's interest in the Partnership pro-rata in proportion to their Capital Commitments or such other proportion as agreed between them.

(4) Key Persons

- a) If, for whatever reason, the Key Persons cease to dedicate a reasonable amount of their professional activity for the Managing General Partner (except for the activities performed for TOP INVEST Previous Funds pursuant to Sec-

tion 4 subsection (3) above), before the date specified in Section 4 subsection (3) (i) and thereafter in the scope necessary for the management of the Partnership, the Partnership's activity shall be immediately suspended except for investments, and the Partners' obligation to make capital contributions shall be suspended subject to the following provisions (the "**Suspension Effect**"). Capital Commitments can be drawn down by the Managing General Partner for the following purposes: (i) to make follow-on investments; (ii) to fund payments in respect of the profit priority allocation pursuant to Section 13 of this Agreement; and (iii) to fund the costs and expenses to be borne by the Partnership pursuant to this Agreement.

d'Artagnan, Athos and Aramis, respectively, and their respective successors and additional persons appointed according to Section 7 (4) c) are hereinafter referred to as the "**Key Persons**".

- b) The Managing General Partner may inform the Partners about a Suspension Effect following its occurrence.
- c) The Managing General Partner shall have the right to submit within a period of 24 months after the occurrence of the Suspension Effect a proposal (the "**Proposal**") on the appointment of one or more successors of the Key Persons. The Partnership and the Parallel Pools shall separately vote on the Proposal. If Partners of the Partnership approve the Proposal with the simple majority of the votes cast, the Suspension Effect shall be deemed terminated and the proposed successor shall become the Key Person.

(4) Investment Period

Subject to the provisions of the preceding subsection (4) and this subsection (5) Capital Commitments can be drawn down only during the investment period. The investment period shall commence upon commencement of the Partnership and shall expire on the seventh anniversary of the final closing, provided that the GP shall have the right to extend such termination date by up to 12 months subject to prior consul-

tation with the Investor Committee. After the expiration of the investment period capital commitments can be drawn down only for the following purposes:

- (i) to fund follow-on investments in Portfolio Companies in which the Partnership holds an investment upon expiration of the investment period;
- (ii) to fund investment obligations of the Partnership validly incurred prior to the expiration of the investment period;
- (iii) to fund new investments if a positive investment decision was taken by the Managing General Partner (with or without qualifications) prior to the expiration of the investment period and the investment is consummated within twelve months after expiration of the investment period;
- (iv) to fund the costs and expenses to be borne by the Partnership pursuant to this Agreement;
- (v) to fund prepayments in respect of the Managing General Partner's and Managing General Partner's profit priority allocation pursuant to Section 13 of this Agreement.

Section 8

Share in Partnership Assets

The Partners shall share in the Partnership assets in proportion to their Capital Commitments. Partners without a Capital Commitment shall not be entitled to a share in the Partnership assets.

Section 9

Liability of Partners

(1) Liability of the Managing General Partner

The Managing General Partner shall be liable for the liabilities which cannot be satisfied out of the assets of the Partnership.

(2) Liability of Limited Partners

The Limited Partners shall, subject to the terms of this Agreement, enjoy limited liability for the liabilities of the Partnership.

Article 3 Allocation of Profits and Losses

Section 10 [Intentionally left blank]

Section 11 Waterfall

(1) Definitions

- a) "Net proceeds" shall mean the balance of the following items: (i) proceeds (dividends, interest and disposition proceeds from investments of the Partnership) as well as the fair market value, determined pursuant to Section 29 below, of Securities of Portfolio Companies distributed in kind by the Partnership, less (ii) expenses directly related to the items pursuant to (i) (i.e. directly related to current income, disposition proceeds and the Securities of Portfolio Companies distributed in kind) and the payments in respect of the Managing General Partner's profit priority allocation for management and assumption of liability pursuant to Section 13 (1) of this Agreement and the Partnership's expenses that are

not directly related to the items pursuant to (i).

- b)** “**Preferred Return**” shall mean an internal return on the capital contributions at a rate of 6 % p.a. compounded annually and calculated for the period during which the capital contributions were effectively tied-up. The Preferred Return shall only be calculated if, and for so long as, the aggregate sum of all contributions actually made to the Partnership plus the Preferred Return thereon exceeds the aggregate sum of the distributions made by the Partnership.
- c)** Whenever allocations shall be made, there shall be determined whether Full Pay-Out has been achieved. “**Full Pay-Out**” shall be achieved when the Partnership has made distributions to the Partners in cash or in kind in the aggregate amount equal to their capital contributions plus the Preferred Return on the capital contributions. Distributions in kind shall be assessed at the fair market value pursuant to Section 29 below.
- d)** “**Profits**” of the Partnership shall mean the annual balance sheet profits of the Partnership determined in accordance with IFRS Accounting Principles

(2) Allocation and Distributions Prior to Full Pay-Out

Until Full Pay-Out has been achieved allocations shall be made as follows:

- a)** Firstly, the Managing General Partner shall be entitled to its profit priority allocations pursuant to Section 13 of this Agreement.
- b)** Thereafter and subject to the provisions of subsection c) of this subsection (2), until Full Pay Out, the Partnership's profits shall be allocated to all Partners in proportion to their Capital Commitments.

- c) Partnership losses shall be allocated the Partners in proportion to their Capital Commitments. Partnership profits of subsequent fiscal periods shall be allocated by the same formula until previous loss allocations have been fully restored, after which point allocations shall be made pursuant to subsection b) above.
- d) Distributions will be made for the Partners in proportion to their Capital Commitments.

In the event of a distribution in kind, the amount of profit or loss shall be determined on the basis of the fair market value pursuant to Section 29 below of the Securities of Portfolio Companies distributed in kind.

(3) Allocations Following Full Pay-Out

- a) After Full Pay-Out has been achieved allocations and distributions shall be made in the following order:

Firstly, the Managing General Partner shall be entitled to its profit priority allocation pursuant to Section 13 of this Agreement.

- (i) Thereafter, 100 % of the Partnership's profits shall be allocated to the account of the Founding General Partner until the Founding General Partner's cumulative allocations equal 25 % of the Preferred Return allocated to the Limited Partners.
- (ii) Thereafter, an amount equal to 20 % of Net Proceeds (less the allocations pursuant to (i) above) shall be allocated to the account of the Founding General Partner and the remaining balance shall be allocated to the accounts of all Partners pro rata in proportion to their Capital Commitments.
- (iii) Losses of the Partnership shall be allocated to the Partners in proportion to their Capital Commitments. To the extent losses have been allocated to the Partners pursuant to the preceding sentence, profits realized by the

Partnership in subsequent fiscal periods shall be allocated by the same formula until previous loss allocations have been fully restored.

- b) If, upon liquidation of the Partnership, the aggregate sum of the capital contributions made to the Partnership is less than the aggregate sum of the Capital Commitments to the Partnership (the "**Shortfall**") and the aggregate sum of all distributions made by the Partnership to the Limited Partners equals or exceeds the aggregate sum of the capital contributions plus the Preferred Return thereon, then the Founding General Partner shall be entitled, in addition to its allocations pursuant to lit a), to a liquidation allocation of an amount of 10 % of the Shortfall.
- c) Distributions to the Partners will be made first pursuant to Section 11 (3) a (i) and (ii) and thereafter in respect of repayments of capital contributions in proportion to the Capital Commitments.

In the event of a distribution in kind, the amount of profit or loss, as the case may be, shall be determined on the basis of the fair market value of the Securities of Portfolio Companies distributed in kind pursuant to Section 29 below.

Section 12

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Article 4

Expenses and Costs

Section 13

Profit Priority Allocation for Management and Assumption of Liability

(1) Profit Priority Allocation

Upon allocation of the annual profits, the Managing General Partner shall be entitled to a priority allocation out of balance sheet profits in consideration for managing the affairs of the Partnership and assuming the unlimited liability. The priority allocation shall only be made to the extent the Partnership realized balance sheet profits. The Managing General Partner shall have the right and obligation to withdraw amounts from the capital reserves in order to increase the Partnership's balance sheet profits.

The annual profit priority allocation for the assumption of liability and management shall be calculated as follows:

- aa) Until the end of the month in which the investment period expires, the annual profit priority allocation shall amount to 2.5 % p.a. of the total Capital Commitments to the Partnership.
- bb) Thereafter, the annual profit priority allocation shall be reduced on an annual basis to 85% of the preceding year's amount provided that the profit priority allocation shall not be less than the amount necessary to orderly manage the Partnership's portfolio.

(2) Calculation and Payment of the Profit Priority Allocation

Prepayments in respect of the annual profit priority allocation shall be made in four installments each time at the beginning of each calendar quarter. Prepayments shall be funded from any liquid resources (including payments of capital reserves). The basis for the profit priority allocation shall be calculated as per the beginning of each calendar quarter.

Section 14

Other Expenses and Fees

(1) Organizational Expenses

The Partnership shall be charged with evidenced fees and expenses incurred in con-

nection with the organization and formation of the Partnership up to a maximum amount of 10 % of the Capital Commitments to the Partnership as per the final closing.

(2) Other Partnership Expenses

The Partnership shall also bear all expenses not being expenses pursuant to subsection (1) and (3) hereof, but directly relating to the purchase or divestment of Securities in Portfolio Companies regardless of whether such transactions have actually been effected, or relating to the holding of Securities of Portfolio Companies. Such costs shall include, but without limitation, the following: (i) direct costs of acquiring or divesting Securities of Portfolio Companies (including legal fees and consulting fees to third parties); (ii) the Partnership's pro-rata share of direct costs in connection with the attempted but failed acquisition or divestment of Securities of Portfolio Companies if the transaction was approved pursuant to Section 16 subsection (1) - with or without qualifications - unless such expenses are borne by third parties; (iii) costs incurred in connection with the bookkeeping and accounting as well as taxes and expenses incurred in relation to the administration and business of the Partnership as well as of the Managing General Partner and (iv) costs of preparation and audit of annual financial statements of the Partnership and of obtaining opinions of the Partnership's auditors concerning the reasonableness of valuation of Partnership assets.

(3) Expenses to be borne by the Managing General Partner

Overhead costs of operation of the Partnership, being incurred by the Managing General Partner, shall be borne by the Managing General Partner and shall include, but without limitation: (i) the costs of the Managing General Partner's own personnel, (ii) expenses for telecommunication and general administration of the Managing General Partner (in particular rental payments and depreciation of equipment), (iii) costs of bookkeeping of the Managing General Partner and of preparation of the annual financial statements of the Managing General Partner, (iv) fees and expenses for legal, tax and other professional advisory services rendered to the Managing

General Partner on its own matters; placement agent and other finders' fees and (v) any travel expenses of the Managing General Partner.

Section 15

[Intentionally left blank]

Article 5

Management and Representation

Section 16

Investment Decisions; Investor Committee

(1) Investment Decisions

Investment decisions will be taken by the Managing General Partner, and the three biggest Limited Partners in terms of Capital Commitments in accordance with the investment policies set forth in Section 4 subsection (2), the other provisions of this Agreement and applicable law upon recommendation by the Founding General Partner.

(2) Investor Committee

There shall be established an Investor Committee for the Partnership consisting of at least three members. Subject to nomination rights granted to certain Limited Partners, the members shall be appointed by the Managing General Partner at its discretion. Members of TOP INVEST shall be represented on the Investor Committee. The Investor Committee shall have the authority to decide on conflicts of interests and on those subject-matters which are subject to Investors Committee approval pursuant to this Agreement. The Investors Committee shall also participate in investment decisions. Resolutions shall be taken by the Investor Committee with the simple majority of the existing votes. A representative of a Limited Partner having in relation to a specific issue a conflict of interest upon which the Investor Committee shall decide and shall be entitled to request to be excluded from voting.

Section 17

Management Authority

(1) Basic Rule

The affairs of the Partnership shall be exclusively managed by the Managing General Partner in accordance with the limitations set forth in this Section 17 and in accordance with the other provisions in this Agreement, and as may be otherwise required by law. Management of the affairs of the Partnership shall constitute their contribution in kind for the furtherance of the Partnership's objectives in consideration for the profit priority allocation.

(2) Management Authority

Subject to the limitations set forth in this Agreement, the Managing General Partner shall be authorized to manage the affairs of the Partnership acting alone.

(3) Termination of Management Authority

Any management authority of the Founding General Partner shall automatically terminate upon its withdrawal from the Partnership. The management authority of the Managing General Partner shall terminate as set forth in SECTION 27 of this Agreement.

Section 18

Restriction on Management Authority

(1) Basic Rule

The management authority of the Managing General Partner shall be limited to Partnership assets. There is no entitlement to incur any bank debt or other debt on behalf of the Partnership; provided, however, that the Partnership shall be entitled to make

use of government subsidies regardless of whether structured as a loan. Securities of a Portfolio Company shall not be mortgaged, pledged or otherwise encumbered (except for purposes of securing bank debt or other debt of the respective Portfolio Company; provided, however, that the provision of collateral shall not have an adverse impact on the non-business status of the Partnership for tax purposes). The Managing General Partner shall have no authority to do any act in contravention of applicable law or in contravention of this Agreement. The Managing General Partner may only make debt investments in a Portfolio Company in which it holds equity interests, provided that any such shareholder loans granted to a Portfolio Company may not exceed 20 % of the aggregate capital commitments of the Partnership and the Parallel Pools at any point in time.

(2) Investment Restrictions

The Partnership shall not invest in Portfolio Companies which engage in, or that directly or indirectly control another entity which business activity is any one or more of the following:

- (a) arms industry and arms trading;
- (b) human cloning.

The Partnership shall ensure through corporate governance or otherwise that Portfolio Companies continue to comply with the above restriction during the term of the Partnership's investment.

The Partnership shall not invest in other funds provided that investments in portfolio acquisition holding structures shall be permitted.

Section 19

Representation, Limited Liability

(1) Representation Authority

The Partnership shall be represented by the Managing General Partner in accordance with its management authority as set forth herein. The authority to represent the Partnership shall be limited to the Partnership's assets. The authority to represent the Partnership shall further be limited insofar as no Partner shall be exposed to a liability for the Partnership's obligations in excess of its obligation to pay its Capital Commitment.

(2) Liability

The Managing General Partner, the Founding General Partner and the members of the Investor Committee shall only be liable vis-a-vis any Partner or the Partnership for actions taken or not taken due to gross negligence or willful malfeasance. This shall likewise apply to any and all actions taken or not taken by any partner, employee or agent of the Managing General Partner, the Founding General Partner or any member of the Investor Committee.

Article 6

Withdrawal and Resignation of Partners

Section 20

Withdrawal and Resignation of Partners

(1) Basic Rule

Notwithstanding the provisions of Section 7 subsection (3) of this Agreement, withdrawals by Partners or termination of the Partnership by a Partner shall not be permitted except for good cause as provided by mandatory law.

(2) Settlement of Withdrawals

Withdrawals of Partners withdrawing pursuant to the provisions of Section 20 subsection (1) shall be settled as follows:

a) Fair Market Value

The Partnership shall pay to the withdrawing Partner as a compensation for its interest in the Partnership an amount equal to the fair market value of its Units determined as of the date of withdrawal. The fair market value shall be determined by the Managing General Partner, or in case of its removal pursuant to SECTION 21 by the remaining Partners, in accordance with the provisions set forth in SECTION 29 and such valuation is subject to arbitration. In the event of a removal because of a default, the compensation shall be determined in accordance with the provisions of Section 7 subsection (3).

b) Payment of Compensation

The compensation shall be payable in installments of principal on the same dates on which distributions are made by the Partnership. Each installment shall equal the amount of distributions the withdrawing Partner would be entitled to if he had not withdrawn from the Partnership. The compensation shall not bear interest.

c) No Collateral, Limitation of Liability

The withdrawing Partner shall not be entitled to any collateral as security for the compensation. The liability under the compensation claim shall be limited to the net assets of the Partnership and there shall be no personal liability thereunder as to any Partner.

d) No Further Claims

Apart from the claim for compensation a withdrawing Partner shall have no further

claims in connection with his withdrawal from the Partnership against the Partnership or any Partner.

(3) No Dissolution

Subject to the provisions hereof, the Partnership shall not be dissolved upon occurrence of one or more of the following events:

- a) notice given by a Partner;
- b) notice given by a pledgee of a Partner;
- c) commencement of insolvency proceedings against a Partner, or rejection of a petition in insolvency; or seizure of the claim on dissolution proceeds;
- d) death of a Partner.

(4) Continuation of Partnership

The occurrence of an event as defined in subsection (3) lit a) through lit d) above will not affect the existence of the Partnership. The respective Partner is automatically removed from the Partnership – in the event specified in subsection (3) lit. c) if the seizure is not released within a period of four months – and the Partnership will continue among the other Partners. In case of death of a Partner, the Partnership will continue with the legal successor of the late Partner. Several legal successors shall appoint a joint representative.

Section 21 Removal of Partners

(1) Basic Rule

Subject to the provisions of subsection (4) of this Section 21, a Partner may be removed as partner of the Partnership if other Partners representing at least seventy-five percent (75%) of the total Capital Commitments of all Partners reasonably determine that the removed Partner, through gross negligence or willful malfeasance, is

conducting itself to the substantial detriment of the Partnership. The provisions of Section 7 subsection (3) on the removal of a defaulting Limited Partner shall not be affected. The Partnership shall continue without the removed Partner.

(2) Notice of Removal, Effective Date

Notice of a Partners' resolution resolving upon removal shall be given in writing and shall be served upon the removed Partner without undue delay by a representative to be appointed in the Partners' resolution. A removal shall become effective as of the date specified in such notice, at the earliest on the date upon which notice has been served upon.

(3) Settlement of Removal

Subject to the provisions of Section 7 subsection (3), the provisions of Section 20 subsection (2) shall apply accordingly to any settlement of a removal.

(4) Removal of the General Partner, Managing General Partner and Founding General Partner, Revocation of Management Authority

a) Removal for Cause

If the Managing General Partner or the Founding Limited Partner, as the case may be, is found guilty by a court of competent jurisdiction in a final court order of having conducted itself to the substantial detriment of the Partnership through gross negligence or willful malfeasance, the Partners of the Partnership and the Parallel Pools may resolve with a majority of more than sixty percent (60%) of the total Capital Commitments to the Partnership and the Parallel Pools to remove the Managing General Partner and the Founding General Partner and to appoint a successor. The management authority shall terminate as per the date specified in sentence 2 of subsection (2) of this Section 21 The Managing General Partner's entitlement to the profit priority allocation shall terminate as of the effective date of revocation of management authority. The Founding General Partner's and/or the Managing General Part-

ner's entire interest in the Partnership shall be redeemed in consideration of a lump sum payment of EUR. 1,000,000.

b) **Removal without Cause**

Upon resolution passed by Limited Partners representing at least 75 % of the total Capital Commitments of all Partners in the Partnership, the Managing General Partner may be removed from the Partnership without cause and a successor can be appointed. The provisions in subsection (2) sentence 1 shall correspondingly apply. The removal of the Managing General Partner shall become effective upon the later of (i) the date specified in the resolution and (ii) the date of service of the removal resolution. The management authority of the Managing General Partner shall terminate upon service of the removal resolution; the Managing General Partner shall still be entitled to a one-time compensation payment in the amount of 2.5 % of the basis determined pursuant to Section 13 subsection (1) lit. a) or lit. bb) – depending on the date of removal – as per the beginning of the calendar month of the removal; the compensation payment shall be payable in one amount and shall be due for payment two weeks after the effective date of the removal. In the event of removal of the Managing General Partner a fraction of the Founding General Partner's interest in the Partnership shall be redeemed by the Partnership without consideration. The fraction subject to redemption shall be the excess of the Founding General Partner's interest in the Partnership over the "**Vested Portion**" (as hereinafter defined). The Vested Portion shall be calculated as per the end of the month of service of the resolution on the removal of the Managing General Partner (the "**Calculation Month**") in accordance with the following formula:

- (i) if the Calculation Month occurs on or before the fourth anniversary of the First Closing (the "**Reference Date**"): 60 % times a fraction whose numerator is the number of months from the beginning of the month of the First Closing until the end of the Calculation Month and whose denominator is 48;
- (ii) if the Calculation Month occurs after the Reference Date: 60 % plus 40 % of a fraction whose numerator is the number of months from the end of the month of

the Reference Date until the end of the Calculation Month and whose denominator is 72.

Section 22 Transfer of Partnership Interests

(1) Basic Rule

Subject to the provisions of this Section 19, the Managing General Partner may dispose of its interest in the Partnership in whole or in part only upon the prior written consent of Partners of the Partnership and the Parallel Pools holding at least seventy-five percent (75 %) of the total capital commitments to the Partnership and the Parallel Pools. Disposal within the meaning of this provision shall include a sale, assignment, any other transfer, pledge or any other encumbrance of the interest. No consent shall be required for any disposal in favor of an affiliate.

Subject to the provisions of this Section 22, the interest of a Limited Partner shall not be transferred in whole or in part unless with the prior written consent of the Managing General Partner and the Investor Committee. The consent shall be given if the transferee is an affiliate of the transferring Limited Partner.

(2) Partnership Interest of the Founding General Partner

Subject to the provisions of this Section 22, the Founding General Partner may dispose of its interest in the Partnership in whole or in part only upon the prior written consent of Limited Partners holding at least seventy-five percent (75 %) of the total Capital Commitments of all Partners in the Partnership. "**Disposal**" within the meaning of this provision shall include any sale, assignment, any other transfer, pledge, sub-participation, nominee ship or trust arrangement or any other encumbrance of or contractual arrangement relating to the interest.

The Founding General Partner shall procure that direct or indirect Disposals by its partners of the Founding General Partner's Profit entitlements according to Section

11 subsection (3) lit. a) (i) and (ii) shall require the prior written consent of Limited Partners representing at least 75 % of the total Capital Commitments of all Partners in the Partnership; provided that no such consent shall be required for Disposals (i) up to 50 % in favor of the spouse and children of a partner of the Founding General Partner, and (ii) in favor of employees of the Managing General Partner or an affiliate.

Article 7
Partners' Meetings

Section 23
Partners' Meetings

(1) Subject-Matters

The Partners' meeting shall resolve upon the following subject-matters:

- a)** approval of the annual financial statements of the Partnership submitted by the Managing General Partner;
- b)** discharge of the Managing General Partner, the Founding General Partner and the members of the Investor Committee for their activities during the past fiscal year;
- c)** appointment of the auditors which shall audit the annual financial statements of the Partnership;
- d)** changes of, and amendments to, this Agreement and dissolution of the Partnership; and
- e)** other subject-matters as provided for under this Agreement or any mandatory law.

(2) Partners' Resolutions

The Managing General Partner shall decide in its sole discretion whether Partners' resolutions shall be passed in Partners' meetings or otherwise in writing or by telecopy. The simple majority of votes cast shall be the "majority approval of the Partners" unless set out otherwise in this Agreement. If a resolution shall be taken in writing or by telecopy, such action requires the involvement of all Partners in the decision-taking process. The period for the casting of votes shall be at least three weeks after request. If Partners do not respond within such period their votes shall be deemed not to be cast.

If a Partner holds its or his interest in the Partnership as a nominee for and on behalf of several beneficiaries, such nominee Partner shall be permitted to cast the votes attributable to its or his interest in the Partnership separately in accordance with instructions imposed on the nominee Partner by the beneficiaries.

(3) Majority

Subject to the provisions of this Agreement and mandatory law, Partners' resolutions and other approvals of the Partners shall be passed upon the simple majority of votes cast. Resolutions according to subsection (1) lit d) shall require a majority of at least seventy-five percent (75 %) of the total Capital Commitments and require in addition the consent of the Managing General Partner. No Capital Commitment shall be increased without the consent of the Partner concerned.

(4) Place of Partners' Meetings

Partners' meetings shall be convened in such place as determined by the Managing General Partner with the consent of the Investor Committee.

(5) Calls of Partners' Meetings

A Partners' meeting shall be called by the Managing General Partner or by Partners holding at least ten percent (10 %) of the total Capital Commitments of all Partners in the Partnership by giving at least three (3) weeks' advance notice in writing, which notice shall include the time and place of such meeting and state the agenda for such meeting. The determination of the three (3) week period is to be made on the beginning of the third day after such notice is given. If the agenda is subsequently amended, such amended agenda must be received by the third day before the scheduled date of a Partners' meeting. Decisive date for notice in time is the date of receipt.

(6) Quorum

A quorum at any meeting of the Partnership shall exist when Partners representing at least 50 % of the total Capital Commitments of all Partners in the Partnership are represented at such meeting personally or by proxy. If a quorum does not exist, a meeting with the same agenda shall be called by giving notice as provided above. A quorum shall be deemed to exist at such subsequent meeting regardless of the number of Partners represented at such meeting, if so stated in the notice for such subsequent meeting.

(7) Chairman / Minutes

The chairman of any meeting of the Partners shall be the Managing General Partner who shall keep written minutes of all the proceedings and votes in any such meeting.

(8) Term of Preclusion

A Partner can object against Partners' resolutions within a period of six (6) weeks after knowledge of the respective resolution by initiating court proceedings. The defendant of the law suit shall be the Partnership.

Article 8
Legal Status of Partners

Section 24
Competition

Any Partner (including, but subject to the provisions of this Agreement, the Managing General Partner and the Founding General Partner), and as applicable, its respective officers, directors and affiliates may engage in or possess an interest in business ventures of every kind and description, independently or with others, including, but not limited to, investing in, acquiring and disposing of securities, or making investments in companies meeting the investment criteria as set forth in Section 4 of this Agreement; provided, however, that Limited Partners shall not have a claim on co-investment opportunities.

Remuneration (except of reimbursement of expenses) paid to representatives of the Managing General Partner as consideration for serving on the board of directors of Portfolio Companies as well as transaction or other fees charged by the Managing General Partner to Portfolio Companies, in either case exclusive VAT, shall be fully credited against the profit priority allocation pursuant to SECTION 13. The Managing General Partner, the Founding General Partner, their respective managing directors, shareholders and employees shall be entitled to co-invest with the Partnership in Portfolio Companies.

During the investment period, TOP INVEST shall pursue investment opportunities which meet the Partnership's investment criteria mainly for the benefit of the Partnership.

Section 25

Protection of Interests, Confidentiality

(1) Protection of Interests

Information obtained by a Partner from the Partnership or from any Portfolio Company may not be used to the disadvantage of the Partnership or such Portfolio Company. Each Partner undertakes to comply with all obligations of the Partnership in connection with such information and, in particular, any obligations of the Partnership regarding the confidentiality of business or trade secrets of such Portfolio Company.

(2) Confidentiality

Information which a Partner obtains in connection with such Partner's participation in the Partnership (including any information obtained in connection with a prospective investment of the Partnership) shall be kept confidential. This obligation includes the obligation of a Partner to use its best efforts to prevent any such information from becoming known to any third party who is not a Partner or the representative of a Partner bound by a statutory secrecy obligation.

(3) Term, Exceptions

Without limitation, the provisions of this Section 25 shall continue to apply after the termination of a Partner's membership in the Partnership. Compliance by a Partner with a statutory obligation to disclose matters of fact in connection with such Partner's investment in the Partnership, including the assets of the Partnership, shall not be affected by the confidentiality undertaking pursuant to the preceding sentence. Any disclosure of information by a Partner in connection with a transfer or other disposition of an interest in the Partnership shall require the approval of the Managing General Partner and a confidentiality undertaking of the prospective transferee similar in scope and substance to the confidentiality undertaking pursuant to this Section 25 clause.

Article 9
Term, Termination, Dissolution

Section 26
Term

The term of the Partnership shall commence as of the date specified in Section 1 subsection (2) and shall continue for a period ending on the earlier of:

- a) the tenth anniversary of the First Closing; provided that the Managing General Partner may extend the term of the Partnership for two consecutive one-year periods to orderly liquidate the investments; or
- b) the date on which the Managing General Partner together with Limited Partners and partners of the Parallel Pools holding at least 75 % of the total Capital Commitments to the Partnership and the Parallel Pools decide to terminate the Partnership; or
- c) the date of occurrence of any of the events set forth in SECTION 7 subsection (4) lit. d) or Section 27 subject to the proviso thereof.

Section 27
Early Termination

Notwithstanding the provisions of Section 26 of this Agreement, the Partnership shall dissolve upon the occurrence of any of the following events: (a) Dissolution of the Founding General Partner or the Managing General Partner; or (b) commencement of insolvency proceedings over the Founding General Partner's or the Managing General Partner's assets or rejection of a petition to commence such proceedings; provided that the Partnership shall not terminate if, within sixty (60) days after such an event, a resolution is taken to continue the business of the Partnership and to appoint a successor of the withdrawing Founding General Partner and Managing Gen-

eral Partner. The resolution to continue the Partnership and to elect a successor shall be taken separately for the Partnership and the Parallel Pools; the resolution of the Partnership and the resolution of each Parallel Pool shall each require a majority of at least 75 % of the respective Capital Commitments. Such successor shall become the founding general partner or managing general partner, respectively, of the Partnership. In such case (and without limitation of any other rights which the Partnership or the other Partners may have against the withdrawing Founding General Partner or the Managing General Partner arising out of such event), the interest of the withdrawing Founding General Partner and Managing General Partner shall be redeemed by the Partnership and the Founding General Partner's and Managing General Partner's entitlement to the profit priority allocation shall terminate as of the date of occurrence of such event. In the event of the removal of the Founding General Partner or the Managing General Partner, respectively, the provisions of Section 21 shall be applied.

Section 28

Dissolution

(1) Liquidator

Upon dissolution of the Partnership, the Managing General Partner shall become liquidator of the Partnership and shall liquidate all or any part of the assets of the Partnership; provided that upon occurrence of any of the events specified in Section 27 or upon dissolution of the Partnership pursuant to SECTION 7 subsection (4) lit. d), the Partnership shall be wound up by a liquidator appointed by the other Partners of the Partnership with a majority of at least seventy five percent (75 %) of the total Capital Commitments to the Partnership.

(2) Allocation of Liquidation Proceeds

Profits and losses arising from the liquidation of the assets of the Partnership upon liquidation shall be allocated among the Partners pursuant to the formula as set forth in the applicable subsection of Section 11 of this Agreement. The allocations to the Founding General Partner pursuant to Section 11 subsection (3) lit a) (i) and (ii) shall be calculated by reference to the total performance of the Partnership (realized until the Partnership is dissolved).

Article 10

Valuation, Accounting and Reporting

Section 29

Valuation of Partnership Assets

(1) Valuation at Fair Value

The assets of the Partnership shall include (without limitation):

- (i) all cash on hand or on deposit, including any interest accrued thereon;
- (ii) all bills and demand notes payable and accounts receivable (including proceeds of securities sold but not delivered);
- (iii) all shares, stock, debentures, debenture stocks, subscription rights, warrants, options and other securities, financial instruments and similar assets owned or controlled for by the Partnership (provided that the Partnership may make adjustments with regards to fluctuations in the market value of securities caused by trading ex-dividends, ex-rights, or by similar practices);
- (iv) all stock dividends, cash dividends and cash distributions received by the Partnership to the extent information thereon is reasonably available to the Partnership;

- (v) all interest accrued on any interest-bearing assets owned by the Partnership except to the extent that the same is included or reflected in the principal amount of such assets;
- (vi) the liquidation value of all contracts and options the Partnership has an open position in;
- (vii) the preliminary expenses of the Partnership insofar as the same have not been written off; and
- (viii) all other assets of any kind and nature including expenses paid in advance.

The assets of the Partnership shall be valued on the basis of the fair value. Such value shall be determined as follows:

- (i) units, shares, stocks or equity interests will be valued in accordance with valuation principles consistent with the guidelines on reporting valuations established by the European Private Equity and Venture Capital Association, as amended from time to time (EVCA);
- (ii) the value of assets denominated in a currency other than euro shall be determined by taking into account the rate of exchange prevailing at the time of the determination of the net asset value; and
- (iii) liquid assets comprising cash, treasury bonds and regularly traded money market instruments will be valued at their market value with interest accrued.

The Managing General Partner is authorized to apply other fair valuation principles for the assets of the Partnership, when circumstances or market conditions so justify.

The liabilities of the Partnership shall include (without limitation):

- (i) all loans, bills and accounts payable;
- (ii) all accrued interest on loans of the Partnership (including accrued fees for commitment for such loans);
- (iii) all accrued or payable expenses (including administrative expenses, custodian fees and any other agents' fees);

- (iv) all known liabilities, present and future, including all matured contractual obligations for payments of money or property, including the amount of any unpaid dividends declared by the Partnership;
- (v) an appropriate provision for future taxes based on capital and income on the accounting date, and other reserves (if any) authorized and approved by the Managing General Partner as well as such amount (if any) as the Managing General Partner may consider to be an appropriate allowance in respect of any contingent liabilities of the Partnership.

All valuation regulations and determinations shall be interpreted and applied in accordance with generally accepted accounting principles.

In the absence of bad faith, gross negligence or manifest error, every decision in calculating the NAV taken by the Managing General Partner or by any company or other organization which the Managing General Partner may appoint for the purpose of calculating the NAV, shall be final and binding on the Partnership and on its present, past or future Partners.

(2) Discounts from Valuation

When evaluating Securities of a Portfolio Company which are held subject to any restriction on transfer or sales in accordance with subsection (1) lit a) and lit b), such Securities will be valued at a reasonable discount.

Section 30

Suspension of calculation of the Net Asset Value

The Managing General Partner may suspend calculation of the valuation:

- a)** where there is an emergency situation following which it is impossible for the Partnership to dispose of or value a substantial part of its assets;
- b)** where the means of communication usually used to determine the price or value of the investments or the stock or other market price are out of service.

Any Partner having requested the valuation will be informed of such a suspension by the Managing General Partner.

Section 31 Accounting

The Managing General Partner shall maintain complete and accurate books of account of the Partnership's affairs at the Partnership's office, which books will be open to inspection by any Partner or a Partner's authorized representative bound by a legal confidentiality obligation at any time during ordinary business hours. Legal inspection rights of Partners under mandatory law shall remain unaffected.

Section 32 Reporting

(1) Annual Reports

The Managing General Partner will furnish to each of the Partners within the time required by law and in no event later than three (3) months after the end of each fiscal year an annual report of the Partnership containing:

- a)** the annual accounts for such fiscal year audited by an independent accounting firm selected by the Partners as provided in Section 23 subsection (1) lit c) of this Agreement;
- b)** a valuation report of the Partnership's Securities of Portfolio Companies as of the end of such fiscal year made by the Managing General Partner in accordance with the provisions of Section 29 subsection (1) and (2) of this Agreement including the review thereof by the auditors as well as a specification of Portfolio Company related expenses borne by the respective Portfolio Company in connection with the consummation of an investment by the Partnership during the expired fiscal year, and

- c) information on the development of the Partnership and its investments according to the Reporting Guidelines of the European Venture Capital Association.

(2) Interim Reports

Subject to the limitations imposed by the Portfolio Companies, the Managing General Partner will furnish to the Partners the following information:

- a) after the acquisition thereof, a summary report on the investment in a new Portfolio Company stating, among other things, the monetary amount invested and the nature of the investment and describing the Portfolio Company's products and markets;
- b) within two months after expiration of each calendar quarter, a quarterly report consisting of a report on the development of the Partnership and its investments according to the Reporting Guidelines of the European Venture Capital Association and unaudited quarterly short-form financial statements of the Partnership.

(3) Confidentiality Undertaking

The provisions of Section 25 on the protection of interests and confidentiality shall correspondingly apply to the annual report and the interim reports. If and to the extent a Portfolio Company's approval of the disclosure of confidential data in an annual or interim report is subject to the signing of a separate confidentiality agreement, the reports including the confidential data will only be delivered to the Partners who sign a separate confidentiality agreement.

(4) Tax Information

The Managing General Partner shall furnish to each Partner annually, without undue delay after preparation thereof, a copy of each Partner's allocable share in the Partnership's profits and losses and net worth.

Article 11
General Provisions

Section 33
Indemnification

- (1) The Partnership shall indemnify to the maximum extent permitted by law the Managing General Partner, the Founding General Partner, their shareholders, directors, employees and agents as well as the members of the Investor Committee (collectively "**Indemnitees**"), against any losses, claims, damages or liabilities (including legal, lawyers' and court fees) arising out of, or related to, the affairs of the Partnership or his or its activities or involvement in the affairs of the Partnership or the Portfolio Companies (collectively the "**Claims**") except for Claims arising out of gross negligence or willful misconduct on the part of such Indemnitee. Prior to having recourse to the Partnership, the Indemnitee shall seek indemnification from other sources, in particular from Portfolio Companies when serving as a member of a board of directors or from insurance companies on the basis of insurance coverage regarding the activities as member of the board of directors of Portfolio Companies. The Partnership's obligation hereunder shall only be reduced in and to the extent an Indemnitee actually receives indemnification from such other sources. The Partnership shall indemnify the Indemnitee upon his or its first demand and the Indemnitee is entitled to receive interim payments unless and until a non-appealable determination has been made that the respective Claim has been caused by gross negligence or willful misconduct on the part of such Indemnitee.
- (2) The Partners shall be personally liable for the Partnership's obligations to pay such indemnification up to the aggregate sum of their unfunded capital commitments and repayments of funded capital commitments.

Section 34
Amendments to the Partnership Agreement

- (1) All amendments to, or changes of, this Agreement must be in writing in order to be effective. This applies as well to any waiver of the requirement of written form. This written form clause shall be deemed to be met if an amendment to, or change of, this Agreement has been passed in a Partners' resolution pursuant to the provisions of Section 23 of this Agreement.
- (2) This Agreement and the agreements referred to herein contain all agreements between the parties hereto and in regard of the subject matters hereof.

Section 35
Severability

Should any individual provision of this Agreement be void or invalid in whole or in part, this shall not affect the validity or enforceability of the remaining provisions. Any void or invalid provision shall be interpreted or supplemented so that the intended economic purpose is achieved. The same shall apply analogously for filling any gaps of this Agreement.

Section 36
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Section 37
Arbitration

- (1) The parties hereto intend that any dispute arising from, or in connection with, this Agreement shall be settled amicably between the parties to such a dispute. An attempt to arrive at an amicable settlement shall be deemed to have failed as soon as one of the parties to such a dispute gives written notice to the other

parties to the dispute, which notice shall state that the party's attempt to arrive at an amicable settlement of the dispute has failed.

- (2) If an attempt at settlement of a dispute under subsection (1) has failed, the dispute shall be finally settled under the Arbitration Rules of the International Chamber of Commerce (the "**Rules**") by three arbitrators appointed in accordance with the Rules.
- (3) The place of arbitration shall be Jersey. The procedural law of the place of arbitration shall apply where the Rules are silent. The language of the arbitral proceedings shall be English.

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