

PSERS-011-090



**COMMONWEALTH OF PENNSYLVANIA  
PUBLIC SCHOOL EMPLOYEES' RETIREMENT SYSTEM**

Office of Chief Counsel  
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April 3, 2012

Hayley Tanguy  
Aztec Financial Services (Guernsey) Limited  
PO Box 656  
Tudor House  
St. Peter Port  
Guernsey GY1 3PP

RE: Fifth Cinven Fund

Dear Ms. Tanguy:

Enclosed is the Amended and Restated Limited Partnership Agreement which has been executed by PSERS for the above-referenced fund:

If you have any questions, please call Richard Michlovitz, Esq. at (717) 720-4677.

Sincerely,

*Heather Funk*  
Heather Funk  
Administrative Officer

Enclosure

cc: Charles Spiller

bcc: Brian Carl (w/o enclosures)  
Andy Fiscus  
Terri Mirarchi  
Treasury

Dated 2012

**CINVEN CAPITAL MANAGEMENT (V) LIMITED PARTNERSHIP INCORPORATED**

**as Managing General Partner  
and**

**CINVEN UK GP LLP**

**as a General Partner  
and**

**CEVINE V MLP LIMITED  
as a Managing Limited Partner**

**and**

**CEVINE CAPITAL MANAGEMENT (SP V GUERNSEY) LIMITED PARTNERSHIP  
INCORPORATED**

**as a Carried Interest Partner**

**and**

**CEVINE CAPITAL MANAGEMENT (SP V) LIMITED PARTNERSHIP  
as a Carried Interest Partner**

**and**

**OTHERS**

**AMENDED AND RESTATED LIMITED PARTNERSHIP AGREEMENT**

relating to

Fifth Cinven Fund (No.1) Limited Partnership

**Linklaters**

Linklaters LLP  
One Silk Street  
London EC2Y 8HQ

Telephone (+44) 20 7456 2000  
Facsimile (+44) 20 7456 2222

Ref Jonathan de Lance-Holmes / Lisa Dinwiddy

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This Agreement is made on 2012 between:

- (1) **CINVEN CAPITAL MANAGEMENT (V) LIMITED PARTNERSHIP INCORPORATED**, a Guernsey limited partnership with registered number [REDACTED] acting by its general partner Cinven Capital Management (V) General Partner Limited (incorporated in Guernsey with registered number 54045) and having its registered office at 3rd Floor, Tudor House, Le Bordage, St Peter Port, Guernsey GY1 3PP;
- (2) **CINVEN UK GP LLP**, a limited liability partnership established under the laws of England and Wales with registered number [REDACTED] and having its registered office at Warwick Court, Paternoster Square, London EC4M 7AG;
- (3) **CEVINE V MLP LIMITED**, a limited company established under the laws of Guernsey with registered number [REDACTED] and having its registered office at 3rd Floor, Tudor House, Le Bordage, St Peter Port, Guernsey GY1 3PP;
- (4) **CEVINE CAPITAL MANAGEMENT (SP V GUERNSEY) LIMITED PARTNERSHIP INCORPORATED**, a Guernsey limited partnership with registered number [REDACTED] which has elected to have legal personality and is acting by its general partner Cinven Capital Management (SP V) Limited (incorporated in Guernsey with registered number [REDACTED] and having its registered office at 3rd Floor, Tudor House, Le Bordage, St Peter Port, Guernsey GY1 3PP;
- (5) **CEVINE CAPITAL MANAGEMENT (SP V) LIMITED PARTNERSHIP**, a Scottish limited partnership with registered number [REDACTED] acting by its general partner Cinven Capital Management (SP V) Limited (incorporated in Guernsey with registered number [REDACTED] and having its registered office at 3rd Floor, Tudor House, Le Bordage, St Peter Port, Guernsey GY1 3PP; and
- (6) **THE PERSONS** who have been at the date of this Agreement, or are subsequently, admitted as a Limited Partner in accordance with this Agreement.

**Recitals:**

- (A) The partnership has been established as a limited partnership with registered number [REDACTED] in Guernsey under the Limited Partnerships (Guernsey) Law 1995 (the "Law") with the name "Fifth Cinven Fund (No. 1) Limited Partnership" (the "Partnership").
- (B) The Partnership has been established to carry on investment activities. A proportion of each of the investments made by the Partnership will be made through the FCP (as hereinafter defined), the sole investors in which will be the Partnership and the Additional Partnerships (as hereinafter defined), together with certain executives of the Cinven Group (as hereinafter defined) who in addition to an investment commitment to the FCP will be entitled to a carried interest out of the FCP.
- (C) This Agreement is adopted in full replacement and substitution of the Limited Partnership Agreement constituting the Partnership dated 16 December 2011.
- (D) The Partnership has entered into the Co-Investment Agreement.

Now it is hereby agreed as follows:

**1 Definitions and Interpretation**

- 1.1 In this Agreement, the following words and expressions shall, unless the context otherwise requires, have the following meanings:

**"Accounting Date"** means 31 December 2012 and 31 December in each year thereafter (or such other date as the Managing General Partner may determine and notify to the Limited Partners provided that without the consent of the Advisory Committee such date shall not result in any Accounting Period being longer than 18 months) and, in the case of the final Accounting Period, the date when the Partnership is liquidated;

**"Accounting Period"** means a period ending on and including an Accounting Date and beginning on the commencement of the Partnership or, if later, on the day following the preceding Accounting Date;

**"Acquisition Cost"** means the acquisition cost to the Partnership of an Investment together with any expenses properly incurred by the Partnership in relation to such acquisition;

**"Additional Limited Partner"** means a person who becomes a Limited Partner at a subsequent Closing in accordance with Clause 2.7 or, to the extent of its additional Commitment, a Limited Partner who increases its Commitment to the Partnership at a subsequent Closing;

**"Additional Partnerships"** means Fifth Cinven Fund (No.2) Limited Partnership, Fifth Cinven Fund (No. 3) Limited Partnership, Fifth Cinven Fund (No. 4) Limited Partnership, Fifth Cinven Fund (UBTI) Limited Partnership and any other person that is or becomes a party to the Co-Investment Agreement as a "Partnership" as therein defined and **"Additional Partnership"** means any one of them;

**"Additional Payment"** has the meaning set out in sub-clause 3.5.2;

**"Advisers"** means Cinven Partners LLP, Cinven S.A., Cinven GmbH, Cinven International Limited, Cinven S.r.l., Cinven HK Limited and/or such other persons as may be appointed from time to time as an investment adviser (directly or indirectly) to the Managing General Partner in relation to the Partnerships;

**"Advisory Agreements"** means the investment advisory agreements entered into between the Managing General Partner and each of the Advisers or between certain of the Advisers, as amended from time to time and **"Advisory Agreement"** means any one of them;

**"Advisory Committee"** means the advisory committee referred to in Clause 11.3;

**"Aggregate Acquisition Cost"** means with respect to an Investment in an Investee Company, the sum of (i) the Acquisition Cost and (ii) the aggregate acquisition cost of parallel investments in such Investee Company made by the Additional Partnerships together with any expenses properly incurred in relation to such acquisition which are paid by any such Additional Partnerships;

**"Agreement"** means this limited partnership agreement, as amended from time to time;

**"Alternative Investment Structure"** has the meaning set out in sub-clause 3.8.1;

**"Assignment Period"** has the meaning set out in sub-clause 3.13.1;

**"Associate"** means, in relation to the person concerned:

- (a) a parent undertaking, a subsidiary undertaking or a subsidiary undertaking of a common parent undertaking;

- (b) in relation to a firm or other unincorporated body means and includes any person directly or indirectly controlled by such person and/or any person (including any individual, group, partnership or other entity) that controls, is controlled by, or is under common control with, the person concerned; or
- (c) in relation to an individual, any of such individual's spouse, parent, step-parent, grandparent, child, grandchild or step-child (or any person acting in his capacity as trustee of any trust the majority by value of beneficiaries of which are limited to that individual or any of such named persons);

**"Associated Contracts"** means the limited partnership agreements constituting each of the Additional Partnerships, the management regulations governing the FCP, the constitutional documents governing any Alternative Investment Structure, the Co-Investment Agreement, each of the Advisory Agreements, the Deeds of Application and any Side Letters;

**"Auditors"** means the firm of chartered accountants appointed to act as auditors to each of the Partnerships and the first such Auditors shall be Deloitte LLP – Guernsey Branch;

**"Bank Guarantee"** means a guarantee by a reputable bank to support the repayment of distributions of Carried Interest made to the Fund Carried Interest Partners under sub-clause 6.3.3(iii);

**"Bank Regulated Partner"** means any Limited Partner that is (or is an affiliate of a bank holding company that is) subject to the provisions of Regulation Y and which has so indicated in the Deed of Application;

**"Bank Regulatory Problem"** means (i) any set of facts or circumstances wherein it has been asserted by any governmental regulatory agency that any Bank Regulated Partner is not entitled to own, hold or exercise any material right with respect to, all or any portion of the interest in the Partnership which such Bank Regulated Partner holds (or such Bank Regulated Partner believes there is a significant risk of such assertion) or (ii) when a Bank Regulated Partner and its affiliates would own, control or have power (including voting rights) over a greater quantity of securities of any kind than are permitted under any requirement of any governmental authority;

**"Basic Payment"** has the meaning set out in sub-clause 3.5.1;

**"Benefit Plan Investor"** means a "benefit plan investor" within the meaning of Section 3(42) of ERISA;

**"Business Day"** means a day (other than a Saturday or Sunday) when banks are open in London and Guernsey;

**"Capital Contribution"** means in respect of the Managing Limited Partner, the Carried Interest Partners and the Limited Partners, the amount contributed to the capital of the Partnership by each such Partner;

**"Carried Interest"** means the entitlement of and distributions received by the Carried Interest Partners pursuant to Clause 6.2;

**"Carried Interest Partners"** means each of Cevine Capital Management (SP V) Limited Partnership Incorporated and Cevine Capital Management (SP V Guernsey) Limited Partnership in respect of their entitlement to Carried Interest and/or any Substitute Carried Interest Partner who shall be admitted to the Partnership as the successor to all or part of

the rights and liabilities of any Carried Interest Partner and any person entitled to carried interest in respect of any Additional Partnership, and **"Carried Interest Partner"** means any one of them;

**"Change of Control"** means:

- (a) any persons other than Cinven Parties (i) acquiring in aggregate, direct or indirect control of the Managing General Partner and/or any of the Advisers; or (ii) becoming legally or beneficially entitled directly or indirectly, in aggregate, to greater than 25 per cent of (x) the net income or capital value of the Cinven Group as a whole; or (y) the Carried Interest; or
- (b) any persons other than the Initial Cinven Parties becoming beneficially entitled directly or indirectly, in aggregate, to greater than 50 per cent of the Carried Interest;

**"Cinven Group"** means the Managing General Partner, UK GP, GP Co and each of the Advisers together with each of their Associates from time to time;

**"Cinven Parties"** means (i) existing or former Cinven Partners, (ii) existing or former members or employees of members of the Cinven Group, (iii) Associates of any of the foregoing, (iv) trusts and similar arrangements for the benefit of, or in the case of discretionary trusts and similar arrangements, whose primary class of beneficiaries consist of, persons falling within (i) to (iii) above, and (v) entities owned and controlled, directly or indirectly, by persons falling within (i) to (iv) above;

**"Cinven Partners"** means those persons, including the Key Partners, who are designated by the executive committee of Cinven Partners LLP as a partner of the Cinven Group from time to time;

**"CIP Capital Amount"** has the meaning set out in Clause 3.2;

**"Claim"** has the meaning set out in sub-clause 13.4.2;

**"Closing"** means any occasion upon which persons are admitted as Investors to any of the Partnerships;

**"Closing Date"** means any date upon which a Closing occurs;

**"Code"** means the United States Internal Revenue Code of 1986;

**"Co-Investment Agreement"** means the agreement dated 16 December 2011 as amended and restated as at the date of this Agreement and as such agreement may be amended from time to time, between the Managing General Partner, the Partnership, the Additional Partnerships and others regulating parallel investment activities by the Partnerships;

**"Commencement Date"** means the later of the First Closing Date and the expiry of the investment period for the Fourth Cinven Fund;

**"Commitment"** means in respect of each Limited Partner, the aggregate Capital Contributions agreed to be contributed by each such Limited Partner (whether or not such amount has been contributed in whole or in part and whether or not it has been repaid to the Limited Partner in whole or in part pursuant to Clause 6.2);

**"Completed Investments"** has the meaning set out in sub-clause 9.5.4;

**"Confidential Information"** has the meaning set out in sub-clause 13.5.1;

**"Continuation Date"** has the meaning set out in sub-clause 9.5.1;

**"Dealing Restrictions"** has the meaning set out in sub-clause 6.4.1;

**"Deed of Application"** means the deed of application pursuant to which an investor offers to make a Commitment to subscribe for interests in the Partnership together with the Investor Questionnaire, each in such form as may be approved by the Managing General Partner;

**"Deemed Partnership"** has the meaning set out in sub-clause 6.2.3(ii);

**"Default Costs"** has the meaning set out in sub-clause 3.9.1;

**"Default Interest"** has the meaning set out in sub-clause 3.9.1;

**"Defaulting Investors"** means the Defaulting Partners and any person who is a defaulting partner pursuant to the limited partnership agreement (or equivalent) of an Additional Partnership;

**"Defaulting Partner"** has the meaning set out in sub-clause 3.9.1;

**"Drawdown Notice"** means a notice served on the Limited Partners by the Managing General Partner pursuant to Clause 3.3;

**"Equity Securities"** has the meaning set out in sub-clause 7.4.2(iv);

**"ERISA"** means the U.S. Employee Retirement Income Security Act of 1974;

**"ERISA Investor"** means any Investor that is a Benefit Plan Investor;

**"ERISA Plan Assets Regulation"** means the United States Department of Labor Regulation 29 CFR Section 2510.3-101 promulgated under ERISA, as modified by Section 3(42) of ERISA;

**"EURIBOR"** means the Euro Interbank Offered Rate for a period of six months, being the rate at which euro interbank term deposits are offered by one prime bank to another prime bank as quoted by the Financial Times from time to time during the period in question;

**"euro"** or **"€"** means the single currency of participating member states of the European Union;

**"Europe"** means the European Union, the European Economic Area and the European Free Trade Association from time to time and the countries of Croatia, Turkey, Former Yugoslav Republic of Macedonia, Bosnia & Herzegovina, Serbia, Montenegro and Albania;

**"Excused Commitment"** means that part of the Commitment of an Excused Partner which would have been payable had the Excused Partner participated in such Investment with the other Limited Partners (including for such purpose any other Excused Partner) pro rata to their respective Commitments;

**"Excused Partner"** means a Limited Partner who has been excused from compliance with a Drawdown Notice under Clause 3.11;

**"FATCA"** has the meaning set out in paragraph (iv) of Clause 12.1;



“**FCC**” has the meaning set out in sub-clause 13.17.1;

“**FCP**” means the Fifth Cinven Fund FCP-SIF, a *fonds commun de placement* established under the laws of Luxembourg;

“**FCP Carried Interest**” means all distributions made by the FCP to its unitholders other than to the Partnerships and to the FCP Co-Investors with respect to their FCP Co-Investment;

“**FCP Carried Interest Partners**” means those persons entitled to distributions in the nature of carried interest from the FCP;

“**FCP Co-Investment**” means the aggregate amount committed by the FCP Co-Investors as investors in the FCP;

“**FCP Co-Investors**” means those persons other than the Partnerships who have made or will on or prior to the Final Closing Date make an investment commitment to the FCP alongside the Partnerships;

“**FCP Commitment**” means the investment commitment of the Partnership to the FCP;

“**FCP Management Fee**” means the fee (inclusive of any VAT) payable by the FCP to the FCP Manager under the terms of the FCP Rules;

“**FCP Manager**” means Cinven V FCP Management S.à r.l. or such other member of the Cinven Group as may be appointed from time to time as manager of the FCP;

“**FCP Rules**” means the management regulations of the FCP as amended from time to time;

“**Feeder Partner**” means a Limited Partner which holds its limited partnership interest as nominee, bare trustee or agent for, or is an investment vehicle whose investors are, any other persons or entities (each a “**Feeder Investor**”), and which the Managing General Partner elects to treat as a Feeder Partner;

“**Final Closing Date**” means the date upon which Investors are last admitted to any of the Partnerships;

“**Financial Holding Company Partner**” means each Limited Partner that is (or an affiliate of a bank holding company that is) a financial holding company as defined in the United States Gramm-Leach-Bliley Act;

“**First Close Commitment**” means the Commitment subscribed for by a First Close Investor on the date of such First Close Investor’s admission to a Partnership together with any additional Commitment subsequently subscribed for by such Investor within three months following the First Closing Date which the Managing General Partner, in its sole discretion, elects to treat as a First Close Commitment;

“**First Close Incentive**” has the meaning set out in sub-clause 7.4.2(v)(a);

“**First Close Investor**” means those Investors who are admitted to any of the Partnerships on the First Closing Date together with such other Investors who may be admitted to any of the Partnerships following the First Closing Date (if any) as the Managing General Partner may, in its absolute discretion, agree to treat as First Close Investors, provided that such Investors shall be admitted on a date falling no later than three months following the First Closing Date and “**First Close Investor**” means any one of them;

**"First Closing Date"** means 12 March 2012, being the date upon which Investors were first admitted to any of the Partnerships;

**"First Drawdown Date"** has the meaning set out in sub-clause 3.5.2;

**"First Drawdown Notice"** means a notice served on a Limited Partner by the Managing General Partner on, or at its discretion, following the First Closing Date or any Subsequent Closing Date as appropriate, in connection with such Limited Partner's admission as a Limited Partner, which notice shall specify the date and means of payment of the initial amount of Capital Contribution to be made by such Limited Partner in accordance with Clause 3.3 or 3.5 as appropriate;

**"Former Investors"** means the Former Partners and any person which is a former partner pursuant to the limited partnership agreement (or equivalent) of an Additional Partnership;

**"Former Partners"** has the meaning set out in sub-clause 6.2.2;

**"Fully Excused Partners"** has the meaning set out in Clause 3.13;

**"Fund"** means the fund known as the Fifth Cinven Fund comprising the Partnership and the Additional Partnerships;

**"Fund Carried Interest Partners"** means the Carried Interest Partners and the FCP Carried Interest Partners and **"Fund Carried Interest Partner"** means any one of them;

**"Fund Commitments"** means the aggregate of Commitments and commitments made by Investors to the Additional Partnerships;

**"General Partners"** means UK GP and the Managing General Partner and/or any substitute general partner who shall be admitted to the Partnership as the successor to the rights and liabilities of either of them and **"General Partner"** means any one of them;

**"GFSC"** means the Guernsey Financial Services Commission;

**"GP Co"** means Cinven Capital Management V General Partner Limited and/or any substitute general partner who shall act as the general partner of the Managing General Partner from time to time;

**"GP Profit Shares"** means the Management Profit Share and the UK GP Profit Share;

**"Guidance Document"** means the document published by the GFSC in May 2007 for the purpose of providing guidance in respect of Qualifying Investor Funds as the same may be amended, supplemented and/or replaced from time to time;

**"Indemnified Party"** has the meaning set out in sub-clause 13.3.1;

**"Initial Cinven Parties"** means those persons who are Cinven Parties at the date of this Agreement and such other Cinven Parties as would fall within (iii) to (v) of the definition of Cinven Parties if (i) and (ii) of that definition referred only to persons falling within those categories at the First Closing Date;

**"Interest"** means the interest of a Limited Partner in the Partnership including its Commitment and all other rights which it has in the Partnership, including, its rights to vote and inspect the records and books of account of the Partnership;

**"Intermediate Vehicle"** means any intermediate vehicle established for the purpose of holding an investment in an Investee Company by the Partnerships (whether alone or with other persons);

**"Investee Companies"** means the bodies corporate or other entities (including their Associates) in which Investments have been made by the Partnership directly, or indirectly through the Intermediate Vehicles (and, for the avoidance of doubt, an Intermediate Vehicle shall not be regarded as an Investee Company) and **"Investee Company"** means any one of them;

**"Investment"** means an investment acquired by the Partnership in or in respect of an Investee Company acquired by or for the account of the Partnership whether made directly or through one or more Intermediate Vehicles and howsoever constituted or represented including shares, debentures, warrants or other securities of and loans (whether secured or unsecured provided such loans are permitted pursuant to the terms of this Agreement) made to any Investee Company or Intermediate Vehicle, any undertaking by the Partnership to make the same and any guarantee or undertaking given by the Partnership in connection with an investment in such securities or any obligation of such Investee Company but excluding any short-term investment made pursuant to sub-clause 4.2.20;

**"Investment Period"** means the period beginning on the Commencement Date and expiring on the earliest to occur of those events specified in sub-clause 3.10.1;

**"Investor Questionnaire"** means the investor questionnaire to be completed by each Limited Partner prior to their admission as a Limited Partner requiring certain information, including "know your customer" and anti-money laundering information to be provided about each Limited Partner;

**"Investors"** means the Limited Partners and the limited partners (or equivalent) in any Additional Partnership;

**"IRR"** means the internal rate of return (expressed as a percentage) which when applied as a discount to a particular set of cashflows gives the net present value of that set of cashflows as zero on the basis that the rate of return is treated as compounding annually at the end of each calendar year;

**"Key Partner"** means any of Hugh Langmuir, David Barker, Peter Catterall, Guy Davison, Stuart McAlpine and Nicolas Paulmier, any other person approved by the Advisory Committee (by a two-thirds majority vote) as an additional or replacement Key Partner and, on one occasion only in the event that any Key Partner has ceased to devote time to the affairs of the Fund, Previous Funds or Successor Fund by reason of his death or disability, any one of Caspar Berendsen, Pascal Heberling, Roberto Italia or Benoît Valentin as may be designated by the Managing General Partner as a replacement for such Key Partner;

**"Key Partner Event"** has the meaning set out in Clause 5.2;

**"Law"** has the meaning set out in Recital (A);

**"Limited Partner"** means a person admitted in accordance with this Agreement as a limited partner in the Partnership and any entity which is subsequently admitted to the Partnership as an Additional Limited Partner or Substitute Limited Partner excluding the Carried Interest Partners and excluding the Managing Limited Partner but without prejudice to their status as limited partners under the Law);

**“Limited Partner Consent”** means a resolution approved in writing by Investors excluding Related Parties holding more than 50 per cent of Fund Commitments (excluding the Commitments of Former Investors, Defaulting Investors and Related Parties);

**“Limited Partner Special Consent”** means a resolution approved in writing by Investors (excluding Related Parties) holding at least 75 per cent of Fund Commitments (excluding the Commitments of Former Investors, Defaulting Investors and Related Parties);

**“Limited Partner Two Thirds Consent”** means a resolution approved in writing by Investors (excluding Related Parties) holding at least 66 2/3rds per cent of Fund Commitments (excluding the Commitments of Former Investors, Defaulting Investors and Related Parties);

**“Limited Partner’s Share”** has the meaning set out in sub-clause 6.2.1;

**“Listing”** means in relation to any Investment comprising securities, the admission of such securities to the Official List of the United Kingdom Listing Authority or the admission of the same to any other recognised investment exchange, recognised overseas investment exchange or designated investment exchange (within the meaning of the United Kingdom Financial Services and Markets Act 2000) but excluding for this purpose the Alternative Investment Market of the London Stock Exchange;

**“Listing Price”** means the price at which securities comprising an Investment are offered for sale or subscription or placed in connection with a Listing;

**“LP Group”** has the meaning set out in sub-clause 8.4.3;

**“Management Profit Share”** means the management profit share to which the Managing General Partner is entitled in accordance with Clause 7.4;

**“Management Profit Share Element”** has the meaning set out in sub-clause 3.6.1;

**“Managing General Partner”** means Cinven Capital Management (V) Limited Partnership Incorporated (acting through GP Co) and/or any substitute general partner who shall be admitted to the Partnership as the successor to the rights and liabilities of the Managing General Partner;

**“Managing Limited Partner”** means Cevine V MLP Limited in its capacity as Managing Limited Partner and/or any Substitute Managing Limited Partner who shall be admitted to the Partnership as the successor to all or part of the rights and liabilities of the Managing Limited Partner;

**“Media Company”** has the meaning set out in sub-clause 13.17.2;

**“Middle Market Price”** means the mid-market price or other official published equivalent price of a security as at the close of business on the relevant Business Day as published by the principal investment exchange on which the relevant security is traded;

**“Minimum Commitment”** means with respect to any person who or whose Associate is an investor in any of the Previous Funds, €10 million, and with respect to any other person, €20 million;

**“Minimum Return”** means in the case of each Limited Partner an amount equal to the amount of such Limited Partner’s Capital Contributions as shall have been or, for the

purpose of determining the Theoretical Clawback Amount shall have been deemed to have been, drawn down, plus an amount equal to the greater of:

- (a) the aggregate amounts distributed pursuant to sub-clause 6.2.1(iii) to such Limited Partner over the life of the Partnership together with such further amount, if any, as would be required to produce the Preferred Return as of the date of the determination of the Minimum Return; and
- (b) 80 per cent of the excess of (1) all distributions made (and, in the case of the Carried Interest Partners, deemed to have been made to them pursuant to sub-clause 6.2.1) pursuant to sub-clauses 6.2.1(ii), 6.2.1(iii), 6.2.1(iv) and 6.2.1(v), to such Limited Partner and the Carried Interest Partners in respect of the Carried Interest Partners' entitlement to Carried Interest in respect of distributions made to such Limited Partner, over (2) such Limited Partner's Commitments as shall have been or, for the purpose of determining the Theoretical Clawback Amount, shall have been deemed to have been drawn down;

**"New Carried Interest Partner"** has the meaning set out in sub-clause 9.5.3;

**"New Managing General Partner"** has the meaning set out in sub-clause 9.5.2(ii);

**"New Managing Limited Partner"** has the meaning set out in sub-clause 9.5.2(ii);

**"New UK GP"** has the meaning set out in sub-clause 9.5.2(ii);

**"Offering Memorandum"** means the offering memorandum dated December 2011 relating to the Fund as amended or supplemented from time to time;

**"Original Advisers"** has the meaning set out in sub-clause 9.5.3(iii);

**"Original Carried Interest Partners"** has the meaning set out in sub-clause 9.5.3;

**"Original Managing General Partner"** has the meaning set out in sub-clause 9.5.1;

**"Original Managing Limited Partner"** has the meaning set out in sub-clause 9.5.2(i);

**"Original UK GP"** has the meaning set out in sub-clause 9.5.2(i);

**"Partner"** or **"Partners"** means the Managing General Partner, UK GP, the Managing Limited Partner, the Carried Interest Partners and/or all or any of the Limited Partners, as the case may require;

**"Partnership"** has the meaning set out in Recital (A);

**"Partnership Assets"** means all of the assets of the Partnership inclusive of Capital Contributions and any obligations of Limited Partners to contribute undrawn Commitments under and pursuant to the terms of this Agreement;

**"Partnerships"** means the Partnership and the Additional Partnerships;

**"Payment Date"** has the meaning set out in sub-clause 7.4.2(vii);

**"Policy"** means with respect to any Public Plan Partner a policy of general applicability with respect to investments in private investment funds by such Public Plan Partner promulgated by a government body or any committee thereof that has policy-making authority with respect to such Public Plan Partner, which policy is (a) disclosed to the

Managing General Partner on or prior to the date of admission of such Public Plan Partner as a Limited Partner; and (b) relates to the conduct of the Public Plan Partner's external investment managers, including general partners of investment funds in which the Public Plan Partner invests;

**"Preferred Return"** means in the case of each Limited Partner that amount, if any, which if distributed to such Limited Partner would on the date of that distribution give such Limited Partner an IRR of 8 per cent in relation to the following cashflows:

- (a) so much of that Limited Partner's Commitment as shall then have been drawn down from that Partner by the Partnership; and
- (b) the aggregate of all distributions previously and concurrently made to that Limited Partner pursuant to sub-clause 6.2.1(ii), and previously made pursuant to sub-clauses 6.2.1(iii) and 6.2.1(v) including Limited Partner Tax Credits deemed to be included in such distribution,

provided that there shall be excluded (x) from Commitments for the purpose of (a) above any Capital Contributions drawn down which if, or having been, repaid would then be available to be redrawn, and (y) from distributions for the purposes of (b) above, any distributions available to be redrawn, in each case (aa) pursuant to sub-clause 3.3.3(i) in respect of capital proceeds received from Temporary Investments and (bb) pursuant to sub-clause 3.3.3(ii) of such Capital Contributions;

**"Previous Funds"** means the limited partnerships comprising the Coal Pension Venture Limited Partnership, the Coal Pension Venture (Prior Situations) Limited Partnership, the Barclays UK Retirement Fund Venture Limited Partnership, the Barclays UK Retirement Fund Venture (Prior Situations) Limited Partnership, the Railway Pensions Fund Limited Partnership, the Cinven Fund, the Second Cinven Fund, the Third Cinven Fund, the Fourth Cinven Fund and related co-investment limited partnerships;

**"Prohibited Investment"** means all or that portion of an Investment in relation to which an Excused Partner is excused from compliance with the relevant Drawdown Notice for the reason set out in sub-clause 3.11.1 or sub-clause 3.11.5;

**"Public Plan Partner"** means a "governmental plan" within the meaning of section 3(32) of ERISA;

**"Qualified Investor"** has the meaning set out in the Guidance Document;

**"Qualifying Investment"** means an Investment which may be made by the Fund in accordance with the purpose of the Partnership described in Clause 2.4 and the investment policy described in Clause 5;

**"Qualifying Investor Fund"** means an authorised closed-ended collective investment scheme into which only Qualified Investors are permitted to invest;

**"Reconstitution Date"** has the meaning set out in sub-clause 9.5.2(i);

**"Regulation Y"** means Regulation Y of the Board of Governors of the Federal Reserve System (CFR Part 225) or any successor to such Regulation;

**"Related Parties"** means all or any of the Managing General Partner, the GP Co, the UK GP, the Carried Interest Partners, the Managing Limited Partner, a member of the Cinven

Group and any director, officer, employee, partner, or direct or indirect member or shareholder of any of the foregoing;

**"Relevant Partnership Assets"** has the meaning set out in sub-clause 9.5.4(i);

**"Relevant Partnership Liabilities"** has the meaning set out in sub-clause 9.5.4(ii);

**"Removal Date"** has the meaning set out in sub-clause 9.5.2(i);

**"Retained Amount"** has the meaning set out in sub-clause 6.3.2;

**"Return Amount"** has the meaning set out in sub-clause 13.4.3;

**"Securities Act"** means the United States Securities Act of 1933;

**"Side Letters"** has the meaning set out in sub-clause 13.7.1;

**"Spot Rate of Exchange"** means the average of the spot rates of exchange between euro and another currency (being the spot rate for purchasing and selling euro in exchange for the other currency respectively) in London at 11.00 a.m. on the relevant date as certified by the Managing General Partner;

**"Subsequent Closing Date"** means any date after the First Closing Date on which any new Limited Partner is admitted or on which the Commitment of an existing Limited Partner is increased pursuant to Clause 2.7;

**"Substitute Carried Interest Partner"** means a person admitted to the Partnership pursuant to Clause 8.2 as the successor to all or part of the rights and liabilities of a Carried Interest Partner in respect of that Carried Interest Partner's interest in the Carried Interest;

**"Substitute Limited Partner"** means a person admitted to the Partnership pursuant to Clause 8.2 as the successor to all or part of the rights and liabilities of a Limited Partner in respect of such Limited Partner's interest in the Partnership;

**"Substitute Managing Limited Partner"** means a person admitted to the Partnership pursuant to Clause 8.2 as the successor to all or part of the rights and liabilities of a Managing Limited Partner in respect of the Managing Limited Partner's interest in the Partnership;

**"Successor Fund"** has the meaning set out in sub-clause 13.2.1(ii);

**"Tax Credits"** means any tax deducted or withheld from, and any tax credit attributable to, receipts of the Partnership;

**"Temporary Investment"** means any part of an Investment that the Managing General Partner intends at the time of acquisition or subsequently to syndicate, refinance or otherwise realise and does so within nine months of acquisition (or such longer period as may be agreed with the Advisory Committee) but any such investment that has not been syndicated, refinanced or otherwise realised within nine months of its acquisition (or such longer period as may be agreed with the Advisory Committee) shall cease to be a Temporary Investment;

**"Theoretical Clawback Amount"** means the aggregate amount that, in the opinion of the Auditors, the Limited Partners would need to receive to ensure each had received

aggregate distributions equal to the Minimum Return as at the date of the Auditors' opinion and on the assumption that on that date:

- (a) the Partnership and the FCP had been liquidated;
- (b) their remaining Investments had been entirely written off and all Undrawn Commitments to the Partnership had been drawn down and written off; and
- (c) the assets of the Partnership and the Partnership's attributable share of the assets of the FCP remaining after satisfaction of the actual debts, obligations and liabilities of the Partnership and the FCP appearing on the books of the Partnership and the FCP (without double counting), had been distributed on the date of the Auditors' opinion in accordance with this Agreement and the FCP Rules;

**"Transaction Fees"** means any fees received by the UK GP, the Managing General Partner, the Advisers, the FCP Manager, the Managing Limited Partner or any of their Associates or any of their respective officers, directors, partners, employees, direct or indirect members, shareholders or beneficiaries in connection with the Partnership and its Investments including:

- (i) fees received in respect of any acquisitions and divestments whether or not they proceed to completion, including completion fees, syndication fees, break-up fees, commitment fees, and management fees and warrants, options and similar equity interests; and
- (ii) directors', consulting and monitoring fees, but excluding the GP Profit Shares, fees of the FCP Manager and fees of the Advisers which are borne out of the GP Profit Shares and/or FCP Management Fee;

excluding any profit share, management or advisory fees, carried interest payments, performance fees or similar fees or charges paid by persons other than the Partnership (including Limited Partners) in respect of co-investments with the Partnership and excluding the portion of such fees attributable to any Additional Partnerships and their investments,

**"Transfer"** has the meaning set out in sub-clause 8.2.1;

**"Transfer and Adherence Agreement"** means an agreement in a form acceptable to the Managing General Partner, to be completed by such person seeking to be admitted as a limited partner to the Partnership pursuant to a Transfer in accordance with Clause 8.2;

**"UK GP"** means Cinven UK GP LLP or such other person admitted to the Partnership pursuant to Clause 8.1 as the successor to all or part of the rights and liabilities of the UK GP in respect of the UK GP's interest in the Partnership;

**"UK GP Profit Share"** has the meaning set out in sub-clause 7.4.3;

**"Unaffected Limited Partners"** means the Limited Partners other than any Excused Partner;

**"Undrawn Commitment"** means, in respect of a Limited Partner, the amount of its Commitment which at the relevant time has not yet been drawn down, which for the avoidance of doubt shall include such amounts as are referred to in sub-clause 3.3.3;

**"US Person"** has the meaning set out in Regulation S under the Securities Act;

**"Valuer"** has the meaning set out in Clause 12.7; and



**"VAT"** means, within the European Union tax levied subject to and in accordance with EU Directive 2006/112/EC and outside the European Union any similar tax.

**1.2** In this Agreement:

- 1.2.1 references to any statute or statutory instrument or governmental regulation shall be deemed to include any modification, amendment, extension, re-enactment thereof or successor thereto;
- 1.2.2 references to persons shall include natural persons, bodies corporate, partnerships and other incorporated or unincorporated associations;
- 1.2.3 the expressions **"subsidiary"**, **"subsidiary undertaking"**, **"holding company"** and **"parent undertaking"** shall bear the respective meanings given thereto in Sections 1159, 1161 and 1162 of the United Kingdom Companies Act 2006;
- 1.2.4 the United Kingdom Interpretation Act 1978, as amended, shall apply to this Agreement in the same way it applies to an enactment;
- 1.2.5 the expression **"control"** shall bear the meaning given thereto in Section 1124 of the United Kingdom Corporation Tax Act 2010 and the expressions **"controlling"** and **"controlled by"** shall be construed accordingly;
- 1.2.6 the masculine shall include the feminine and the neuter and the singular shall include the plural and vice versa as the context shall admit or require;
- 1.2.7 the headings are for ease of reference only and shall not be deemed to form any part of this Agreement;
- 1.2.8 the expression **"include"** or **"including"** shall be construed as meaning "include/including (as appropriate) but not limited to"; and
- 1.2.9 for the avoidance of doubt, the amount of any payment under this Agreement pursuant to an indemnity or equivalent provision shall be computed on an after-tax basis.

**2 Constitution of the Partnership**

**2.1 Nature**

The Partnership is a limited partnership and has been registered pursuant to the Law. The General Partners shall at all times comply with the requirements of the Law. Without prejudice to the generality of the foregoing, the General Partners shall comply with the filing and notification requirements of the Law and shall forthwith notify particulars of any relevant changes in the composition or terms of the Partnership effected pursuant to this Agreement and any further changes which may occur in the future to HM Greffier or such other person in Guernsey acting as Registrar of Limited Partnerships under the Law in a statement specifying the date and nature of such change.

**2.2 Liability of Partners**

In the event that the Partnership is unable to pay its debts, liabilities or obligations, the liability of the Managing Limited Partner, the Carried Interest Partners and each Limited Partner shall be limited to the amount of its Capital Contribution, plus, in the case of a Limited Partner, its Undrawn Commitment (and in either case as may be imposed by this Agreement, the Law or otherwise under any applicable law) and references to Partnership

Assets shall be construed accordingly. The General Partners shall each (on an unlimited basis) be fully liable for such of the Partnership's debts, liabilities and obligations as exceed the Partnership Assets.

### **2.3 Name**

The affairs, activities and operations of the Partnership shall be carried on under the name and style or firm name of "Fifth Cinven Fund (No. 1) Limited Partnership" or such other name as shall from time to time be determined by the Managing General Partner and notified to Limited Partners.

### **2.4 Purpose**

The purpose of the Partnership is to carry on investment and ancillary activities by making, holding, monitoring and realising Qualifying Investments including primarily equity and equity-related investments in Europe. 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.

### **2.5 Commencement and Duration**

The Partnership was established on 23 November 2011. The term of the Partnership shall continue until the expiration of 10 years from the Commencement Date unless terminated sooner in accordance with the provisions of Clause 9.1 or extended in accordance with the provisions of Clause 9.4.

### **2.6 Registered Office and Principal Place of Business**

The registered office and principal place of business of the Partnership shall be at 3rd Floor, Tudor House, Le Bordage, St Peter Port, Guernsey GY1 3PP, Channel Islands or such other place or places as the Managing General Partner shall from time to time determine, provided that the registered office shall at all times be in Guernsey.

### **2.7 Admission of Limited Partners**

2.7.1 The Managing General Partner may subject to Clause 2.8 admit to the Partnership as a Limited Partner any person who has executed a Deed of Application agreeing to be bound by the terms of this Agreement and to make a Commitment of not less than the Minimum Commitment (or such lesser sum as the Managing General Partner may agree in its sole discretion).

2.7.2 Except as provided in sub-clause 2.7.3 and subject to Clause 2.8, any existing Limited Partner may, with the consent of the Managing General Partner, increase its Commitment at any time after the First Closing Date.

2.7.3 Unless approved by a Limited Partner Special Consent, no new Investor may be admitted to the Partnership or any Additional Partnership and no existing Investor may increase its commitment to the Partnership or any Additional Partnership (in each case other than on a transfer of Commitments in accordance with this Agreement or the Agreement governing such Additional Partnership) later than 12 months following the First Closing Date, provided that no new Investor shall be admitted and no Investor shall be permitted to increase its commitment at any time

after the date falling 24 months after the First Closing Date without the unanimous consent of all Investors.

## **2.8 Maximum Fund Size**

Fund Commitments shall not exceed €6.5 billion.

## **3 Capital Contributions**

### **3.1 General Partners and Managing Limited Partner**

3.1.1 The Capital Contribution of each of the General Partners shall be nil.

3.1.2 The Capital Contribution of the Managing Limited Partner shall be €100.

### **3.2 Carried Interest Partners**

The Carried Interest Partners shall on each Closing Date contribute (to the extent not previously contributed) by way of Capital Contribution an aggregate sum in cash which, together with any such amounts previously contributed, equals 20 per cent of the aggregate of (i) their Capital Contributions; and (ii) 0.01 per cent of the Commitments of the Limited Partners (the "CIP Capital Amount").

### **3.3 Calls**

3.3.1 The initial Capital Contribution required to be made by each Limited Partner shall be made in such amount as the Managing General Partner shall determine (but subject as stated in this sub-clause 3.3.1 and subject to sub-clause 3.3.4 and Clauses 3.11, 3.12 and 7.4 pro rata to the Limited Partners' respective Commitments) and specify in the First Drawdown Notice served on each Limited Partner. The initial First Drawdown Notice may be issued by the Managing General Partner on, or at any time following, the First Closing Date. Thereafter a First Drawdown Notice will be issued to those Limited Partners admitted to or increasing their commitments to the Partnership on each Closing Date following the date on which the initial First Drawdown notice was issued. Each First Drawdown Notice shall include a date and means for payment (which date shall be the same for all Limited Partners admitted to or increasing their Commitments to the Partnership on the same Closing Date and not less than 10 Business Days after the date of issue of the First Drawdown Notice). All such sums shall be deemed to have been contributed on the date specified for payment in such First Drawdown Notice for the purposes of this Agreement (save as provided in sub-clause 6.1.1). The First Drawdown Notice shall be for an amount which shall be required to meet Partnership expenses, drawings on account of the GP Profit Shares, to provide initial working capital for the Partnership and, where an Investment is being made on such occasion, such amount as is required to fund the Acquisition Cost of that Investment.

3.3.2 The balance of Undrawn Commitments shall be advanced pro rata to Commitments subject only to the provisions of Clauses 3.11 and 3.12 regarding Excused Commitments and to Clause 7.4 regarding Management Profit Share, in tranches of such amount and at such times as the Managing General Partner may require either for the purpose of making Investments (whether directly or through

the FCP) or for working capital purposes (including repayment of Partnership borrowings) or for paying the GP Profit Shares or drawings in respect thereof or to meet obligations of the Partnership including its FCP Commitment and indemnification obligations set out in Clause 13.3. The Managing General Partner shall give not less than 10 Business Days' written notice requesting payment. Any such Drawdown Notice shall, subject to any obligations of confidentiality, contain brief details of the proposed Investment to which the sums raised pursuant to such Drawdown Notice are intended to be applied (including the name of the Investee Company, details of the types of business carried on by the Investee Company and its subsidiaries and the geographical areas in which such businesses operate) or shall indicate that the sum is required for working capital of the Partnership (including repayment of Partnership borrowings) or to meet the GP Profit Shares or drawings in respect thereof or otherwise to satisfy any obligation of the Partnership. Where any Limited Partner has notified the Managing General Partner in writing that particular circumstances or types of investments may be likely to cause such Limited Partner to seek to apply the Excused Commitment provisions of Clause 3.11, the Managing General Partner shall use reasonable endeavours to provide to such Limited Partner (subject to the provision of confidentiality undertakings if required) such information in the possession of the Managing General Partner as may be reasonably necessary to enable such Limited Partner to determine whether it should seek to apply such Excused Commitment provisions. The Managing General Partner shall use its reasonable endeavours to ensure that all information supplied to Limited Partners under this sub-clause 3.3.2 is accurate and not misleading but shall be under no liability to any Limited Partner in the event that it is subsequently discovered that any such information was not in fact accurate or was found to be in some way misleading.

**3.3.3** Capital Contributions shall be repaid as provided for in Clause 6.2. Capital Contributions which have been repaid shall not be available for redrawing, save where required by the Law and save that each Limited Partner may be required to recontribute by way of Capital Contribution that part of any amount distributed to it pursuant to this Agreement by way of repayment of Capital Contribution to the extent that such repayment:

- (i) comprises capital proceeds from an Investment (including a Temporary Investment) received within 12 months of the acquisition of that Investment, in an amount not exceeding its Acquisition Cost;
- (ii) is of amounts repaid to Limited Partners in accordance with sub-clause 3.6.3;
- (iii) is of an amount equal to Capital Contributions drawn down for the purpose of funding drawings in respect of the GP Profit Shares or the FCP Management Fee and such drawings have been off-set against allocations as referred to in sub-clauses 7.4.2(vii) and/or 7.4.3;
- (iv) comprises amounts drawn down for a proposed Investment that did not proceed, or which were in excess of what was required; or

- (v) is of an amount equal to Capital Contributions drawn down to fund the expenses of the Partnership referred to in Clause 4.4.

Notwithstanding any provisions to the contrary, any proceeds that would, if returned to a Limited Partner, be subject to recontribution in accordance with this Clause 3.3.3 may, in the Managing General Partner's absolute discretion, be retained within the Partnership for a period not exceeding six months and invested in such short term investments as are described in sub-clause 4.2.20 and the amount together with interest thereon shall be treated as repaid to that Limited Partner and immediately redrawn on the occasion of the next drawdown of Capital Contributions.

- 3.3.4 Notwithstanding sub-clause 3.3.1, in the event the Managing General Partner seeks to qualify the Partnership as a "venture capital operating company" (as such term is defined in the ERISA Plan Asset Regulation), then the Managing General Partner may delay, for prospective ERISA Investors only, the date for their initial Capital Contribution such that it shall be no sooner than either (i) the date of the first Investment of the Partnership or (ii) the date the Managing General Partner requires an ERISA Investor to make a Capital Contribution into an escrow account established by the General Partner in connection with the Partnership's first Investment. If the date for the initial Capital Contribution for such prospective ERISA Investors is the date of the first Investment by the Partnership, the Managing General Partner shall provide each such prospective ERISA Investor with notice of the anticipated closing date for the first Investment in the relevant Drawdown Notice and shall subsequently notify each such prospective ERISA Investor of the actual closing date of the first Investment. Each such prospective ERISA Investor's Capital Contribution due and payable on the closing date of the first Investment shall be paid as early as practicable on the actual closing date of the first Investment. If the Managing General Partner elects to establish an escrow account for ERISA Investors' Capital Contributions prior to the first Investment date, the Managing General Partner shall provide each ERISA Investor with a Drawdown Notice specifying a Capital Contribution date not more than 10 calendar days prior to the anticipated closing date of the first Investment to which such notice relates. The terms of the escrow shall be intended to meet the specifications for such arrangement as set forth in Department of Labor Advisory Opinion Letter 95-04A (1995).

### **3.4 Currency and Interest**

- 3.4.1 Undrawn Commitments shall be drawn down in euro except where the Managing General Partner agrees with a Limited Partner that all or any part of its Undrawn Commitment shall be drawn down in another currency in which an Investment is to be made. Where Undrawn Commitments are drawn down in a currency other than euro that Limited Partner's Undrawn Commitment shall be reduced by the euro value of the sum drawn down on the date specified in the Drawdown Notice for the relevant Capital Contribution to be made, such euro value to be ascertained using the same rate of exchange applicable to the purchase of that currency by the Managing General Partner with the amount of euro drawn from the other Limited Partners, and the relevant Capital Contribution shall be entered into the books of the Partnership in the amount of such euro value.

3.4.2 No interest shall be paid or payable by the Partnership upon any Capital Contributions made to the Partnership by the Limited Partners. On termination of the Partnership, the Limited Partners will be subordinated to all other creditors as regards repayment of any Capital Contributions then outstanding.

### 3.5 Payments on Subsequent Closing Dates

The amount payable as the initial call in respect of an Additional Limited Partner to be issued on a Subsequent Closing Date shall be the aggregate of:

- 3.5.1 such amount of Capital Contributions, if any, (the "**Basic Payment**") as shall ensure that, following the application of Clauses 3.6 and 3.7 and the equivalent provisions of the constitutional documents of the Additional Partnerships, each Investor shall, subject to Clauses 3.3.4, 3.11, 3.12 and 7.4 and the equivalent provisions of the constitutional documents of the Additional Partnerships, have contributed Capital Contributions pro rata inter se to the Investors' respective Commitments existing immediately following that Subsequent Closing Date; and
- 3.5.2 a further amount (the "**Additional Payment**") equal to notional interest on the Basic Payment at a rate being the higher of (i) EURIBOR plus 4 per cent per annum and (ii) 6 per cent per annum; calculated over the period from (but excluding) the date on which monies were first drawn down from Limited Partners pursuant to sub-clause 3.3.1 (the "**First Drawdown Date**") (or, to the extent that the Basic Payment reflects Capital Contributions made or advanced by existing Limited Partners on any date after the First Drawdown Date, the date on which such Capital Contributions were made) to and including that Subsequent Closing Date.

### 3.6 Treatment of Payments on Subsequent Closing Dates

- 3.6.1 Payment of that part of any Basic Payment and any Additional Payment paid pursuant to Clause 3.5 as is required to be on-paid to any Additional Partnership(s) pursuant to the terms of the Co-Investment Agreement shall be made to such Additional Partnership(s) in accordance with such terms.
- 3.6.2 That portion of the Basic Payment which represents Capital Contributions made to fund payments of or on account of the Management Profit Share (the "**Management Profit Share Element**") shall be paid to the Managing General Partner and treated as an advance pursuant to sub-clause 7.4.2(vii) against future allocations of the Management Profit Share.
- 3.6.3 The remainder of the Basic Payment shall be allocated and distributed as soon as practicable following its receipt to those Limited Partners who were admitted to the Partnership prior to the relevant Subsequent Closing Date pro rata inter se to their respective Capital Contributions immediately prior to that Subsequent Closing Date. To the extent that a Limited Partner receives any such distribution, Capital Contributions previously made by it to the Partnership shall be treated as not having been made (and accordingly such Limited Partner's Undrawn Commitment shall be increased by such amount).
- 3.6.4 Payment of any Additional Payment shall not constitute a Capital Contribution by a Limited Partner. Instead:

- (i) the part of the Additional Payment which relates to the Management Profit Share Element shall be paid to the Managing General Partner as an additional amount of Management Profit Share; and
- (ii) the remainder of the Additional Payment shall be allocated and distributed to those Limited Partners who were admitted to the Partnership prior to the relevant Subsequent Closing Date pro rata inter se to their respective Capital Contributions immediately prior to that Subsequent Closing Date. Such amounts shall not be treated as income or capital proceeds arising from or in connection with one or more Investments for the purposes of this Agreement and shall not increase existing Limited Partners' Undrawn Commitments.

### 3.7 Payments under the Co-Investment Agreement

3.7.1 Amounts in respect of payments made to or from any Additional Partnerships under the Co-Investment Agreement shall be treated as follows:

- (i) amounts received by the Partnership from Additional Partnerships in relation to any Subsequent Closing Date shall be allocated and distributed as soon as practicable following their receipt to those Limited Partners who were admitted to the Partnership prior to that Subsequent Closing Date pro rata inter se to their respective Capital Contributions (other than Capital Contributions made pursuant to sub-clauses 7.4.2(vii) and 7.4.3) immediately prior to that Subsequent Closing Date. To the extent that a Limited Partner receives any such distribution (other than such part as represents the equivalent of the Additional Payment), Capital Contributions previously made by it to the Partnership shall be treated as not having been made (and accordingly such Partner's Undrawn Commitments shall be increased by a like amount); and
- (ii) payments made by the Partnership to any Additional Partnerships shall be funded out of Basic Payments and Additional Payments by those Limited Partners who were admitted to the Partnership (or increased their Commitment) on the Subsequent Closing Date to which the payment relates, pro rata inter se to their respective Capital Contributions (other than Capital Contributions made pursuant to sub-clauses 7.4.2(vii) and 7.4.3) made by or on that Subsequent Closing Date.

### 3.8 Alternative Investment Structures

3.8.1 The Managing General Partner shall be entitled at any time to require any Limited Partner to participate in a particular investment opportunity through a vehicle or investment structure other than the Partnership (in each case an "**Alternative Investment Structure**") if the Managing General Partner in its absolute discretion determines that for legal, tax, regulatory or other similar reasons such Alternative Investment Structure is necessary or desirable, provided that:

- (i) each Alternative Investment Structure shall (to the extent reasonably practicable in the circumstances, including in the light of legal, regulatory and tax considerations) be designed such that (except with the consent of the relevant Limited Partner) the overall commercial effect to a Limited Partner of participating in the Alternative Investment Structure (including

amounts that would be allocated and distributed to the relevant Limited Partner) is in all material respects no less beneficial, and such that the aggregate liability of the relevant Limited Partner to or in respect of such Alternative Investment Structure is no greater, than would have been the case had the relevant Limited Partner participated in such investment opportunity through the Partnership;

- (ii) investments made in Alternative Investment Structures shall for the purposes of this Agreement, be treated as if they had been made through the Partnership, after adjusting for the effect of any management profit share, management or advisory fee, transaction-related fee offset, carried interest or clawback provisions contained in such Alternative Investment Structures;
- (iii) in the case of a Transfer by a Limited Partner of all or any part of its interest in the Partnership such Limited Partner shall be obliged to effect an equivalent Transfer of or in respect of the equivalent proportion of its investment in any Alternative Investment Structure to the same person or persons, and no Limited Partner shall effect or agree to effect any Transfer of or in respect of its interest in an Alternative Investment Structure except alongside and pro rata to a permitted Transfer of or in respect of its interests in the Partnership unless in each case the Managing General Partner otherwise determines in its sole discretion;
- (iv) the Managing General Partner shall provide to any such Limited Partner:
  - (a) not less than 15 Business Days prior to the date on which a Limited Partner is to be admitted to such Alternative Investment Structure, a copy of the constitutional documents for the relevant Alternative Investment Structure; and
  - (b) on or prior to the admission of such Limited Partner to an Alternative Investment Structure, a customary legal opinion on limited liability and a customary opinion on the tax treatment of such Alternative Investment Structure in the jurisdiction in which such Alternative Investment Structure is established, provided that such opinions shall only be required to be provided on the first occasion on which the particular Alternative Investment Structure is used and no opinion shall be required where the Alternative Investment Structure is itself a Guernsey limited partnership; and
- (v) to the extent that one or more Partnerships and/or one or more other Alternative Investment Structures is also investing in the Investment to be held by the Alternative Investment Structure, the Alternative Investment Structure invests and divests of its interest in the relevant Investment at substantially the same time and on substantially the same terms as the relevant Partnerships and/or Alternative Investment Structures.

**3.8.2** If the Managing General Partner determines that some or all of a Limited Partner's indirect interest in an Investment held through the Partnership should be held through an Alternative Investment Structure or, with respect to an Investment held through an Alternative Investment Structure, should instead be held through the Partnership, the Managing General Partner may cause the Partnership or the



Alternative Investment Structure (as the case may be) to transfer all or a relevant portion of the Investment to an Alternative Investment Structure or the Partnership (as the case may be).

- 3.8.3 The Managing General Partner may, where it determines it appropriate, structure an Alternative Investment Structure to hold more than one investment.

### 3.9 Failure to Comply with Drawdown Notice

- 3.9.1 Notwithstanding any provision of this Agreement to the contrary, if any Limited Partner fails to contribute to the Partnership the amount which is the subject of a Drawdown Notice on or before the date of expiry of such Drawdown Notice (otherwise than in the circumstances set out in Clause 3.11) (a “**Defaulting Partner**”), the Managing General Partner shall (without prejudice to any rights which the Partnership or any Partner may have against such Limited Partner) have the right, if the Defaulting Partner shall fail to remedy such default and to pay to the Partnership an amount equal to (a) interest on the amount outstanding from the date of expiry of the Drawdown Notice up to the date of payment thereof at the rate of the higher of (I) EURIBOR plus 4 per cent per annum; or (II) 10 per cent per annum (“**Default Interest**”); plus (b) such amount (“**Default Costs**”) as is sufficient to reimburse the Partnership, any Investee Company or Intermediate Vehicle, the General Partners and the Advisers for any losses (including any borrowing, legal or other expenses (including irrecoverable VAT thereon)) incurred by them or any of their Associates by reason of or in connection with such Defaulting Partner’s default, as specified by the Managing General Partner in its good faith discretion, on or before the expiry of 10 Business Days from the date of receipt of further written notice from the Managing General Partner requiring the Defaulting Partner so to do, either:

- (i) suspend indefinitely the right of the Defaulting Partner to receive any further distributions from the Partnership and sell all or a portion of such Defaulting Partner’s interest in the Partnership as attorney for such Defaulting Partner (including, its obligations in respect of Undrawn Commitments) to a third party (or parties) identified by the Managing General Partner (which party or parties may include a Limited Partner or a limited partner in any other Partnership but shall not include any member of the Cinven Group or their officers, directors, partners, employees or members) at the best price reasonably obtainable bearing in mind the need to effect a prompt transfer in order to remedy the default and apply the net proceeds of such sale (after paying any expenses of the sale) as follows:
  - (a) first, in payment to the Partnership of all amounts due from the Defaulting Partner including Default Interest and Default Costs to the date of such payment;
  - (b) second, in payment to the Partnership to be held on trust for the Defaulting Partner until such time as the Partnership is liquidated in accordance with Clause 9 an amount equal to the lesser of (i) such Defaulting Partner’s Capital Contributions; and (ii) any remaining proceeds of sale; and

- (c) third, any remaining proceeds of such sale shall be allocated and distributed to the remaining Limited Partners pro rata to their Commitments; or
  - (ii) to forfeit such interest.
- 3.9.2 Upon forfeiture, such Defaulting Partner shall cease to be a Partner and all (or part of as aforesaid) amounts standing to the credit of such Defaulting Partner's relevant accounts (other than the Capital Contribution) shall accrue to and form part of the Partnership Assets and shall be apportioned between the remaining Partners in the manner provided for in Clause 7.1. Notwithstanding such forfeiture the Defaulting Partner shall be entitled to repayment of its Capital Contributions in accordance with the provisions of sub-clause 6.2.2. In the event of the right of forfeiture being exercised against a Defaulting Partner under this Clause 3.9 the total Commitments to the Partnership shall be reduced by an amount equal to the Commitment of the Defaulting Partner and thereafter such reduced total Commitments shall apply for the purposes of this Agreement.
- 3.9.3 Notwithstanding any provision of this Agreement to the contrary, if any Feeder Partner fails to make any payment as aforesaid by reason of the failure of any of its Feeder Investors to make a payment to that Feeder Partner when required to do so in accordance with the relevant constitutional documents, the provisions of this Clause 3.9 shall apply only to the Feeder Partner to the extent that such Feeder Investor, if admitted as a Limited Partner, would be a Defaulting Partner and this Clause 3.9 shall be applied and interpreted in a manner that minimises the adverse consequences to each Feeder Investor which would not be a Defaulting Partner under such application of this Clause 3.9.
- 3.9.4 Any Defaulting Partner shall not be entitled to vote on any matter requiring the consent of the Limited Partners, and the Commitments of such Defaulting Partner shall not be taken into account for the purposes of any such vote.

### **3.10 End of Investment Period**

- 3.10.1 The Investment Period shall terminate on the earliest of the following events:
  - (i) the fifth anniversary of the Commencement Date or such later date on or before the sixth anniversary of the Commencement Date as the Managing General Partner shall, following consultation with the Advisory Committee, determine and notify to the Limited Partners;
  - (ii) the day following that upon which all Commitments to the Partnership have been drawn down (and, for this purpose, the amount of any Excused Commitment shall be deemed to have been drawn down);
  - (iii) if the Managing General Partner so determines (in its absolute discretion) such date as the Managing General Partner may notify the Limited Partners after not less than 80 per cent of Fund Commitments (and for this purpose the amount of any Excused Commitment shall be deemed to have been drawn down) have been drawn down or, without prejudice to the provisions of sub-clause 3.10.2(i), reserved for future estimated draw

downs for the purpose of paying ongoing operating expenses of the Partnerships and drawings on account of the GP Profit Shares and provided that a like determination is made in respect of each Additional Partnership, if any;

- (iv) the agreement to terminate the Investment Period by Limited Partner Special Consent; or
- (v) in accordance with sub-clause 5.2.3.

**3.10.2** Following the expiry of the Investment Period, Undrawn Commitments of the Limited Partners may at any time in whole or in part (and if in part on a pro rata basis) be irrevocably cancelled as the Managing General Partner may in its discretion determine. To the extent Undrawn Commitments of the Limited Partners are not cancelled, Drawdown Notices may only be served on Limited Partners after the end of the Investment Period for the purpose of:

- (i) paying ongoing operating expenses of the Partnership including the payment to the General Partners of the GP Profit Shares or drawings on account thereof in accordance with Clause 7.4;
- (ii) completing Investments in respect of which the Partnership has been granted exclusivity and which the failure by the Partnership to complete would cause the Partnership and/or any member of the Cinven Group to suffer material financial harm or penalty or a binding written agreement or written undertaking to invest has been given in each case prior to the end of the Investment Period;
- (iii) completing follow-on Investments in existing Investee Companies provided that the total amount required to be advanced pursuant to this sub-clause (iii) shall not exceed 15 per cent of aggregate Commitments; or
- (iv) meeting obligations of the Partnership (or an Intermediate Vehicle or a special purpose vehicle owned and controlled by the Partnership or Partnerships) including those under guarantees, indemnities, warranties, covenants or undertakings given pursuant to sub-clause 4.2.10 and pursuant to Clause 13.3.

**3.10.3** As soon as reasonably practicable following the termination of the Investment Period the Managing General Partner shall notify Limited Partners of any such agreement or undertaking referred to in sub-clause 3.10.2(ii) although failure to do so shall not give rise to any liability on the part of the Managing General Partner or affect the obligations of the Limited Partners.

### **3.11 Excused Commitment**

**3.11.1** A Limited Partner may notify the Managing General Partner in writing, not later than five Business Days after the date of receipt in accordance with Clause 13.9 of a Drawdown Notice in respect of a proposed Investment, that:

- (i) participation in the proposed Investment would cause a breach of any investment policy or investment restriction applicable to the Limited Partner which policy or restriction was notified to the Managing General Partner in

writing prior to the date of such Limited Partner's admission to the Partnership and accepted in writing by the Managing General Partner as a ground for non-participation, or it is unable to participate upon such other grounds as the Managing General Partner may in its absolute discretion agree from time to time; or

- (ii) by reason of applicable laws or regulations or the interpretation thereof that participation through the Partnership in the proposed Investment would more likely than not result in (x) a breach of a statute, law or governmental regulation (including any judicial or administrative interpretation thereof) applicable to such Limited Partner or (y) the withdrawal or non-renewal of or refusal to issue any licence or permission required from any regulatory or administrative authority (or would cause any such licence or permission to be subject to any significant restriction) for the conduct of a regulated business which forms a significant part of the overall business of the Limited Partner or (z) the loss to the Limited Partner of its status (including tax-exempt status) under any relevant tax legislation; or
- (iii) by reason of that Limited Partner being a Bank Regulated Partner or a Financial Holding Company Partner the amount being drawn down from that Bank Regulated Partner or Financial Holding Company Partner would result in it, together with its affiliates:
  - (a)
    - (I) having contributed more than 24.99 per cent of all Capital Contributions made to the Partnership by the Limited Partners; or
    - (II) having a capital account in excess of 24.99 per cent of the aggregate capital accounts of all Limited Partners; or
  - (b) otherwise being in violation of Section 4 of the United States Bank Holding Company Act of 1956.

**3.11.2** In such circumstances such Limited Partner may request the Managing General Partner to exclude it from such proposed Investment and subject to the Limited Partner having satisfied the conditions set out in this Clause 3.11 it shall be so excused. Any such notice from a Limited Partner to the Managing General Partner shall be accompanied by a certificate of an authorised senior officer of the Limited Partner concerned to the effect of the foregoing sentences, and either contemporaneously or within three further Business Days by an opinion of counsel or other legal adviser (which may be an in-house counsel), which counsel and form of opinion shall be reasonably acceptable to the Managing General Partner to the effect that the Limited Partner is unable to participate in the proposed Investment for one of the foregoing reasons in sub-clause 3.11.1 and giving the reasons therefor.

**3.11.3** In relation to an Investment for which a Limited Partner may otherwise be excused pursuant to this Clause 3.11, the Managing General Partner may elect to structure and implement the relevant Limited Partner's investment in the relevant investment opportunity through an Alternative Investment Structure in accordance with Clause

3.8 to which none of the circumstances in sub-clause 3.11.1(i), 3.11.1(ii) or 3.11.1(iii) would apply. Each affected Limited Partner shall provide such information and other assistance as the Managing General Partner may reasonably request for this purpose.

**3.11.4** The provisions of this Clause 3.11, shall not release the Limited Partner from its obligations under this Agreement in relation to any other Drawdown Notice which may be served upon the Limited Partner. For the avoidance of doubt, the provisions of this Clause 3.11 shall not apply in the case of a Limited Partner who seeks to be excused from a proposed Investment on the grounds of its bankruptcy, insolvency, dissolution, liquidation or other similar event and in such circumstances, the provisions of Clause 3.9 shall apply to such Limited Partner.

**3.11.5** If either:

- (i) US legal counsel to the Partnership or US legal counsel to an ERISA Investor (or any other person that is reasonably acceptable to the Managing General Partner) has advised the Managing General Partner that there is a material risk that existing participation in the Partnership by "Benefit Plan Investors" is "significant" or would become "significant" by reason of an ERISA Investor satisfying a call to make any Capital Contribution and the Partnership has not, from the date of the Partnership's first Investment, qualified as a "venture capital operating company" (as these terms are defined in the ERISA Plan Assets Regulation); or
- (ii) US legal counsel has advised the Managing General Partner that there is a material risk that the Managing General Partner, an Adviser, any ERISA Investor or its "plan sponsor" (as this term is defined by ERISA), by reason of its continuing investment in the Partnership, or the Partnership, in respect of any action or transaction entered into or proposed to be entered into, has violated or will violate any provision of ERISA or other law,

the relevant ERISA Investors shall (without prejudice to Clauses 8.5 and 12.1) be excused from making the relevant Capital Contribution.

### **3.12 Overriding Provisions**

**3.12.1** The provisions of this Clause 3.12 shall apply and shall override any other provisions of this Agreement which are inconsistent therewith where a Limited Partner is excused from meeting a Drawdown Notice pursuant to Clause 3.11.

**3.12.2** The Undrawn Commitments of an Excused Partner shall be reduced by the amount of any Excused Commitment, except for the purposes of calculating the Management Profit Share to be borne by such Excused Partner.

**3.12.3** An Excused Partner shall not be allocated any amounts derived from the Prohibited Investment to which the Excused Commitment relates.

**3.12.4** Any Substitute Limited Partner to whom a limited partnership interest has been assigned under Clause 8 shall be treated as an Excused Partner to the same

extent as the Limited Partner by whom such limited partnership interest was transferred.

- 3.12.5 For the avoidance of doubt, in the event that there are one or more Excused Partners in respect of an Investment or in respect of the same Investment there are, under provisions equivalent to Clause 3.11 one or more excused partners in any of the Additional Partnerships, the Managing General Partner shall be entitled to serve further Drawdown Notice(s) on the Limited Partners who are not Excused Partners for the purpose of completing the Investment in compliance with sub-clause 4.2.3, provided that no Limited Partner's exposure to an Investment thereby exceeds the diversification limits set out in sub-clauses 5.1.4 and 5.1.5 on the basis that such limits were applied on an individual basis to such Limited Partner and to such Limited Partner's total Commitments.

### 3.13 Assignment Period

In the event that any Limited Partner is an Excused Partner in respect of three or more consecutive Drawdown Notices (other than Drawdown Notices relating solely to working capital or payment of or drawings on account of the Management Profit Share) or a Limited Partner notifies the Managing General Partner in writing that it will not be able to comply with future Drawdown Notices for reasons which would qualify such Limited Partner as an Excused Partner in accordance with Clause 3.11 (a "**Fully Excused Partner**") the following terms shall apply:

- 3.13.1 For a period of six months from the date when a Limited Partner becomes a Fully Excused Partner (the "**Assignment Period**") such Fully Excused Partner shall continue to have all the rights and obligations of a Limited Partner except that no further Drawdown Notices shall be served on such Fully Excused Partner, and the Managing General Partner may, in its absolute discretion in each individual case, decide either:
- (i) that for the purposes of determining the total Commitments to the Partnership and the Partnerships (except in relation to Clause 7.4), the Commitment of such Limited Partner shall be excluded; or
  - (ii) that in respect of any Investments for which the Managing General Partner issues Drawdown Notices during the Assignment Period, the Fully Excused Partner shall be treated as an Excused Partner in accordance with the terms of Clause 3.12.
- 3.13.2 During the Assignment Period, a Fully Excused Partner may attempt to procure an assignee or assignees to whom to transfer its interest as a Limited Partner, on condition that all of the relevant terms of Clause 8 shall be complied with. The Managing General Partner shall not unreasonably withhold any consent required pursuant to Clause 8.2 in respect of any transfer to any assignee(s) procured under this sub-clause 3.13.2 provided that the Managing General Partner shall not be acting unreasonably in withholding its consent where it has identified an alternative person willing to purchase the interest of the Fully Excused Partner on terms no less favourable than the terms agreed by the Fully Excused Partner with the prospective assignee(s).

- 3.13.3** If a Fully Excused Partner fails, during the Assignment Period, to effect the assignment of all or part of its interest in the Partnership in accordance with sub-clause 3.13.2, the Managing General Partner shall thereafter have the right to effect the sale of such interest or part thereof at such price and on such terms as it may be able to obtain from a third party (other than a member of the Cinven Group except with Advisory Committee approval) which is acceptable under the terms of Clause 8.2 and shall thereupon account to the Fully Excused Partner for the proceeds of such sale after deduction by the Managing General Partner of its reasonable expenses.
- 3.13.4** Each Limited Partner hereby appoints the Managing General Partner as its duly authorised attorney with full powers to act on behalf of such Limited Partner in negotiating and effecting such sale as is contemplated under the terms of sub-clause 3.13.3 (and agrees to execute such documents as the Managing General Partner may require to give full effect to such power of attorney) and may for the purposes thereof sell such interest to one or more purchasers as it may deem fit and each Limited Partner hereby agrees to hold the Managing General Partner harmless in relation to exercising such powers, save with respect to any matters arising from the Managing General Partner's gross negligence, fraud, bad faith and material breach of fiduciary duty.
- 3.13.5** Any expenses other than those expressly referred to in sub-clause 3.13.3 which are incurred by the Managing General Partner and which are associated with a Limited Partner becoming a Fully Excused Partner shall be borne by such Limited Partner.
- 3.13.6** Notwithstanding that a Limited Partner becomes a Fully Excused Partner in accordance with the terms of this Clause 3.13, the Managing General Partner shall have discretion not to apply the provisions of sub-clauses 3.13.1 to 3.13.5 if it is satisfied that the events leading to the Limited Partner becoming a Fully Excused Partner were beyond the control of the relevant Limited Partner but the Managing General Partner shall be under no obligation or constraint to use such discretion and even if the Managing General Partner has used such discretion on the third consecutive Drawdown Notice when such Limited Partner is an Excused Partner, the Managing General Partner shall have absolute discretion to deem the Limited Partner to be a Fully Excused Partner and to apply the provisions of sub-clauses 3.13.1 to 3.13.5 upon any subsequent occasion when the Limited Partner is an Excused Partner irrespective of whether or not it is consecutive with the preceding series of three consecutive occasions.

### **3.14 Reallocation**

- 3.14.1** The Managing General Partner shall be entitled to reallocate a Limited Partner's interests in the Partnership to any Additional Partnership, either in whole or in part, on terms substantially the same as those of the Partnership at any time if in the Managing General Partner's reasonable opinion, such reallocation is necessary for legal, tax, regulatory or similar reasons (including, in the case of an ERISA Investor, reallocating the ERISA Partner's interests to an Additional Partnership that is intended to qualify as a "venture capital operating company" (as defined in

the ERISA Plan Assets Regulation), if the Managing General Partner determines that, absent such reallocation, there is a material risk that investments in the Partnership by Benefit Plan Investors may be or become "significant" (as defined in the ERISA Plan Assets Regulation)), provided that the relevant Limited Partner's rights and obligations are not prejudiced thereby and that:

- (i) the Limited Partner is provided with a copy of the constitutional documents of such Additional Partnership not less than 15 Business Days prior to the date on which it is intended that such Limited Partner is to be admitted to the Additional Partnership; and
- (ii) on or prior to the admission of the Limited Partner to the Additional Partnership, a customary legal opinion on limited liability and a customary opinion on the tax treatment of such Additional Partnership in the jurisdiction in which such Additional Partnership is established.

The Managing General Partner shall notify the Limited Partner of any such reallocation as soon as practicable thereafter.

**3.14.2** Each Limited Partner and each Carried Interest Partner appoints the Managing General Partner to be their agent and attorney-in-fact to execute such documents or make such arrangements on their behalf as may be necessary to effect any such reallocation to any Additional Partnership including the following:

- (i) to take all steps necessary to allow the Limited Partner to withdraw as a Partner in the Partnership and become a limited partner in an Additional Partnership;
- (ii) to transfer all or the relevant proportion of the relevant Limited Partner's total Commitments including all Capital Contributions made to the Partnership to the Additional Partnership; and
- (iii) to transfer an appropriate share of the assets from the Partnership to the relevant Additional Partnership in accordance with the provisions of the Co-Investment Agreement.

**3.14.3** Where any Limited Partner has been reallocated to the Partnership pursuant to the re-allocation provision of the limited partnership agreement of any Additional Partnership, all calculations undertaken pursuant to Clause 6 and Clause 13.4 shall be undertaken on the basis that such Limited Partner has been a Partner in the Partnership from the date of its admission to the Additional Partnership and all amounts paid by it to and received by it from the Additional Partnership during such time as the relevant Limited Partner was a limited partner in the Additional Partnership shall be treated as if they were payments to and by the Partnership rather than the Additional Partnership.

## **4 Rights and Duties of the General Partners**

### **4.1 Management**

**4.1.1** Subject to sub-clauses 4.1.2 and 4.1.4, the Managing General Partner, acting through GP Co, shall undertake and shall have exclusive responsibility for the management, operation and administration of the business and affairs of the



Partnership and, subject as provided herein, shall have the power and authority to do all things necessary to carry out the purposes of the Partnership, shall devote as much of its time and attention thereto as shall reasonably be required for the management, operation and administration of the business of the Partnership, shall procure that all filings and registrations required in relation to the Partnership pursuant to the Law are promptly made and shall operate the Partnership in accordance with this Agreement. In the discharge of his duties thereunder the Managing General Partner shall perform them with due care and skill and to the standards which would be expected from a competent managing general partner of a private equity fund similar to the Fund.

- 4.1.2 UK GP hereby confirms and agrees that, except as may be required by the Law, it shall have no authority to manage, operate or administer the business or affairs of the Partnership and its role is limited to marketing the Fund to prospective investors in accordance with applicable law and regulation.
- 4.1.3 The Limited Partners shall take no part in the management, conduct, operation and administration of the business and affairs of the Partnership, and shall have no right or authority to act for the Partnership, to transact the business of, sign or execute documents for or otherwise bind the Partnership, or to take any part in or in any way to interfere in the management, conduct, operation and administration of the Partnership or to vote on matters relating to the Partnership other than as provided in the Law or as set forth in this Agreement but they (including Feeder Investors in the case of Feeder Partners) and their duly authorised agents shall at all reasonable times have access to and the right to inspect the records and books of account of the Partnership and to discuss the same with the Managing General Partner.
- 4.1.4 The Managing Limited Partner shall have the right to participate with the Managing General Partner in the management, conduct, operation and administration of the business and affairs of the Partnership provided that the Managing Limited Partner shall have no power to bind the Partnership. In the event of any disagreement between the Managing Limited Partner and the Managing General Partner the views of the Managing General Partner shall prevail. The Managing General Partner agrees to provide the Managing Limited Partner, upon request, with such information as will enable the Managing Limited Partner to exercise its rights as aforesaid.
- 4.1.5 Notwithstanding any other provision of this Agreement, UK GP shall not perform any activity in relation to the Partnership that is a "regulated activity" under the UK Financial Services and Markets Act 2000 or that constitutes "controlled investment business" under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (as amended) in or from within the Bailiwick of Guernsey.

## **4.2 Authority and Powers**

Without prejudice to the generality of Clause 4.1, the Managing General Partner, acting through GP Co, shall have full power and authority on behalf of the Partnership and with the power to bind the Partnership thereby and without prior consultation with any of the Limited Partners:

- 4.2.1** to cause the Partnership to pay out of the Partnership Assets its proportion of the expenses referred to in sub-clauses 4.4.1 to 4.4.8;
- 4.2.2** to formulate the investment policy of the Partnership provided that in so doing the Managing General Partner shall have due regard to the purpose of the Partnership and the Fund as set out in Clause 2.4, and shall act in accordance with the investment policy guidelines of the Partnership as set out in Clause 5.1;
- 4.2.3** to identify, evaluate and negotiate investment opportunities and to acquire, underwrite, hold, sell, syndicate, refinance, exchange, convert or otherwise dispose of Investments for the account of the Partnership and to enter into investment agreements on behalf of the Partnership provided that in so doing the Managing General Partner shall, in accordance with the Co-Investment Agreement, use its reasonable endeavours to procure that in respect of each Investee Company
- (i) the Partnership shall pay the Acquisition Cost, which shall equal that proportion of the Aggregate Acquisition Cost as is equal to the proportion which the aggregate Commitments to the Partnership (excluding the total Commitment of any Excused Partner who has been excused in relation to that Investment) bear to the aggregate commitments to the Fund (excluding the total commitment of any excused partner in any of the Partnerships who has been excused in relation to that Investment under provisions equivalent to Clause 3.11);
  - (ii) the Partnership shall simultaneously with each of the Additional Partnerships acquire an Investment carrying rights, interests and restrictions which, except in relation to any rights granted to a Partnership which the Managing General Partner has elected to qualify as a “venture capital operating company” within the ERISA Plan Assets Regulation which are required in order for such Partnership to qualify as a “venture capital operating company, are no less favourable than the investments by each of the Additional Partnerships; and
  - (iii) the Investment shall be realised simultaneously with, and on terms no less favourable than, all other investments in the same Investee Company by the Additional Partnerships or, where it is desirable to realise part of an Investment, such partial realisation shall be effected pro rata in the proportions referred to in sub-clause (i) above;
- 4.2.4** to give advice to, monitor and, where appropriate, to appoint executive directors and/or non-executive directors to the boards of Investee Companies;
- 4.2.5** to provide at its own expense office facilities and office and executive staff and office equipment to facilitate the carrying on of the business of the Partnership;
- 4.2.6** to receive, on behalf of the Partnership, Capital Contributions made by Limited Partners and, on behalf of the Partnership, to receive investment income and other funds arising from Investments;
- 4.2.7** to open, maintain and close bank accounts and custodian accounts for and in the name of the Partnership in Guernsey or elsewhere and to draw cheques and other orders for the payment of monies;

- 4.2.8** to enter into, make and perform such contracts, agreements, deeds and other undertakings and to do all such other acts as it may deem necessary or advisable for or as may be incidental to the conduct of the affairs and activities of the Partnership;
- 4.2.9** without prejudice to sub-clause 7.2.2 and subject to the limitation in sub-clause 5.1.12, to borrow money on behalf of the Partnership (or an Intermediate Vehicle or a special purpose vehicle owned and controlled by the Partnership or Partnerships) pending the issue of a Drawdown Notice for the purpose of funding the acquisition of Investments, drawings on account of the Management Profit Share, and Partnership expenses (the principal amount of such borrowings not exceeding the amount of Undrawn Commitments). In connection with such borrowings and any other liabilities, the Managing General Partner may on behalf of the Partnership make, issue, accept, endorse and execute promissory notes, drafts, bills of exchange, guarantees and other instruments and evidences of indebtedness, and secure the payment thereof by mortgage, charge, pledge or assignment of any interest in all or any part of the Partnership Assets (including any Undrawn Commitments), provided that: (i) any arrangements relating to the pledge or assignment thereof are in accordance with applicable law; (ii) borrowings in connection with one Investment shall not be secured in any way on any other Investment; and (iii) any such borrowing shall be repaid within 18 months of the date on which it was incurred;
- 4.2.10** subject to the limitations in sub-clauses 5.1.4 and 5.1.12, to give (or to cause an Intermediate Vehicle or a special purpose vehicle owned and controlled by the Partnership or Partnerships to give) guarantees, indemnities, warranties, covenants and undertakings (including undertakings to make an Investment in an Investee Company) in favour of third parties on behalf of the Partnership in connection with or for the purposes of the acquisition, holding or disposal of any Investment or in respect of the liabilities or obligations of any Investee Company provided that the liability of the Partnership thereunder shall be pro rata with the other Partnerships and to secure any such guarantees, indemnities, warranties, covenants or undertakings by mortgage, charge, pledge or assignment of any interest in all or any part of the Partnership Assets (including any Undrawn Commitments);
- 4.2.11** to make loans provided that such loans shall only be made in connection with an Investment or as provided in sub-clause 7.4.2(vii) and/or 7.4.3;
- 4.2.12** to disburse payments of expenses payable by the Partnership under Clause 4.4 including the expenses of acquiring and disposing of Investments to the extent that such expenses have not been agreed to be paid by any other person;
- 4.2.13** to commence or defend any litigation relating to the Partnership or to any of the Partnership Assets;
- 4.2.14** to hold the Partnership Assets and to maintain the Partnership's records and books of account at the Partnership's principal office and to allow any Partner or its representative access thereto at any time for the purpose of copying the same provided that such Limited Partner shall reimburse to the Managing General

Partner any reasonable expenses incurred by the Managing General Partner in connection with such copying;

- 4.2.15 to make payments and distributions to the Partners in accordance with the terms of this Agreement;
- 4.2.16 to carry out periodic valuations of the Partnership Assets as the Managing General Partner may see fit;
- 4.2.17 to admit Additional Limited Partners, Substitute Limited Partners and Substitute Carried Interest Partners to the Partnership in accordance with the provisions of Clauses 2.7 and 8.2;
- 4.2.18 to engage (at the expense of the Partnership, save where otherwise stated by this Agreement, and to the extent that the expense is not recoverable from any other person), agents, lawyers, accountants, custodians, brokers, investment and financial advisers and consultants as it may deem necessary or advisable in relation to the affairs of the Partnership provided that no such person is a member of the Cinven Group or a Cinven Partner and that in the case a custodian is engaged, such custodian shall be a bank or other financial institution;
- 4.2.19 to register and publish all such notices, statements or other instruments as may be required pursuant to the Law 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 Section 10 of the Law;
- 4.2.20 to invest the funds of the Partnership in government securities, bank deposits with financial institutions having a Moody's (or equivalent) long-term rating of A3 and other short-term investments having a Moody's (or equivalent) rating of P-1 for short-term deposits and at least A1 for long-term deposits pending the selection of suitable Investments and distributions in accordance with Clause 6;
- 4.2.21 to enter (or to cause an Intermediate Vehicle or a special purpose vehicle owned and controlled by the Partnership or Partnerships to enter) into hedging arrangements in relation to the actual or anticipated foreign currency exposure on funds required to make, or on funds derived from or from the disposal of, non-euro Investments, in such form as the Managing General Partner may determine;
- 4.2.22 generally (without prejudice to Clause 10.2) to communicate with the Limited Partners and to report to the Limited Partners at such times as it shall think fit and to represent the Partnership in all things;
- 4.2.23 to make such tax filings on behalf of the Partnership as may be required and to provide, at the cost of the requesting Limited Partner, such assistance as it considers reasonable (which shall include the provision of such information as the Limited Partners may reasonably require) to enable Limited Partners or the partners in such Limited Partner to claim any reliefs from taxation and to prepare tax returns in respect of their profits from the Partnership and to take such steps as the Managing General Partner considers reasonable to assist the Partnership or the Limited Partners to obtain the benefit of available tax credits against tax withheld on sums received from Investee Companies;
- 4.2.24 to syndicate, refinance or otherwise realise Temporary Investments;

- 4.2.25 to appoint each of the Advisers to provide investment advisory services and certain other services to the Managing General Partner, subject always to the supervision of the Managing General Partner, and on the terms of the relevant Advisory Agreement and provided that the fees of the Advisers for acting as such shall be borne by the Managing General Partner out of the Management Profit Share and shall not be borne by the Partnerships;
- 4.2.26 to comply with any tax law or undertaking with any tax authority;
- 4.2.27 to take any action necessary or advisable to cause the Partnership to be treated, for United States federal income tax purposes, as a partnership and not as an association taxable as a corporation, including filing any returns, elections or statements by the Partnership with the applicable United States tax authorities; and
- 4.2.28 generally to do all other things on behalf of the Partnership as may in the Managing General Partner's opinion be reasonably required in connection with or ancillary to the purposes or objectives of the Partnership as described herein and which are, in the Managing General Partner's opinion, in the best interests of the Partnership

#### **4.3 Separate Liabilities of the General Partners**

Each of the General Partners 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 and 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.

#### **4.4 Expenses**

- 4.4.1 The Partnership shall be responsible for its pro rata proportion (calculated by reference to the total commitments to each of the Partnerships) of all reasonable direct organisational and offering costs and expenses of the formation of the Partnerships and the establishment of the Fund including legal and accounting fees but excluding placement agents' and financial advisors' fees (as to which see sub-clause 4.4.8) to the extent that the aggregate of all such organisational and offering costs and expenses for the Partnership and all Additional Partnerships comprising the Fund do not exceed €2,500,000, together with VAT (or the local equivalent thereof) where applicable. Insofar as the aforesaid fees, costs and expenses have been borne by a member of the Cinven Group, such person shall be entitled to be reimbursed out of the Partnership Assets. The Managing General Partner shall be solely responsible for the excess.
- 4.4.2 The Partnership shall be responsible for meeting its pro rata proportion (calculated by reference to the total commitments of each of the Partnerships) of all reasonable costs and expenses incurred in relation to the holding of meetings of the Partnerships and the production and distribution of the reports and accounts and other information referred to in Clause 10 in respect of each of the Partnerships and any other valuations or certifications required pursuant to the Partnership Agreements including the fees of the Auditors in connection therewith.
- 4.4.3 The Partnership shall bear its pro rata proportion (calculated by reference to the total commitments to each of the Partnerships) of all fees and expenses (inclusive of VAT, if any) charged by lawyers, accountants, administrators, auditors, brokers,

finders and other professional advisers appointed by either of the General Partners or the Advisers (not being Associates of any of the foregoing, or a Cinven Partner or an Associate of a Cinven Partner) in relation to the operation and administration of the Partnerships generally, including in relation to litigation or the preparation of reports.

- 4.4.4** The Partnership shall bear its pro rata proportion (whether directly or indirectly through the FCP or other Intermediate Vehicles and calculated by reference to the total commitments to each of the Partnerships) of all legal, accounting, consultants and other costs and expenses (inclusive of VAT, if any) relating to Investments or proposed Investments by the Partnership, whether in respect of the selection, acquisition, holding or disposition thereof, to the extent that such costs and expenses are not borne by a third party, irrespective of whether or not such proposed Investments proceed. In addition all taxes and all fees or other charges levied by any governmental agency against the Partnership in connection with its Investments or otherwise shall be borne by the Partnership.
- 4.4.5** The Partnership shall be responsible for its pro rata proportion (calculated by reference to the total commitments to each of the Partnerships) of the reasonable costs and expenses of meetings of the Advisory Committee and the reasonable out-of-pocket expenses incurred by members in attending meetings of the Advisory Committee together with the fees of the UK and/or Guernsey financial and legal advisers appointed by the Advisory Committee for the purpose of approving the terms of Bank Guarantees and undertakings referred to in sub-clause 6.3.7 and the fees and expenses of any person appointed by the President for the time being of the Institute of Chartered Accountants of England and Wales for the purpose of settling any dispute as to the form of a Bank Guarantee.
- 4.4.6** The Partnership shall bear and discharge its pro rata proportion (calculated by reference to the total commitments to each of the Partnerships) of the costs of any appropriate liability insurance (or its equivalent) taken out in respect of the Fund and any directors and officers liability insurance taken out in respect of any member of the Cinven Group in connection with the Fund, including any such person who may be nominated to the board of directors of such Investee Company by the Managing General Partner.
- 4.4.7** The Partnership shall bear and discharge its pro rata proportion (whether directly or indirectly through the FCP or other Intermediate Vehicles) (calculated by reference to the total commitments to each of the Partnerships) of the reasonable costs and expenses incurred by or on behalf of the Partnership in connection with any litigation, arbitration, investigation and other proceedings in connection with the Partnership or the Fund.
- 4.4.8** The Partnership shall be responsible for its pro rata proportion (calculated by reference to the total commitments to each of the Partnerships) of all placement agents' and financial advisors' fees and expenses in connection with the formation of the Partnership and the establishment of the Fund. The Management Profit Share shall be reduced to the extent of such amounts borne by the Partnership (less any VAT recovery in respect thereof).
- 4.4.9** All externally imposed costs, fees or charges (including stamp duty and stamp duty reserve tax or similar tax or duty in any jurisdiction) associated with the distribution

of Investments in specie to each Limited Partner or Fund Carried Interest Partner shall be borne by such Limited Partner or Fund Carried Interest Partner as appropriate.

**4.4.10** Save as expressly provided in this Agreement, all costs and expenses incurred by the General Partners, or the FCP Manager in managing, operating and administering the Partnership, the Fund and the FCP or by the Advisers for providing the services referred to in sub-clause 4.2.25 including all staffing costs, general overheads and relevant travel expenses (and any taxes thereon) and the costs of establishing the FCP, shall be borne by the General Partners, the Advisers, the FCP Manager or their Associates and shall not be for the account of the Partnership, provided that where such costs and expenses in relation to the FCP are borne by the FCP the Management Profit Share shall be reduced by an amount equal to the amount of any costs and expenses which are borne by the Partnership as a investor in the FCP.

**4.4.11** All expenses of the Auditors in connection with Clause 6.3 shall be for the account of the Partnership.

#### **4.5 Fees Received from Investee Companies**

**4.5.1** Any Related Party and the FCP Manager may negotiate the payment of, accept and retain all Transaction Fees, provided that the Management Profit Share is reduced by the Partnership's pro rata share of all such Transaction Fees pursuant to sub-clause 7.4.2(v)(c).

**4.5.2** The Related Parties and/or their Associates shall invoice such fees for settlement in cash only.

### **5 Policy**

#### **5.1 Investment Policy Guidelines**

In exercising its powers under Clause 4, the Managing General Partner shall comply with the following investment policy guidelines, and subject thereto, to the investment strategy as discussed in the Offering Memorandum (and for this purpose the Offering Memorandum shall not include any supplements issued after the First Closing Date) and, for the avoidance of doubt, this Clause 5.1 shall apply equally whether such activities are carried out directly by the Partnership or indirectly through the Partnership's interest in the FCP:

**5.1.1** the Managing General Partner will adhere to the investment objectives and policy of the Partnership set out in this Agreement and, in particular, investments shall be made primarily in the form of equity or equity-related investments in connection with (i) management buy-outs or management buy-ins and private equity transactions or (ii) requirements by Investee Companies for additional capital;

**5.1.2** save as provided in sub-clause 5.1.5, no Investment will be made with the intention of it being of a short-term nature;

**5.1.3** an Investment may only be made in any company or firm which has its headquarters located or which conducts a material part of its business in Europe;

- 5.1.4** in respect of any Investee Company, subject to sub-clause 5.1.6, no Investment (excluding any related Temporary Investments) shall be made or contractually committed by the Partnership nor shall the Partnership at the time of making or while it holds an Investment enter into any guarantee, indemnity or undertaking in favour of any third party in respect of any liability or obligation of such Investee Company, where the aggregate of the amounts invested, committed or for which the Partnership is liable (whether fixed, contingent or otherwise) in respect of any such guarantee or indemnity exceeds 15 per cent of the total Commitments to the Partnership;
- 5.1.5** the Partnership may if the Managing General Partner so determines make a Temporary Investment, provided, subject to sub-clause 5.1.6, that the Acquisition Cost of the Investment (inclusive of that Temporary Investment) shall not exceed 20 per cent of the total Commitments to the Partnership without the consent of the Advisory Committee and, in any event, shall not exceed 25 per cent of the total Commitments to the Partnership;
- 5.1.6** if, prior to the Final Closing Date and at the date an Investment is made Fund Commitments are less than €5 billion, for the purposes of sub-clauses 5.1.4 and 5.1.5 the total Commitments to the Partnership shall be deemed to be the lesser of (i) 150 per cent of the total Commitments to the Partnership; and (ii) the Partnership's pro rata share of €5,000,000,000 determined by reference to the proportion which Commitments to the Partnership bear to Fund Commitments. If Fund Commitments following the Final Closing Date are less than the level of deemed Commitments provided for in this sub-clause 5.1.6, the restrictions in sub-clauses 5.1.4 and 5.1.5 shall not be deemed to have been breached by any Investments made prior to the Final Closing Date, provided that in such event the Managing General Partner shall use reasonable endeavours to dispose of any portion in excess of the level set out in sub-clauses 5.1.4 and 5.1.5 on the most favourable terms it is commercially reasonable to obtain in the circumstances;
- 5.1.7** the Managing General Partner shall use its best endeavours consistent with the other terms of this Agreement to conduct the activities of the Partnership so as not to cause the Partnership to be deemed or cause any Limited Partner (or any partner of any Limited Partner that is a partnership) that is not a "United States person" (as that term is defined in section 7701 of the Code) to be deemed solely as a result of such Limited Partner's investment in the Partnership, to be engaged in a "trade or business within the United States" within the meaning of sections 871 and 882 of the Code;
- 5.1.8** in the event that it is proposed that assets of the Partnership are invested in any prospective Investee Company in which the Previous Funds have an investment, the Managing General Partner shall seek the prior approval of the Advisory Committee and no such investment shall be made without such approval;
- 5.1.9** save as otherwise provided in this Agreement, including sub-clause 6.2.5, the proceeds realised on the disposal of an Investment shall not be applied in the making of further Investments;



- 5.1.10** the Managing General Partner shall not cause the Partnership to make Investments that are traded on a recognised stock exchange or market for dealing in securities for any purpose other than in contemplation of acquiring control of or significant influence over the strategy and management of, alone or in conjunction with third parties, a prospective Investee Company, or as a follow-on Investment in an Investee Company where such control or significant influence has already been acquired, and where such Investments otherwise are in accordance with the investment strategy as discussed in the Offering Memorandum;
- 5.1.11** the assets of the Partnership will not be invested:
- (i) in any Investment in an Investee Company that directly involves the assumption by the Partnership of unlimited liability for the debts and obligations of the Investee Company;
  - (ii) in any corporation organised under the laws of the United States of America or of any State thereof if the Managing General Partner is not reasonably satisfied (based on representations and warranties received from such corporation) that such corporation is not a "United States real property holding corporation" within the meaning of Section 897 of the Code; and
  - (iii) in any Investment that is, directly or indirectly, a U.S. real estate investment trust or an Australian real property trust;
- 5.1.12** the amount of any outstanding liabilities of the Partnership, whether actual or contingent, in respect of any borrowings referred to in sub-clause 4.2.9 and guarantees, indemnities, warranties, covenants or undertakings referred to in sub-clause 4.2.10 (other than obligations arising in connection with the disposal of Investments) shall at no time exceed the lower of (i) 20 per cent of aggregate Commitments; and (ii) aggregate Undrawn Commitments provided that the Managing General Partner shall not be in breach of this sub-clause 5.1.12 if, at any time, the liabilities exceed the foregoing restrictions by reason of Capital Contributions being drawn down to meet any other liabilities of the Partnership that were not reasonably foreseen at the time the guarantee, indemnity or undertaking was given;
- 5.1.13** in weighing up the attraction of any Investment and the structure which is to be used to make such an Investment, the Managing General Partner shall have regard to the tax position (including any filing obligations) of the Partnership, the FCP, the Partners generally and any other parties with whom the Partnership will or may coinvest or to whom any interest in the Investee Company may be syndicated, in the jurisdiction or jurisdictions in which the Investment would be made and when making any Investment the Managing General Partner shall take such steps as it may consider to be commercially reasonable in all the circumstances to mitigate the same;
- 5.1.14** the Managing General Partner agrees that it will make (or cause the Partnership or the FCP to make) any filings, applications or elections to obtain any available exemption from, or refund of, any withholding or other taxes imposed by any taxing authority (other than taxes imposed by:

- (i) the jurisdiction under the laws of which the Limited Partner is organised or any political subdivision or taxing authority thereof or therein; or
- (ii) any jurisdiction (or any political subdivision or taxing authority thereof) as a result of the applicable Limited Partner or its partners, shareholders or members being treated as resident, as doing business or as having a permanent establishment in such jurisdiction, determined in each case without regard to the Limited Partner's investment in the Partnership),

with respect to amounts distributable to such Limited Partner under the Partnership Agreement, to the extent the Managing General Partner or the Partnership can do so without unreasonable effort or expense and considers it commercially reasonable to do so, provided that if the Managing General Partner considers that any such filing, application or election would involve unreasonable expense, if so requested by one or more Limited Partners, such filing, application or election may be made in any event if so requested by one or more Limited Partners, at the cost of such Limited Partners, such cost to be split equally between the requesting Limited Partners. Each Limited Partner agrees that it will co-operate with the Managing General Partner:

- (a) in making any such filings, applications or elections relating to the Partnership, the Limited Partners generally or to that Limited Partner; and
- (b) so as to enable the Managing General Partner to comply with any tax law or undertaking with any tax authority,

to the extent the Managing General Partner determines that such co-operation is necessary or desirable;

**5.1.15** in the event that the Partnership makes an Investment in any entity that in the Managing General Partner's reasonable determination would be classified as a "passive foreign investment company" within the meaning of Section 1297 of the Code and that entity agrees to provide the Partnership with relevant financial information, the Managing General Partner shall use its best endeavours to furnish such financial information to each Limited Partner who so requests in writing (and at the Limited Partner's expense) in order to enable such Limited Partner to make and maintain a "qualified electing fund" election with respect to such Investment pursuant to Section 1295 of the Code;

**5.1.16** before the making of an Investment in any jurisdiction outside the United Kingdom in which the Fund has not previously invested or if the Managing General Partner proposes to establish an office in any jurisdiction other than the United Kingdom or Guernsey, the Managing General Partner shall obtain advice of a reputable and duly qualified person to the effect that such Investment or establishment of an office should not cause a Limited Partner, solely as a consequence of the Limited Partner's status as a limited partner in the Partnership, to pay any taxes in such jurisdiction based on its net income or any portion thereof, other than in respect of income derived through the Partnership; provided that in the event that (i) no investment has been made in the relevant jurisdiction by the Fund within three years prior to the date of the proposed Investment, or (ii) the Managing General Partner is aware of any change in applicable law or regulation in the relevant jurisdiction, the Managing General Partner shall seek advice as to whether relevant law has changed;

5.1.17 before the making of the first Investment by the Partnership in any jurisdiction outside the United Kingdom in which the Fund has not previously invested, or if the Managing General Partner proposes to establish an office in any jurisdiction other than the United Kingdom or Guernsey, the Managing General Partner shall either:

- (i) obtain advice in writing of a reputable and duly qualified local legal counsel to the effect that the Limited Partners will not incur any liability beyond or in addition to the liability that they would otherwise have under Guernsey law or the Partnership Agreement as a result of, or in connection with, such Investment or the establishment of such office; or
- (ii) make such Investment through, or establish such office in, the name of an Intermediate Vehicle which is a limited liability vehicle,

provided that in the event that (a) no investment has been made in the relevant jurisdiction by the Fund within three years prior to the date of the proposed Investment, or (b) the Managing General Partner is aware of any change in applicable law or regulation in the relevant jurisdiction, the Managing General Partner shall seek written advice as to whether relevant law has changed;

5.1.18 the Partnership shall not enter into hedging arrangements other than for the purposes provided for in sub-clause 4.2.21.

## 5.2 Suspension of the Managing General Partner's Investment Powers

The following provisions shall apply in the event that during the Investment Period: (i) fewer than four of the Key Partners devote substantially all of their working time to the affairs of the Fund, any Previous Funds or any Successor Fund (including, for the avoidance of doubt, through the Advisers, in the provision of advisory and/or other services, pursuant to sub-clause 4.2.25 or otherwise) (a "Key Partner Event"); or (ii) a Change of Control occurs:

5.2.1 the Managing General Partner shall promptly notify the Limited Partners that such an event has occurred;

5.2.2 unless and until (i) in the case of a Key Partner Event, a replacement or additional Key Partner is approved or designated as such, as a result of which there are once more at least four Key Partners devoting substantially all of their working time to the affairs of the Fund, any Previous Funds or any Successor Fund as aforesaid, or (ii) the Change of Control is consented to by the Advisory Committee, the investment powers of the Managing General Partner shall be suspended in relation to both the Partnership and the Additional Partnerships for a period of 180 days (other than in respect of any investment opportunity for which the Partnership has been granted exclusivity and which the failure by the Partnership to complete would cause the Partnership and/or any member of the Cinven Group to suffer material financial harm or penalty, any investment which the Partnership is contractually bound to make or any follow-on Investment) provided that such suspension may be revoked at any time by a Limited Partner Consent; and

5.2.3 unless the suspension has ceased or has been revoked in accordance with sub-clause 5.2.2, at the expiry of such 180-day period the Investment Period shall end with immediate effect.

## **6 Distributions**

### **6.1 Determining Entitlement to Distributions**

For the purposes of establishing the entitlement of Partners to participate in distributions:

- 6.1.1** any sums paid by a Limited Partner on admission to the Partnership after the First Closing Date (other than the Additional Payment pursuant to sub-clause 3.5.2 which shall be disregarded for these purposes) shall be deemed to have been called down on the date or dates upon which they would have been called down had such Limited Partner been admitted to the Partnership on the First Closing Date and all other Capital Contributions shall be deemed to have been called down on the date specified for payment in the relevant Drawdown Notice;
- 6.1.2** there shall be included in the amount regarded as having been distributed to a Partner:
- (i) any costs and expenses in relation to such distribution together with the amount of any Tax Credits attributed to the Partner concerned and any taxation payable by the Partner to the extent borne by the Partnership, either of the General Partners or their Associates and for which they have not been indemnified by the Partner concerned pursuant to sub-clause 13.3.3; and
  - (ii) all distributions in specie to the Partner made pursuant to Clause 6.4 (which distributions shall be valued in accordance with Clause 6.4 (without any deduction for any costs, expenses or taxation payable by the Partner in relation thereto) and which shall be deemed to be made on the date of Listing or distribution as applicable under Clause 6.4); and
  - (iii) all distributions in cash or in specie to the Partners following termination of the Partnership, in the latter case valued in accordance with sub-clause 9.3.4; and
- 6.1.3** all distributions shall be made or deemed to be made in euro and where distributions are in fact made in a currency other than euro the value of such a distribution (whether in currency or in specie) shall be calculated in euro at the Spot Rate of Exchange for the relevant currency on the date falling five Business Days prior to the date of the distribution and, in the case of distributions of listed securities the Spot Rate of Exchange of the Listing Price or Middle Market Price in accordance with sub-clause 6.4.2;

### **6.2 Distributions**

- 6.2.1** All assets of the Partnership available for distribution shall be distributed in the following order. The following calculation and allocation shall be performed separately in respect of each Limited Partner in relation to that proportion of assets available for distribution as is equal to that proportion which such Limited Partner's Commitments represents to the aggregate Commitments of all Limited Partners (a "**Limited Partner's Share**"):
- (i) firstly, to the General Partners in payment of the accrued unpaid GP Profit Shares attributable to the Limited Partner's Commitment;

- (ii) secondly, until the Limited Partner has received repayment of the aggregate amount of its drawn down Capital Contributions which then remain outstanding, to the Limited Partner, such distributions being in repayment of its drawn down Capital Contributions;
- (iii) thirdly, until the Limited Partner has received the Preferred Return, to the Limited Partner;
- (iv) fourthly, to the Carried Interest Partners until such time as they shall have received a sum which when grossed up (without double counting) by the Limited Partner's Share of distributions of FCP Carried Interest which but for the existence of the FCP would have been distributed to the Carried Interest Partners equals 20 per cent of the aggregate of (1) the aggregate distributions to the Limited Partner pursuant to sub-clause 6.2.1(iii) and (2) the aggregate distributions made to the Carried Interest Partners under this sub-clause 6.2.1(iv), as grossed up (without double counting) by the Limited Partner's Share of distributions of FCP Carried Interest; and
- (v) fifthly, as to 80 per cent to the Limited Partner and 20 per cent to the Carried Interest Partners provided that in determining the entitlement of the Limited Partner and the Carried Interest Partners pursuant to this sub-clause 6.2.1(v), the amount available for distribution shall be treated as grossed up by the Limited Partner's Share of FCP Carried Interest (to the extent not already taken into account pursuant to sub-clause 6.2.1(iv) or previous applications of this sub-clause 6.2.1(v)) and shall be treated as having been received by the Carried Interest Partners pursuant to this sub-clause 6.2.1(v), and provided further that there shall be paid to the Managing Limited Partner an amount equal to the Limited Partner's Share of the Managing Limited Partner's Capital Contribution plus €100 once cumulative distributions pursuant to this Clause 6.2 equals two and a half times the Limited Partner's Commitments to the Partnership,

in all cases after payment of or making appropriate provision (if any) for expenses of the Partnership. Distributions to the Carried Interest Partners shall be in such proportions between themselves as they may agree and notify to the Managing General Partner (and in the absence of such agreement and notification, shall be in proportion to their respective Capital Contributions). Where any distribution is applied in the repayment of Capital Contributions and the amount repaid is to be available for redrawing pursuant to the terms of this Agreement the Managing General Partner shall notify each Limited Partner in writing at the same time as the distribution is made as to how much of the Capital Contribution repayment is to be available for redrawing and the grounds upon which it can be redrawn; provided that any failure on the part of the Managing General Partner to make such notification shall in no way give rise to any claim against the Managing General Partner or affect the ability of the Managing General Partner to redraw such Capital Contributions.

- 6.2.2 For the purpose of sub-clause 6.2.1(ii) reference to Limited Partners shall include former Limited Partners whose interest in the Partnership has been forfeited pursuant to Clause 3.9 ("**Former Partners**") provided that:

- (i) such Former Partners shall only be entitled to repayment of their Capital Contributions after the repayment of all other Capital Contributions in accordance with sub-clause 6.2.1; and
- (ii) there shall be deducted from any sums available for repayment of Capital Contributions to a Former Partner an amount equal to (a) all outstanding amounts due from such Former Partner prior to the forfeiture of its interest, including Default Costs and Default Interest; plus (b) the Management Profit Share attributable to the Former Partner's drawn down Commitments which shall be calculated by applying the formula set out in sub-clause 7.4.1 to the amount of the Commitments drawn down from the Former Partner prior to the forfeiture of its interest in the Partnership in respect of each subsequent Accounting Period during the life of the Partnership and adjusting the same as provided in Clause 7.4. The amount so deducted from assets otherwise distributable to the Former Partner shall instead be allocated to and distributed to the Managing General Partner as a special Managing General Partner's share in respect of such Former Partner, in addition to its allocations under Clause 7.4.

**6.2.3** If at any time there shall be an Excused Partner, then for the purpose of applying the distribution provisions of sub-clauses 6.2.1(ii) to 6.2.1(v) there shall be deemed to exist:

- (i) a separate partnership comprising the Unaffected Limited Partners, and the Carried Interest Partners; and
- (ii) a separate partnership for each Excused Partner comprising that Excused Partner and the Carried Interest Partners (each such Partnership a "Deemed Partnership") and the provision of sub-clauses 6.2.1(ii) to 6.2.1(v) shall be applied separately in relation to each Deemed Partnership and in so applying those provisions to a Deemed Partnership the assets of the Partnership available for distribution for the purpose of those Clauses shall be the assets of that Deemed Partnership comprising those amounts allocated to the relevant Excused Partner or Unaffected Limited Partners, as appropriate, and the Carried Interest Partners in respect of their Carried Interest in relation to that Excused Partner or Unaffected Limited Partners, as appropriate, and net of associated liabilities, which shall be distributed in accordance with those provisions to the Partners deemed to be partners of those Deemed Partnerships.

**6.2.4** Proceeds other than from the realisation of Investments will be distributed in accordance with sub-clause 6.2.1 as soon as practicable at the discretion of the Managing General Partner after the last day of June and December in each year in respect of the previous six month period provided that proceeds may be retained and applied for the purpose of making follow on investments to the extent permitted by this Agreement.

**6.2.5** Save (i) as otherwise provided in this Agreement, and (ii) with respect to any proceeds received by the Partnership arising from a reconstruction or reorganisation not resulting in a change in the ultimate ownership by the

Partnership of its interest in an Investee Company, all cash proceeds of the realisation of Investments available for distribution shall be distributed in accordance with sub-clause 6.2.1 as soon as practicable after the relevant amount becomes available for distribution and usually within three months of such realisation save to the extent otherwise permitted pursuant to sub-clause 3.3.3 and provided further that where such realisation proceeds are less than 0.5 per cent of aggregate Commitments, the Managing General Partner may in its absolute discretion elect to carry such sums forward to the next date on which a distribution is made.

- 6.2.6 The Managing General Partner shall procure that the only distributions to be made by the FCP shall be to the Partnerships, the FCP Carried Interest Partners and the FCP Co-Investors, and that the aggregate distributions of Carried Interest and FCP Carried Interest shall not exceed the amount of, and such distributions shall only be made at such times and in such form as, the Carried Interest that would have been distributed by the Partnership but for the Partnership making a portion of its Investments through the FCP (or, in the event that sub-clause 9.5.4 should apply, the proportion of such Carried Interest that would have been distributed by the Partnership to the Original Carried Interest Partners but for the Partnership making a portion of its Investments through the FCP).

### 6.3 Retention of Carried Interest Distributions

- 6.3.1 Notwithstanding the provisions of sub-clause 6.2.1, all distributions (whether in cash or in specie) to which the Carried Interest Partners would have been entitled pursuant to sub-clauses 6.2.1(iv) and 6.2.1(v) but for this Clause 6.3, together with the FCP Carried Interest, shall:
- (i) in the case of distributions to the Carried Interest Partners, be retained by the Managing General Partner in a trust account for the Carried Interest Partners on the following terms (and considered a distribution to them pursuant to sub-clause 6.2.1(iv) or 6.2.1(v), as the case may be); and
  - (ii) in the case of distribution of FCP Carried Interest, the Managing General Partner shall procure that such amounts are retained by the FCP Manager on the following terms (and shall be taken into account in the grossing up pursuant to sub-clause 6.2.1(iv) or 6.2.1(v), as the case may be).
- 6.3.2 Amounts retained by the Managing General Partner and the FCP Manager pursuant to sub-clause 6.3.1 (the “**Retained Amount**”) shall be kept segregated from the other Partnership Assets and those of the FCP and shall be invested in such government securities, bank deposits with financial institutions having a Moody’s (or equivalent) long-term rating of A3 and other short-term investments having a Moody’s (or equivalent) rating of P-1 for short-term deposits and at least A-1 for long-term deposits as the Carried Interest Partners may require, or the FCP Manager may determine.
- 6.3.3 The Managing General Partner shall from time to time pay to the Carried Interest Partners, and the Managing General Partner shall procure that the FCP Manager shall pay to the FCP Carried Interest Partners:

- (i) the net after-tax earnings from the investments referred to in sub-clause 6.3.2;
- (ii) such amount as shall be necessary to meet any taxation in respect of the Retained Amount insofar as the Managing General Partner shall be reasonably satisfied that such taxation has been suffered or is likely to be suffered by a Fund Carried Interest Partner or any person entitled directly or indirectly to any interest in the Retained Amount. In computing any tax liability to be suffered in relation to future periods or events the latest available rate shall be taken; and
- (iii) such further amount(s) as any Fund Carried Interest Partner (or such other person as may be nominated by any Fund Carried Interest Partner), with the support of a bank guarantee (approved in accordance with sub-clause 6.3.7) (a "**Bank Guarantee**"), undertakes to repay on the termination of the Partnership in the event that Limited Partners have received less than the Minimum Return.

**6.3.4** If the aggregate of the Retained Amount (net of amounts which the Fund Carried Interest Partners are entitled to have released to them pursuant to sub-clauses 6.3.3(i) and 6.3.3(ii)) and the amount which the Fund Carried Interest Partners (or such other person(s) nominated in accordance with sub-clause 6.3.3(iii)) have undertaken to repay pursuant to sub-clause 6.3.3(iii) exceeds the Theoretical Clawback Amount, then the Managing General Partner may release, or procure that the FCP Manager shall release, an amount to the Fund Carried Interest Partners out of the Retained Amount or, on behalf of the Partnership, may agree to a reduction in the amount of the Bank Guarantee(s), or a combination thereof, equal to the excess. The extent of the release of the Retained Amount or the reduction of the amounts of the Bank Guarantee(s) shall be as notified by the Fund Carried Interest Partners to the Managing General Partner. After the first application of this sub-clause 6.3.4, but without prejudice to its future application, no further distributions of Carried Interest or FCP Carried Interest shall be withheld by the Managing General Partner or the FCP Manager pursuant to sub-clause 6.3.1.

**6.3.5** If following the termination of the Partnership and distribution of its assets one or more Limited Partners shall not have received the Minimum Return, the Managing General Partner shall notify the Fund Carried Interest Partners of the amount of the shortfall. Each Fund Carried Interest Partner and each person nominated by that Fund Carried Interest Partner in respect of any undertaking given pursuant to sub-clause 6.3.3(iii) shall be liable on a pro rata basis for the shortfall to the extent of its share of the Retained Amount (net of amounts which the Fund Carried Interest Partners are entitled to have released to them pursuant to sub-clauses 6.3.3(i) and 6.3.3(ii)) and the amount of the undertaking given by such Fund Carried Interest Partner or any person nominated by such Fund Carried Interest Partner pursuant to sub-clause 6.3.3(iii). Each of the Carried Interest Partners shall, and the Managing General Partner shall procure that the FCP Manager shall require each



of the FCP Carried Interest Partners to, as soon as practicable (and in any event within 10 Business Days of the Managing General Partner's or the FCP Manager's notification (as the case may be) notify the Managing General Partner or the FCP Manager (as the case may be) how much of the shortfall is to be paid by the Managing General Partner or the FCP Manager to the relevant Limited Partners, out of their net share of the Retained Amount, and how much is to be repaid by the Carried Interest Partner or FCP Carried Interest Partner (as the case may be) (or such other person(s) nominated in accordance with sub-clause 6.3.3(iii) in the case of the Carried Interest Partners and the equivalent clause in the FCP Rules in the case of the FCP Carried Interest Partners) to the Managing General Partner or the FCP Manager (as the case may be) pursuant to the undertaking referred to in sub-clause 6.3.3(iii) in the case of the Carried Interest Partners and the equivalent clause in the FCP Rules in the case of the FCP Carried Interest Partners. In the absence of such notification, the Managing General Partner shall, before calling on the undertaking referred to in sub-clause 6.3.3(iii) and procuring that the FCP Manager call on a similar undertaking in the FCP Rules, first pay to the relevant Limited Partners or procure that there is paid by the FCP Manager, out of each Fund Carried Interest Partner's net share of the Retained Amount, such amount as is required to enable each Limited Partner to receive the Minimum Return. The balance (if any) of each Fund Carried Interest Partner's net share of the Retained Amount shall be released by the Managing General Partner or the FCP Manager to each of the Fund Carried Interest Partners. If one or more of the Limited Partners shall still not have received the Minimum Return, each Carried Interest Partner shall pay and the Managing General Partner shall procure that the FCP Manager shall require each FCP Carried Interest Partner to pay to the relevant Limited Partners, in cash, out of and not exceeding amounts received by such Carried Interest Partner or FCP Carried Interest Partner (as the case may be) that proportion of the shortfall as the amount of Carried Interest or FCP Carried Interest (as applicable) actually received, or deemed pursuant to sub-clause 6.2.1 to have been received, by the relevant Fund Carried Interest Partner, bears to the total Carried Interest as grossed up as described in sub-clause 6.2.1 actually received or deemed to have been received by all the Fund Carried Interest Partners.

**6.3.6** For the purpose of:

- (i) sub-clause 6.3.5, the amount of Carried Interest received or deemed to have been received by a Carried Interest Partner or an FCP Carried Interest Partner and the total amount of Carried Interest received or deemed to have been received by the Fund Carried Interest Partners shall be net of any taxation insofar as such taxation has been suffered or is likely to be suffered by a Fund Carried Interest Partner or any person who is entitled, directly or indirectly, to any interest in the Carried Interest or FCP Carried Interest (such taxation to be calculated after taking into account any tax benefits received by the Fund Carried Interest Partner (or such other person) as a result of a payment being made to one or more Limited Partners by the Fund Carried Interest Partner); and

(ii) this Clause 6.3, the amount which would have been distributed to the Carried Interest Partners as grossed up as described in sub-clause 6.2.1 pursuant to sub-clauses 6.2.1(iv) and 6.2.1(v) but for this Clause 6.3 shall nevertheless be taken into account in determining the balance on the partnership accounts of the Carried Interest Partners as if each amount shall have been distributed.

6.3.7 The terms of an undertaking given by a Fund Carried Interest Partner in accordance with sub-clause 6.3.3(iii) or the equivalent clause of the FCP Rules and the terms of the supporting Bank Guarantee shall be in a form reasonably acceptable to the Advisory Committee. For the avoidance of doubt, any costs or expenses incurred in obtaining the Bank Guarantee other than those costs referred to in sub-clause 4.4.5 shall not be for the account of the Partnership.

#### 6.4 Distributions in specie

6.4.1 No distribution in specie will be made prior to the tenth anniversary of the Commencement Date, and no distribution in specie will be made of Investments that have not obtained a Listing except on termination of the Partnership in accordance with sub-clause 9.3.4. In respect of Investments which achieve a Listing, the Managing General Partner acknowledges the wishes of Limited Partners to receive distributions in cash rather than in specie but may in its absolute discretion procure that the Partnership in lieu of making a distribution in cash pursuant to sub-clause 6.2.1 shall make a distribution in specie of any listed securities comprised in such Investment. The Managing General Partner shall give Limited Partners five Business Days' notice of its intention to make a distribution in specie. No distributions in specie will be made of any Investment which has achieved a Listing that is subject to Dealing Restrictions (as defined below), nor shall any distribution in specie be made unless a distribution in specie is made by the other Partnerships of the same securities pursuant to the equivalent provisions of this Clause 6.4 in the agreements governing the other Partnerships. Distributions in specie of such listed securities shall be made such that the Partners entitled to the distribution shall receive a proportionate amount of each class of securities available for distribution, or (if such method of distribution is for any reason impracticable) such that each Partner entitled to the distribution shall receive as nearly as possible a proportionate amount of each class of securities available for distribution together with a balancing payment in cash in the case of any Partner who does not receive the full proportionate amount of any class of securities to which it would otherwise be entitled hereunder. If a distribution in specie is made under this Clause 6.4 the Managing General Partner shall take reasonable steps to procure that certificates representing the securities to which the Partners are entitled pursuant to such distribution are sent to them, or that the appropriate computer entries are made to record the transfer of title to such securities and will take any necessary additional steps to comply with any law or regulation applying to the transfer of such securities. For the purpose of this Clause 6.4 "**Dealing Restrictions**" means in relation to the relevant listed security any agreement entered into by the Managing General Partner or any Associate of the Managing General Partner on behalf of the Partnership or any applicable law, market or other

regulation or rule as a consequence of which the Partnership or the Limited Partners would not be entitled following the Listing to freely transfer the listed securities.

**6.4.2** For the purpose of calculating the Carried Interest entitlements of the Carried Interest Partners pursuant to Clause 7.1 and otherwise for the purposes of Clauses 6 and 7, all listed securities distributed in specie pursuant to this Clause 6.4, together with such securities as may have been distributed in specie by the FCP, shall be valued:

- (i) if distributed on the day of or within five Business Days following Listing (including the day of Listing), at the average of the Middle Market Prices for the five Business Days starting with the date of Listing; or
- (ii) if distributed thereafter, at the average of the Middle Market Prices on the five Business Days immediately before distribution and the five Business Days (of which the first shall be the day of distribution) immediately after distribution,

provided that the Middle Market Prices of the five Business Days immediately after the distribution shall only be included in the calculation if in that period there has been no disposal by any of the Investors of the securities comprised in the distribution in specie in which event, in the case of a distribution pursuant to sub-clause 6.4.2(i), the Listing Price shall be used. Valuations shall be made by the Managing General Partner and shall be certified by the Auditors as having been made in accordance with the provisions of this Clause 6.4. Unless the relevant securities are valued for the purposes of distribution on the basis set out at sub-clause (ii) above, all such distributions in specie shall be deemed to have been made on the date of Listing. For the avoidance of doubt, any stamp duty, stamp duty reserve tax or other taxes payable on transfer shall be for the account of the Partners.

**6.4.3** Where the Managing General Partner proposes to distribute listed securities in specie under this Clause 6.4 the Managing General Partner shall use its reasonable endeavours to arrange facilities whereby Limited Partners who wish to realise securities to be distributed to them in specie may do so in the course of the Listing procedure. However, Limited Partners acknowledge that the circumstances of the Listing may not in all cases permit such an arrangement and if such arrangement is available it will be offered to interested Limited Partners pro rata to the size of their respective Commitments. Notwithstanding the foregoing for the purpose of calculating the Carried Interest, the provisions of sub-clause 6.4.2 shall apply as if the Partner in question had in fact received the distribution in specie.

## **6.5 Tax Credits**

For the purposes of this Clause 6 and Clause 7, there shall be included in calculating income allocated and distributed to Partners all Tax Credits in respect of income allocated to Partners.

## **6.6 Limitations on Distributions**

The Managing General Partner shall not be obliged to cause the Partnership to make any distribution pursuant to this Clause 6:

- 6.6.1** unless (in the case of Clause 6.2) there is cash available therefor;
- 6.6.2** which would render the Partnership insolvent; or
- 6.6.3** which, in the reasonable opinion of the Managing General Partner, would or might leave the Partnership with insufficient funds to meet any actual or contemplated future obligations, liabilities or contingencies including obligations to the General Partners and the Carried Interest Partners.

## **7 Allocations and Accounts**

### **7.1 Allocation of Profits and Losses and Adjustments**

- 7.1.1** Profits and losses shall be allocated to the accounts of the Partners (and where there are Deemed Partnerships, allocations shall be made to the accounts of the Partners comprised in those Deemed Partnerships) so as to correspond to the distribution of assets to the Partners pursuant to Clause 6.2 on the assumption that (other than for the purposes of determining whether a Limited Partner has received its Preferred Return) apart from an amount equal to those profits and losses, all Investments and other assets of the Partnership are entirely written-off (or on such other basis as the Managing General Partner may determine with the approval of the Auditors), provided that once a Limited Partner has received its Preferred Return pursuant to sub-clause 6.2.1(iii), and following the application of sub-clause 7.1.2, profits and losses attributable to such Limited Partner's Commitment will be allocated between the Partners in the proportions of 80 per cent to such Limited Partner and 20 per cent to the Carried Interest Partners (taking into account the amount grossed up as described in sub-clause 6.2.1 and after the allocation of the GP Profit Shares pursuant to Clause 7.4).
- 7.1.2** On, or at any time after, the date on which a Limited Partner has received the Preferred Return pursuant to sub-clause 6.2.1(iii), there shall be transferred from the account of such Limited Partner to the accounts of the Carried Interest Partners such amounts as are necessary to adjust the credit balances on such accounts to those which would have been shown therein if allocations in respect of such Limited Partner's Commitment had always been made in the proportions of 80 per cent to the Limited Partner and 20 per cent to the Carried Interest Partners (taking into account the amount grossed up as described in sub-clause 6.2.1 and after the allocation of the GP Profit Shares pursuant to Clause 7.4). Capital adjustments may otherwise be made to the balances on the accounts of the Partners as may be necessary to reattribute such balances (including the capital cost of the assets of the Partnership) so that they reflect the entitlement of the Partners to receive distributions in accordance with Clause 6.2.

- 7.1.3 All allocations and adjustments pursuant to sub-clauses 7.1.1 and 7.1.2 shall be made by the Managing General Partner. In particular, (i) profits allocated to a Carried Interest Partner shall be selected from such income or gains of the Partnership as the Managing General Partner may determine and (ii) the Managing General Partner may at its discretion allocate profits and losses to one or more Limited Partners to the full extent practicable from Investments made directly by the Partnership and not through the FCP.
- 7.1.4 Notwithstanding the foregoing, allocations of profits and losses shall for US tax purposes be allocated in accordance with the Schedule.

## **7.2 Allocation of Liabilities**

- 7.2.1 The Managing Limited Partner, Carried Interest Partners and the Limited Partners shall have no personal obligation for the debts or liabilities of the Partnership, except as provided in this Agreement or in the Law or in other applicable laws, if any. In the event of an insufficiency of Partnership Assets, the General Partners shall be fully responsible for all of the debts, liabilities and obligations of the Partnership, it being understood and agreed, however, that the General Partners shall not be liable to any other Partner for the return of any Capital Contributions made to the Partnership.
- 7.2.2 If at any time following the date when the full amount of Capital Contributions shall have been paid pursuant to Clause 3, the liabilities of the Partnership cannot be satisfied out of the Partnership's cash funds, a member of the Cinven Group may advance by way of loan an amount which when added to the Partnership's cash funds will be sufficient to meet such liabilities, provided that (a) the Managing General Partner has used reasonable efforts to obtain funding from third parties at the same or lower rates than those stated in this sub-clause 7.2.2; and (b) as soon as reasonably practicable following the date on which any such loan is made, the Managing General Partner shall notify the Advisory Committee of the provision and terms of any such loan. Any such loan, together with interest thereon at a rate equal to the higher of (i) EURIBOR plus 4 per cent per annum or (ii) 6 per cent per annum, provided that such interest rate shall never be higher than the cost of funding of the Managing General Partner, shall be repaid immediately if and when cash funds become available for such purpose.

## **7.3 Accounts and Apportionment of Partnership Expenses**

The Partnership shall establish and maintain such proper accounts and records for each of the Partners as the Managing General Partner shall determine and amounts shall be credited or debited to and from these accounts as appropriate. Fees and expenses of the Partnership (other than those which specifically relate to a particular Investment which shall be allocated against income and capital receipts of that Investment) shall be allocated against such Partnership receipts as the Managing General Partner may in its discretion determine to be fair and reasonable.

## **7.4 Allocation of Management Profit Share**

- 7.4.1 Subject as otherwise provided in this sub-clause 7.4.1, there shall be allocated to the Managing General Partner in respect of each Accounting Period as a first charge on the income and capital profits of the Partnership for that Accounting

Period an amount which, after deducting fees and expenses of the Partnership allocated against such items of income and capital profits shall, subject to adjustment as provided below, and after the inclusion of any Tax Credits relating to allocations of income, be equal in amount to 1.5 per cent of the total Commitments of all of the Limited Partners, less an amount equal to (i) the FCP Management Fee and (ii) the UK GP Profit Share. Notwithstanding the foregoing, the Managing General Partner shall endeavour, so far as practicable, to procure that income and capital profits arising on Investments in respect of which there are Excused Partners shall not be allocated to the Management Profit Share. Effective for the balance of the Accounting Period remaining after the date the Investment Period ends and for all subsequent Accounting Periods (or part thereof) the Management Profit Share shall be reduced to 1.25 per cent per annum, calculated quarterly, of the cumulative Acquisition Cost of all Investments less the cumulative Acquisition Cost of Investments that have been realised or written off or permanently written down each as determined in accordance with sub-clause 7.4.2(iv), less an amount equal to (a) the FCP Management Fee; and (b) the UK GP Profit Share. For the avoidance of doubt, the Management Profit Share together with the FCP Management Fee and the UK GP Profit Share shall not, in the aggregate, exceed the Management Profit Share to which the Managing General Partner would otherwise be entitled under the terms of this Agreement if there was no FCP Management Fee or UK GP Profit Share.

**7.4.2** The following provisions shall apply in relation to the calculation, allocation and payment of the Management Profit Share:

- (i) the Management Profit Share shall be deemed to accrue on a daily basis. In the event that an Accounting Period shall cover a period of more or less than 12 full calendar months the Management Profit Share to be allocated to the Managing General Partner hereunder shall be increased or reduced (as the case may be) by multiplying the amount thereof which would otherwise be payable by a fraction the numerator of which shall be the number of days in the relevant Accounting Period and the denominator of which shall be 365;
- (ii) for the purpose of this Clause 7.4 the first Accounting Period shall be treated as starting on the Commencement Date;
- (iii) the Management Profit Share shall be adjusted on each Closing after the Commencement Date so that it shall be calculated by reference to the increased Commitments to the Partnership following such Closing and Management Profit Share as so adjusted shall accrue from the start of the Commencement Date;
- (iv) following the end of the Investment Period, the cumulative Acquisition Cost of Investments shall, for the purposes of calculating the Management Profit Share for the balance of the Accounting Period quarter in which the Investment Period ended and subsequent Accounting Period quarters, be deemed to be reduced by an amount (to be calculated as at the expiry of the Investment Period and thereafter on the last day of the preceding Accounting Period quarter) as is equal to the aggregate of (1) the Acquisition Cost of any Investment which has been realised (including any

Investment or portion thereof distributed in specie) as at that time, or in the case of an Investment which has been partially realised, the proportion of the Acquisition Cost attributable to the realised portion of the Investment (in the case of a partial realisation of an Investment consisting partly but not entirely of Equity Securities such proportion shall be determined by multiplying the Acquisition Cost by a fraction where the numerator is the Acquisition Cost of that part of the Investment which has been realised consisting of Equity Securities and the denominator is the Acquisition Cost of that part of the Investment (whether or not realised) consisting of Equity Securities) and (2) the amount by which any unrealised Investment is fully and permanently written off or permanently written down as at that time. For the foregoing purpose “**Equity Securities**” means, in relation to any Investment, the share capital or other securities comprised in that Investment other than such share capital or other securities which neither as respects dividends or other income rights nor as respects capital, carries any rights to participate beyond a specified amount in a distribution or other payment made in respect of such shares or other securities;

- (v) the Management Profit Share (and drawings made in respect thereof by the Managing General Partner) shall be subject to adjustment in accordance with the following provisions:
  - (a) the Management Profit Share payable by a First Close Investor which is attributable to its First Close Commitment shall be reduced by 5 per cent (the “**First Close Incentive**”). To the extent a First Close Investor’s Commitment is not comprised solely of its First Close Commitment the reduction in Management Profit Share attributable to the First Close Commitment of such Investor shall be applied pro rata across such First Close Investor’s entire Commitment;
  - (b) the Management Profit Share shall be reduced in accordance with sub-clause 4.4.8;
  - (c) the Management Profit Share in respect of each Accounting Period shall be reduced by an amount equal to all Transaction Fees paid to any Related Party in that Accounting Period;
  - (d) to the extent that the Managing General Partner has received drawings against its entitlement in respect of its Management Profit Share (whether in respect of the current or previous Accounting Periods) prior to the effecting of any such reduction, it shall repay that part of such drawings as is equal to the amount of such reduction no later than the date it is next entitled to make drawings on account of its prospective Management Profit Share pursuant to sub-clause 7.4.2(vii);
  - (e) to the extent that the Management Profit Share is required to be reduced by the amount of any fees received in any Accounting Period in accordance with paragraph (b) or (c) above, and such amount exceeds the Management Profit Share to which the Managing General Partner is entitled for that and previous

Accounting Periods, the Management Profit Share in respect of any subsequent Accounting Period or Periods shall be reduced by the amount of such excess and the drawings which the Managing General Partner shall be entitled to make in respect of such future Accounting Period or Periods shall be reduced accordingly; and

- (f) if on termination of the Partnership the amount by which the Management Profit Share is required to be reduced in accordance with paragraph (b) or (c) above, exceeds the total Management Profit Share then the Managing General Partner shall account for and pay to the Limited Partners (pro rata to the amount of Management Profit Share borne by each Limited Partner but excluding any Limited Partner which expressly waives participation in such allocation) the amount of such excess;
- (vi) the Management Profit Share allocated to the Managing General Partner hereunder shall be allocated out of such income or capital profits as determined by the Managing General Partner but subject to the proviso in sub-clause 7.4.1;
- (vii) the Managing General Partner shall be entitled as from the Commencement Date in respect of each Accounting Period to make drawings out of the Partnership's cash funds on 2 January and 1 July in each Accounting Period until the end of the Investment Period and thereafter on 2 January, 1 April, 1 July and 1 October and, in the case of the first Accounting Period, on the date of each Closing (each "**Payment Date**"), on account of its prospective entitlement to the Management Profit Share. The amount which may be drawn down on each Payment Date shall be calculated in accordance with sub-clause 7.4.2(i) for the period from that date (or in the case of the first Accounting Period, from the commencement date of that Accounting Period as determined in accordance with sub-clause 7.4.2(ii)) down to and excluding the next Payment Date, by reference to the maximum amount of the Management Profit Share as determined at the start of the relevant Accounting Period and on 1 July. The Managing General Partner may, in its absolute discretion, elect to defer any draw down on account of Management Profit Share, in whole or in part. Any amounts which are so deferred shall not accrue interest and shall become payable on such date as may be stipulated by the Managing General Partner. Drawings may not be made on any Limited Partner for these purposes to the extent that they would be used to fund an advance on account of Management Profit Share attributable to another Limited Partner which is a Defaulting Partner. Where amounts have been overdrawn for any period in respect of the prospective Management Profit Share for that period, the amount overdrawn shall be offset against the amount of the next drawing and to the extent not offset shall be repaid to the Partnership. Such drawings shall be made on an interest-free basis and shall be set off against allocations of the Management Profit Share for the relevant Accounting Period or if the allocations in respect of such Accounting Period are insufficient, allocations in subsequent Accounting Periods pursuant to sub-clause 7.4.2(viii)) and to the extent that drawings are set-off against



Tax Credits no repayment shall be made until such Tax Credits could reasonably be expected to have produced a cash benefit if conferred on a UK tax resident individual;

- (viii) any profits of the Partnership in any subsequent Accounting Period which is in excess of the amount to be allocated to the Managing General Partner under this Clause 7.4 for such Accounting Period shall be applied (in priority to any allocation to the UK GP or the Limited Partners) in making additional allocations to the Managing General Partner of the Management Profit Share in accordance with sub-clause 7.4.1 up to the amount of the deficit due to the Managing General Partner in respect of previous Accounting Periods. Such additional allocations shall be set off against drawings made pursuant to sub-clause 7.4.2(vii) and outstanding. In the event that there is insufficient profit during the life of the Partnership to allocate to the Managing General Partner to enable all drawings of the Managing General Partner to be set-off hereunder any balance outstanding shall be waived by the Partnership immediately prior to termination of the Partnership;
- (ix) if a particular allocation of income is assumed in computing the Limited Partner Tax Credits to be taken into account in calculating the amount of distribution received by Partners then, notwithstanding any other provision of this Clause 7.4, income shall be allocated in accordance with that assumption;
- (x) in the event that the right of forfeiture is exercised in relation to a Limited Partner under Clause 3.9 the Management Profit Share shall (subject to the provisions of sub-clause 6.2.2) cease to accrue in respect of the Commitments of that Limited Partner and shall thereafter be calculated by reference to the Commitments of the remaining Limited Partners.

**7.4.3** In respect of each Accounting Period the UK GP shall be entitled to receive an annual profit share from the Partnerships which in aggregate equals €10,000, to be borne by the Partnership and each Additional Partnership on a pro rata basis (calculated by reference to the total commitments to each of the Partnerships) (the "**UK GP Profit Share**"). The UK GP shall be entitled as from the Commencement Date in respect of each Accounting Period to make drawings on account of UK GP Profit Share out of the Partnership's cash funds on a Payment Date, and in the case of the first Accounting Period, at the same time as the Managing General Partner first makes a drawdown on account of its Management Profit Share. The UK GP may, in its absolute discretion, elect to defer any drawdown on account of UK GP Profit Share, in whole or in part. Any amounts which are so deferred shall not accrue interest and shall become payable on such date as may be stipulated by the UK GP. Drawings shall be made on an interest-free basis and shall be set off against allocations of the UK GP Profit Share for the relevant Accounting Period or, if the profits available for allocation in respect of such Accounting Period are insufficient, against profits available for allocation in any subsequent Accounting Period until the UK GP Profit Share for all previous Accounting Periods has been set-off in full. In the event that there is insufficient profit during the life of the Partnership to allocate to the UK GP to enable all drawings of the UK GP to be set

off hereunder any balance outstanding shall be waived by the Partnership immediately prior to termination of the Partnership.

## **8 Assignment of Interests**

### **8.1 Assignment of Interest of the General Partners**

Neither General Partner may sell, assign, transfer, exchange, pledge, encumber or otherwise dispose (including the granting of any participation therein) of all or any part of their general partnership interest, or voluntarily dissolve or voluntarily withdraw as a general partner of the Partnership, without the sanction of a Limited Partner Special Consent, provided that a General Partner shall be entitled to transfer all of its general partnership rights and obligations to a member of the Cinven Group provided that such incoming general partner shall have agreed with the Partnership to assume the obligations of the relevant General Partner.

### **8.2 Assignment of Interests of Limited Partners and Carried Interest Partners**

**8.2.1** No sale, assignment, transfer, exchange, pledge, encumbrance or other disposition, including the granting of any participation or economic interest or security interest therein, of all or any part of any Carried Interest Partner's, or any Limited Partner's or of the Managing Limited Partner's interest in the Partnership (including all or any part of its Capital Contribution), and including the entry into any derivative or other contract, the issue of any instrument of securities, incurrence of indebtedness or any other arrangements the purpose or effect of which is to give any person other than the Limited Partner economic exposure to and/or control of influence over the exercise of rights attaching to such Limited Partner's interest in the Partnership ("**Transfer**"), whether voluntary or involuntary, shall be valid or effective without the prior written consent of the Managing General Partner (subject to sub-clause 8.2.6) which shall not be unreasonably withheld or delayed. Failure to comply with the provisions of this Clause 8.2, or the following, will (without limitation) be considered reasonable grounds for refusing such consent:

- (i) if the Managing General Partner considers that the Transfer would cause the Partnership (or any of the other Partnerships) to be disqualified as a limited partnership or be terminated;
- (ii) if the Managing General Partner considers that the effect of such Transfer would result in:
  - (a) a violation of the Securities Act or any applicable securities law of any of the States of the United States or the securities laws of any other jurisdiction, or a Japanese resident transferee not being a "qualified institutional investor" within the meaning of the Japanese Securities and Exchange Law 1948 (as amended) acquiring an interest from a Japanese resident transferor;
  - (b) the Partnership (or any of the other Partnerships) being required to register, or seek an exemption from registration, as an investment company under the United States Investment Company Act of 1940;
  - (c) a non-exempt prohibited transaction under Section 406 of ERISA or Section 4975 of the Code;

- (d) a loss of partnership status for US Federal income tax purposes for the Partnership (or any of the other Partnerships);
  - (e) the termination of the Partnership (or any of the other Partnerships) under Section 708 of the Code but only if such termination would result in material adverse tax consequences to the Limited Partners or the limited partners of any of the other Partnerships;
  - (f) the Partnership (or any of the other Partnerships) being considered a publicly traded partnership for US Federal income tax purposes; or
  - (g) the Partnership ceasing to be a Qualifying Investor Fund;
- (iii) if the Managing General Partner considers that any proposed transferee of the entire interest of a Partner intends to hold the said interest otherwise than for itself beneficially;
  - (iv) if the Managing General Partner considers that the Transfer would violate any applicable law or any term of the Partnership Agreement or might otherwise not be in the best interests of the Partnership; or
  - (v) if the Managing General Partner, after consulting with legal counsel, reasonably and in good faith concludes that the transfer will result in the assets of the Partnership (or any of the other Partnerships) being treated as "plan assets" for the purposes of ERISA Plan Assets Regulation. In order for the Managing General Partner to make the determination set forth in this sub-clause 8.2.1(v), any proposed assignee or transferee of interests in the Partnership will be required to confirm to the Managing General Partner, among other things, to what extent it is a Benefit Plan Investor.

**8.2.2** A Carried Interest Partner, Limited Partner or Managing Limited Partner wishing to Transfer all or part of its interest in the Partnership shall:

- (i) where it intends to Transfer all or any part of its interest in the Partnership other than to an Associate, notify the Managing General Partner as soon as reasonably practicable following a decision to effect a Transfer and, in any event, prior to entering into any agreement (whether or not such agreement is subject to conditions including obtaining the consent of the Managing General Partner) to Transfer all or any part of its interest in the Partnership or any agreement with an intermediary to market or seek to procure purchasers of or other parties to a Transfer of all or any part of its interest in the Partnership, and shall discuss in good faith with the Managing General Partner whether instead to effect a Transfer with a person or persons nominated by the Managing General Partner. This sub-clause 8.2.2(i) shall not create any obligation on the part of a Limited Partner to Transfer its interest to a person nominated by the Managing General Partner; and
- (ii) apply to the Managing General Partner for its consent to the Transfer by giving not less than 60 days' prior written notice (or such shorter period as may be agreed by the Managing General Partner in its absolute discretion) and shall furnish such information in relation to the proposed Transfer and the transferee or other parties to the proposed Transfer as may be required by the Managing General Partner, provided that no such assignee or transferee of a Limited Partner's interest, a Carried Interest Partner's

interest or a Managing Limited Partner's interest in the Partnership shall become a Substitute Limited Partner, Substitute Carried Interest Partner or a Substitute Managing Limited Partner without the further prior written consent of the Managing General Partner which consent shall not be unreasonably withheld. The transferring Limited Partner, Carried Interest Partner or Managing Limited Partner shall bear all costs and expenses arising in connection with any such permitted transfer, including reasonable legal fees arising in relation thereto and the transferring Limited Partner or Carried Interest Partner, the transferee and all other Partners shall join in the giving of any election required by the Managing General Partner.

- 8.2.3** Prior to a proposed Transfer, the Managing General Partner, in its sole discretion, may require a written opinion of responsible counsel (which may be an in-house counsel), satisfactory in form and substance to the Managing General Partner, to the effect that such Transfer will not result in any of the matters described in sub-clause 8.2.1(ii). Such opinion shall also cover such other matters as the Managing General Partner may reasonably request.
- 8.2.4** Sub-clause 8.2.3 shall not apply to a Transfer of all of a Limited Partner's interest in the Partnership (i) to a person which succeeds to its business substantially as an entirety, or (ii) to a person who, directly or indirectly, owns all the outstanding equity securities of such Limited Partner (or of the person of which such Limited Partner, directly or indirectly, is a wholly-owned subsidiary), (iii) to another Limited Partner, (iv) from a Limited Partner acting as a trustee or fiduciary to a replacement or successor trustee or fiduciary without any change in the beneficial ownership of the Limited Partner's interest, or (v) from any governmental entity or agency to a successor of that entity or agency. The Managing General Partner agrees to cooperate with any Limited Partner making a Transfer pursuant to sub-clause 8.2.4 by providing promptly such records and other factual information as may be reasonably requested with respect to such proposed Transfer.
- 8.2.5** Subject to the reasonable satisfaction of the Managing General Partner that such Transfers will not result in or cause any of the events described in sub-clause 8.2.1(i), 8.2.1(ii), 8.2.1(iii), 8.2.1(iv) or 8.2.1(v) or otherwise adversely affect the Partnership (or any of the other Partnerships), the Managing General Partner will give its consents referred to in sub-clauses 8.2.1 and 8.2.2 to the transfer of the limited partnership interest in the Partnership (i) held by a Limited Partner to an Associate of such Limited Partner or (ii) by a governmental entity or agency to a successor of that entity or agency. Nothing in this sub-clause 8.2.5 shall prejudice any other provision of this Agreement governing the transfer of all or part of a limited partnership interest in the Partnership.
- 8.2.6** Any Substitute Limited Partner, Substitute Carried Interest Partner or Substitute Managing Limited Partner shall be bound by all the provisions hereof and, as a condition of giving its consent to any Transfer to be made in accordance with the provisions of this Clause 8.2, the Managing General Partner shall require the proposed Substitute Limited Partner, Substitute Carried Interest Partner or Substitute Managing Limited Partner to acknowledge its assumption (in whole or in part) of the obligations of the transferring Limited Partner, Carried Interest Partner

or Managing Limited Partner by entering into a Transfer and Adherence Agreement. Neither the Partnership nor the UK GP nor the Managing General Partner shall incur any liability for allocations and distributions made in good faith to the transferring Limited Partner, Carried Interest Partner or Managing Limited Partner 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.

**8.2.7** Except as otherwise provided in this sub-clause 8.2.7, in the case of a Transfer of all or any part of the interest held by a First Close Investor, the Substitute Limited Partner shall not be entitled to the First Close Incentive on any Management Profit Share in respect of any period after the date of the Transfer. Notwithstanding the foregoing, the following shall apply in the event of a Transfer by a First Close Investor to an Associate:

(i) where all but not part of a First Close Investor's Commitment is the subject of the Transfer, the Substitute Limited Partner shall be entitled to the same First Close Incentive as applied to the transferor's Commitment;

(ii) where only a portion of the transferor's Commitment is being transferred the Substitute Limited Partner shall only be entitled to a First Close Incentive on that proportion of the Commitment, if any, as represents the difference between the First Close Commitment held by the transferor prior to the Transfer and the First Close Commitment which continues to be held by the relevant transferor following the Transfer.

**8.2.8** Notwithstanding any other provisions of this Clause 8.2, each of the Limited Partners, Carried Interest Partners, UK GP and Managing Limited Partner undertakes to notify the Managing General Partner forthwith in writing of the full name of any entity or person to whom it proposes to transfer its interest pursuant to this Clause 8.2, of any change in its own name and any other information which the Managing General Partner may reasonably request.

**8.2.9** No Transfer of an interest in violation of Clauses 8.1 and 8.2 shall be valid or effective, and the Partnership shall not recognise the same for any purpose, including the making of distributions, or repayments of Capital Contribution, or otherwise with respect to interests in the Partnership and any Transfer of an interest to a Substitute Limited Partner or a Substitute Carried Interest Partner on the basis of any representation by such Partner which is untrue or which is subsequently breached by such Partner shall be void.

### **8.3 Change of Control**

The Managing General Partner shall procure that following the end of the Investment Period, in the absence of a Limited Partner Special Consent:

(i) no person other than the Cinven Parties may (a) acquire, in aggregate, direct or indirect control of the Managing General Partner and the Advisers; or (b) become entitled, directly or indirectly, to greater than 25 per cent of the Carried Interest; and

- (ii) no person other than the Initial Cinven Parties may become beneficially entitled directly or indirectly, in aggregate, to greater than 50 per cent. of the Carried Interest.

#### **8.4 Change of Control of a Limited Partner**

- 8.4.1** Each Limited Partner agrees that it will notify the Managing General Partner in writing of and will seek the Managing General Partner's prior written consent to a proposed change in either the ultimate control or the ultimate beneficial ownership of the Limited Partner such that the ultimate controllers or the ultimate beneficial owners (as the case may be) of a Limited Partner include one or more persons not detailed as controllers or beneficial owners in the Investor Questionnaire provided by the Limited Partner prior to their admission as a Limited Partner, as amended pursuant to any notification made to and consents of the Managing General Partner, pursuant to this Clause 8.4.
- 8.4.2** Subject to sub-clause 3.3.3, any Limited Partner in respect of which there occurs a change in ultimate control or ultimate beneficial ownership as described in sub-clause 8.5.1, the Managing General Partner may, with effect from the date of such change in control or beneficial ownership, require such Limited Partner to transfer or otherwise forfeit its interest in accordance with sub-clauses 3.9.1(i), 3.9.1(ii) and 3.9.2.
- 8.4.3** Notwithstanding the foregoing, with respect to any Limited Partner for which the holding of interests in the Partnership and similar vehicles is ancillary to and does not form part of the main business of the group comprising such Limited Partner and its Associates (an "LP Group"), the provisions of sub-clause 8.4.1 shall not apply to a change in control or beneficial ownership of the Limited Partner where such change in control or beneficial ownership results from a sale or other transfer of the LP Group. Such Limited Partner shall, however, be required to notify the Managing General Partner in writing of the change in control or beneficial ownership on or as soon as reasonably practicable following such change.

#### **8.5 ERISA Investors**

- 8.5.1** If US legal counsel to the Partnership or US legal counsel to an ERISA Investor (or any other person that is reasonably acceptable to the Managing General Partner) has advised the Managing General Partner that (a) there is a material risk that existing participation in the Partnership by Benefit Plan Investors is "significant" or is likely to become "significant", and the Partnership does not qualify as an "operating company" (as such terms are defined in the ERISA Plan Asset Regulations), or (b) such ERISA Investor's continuance as a Limited Partner would be a non-exempt "prohibited transaction" as defined in Section 406 of ERISA or Section 4975 of the Code, or (c) as a result of any amendment to ERISA after the date hereof, such ERISA Investor's continuance as a Limited Partner would be a material violation of ERISA or related law, the Managing General Partner shall deliver a copy of such advice to all ERISA Investors and shall use all reasonable endeavours to take such actions as the Managing General Partner deems necessary and appropriate to (x) prevent the characterisation, or take such steps as it deems necessary or advisable to end the characterisation, as applicable, of

the Partnership's assets as "plan assets" of any ERISA Investor (or any employee benefit plan which is a limited partner of or other participant in an ERISA Investor); and (y) prevent the occurrence of a prohibited transaction or violations of ERISA or other ERISA-related law. Without limiting the generality of the foregoing, the Managing General Partner may but shall not be obliged to:

- (i) modify the manner in which the Partnership conducts its business;
- (ii) permit the transfer, in accordance with the provisions of Clause 8.2, of all or a portion of the interests of any ERISA Investor;
- (iii) require the transfer, in accordance with the provisions of Clause 8.2, of all or a portion of the interests of any ERISA Investor; or
- (iv) require that any or all ERISA Investors completely or partially withdraw from the Partnership in accordance with the provisions of Clause 12.

The Managing General Partner shall consult with the ERISA Investors prior to action pursuant to this sub-clause; however, such consultation shall be non-binding and the Managing General Partner reserves the right to take such actions as the Managing General Partner deems necessary and appropriate.

- 8.5.2** If, by that date which is sixty (60) days after the date of delivery of the advice described in sub-clause 8.5.1, Benefit Plan Investor participation in the Partnership has not been reduced to a level at which it is no longer "significant" (as defined in the ERISA Plan Asset Regulations), or there are, in the relevant US legal counsel's opinion, other continuing violations of ERISA or other ERISA-related law, then any ERISA Investor, shall (a)<sup>4</sup> upon demand by the Managing General Partner, either withdraw from the Partnership in accordance with the provisions of Clause 12 or transfer its interest in the Partnership in accordance with the provisions of Clause 8.2, or (b) be permitted to withdraw from the Partnership in accordance with the provisions of Clause 12 or transfer its interest in the Partnership in accordance with the provisions of Clause 8.2. Any such transfer shall be effective on the date which is the earlier of (i) the last calendar day of the fiscal quarter during which the demand for transfer is made, or (ii) any other date for transfer that is recommended by US legal counsel to the Partnership in the aforementioned opinion.

## **9 Termination and Liquidation**

### **9.1 Termination**

The death, bankruptcy, insolvency, dissolution, liquidation, expulsion or removal of a Partner (other than a General Partner which is the sole remaining general partner of the Partnership) shall not operate to dissolve or terminate the Partnership and the estate or trustee in bankruptcy or receiver or liquidator of a deceased, bankrupt, insolvent, or dissolved Partner, shall not have the right to require repayment of such Partner's Capital Contribution prior to the liquidation of the Partnership. Subject as provided in Clause 9.4, the Partnership shall, notwithstanding any provisions contained herein to the contrary, be terminated on the 10th anniversary of the Commencement Date or upon the happening of any of the following events the happening of which the Managing General Partner shall notify in writing to the Limited Partners as soon as practicable:

- 9.1.1** save where Clause 8.1 applies, the bankruptcy, insolvency, dissolution, liquidation, resignation, withdrawal, removal or expulsion of the Managing General Partner in which event the Partnership shall terminate automatically (and without any further action of any of the Partners) and without notice unless the Partnership is reconstituted pursuant to Clause 9.5;
- 9.1.2** the service of a notice on the Managing General Partner pursuant to a Limited Partner Consent on the occurrence of any of the following:
- (i) a final determination by arbitrators appointed pursuant to Clause 13.15 that the Managing General Partner, the FCP Manager or any of the Advisers has committed a breach of this Agreement (including, in particular, a breach of the obligation to manage the affairs of the Partnership pursuant to the terms hereof), an Advisory Agreement or the FCP Rules which breach materially and adversely affects the Partnership and, if capable of remedy, has not been remedied within 30 days after written notice of such breach shall have been served on the Managing General Partner by any Limited Partner requiring such remedy;
  - (ii) any act or omission of the Managing General Partner or Adviser or the FCP Manager in connection with the operation of the Partnership or the FCP which has been finally determined by arbitrators appointed pursuant to Clause 13.15 to constitute gross negligence or a breach of fiduciary duty which materially and adversely affects the Partnership which, if capable of remedy, has not been remedied within 30 days after written notice of such breach shall have been served on the Managing General Partner by any Limited Partner requiring such remedy;
  - (iii) any act or omission of the Managing General Partner, an Adviser or the FCP Manager which has been finally determined by arbitrators appointed pursuant to Clause 13.15 to constitute a wilful illegal act that is material in the context of the business of Managing General Partner, an Adviser or the FCP Manager, as appropriate;
  - (iv) any act or omission by Managing General Partner, an Adviser or the FCP Manager which is finally determined by arbitrators appointed pursuant to Clause 13.15 to constitute fraud;
  - (v) any act or omission of the Managing General Partner, an Adviser, Cinven Limited or the FCP Manager in connection with the operation of the Partnership, the FCP, any Previous Fund and/or any Successor Fund which is finally determined by arbitrators appointed pursuant to Clause 13.15 to constitute wilful default, bad faith or professional misconduct which has materially and adversely affected one or more of the Previous Funds, the Partnership and/or any Successor Fund; or
  - (vi) the making of any verdict, judgment or arbitration award against the Managing General Partner or an Adviser which materially and adversely affects the ability of the Managing General Partner and the Advisers taken as a whole to carry out their duties under this Agreement and the Advisory Agreements and/or to conduct the activities of the Partnership.



- 9.1.3 the agreement of the Managing General Partner with a Limited Partner Special Consent (provided a similar agreement is made with each Additional Partnership);
- 9.1.4 notice served by the Managing General Partner on the Limited Partners following change in the law as a result of which in the reasonable opinion of the Managing General Partner on the basis of a written legal opinion from an internationally recognised law firm, the continuation of the Partnership becomes unlawful, impractical or inadvisable taking into account the interests of the Partners as a whole;
- 9.1.5 notice served on the Managing General Partner at any time during the six-month period following the termination of the Investment Period pursuant to sub-clause 3.10.1(v);
- 9.1.6 notice served on the Managing General Partner pursuant to a Limited Partner Consent following the termination of any Additional Partnership pursuant to an equivalent provision to sub-clause 9.1.1, 9.1.2, 9.1.4 or 9.1.5; and
- 9.1.7 notice served on the Managing General Partner at any time following the second anniversary of the Commencement Date requiring the termination of each of the Partnerships pursuant to a Limited Partner Special Consent, provided that the Partnership shall pay to the Managing General Partner an amount equal to two times the Management Profit Share for the Accounting Period ending immediately prior to the date such notice was served. To fund such payment the Managing General Partner shall be entitled to issue a Drawdown Notice for the amount thereof and the termination shall only become effective upon the later of such payment being made (which the Managing General Partner shall procure occurs as soon as possible) and upon the completion of Investments in respect of which the Partnership has been granted exclusivity and which the failure of the Partnership to so complete would cause the Partnership and/or any member of the Cinven Group to suffer material financial harm or penalty or a binding agreement or undertaking to invest pursuant to a written agreement has been entered into, in each case prior to such notice being served on the Managing General Partner.

## **9.2 No Early Termination of the Fund**

The Partnership shall not be capable of termination other than as provided for in Clause 9.1.

## **9.3 Liquidation of Interests of Partners**

- 9.3.1 The Carried Interest Partners shall not have the right to the return of their Capital Contribution except upon the liquidation of the Partnership save that in the event of withdrawal or expulsion of any Partner from the Partnership, they shall be repaid part of their Capital Contribution so that the amount of their Capital Contribution shall continue to equal the CIP Capital Amount as determined immediately following such withdrawal.
- 9.3.2 The UK GP, the Managing General Partner and the Advisers shall not (subject always to sub-clause 13.3.1) be personally liable for the return of the Capital Contributions made by the Carried Interest Partners, the Limited Partners or the Managing Limited Partner.

- 9.3.3 Upon termination of the Partnership, no further activities or operations shall be conducted except for such action as shall be necessary for the winding-up of the affairs of the Partnership and the distribution of the Partnership Assets amongst the Partners. The Managing General Partner shall act as liquidating trustee provided however that if the Partnership is terminated for a reason set forth in sub-clause 9.1.1, 9.1.2 or 9.1.5 the Advisory Committee may request the courts of the island of Guernsey to designate some other party or parties to act as a liquidating trustee or trustees and to receive such remuneration for so acting as the Advisory Committee may agree.
- 9.3.4 Upon termination of the Partnership, the liquidating trustee or trustees shall use all reasonable endeavours to sell the Partnership Assets with reasonable speed on the best terms available. In the event that such sale is not possible or not, in the liquidating trustee or trustees' opinion, in the best interests of the Limited Partners it or they may, at its or their discretion, distribute all or any of the Partnership Assets in specie (whether or not the same have achieved Listing) on the basis set out in sub-clause 6.4.1. Such Partnership Assets shall be valued by an independent investment banking firm or other independent expert appointed by the liquidating trustee after consultation with the Advisory Committee. In the case of securities which have not achieved Listing, any Limited Partner may request the liquidating trustee to endeavour to arrange for a sale of its due proportion of any such unlisted security, the net proceeds of such sale to be distributed to such Limited Partner. 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 the remaining proceeds and assets to be distributed shall be distributed amongst the Partners on the basis set out in Clause 6 and the appropriate allocations shall be made in the accounts of each of the Partners in accordance with the provisions of Clause 7.

#### **9.4 Extension of the Life of the Partnership**

At any time prior to the 10th anniversary of the Commencement Date the life of the Partnership may be extended, at the election of the Managing General Partner with the consent of the Advisory Committee, by a period or periods not exceeding in total two years, so as to permit the orderly winding up of the affairs of the Partnership and the distribution of the Partnership Assets amongst the Partners. Any such election shall be irrevocable but shall be without prejudice to the possibility of earlier termination of the Partnership for any reason specified in Clause 9.1.

#### **9.5 Reconstitution of the Partnership following Termination**

- 9.5.1 In the event of the termination of the Partnership pursuant to sub-clause 9.1.1, the Limited Partners may elect to continue the Partnership and each Additional Partnership by a Limited Partner Special Consent passed as soon as possible following the occurrence of the event specified in sub-clause 9.1.1 (the "Continuation Date") by appointing a new Managing General Partner, new additional general partner and new managing limited partner of the Partnership and the Additional Partnerships on the terms set out in this Clause 9.5.

9.5.2 Within 60 days of being notified of the termination of the Partnership pursuant to sub-clause 9.1.2, 9.1.5, 9.1.6 or 9.1.7 any Investor shall with Limited Partner Special Consent be entitled to serve written notice on the current Managing General Partner (the "**Original Managing General Partner**") requiring the reconstitution of the Partnership and each Additional Partnership on the terms of, in the case of the Partnership, this Agreement and in the case of the Additional Partnerships the agreements constituting such Additional Partnerships and:

- (i) the removal of the Original Managing General Partner, the UK GP (the "**Original UK GP**") and the Managing Limited Partner (the "**Original Managing Limited Partner**") from the Partnership and the Additional Partnerships with effect from a date specified in such notice (the "**Removal Date**" and together with the Continuation Date, the "**Reconstitution Date**"); and
- (ii) the substitution of specified persons (the "**New Managing General Partner**", the "**New UK GP**" and the "**New Managing Limited Partner**") as successor managing general partner, additional general partner and managing limited partner respectively of the Partnership and the Additional Partnerships in place of the Original Managing General Partner, the Original UK GP and the Original Managing Limited Partner on the terms set out in this Clause 9.5.

9.5.3 Upon the Reconstitution Date, the New Managing General Partner, the New UK GP and New Managing Limited Partner shall be admitted as the Managing General Partner, UK GP and Managing Limited Partner and, upon such admission, the Original UK GP, the Original Managing General Partner and Original Managing Limited Partner shall cease to be Partners in the Partnership. The Original Managing General Partner, the Original UK GP and the Carried Interest Partners (the "**Original Carried Interest Partners**") shall assign and transfer to the New General Partner, the New UK GP and, in respect of the assignment by the Original Carried Interest Partner such person as the New Managing General Partner may nominate and the Original Managing Limited Partner shall assign to the New Managing Limited Partner, all of their right, title and interest in the Partnership (other than as referred to in sub-clauses 9.5.4 and 9.5.7) provided that the Original Managing General Partner, the Original UK GP, the Original Managing Limited Partner and Original Carried Interest Partners shall:

- (i) retain the right to receive all amounts accrued to them hereunder as at the Reconstitution Date (including, for the avoidance of doubt, any accrued Management Profit Share and/or UK GP Profit Share or advance on account thereof and the right to receive or have reimbursed any fees or expenses in accordance with the terms of this Agreement);
- (ii) receive such amount equal to distributions they would have received (where the Partnership is continued following its termination pursuant to sub-clause 9.1.3), had the Partnership and the FCP been terminated and the Partnership's assets distributed in accordance with Clause 9.3;
- (iii) continue to be entitled along with any of the Advisers (the "**Original Advisers**") and their respective Associates, officers, members, partners,

agents, delegates and employees, to the benefit of the provisions regarding the exclusion of liability and indemnification set out in Clause 13.3 (and subject to the limitations set out therein), and the New General Partner shall exercise to the fullest extent their rights under Clause 13.4 in order to fund the right to be indemnified under Clause 13.3 of the Original Managing General Partner, Original UK GP, the Original Advisers, the Original Managing Limited Partner and their respective Associates, officers, members, partners, agents, delegates and employees; and

- (iv) in the case of the Original Carried Interest Partners, retain the right to distributions of Carried Interest as referred to in sub-clause 9.5.4, and to their interest in the Partnership in respect of their Commitment (as referred to in sub-clause 9.5.7).

The relevant assignee shall pay to the Managing Limited Partner an amount equal to the Capital Contribution of the Managing Limited Partner and to each Carried Interest Partner an amount equal to its Capital Contribution made pursuant to Clauses 3.1 and 3.2 respectively (to the extent not previously repaid) or, if sub-clause 9.5.4 applies, 30 per cent thereof. Amounts referred to in paragraph (i) above to be paid by the Partnership within 30 days of the Reconstitution Date.

**9.5.4** Where the Partnership is continued otherwise than following its termination pursuant to sub-clause 9.1.3, the Original Carried Interest Partners shall remain (in respect of their entitlement to Carried Interest) limited partners in the Partnership and entitled to receive distributions of Carried Interest provided that where the Partnership is continued following its termination pursuant to this sub-clause 9.1.1, 9.1.2, 9.1.4, 9.1.5 or 9.1.6 this entitlement shall be restricted to the Carried Interest distributions in respect of Investments made prior to the Reconstitution Date (which for this purpose shall include any Investments in respect of which a binding agreement or undertaking to invest was entered into prior to the Reconstitution Date (the "**Completed Investments**"), and the entitlement to such distributions (as grossed up as described in sub-clause 6.2.1) shall be reduced by 30 per cent For the purpose of calculating such Carried Interest where the Partnership is continued following its termination pursuant to sub-clause 9.1.1, 9.1.2, 9.1.4, 9.1.5 or 9.1.6, the allocation and distribution provisions of this Agreement shall, notwithstanding any contrary provision of Clause 6 or 7, be determined and applied as though the Original Carried Interest Partners were the only Partners entitled to Carried Interest and as though:

- (i) the only assets of the Partnership were those assets held by the Partnership together with its interest in the FCP as at the Reconstitution Date (including, the Completed Investments) together with, subject to sub-clause 9.5.5, such further assets (including cash) received by the Partnership and the FCP in respect of their interest therein after the Reconstitution Date in respect of such assets and Completed Investments (the "**Relevant Partnership Assets**");

- (ii) the only liabilities of the Partnership were the liabilities of the Partnership and its share of the liabilities of the FCP as at the Reconstitution Date together with such expenses and liabilities properly incurred by the Partnership and its share of those expenses and liabilities properly incurred by the FCP after the Reconstitution Date on account of the Relevant Partnership Assets and which are allocated to the Partnership for the purposes of sub-clause 9.5.4 on such basis as the Auditors certify to the Original Carried Interest Partners as being in their opinion fair and reasonable, provided that such further expenses and liabilities shall not include any expenses or liabilities incurred as a result of gross negligence, fraud, wilful illegal act, gross professional misconduct, bad faith, material breach of fiduciary duty, wilful default or any material breach of contract or of this Agreement of the New General Partner or its Associates, or officers, members partners, agents, delegates and employees or any of them and for the avoidance of doubt shall not include any expenses or liabilities in respect of any Investments other than Completed Investments (the "**Relevant Partnership Liabilities**");
- (iii) the only Commitments of the Partnership are those Commitments drawn down as at the Reconstitution Date, plus such Commitments as may be drawn down to meet any additional Relevant Partnership Liabilities; and
- (iv) as though the amount that would be allocated and distributed to the Carried Interest Partners on the above basis (as grossed up as described in sub-clause 6.2.1) were reduced by 30 per cent,

provided that, for the avoidance of doubt, the Original Carried Interest Partners shall only be entitled to such proportion of the Carried Interest to the extent and at the times that Carried Interest becomes available for distribution in accordance with Clause 6.2 (taking into account all of the assets, liabilities, expenses and Commitments of the Partnership) and the remainder of the Carried Interest shall be available to the New Carried Interest Partner.

**9.5.5** In the event that a further Investment (or Investments) is made by the Partnership after the Reconstitution Date into the same Investee Company as a Completed Investment, the Partnership shall, for the purposes of sub-clause 9.5.4, be treated as receiving that proportion of any further assets (including cash) received by the Partnership after the Reconstitution Date in respect of those Completed Investment(s) and further Investment(s) in such Investee Company as is equal to:

- (i) the aggregate Acquisition Cost of the Completed Investment(s) in such Investee Company; divided by
- (ii) the aggregate Acquisition Cost of the Completed Investment(s) and the further Investment(s) in such Investee Company.

**9.5.6** Distribution of Carried Interest to the Original Carried Interest Partners and the New Carried Interest Partner shall continue to be paid into the trust account to the extent required by Clause 6.3 to which the New Carried Interest Partner shall be subject in the same manner as the Original Carried Interest Partners and

distributions to the FCP Carried Interest Partners shall continue to be subject to the retention arrangements at Clause 6.3.

9.5.7 Following the Reconstitution Date, the New General Partner, the New UK GP and the New Managing Limited Partner shall assume all of the Original Managing General Partner's, the Original UK GP's and the Original Managing Limited Partner's obligations to the Partnership, the Limited Partners and third parties, and the New General Partner shall procure that the Partnership shall:

- (i) be continued under a name other than one incorporating the name "Cinven" or any confusingly similar name;
- (ii) cease to use any printed materials referring to the Cinven name; or
- (iii) cease to do anything which would suggest a continuing association with the Cinven Group.

9.5.8 Notwithstanding the provisions of Clause 13.6, no amendment to the terms of this Agreement that adversely affects the Original Managing General Partner's or the Original UK GP's or the Original Carried Interest Partner's or Original Managing Limited Partner's rights or interests may be made on or after the Reconstitution Date without the written consent of the Original Managing General Partner and/or the Original UK GP and/or the Original Carried Interest Partner and/or the Original Managing Limited Partner (as appropriate).

## **10 Accounts, Reports and Auditors**

### **10.1 Accounts**

The Managing General Partner shall prepare and approve accounts of the Partnership in respect of each Accounting Period in accordance with generally accepted accounting principles in the United Kingdom (except where determined by the Managing General Partner as not being relevant to a private equity fund), including a balance sheet, profit and loss account and cash flow statement, a statement of the aggregate amount of the relevant accounts of each category of Partner and a summary of Investments. The Managing General Partner shall cause such accounts to be audited by the Auditors. A set of the audited accounts including the report of the Auditors and a statement of accounting policies shall be furnished to each Partner within 90 days following the end of each Accounting Period. The accounts shall contain a certification by the Auditors that in their opinion: (i) the proportion of the Acquisition Cost to the Aggregate Acquisition Cost of each Investment made during the Accounting Period was in that proportion referred to in sub-clause 4.2.3; (ii) the allocations (including allocations of the Carried Interest as grossed up as described in sub-clause 6.2.1) to the accounts of the Partners for the Accounting Period were made in accordance with Clause 7.1; and (iii) distributions (including distributions to the Carried Interest Partners as grossed up as described in sub-clause 6.2.1) during the Accounting Period were made in accordance with the Agreement.

### **10.2 Reports**

10.2.1 Within 60 days of the end of each period of three months ending on the last days of March, June and September and within 90 days of the end of each period of three months ending on the last day of December in each year, the Managing General

Partner shall prepare and send to each Limited Partner an unaudited report approved by the directors of the Managing General Partner comprising a statement of the Investments and other property and assets of the Partnership, details of the Investments purchased, sold and otherwise disposed of during the relevant period and the cost of each Investment forming part of the Partnership Assets and the valuation thereof as at the end of such period, an unaudited balance sheet, profit and loss account and cash flow statement for the Partnership, a statement of the amount of the relevant accounts of such Limited Partner, and details of all transaction fees, directors fees and other fees (including those referred to in Clause 4.5 and sub-clause 13.2.3(ii)) received by the Managing General Partner or its Associates in connection with the Investments of the Fund duly certified by the Managing General Partner as being complete and accurate.

**10.2.2** The Managing General Partner shall cause to be prepared and filed any tax returns and reports that are required to be filed by the Partnership and will provide within 60 days after the end of each Accounting Period to each Limited Partner that so requires (but at that Limited Partner's cost) a Schedule K-1 showing such Partner's allocation of all items of the Partnership's income, gain, loss, deduction or credit prepared in accordance with the US tax principles contained in Section 704 of the Code.

**10.2.3** The Managing General Partner shall provide each Limited Partner with an annual statement of taxes withheld in respect of the amounts distributed to that Limited Partner and such information and assistance as may be reasonably requested by such Limited Partner for the purposes specified in sub-clause 4.2.23; and

**10.2.4** The Managing General Partner shall provide such other information as may be reasonably requested by a Limited Partner in relation to the Partnership (but at such Limited Partner's expense where the Managing General Partner so determines) including, such information as the Limited Partner may require for the purpose of preparing regulatory reports.

### **10.3 Valuations**

For the purpose of the accounts maintained by the Partnerships and the annual audited accounts of the Partnership, Investments will be held at the lower of cost or cost less provision in accordance with generally accepted accounting principles in the United Kingdom. Quarterly reports will contain the cost and a fair value of each Investment valued in accordance with the International Private Equity and Venture Capital Valuation Guidelines issued in September 2009 by the International Private Equity and Venture Capital Valuation Board.

### **10.4 Auditors**

The Auditors may be removed at any time by the Managing General Partner who shall be entitled to appoint an internationally recognised firm of chartered accountants as a replacement or to fill any vacancy arising as a result of any resignation by the Auditors. In the event of any resignation or removal of the Auditors, the Managing General Partner shall notify the Advisory Committee, and shall invite the outgoing Auditors to send a written notice to the Partners stating whether or not there are any circumstances connected with their resignation or removal which they consider should be brought to the attention of any of the Partners.

## **10.5 Books and Records**

- 10.5.1** The Managing General Partner shall retain all records and books of account relating to the Partnership for a period of at least six years after the date of termination of the Partnership.
- 10.5.2** Other than as set out in this Agreement, Limited Partners shall not have any right to inspect, make copies of or take extracts from the Partnership records or books of account, to be given any information of things affecting the Partnership or to be given a formal account of the Partnership affairs.

## **11 Meetings of Limited Partners and the Advisory Committee**

### **11.1 Meetings**

- 11.1.1** The Managing General Partner shall convene an annual general meeting of the Partners on not less than 15 Business Days' notice to be held within 120 days of the end of each Accounting Period.
- 11.1.2** Upon the written request of persons representing 20 per cent or more of the Commitments drawn down from the Limited Partners (other than the Commitments held by any member of the Cinven Group), the Managing General Partner shall call a meeting of the Partners. Notice of such meeting shall be given to each Partner within 10 Business Days after receipt by the Managing General Partner of such request and such meeting will be held within 60 Business Days of the date on which such notice shall have been given to the Partners but not earlier than 10 Business Days from the date of such notice. The Managing General Partner may also call a meeting of the Partners on the Managing General Partner's own initiative by giving notice of such meeting to each Partner not less than 10 nor more than 60 Business Days prior to such meeting.
- 11.1.3** Each notice of a meeting of the Partners shall state the time and (unless such notice states that such meeting is to be held by telephone) the place at which such meeting shall be held (which time and place, if any, shall be reasonably selected by the Managing General Partner) and, if such meeting is called by the Managing General Partner on its own initiative or is the annual general meeting, shall state briefly the purpose of the meeting. A Limited Partner may waive the right to notice in writing either before or after a meeting. Attendance may be in person, by proxy or delegate or by telephone. The consideration of any matter at a meeting called pursuant to this Clause 11 shall not obviate the need to obtain a Limited Partners' Consent or a Limited Partner Special Consent or any other written consent or confirmation where required under this Agreement. Any Partner may obtain from the Managing General Partner a list of the names, addresses and interests of the Partners upon written request provided that such Partner shall pay any reasonable expense associated therewith. Unless expressly stated otherwise in this Agreement all motions considered at any such meeting shall be capable of being determined by a resolution passed by Limited Partners representing over 50 per cent of the Commitments drawn down from the Limited Partners (other than the Commitments of any member of the Cinven Group).
- 11.1.4** No Bank Regulated Partner and no transferee of a Bank Regulated Partner's interest in the Partnership shall have the right to vote (whether in person, by proxy,



by execution of a written consent or otherwise) on any matter presented to the Partners or the Limited Partners pursuant to this Agreement that portion of such Bank Regulated Partner's (or transferee's) voting rights that would cause such Bank Regulated Partner (or transferee) to have a vote that exceeds 4.99 per cent of the entire vote being taken in respect of any matter to be approved by Partners or Limited Partners solely to the extent that the exercise of such voting rights would cause a Bank Regulatory Problem.

## **11.2 Feeder Partner**

Any Limited Partner who is a Feeder Partner may vote in accordance with the wishes of its Feeder Investors, and accordingly such Limited Partner may in respect of any resolution referred to in Clause 11.1 or any Limited Partner Consent or Limited Partner Special Consent divide its vote(s) proportionately so as to reflect the views of such Feeder Investors.

## **11.3 Advisory Committee**

An Advisory Committee, comprising not less than five persons and not more than 20 persons representing the Investors (and, for the avoidance of doubt, no member of the Cinven Group may be a representative) (such persons to be nominated by the Managing General Partner) shall meet at least twice in each year and at such other times as may be requested by the Managing General Partner to carry out the following tasks:

- 11.3.1 to review any potential conflict of interest between a member of the Cinven Group, any members, partners, directors, employees or officers of a member of the Cinven Group, any Related Parties or any of their Associates and the Fund, any Investee Company and/or any Alternative Investment Structure;
- 11.3.2 to review with the Managing General Partner the progress of the Fund generally in achieving its investment objectives; and
- 11.3.3 to review any valuations of the Partnership Assets which are made pursuant to sub-clause 4.2.16 or Clause 12.6;

provided always that the function of such Advisory Committee shall be to consult with the Managing General Partner in relation to the above matters and the Managing General Partner shall not be required to follow any advice or recommendation of the Advisory Committee but shall exercise its powers as set out in Clause 4 hereof at its own discretion except that the Managing General Partner shall not cause the Partnership to enter into any transaction or arrangement involving any potential material conflict of interest as stated in sub-clause 11.3.1 unless and until the Advisory Committee shall have confirmed by majority resolution that such transaction or arrangement may be concluded notwithstanding such potential conflict. If any matter requiring the approval (or permission) of the Advisory Committee is not so approved (or such permission is not granted), the Managing General Partner shall be without any authority to proceed in connection with such matter.

Each member of the Advisory Committee shall hold office from the date of nomination and thereafter until removed in accordance with the foregoing provisions of this Clause 11.3, whereupon the Managing General Partner shall as soon as reasonably practicable nominate a further member to represent such limited partners who shall hold office on the same terms. No member of the Advisory Committee shall be entitled to any compensation

or other sum in consequence of his or her removal from such office pursuant to this Clause 11.3.

- 11.4** In addition to the functions set out in Clause 11.3, the Advisory Committee shall be responsible for the matters set out in sub-clause 6.3.7 for which purpose they shall be entitled to instruct UK and/or Guernsey financial and legal advisers and also perform the functions set out in sub-clauses 3.10.1(i), 3.13.3, 5.1, 5.1.5, 5.1.8, 5.2.2 (and the associated definition of Key Partner), 9.3.3, 9.3.4, 9.4, 12.7 and 13.2.4.
- 11.5** For the purposes of any meeting convened for the purposes of those matters detailed in Clause 11.4, meetings of the Advisory Committee shall (unless otherwise expressly provided in the relevant Clause) be convened by any two members of the Advisory Committee or the Managing General Partner and not less than 10 Business Days' notice (or such shorter period as may be agreed by the members of the Advisory Committee) of such meetings shall be given to members of the Advisory Committee and to the Managing General Partner which notice shall contain reasonable particulars of the matters to be discussed at the meeting.
- 11.6** The Managing General Partner shall be entitled to attend and to address any meetings of the Advisory Committee but any person representing the Managing General Partner at such meeting shall not be entitled to vote on any resolution proposed at such meeting and may be excluded during deliberations or the taking of any vote. Save as aforesaid the Advisory Committee shall convene and regulate its meetings as it considers fit including quorum requirements, holding its meetings by telephone and the attendance at meetings by alternates or proxies of members of the Advisory Committee but in all cases a majority resolution of the Advisory Committee shall either take the form of a written resolution signed by a majority of the members of the Advisory Committee or a resolution passed on a show of hands by a majority of the members of the Advisory Committee present at a duly convened and quorate meeting.
- 11.7** The members of the Advisory Committee and any Limited Partner on whose behalf a Member is appointed shall owe no duty of care or fiduciary duty to any Partner or any other person referred to in this Agreement in respect of the activities of the Advisory Committee, other than the duty to act in good faith.

## **12 Withdrawal of Limited Partners**

- 12.1** A Limited Partner may be required by the Managing General Partner after prior consultation between the Limited Partner and the Managing General Partner, by notice to such Limited Partner, completely or partially to withdraw from the Partnership if (i) in the reasonable judgement of the Managing General Partner, supported by an opinion of its US counsel (such opinion and counsel to be reasonably satisfactory to such Limited Partner) which shall be supplied to the Limited Partner, by virtue of that Limited Partner's interest in the Partnership, there is a material likelihood that the Partnership or any Partner may be subject to any requirement to register under the United States Investment Company Act of 1940, (ii) as described and pursuant to Clause 8.5, the assets of the Partnership may be deemed to be "plan assets" for the purposes of ERISA Plan Assets Regulation, (iii) in the reasonable judgement of the Managing General Partner, such Limited Partner is not a Qualified Investor, or (iv) in the reasonable discretion of the Managing General Partner, the

ongoing participation of such Limited Partner in the Partnership is prohibited by law and any guidance with respect thereto, is prohibited by a Policy or would cause the Partnership and/or the Managing General Partner to be non-compliant with any obligations imposed on it under Section 1471-1474 of the Code and guidance promulgated thereunder ("FATCA"), provided in every case other than a withdrawal on account of FATCA, the decision of the Managing General Partner is supported by an opinion of counsel (such opinion and counsel to be reasonably satisfactory to such Limited Partner). No Limited Partner shall be required to withdraw pursuant to this Clause 12.1(iv) on account of FATCA if that Limited Partner has complied with any applicable requirements under FATCA and provides any documentation to the Partnership which may be required and requested by the Partnership in order for the Partnership to comply with its obligations under FATCA.

**12.2** A complete or partial withdrawal pursuant to Clause 12.1 will be effected by the Partnership's purchase of the withdrawing Limited Partner's Interest (or, in the case of a partial withdrawal, a portion thereof) at the purchase price and in accordance with the procedures set out in Clause 12.3. The effective date of any such withdrawal shall be the last day of the month in which notice of such withdrawal was given by the Managing General Partner, in the case of a withdrawal pursuant to Clause 12.1.

### **12.3**

**12.3.1** In the event that the Partnership purchases the Interest (or, in the case of a partial withdrawal, a portion thereof) of any Limited Partner pursuant to the provisions of this Clause 12, the purchase price therefore shall be the amount which such Limited Partner would have been entitled to receive in respect of its Interest (or, in the case of a partial withdrawal, a portion thereof) pursuant to sub-clause 9.3.4 if the Partnership had been liquidated and terminated as of the date of such purchase determined on the basis of the audited and unaudited financial statements and records of the Partnership. Such valuation shall be made by the Managing General Partner in good faith in consultation with the Auditors. Such purchase price shall be paid in cash, except that the Partnership may pay such purchase price in whole or in part through a distribution in specie of Partnership Assets, as soon as reasonably practicable after such withdrawal pursuant to this Clause 12. The making of any such payment in specie, shall be in the form of the withdrawing Limited Partner's pro rata share of each Investment of the Partnership.

**12.3.2** Notwithstanding the foregoing the Partnership shall not be required to sell Investments, in order to make such payments, in advance of the time at which the Managing General Partner, in the best interests of the Partnership (in the Managing General Partner's judgement), would otherwise cause such Investments to be sold. If, for any reason, the Partnership determines not to sell Investments in order to make such payments, or make a distribution in specie, the Partnership shall give to the Limited Partner a promissory note, payable in cash, which shall bear interest at a rate equal to the lesser of:

- (i) the highest rate permitted by law; or
- (ii) the greater of (1) the rate the Partnership could obtain from a money market fund or (2) that rate necessary to avoid imputation of interest under any applicable provision of the Code.

Such promissory note shall mature on the date of the Partnership's final distribution to Partners. At such time as any distributions are made to the Partners, the principal amount of such promissory note shall be prepaid to the extent of any actual amounts that would have been distributed to the withdrawing Limited Partner had such Limited Partner maintained an interest in the Partnership equivalent to the portion of such Limited Partner's interest not redeemed in cash.

The note shall be payable out of the assets of the Partnership and not out of the assets of a General Partner.

- 12.4** In the event of withdrawal of any Partner from the Partnership, the Carried Interest Partners shall be repaid part of their Capital Contributions (in proportion, as between themselves, to their Capital Contributions) so that the aggregate amount of their Capital Contributions shall continue to equal 20 per cent of the total Capital Contributions of all Partners subscribed in the Partnership immediately following such withdrawal.
- 12.5** Otherwise than with the consent of the Managing General Partner and except as provided in this Clause 12, no Limited Partner shall have the right to withdraw from the Partnership. The Managing General Partner shall notify Limited Partners of any withdrawal.
- 12.6** Notwithstanding the other provisions of this Clause 12, in the case of the purchase of all or a portion of an interest held by an ERISA Investor pursuant to this Clause 12, if such ERISA Investor delivers to the Managing General Partner a written opinion of responsible counsel (which may be an in-house counsel) satisfactory in form and substance to the Managing General Partner to the effect that such purchase could reasonably be expected to result in a non-exempt "prohibited transaction" as defined in Section 406 of ERISA or Section 4975 of the Code, the Managing General Partner shall use its commercially reasonable efforts to (i) arrange for the purchase of such ERISA Investor's interest (or a portion thereof) by a third party who is not a "party in interest" as defined in Section 3(14) of ERISA or a "disqualified person" (as defined in Section 4975 of the Code) with respect to such ERISA Investor and (ii) obtain the best terms then available (having regard to all of the relevant circumstances, including the best price offered).
- 12.7** With respect to any distribution in specie of any unlisted Investments pursuant to this Clause 12, the following procedures shall apply. The Managing General Partner shall notify the relevant Limited Partner in writing of the distribution value of each such Investment no later than 10 days after the date of distribution thereof. If, within 45 days after receipt of such notification or any distribution in specie of such Investments, the relevant Limited Partner notifies the Managing General Partner in writing of objections to such valuation then as promptly as practicable (and in any event within 30 days) after receipt of such notification, the Managing General Partner shall furnish to the relevant Limited Partner an explanation in writing of such valuation or a revised valuation and, if within 45 days thereafter the relevant Limited Partner notifies the Managing General Partner in writing that it continues to object to the valuation made by the Managing General Partner, such valuation shall be determined by an independent investment banking firm or other independent expert appointed by the Managing General Partner after consultation with the Advisory Committee (the "Valuer"). The Valuer shall act as an expert and not as an arbitrator and the determination of the Valuer shall be final and binding on all Partners. The costs of the Valuer shall be borne by the Partnership and the relevant Limited Partner as the Valuer shall direct or in the absence of such direction by them equally. Subject to any rule of law or of any regulatory body or any provision of any contract or arrangement

entered into prior to the valuation first provided by the Managing General Partner, the Managing General Partner and the relevant Limited Partner shall afford as soon as reasonably practicable to the Valuer all facilities and any necessary access to their respective premises, books, accounts, records, returns and other documents as may be in their respective possession or under their respective control as may be reasonably required by the Valuer to make his determination.

- 12.8** A Bank Regulated Partner or a Financial Holding Company Partner may elect to withdraw partially from the Partnership, and the Managing General Partner may require a Bank Regulated Partner or a Financial Holding Company Partner to withdraw partially from the Partnership, to the extent necessary to prevent its capital account, taken together with the capital accounts of its affiliates, from exceeding 24.99 per cent of the aggregate capital accounts of all Limited Partners. Each of the Managing General Partner, or such Bank Regulated Partner or Financial Holding Company Partner, as the case may be, shall immediately notify the other upon becoming aware that such Bank Regulated Partner's or Financial Holding Company Partner's capital account exceeds 24.99 per cent of the aggregate capital accounts of all Limited Partners. A partial withdrawal pursuant to this Clause 12.8 shall be effected by the Partnership's purchase of the portion of the withdrawing Limited Partner's Interest in excess of 24.99 per cent, at a purchase price determined in the manner provided for in Clause 12.3; or by the Managing General Partner arranging for the purchase of such portion of the Interest by an unaffiliated third party for a price which is acceptable to such Bank Regulated Partner or Financial Holding Company Partner, in its sole discretion. The provisions of Clauses 12.4 and 12.7 shall also apply, *mutatis mutandis*, to any such purchase.

The effective date of any such partial withdrawal shall be the first date on which notice was given pursuant to this Clause 12.8.

## **13 General**

### **13.1 ERISA Investors**

If the assets of the Partnership at any time are "plan assets" for the purposes of ERISA or the Code with respect to any plan subject to either statute, then each ERISA Investor shall, at the request of the Managing General Partner, identify to the Managing General Partner which of the persons or entities identified by the Managing General Partner, on a list of persons or entities with whom the Partnership may have had non-exempt dealings, are parties in interest or disqualified persons (as defined in Sections 3 of ERISA and 4975 of the Code, respectively) with respect to such ERISA Investor.

### **13.2 Investment Opportunities**

**13.2.1** The functions and duties which the Managing General Partner, the UK GP and/or the Advisers undertake for or on behalf of the Partnership shall not be exclusive and the Managing General Partner, the UK GP and/or the Advisers or any Associate of the Managing General Partner, the UK GP and/or the Advisers may perform similar functions and duties for others and may act as a general partner, manager or investment adviser of or to other private equity funds including the Previous Funds or engage in any other activity provided however that:

- (i) the Managing General Partner shall continue properly to manage the affairs of the Partnership and is not thereby prevented from properly performing its duties under Clause 4 and procures that its executives devote substantially all of their working time to the activities of investment management of the Fund, the Previous Funds and any Successor Fund (as defined below); and
- (ii) the UK GP, the Managing General Partner and each of the Advisers shall not and shall procure that their Associates and/or their respective partners, members, directors or employees shall not act as general partner or manager of, or investment adviser to, or establish, another investment fund with investment objectives and criteria substantially the same as or similar to those of the Partnership (other than the Previous Funds or any investment fund the terms of which prevent it from investing prior to the earlier of the two dates specified below) (a "Successor Fund") without a Limited Partner Two Thirds Consent until the earlier of (x) the date when at least 75 per cent of Fund Commitments have been drawn down or reserved for future estimated draw downs for the purpose of paying ongoing operating expenses of the Partnership and (y) the end of the Investment Period.

13.2.2 The following provisions shall apply to all Fund investment opportunities (whether such opportunities are taken up directly by the Partnerships or indirectly via the FCP):

- (i) For the purposes of this sub-clause 13.2.2, the level of participation in any investment opportunity that would be a Qualifying Investment shall be 100 per cent until the expiry of the Investment Period, or if earlier, consent being given in accordance with sub-clause 13.2.1(ii) whereupon the level of participation shall be such lesser percentage as may be agreed by a Limited Partner Consent. The Managing General Partner shall, and shall procure that its Associates shall, offer to the Fund until the end of the Investment Period participation in any investment opportunity that would be a Qualifying Investment; provided that no such offer need be made of any investment opportunity where the Managing General Partner or any of its Associates or any Previous Funds already hold an investment;
- (ii) It is the intention of the Managing General Partner to cause the Fund to take such investment opportunity except where to do so would conflict with the stated investment policy of the Partnerships;
- (iii) The decision whether or not the Partnership should take up such investment opportunity shall be made by the Managing General Partner.
- (iv) Nothing shall, however, prevent the Managing General Partner, any of the Advisers or any of their Associates from:
  - (a) arranging or advising in relation to acquisitions by Investee Companies of companies or businesses which are complementary to their existing businesses without offering participation in any such opportunity to the Partnership, subject always to Clause 4.5; or

- (b) (in the case of the Managing General Partner) continuing to manage and make or arrange investments in companies in which the Previous Funds are invested.

**13.2.3** The following provisions shall apply in relation to Investee Companies:

- (i) None of the UK GP, the Managing General Partner, any of the Advisers or their Associates or their respective members, partners, directors or employees may (save as provided in sub-clause 13.2.3(ii)) for its or their own account directly or indirectly acquire an interest in companies in which the Partnership has an interest except as a result of a distribution in specie from the Partnership pursuant to this Agreement (or from any of the other Partnerships pursuant to their respective limited partnership agreements), through an interest in or arising from any other private equity fund or other funds sponsored, managed or advised by the Managing General Partner or any of the Advisers or by any of their Associates or a distribution in kind from any such other fund (including funds of existing clients of the Cinven Group and the Previous Funds or successor funds as permitted by sub-clause 13.2.1(ii)) or pursuant to the Co-Investment Agreement or through any interest in the Carried Interest or, where the Investee Company has securities which are listed Securities, through an arms-length purchase of such listed Securities and in compliance with all, applicable laws relating to "insider dealing";
- (ii) Officers, partners, members, employees or agents of the UK GP, Managing General Partner or any of the Advisers or any Associate may serve as officers or directors of, or consultants to, companies in which the Partnership has an interest, and in such event the UK GP, Managing General Partner any of the Advisers or their Associates shall be entitled to retain for its or their own account any fees received by any such person for so serving in such a capacity but to the extent such fees constitute Transaction Fees shall be credited against the Management Profit Share which shall be reduced in accordance with Clause 4.5.

**13.2.4** The Managing General Partner may not cause the Partnership (whether directly or indirectly via the FCP) to:

- (i) invest in companies in which other funds (including the Previous Funds and the Successor Funds) managed or advised by a member of the Cinven Group hold, at the date of the proposed investment by the Partnership, an existing investment (except to the extent that such investment was made at the same time as an earlier Investment in an Investee Company by the Partnership) unless such investment by the Partnership is first approved by the Advisory Committee;
- (ii) (except as permitted by sub-clause 13.2.4(i)) invest in companies in which a member of the Cinven Group or their respective members, partners, directors or employees hold, at the date of the proposed investment by the Partnership, an existing investment (except to the extent that such investment was made at the same time as an earlier Investment in an Investee Company by the Partnership) unless such investment is approved by the Advisory Committee;

- (iii) sell Investments to, or acquire Investments from, a member of the Cinven Group or any fund (including the Previous Funds and the Successor Funds) managed by a member of the Cinven Group or invest in any company as part of an arrangement whereby any investment in such company held by any of the aforesaid will be repaid or redeemed unless such sale, acquisition or investment is first approved by the Advisory Committee; or
- (iv) invest in any fund or similar pooled investment vehicle except where such mode of investment is required or desirable in relation to a specific investment opportunity and provided that the Partnership does not, as a result, effectively bear double management profit share or equivalent management fees and carried interest or equivalent performance fees.

13.2.5 Any Limited Partner that is not a Related Partner may directly or indirectly acquire an interest in companies in which the Partnership has an interest and shall not be liable to account to the Partnership for any profits arising. No Limited Partner shall be obliged to bring to the Partnership's attention any investment opportunities of which it may from time to time become aware. To the maximum extent permitted by law all fiduciary duties owed by a Limited Partner to other Limited Partners or the Partnership are hereby excluded, other than as provided in Clause 11.7.

13.2.6 The Managing General Partner may at its sole discretion provide Limited Partners with co-investment opportunities related to Investments. Opportunities as are provided will be on terms no more favourable than the terms relating to the relevant Investment and will normally be offered among those Limited Partners who have notified the Managing General Partner of their interest in being afforded such opportunities.

### **13.3 Limitation of Liability and Indemnification of the General Partners, the Advisers, the FCP Manager, their Associates and the Members of the Advisory Committee**

13.3.1 To the maximum extent permitted by applicable law and except as otherwise provided in this Clause 13.3 each of the General Partners, each of the Advisers, the FCP Manager, the Managing Limited Partner, their respective Associates, officers, partners, members, agents, delegates and employees of any of the foregoing, members of the Advisory Committee and Limited Partners who appoint members of the Advisory Committee (each an "Indemnified Party"):

- (i) shall have no liability for any loss incurred by the Partnership or any Limited Partner howsoever arising in connection with the services provided by any of them pursuant to this Agreement, any Advisory Agreement or the FCP Rules; and
- (ii) shall be entitled to be indemnified by the Partnership out of the Partnership Assets, which in the case of the FCP Manager, its officers, partners, members, agents, delegates and employees shall only be to the extent not indemnified out of the assets of the FCP (and the Managing General Partner shall procure that the terms of any such indemnity are no more favourable to the FCP Manager, its officers, members, partners, agents, delegates and employees than the terms hereof), against any and all claims, liabilities (including liabilities in contract or tort), costs, damages or



expenses (including reasonable legal fees) incurred or threatened by reason of him or it being or having been the UK GP or the Managing General Partner or an Adviser or the FCP Manager or the Managing Limited Partner or an Associate, or an officer, partner, member, agent, delegate or employee of the foregoing (to the extent that any such claim, liability (including prospectus liability), costs, damages or expenses relate to the Partnership) or having been appointed a director of an Investee Company or being or having been a member of the Advisory Committee or a Limited Partner appointer of such member;

**13.3.2 Notwithstanding the foregoing:**

- (a) an Indemnified Party being neither a member of the Advisory Committee nor the Limited Partner appointer of that member, shall not be so exculpated or indemnified with respect to any matter resulting from his or its gross negligence, fraud, wilful illegal act, gross professional misconduct, bad faith, material breach of fiduciary duty, wilful default or any material breach of this Agreement or the FCP Rules (and for these purposes a material breach shall not include a breach of this Agreement or such FCP Rules which results from innocent or inadvertent failure to comply with any relevant provision of law or statute or an innocent or inadvertent breach of the investment policy of the Partnership as set out in this Agreement) or breach of the United Kingdom Financial Services Authority's Handbook of Rules and Guidance;
- (b) an Indemnified Party being a member of the Advisory Committee or Limited Partner appointer of that member shall not be so exculpated or indemnified with respect to any matter resulting from his or its fraud, wilful illegal act, or bad faith,

and provided further that any such person indemnified under (a) or (b) above in respect of any criminal action or proceeding shall only be so indemnified if such person can show that at the time that the relevant criminal act was committed it or he had no reasonable cause to believe that it or his conduct was contrary to any provision of criminal law in any relevant jurisdiction;

- (c) an Indemnified Party being a Limited Partner who appoints a member of the Advisory Committee shall be so exculpated or indemnified only in respect of such losses which arise solely from the acts or omissions of such member in his capacity as a member of the Advisory Committee or their employment of such member of the Advisory Committee and not, for the avoidance of doubt, in respect of any other losses incurred in connection with such person's status as a Limited Partner.

Any person who shall at any time become a General Partner of the Partnership shall similarly be indemnified in respect of his or its activities as a General Partner together with as appropriate its Associates and their respective officers, members partners, agents, delegates and employees.

- 13.3.3** In addition to the foregoing the Partnership, each of the General Partners, and the Managing Limited Partner and their respective Associates shall be indemnified against any tax liability (including interest and penalties thereon) in respect of tax on amounts allocated to a Limited Partner or a Carried Interest Partner which amounts are regarded as those of any Limited Partner or Carried Interest Partner under the law of the jurisdiction in which the tax arises, such indemnity to be satisfied in the first instance by the Limited Partner concerned or the Carried Interest Partner concerned but if not so satisfied, where a General Partner, the Managing Limited Partner or any of their respective Associates is entitled to be indemnified by a Limited Partner, then satisfied out of the Partnership Assets in which event the Partnership shall be subrogated to the rights of such General Partner(s), the Managing Limited Partner and their respective Associates against such Limited Partner or the Carried Interest Partner hereunder, provided that the General Partners, the Managing Limited Partner and their respective Associates shall not be so indemnified where such liability results from his or its gross negligence, fraud, wilful illegal act, gross professional misconduct, bad faith, material breach of fiduciary duty, wilful default or any material breach of this Agreement or the FCP Rules (and for these purposes a material breach shall not include a breach of this Agreement or such FCP Rules which results from innocent or inadvertent failure to comply with any relevant provision of law or statute or an innocent or inadvertent breach of the investment policy of the Partnership as set out in this Agreement).
- 13.3.4** None of the General Partners, the Advisers, the FCP Manager, the Managing Limited Partner or their respective Associates shall be liable to the Partnership or any Limited Partner for the negligence, dishonesty, wilful default or bad faith of any agent (other than an Associate of the foregoing) acting on behalf of such General Partner, such Adviser, the Managing Limited Partner or the Partnership provided that such agent was selected, appointed and retained by such General Partner, such Adviser or the Managing Limited Partner in good faith and applying reasonable care.
- 13.3.5** Each Indemnified Party shall use its reasonable endeavours to exercise any rights of recovery which it may have against its insurer, the relevant Investee Company or any other third party prior to receiving an indemnity under sub-clause 13.3.1 but without prejudice to its right to be indemnified under sub-clause 13.3.1 if such rights of recovery do not produce prompt payment. To the extent that an Indemnified Party receives an indemnity under sub-clause 13.3.1 and subsequently recovers monies in relation to the same matter from an insurer, Investee Company or any other third party then such person shall account to the Partnership for the amount so recovered (after deduction of all costs and expenses incurred in procuring recovery) or, if less, the amount paid to such person by the Partnership by way of indemnity (net of any tax borne thereon).
- 13.3.6** The Managing General Partner shall notify the Advisory Committee of any indemnification claims made against the Partnership pursuant to this Clause 13.3.
- 13.3.7** The indemnity provided in sub-clause 13.3.1(ii) shall not apply to disputes among or between the Managing General Partner, the UK GP, the Advisers, the FCP

Manager, the Managing Limited Partner, their respective Associates or officers, partners, members, agents, delegates and employees of any of the foregoing or among or between a member of the Advisory Committee and the Limited Partner represented by such Member solely in relation to the rights of such persons inter se.

- 13.3.8 Notwithstanding sub-clause 13.3.1, in the event that an action is brought against an Indemnified Party by a majority of Limited Partners, such Indemnified Party shall not be entitled to be indemnified for any costs and expenses in defending such action unless and until a final determination is made in such proceedings that such Indemnified Party has not (i) in the case of an Indemnified Party being neither a member of the Advisory Committee nor the Limited Partner appointer of that member, been grossly negligent or fraudulent, committed a wilful illegal act, committed gross professional misconduct, acted in bad faith, committed a material breach of fiduciary duty, committed wilful default or materially breached this Agreement or the FCP Rules (and for these purposes a material breach shall not include a breach of this Agreement or such FCP Rules which results from innocent or inadvertent failure to comply with any relevant provision of law or statute or an innocent or inadvertent breach of the investment policy of the Partnership as set out in this Agreement) or breached the United Kingdom Financial Services Authority's Handbook of Rules and Guidance; and (ii) in the case of an Indemnified Party being a member of the Advisory Committee or Limited Partner appointer of that member, been fraudulent, committed a wilful illegal act, or acted in bad faith.

#### 13.4 Partner Giveback

- 13.4.1 Subject to sub-clause 13.4.4 and to the maximum extent permitted by law, Partners (including former Partners but excluding the General Partners in respect of their GP Profit Shares) may be required by the Managing General Partner or a liquidating trustee at any time to return distributions made to such Partners or former Partners at any time before and up to two years following the termination of the Partnership for the purpose of:
- (i) meeting the Partnership's indemnification obligations under Clause 13.3; or
  - (ii) meeting any other liabilities of the Partnership.
- 13.4.2 If, at the end of the period referred to in sub-clause 13.4.1 there is pending or threatened any legal action, suit or proceeding or any claim has been made, in either case, against any person entitled to be indemnified under Clause 13.3 or the Partnership or the FCP or any liability actual or contingent exists (any of the foregoing a "Claim"), which may entitle such person to be indemnified by the Partnership under Clause 13.3, the Managing General Partner or liquidating trustee shall so notify the Partners and former Partners at such time (which notice shall include a brief description of each Claim) and the obligation of the Partners to return any distributions for the purpose specified in sub-clause 13.4.1 shall survive such period with respect to each such Claim set forth in such notice (or any related action, suite, proceeding, claim or liability based upon the same or a similar Claim) until the date that such Claim is ultimately resolved and satisfied;

**13.4.3** Subject to sub-clause 13.4.4, the share of each Partner of the amount of distributions to be returned to the Partnership (the "**Return Amount**") shall be in proportion to its share of distributions (such distributions being deemed to have been grossed up as described in sub-clause 6.2.1), taking such distributions in the reverse order in which they were made up to an amount equal to the Return Amount, provided that if any such distributions were made pursuant to sub-clause 6.2.1(ii) or 6.2.1(iii) after any distributions of Carried Interest, such distribution shall be treated as having been made prior to any such distributions of Carried Interest. If a Partner is required to return distributions made to it pursuant to sub-clause 6.2.1(ii), the amount thereof shall be treated as a drawn down Capital Contributions as from the date the distribution was returned for the purpose of determining the priority of future distributions under sub-clause 6.2.1;

**13.4.4** The obligation of such Partners (and former Partners) to return distributions shall be subject to the following limitations:

- (i) from a Partner's share of distributions to be returned pursuant to the foregoing paragraphs there shall be deducted the amounts of any distributions determined under applicable law that that Partner is required or has returned to or for the account of the Partnership or Partnership creditors; and
- (ii) the aggregate amount of distributions which a Limited Partner is required to return under this Clause 13.4 shall not exceed 25 per cent of its Commitment.

### **13.5 Confidential Information**

**13.5.1** Each Partner shall not, and 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 other than a Partner or use to the detriment of the Partnership or any of the Partners any confidential information, which means:

- (i) information concerning the affairs of the Partnership (including the accounts and reports and other information referred to in Clause 10);
- (ii) the negotiations relating to this Agreement (and such other agreements);
- (iii) information concerning the Managing General Partner, the UK GP, the Managing Limited Partner, the Advisers, the Carried Interest Partners and their respective Associates and the business, financial or other affairs of any of them and/or their respective partners, employees, officers, directors, members or shareholders;
- (iv) the identity of the Limited Partners and the information contained in their Application Forms; or
- (v) and any information about any Investee Company, Intermediate Vehicle or any proposed or actual Investment by the Partnership;

(the foregoing being "**Confidential Information**").

13.5.2 The obligation set forth in sub-clause 13.5.1 shall not apply to Confidential Information which:

- (i) is required to be disclosed by any court or governmental, administrative, tax or regulatory authority which is competent to require such disclosure or by any applicable law or by the regulations of any relevant stock exchange or other regulatory authority the rules and regulations of which are binding upon the Partner concerned and any other person to whom the Partner concerned has disclosed Confidential Information as permitted by this sub-clause 13.5.2, provided that the Partner concerned shall use all reasonable endeavours to oppose and prevent any such requirement to disclose and, to the maximum extent permitted by law, to inform the Managing General Partner forthwith upon it becoming aware that it or such other person is subject to such requirement to disclose and, in any event, to do so prior to any such disclosure by it and so far as possible prior to disclosure by such other person;
- (ii) is publicly available or is received from sources other than from a Partner or any partner, member, director, officer, employee or agent of such Partner and in all such cases is not so received subject to any obligation of confidentiality;
- (iii) is required to be disclosed to a tax authority in connection with the disclosing entity's or Managing General Partner's tax affairs;
- (iv) is disclosed by a Partner to:
  - (a) its partners, members, directors, officers, employees, agents and professional advisers; or
  - (b) to any other Partner, or to any prospective purchaser of all or any part of that Partner's interest in the Partnership; or
  - (c) any prospective investor in any investment fund established, advised, managed or to be managed by a Partner or the manager of such Partner or their Associate,

subject to all of the foregoing persons agreeing to be subject to the obligations of confidentiality substantially similar to those imposed by this Clause 13.5 and, in the case of sub-clause (b) and/or (c) above, to the consent of the Managing General Partner to such disclosure being obtained such consent not to be unreasonably withheld;

- (v) is customarily reported by any Limited Partner to its own investors or in a fiduciary capacity, provided always that such Limited Partner or other investors are subject to obligations of confidentiality substantially similar to those imposed by this Clause 13.5;
- (vi) a Limited Partner is authorised to disclose by the Managing General Partner on such terms as the Managing General Partner may determine; and

(vii) is disclosed in order to enable the Managing General Partner and/or the Partnership to comply with any tax law or undertaking with any tax authority.

**13.5.3** In the event that the Managing General Partner has reasonable grounds to believe that any Limited Partner is in breach or may be in breach of its obligations of confidentiality as set out in this sub-clause 13.5.3 or that any other person to whom Confidential Information may be disclosed pursuant to sub-clause 13.5.2 is in breach or may be in breach of any obligation of confidentiality in relation to such Confidential Information or that any Limited Partner is unable to assure the confidentiality of Confidential Information because it has or may become subject to a requirement to disclose Confidential Information as envisaged by sub-clause 13.5.2(i) or that any other person to whom Confidential Information has been or may be disclosed pursuant to sub-clause 13.5.2, has or may become subject to such a requirement (whether such belief of the Managing General Partner results from an express disclosure by such Limited Partner in accordance with this sub-clause 13.5.3 or otherwise), then without prejudice to any other rights it may have the Managing General Partner shall at its discretion be entitled to withhold Confidential Information from such Limited Partner or shall make such Confidential Information available to such Limited Partner in such alternative manner and/or form as would satisfy the Managing General Partner that the confidentiality of such Confidential Information would be secured.

**13.5.4** Notwithstanding the foregoing it is recognised and agreed that the members of the Cinven Group may refer to some or all of the Investments and the investment performance of the Fund for the purposes of marketing whether in connection with a Successor Fund or otherwise provided that no reference shall be made to the identity of any Limited Partner or their Associates without the prior written consent of that Limited Partner.

**13.5.5** Nothing in this Agreement shall entitle the Limited Partner to receive any information of a confidential or sensitive nature, including documents relation to and financing and other information concerning, Investee Companies.

### **13.6 Amendment to Partnership Agreement**

**13.6.1** This Agreement may be amended in whole or in part with the written consent of the Managing General Partner and with the approval of a Limited Partner Special Consent, provided however that no such amendment shall be made which:

- (i) imposes upon any Partner any obligation to make any further payment to the Partnership beyond the amount of its Commitment without the consent of the Partner affected thereby; or
- (ii) make any amendment to any provision of this Agreement specifically dealing with the rights of Bank Regulated Partners, ERISA Investors or Financial Holding Company Partners that are exclusive to such Bank Regulated Partners, ERISA Investors or Financial Holding Company Partners without the consent of a majority by value of Commitments of Bank Regulated Partners, ERISA Investors or Financial Holding Company Partners (as the case may be) adversely affected thereby; or

- (iii) would in the reasonable opinion of the Managing General Partner otherwise adversely affect the interests in the Partnership of a Partner (other than an amendment that affects the interests of all of the Partners to the same degree) without the consent of such Partner; or
- (iv) amends any provision of this Clause 13.6 without the consent of each Partner effected thereby.

13.6.2 This Agreement may be amended by the Managing General Partner without a Limited Partner Special Consent, provided that the amendment would not have any of the effects described in sub-clauses 13.6.1(i), 13.6.1(ii), 13.6.1(iv) or would not in the reasonable opinion of the Managing General Partner otherwise adversely affect the interests of any Limited Partner:

- (i) if the Managing General Partner considers that such amendment is necessary or expedient in the interests of the Partnership or the Partners or any of them,
- (ii) if such amendment is of an administrative or clerical nature or corrects any manifest, printing, typographical or clerical error or omissions; or
- (iii) to make any other change required or advisable to cause the Partnership or the General Partners to comply with any applicable law or regulation; or
- (iv) to make any change negotiated with Additional Limited Partners or additional limited partners to an Additional Partnership; or
- (v) to make any change that is notified to Partners and not objected to by any Partner within 15 Business Days of such notification.

13.6.3 In the event of any amendment being made to this Agreement pursuant to this Clause 13.6 the Managing General Partner shall prepare and execute for itself and on behalf of the other Partners a supplemental partnership agreement effecting such variation and containing the full text of this Agreement as varied and shall within 10 Business Days of any such amendment send to each Limited Partner a copy of such supplemental agreement.

### 13.7 Side Letter and Most Favoured Nations

13.7.1 The parties hereto acknowledge that the Managing General Partner, without any further act, approval or vote of any Partner, may enter into side letters or other agreements with individual Investors which have the effect of establishing rights under, or altering or supplementing the terms of, this Agreement or any agreement governing any Additional Partnerships ("**Side Letters**") with respect to that Investor. The parties hereto agree that any rights established, or any terms of this Agreement altered or supplemented in a Side Letter shall govern with respect to such Investor notwithstanding any other provision of this Agreement.

13.7.2 In the event that any terms more favourable than those set out in this Agreement are granted pursuant to any Side Letter then the benefit of such terms subject to the satisfaction of any conditions (including as to the size of Commitment) on which such terms were offered, shall be offered to all Investors. Such offer shall be made by the Managing General Partner in writing within 30 days of (a) the Final Closing Date, in the case of any Side Letters agreed on or prior to the Final Closing Date;

and (b) otherwise, the entry into the relevant Side Letter and shall be open for acceptance in writing only within 30 days of receipt of such offer in accordance with Clause 13.9. For the avoidance of doubt such terms shall not be regarded as more favourable:

- (i) solely by virtue of the Managing General Partner having exercised a discretion or given a consent or confirmation or acceded to a request provided for in this Agreement or in any agreement governing any Additional Partnership in respect of such person or having agreed the terms upon which any such discretion, consent, confirmation or accession may be exercised; or
- (ii) by reason of certain terms relating to an Investor's legal, tax, regulatory or ERISA status or to statutory or regulatory provisions applicable to such Investor; or
- (iii) by reason of the Managing General Partner granting an Investor a right to nominate a Member of the Advisory Committee.

The Managing General Partner will disclose to each Investor all provisions the benefit of which the Managing General Partner is required to offer to such Investor in accordance with this sub-clause 13.7.2.

### **13.8 Certain Representations**

**13.8.1** The Managing General Partner represents and warrants to each Limited Partner, as of the First Closing Date, that to the best of its knowledge, except as previously disclosed in writing to each Limited Partner:

- (i) there is no legal action, suit, arbitration or other legal, administrative or other governmental investigation, enquiry or proceeding (whether federal, state, local or foreign) pending or threatened against or affecting:
  - (a) the Partnership or any of its properties or assets, or any of the Additional Partnerships or any of their properties or assets;
  - (b) any member of the Cinven Group or any of their properties or assets;
  - (c) any of the Cinven Partners to the extent such litigation is brought against any Cinven Partners in connection with:
    - (I) their investment management activities or otherwise in a fiduciary capacity; or
    - (II) in relation to any indictable crime involving dishonesty; or
  - (d) any investment clients (including the Previous Funds) of the Managing General Partner, the Advisers or their Associates or any properties or assets of such clients, relating to or arising in connection with the investment management or investment advisory services provided by the Managing General Partner, the Advisers, as the case may be, or any of their Associates to such clients.

For the purposes of sub-clauses (a) and (d) above, the Managing General Partner makes no representation or warranty regarding any legal action, suit, arbitration, or other legal, administrative or governmental investigation,



enquiry or proceeding pending or threatened against an Investee Company or a portfolio company of any of such clients (including the Previous Funds), provided none of the Partnership, the Managing General Partner, UK GP, the Advisers or any of their Associates, or any Cinven Partner, or any of such clients is named as a party thereto, unless an adverse outcome of such litigation could have a material adverse effect on the Partnership or any such clients as a whole. To the best knowledge of the Managing General Partner, there is no reasonable basis for any action, suit, arbitration, investigation, enquiry or proceeding of the type referred to in this paragraph; and

- (ii) none of the Managing General Partner, the Advisers or any of the Cinven Partners, within the last five years, has been charged with, indicted for or convicted of any crime involving dishonesty or which is punishable by imprisonment or any violation of any federal, state or other applicable securities law, rule or regulation, or is currently the subject of any criminal or civil proceeding or formal investigation alleging fraud, misrepresentation, breach of fiduciary duty or violation of any federal, state or other applicable securities law, rule or regulation.

**13.8.2** The Managing General Partner represents and warrants that it agrees with the understandings and assumptions set forth in the legal opinions to be delivered to Limited Partners by each of Carey Olsen and Linklaters LLP insofar as such understandings and assumptions relate to factual matters concerning the Managing General Partner, the UK GP, the Advisers, the Managing Limited Partner or their Associates or to the manner in which the Partnerships are to be operated.

### **13.9 Notices**

**13.9.1** Subject to sub-clause 13.9.2, notices which may or are required to be given hereunder by any party to another or by or to the Advisory Committee shall be in writing and sent by facsimile, email with confirmed answerback (with a faxed copy to follow as soon as reasonably practicable thereafter) or by prepaid post or courier delivery, the details of which are set out in its form of application for admission to the Partnership as those details may be varied from time to time by notice addressed to the Partnership in the case of the Limited Partners and to each Limited Partner in the case of a General Partner or a Carried Interest Partner and when the notice is to be given to the Advisory Committee, the notice shall be sent in accordance with the foregoing to each member of the Advisory Committee to the address for notifications to such member as shall from time to time be agreed between such member and the Managing General Partner or Carried Interest Partner.

**13.9.2** All notices and other communications given in accordance with this Agreement are effective as follows:

- (i) if sent by facsimile, at the expiry of two hours after the completion of the transmission;
- (ii) if sent by e-mail or other form of electronic communication, at the expiry of 24 hours after the time of transmission;
- (iii) if sent by pre-paid post, five days after the date of posting; and

(iv) if sent by courier delivery, at the time signed for delivery,

provided that if a notice or other communication would become effective under the above provisions after 5:30pm on any Business Day, then it shall be deemed to instead become effective at 9am on the next following Business Day. References in this Agreement time are to the local time in the country of the addressee.

### **13.10 Agreement Binding upon Successors and Assigns**

Except as otherwise specified herein, 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.

### **13.11 Value Added Tax**

If a General Partner is liable to pay any VAT by reason of its being treated as making taxable supplies pursuant to this Agreement or by reason of any taxable supplies made in connection with the Fund, it shall be entitled to be indemnified out of the Partnership Assets in respect of any such liability. The relevant General Partner agrees to use its reasonable endeavours to avoid or mitigate such a liability.

### **13.12 Extent of Partnership and Entire Agreement**

**13.12.1** Notwithstanding any other provision of this Agreement, each of the Partners hereby acknowledges and agrees that it is their intention to create a Partnership solely with each of the other Partners on the terms of this Agreement, their Side Letters and Deeds of Application, which documents together constitute the entire agreement between the Partners with respect to the subject matter thereof and supersedes any prior agreement or understanding among or between them with respect to such subject matter. The representations and warranties of the Limited Partners, in their forms of application and other provisions thereof and those of the Managing General Partner in Clause 13.8, shall survive the execution and delivery of this Agreement.

**13.12.2** No person other than the Partners shall participate in any profits or losses arising in relation to the operations of the Partnership.

### **13.13 Authority for Admission of New Limited Partners**

Each Limited Partner, the Carried Interest Partner, the Managing Limited Partner and the UK GP hereby appoints the Managing General Partner to be such Partner's agent and attorney-in-fact to execute one or more application forms on behalf of such Partner between the Partnership, the Managing General Partner and any other person being admitted by the Managing General Partner to the Partnership as a Limited Partner (or such other parties as may be appropriate) in such form and on such terms and conditions as the Managing General Partner hereby reasonably considers necessary or appropriate, including reference to this Partnership Agreement and the novation thereof and agreeing and covenanting with such person on behalf of the Partner that the Partner will from the effective date of the acceptance by the Managing General Partner of such application form or forms comply with and observe the terms of this Agreement.

### **13.14 Governing Law**

This Agreement and all matters arising from or in connection with this Agreement shall be governed by and construed in accordance with the laws of the island of Guernsey.

### **13.15 Arbitration**

**13.15.1** Any dispute arising out of or connected with this Agreement, including a dispute as to the validity or existence of this Agreement and/or this Clause 13.15, shall be resolved by arbitration in London conducted in the English language by a panel of three arbitrators pursuant to the LCIA Rules, which Rules are deemed to be incorporated by reference into this Clause 13.15 save that, unless the parties agree or the panel rules otherwise:

- (i) neither party shall be required to give general discovery of documents, but each party shall be required to disclose the documents on which they rely and the documents which adversely affect their case and/or another party's case or support another party's case;
- (ii) the third arbitrator, who shall act as chairman of the tribunal, shall be nominated by agreement between the two arbitrators nominated by or on behalf of the parties. If he is not so nominated within 30 days of the date on which the later of the two party-nominated arbitrators has been so nominated, he shall be chosen by the LCIA; and
- (iii) the panel shall make its award, with reasons, within two months of the closing of the hearing.

**13.15.2** Where disputes arise under this Agreement and under any of the Associated Contracts which, in the reasonable opinion of the panel to be appointed first in time in any of the disputes, are so closely connected that it is expedient for them to be resolved in the same proceedings, that panel shall have the power to order that the proceedings to resolve that dispute shall be consolidated with those to resolve any of the other disputes (whether or not proceedings to resolve those other disputes have yet been instituted), provided that no date for exchange of witness statements has been fixed. If that panel so orders, the parties to each dispute which is a subject of its order shall be treated as having consented to that dispute being finally decided:

- (i) by the panel who ordered the consolidation unless the LCIA decides that it would not be suitable or impartial; and
- (ii) in accordance with the procedure, at the seat and in the language specified in the arbitration agreement in the contract under which the panel who ordered the consolidation was appointed, save as otherwise agreed by all parties to the consolidated proceedings or, in the absence of such agreement, ordered by the panel in the consolidated proceedings.

This sub-clause 13.15.2 shall apply even where powers to consolidate proceedings exist under any applicable arbitration rules (including those of an arbitral institution) and, in such circumstances, the provisions of this clause shall apply in addition to those powers.

### **13.16 Execution in Counterpart**

This Agreement may be executed in counterparts, each of which shall be deemed to be an original hereof.

### 13.17 Media Company Provisions

13.17.1 In addition to any other restrictions applicable to Limited Partners set forth in this Agreement and notwithstanding any other provisions hereof, for so long as the Partnership has an “attributable ownership investment” within the meaning of the rules and regulations of the United States Federal Communications Commission (“FCC”) in a Media Company, no Limited Partner (and no officer, director, partner, member or equivalent non-corporate official of a Limited Partner that is not an individual, in each case, in such capacity as Limited Partner) shall:

- (i) act as an employee of the Partnership if his or her functions, directly or indirectly, relate to the media activities of the Partnership or the media business of any Media Company in which the Partnership has an investment;
- (ii) serve, in any material capacity, as an independent contractor or agent with respect to the media activities of the Partnership or the media business of any Media Company in which the Partnership has an investment;
- (iii) communicate on matters pertaining to the day-to-day media activities of the Partnership or media operations of a Media Company in which the Partnership has an investment with (x) any officer, director, partner, agent, representative or employee of such Media Company, or (y) the Partnership, the Managing General Partner, or any officer, director, partner, member, agent, representative thereof;
- (iv) perform any services for the Partnership materially relating to the media activities of the Partnership or the media business of any Media Company in which the Partnership has an investment, except that any Limited Partner may make loans to, or act as a surety for, the Partnership or any such Media Company (to the extent consistent with the FCC’s equity debt plus and other attribution rules and policies);
- (v) become actively involved in the management or operation of the Partnership’s media activities or the media activities of any Media Company in which the Partnership has an investment; or
- (vi) while the Partnership holds an investment in a Media Company, (x) vote for the removal of the Managing General Partner except where the Managing General Partner is subject to bankruptcy proceedings, is adjudicated incompetent by a court of competent jurisdiction, or is removed for any cause which is determined by an independent party to constitute malfeasance, criminal conduct, or wanton or wilful neglect, or other such extraordinary conduct with respect to which a prudent investor would require the right to remove the Managing General Partner or (y) vote on the admission of any new Managing General Partner to the Partnership unless such admission may be vetoed by the General Partners.

13.17.2 For purposes of this Clause 13.17, “Media Company” shall mean an entity that, directly or indirectly, owns, controls or operates or has an attributable interest in (a) a U.S. broadcast radio or television station or a U.S. cable television system, (b) a “daily newspaper” (as such term is defined in Section 73.3555 of the FCC’s rules and regulations), (c) any U.S. communications facility operated pursuant to a

license granted by the FCC and subject to the provisions of Section 310(b) of the United States Communications Act of 1934, as amended, or (d) any other business that is subject to FCC regulations under which the ownership of the Partnership in such entity may be attributed to a Limited Partner or under which the ownership of a Limited Partner in another business may be subject to limitation or restriction as a result of the ownership of the Partnership in such entity.

**13.17.3** Notwithstanding anything in this Agreement to the contrary, any Limited Partner may, at any time, by written notice to the Partnership, elect that any or all of the restrictions contained in the foregoing provisions of this Clause 13.17 shall not apply to such Limited Partner and/or the officers, directors, partners or equivalent non-corporate officials of such Limited Partner, in which case, from and after receipt of such notice by the Partnership, said provisions shall not be applicable to such Limited Partner and/or such other persons; provided, however, that any Limited Partner that so elects shall, if requested to do so in writing by the Managing General Partner, furnish to the Partnership such information, certifications, opinions or other documents relating to such Limited Partner's status under or compliance with the "cross-ownership", "multiple ownership", alien ownership or other rules or policies of the FCC, in order to permit the Partnership to make and maintain investments in Media Companies.

**13.17.4** Prior to the Partnership investing in a Media Company, the Partnership shall have received an opinion of counsel, which opinion shall state that it shall be relied on by the Limited Partners, to the effect that such Investment will not be attributable to any Limited Partner under the attribution rules of the FCC or cause any Limited Partner to be in violation of the FCC's "cross ownership" or "multiple ownership" rules.

In witness whereof the parties hereto have executed this Agreement on the date first written.

SIGNED by  
**CINVEN CAPITAL  
MANAGEMENT (V) LIMITED  
PARTNERSHIP INCORPORATED**  
on its own behalf and on behalf of  
each of the other Partners pursuant  
to sub-clause 13.6.3 acting by its  
general partner **CINVEN CAPITAL  
MANAGEMENT (V) GENERAL  
PARTNER LIMITED**

}

in the presence of:

.....  
Witness

SIGNED by  
COMMONWEALTH OF  
PENNSYLVANIA PUBLIC  
SCHOOL EMPLOYEES'  
RETIREMENT SYSTEM


By: 

~~Alan H. Van Noord, CFA~~ ~~Chief Investment Officer~~ James H. Grossman, Jr.  
Deputy Chief Investment Officer

By: 

Jeffrey B. Clay  
Executive Director

Approved for form and legality:

  
~~Gerald Cornish, Chief Counsel~~  
Michele M. Rejencz  
Public School Employees'  
Retirement System

## The Schedule US Tax Allocations

### 1.1 US Capital Accounts

The Partnership shall maintain a capital account for each Partner in accordance with Treas. Regs. §1.704-1(b)(2)(iv) and administrative guidance issued with respect thereto (each such account as so maintained, a "US Capital Account"). Subject to paragraph 1.5 of this Schedule, the provisions of this Schedule relating to US Capital Accounts are intended to comply with such provisions and related provisions issued with respect to Section 704 of the Code and shall be interpreted consistently therewith. The Partnership shall have the authority to make such adjustments to the Partners' US Capital Accounts as may be required to cause the allocations made by the Partnership to comply with such provisions.

### 1.2 Adjustments to US Capital Accounts

At least once each taxable year of the Partnership for US tax purposes (as determined under Section 706 of the Code, a "US Fiscal Year"), after adjusting each Partner's US Capital Account for all contributions and distributions with respect to that US Fiscal Year, the Partnership shall allocate profits and losses and items thereof in the following order of priority:

- 1.2.1 first, profits and losses and items thereof shall be allocated in the manner and to the extent provided by:
- (i) Treas. Regs. §1.704-1(b)(4);
  - (ii) Treas. Regs. §1.704-1(b)(2) (to comply with the substantial economic effect safe harbors), including Treas. Regs. §1.704(b)(2)(ii)(d) (flush language) (the "qualified income offset") and Treas. Regs. §1.704-1(b)(2)(iv) (capital accounting requirements); and
  - (iii) Treas. Regs. §1.704-2; and
- 1.2.2 all remaining profits and losses and items thereof shall be allocated to the Partners' US Capital Accounts in a manner such that, after such allocations have been made, the balance of each Partner's US Capital Account (which may be a positive, negative, or zero balance) shall equal:
- (i) the amount that would be distributed to such Partner, determined as if the Partnership were to sell each of its assets for its Section 704(b) Book Value thereof and distribute the proceeds thereof (net of any sales commissions and other similar transaction fees and payments required to be made to creditors) pursuant to the distribution provisions of this Agreement; *minus*
  - (ii) the sum of (A) such Partner's share of the "partnership minimum gain" (as determined under Treas. Regs. §1.704-2(d) and (g)(3)) and "partner minimum gain" (as determined under Treas. Regs. §1.704-2(i)), and (B) the amount, if any, that such Partner would be obliged (or deemed for US tax purposes to be obliged) to contribute, in its capacity as a Partner, to the capital of the Partnership as of the last day of that US Fiscal Year.

### **1.3 Section 704(c)(1)(A) of the Code**

Except as provided in the following provisions of this paragraph 1.3, each item of taxable income, gain, loss, deduction, or credit shall be allocated in the same manner as its correlative item of "book" items allocated pursuant to paragraph 1.2 of this Schedule. In accordance with Section 704(c)(1)(A) of the Code (and the principles thereof) and Treas. Regs. §1.704-3, income, gain, loss and deduction with respect to any property contributed to the capital of the Partnership, or after Partnership property has been revalued under Treas. Regs. §1.704-1(b)(2)(iv)(f), shall, solely for US federal, state and local tax purposes, be allocated among the Partners so as to take into account any variation between the adjusted basis of such Partnership property to the Partnership for United States federal income tax purposes and its value as so determined at the time of the contribution or revaluation of Partnership property.

### **1.4 Elections**

Any elections or other decisions relating to allocation under this Schedule shall be made by the Managing General Partner.

### **1.5 Effect of Allocations**

Allocations pursuant to this Schedule are solely for US tax purposes and shall not affect, or in any way be taken into account in computing, any Partner's US Capital Account or share profit, loss, or other items, pursuant to any provision of this Agreement or otherwise affect the Partners' rights (including rights to distributions) and obligations with respect to the Partnership.

### **1.6 Definitions**

For the purposes of this Schedule, the following terms have the following meanings:

- (i) **"Code"** means the US Internal Revenue Code of 1986, as amended;
- (ii) **"Profits and Losses"** shall mean the items of profit and loss of the Partnership (including separately stated items) as computed under Treas. Regs. §1.704-1(b)(2)(iv);
- (iii) **"Section 704(b) Book Value"** means, with respect to any Partnership property, the Partnership's adjusted basis for US tax purposes, adjusted from time to time to reflect the adjustments required or permitted by Treas. Regs. §1.704-1(b)(2)(iv)(d) through (g), provided that on the date of the contribution of an asset to the Partnership, the Section 704(b) Book Value of any asset contributed to the Partnership shall be equal to the fair market value (as reasonably determined by the Parties) of such asset on the date of such contribution; and
- (iv) **"Treas. Regs."** means the Treasury Regulations issued under the Code.