

# 第 四 分 冊

## 投資事業有限責任組合契約書例（案） （英文契約書版）

経済産業省 産業組織課

新たなモデルLPAの作成等のための有識者検討会

# **Model Agreement for Investment Limited Partnership**

[●] 2025

**Ministry of Economy, Trade and Industry**

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**Exhibit 1: Schedule of Partners**

**Exhibit 2: Investment Guideline (sample)**

**Investment Limited Partnership Agreement**  
**of**  
**[Name of the Invest Limited Partnership]**

This **Investment Limited Partnership Agreement of [Partnership name] Investment Limited Partnership** (the “**Partnership**”) is made on [date], by and among [Name of the General Partner], [description / office address of the General Partner], as general partner, and the other persons who are at the date of this Agreement limited partners or agree to become limited partners in the Partnership by executing a Subscription Agreement which is accepted by the General Partner and who are then subsequently admitted and recorded in the Schedule of Partners as Limited Partners in the Partnership.

**Recitals**

**Whereas**, the Partnership is an investment limited partnership (*toushi jigyo yugen sekinin kumiai*) pursuant to and in accordance with the Limited Partnership Act for Investment (Act No. 90 of 1998, as amended) (the “**Act**”);

**Now, Therefore**, in consideration of the mutual covenants and promises contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

**1. Definitions**

**1.1 Defined Terms<sup>1</sup>**

As used in this Agreement (including the exhibits thereto), the following terms shall have the following meanings:

“**Act**” has the meaning specified in the recitals to this Agreement 【投有責法】；

“**Actions**” has the meaning specified in Section 7.12(c);

“**Additional Amount**” has the meaning specified in Section 4.10(b)(i)(D) 【追加出資手数料】；

“**Additional Partners**” means the New Partners and the Existing Partners that increases the Capital Commitment 【追加出資組合員】；

“**Administrator**” means any Person duly appointed to provide administration services to the Partnership;

“**Advisory Committee**” has the meaning specified in Section 7.14(a) 【諮問委員会】；

“**Affiliate**” means, with respect to a specified Person, any Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with the specified Person. For all purposes under this Agreement, each Key Person and each general partner, member, executive officer or director of any successor to the General Partner will be deemed to be an Affiliate of the Partnership and the General Partner (or its successor, as appropriate) for so long as such Key Person or such general partner, member, executive officer or director of any such successor, as appropriate, remains in such capacity;

“**Aggregate Distributed Amount**” means the aggregate amount of Partnership Asset distributions (including, in the case of distributions in kind, its Value at the Time of Distribution) made to the Participating Interested Partners pursuant to Sections 6.2(a) and (b) prior to the applicable distribution to be made pursuant to Sections 6.2(a) and (b) 【分配累計額】；

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<sup>1</sup> **Note to Draft:** Corresponding to Article 1.1 of the Japanese Model LPA.

“**Aggregate Carry Distributions**” has the meaning specified in Section 6.2(c)(iii) 【キャリード・インタレスト累計額】；

“**Agreement**” means this Investment Limited Partnership Agreement of [*name of the Partnership*], dated [●], as amended and/or restated from time to time 【本契約】；

“**AIV Agreement**” means any organizational document of an Alternative Investment Vehicle;

“**Alternative Investment Vehicle**” has the meaning specified in Section 3.6(a);

“**Anti-Organized Crime Group Act**” means the Act on Prevention of Unjust Acts by Organized Crime Groups (Act No. 77 of 1991, as amended) 【暴力団対策法】；

“**Anti-Social Force**” means any of the following Persons: (i) Organized Crime Group; (ii) Organized Crime Group Member; (iii) Person who was an Organized Crime Group Member at any point of time in the past 5 years, (iv) Quasi Organized Crime Group Member; (v) Organized Crime Group-Associated Company; (vi) corporate extortionists (*sokaiya to*) (meaning persons who are likely to engage in Violent and Unlawful Acts seeking unfair benefits from corporations and thereby threaten the safety of civil society); (vii) rogue person or group proclaiming itself as a social activist (*shakai undo hyobo goro*) (meaning persons pretending or proclaiming themselves to be social or political activists, who are likely to engage in Violent and Unlawful Acts seeking unfair benefits and threatening the safety of civil society); (viii) organized special intellectual crime group (*tokushu chinou boryoku shudan to*) (meaning groups or persons other than those set forth in items (i) to (vii) who constitute the core of a structural evil by using power of an Organized Crime Group based on a relationship with an Organized Crime Group, or by having financial relations with an Organized Crime Group); (ix) Person who has been publicly announced as a subject of economic sanctions by the Ministry of Finance of Japan, the Office of Foreign Assets Control of the U.S. Department of the Treasury, or the Government of the United Kingdom, or who is subject to sanctions measures pursuant to a resolution of the United Nations Security Council or; (x) any other persons considered to be analogous to any of item (i) to item (ix) 【反社会的勢力等】；

“**Applicable Rules**” means Japanese and non-Japanese laws, orders, regulations, guidelines and any other similar rules (including FATCA/CRS) that are applicable to the Partnership, Partners or their respective directors, officers, employees or agents in connection with the Partnership and activities of the Partnership 【適用法令等】；

“**Assignee**” means any Person to which a Partner or another assignee has Transferred its Interest in accordance with Section 9.

“**Bridge Finance**” means any Portfolio Investment that the General Partner intends to make subject to a Disposition within [●] months of its acquisition, which has been expressly indicated in the applicable Capital Call Notice 【ブリッジ・ファイナンス】；

“**Business Day**” means any days other than days designated as bank holidays in Japan under the Banking Act (Act No. 59 of 1981, as amended) 【営業日】；

“**Business Ordinance on Financial Instruments Business**” means Business Ordinance on Financial Instruments Business (Cabinet Office Order No. 52 of 2007, as amended) 【金融商品取引業府令】；

“**Business Ordinance on Specified Securities**” means the Business Ordinance on Disclosure of Information on Specified Securities (Ordinance of the Ministry of Finance No. 22 of 1993, as amended);

“**Capital Call**” has the meaning specified in Section 4.3;

“**Capital Call Notice**” has the meaning specified in Section 4.3 【キャピタル・コール通知】；

“**Capital Call Right**” means the claim (*saiken*) that corresponds to the obligation of any Limited Partner to make Capital Contributions pursuant to the applicable Capital Call Notice 【キャピタル・コール権】；

“**Capital Commitment**” means, with respect to a Partner, the amount that such Partner agrees to contribute to the Partnership pursuant to Section 4.1(a) (or, if such amount is changed pursuant to the provisions of this Agreement, the amount after such change) 【出資約束金額】；

“**Capital Contribution**” means, with respect to a Partner, the total amount of the Capital Commitment of such Partner that has been contributed by such Partner to the Partnership pursuant to Section 4 (excluding any Additional Amount) 【出資履行金額】；

“**Carry Distributions**” means Partnership Assets distributable to the [General Partner / Special Limited Partner(s)] under Sections 6.2(a), 6.2(c)(iii) and (iv) 【キャリド・インタレスト】；

“**Cause**” has the meaning specified in Section 9.11(b);

[“**Change of Control Event**” means an event that [●] no longer holds, directly or indirectly, at least 50% of the voting rights in the General Partner] 【支配変更事由】；

“**Civil Code**” means the Civil Code (Act No. 89 of 1896, as amended) 【民法】；

“**Clawback Amount**” has the meaning specified in Section 10.5 【クローバック金額】；

“**Co-Investment**” has the meaning specified in Section 7.8(b)(iii) 【共同投資】

“**Co-Investment Fund**” has the meaning specified in Section 7.8(b)(iii) 【共同投資ファンド】；

“**Commencement Date**” has the meaning specified in Section 2.8 【効力発生日】；

“**Compensated Partner**” has the meaning specified in Section 4.13(a);

“**Contributing Partner**” has the meaning specified in Section 4.13(a);

“**Corporation Tax Act**” means the Corporation Tax Act (Act No. 34 of 1965, as amended) 【法人税法】；

“**Covered Person**” has the meaning specified in Section 7.12(a);

“**Cryptoassets**” has the meaning specified in Article 2, Paragraph 14 of the Payment Services Act as cryptoassets 【暗号資産】；

“**Cryptoassets, Etc.**” has the meaning specified in Article 4 of the Order for Enforcement as Cryptoassets, Electronic Payment Instruments or any other property value (limited to that recorded on an electronic device or any other object by electronic means) that are transferrable through an electronic data processing system 【暗号資産等】；

“**Deductible Fees**” has the meaning specified in Section 7.13(b)(iii) 【控除対象手数料等】；

“**Defaulting Limited Partner**” has the meaning specified in Section 4.9(a)(iv) 【不履行有限責任組合員】；

“**Designated Securities**” has the meaning specified in Article 3, Paragraph 1, Item 3 of the Act as designated securities 【指定有価証券】；

“**Disposition**” means a sale or other disposition, redemption, cancellation, purchase, refund or repayment as determined as such by the General Partner in its sole discretion 【処分等】；

“**Disposition Proceeds**” means all consideration received by the Partnership upon the Disposition of a Portfolio Investment or portion thereof 【処分収益】；



**“Disqualified Investor”** means any Person set forth in Article 63, Paragraph 1, Item 1(i) through (ha) of the FIEA 【不適格投資家】；

**“Distributable Amount”** has the meaning specified in Section 6.2(c)(i) 【分配可能額】；

**“Electronic Payment Instrument”** has the meaning specified in Article 2, Paragraph 5 of the Payment Services Act;

**“Encumbrance”** means a pledge, alienation, mortgage, charge, hypothecation, encumbrance or similar collateral assignment by any other means, whether for value or no value and whether voluntary or involuntary (including by operation of law or by judgment, levy, attachment, garnishment, bankruptcy or other legal or equitable proceedings);

**“Enterprise”** means a corporation established under the laws of Japan, a Special Foreign Corporation or an individual engaging in business 【事業者】；

**“Excess Carry Amount”** has the meaning specified in Section 10.5(b);

**“Existing Fund”** means any partnership, company or any other entity (a) whose business purpose is to conduct investment activities and the same or similar to that of the Partnership, (b) that was established prior to the Commencement Date, and (c) of which the General Partner acts as a general partner, a member with unlimited liability, a director, an business executor or in any similar position 【既存ファンド】；

**“Existing Partner”** means any Partner that is listed on the Schedule of Partners 【既存組員】；

**“External Auditor”** means [[[●] Accounting Firm / [●], certified public accountant] and/or any other / any] accounting firm or certified public accountant who is appointed by the General Partner in place of or in addition to the foregoing from time to time and whose appointment is notified by the General Partner to the Limited Partners (excluding those resigned or dismissed) 【監査人】；

**“FATCA/CRS”** means Sections 1471 through 1474 of the U.S. Internal Revenue Code of 1986 (as amended) and related agreements between the Japanese government and the U.S. government (including the Statement of Mutual Cooperation and Understanding between the U.S. Department of the Treasury and the Authorities of Japan to Improve International Tax Compliance and to Facilitate Implementation of FATCA, dated June 11, 2013, and the Additional Statement to Modify Certain Parts of the Statement of Mutual Cooperation and Understanding between the U.S. Department of the Treasury and the Authorities of Japan to Improve International Tax Compliance and to Facilitate Implementation of FATCA, dated December 18, 2013), the Common Reporting Standard developed by the OECD for automatic exchange among countries of information on financial accounts of non-residents, and laws and regulations related thereto (including the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act Incidental to Enforcement of Tax Treaties (Act No. 46 of 1969, as amended), the Order for Enforcement of the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act Incidental to Enforcement of Tax Treaties (Cabinet Order No. 335 of 1987, as amended) and the Ordinance for Enforcement of the Act on Special Provisions of the Income Tax Act, the Corporation Tax Act and the Local Tax Act Incidental to Enforcement of Tax Treaties (Ordinance of Ministry Of Finance and Ministry of Home Affairs No. 1 of 1969, as amended)) or agreements among the authorities of countries related thereto 【FATCA/CRS】；

**“FDI Laws”** means any foreign direct investment laws of any countries and other jurisdictions with comparable regimes;

**“Feeder Fund”** means a Limited Partner that is (a) formed by the General Partner or a Related Party to serve as a collective investment vehicle that will invest substantially all of its investable

assets in the Partnership and (b) designated as such in writing by the General Partner upon its admission to the Partnership;

“**FIEA**” means the Financial Instruments and Exchange Act (Act No. 25 of 1948, as amended) 【金融商品取引法】；

“**Final Closing Date**” means the last date on which the General Partner admits Limited Partners to the Partnership (as designated by the General Partner in its sole discretion in accordance with, and subject to the limitations of, Section 4.10), which shall not be later than [●];

“**Financial Statements**” means a balance sheet, a statement of income or loss and a business report for the relevant Fiscal Year and schedules annexed to the foregoing 【財務諸表等】；

“**First Closing Date**” means the date, designated by the General Partner, in its sole discretion, on which the General Partner first admits Limited Partners;

“**Fiscal Year**” means the 12-month period ending on [month, date] of each year, the first Fiscal Year beginning on the Commencement Date and ending on [month, date, year] 【事業年度】<sup>2</sup>；

“**Follow-On Investments**” has the meaning specified in Section 4.4(a)(i);

“**Follow-Up Investments**” has the meaning specified in Section 7.3(a);

“**Foreign Corporation**” means a corporation established other than under the laws of Japan that is not a Special Foreign Corporation 【外国法人】；

“**Foreign Investments**” means shares, share purchase warrants or Designated Securities issued by, or equity interests in, a Foreign Corporation or any other securities similar to the foregoing, or Cryptoassets issued for a Foreign Corporation 【外国法人向け出資等】；

“**Foreign Limited Partner**” means a Limited Partner that is a non-resident or a foreign corporation under the Income Tax Act 【外国有限責任組合員】；

“**General Partner**” means [name of the General Partner], and its permitted successors and assignees, in its capacity as general partner of the Partnership (but excludes the General Partner that has withdrawn from the Partnership or transferred all of its status as general partner) 【無限責任組合員】；

“**GP Amount**” has the meaning specified in Section 10.5(b);

“**Hedging Transactions**” has the meaning specified in Section 6.7;

“**Income Tax Act**” means the Income Tax Act (Act No. 33 of 1965, as amended) 【所得税法】；

“**Indemnitee**” has the meaning specified in Section 7.12(c) 【被補償者】；

“**Interest**” means a Partner’s interest in the Partnership 【組合持分】；

“**Interest Amount**” means, with respect to a Partner, its Capital Contribution after (a) addition or deduction of profit or loss, as the case may be, to be allotted to such Partner to or from its Capital Contribution pursuant to Section 4.2 and (b) deduction of the amount of money or the value of the Portfolio Securities distributed to the Partner pursuant to the provisions of this Agreement 【持分金額】。

“**Interested Partners**” means the Partners and the Withdrawing Partners 【組合員等】；

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<sup>2</sup> **Note to Draft:** Corresponding to Article 25.1 of the Japanese Model LPA.

“**Invested Amount**” means the total amount of the acquisition prices of the Portfolio Securities that have been acquired by the Partnership at any given time 【投資総額】；

“**Investment Committee**” has the meaning specified in Section 3.3(d);

“**Investment Limited Partnership**” means an investment limited partnership as defined in Article 2, Paragraph 2 of the Act 【投資事業有限責任組合】；

“**Investment Manager**” means [●] or such other Person designated from time to time by the General Partner as the investment manager of the Partnership;

“**Investment Partnership**” means an Investment Limited Partnership or a partnership that is formed by a partnership agreement as set forth in Article 667, Paragraph 1 of the Civil Code for the purpose of conducting the investment business or an organization similar thereto located in any foreign country 【投資組合等】；

“**Investment Period**” means the [●]-year period from the Commencement Date; *provided that* the General Partner may, with the consent of the Advisory Committee or [●]% in Units of the Limited Partners, extend the Investment Period [on no more than [●] occasions, by any period up to a maximum period of [●] years in total / by a single [●]-year period], unless terminated earlier pursuant to the provisions of this Agreement, in which case the Investment Period shall be the period from the Commencement Date to the date of such early termination 【投資期間】;<sup>3</sup>

“**Key Person**” means [●] and [●] as well as any Person appointed pursuant to Section 4.6(d) (but excludes any Person that has ceased to be a Key Person following the appointment of a successor pursuant to Section 4.6(d)) 【主要担当者】；

“**Key Person Event**” means an event that [all of the/[●]] Key Persons are no longer [able to devote, or devoting without a reasonable ground, [almost all / at least [●]]% of the business time for the management of the Partnership Assets, Existing Funds and Co-Investment Funds / substantially involved in the management of the Partnership Assets, Existing Funds and Co-Investment Funds] 【主要担当者事由】；

“**Liabilities**” has the meaning specified in Section 7.12(c);

“**Limited Partner**” means any Person listed as a limited partner in Exhibit 1 attached hereto and each Person that is admitted to the Partnership pursuant to the terms of this Agreement (but excludes any Limited Partner that has withdrawn from the Partnership or transferred all of its status as Limited Partner) 【有限責任組合員】；

“**Majority (or other Specified Percentage) in Units**” means, subject to Sections 3.7(c), at any time, the Partners holding more than 50% (or such other specified percentage) of the Number of Investment Units held (excluding the Number of Investment Units of any Limited Partner that is not permitted to participate in such consent or approval pursuant to the provisions of this Agreement), in the aggregate, by all (or a specified group of) the Partners, with the Number of Investment Units being determined as of the date of the instrument whereby the consent or approval of, or appointment by, such Partners is sought;

“**Management Fee**” has the meaning specified in Section 7.13(b)(i) 【管理報酬】；

“**Management Fee Deduction**” has the meaning specified in Section 7.13(b)(iii) 【管理報酬控除額】；

“**Marketable Securities**” means securities that are (a) listed on a financial instruments exchange as defined in Article 2, Paragraph 16 of the FIEA or any other similar financial instruments exchange located in any foreign country or (b) registered in a registry of over-the-

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<sup>3</sup> **Note to Draft:** Corresponding to Articles 10.1 and 10.2 of the Japanese Model LPA.

counter traded securities as defined in Article 67-11, Paragraph 1 of the FIEA or any other similar registry kept in any foreign country 【市場性のある有価証券】；

“**Material Adverse Effect**” has the meaning specified in Section 9.10(c);

“**Maximum Single Investment Amount**” has the meaning specified in Section 3.5 【最大個別投資額】；

“**Net Asset Amount**” means such amount as shall be prescribed as investments in capital in the balance sheet to be prepared pursuant to Section 8.3(a) (which shall be deemed to be zero in the event that such amount is less than zero) 【純資産額】；

“**Net Distribution**” means, with respect to a Limited Partner, the positive or negative difference between (a) the aggregate distributions of Partnership Assets to such Limited Partner *minus* (b) the total amount of such Limited Partner’s Capital Contributions;

“**Net GP Amount**” has the meaning specified in Section 10.5(b);

“**New Partner**” means any Partner that is admitted to the Partnership pursuant to Section 4.10 【新規加入組合員】；

“**Number of Investment Units**” means, with respect to a Partner, the number of the units of Capital Contribution held by such Partner in the Partnership (it being understood that, if this Agreement requires that a certain ratio to the aggregate Number of Investment Units of the Limited Partners be satisfied, such ratio may be satisfied by aggregating the Number of Investment Units of more than one Limited Partner) 【出資口数】；

“**Order for Enforcement**” means the Order for Enforcement of the Limited Partnership Act for Investments (Cabinet Order No. 235 of 1998, as amended) 【投有責法施行規則】；

“**Order for Enforcement of the Special Taxation Measures Act**” means the Order for Enforcement of the Act on Special Measures Concerning Taxation (Cabinet Order No. 43 of 1957, as amended) 【租税特別措置法施行令】；

“**Organizational Expenses**” means all out-of-pocket expenses incurred by or on behalf of the Partnership, the General Partner, the Investment Manager or their respective Affiliates in connection with the organization of the Partnership and the General Partner and the marketing and offering of interests to the Limited Partners; *provided that* the aggregate amount of all such expenses shall not exceed [●]% of the aggregate amount of the Capital Commitment of the Partners;

“**Organized Crime Group**” (*boryokudan*) means an organized crime group as defined in Article 2, Item 2 of the Anti-Organized Crime Group Act (meaning a group whose members (including members of its affiliated group) collectively or regularly encourage Violent and Unlawful Acts) 【暴力団】；

“**Organized Crime Group-Associated Company**” (*boryokudan kankei kigyo*) means a company in which an Organized Crime Group Members are substantially involved in management, a company managed by Quasi Organized Crime Group Members or former Organized Crime Group Members which actively cooperates with or are involved in the maintenance or operation of an Organized Crime Group, including funding to an Organized Crime Group, or a company which cooperates in the maintenance or operation of an Organized Crime Group by actively using it as it conducts business 【暴力団関係企業】；

“**Organized Crime Group Member**” (*boryokudan-in*) means an organized crime group member as defined in Article 2, Item 6 of the Anti-Organized Crime Group Act (meaning a member of an Organized Crime Group) 【暴力団員】；

**“Other Expenses”** means (a) all ordinary overhead expenses relating to the business or operation of the Partnership or the General Partner other than as set forth in items (g) and (h) of the definition of “Partnership Expenses” and (b) all ordinary and recurring administrative expenses of the General Partner;

**“Other Funds”** means any investment fund, vehicle or account advised, sub-advised, managed or sponsored by a Related Party as well as any Proprietary Accounts;

**“Other Investment Proceeds”** means all consideration received by the Partnership in the form of dividends, interests, royalties, or other profits (other than Disposition Profits) with respect to Portfolio Securities 【その他投資収益】；

**“Outstanding Indebtedness”** means the amount of the outstanding borrowings under Sections 7.8(a)(i) and (ii), and the appraised value of the security interests and the amount of the Partnership’s guarantee obligations under Section (iii) 【借入残高】；

**“Participating Interested Partners”** has the meaning specified in Section 6.2(a)(i) 【対象組合員等】；

**“Partners”** means the General Partner and the Limited Partners 【組合員】；

**“Partners’ Meeting”** has the meaning specified in Section 8.4(a);

**“Partnership”** has the meaning specified in the preamble to this Agreement 【本組合】；

**“Partnership Accounting Guidelines”** means the method for preparation of Financial Statements as stipulated in Chapter II of the Order for Enforcement and the “Accounting Procedures for Investment Limited Partnerships and Audits thereof” (Industry Audit Committee’s Report No. 38 of March 15, 2007, as amended) issued by the Japanese Institute of Certified Public Accountants 【組合会計準則】；

**“Partnership Assets”** means cash contributions, and all assets that are acquired, or derived from, cash contributions including Portfolio Securities that belong to the Partnership 【組合財産】；

**“Partnership Bank Account”** means any bank account opened by the General Partner from time to time in the name of the Partnership and notified by the General Partner to the Limited Partners 【組合口座】；

**“Partnership Credit Party”** has the meaning specified in Section 7.6(b);

**“Partnership Expenses”** means all fees, costs and expenses reasonably allocable to the Partnership, including: (a) fees, costs and expenses of outside counsel, accountants, auditors, appraisers, valuation experts, consultants, administrators, custodians, depositaries, trustees and other similar outside advisors and service providers with respect to the Partnership and its Portfolio Investments; (b) fees, costs and expenses of identifying, investigating (and conducting diligence with respect to), evaluating, structuring, consummating, holding, monitoring or selling potential and actual Portfolio Investments; (c) any taxes, fees or other governmental charges levied against the Partnership or on its income or assets or in connection with its business or operations; (d) fees, costs and expenses incurred in connection with any audit, examination, investigation or other proceeding by any taxing authority or incurred in connection with any governmental inquiry, investigation or proceeding, in each case, involving or otherwise applicable to the Partnership, including the amount of any judgments, settlements, remediation or fines paid in connection therewith; (e) expenses of the Advisory Committee and its members and observers; (f) fees, costs and expenses of holding any annual or other information meeting of the Partners; (g) the portion reasonably allocable to the Partnership of fees, costs and expenses incurred in connection with legal, regulatory and tax compliance with Japanese or non-Japanese law or other law or regulation relating to the Partnership’s activities;

(h) fees, costs and expenses associated with the Partnership's administration; (i) principal, interest on and fees, costs and expenses relating to or arising out of all borrowings made by the Partnership; (j) fees, costs and expenses related to a default by a Defaulting Limited Partner; (k) fees, costs and expenses related to a Transfer of an Interest (and admission of a substitute Partner) or a permitted withdrawal of a Partner; (l) fees, costs and expenses incurred in connection with any amendments, restatements or other modifications to, compliance with, and translation of, this Agreement or any other constituent or related documents of the Partnership and the General Partner; (m) premiums and fees for insurance for the benefit of, or allocated to, the Partnership; (n) expenses of any actual or potential litigation or other dispute related to the Partnership or any actual or potential Portfolio Investment or Portfolio Company, Etc. and other extraordinary expenses related to the Partnership or actual or potential Portfolio Investment or Portfolio Company, Etc.; (o) fees, costs and expenses required under or otherwise related to the Partnership's indemnification obligations under this Agreement or other matters that are the subject of indemnification or contribution pursuant to Section 7.12; (p) fees, costs and expenses incurred in connection with dissolving, liquidating and terminating the Partnership; (q) all other costs and expenses of the Partnership or the General Partner and its Affiliates in connection with the business or operation of the Partnership and its Portfolio Investments; (r) broken deal expenses; (s) in the case of each of the foregoing items in this definition, all similar items in connection with any Feeder Funds, Alternative Investment Vehicles, Portfolio Companies, Etc. or entities through which the Partnership makes any Investment, to the extent not otherwise paid or borne by such Feeder Funds, Alternative Investment Vehicles, Portfolio Companies, Etc. or entities and (t) the Organizational Expenses; but not including Other Expenses and the Management Fee 【組合費用】；

**“Partnership Indebtedness”** means indebtedness borne by the Partnership 【組合債務】；

**“Payment Services Act”** means the Payment Services Act (Act No. 59 of 2009, as amended);

**“Permitted Investor”** means a Person who falls under one of the categories set forth in Article 17-12, Paragraph 4, Item 2 of the Order for Enforcement of the Financial Instruments and Exchange Act (Cabinet Office Order No. 321 of 1965, as amended) 【特例業務対象投資家】；

**“Person”** means and includes an individual, a partnership, a limited liability company, a joint venture, a corporation, a trust, an unincorporated organization, a government or any department or agency thereof or any entity similar to any of the foregoing;

**“Portfolio Company”** means an Enterprise in or to which the Partnership holds shares, interests, share purchase warrants, Designated Securities, pecuniary receivables, industrial property rights, copyrights, trust beneficial interest or Cryptoassets pursuant to the provisions of Sections 3.1(a)(i) through (vi) and (vii) 【投資先事業者】；

**“Portfolio Company, Etc.”** means a Portfolio Company, an Investment Partnership to which the Partnership has made a contribution pursuant to Section 3.1(a)(x), and a Foreign Corporation in which the Partnership holds Foreign Investments pursuant to Section 3.1(a)(xii) 【投資先事業者等】；

**“Portfolio Investment”** means any investment to be made, or made, in any Portfolio Security;

**“Portfolio Securities”** means shares, interests, share purchase warrants, Designated Securities, pecuniary receivables, trust beneficial interests, Cryptoassets, contributions to Investment Partnerships, promissory notes, negotiable deposit certificates, movables or Foreign Investments that the Partnership has acquired or will acquire pursuant to the provisions of Sections 3.1(a)(i) through (vi), (vii) and (x) through (xii) (including, with respect to any Special Foreign Corporation, instruments issued under foreign laws and regulations that are similar to shares, interests, stock options, Designated Securities, promissory notes, bonds, specified bonds, corporate bonds and investment corporation bonds relating to the businesses listed in Section 3.1(a)(i) through (iii), (vi), (ix) and (xi)(A) and (C) as set forth in 3.2).

“**Preferred Return**” has the meaning specified in Section 6.2(c)(ii);

“**Preferred Return Shortfall Amount**” has the meaning specified in Section 10.5(a);

“**Professional Investor**” has the meaning specified in Article 2, Paragraph 31 of the FIEA as professional investor (*tokutei toshika*);

“**Proprietary Accounts**” means proprietary accounts and investment vehicles, including accounts through which it invests primarily for its own investment purposes and accounts established primarily for the purposes of developing, evaluating and testing potential investment strategies or products, which may be established by the General Partner or its Affiliates;

“**Provisional Interest Amount**” has the meaning specified in Section 5.2(a) 【仮持分金額】；

“**Qualified Institutional Investor**” has the meaning specified in Article 2, Paragraph 3, Item 1 of the FIEA and Article 10 of the Cabinet Office Order on Definitions under Article 2 of the Financial Instruments and Exchange Act (Order of the Ministry of Finance No. 14 of 1993, as amended) as a qualified institutional investor (*tekikaku kikan toshika*) 【適格機関投資家】；

“**Quarterly Financial Information**” has the meaning specified in Section 8.3(b) 【四半期財務情報】；

“**Quasi Organized Crime Group Member**” (*boryokudan jun koseiin*) means a person, other than an Organized Crime Member, who maintains a relationship with an Organized Crime Group, and who (a) is likely to engage in Violent and Unlawful Acts based on the power of an Organized Crime Group, or (b) cooperates or is involved with the maintenance and operation of an Organized Crime Group, including providing money, weapons, etc. to an Organized Crime Group or Organized Crime Group Member 【暴力団準構成員】；

“**Reference Date**” has the meaning specified in Section 6.2(b) 【現物分配基準日】；

“**Related Party**” means (a) any Person of whom the decision-making body is, directly or indirectly, controlled by the General Partner (including any Person in a position similar to a director, officer, auditor or member of the General Partner, its employees and any Special Limited Partner), (b) any Person that directly or indirectly controls the decision-making body of the General Partner, (c) any Person of whom the decision-making body is, directly or indirectly, controlled by a Person as prescribed in item (b) (not including the General Partner and any Person as prescribed in item (a)) and (d) any Person in a position similar to a director, officer, auditor or member of Persons as prescribed in items (a) through (c) and their respective employees, *provided that* no Portfolio Company, Etc. shall be deemed a Related Party 【特定関係者】；

“**Schedule of Partners**” means the list of Partners attached as Exhibit 1 hereto, as maintained and amended from time to time by the General Partner;

“**Sensitive Information**” means any non-public information of the Partnership or any Portfolio Company that the General Partner reasonably determines would, if made available to a Limited Partner, be expected to affect the obligations of the Partnership or any Portfolio Company to file, advisability of filing, or substantive outcome of a foreign direct investment, public interest or any similar filing or notification related to the Partnership or any Portfolio Company.

“**Sharing Percentage**” means, with respect to any Partner for any Portfolio Investment, the percentage that the amount contributed by such Partner who participates in such Portfolio Investment comprises of the total amount contributed by the Partners who participate in such Portfolio Investment 【対象持分割合】；

“**Special Foreign Corporation**” has the meaning specified in Article 1 of the Order for Enforcement as a Person of whom a Japanese corporation or individual substantially controls, or has a material influence over, the management 【特別外国法人】；

[“**Special Limited Partner**” means any Limited Partner that is designated as a special limited partner in Exhibit 1 (but excludes a Limited Partner of which the designation as a special limited partner has been removed pursuant to Section 2.7(b)) 【特別有限責任組合員】；]

“**Special Proceeds**” means all proceeds or other consideration received by the Partnership with respect to the Partnership Assets, other than Disposition Proceeds and Other Investment Proceeds 【特別収益】；

“**Special Taxation Measures Act**” means the Act on Special Measures Concerning Taxation (Act No. 26 of 1957, as amended) 【租税特別措置法】；

“**Subscription Agreement**” means each of the subscription agreements between the Partnership and a Limited Partner (or the signature pages to this Agreement or any other document provided by a Limited Partner upon request by the General Partner) pursuant to which such Limited Partner subscribes for an interest in the Partnership;

“**Subscription Finance**” means a creation of any security interest over any Capital Call Right with respect to any Unused Capital Commitment and the borrowing related thereto pursuant to Sections 7.8(a)(i) and (iii) 【サブスクリプション・ファイナンス】；

“**Subsequent Closing Date**” has the meaning specified in Section 4.10(b)(i) 【追加クロージング日】；

“**Substitute Limited Partner**” means any Assignee that has been admitted to the Partnership as a Limited Partner pursuant to Section 9.7 by virtue of such Assignee’s having received all or a portion of an Interest from a Limited Partner;

“**Successor Fund**” means any partnership, company or any other entity whose business purpose is to conduct investment activities and the same or similar to that of the Partnership 【承継ファンド】；

“**Transfer**” means a sale, transfer, assignment, declaration of trust, gift, bequest or disposition by any other means, whether for value or no value and whether voluntary or involuntary (including by realization upon any Encumbrance or by operation of law or by judgment, levy, attachment, garnishment, bankruptcy or other legal or equitable proceedings);

[“**Unrealized Invested Capital**” means, at any given time, the sum of (a) the total amount of the acquisition prices of the Portfolio Securities that the Partnership holds and (b) expenses related thereto *less* the amount of any write-downs that the General Partner has made for a portion of the value of any Portfolio Securities on the ground that such portion of the value would not recover in future 【投資残高】；]

“**Unused Capital Commitment**” means, with respect to any Partner and as of any time, the amount of the Capital Commitment of such Partner which remains unpaid (or, if such amount is changed pursuant to the provisions of this Agreement, the amount after such change) 【出資未履行金額】；

“**Value at the Time of Distribution**” means the value of any Portfolio Securities as of the Reference Date where they are distributed in kind. The value as of the Reference Date shall be (a) if the Portfolio Securities to be distributed are the Marketable Securities, the average closing price for the latest five (5) trading days immediately preceding (and excluding) the Reference Date (or if there are fewer than five (5) trading days prior to the Reference Date, the average of the closing price for all trading dates immediately preceding (and excluding) the Reference Date) and (b) if the Portfolio Securities to be distributed are not Marketable Securities, the value



determined as fair market value by the General Partner with the approval of the Limited Partners pursuant to Section 6.2(b). For the purposes of this definition, the “closing price” of the Portfolio Securities means the closing selling and purchase price on the relevant financial instruments exchange or published by the Japan Securities Dealers Association or any other similar prices quoted on any foreign exchange or over-the-counter market, and the “trading day” means the day on which the financial instruments exchange concerning the Portfolio Securities opens or the day on which the over-the-counter-market operated by the Japan Securities Dealers Association opens, or any similar day in foreign countries; *provided that* any day on which no closing price is available shall be excluded 【分配時評価額】；

“**Violent and Unlawful Act**” means violent and unlawful acts as defined in Article 2, Paragraph 1 of the Anti-Organized Crime Group Act 【暴力的不法行為等】；and

“**Withdrawing Partner**” means any Partner that has withdrawn from the Partnership pursuant to Section 9.8 【脱退組合員】.

## **1.2 Dates and Times of Day<sup>4</sup>**

All references herein to dates or times of day shall be references to those in Japan.

## **1.3 Act of the General Partner**

All references herein to the “Partnership” shall be references to the General Partner as context requires.

## **1.4 Taxes<sup>5</sup>**

All references herein to fees, costs or expenses shall [include/exclude] consumption tax, value-added tax or any similar tax to be imposed thereon.

# **2. Organizational Matters**

## **2.1 Establishment**

The Partners hereby agree to establish the Partnership as an investment limited partnership under the Act for the purposes and upon the terms and conditions set forth herein, and the General Partner hereby agrees to act as general partner of the Partnership upon its execution of this Agreement. The rights and liabilities of the Partners shall be as provided in the Act and as set forth herein. In the event of any inconsistency between any terms and conditions contained in this Agreement and any non-mandatory provisions of the Act, the terms and conditions contained in this Agreement will govern. The Partnership shall continue in existence notwithstanding any change in the composition of the Partners; *provided that* there shall at all times be at least one general partner and one limited partner within the meaning of the Act.

## **2.2 Name<sup>6</sup>**

The name of the Partnership is “[●]投資事業有限責任組合”. [The English name of the Partnership is [●] Investment Limited Partnership.] The General Partner may change the name of the Partnership from time to time, in accordance with Applicable Rules, and will promptly give written notice of any such change to the Limited Partners.

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<sup>4</sup> **Note to Draft:** Corresponding to Article 1.2 of the Japanese Model LPA.

<sup>5</sup> **Note to Draft:** Corresponding to Article 1.3 of the Japanese Model LPA.

<sup>6</sup> **Note to Draft:** Corresponding to Article 2 of the Japanese Model LPA.

### **2.3 Registered Office<sup>7</sup>**

The Partnership shall have its principal office at [*address of the Partnership*]. [The General Partner may from time to time change the principal office of the Partnership in accordance with Applicable Rules by providing the Limited Partners with a prior written notice of the proposed change. / The General Partner will promptly give written notice of any change in the principal office of the Partnership to the Limited Partners.]

### **2.4 Business Purpose**

The principal purpose and investment objective of the Partnership is to make, hold, manage and dispose of investments in Portfolio Companies, Etc. in accordance with the investment objectives, policies, procedures and restrictions more specifically set forth herein, in each case, in accordance with the Act. In connection therewith and subject to the provisions hereof, the Partnership will have the power to engage in all activities and transactions and enter into all documentation which the General Partner deems necessary or advisable, including: (a) identifying and analyzing Portfolio Investment opportunities; (b) acquiring Portfolio Investments; (c) making, holding, restructuring, monitoring and managing Portfolio Investments; (d) disposing of all or any portion of any Portfolio Investment; (e) performing all obligations imposed upon it by this Agreement, by law or otherwise; and (f) engaging in any other activities incidental or ancillary to the foregoing (which are not prohibited hereunder) as the General Partner deems necessary or advisable.

### **2.5 Registration<sup>8</sup>**

The General Partner shall register the effect of this Agreement pursuant to Article 17 of the Act at the location of the principal office of the Partnership. In the event of any changes to the registered matters, the General Partner shall register the changes in accordance with Article 18 of the Act.

### **2.6 Organizational Certificates and Other Filings**

If requested by the General Partner, the Limited Partners will promptly execute all certificates and other documents consistent with the terms of this Agreement necessary for the General Partner to accomplish all filing, recording, publishing and other acts as may be appropriate to comply with all requirements for (a) the formation, registration and operation of the Partnership as an investment limited partnership under the laws of Japan, (b) if the General Partner deems it advisable, the operation of the Partnership as an investment limited partnership, or partnership in which the Limited Partners have limited liability, in all jurisdictions where the Partnership proposes to operate and (c) all other filings required to be made by the General Partner in relation to the Partnership.

### **2.7 Schedule of Partners<sup>9</sup>**

- (a) The names and addresses of the Partners and the distinction between general partner and limited partner shall be as set forth in Exhibit 1 hereto. [In the case where any Limited Partner is designated as Special Limited Partner, Exhibit 1 shall clearly specify which Limited Partners are designated as Special Limited Partners, in addition to the distinction between general partners and limited partners.]
- (b) [The General Partner may, at its discretion, newly designate or remove Special Limited Partners. If the General Partner makes such designation or removal, it shall promptly send the updated Exhibit 1 to each Limited Partner.]

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<sup>7</sup> **Note to Draft:** Corresponding to Article 3 of the Japanese Model LPA.

<sup>8</sup> **Note to Draft:** Corresponding to Article 7 of the Japanese Model LPA.

<sup>9</sup> **Note to Draft:** Corresponding to Article 4 of the Japanese Model LPA.

- (c) Except in the cases specified in Sections 7.8(b)(viii) or 7.8(b)(ix), Limited Partners [and Special Limited Partners] that are Related Parties shall not be entitled to exercise voting rights with respect to their Interests in the Partnership at Partners' Meetings, and shall be excluded from the calculation of ratios based on the Number of Investment Units and the Sharing Percentage for the purposes of any decision-making under this Agreement.
- (d) Each Limited Partner shall promptly notify the General Partner in writing of any changes to its address and other information listed in Exhibit 1.
- (e) The General Partner shall promptly update Exhibit 1 and send the updated Exhibit 1 to each Limited Partner if (i) it has been notified of any changes pursuant to clause (d) above, or (ii) there has been any change to the information listed in Exhibit 1 with respect to the General Partner.

## 2.8 Term<sup>10</sup>

The term of the Partnership shall commence on [●] (the “**Commencement Date**”) and continue until the first to occur of the events or date enumerated in Section 10.2.

## 3. Business of the Partnership, Investments, Limitations and Structures

### 3.1 Business of the Partnership<sup>11</sup>

- (a) The Partners shall jointly conduct the following businesses as the business of the Partnership:
  - (i) acquiring and holding shares of a Japanese stock company (*kabushiki kaisha*), interests in a Japanese limited liability company (*godo kaisha*) or interests in a Japanese business cooperative (*kigyo kumiai*), in each case issued upon establishment;
  - (ii) acquiring and holding shares or stock options (excluding those attached to bonds with stock options) issued by a Japanese stock company (*kabushiki kaisha*), interests in a Japanese limited liability company (*godo kaisha*) or interests in a Japanese business cooperative (*kigyo kumiai*);
  - (iii) acquiring and holding the Designated Securities;
  - (iv) acquiring and holding monetary claims against an Enterprise, or monetary claims owned by an Enterprise;
  - (v) originating loan to an Enterprise;
  - (vi) acquiring and holding interests under a silent partnership agreement (*tokumei kumiai keiyaku*) with an Enterprise or trust beneficiary rights;
  - (vii) acquiring and holding Cryptoassets issued for an Enterprise;
  - (viii) acquiring and holding industrial property rights or copyrights owned by an Enterprise (including licensing the use of such rights);
  - (ix) providing management or technical guidance to an Enterprise in which the Partnership holds shares, interests, stock options, Designated Securities,

<sup>10</sup> **Note to Draft:** Corresponding to Article 6.1 of the Japanese Model LPA.

<sup>11</sup> **Note to Draft:** Corresponding to Article 5 of the Japanese Model LPA.

monetary claims, Cryptoassets, industrial property rights, copyrights or trust beneficiary rights pursuant to subclauses (i) through (vii) above;

- (x) investing in an Investment Partnership;
- (xi) engaging in the following businesses incidental to the businesses specified in subclauses (i) through (x) above:
  - (A) acquiring and holding promissory notes (*yakusoku tegata*) issued or owned by an Enterprise (excluding those specified in Article 2, Paragraph 1, Item 15 of the FIEA);
  - (B) acquiring and holding negotiable certificates of deposit;
  - (C) engaging in the sale, exchange, or leasing of movable property which serve as collateral for promissory notes specified in item (A) above, bonds as set out in Article 2, Paragraph 1, Item 3 of the FIEA, specified bonds as set out in Article 2, Paragraph 1, Item 4 of the FIEA, corporate bonds specified in Article 2, Paragraph 1, Item 5 of the FIEA, investment corporation bonds as set out in Article 2, Paragraph 1, Item 11 of the FIEA, promissory notes as set out in Article 2, Paragraph 1, Item 15 of the FIEA, or monetary claims against an Enterprise, or acting as an agent or intermediary for such sale, exchange or lease transactions;
  - (D) acquiring and holding Cryptoassets, Etc. related to the holding of Cryptoassets specified in subclause (vii) above, and managing or lending Cryptoassets specified in subclause (vii) above or Cryptoassets, Etc.; and
  - (E) acquiring and holding Cryptoassets other than Cryptoassets specified in subclause (vii) above or Electronic Payment Instruments used for payments in the businesses specified in subclauses (i) through (vii) or (x) above (including the acquisition and holding of Cryptoassets, Etc. related to the holding of such Cryptoassets or electronic payment instruments), and managing or lending such Cryptoassets, electronic payment instruments or Cryptoassets, Etc.;
- (xii) acquiring and holding Foreign Investments; *provided that* the total costs of such acquisitions do not exceed [50%] of the total Capital Contributions from all Partners, and that such acquisitions do not impede the execution of the businesses specified in subclauses (i) through (xi) above; and
- (xiii) managing surplus funds in order to achieve the purposes of this Agreement through the following methods:
  - (A) deposits with banks or other financial institutions;
  - (B) acquiring government or municipal bonds; and
  - (C) acquiring bonds issued or guaranteed by foreign governments, local governments, international organizations, foreign government affiliated institutions (defined as institutions primarily funded by the government of the country where their headquarters or principal offices are located), corporations primarily funded by foreign local governments, or foreign banks or other foreign financial institutions.

- (b) Shares, interests, stock options, Designated Securities, promissory notes, bonds, specified bonds, corporate bonds and investment corporation bonds relating to the businesses listed in clauses (a)(i) through (iii), (vi), (ix) and (xi)(A) and (C) above shall, with respect to any Special Foreign Corporation, include similar instruments issued under foreign laws and regulations.

### 3.2 Investment Opportunities

Except as otherwise permitted by this Section エラー! 参照元が見つかりません。 and Section 7.8(b)(v) and subject to the investment limitations set forth in this Agreement, during the Investment Period, any available investment opportunities that the General Partner determines, in good faith, to be suitable and appropriate for the Partnership and consistent with its investment objectives, will be offered by the General Partner to the Partnership; *provided that*:

- (a) the General Partner shall be under no obligation to allocate more than the Partnership's *pro rata* portion of any Follow-On Investment to the Partnership; and
- (b) nothing in this Section 3.2 shall preclude or limit any Other Fund from participating in any investment opportunity constituting a follow-on investment in an existing investment held by such Person, and the General Partner shall be under no obligation to allocate to the Partnership any portion of such investment opportunity.

Subject to the foregoing, the General Partner and its Affiliates will allocate investment opportunities among the Partnership and any Other Funds in a manner that is consistent with an allocation methodology established by the General Partner and its Affiliates reasonably designed to help ensure allocations of opportunities are made over time on a fair and equitable basis. In determining allocations of investments, the General Partner and its Affiliates may take into account such factors as they deem appropriate, including, for example, investment objectives and focus, target investment size and target returns, available capital, timing of capital inflows and outflows and anticipated capital commitments and subscriptions, timing of closing and speed of execution, liquidity profile, applicable concentration limits and other investment restrictions, mandatory minimum investment rights and other contractual obligations applicable to the Partnership and participating Other Funds and/or their respective investors, portfolio diversification, tax efficiencies and potential adverse tax consequences, regulatory restrictions applicable to the Partnership and participating Other Funds and/or their respective investors, policies and restrictions (including internal policies and procedures) applicable to the Partnership and Other Funds, the avoidance of odd-lots or cases where a *pro rata* or other defined allocation methodology would result in a *de minimis* allocation to the Partnership or any participating Other Funds, the potential dilutive effect of a new position, the overall risk profile of a portfolio, the potential return available from a debt investment as compared to an equity investment, the potential effect on the Partnership's performance (positive and negative) and any other considerations deemed relevant by the General Partner and its Affiliates.

### 3.3 Making and Holding of Portfolio Investments<sup>12</sup>

- (a) Any and all matters with respect to the management, administration and disposition of Partnership Assets, including the timing and method of Portfolio Investments, the timing and method of the disposition of Portfolio Securities and the exercise of share purchase warrants, shall be determined by the General Partner in its discretion. Without prejudice to the generality of the foregoing, when the General Partner makes a Portfolio Investment, the General Partner shall seek to enter into an investment agreement with

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<sup>12</sup> **Note to Draft:** Corresponding to Articles 23.4, 23.5 and 23.7 through 23.10 of the Japanese Model LPA.

the relevant Portfolio Company, Etc. on such terms and conditions as the General Partner deems appropriate for such Portfolio Investment.

- (b) A Limited Partner may express its opinion to the General Partner with respect to the selection of Portfolio Securities or management of Partnership Assets; *provided that* the General Partner shall not be bound by any such opinion of a Limited Partner.
- (c) The General Partner shall use its best efforts not to hold any Portfolio Securities for a period exceeding ten (10) years from date of the acquisition of such Portfolio Securities.
- (d) The General Partner (or the Investment Manager) shall establish an investment committee as its internal organization (the “**Investment Committee**”), which shall determine matters relating to the management of Partnership Assets in accordance with such guidelines of the Investment Committee as implemented by the General Partner.
- (e) In the event that the General Partner has made a Portfolio Investment, it shall, without delay, notify each Partner in writing of the following matters:
  - (i) a summary of the Portfolio Company, Etc. that is the subject of such Portfolio Investment;
  - (ii) the type and number of Portfolio Securities relating to such Portfolio Investment;
  - (iii) a reason for such Portfolio Investment, matters concerning the custody or administration of Portfolio Securities relating to such Portfolio Investment and any other appropriate matters; and
  - (iv) in the event that a Subscription Finance has been undertaken in connection with such Portfolio Investment, terms and conditions and other necessary matters with respect to such Subscription Finance, subject always to the applicable confidentiality requirement in relation to such Subscription Finance.

### 3.4 Permissions<sup>13</sup>

- (a) If, in connection with the Partnership’s acquisition or Disposition of any Portfolio Securities of a Portfolio Company, Etc., any permission, license, approval, filing, report or any other procedure is required with respect to any Limited Partner pursuant to Applicable Rules, the Limited Partner shall conduct such procedure, proactively or in accordance with the General Partner’s instructions, and promptly notify the General Partner upon the completion of such procedure; *provided that* the General Partner may conduct such procedure on behalf of the Limited Partner at the Limited Partner’s cost, in which case the Limited Partner shall cooperate with the General Partner.
- (b) If the General Partner becomes aware that the procedure set forth in clause (a) above is required to be taken prior to the acquisition or Disposition of such Portfolio Securities, the General Partner shall not acquire or make Disposition of the Portfolio Securities until the completion of the procedure.
- (c) A Limited Partner shall comply with any Applicable Rules and the General Partner shall have the power to conduct, to the extent reasonably possible, procedures required for any Limited Partner at such Limited Partner’s cost.

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<sup>13</sup> **Note to Draft:** Corresponding to Article 48 of the Japanese Model LPA.

### 3.5 Size Limitations<sup>14</sup>

The Investment of the Partnership in any single Portfolio Investment will not exceed an amount equal to JPY[●] (the “**Maximum Single Investment Amount**”); *provided that* the Maximum Single Investment Amount may be changed with the consent of the Advisory Committee or [●]% in Units of the Limited Partners.

### 3.6 Alternative Investment Structures

#### (a) Alternative Investment Vehicles

If the General Partner determines that for legal, tax, regulatory or other similar reasons an investment should be made or otherwise held through an alternative investment structure, the General Partner will be permitted to structure the making or holding of all or any portion of such investment outside of the Partnership by requiring any Partner or Partners to make or hold such investment through one or more partnerships or other vehicles (each, an “**Alternative Investment Vehicle**”) that will directly or indirectly invest in or otherwise hold such investment on a parallel basis with or in lieu of the Partnership, as the case may be. If the General Partner determines, in its sole discretion, that some or all of a Limited Partner’s indirect interest in a Portfolio Investment held through the Partnership should be held through an Alternative Investment Vehicle (or, with respect to an investment held through an Alternative Investment Vehicle, *vice versa*), or that an investment held through an Alternative Investment Vehicle should be held through a different Alternative Investment Vehicle, after the consummation thereof, the General Partner may, in its sole discretion, cause the Partnership to transfer all or the relevant portion of the Portfolio Investment to an Alternative Investment Vehicle (and *vice versa*) or between Alternative Investment Vehicles. The General Partner may, where it determines it to be appropriate and notwithstanding any other provision of this Section 3.6, structure an Alternative Investment Vehicle to hold more than one investment and, where applicable, may admit one or more co-investors into any Alternative Investment Vehicle on such terms and conditions as the General Partner determines, so long as the General Partner determines in good faith that (i) the governance and economic rights of the Limited Partners in such Alternative Investment Vehicle correspond to the rights of such Limited Partners in the Partnership and (ii) the admission of co-investors into such Alternative Investment Vehicle does not adversely affect the rights and obligations of any Limited Partners admitted to such Alternative Investment Vehicle in any material respect. To the extent Portfolio Investments are transferred among and between the Partnership and Alternative Investment Vehicles after the consummation of such Portfolio Investments, any such transfer shall be made at cost unless otherwise approved by the Advisory Committee. Any Alternative Investment Vehicle (or an entity in which such Alternative Investment Vehicle invests) will provide for the limited liability of the Limited Partners as a matter of the organizational documents of such Alternative Investment Vehicle (or entity in which such Alternative Investment Vehicle invests) and as a matter of local law.

#### (b) AIV Agreement

Portfolio Investments made through an Alternative Investment Vehicle will be made pursuant to an AIV Agreement substantially similar in form and substance to this Agreement (with such changes as are warranted by the law of the jurisdiction in which such Alternative Investment Vehicle is formed, or by the form of such entity, or to address the legal, tax, regulatory or other similar reasons for which the Alternative Investment Vehicle was established, or to accommodate any co-investor admitted in accordance with Section 3.6(a), in each case, as reasonably determined by the General

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<sup>14</sup> **Note to Draft:** Corresponding to Article 23.6 of the Japanese Model LPA.

Partner in consultation with counsel); *provided that* any change from this Agreement (or, with respect to any previously approved AIV Agreement, such previously approved AIV Agreement) that would have a material adverse effect on the Limited Partners must be approved by (a) the Advisory Committee or (b) a Majority in Units of the Limited Partners. The General Partner will provide each Limited Partner with a copy of the AIV Agreement of any Alternative Investment Vehicle through which such Limited Partner is required to make an investment as soon as reasonably practicable following the finalization and adoption of such AIV Agreement.

(c) **Interest in Alternative Investment Vehicles**

The affected Partners investing therein will be required to make capital contributions directly to each Alternative Investment Vehicle to the same extent, for the same purposes and on the same terms and conditions as Partners are required to make Capital Contributions to the Partnership, and such capital contributions will reduce the Unused Capital Commitments of such Partners to the same extent as if Capital Contributions had been made to the Partnership with respect thereto. Subject to the terms of this Section 3.6, to the maximum extent practicable, each Partner will have the same economic interest in all material respects in Portfolio Investments made by the Partnership and in investments made by Alternative Investment Vehicles pursuant to this Section 3.6 as such Partner would have had if such investment had been made solely by the Partnership, and the provisions of Section 4.13(b) regarding return of distributions, of Section 5 regarding allocations of income and loss, of Section 6 regarding distributions, of Section 10.4 regarding the Partnership's final distribution and of Section 10.5(b) regarding return of the Clawback Amount will be applied as if such investment had been made by the Partnership. The General Partner or an Affiliate of the General Partner (i) will act as the general partner or manager of, or in a similar capacity with respect to, any Alternative Investment Vehicle, and (ii) will be entitled to receive Carry Distributions with respect to any Alternative Investment Vehicle, which it may receive in its capacity as general partner, limited partner or other similar capacity of such Alternative Investment Vehicle.

### **3.7 Feeder Funds**

- (a) In order to accommodate certain legal, regulatory, tax, administrative or other requirements of investors (including natural persons) who wish to participate in the Partnership, the General Partner or any of its Affiliates may, subject to Section 7.8(b)(vii), establish one or more Feeder Funds for investors in certain jurisdictions and may require certain investors to hold their Interests in the Partnership indirectly through one or more Feeder Funds; *provided that* such investors generally will hold their indirect Interests in the Partnership on the same or less favorable economic terms as compared to the other investors in the Partnership. Only those entities designated as such by the General Partner shall be deemed to be Feeder Funds. The General Partner may cause the Management Fee and Carry Distributions payable in respect of any Limited Partner that is a Feeder Fund to be calculated as if each investor in such Feeder Fund had made a direct Capital Commitment to the Partnership. In addition, the General Partner may, in its sole discretion, apply Section 4.3, Section 4.4, Section 4.8, Section 4.9 and any related provisions, to the Interests of a Feeder Fund as if each investor in such Feeder Fund had made a Capital Commitment directly to the Partnership rather than to such Feeder Fund.
- (b) The General Partner may make any adjustments to the Interests of a Feeder Fund and take such other actions as are reasonably necessary to give effect to the overall objectives of this Section 3.7 and the other terms of this Agreement relating to Feeder Funds; *provided that* such adjustments and actions will not adversely affect the Interests in the Partnership of any other Limited Partner; and *provided further that*



nothing in this Section 3.7 will be construed as making any interest holder in a Feeder Fund a Limited Partner for any purpose. The General Partner may, in its sole discretion, apply the provisions of this Agreement regarding Section 4.3, Section 4.4, Section 4.8 and Section 4.9 to the interests of any Feeder Fund in such manner as the General Partner determines appropriate in its sole discretion to effect the intent of the provisions relating to Section 4.3, Section 4.4, Section 4.8 and Section 4.9. Unless the governing documents of a Feeder Fund provide otherwise, all fund expenses and organizational expenses of any Feeder Fund shall, as determined by the General Partner in its discretion, constitute “Partnership Expenses” and “Organizational Expenses,” as applicable, for purposes of this Agreement.

- (c) Unless otherwise agreed by the General Partner and such Feeder Fund, any Interest of a Limited Partner that is a Feeder Fund will be voted and/or abstained on any matter in the same manner and proportions as the investors in such Feeder Fund vote and/or abstain on such matter. The General Partner is authorized to take all actions deemed by it to be necessary or reasonable to cause the Partnership to form a Feeder Fund and issue interests therein and to otherwise consummate the foregoing.

## **4. Capital; Partners**

### **4.1 Capital Commitments<sup>15</sup>**

#### **(a) Generally**

The amount of one investment unit in the Partnership shall be JPY[●]. The Capital Commitment of each Partner is the amount obtained by multiplying the Number of Investment Units specified in Exhibit 1 by the amount of one investment unit specified in the preceding sentence. Capital Commitments will be made in Japanese yen. A Person shall be admitted as a limited partner of the Partnership at such time as (a) such Person executes a Subscription Agreement, (b) the General Partner has accepted, on behalf of the Partnership, the subscription of such Person by countersigning such Person’s Subscription Agreement and (c) such Person is listed on the Schedule of Partners. The Schedule of Partners will be amended from time to time by the General Partner to reflect the admission of Additional Partners pursuant to Section 4.10 and the admission of Substitute Limited Partners pursuant to Section 9.7, as well as to reflect any changes in Sharing Percentage or Capital Commitments pursuant to Section 4.1(c), Section 4.10 or any other provision of this Agreement.

#### **(b) General Partner Minimum Commitment**

The General Partner shall maintain its Number of Investment Units at or above [●]% of the aggregate Number of Investment Units held by the Limited Partners. If the General Partner’s Number of Investment Units falls below such percentage, the General Partner shall increase its Capital Commitment in accordance with Section 4.11 to increase its Number of Investment Units, for which the General Partner shall not be required to pay any Additional Amount.

#### **(c) Capital Commitment Reduction<sup>16</sup>**

- (i) If the ratio of the Invested Amount to the aggregated Capital Commitment of the Partners does not exceed [●]% at the end of the Fiscal Year in which the [●] anniversary of the Commencement Date falls, the General Partner shall

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<sup>15</sup> **Note to Draft:** Corresponding to Articles 8.1 through 8.2 of the Japanese Model LPA.

<sup>16</sup> **Note to Draft:** Corresponding to Article 11 of the Japanese Model LPA.

notify each Limited Partner in writing within [●] months from the end of such Fiscal Year.

- (ii) If the notice is given to the Limited Partners pursuant to subclause (i) above, [●]% in Interest of the Limited Partners may request the General Partner a reduction in their Capital Commitments in writing within [●] months from the end of the Fiscal Year as specified in subclause (i) above.
- (iii) If a request is made by Limited Partners pursuant to subclause (i) above, or if the General Partner reasonably determines that a reduction in Capital Commitments is necessary, the General Partner shall, considering factors such as the planned investment amount for the remaining term of the Partnership, the total amount of Management Fees, the amount of Partnership Expenses already incurred, and the estimate of future Partnership Expenses, decide whether to reduce the Capital Commitment, and if so reducing, determine the amount of reduction and the effective date of such reduction. The General Partner shall promptly notify the Limited Partners in writing of the decision set out in this subclause (iii).

#### **4.2 Capital Contributions Generally**

- (a) Except in the cases specified in Section 6.3, unless agreed upon by all Partners, no Partner shall be obligated to contribute capital to the Partnership. No Partner will be required to make Capital Contributions pursuant to this Section 4 in excess of its Unused Capital Commitments. Payments must be made to the Partnership Bank Account by the date specified by the General Partner.<sup>17</sup>
- (b) Each Capital Call Notice issued to a Limited Partner shall specify the purpose of the relevant Capital Contribution (including a breakdown of the allocations of the funds to be contributed), the amount of Capital Contribution required from such Limited Partner and the payment date and, if applicable, indicate that it is for Bridge Finance.<sup>18</sup>

#### **4.3 Capital Contributions During Investment Period<sup>19</sup>**

- (a) During the Investment Period, the General Partner may require the Partners to make Capital Contributions, in its sole discretion, but in accordance with this Section 4, Section 7 and any other relevant provisions of this Agreement, for the purposes of making Portfolio Investments, meeting, reimbursing or providing for Partnership Expenses, the Management Fees and repayment of indebtedness under the Subscription Finance (including repayment of such indebtedness through the enforcement of security interests granted over Partnership Assets). The General Partner shall provide written notice of a request for a Capital Contribution (each, a “**Capital Call Notice**”; and, such request, a “**Capital Call**”) not less than [●] Business Days prior to the date on which such Capital Contribution is due.

#### **4.4 Capital Contributions Following Investment Period<sup>20</sup>**

- (a) Following the expiration of the Investment Period, the General Partner may require the Partners to make Capital Contributions, in its sole discretion, but in accordance with this Section 4, Section 7 and any other relevant provisions of this Agreement, for any of the following purposes:

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<sup>17</sup> **Note to Draft:** Corresponding to Article 12.1 of the Japanese Model LPA.

<sup>18</sup> **Note to Draft:** Corresponding to Article 8.5 of the Japanese Model LPA.

<sup>19</sup> **Note to Draft:** Corresponding to Article 8.3 of the Japanese Model LPA.

<sup>20</sup> **Note to Draft:** Corresponding to Article 8.4 of the Japanese Model LPA.

- (i) to make Follow-On Investments);
- (ii) to complete Follow-Up Investments; and
- (iii) to cover Partnership Expenses or Management Fees specified in Section 7.13(b)(ii)(C);

*provided that*, the amount of Capital Contributions called for the purpose of subclause (i) above shall not exceed [●]% of each Partner's Capital Commitment, and the amount of Capital Contribution called for the purpose of subclause (iii) may be adjusted to more equitable amount determined by the General Partner at its discretion.

- (b) The General Partner shall provide the Capital Call Notice not less than [●] Business Days prior to the date on which such Capital Contribution is due.
- (c) The portion of each Partner's Capital Contribution will be calculated, for the purpose of clause (a)(i) above, *pro rata* to its Sharing Percentage in relation to the Portfolio Investment made in the relevant Portfolio Company, Etc. (calculated immediately before such additional Portfolio Investment) and, for the purpose of clauses (a)(ii) and (a)(iii) above, *pro rata* to its Unused Capital Commitment.

#### **4.5 To Cover a Shortfall<sup>21</sup>**

In addition to the foregoing, each Partner that is not excused pursuant to Section 4.8(b) or excluded pursuant to Section 4.8(a) may be required, in the General Partner's discretion (subject to such Partner's rights under Section 4.8(b)) and upon [●] Business Days' prior written notice, to make additional Capital Contributions in order to provide the Capital Contribution that would have been provided by an excused or excluded Limited Partner, or by a Defaulting Limited Partner; *provided that* (i) any such Capital Contributions shall be made by the non-excused, non-excluded and/or non-defaulting Partners *pro rata* to the amount of Unused Capital Commitments of each such Partner, and (b) no Limited Partner shall be required to make Capital Contributions in excess of its Unused Capital Commitment as a result of the operation of this Section 4.5. Section 4.2 shall apply *mutatis mutandis* to any Capital Call requiring Capital Contributions pursuant to this Section 4.5.

#### **4.6 Key Executives; Change of Control<sup>22</sup>**

- (a) In the event of a [Key Person Event / Change of Control Event], the General Partner shall promptly notify the Limited Partners in writing of the occurrence of such event.
- (b) If a [Key Person Event / Change of Control Event] occurs, the Investment Period shall be suspended, and during such suspension, the General Partner may only engage in activities that are permitted following the expiration of Investment Period.
- (c) Notwithstanding clause (b) above, [in the event that the Investment Period is suspended due to a Key Person Event, the Investment Period shall recommence with the consent of [●]% in Units of the Limited Partners, or upon the appointment of a replacement for the key person who was subject to the Key Person Event pursuant to clause (d) below. If the Investment Period does not recommence, the Investment Period shall end [●] months after the occurrence of the Key Person Event. / in the event that the Investment Period is suspended due to a Change of Control Event, the Investment Period shall recommence with the consent of [●]% in Units of the Limited Partners. If the Investment Period does not recommence, the Investment Period shall end [●] Business Days after the occurrence of the Change of Control Event.]

<sup>21</sup> **Note to Draft:** Corresponding to the second sentence in Article 9.4 and Articles 9.5 and 13 of the Japanese Model LPA.

<sup>22</sup> **Note to Draft:** Corresponding to Articles 10.3 through 10.6.

- (d) The General Partner may, by providing written notice to each Limited Partner, nominate a candidate for the replacement or an additional candidate of the Key Person. Upon such nomination, the General Partner shall provide information regarding such candidate to each Limited Partner and, if requested by a Limited Partner, arrange for an opportunity for such Limited Partner to interview the candidate(s). The appointment of a candidate as the new Key Person shall require the consent of [●]% in Units of the Limited Partners.

#### **4.7 Return of Uninvested Capital<sup>23</sup>**

[The General Partner shall refund Capital Contributions to the Partners under the following circumstances:

- (a) if the General Partner determines that a Portfolio Investment will not be realized, it shall refund the Capital Contributions made for such Portfolio Investment, retaining only the amounts reasonably necessary for the payment of Partnership Expenses and for other Portfolio Investments; and
- (b) if the General Partner determines that the full amount of Capital Contributions made for a Portfolio Investment is not required to execute the investment, it shall refund the excess Capital Contributions, retaining only the amounts reasonably necessary for the payment of Partnership Expenses and for other Portfolio Investments.

The amounts so refunded shall be treated as if they had never been contributed to the Partnership, added to the Partners' Unused Capital Commitments, and subject to future Capital Calls.]

#### **4.8 Limitations on Contributions<sup>24</sup>**

##### **(a) Exclusion**

The General Partner may exclude a Limited Partner from participating, in whole or in part, in a Portfolio Investment at any time prior to the making of such Portfolio Investment if the General Partner notifies such Limited Partner in writing that the General Partner has reasonably determined that the participation of such Limited Partner would have a material adverse impact on the business of the Partnership or other Partners. In the case of the exclusion of a Limited Partner, the General Partner shall notify such Limited Partner in writing of such determination no later than the date of payment date specified in the relevant Capital Call Notice.

##### **(b) Excuse**

- (i) No Limited Partner will be required to make a Capital Contribution, in whole or in part, if it requests the General Partner to be excused from such Capital Contribution based on its reasonable judgement that making the Capital Contribution specified in a Capital Call Notice in relation to a Portfolio Investment would result in a material adverse impact including a breach of any law, regulation or investment policy (limited to those notified to the General Partner in writing prior to the admission of the relevant Limited Partner to the Partnership) applicable to that Limited Partner; *provided that* the Limited Partner requesting an excuse must (i) provide written notice to the General Partner of such request within [●] Business Days from the receipt of the Capital Call Notice (or by a later date as determined in the General Partner's discretion), together with a legal opinion of a legal counsel (the legal counsel and the contents of the legal opinion must be reasonably satisfactory to the General

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<sup>23</sup> **Note to Draft:** Corresponding to Article 12.3 of the Japanese Model LPA.

<sup>24</sup> **Note to Draft:** Corresponding to Articles 9.1 through 9.3 and the first sentence in Article 9.4 of the Japanese Model LPA.

Partner and must address the Limited Partner's judgment), and (ii) provide any other information reasonably requested by the General Partner regarding the potential for such material adverse impact.

- (ii) The Limited Partner seeking to be excused shall make reasonable efforts to resolve the circumstances that may cause the material adverse impact specified in immediately preceding paragraph within the period stipulated therein.

(c) **Determination to Proceed**

If a Limited Partner is excused or excluded from making a Capital Contribution, the General Partner may, at its discretion, determine whether or not to proceed with the Portfolio Investment associated with such excuse or exclusion without the contribution from the excused or excluded Limited Partner.

#### **4.9 Failure to Contribute<sup>25</sup>**

(a) **Default**

- (i) If any Partner fails to fulfil its payment obligations under this Agreement, such Partner shall pay the Partnership late damage calculated at an annual rate of [●]% (based on a 365-day year) on the unpaid balance of the amount due, for the period from the day following the date the payment was due until the date the full amount is paid.
- (ii) If the failure of such Partner to fulfil its payment obligations under this Agreement results in damages to the Partnership or other Partners, the Partner shall compensate for any and all damages incurred by the Partnership or other Partners due to such non-fulfilment.
- (iii) A Partner cannot refuse to fulfil its own payment obligations on the grounds of another Partner's failure to fulfil their payment obligations.
- (iv) If a Limited Partner fails to fulfil its payment obligations under this Agreement and such failure continues for a period of [●] Business Days after receipt by such Limited Partner of written notice from the General Partner specifying such failure, then such Limited Partner will be designated as a “**Defaulting Limited Partner**” upon a written notice from the General Partner to such Limited Partner treating it as a Defaulting Limited Partner.
- (v) In its discretion, the General Partner may take one or more of the following actions regarding the Defaulting Limited Partner:
  - (A) Regardless of any provisions in this Agreement, prohibit the Defaulting Limited Partner from exercising voting rights at partner meetings concerning their Interests, and exclude the Defaulting Limited Partner from the calculation of ratios based on the Number of Investment Units and the Sharing Percentage for the purposes of any decision-making under this Agreement.
  - (B) Prohibit the Defaulting Limited Partner from participating in all or part of future Portfolio Investments and fulfilling the associated capital contributions.
  - (C) Confiscate the amount, excluding the portion equivalent to the return of capital contributions, from the distributions payable to the

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<sup>25</sup> **Note to Draft:** Corresponding to Article 13 of the Japanese Model LPA.

Defaulting Limited Partner, deducting the Partnership Expenses allocable to the Defaulting Limited Partner, and distribute the confiscated amount to the Partners other than the Defaulting Limited Partner in accordance with the ratios stipulated in Sections 6.2(a) and 6.2(b).

- (D) Reduce the ratio of the Partnership Assets distribution to the Defaulting Limited Partner by [●]% and distribute the reduced amount to the Partners other than the Defaulting Limited Partner in accordance with the ratios stipulated in Sections 6.2(a) and 6.2(b).

(b) **Shortfall**

Nothing in this Section 4.9 shall limit the right of the General Partner to call for additional Capital Contributions from the Limited Partners pursuant to Section 4.5 after taking into account the failure of a Defaulting Limited Partner to make its Capital Contribution.

(c) **Access to Books and Records**

To the extent permitted by Applicable Rules, the General Partner may, in its sole discretion, restrict any Defaulting Limited Partner from receiving, or otherwise having access to, the books and records of the Partnership.

(d) **Remedies Non-Exclusive**

No right, power or remedy conferred upon the General Partner in this Section 4.9 will be exclusive, and each such right, power or remedy will be cumulative and in addition to every other right, power or remedy whether conferred in this Section 4.9 or now or hereafter available at law or in equity or by statute or otherwise. No course of dealing between the General Partner and any Defaulting Limited Partner and no delay in exercising any right, power or remedy conferred in this Section 4.9 or existing at the date of this Agreement or hereafter at law or in equity or by statute or otherwise will operate as a waiver or otherwise prejudice any such right, power or remedy. In addition to the foregoing, the General Partner may, in its sole discretion, institute a lawsuit against any Defaulting Limited Partner for damages and any other available remedies, including specific performance of its obligation to make Capital Contributions and any other payments to be made hereunder by a Limited Partner and to collect any overdue amounts hereunder, with interest on such overdue amounts. Each Limited Partner agrees to pay on demand all costs and expenses (including reasonable attorneys' fees) incurred by or on behalf of the Partnership in connection with the enforcement of this Agreement against such Limited Partner as a result of a default by such Limited Partner.

(e) **Remedies at Law Inadequate**

Each Limited Partner acknowledges by its execution of this Agreement that it has been admitted to the Partnership in reliance upon its agreement under this Section 4.9 (as well as the other provisions of this Agreement) that the General Partner and the Partnership would have no adequate remedy at law for a breach of this Agreement and that damages from a breach of this Agreement would be impossible to ascertain at the date of this Agreement or of such breach. It is accordingly agreed that the General Partner and the Partnership are entitled to seek an injunction or other equitable relief to prevent breaches of this Agreement, such injunction or other equitable relief being in addition to any other remedy to which either is entitled at law or in equity.

(f) **Application of Remedies**

The General Partner may, in its sole discretion, waive or apply, in whole or in part, any provision of this Section 4.9. In addition, each Limited Partner acknowledges that the General Partner may, in its sole discretion, apply different default remedies to each defaulting Limited Partner, in light of the specific circumstances applicable to each such defaulting Limited Partner (including taking into account any legal or regulatory restrictions applicable to such Limited Partner with respect to the application of the default remedies in respect of its Interest). The remedies available to the General Partner herein may be applied to each separate event of default hereunder by a Limited Partner.

**4.10 Additional Partners<sup>26</sup>**

Until the Final Closing Date, the General Partner may, in its sole discretion, at any time and from time to time, issue Interests in the Partnership directly from the Partnership, and admit one or more recipients of such Interests as Additional Partners, on the terms and conditions contained in this Agreement. Upon the admission of any Additional Partner, the General Partner will cause this Agreement to be amended in accordance with Section 11.1(b) to reflect such admission if such amendment is required. No action or consent by any Limited Partner will be required in connection with the admission of an Additional Partner, but any such admission will be subject to the satisfaction of the following conditions:

- (a) Each Additional Partner will execute and deliver such instruments and take such actions as the General Partner shall deem necessary or desirable to effect such admission, including the execution of a Subscription Agreement pursuant to which such Additional Partner agrees to be bound by the terms and provisions hereof.
- (b) Such Additional Partner will:
  - (i) on or prior to the date specified in writing by the General Partner (the “**Subsequent Closing Date**”), pay to the Partnership Bank Account:
    - (A) an amount such Additional Partner would have paid for the Portfolio Investments pursuant to Sections 4.2 and 4.3 if such Additional Partner and all other Additional Partners were Limited Partners at the time each such Portfolio Investment was made (excluding the amounts already additional Capital Commitment);
    - (B) an amount such Additional Partner would have paid pursuant to Sections 4.2 and 4.3 if it and all other Additional Partners [(other than the General Partner)] were Limited Partners at the time of each payment of Partnership Expenses (excluding the amounts already paid for Partnership Expenses by the Existing Partners making additional Capital Commitment);
    - (C) an amount such Additional Partner would have paid if it and all other Additional Partners [(other than the General Partner and any Special Limited Partner, if applicable)] were Limited Partners at the time of the payment of the initial Management Fee and each subsequent Management Fee (if applicable) (excluding the amounts already paid for the Management Fees by the Existing Partners making additional Capital Commitment)

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<sup>26</sup> **Note to Draft:** Corresponding to Articles 8.6 through 8.9, 36.1 and 36.2 of the Japanese Model LPA.

- (D) an additional amount (an “**Additional Amount**”) equal to the interest calculated at an annual rate of [●]% (on a 365-day basis) on each amount referred to in items (A), (B) and (C) above for the period from the date that contributions were originally funded by the Existing Partners in respect of such amounts to the Subsequent Closing Date.
  - (ii) by making the payments specified in subclause (i) above, acquire the rights and obligations under this Agreement as if it had been admitted to the Partnership, or had increased its Capital Commitment, as applicable, pursuant to this Section 4.10 on the Commencement Date.
  - (iii) Notwithstanding subclauses (i)(A), (i)(B) and (i)(D) (to the extent relevant to subclauses (i)(A) or (i)(B)) above, [if the General Partner, in its good faith judgment, determines that the Additional Partner’s share in the Portfolio Investment would become inequitable due to significant value fluctuations relating to the Portfolio Investment caused by the payment of such amounts, or] if the General Partner reasonably determines in accordance with Section 4.8(b) that it is appropriate to excuse the Additional Partner from the Capital Contribution relating to the Portfolio Investment, or reasonably determines in accordance with Section 4.8(a) that it is inappropriate for the Additional Partner to participate in the Portfolio Investment, the General Partner may exclude the Additional Partner from participating in the Portfolio Investment. Additionally, if distributions have already been made by the Partnership pursuant to Section 6.2 prior to the Subsequent Closing Date, the General Partner may, at its discretion, make appropriate adjustments to the amount to be paid by the Additional Partner.
  - (iv) The General Partner shall (A) receive the amount specified in subclause (i)(C) above as Management Fees and receive the Additional Amount in respect of such amount in subclause (i)(C) above paid pursuant to subclause 4.10(b)(i)(D) above, (B) for the amount specified in subclause (i)(A) above, return the Capital Contribution and distribute the Additional Amount to other Partners, both in proportion to their Sharing Percentage in the Portfolio Investment (calculated immediately before the Subsequent Closing Date), and (C) for the amount specified in subclause (i)(B) above, return the Capital Contribution and distribute the Additional Amount to other Partners, both in proportion to their Unused Capital Commitments (calculated immediately before the Subsequent Closing Date); *provided that* for Partnership Expenses related to the Portfolio Investment, the refund and distribution shall be made in proportion to their Sharing Percentage in the Portfolio Investment (calculated immediately before the Subsequent Closing Date). The Additional Amount shall be treated as if it had been directly paid to the General Partner or the other Partners, and shall not be considered contributions by the Additional Partner, nor shall they cause any changes to the amounts of Capital Contributions or Unused Capital Commitments of any Partner.
- (c) Notwithstanding any other provision of this Agreement, the General Partner may, in its sole discretion (but is not required to), exclude any Additional Partner admitted after the First Closing Date from participating in all or any portion of any Portfolio Investment (or, as applicable, the portion thereof relating to any increased Capital Commitment by an existing Limited Partner increasing its Capital Commitment after the First Closing Date), in each case of clauses (b)(i) and (b)(ii) above, with the same effect as if such Limited Partner had been excluded therefrom pursuant to Section 4.8(a) and, in the case of clause (b)(i) above, will so inform such Limited Partner prior to the date of its admission to the Partnership.



#### **4.11 Increases in Capital Commitments by the General Partner; Admission of General Partners**

To the extent that the General Partner increases its Capital Commitment following the First Closing Date, such increase in Capital Commitment will be subject to the same requirements and otherwise be managed in the same manner as increases in the Capital Commitment of any Limited Partner pursuant to Section 4.10; *provided that* the General Partner shall not be required to fund any amounts in respect of Management Fees or Organizational Expenses paid prior to the date of such increase in its Capital Commitment (or any Additional Amounts payable thereon).

#### **4.12 Partner Capital<sup>27</sup>**

Except for the distribution of Partnership Assets pursuant to Section 6.2, the return of Interests to the Withdrawing Partners pursuant to Section 9.8(h) and as otherwise provided in this Agreement, the Capital Contribution shall not be refunded to any Partner for any reason during the Investment Period.

#### **4.13 Return of Distributions<sup>28</sup>**

##### **(a) To Cover a Liability**

If (a) the Partnership or any Partner incurs any Liability pursuant to the provisions of indemnification required by Section 7.12(c) and (b) the amount of reserves, if any, specifically identified by the Partnership as available to cover such Liability (which shall include the Net GP Amount returned pursuant to the subclause (ii) in the proviso to this sentence) is less than the amount of such Liability, then the General Partner may require each Limited Partner (a “**Contributing Partner**”) to return distributions previously received by such Limited Partner (or the predecessor in interest to such Limited Partner) (by payment to the Partnership or any Partner who incurs such Liability (a “**Compensated Partner**”)) to the satisfaction, payment and settlement of any such Liability, in an amount or amounts determined in Section 4.13(b); *provided that* (i) no Limited Partner will be required, at any time or times, to return pursuant to this Section 4.13 any amount which, together with all such amounts previously returned pursuant to this Section 4.13, would exceed the total amount of distributions previously received by such Limited Partner (or the predecessor in interest to such Partner) pursuant to this Agreement or which would otherwise exceed the limitations set forth in Section 4.13(c) and (ii) prior to requiring any such contribution or payment by any Limited Partner, the General Partner shall [return/cause any Special Limited Partner to return] the Net GP Amount with respect to the Limited Partners.

##### **(b) Calculation**

Each Limited Partner will be allocated a share of the Liability based on a proportion reasonably determined by the General Partner (of which basis for calculation shall be notified to the Limited Partners in advance).

##### **(c) Limitations on Return Obligation**

The obligations of each Partner under this Section 4.13 will survive any dissolution, liquidation or termination of the Partnership, but will not extend beyond the second anniversary of the dissolution of the Partnership pursuant to Section 10.2 of this Agreement; *provided that* if at the end of such period, there are any Actions then pending or any other Liabilities (whether contingent or otherwise) then outstanding,

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<sup>27</sup> **Note to Draft:** Corresponding to Article 12.2 of the Japanese Model LPA.

<sup>28</sup> **Note to Draft:** Corresponding to Articles 21.3 and 21.4.

the General Partner shall so notify the Limited Partners prior to the end of such period (which notice shall include a brief description of each such Action or such Liabilities), and the obligation of the Partners to return any distribution for the purpose of meeting the Partnership's indemnity obligations under Section 7.12(c) shall survive with respect to each such Action and Liability set forth in such notice (or any related Action or Liability based upon the same or a similar claim) until the date that such Action or Liability is ultimately resolved and satisfied. Nothing in this Section 4.13 or elsewhere in this Agreement will relieve any Partner of any other obligation which it may have under the Act or any other provision of Applicable Rules.

(d) **Notice by Compensated Partner**

Promptly after receipt by a potential Compensated Partner (other than the General Partner) of a notice of any claim or the commencement of any Action, the Compensated Partner will, if it believes a claim in respect thereof should be made against one or more Contributing Partners under this Section 4.13, notify the General Partner in writing of such claim or the commencement of such Action.

(e) **Notice by General Partner**

Upon any determination (at any time and from time to time) by the General Partner that Liabilities will be or have been incurred for which contribution or payment will be required pursuant hereto, the General Partner will promptly provide written notification thereof to each Contributing Partner. Such notification will include a reasonable description of such Liabilities, the amount of the required contribution or payment by each Contributing Partner and the date by which contribution or payment by Contributing Partners must be made. Prior to the contribution or payment deadline, each Contributing Partner will deliver to the General Partner or the Person or Persons specified by the General Partner the amount of the required contribution or payment.

(f) **Effect of Return**

If a Partner returns a distribution pursuant to this Section 4.13 with respect to a distribution previously received by the Partner (or predecessor to the Partner), (a) the distribution will be treated as if it had not been made for purposes of thereafter applying this Section 4.13 (except with respect to the limitations in Section 4.134.13(c)), Section 6.2 (except that, for the purposes of calculating the Preferred Return, the required return will be deemed not to accrue with respect to any Capital Contributions represented by such returned distributions from and including the date upon which such distributions were originally received by the relevant Partner and up to and including the date such distributions were returned to the Partnership or paid to a Compensated Partner) and Section 10.5(b), as determined by the General Partner, and (b) the contribution will not be treated as a Capital Contribution for purposes of Section 6.2.

(g) **Liabilities for Partnership Indebtedness<sup>29</sup>**

The Partnership Indebtedness shall be repaid by the General Partner out of the Partnership Assets; *provided that* the General Partner shall not be relieved from liabilities to repay the Partnership Indebtedness out of its own assets. Except as provided in Section 6.3(b), a Limited Partner shall be liable to repay Partnership Indebtedness solely to the extent of the amount of its Capital Commitment.

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<sup>29</sup> **Note to Draft:** Corresponding to Articles 21.1 and 21.2 of the Japanese Model LPA.

## 5. Ownership of Partnership Assets; Allocations of Income and Loss

### 5.1 Ownership of Partnership Assets<sup>30</sup>

- (a) The Partnership Assets shall be co-owned by all Partners.
- (b) No Partner may request a partition of the Partnership Assets prior to the completion of the liquidation procedures of the Partnership.

### 5.2 General Allocations<sup>31</sup>

- (a) At the end of each Fiscal year, with respect to gains and losses resulting from the business of the Partnership, (i) the following shall be allocated to each Partner who participates in each respective Portfolio Investment in proportion to its Sharing Percentage concerning such Portfolio Investment: (A) gains and losses resulting from a Disposition of such Portfolio Investment, (B) Partnership Expenses related to such Portfolio Investment and (C) other gains and losses attributable to such Portfolio Investment; and (ii) gains and losses that are not attributable to any Portfolio Investment shall be allocated to each Partner in proportion to its Capital Commitment (or, in the case of management fees as set forth in Section 7.13(b)(ii)(C), its Capital Contribution); *provided that* if such allocation would result in the Interest Amount of any Limited Partner being less than zero (the Interest Amount calculated without application of this proviso, the “**Provisional Interest Amount**”), the Interest Amount of such Limited Partner shall be zero and all excess losses shall be allocated to the General Partner.
- (b) If losses are allocated to the General Partner in accordance with the proviso in the preceding paragraph (a), all gains and losses of the Partnership which would, pursuant to the main text of the preceding paragraph (a), have been allocated to a Limited Partner shall be allocated to the General Partner to the extent that such Limited Partner’s Provisional Interest Amount would otherwise be less than zero and, if there is any gains of the Partnership that would cause such Limited Partner’s Provisional Interest Amount to be no less than zero, such excess gains shall be allocated to such Limited Partner.
- (c) Notwithstanding the preceding paragraphs (a) and (b), in the event that the Carry Distributions are made to the [General Partner/Special Limited Partner] (including in the event that the General Partner withhold such distribution in its discretion pursuant to the proviso to Section 6.2(a)), gains in an amount equal to such distribution shall be allocated to the General Partner and any other gains shall be allocated to the Partners pursuant to the preceding clauses (a) and (b).

## 6. Distributions

### 6.1 No Right to Request Distributions<sup>32</sup>

Unless prescribed in this Agreement, no Interested Partner may request a distribution of the Partnership Assets prior to the dissolution of the Partnership for any reason.

### 6.2 Distributions Generally<sup>33</sup>

- (a) To the extent not prohibited pursuant to Section 6.3(a), the General Partner shall determine the distribution amount in accordance with the following items at such time

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<sup>30</sup> **Note to Draft:** Corresponding to Article 27 of the Japanese Model LPA.

<sup>31</sup> **Note to Draft:** Corresponding to Article 28 of the Japanese Model LPA.

<sup>32</sup> **Note to Draft:** Corresponding to Article 29.1 of the Japanese Model LPA.

<sup>33</sup> **Note to Draft:** Corresponding to Articles 29.2 through 29.10 of the Japanese Model LPA.

as the General Partner in its discretion determines and shall distribute to the Interested Partners the Partnership Assets[; *provided that* that the General Partner may, in its discretion, withhold distributions under this Section 6.2 if they are required to pay Partnership Expense, Management Fees, liabilities of the Partnership, or taxes and other public duties]:

- (i) if the General Partner receives Disposition Proceeds, the General Partner shall distribute to the Participating Interested Partners in respect of such Portfolio Investment the balance of such Disposition Proceeds after the deduction of the sum of costs and expenses and taxes and other public duties required for the Disposition and Partnership Expenses concerning such Portfolio Investment due and payable at the time of the Disposition in proportion to the respective Sharing Percentage of such Participating Interested Partners (or, for a Withdrawing Partner, its Sharing Percentage at the time of its withdrawal) on such date as the General Partner in its discretion designates within [●] months from receipt of such Disposition Proceeds. **“Participating Interested Partners”** means, in respect of a Portfolio Investment, the Interested Partners who made contribution in such Portfolio Investment.
  - (ii) if the General Partner receives Other Investment Proceeds, the General Partner shall distribute to the Participating Interested Partners in respect of such Portfolio Investment the balance of such Other Investment Proceeds after the deduction of the sum of costs and expenses and taxes and other public duties required to receive such Other Investment Proceeds and Partnership Expenses concerning such Portfolio Investment due and payable at the time of the receipt of such Other Investment Proceeds in proportion to their respective Sharing Percentage of such Participating Interested Partners (or, for a Withdrawing Partner, its Sharing Percentage at the time of its withdrawal) on such date as the General Partner in its discretion designates within [●] months from the end of the Fiscal Year in which the day of receipt of such Other Investment Proceeds falls.
  - (iii) If the General Partner receives Special Proceeds, the General Partner shall not be required to distribute such Special Proceeds at the time when they are received and may distribute to the Interested Partners a portion of the Special Proceeds that the General Partner deems in its discretion appropriate, in proportion to (x) in the case of a Partner, its Interest Amount and (y) in the case of a Withdrawing Partner, its Interest Amount at the time of its withdrawal, on such date as the General Partner in its discretion designate.
- (b) If the General Partner reasonably determines that it is beneficial for the Partners who have made contributions with respect to a Portfolio Investment to receive an in-kind distribution of Portfolio Securities in respect of such Portfolio Investment (including non-monetary consideration acquired by the Partnership from a Disposition of, in-kind dividends with respect to, or share splits of, Portfolio Securities) (the day of such determination, the **“Reference Date”**), the General Partner may, promptly after the Reference Date, distribute in kind to the Participating Interested Partners in respect of such Portfolio Investment their respective pro rata shares of the Portfolio Investments equivalent to the balance of the total amount of the Value at the Time of Distribution of the Portfolio Securities after the deduction of the sum of costs and expenses and taxes and other public duties required for the distribution, in proportion to their respective Sharing Percentage (or, for a Withdrawing Partner, its Sharing Percentage at the time of its withdrawal), to the extent not prohibited by Section 6.3(a). The General Partner may sell a portion of the Portfolio Securities that are to be distributed in order to pay costs, expenses, taxes and other public duties required for such distribution, in which case the General Partner shall distribute the Portfolio Securities

remaining after deducting the Portfolio Securities so sold or to be so sold. If the Portfolio Securities are not Marketable Securities, the General Partner shall send to the Limited Partners who have made contributions to the Portfolio Investment a document stating (i) the proposed in-kind distribution and the reason therefor, (ii) details of the Portfolio Securities to be distributed in kind, (iii) an assessment of the Value at the Time of Distribution as of the Reference Date and (iv) other matters as required for determination of appropriateness of the proposed distribution in kind, and shall be required to obtain an approval of any of such Limited Partners holding interests equal to [●]% or more of the total Sharing Percentage of such Limited Partners.

- (c) The distribution of Disposition Proceeds or Other Investment Proceeds or Portfolio Securities set forth in clause (b) above with respect to a Portfolio Investment shall be made to each Participating Interested Partner in respect of such Portfolio Investment in the order of priority and in the manner provided as follows:
- (i) first, 100% of the Distributable Amount to such Participating Interested Partner until the sum of the amount to be distributed to such Participating Interested Partner (including the Value at the Time of Distribution in the case of a distribution in kind) pursuant to the preceding two paragraphs in the proposed distribution (the “**Distributable Amount**”) and the Aggregate Distributed Amount is equal to the total Capital Contributions of such Participating Interested Partner;
  - (ii) second, 100% of the Distributable Amount to such Participating Interested Partner until the balance of the sum of the Aggregate Distributed Amount and the Distributable Amount after the deduction of the total Capital Contributions of such Participating Interested Partner is equal to the product of the total Capital Contributions of such Participating Interested Partner multiplied by [O]% (the “**Preferred Return**”);
  - (iii) third, [P]% of the Distributable Amount to the [General Partner/Special Limited Partner] as the Carry Distributions and [100-P]% of the Distributable Amount to such Participating Interested Partner until the sum of (x) the Carry Distributions made to the [General Partner/Special Limited Partner] in respect of such Participating Interested Partner pursuant to this paragraph prior to the proposed distribution and (y) the Carry Distributions to be made to the [General Partner/Special Limited Partner] in respect of such Participating Interested Partner pursuant to this paragraph under the proposed distribution (the “**Aggregate Carry Distributions**”) is equal to [Q]% of the sum of:
    - (A) the balance of the sum of the Aggregate Distributed Amount and the distributions made to such Participating Interested Partner pursuant to paragraphs (i) to (iii) after the deduction of the total Capital Contributions of such Participating Interested Partner; and
    - (B) the Aggregate Carry Distributions; and
  - (iv) fourth, [Q]% of the Distributable Amount to the [General Partner/Special Limited Partner] as the Carry Distributions and [(100-Q)]% of the Distributable Amount to such Participating Interested Partner.
- (d) If the General Partner makes a distribution in kind of Partnership Assets pursuant to clause (b) above, the General Partner shall request the Partners who are entitled to such distribution in kind to elect to either (i) receive the relevant Portfolio Securities to be distributed in kind or (ii) request the Disposition by the General Partner of all or part of such Portfolio Securities and to receive the proceeds of such disposition, no later than [●] Business Days prior to the Reference Date. With respect to any Partners who

communicate their intention to receive the proceeds of Disposition in accordance with subclause (ii) within [●] Business Days from such request, the General Partner shall deliver such disposition proceeds by the date of the distribution in kind, after the disposition of the Portfolio Securities at such time and price as the General Partners determines in its discretion; *provided that* as a general rule, such price shall be the closing price (or an equivalent price) on any day during the period from the date such communication has been made through the date of distribution in kind (otherwise, for the avoidance of doubt, the General Partner shall distribute the Portfolio Securities in kind). The expenses incurred in connection with the General Partner's Disposition of Portfolio Securities pursuant to this clause (d) shall be borne by the Partners who desire such disposition.

- (e) Notwithstanding clause (a)(i) above, if (i) during the Investment Period, the General Partner receives funds from the Disposition of Portfolio Securities within [●] months from the acquisition thereof, or (ii) the General Partner conducts a Bridge Finance and receives funds from the Disposition of such Bridge Finance during the period initially specified for such Bridge Finance, the General Partner may, in its discretion, reinvest the balance of funds from such Disposition after the deduction of any costs and expenses and any taxes and other public duties required for the Disposition, up to the amount contributed to acquire such Portfolio Security or Bridge Finance.
- (f) In connection with any distribution to the Partners made pursuant to this Section 6.2, the General Partner shall give each Partner who is entitled to such distribution a written notice without delay stating (i) with respect to a distribution of Distribution Proceeds or an in-kind distribution of Portfolio Securities, details of funds or Portfolio Securities to be distributed (including the Value at the Time of Distribution of Portfolio Securities to be distributed in kind), a summary of the business of the Portfolio Company, Etc. that is the source of the distribution, the reason for the distribution and any other matter that the General Partner deems appropriate, and (ii) with respect to a distribution of Other Investment Proceeds or Special Proceeds, details of funds, the reason for the distribution and any other matter that the General Partner deems appropriate.
- (g) When distributing Partnership Assets as set forth in this Section 6.2, the General Partner may, in its discretion, adjust any fractional amount as it deems appropriate.
- (h) The Partnership Assets distributed pursuant to this Section 6.2 shall become each Partner's own assets from the receipt of the distribution.
- (i) The General Partner shall not be liable for any fluctuation in price of distributed assets occurred after its receipt for any reason.

### **6.3 Distribution Limitations<sup>34</sup>**

- (a) Notwithstanding Section 6.2, the General Partner may not make any distribution of the Partnership Assets in excess of the balance of the Net Asset Amount after deducting unrealized gain.
- (b) If any Limited Partner receives a distribution in excess of the balance of the Net Asset Amount after deducting unrealized gain in violation with the preceding paragraph (a), such Limited Partner shall be liable to repay the Partnership Indebtedness to the extent of such excess amount and until five (5) years has elapsed from the date of such distribution.
- (c) To the extent of the amount of any cash or in-kind distributions made to any Partner in violation with clause (a) above, the General Partner shall return to the Partnership the

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<sup>34</sup> **Note to Draft:** Corresponding to Article 30 of the Japanese Model LPA.

Partnership Assets distributed to it and the fees set forth in Section 7.13(b)[, and cause the Special Limited Partner to return to the Partnership the Partnership Assets distributed to it].

#### **6.4 Reinvestment of Disposition Proceeds or Other Investment Proceeds<sup>35</sup>**

Unless otherwise permitted in Section 6.2(e) or any other provisions under this Agreement, the General Partner may not use any Disposition Proceeds or Other Investment Proceeds to make a Portfolio Investment.

#### **6.5 Distributions Upon Liquidation**

Distributions made in conjunction with the final liquidation of the Partnership will be applied or distributed as provided in Section 10.

#### **6.6 Taxes and Other Public Duties<sup>36</sup>**

- (a) The taxes and other public duties imposed on each Partner in connection with the business of the Partnership shall be borne by each Partner and shall not be paid out of the Partnership Assets; *provided that* the General Partner may pay any tax or other public duty imposed due to a Disposition of Partnership Assets out of the Partnership Assets to the extent that such tax or other public duty is to be borne by each Partner in proportion to its Interest Amount or applicable Sharing Percentage.
- (b) If any competent administrative agency requests that a Partner submit documents, materials, certificates or similar items in connection with taxes and other public duties imposed on such Partner in connection with the business of the Partnership, the General Partner shall, as appropriate, prepare these documents in such form as the Partner requires and send them to the Partner; *provided that* the General Partner may charge the Partner for the expenses that are necessary to prepare and send them in such manner as it deems appropriate in its discretion.
- (c) If (i) any Interested Partner fails to pay its taxes and other public duties in connection with the business of the Partnership without any justifiable reason, or (ii) the General Partner reasonably determines that the General Partner or the Partnership is required by Applicable Rules to withhold taxes with respect to any Interested Partner or pay any taxes and other public duties (including tax payments required by an amendment notice, determination notice, tax payment notice and any other tax assessment issued by a Japanese tax authority) on behalf of or with respect to any Interested Partner, the General Partner may, in making a distribution pursuant to Section 6.2, in its discretion, (x) deduct, from the Partnership Assets to be distributed to such Interested Partner, cash or property by an amount equal to such unpaid amount or such amount to be paid (as applicable) or (y) sell such property in such manner as the General Partner in its discretion deems appropriate, and pay such taxes and other public duties. The General Partner may alternatively make such withholding or payment of taxes or other public duties and collect cash or property in the same manner. Upon request of the General Partner, the Interested Partner shall immediately pay to the General Partner (a) the amount necessary for payment of such taxes or other public duties or (b) if the General Partner has already made such payment, the amount paid by the General Partner, together with interest at [●]% per annum for the period from the date of payment by the General Partner until the date of actual payment by the Interested Partner prorated on the basis of a 365-day year. These payments by Interested Partners shall not be treated as part of any contribution to the Partnership. The General Partner shall not be

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<sup>35</sup> **Note to Draft:** Corresponding to Article 23.3 of the Japanese Model LPA.

<sup>36</sup> **Note to Draft:** Corresponding to Article 31 of the Japanese Model LPA.

liable for any result of its determinations (including the determination and manner of any sale) under this clause (c).

- (d) A Foreign Limited Partner represents and warrants that it is not treated as having a permanent establishment for the purpose of the tax laws of Japan for any reason other than its status as a Partner and that it would not receive domestic source income set forth in Article 161(1)(i) of the Income Tax Act or domestic source income set forth in Article 138(1)(i) of the Corporation Tax Act if such Foreign Limited Partner did not conduct any business in Japan through a permanent establishment pursuant to this Agreement. If it is discovered that such representation and warranty is not true or correct or if a Foreign Limited Partner has failed to satisfy, or is likely to fail to satisfy, any of the requirements set forth in Article 41-21(1) of the Special Tax Measures Act, the Foreign Limited Partner shall immediately notify the General Partner of such fact in writing. For the purpose of withholding in connection with distributions of the Partnership Assets, the General Partner shall not be liable to the Partnership or the Interested Partners for the results of the withholding, so long as the General Partner relies on the Foreign Limited Partners' representation and warranty contained in this paragraph (d) and withholds taxes and other public duties as prescribed by the laws of Japan and applicable tax treaties.
- (e) An applicable Foreign Limited Partner shall prepare all documents required to be eligible for the relevant application under the Special Tax Measures Act (including, without limitation, application or amendments thereto required to be submitted to the director of the competent tax office to be eligible for application of these provisions) and submit such document to the General Partner in a timely manner (and, if the General Partner designates a due date, no later than such due date), and provide other cooperation as reasonably required (including, without limitation, identity confirmation procedures).
- (f) A Limited Partner shall prepare all documents that the General Partner requests for compliance with FATCA/CRS and submit such document to the General Partner in a timely manner (and, if the General Partner designates a due date, no later than such due date) and provide other cooperation as reasonably required (including, without limitation, identity confirmation procedures with respect to the Limited Partner and reporting of personal information to Japanese or non-Japanese tax authorities), and shall not object to these obligations.
- (g) A Limited Partner represents and warrants that the contents of any documents submitted to the General Partner pursuant to the preceding paragraph (f) are true and correct. If it is discovered that such representation and warranty is not true or correct, the Limited Partner shall immediately notify the General Partner of such fact in writing.
- (h) The General Partner shall not be liable for tax treatment of any Interested Partner in connection with contributions to the Partnership, distributions of Partnership Assets or profits resulting from the business of the Partnership, and the Interested Partners shall be responsible for confirming their respective tax treatment.

## 6.7 Hedging

The Partnership (either directly or indirectly through subsidiaries) may engage in *bona fide* hedging transactions in connection with the acquisition, holding, financing, refinancing or disposition of one or more Portfolio Investments, including investments in currency futures, forwards and other currency hedging contracts, swaps and other derivative contracts or instruments (such investments, contracts and instruments collectively, “**Hedging Transactions**”). Any amounts paid by the Partnership for any Hedging Transactions may be considered a Partnership Expense, capital invested by the Partnership in connection with the acquisition of the related Portfolio Investment(s) or as capital invested by the Partnership in



connection with the acquisition of a standalone Portfolio Investment, and any distributions resulting from any Hedging Transactions utilized for hedging purposes may be treated as Disposition Proceeds or Other Investment Proceeds from the related Portfolio Investment(s) or from a separate Portfolio Investment(s), in each case as the General Partner determines in good faith to be appropriate in the circumstances. For the avoidance of doubt, Portfolio Companies and other Persons in which the Partnership invests may enter into transactions involving derivative contracts or instruments as and when appropriate, which transactions will not be subject to any restrictions regarding such transactions that are imposed on the Partnership under this Agreement. Hedging Transactions may be entered into on a joint and several or cross collateralized basis with, or for the benefit of, any Alternative Investment Vehicles or its direct or indirect subsidiaries; *provided that*, to the extent that the Partnership agrees to be liable for more than its *pro rata* share of any obligation in connection with a Hedging Transaction in which one or more Alternative Investment Vehicles also participate, then the General Partner or its Affiliates will cause such Alternative Investment Vehicles (or their relevant direct or indirect investment subsidiaries) to contribute towards or otherwise be liable for their allocable share of such obligation.

## **7. Operations**

### **7.1 Authority of the General Partner<sup>37</sup>**

- (a) Subject to the provisions hereof, the General Partner shall have the power by itself (or through its duly appointed agents or attorneys) and shall be authorized and empowered on behalf and in the name of the Partnership to determine and execute the following matters and other Partnership operations and to represent the Partnership both in and out of court in order to carry out any and all of the businesses of the Partnership as set forth in Section 3.1:
  - (i) Management, administration, and disposal of Partnership Assets;
  - (ii) Exercise of voting rights related to Portfolio Securities and other rights pertaining to Partnership Assets;
  - (iii) Provision of management or technical guidance to Portfolio Companies;
  - (iv) Selection, consultation, and engagement of attorneys, certified public accountants, tax accountants, appraisers, advisors, and other professionals necessary for the Partnership's operations;
  - (v) Matters concerning the distribution of the Partnership Assets and the return of the Interest in the Partnership;
  - (vi) Preparation and maintenance of accounting books and records and other accounting-related matters of the Partnership; and
  - (vii) Payment of debts, including Partnership Expenses, costs, and fees incurred in connection with the Partnership's business.
  - (viii) Any other matters necessary to achieve the Partnership's objectives.
- (b) The General Partner may, to the extent permitted by clause (a)(iv) above [or any other provision in this Agreement], delegate or sub-delegate a portion of the Partnership's operations to any Person it deems appropriate in its discretion and liability.

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<sup>37</sup> **Note to Draft:** Corresponding to Article 14 of the Japanese Model LPA.

- (c) If the general partner engages in activities outside the scope stipulated in Article 3, Paragraph 1 of the Act and activities that can be considered complementary or integral to the businesses stipulated in Article 3, Paragraph 1 of the Act, the Partners cannot ratify such activities.

## **7.2 Specific Authority**

Without in any way limiting the foregoing, but subject to the express restrictions hereof, the General Partner, on behalf of the Partnership, shall have the right and the power, in its sole discretion, to, or to cause the Partnership to, as applicable:

- (a) take all actions necessary to fulfill the Partnership's purpose and objectives set forth in Sections 2.4 and 3.1;
- (b) identify, investigate, analyze, select, negotiate, structure, commit to, acquire, hold, manage and own Portfolio Investments;
- (c) dispose of (including by way of transfer, exchange, sale, pledge, charge or other form of encumbrance, sale or redemption) or distribute to the Partners all or any portion of any Portfolio Investments or other Partnership Assets, whether within the ordinary course of business or otherwise;
- (d) enter into purchase and sale agreements, concession agreements or any other agreement to make or dispose of Portfolio Investments, which agreements may include such representations, warranties, covenants, indemnities and guaranties as the General Partner deems necessary or advisable;
- (e) open, maintain and close bank accounts and brokerage, money market fund and similar accounts and draw checks or other orders for the payment of monies;
- (f) exercise all rights, powers, privileges and other incidents of ownership or possession with respect to Portfolio Investments, including (A) approve of a restructuring of an Investment, (B) participate in arrangements with creditors relating to such Investment and (C) exercise any and all voting or other rights related to any Securities, including to the extent applicable, the exercise of any options, warrants or other conversion features of such Securities and the selection of members of (1) the board of directors or (2) management or advisory groups, in each case, of any Portfolio Company (which members may include Partners or Affiliates or personnel of any Partner);
- (g) direct the formulation of investment policies and strategies for the Partnership and select and approve Portfolio Investments in accordance with this Agreement;
- (h) appoint an Administrator to undertake certain administration services for the Partnership and other assistance;
- (i) hire appraisers, auditors, attorneys, accountants, investment bankers and such other advisors, consultants, brokers, administrators or agents for the Partnership (including placement agents and finders in connection with the offer and sale of Interests) as it may deem necessary or advisable, and authorize any such agent to act for and on behalf of the Partnership or any Portfolio Investment;
- (j) institute, and settle or compromise, suits, administrative proceedings and other similar matters;
- (k) solicit proxies or consents in connection with any stockholder vote of any Portfolio Company or otherwise with respect to any other voting rights attaching to any other asset or property comprising a Portfolio Investment to the extent necessary or desirable to fulfil the purposes of the Partnership;

- (l) indemnify banks and other financial institutions in connection with any commitment letter or similar agreement of such institutions to provide financing to the Partnership, any Feeder Fund or any Portfolio Investment;
- (m) comply with any tax law or undertaking with any tax authority;
- (n) control all other aspects of the business or operations of the Partnership (including with respect to any Portfolio Investments) that the General Partner elects to so control; and
- (o) enter into, execute, maintain, perform and/or terminate such other insurance policies, indemnities, contracts, undertakings, agreements, deeds and any and all other documents and instruments as may be necessary or advisable to the carrying out of any of the Partnership's powers, objects or purposes or to the conduct of the Partnership's activities, including entering into instruments and other arrangements designed to reduce one or more risks associated with one or more Portfolio Investments.

### 7.3 Management During or Following Investment Period<sup>38</sup>

The General Partner shall manage the Partnership Assets pursuant to Exhibit 2 attached hereto within the scope of the business of the Partnership set forth in Section 3.1(a). The General Partner may make Portfolio Investments during the Investment Period only; *provided that* following the expiration or earlier termination of the Investment Period until the completion of the dissolution, liquidation and termination of the Partnership:

- (a) the Partnership will be permitted to retain the Portfolio Investments, make Portfolio Investments as to which the Partnership had, prior to the expiration or earlier termination of the Investment Period, entered into a letter of intent that is legally binding or contractual or other legally binding commitment, or completed the primary preparation, to make an investment therein (collectively, **"Follow-Up Investments"**);
- (b) in addition to Follow-Up Investments permitted pursuant to Section 7.3(a), the Partnership will be permitted to make additional investments in or relating to existing Portfolio Investments including investments made pursuant to future funding commitments of the Partnership or to the exercise by the Partnership of any options or other rights relating thereto (collectively, **"Follow-On Investments"**); and
- (c) the General Partner will not be permitted to give Capital Call Notices for any portion of the Partners' Unused Capital Commitments except for the purpose of making Follow-Up Investments and Follow-On Investments and, as appropriate, paying Partnership Expenses, Management Fees and other obligations and liabilities of the Partnership (including with respect to the repayment of indebtedness or to fund guarantees).

### 7.4 Specific Authorization

The Partnership, and the General Partner on behalf of the Partnership, may enter into and perform the Subscription Agreements without any further act, vote or approval of any Person, including any Partner, notwithstanding any other provision of this Agreement.

### 7.5 Several Interest Election

If, and to the extent, agreed between the General Partner and a Limited Partner, the General Partner may, in its sole discretion, apply any or all of the provisions of this Agreement, including with respect to (a) treatment as a Defaulting Limited Partner, (b) voting of an interest and (c) exercise of the General Partner's exclusion right pursuant to Section 4.8(a) or a Partner's excuse right pursuant to Section 4.8(b), with respect to such Limited Partner as if the

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<sup>38</sup> **Note to Draft:** Corresponding to Articles 23.1 and 23.2 of the Japanese Model LPA.

Interest held by the Limited Partner were held by one or more separate Limited Partners that had each made a Capital Commitment directly to the Partnership.

## 7.6 Investor Consent

- (a) In connection with any indebtedness or other obligation incurred in connection with Section 7.8(a) and notwithstanding any other provision of this Agreement, each of the General Partner, on its own behalf or on behalf of the Partnership, and the Partnership shall have the right, at its option and without further notice to or consent from any Limited Partner, to pledge (or otherwise create a security interest over) to any lender (i) the right of the General Partner to require the Limited Partners to make Capital Contributions to the Partnership, (ii) the right to receive Capital Contributions into an account of the Partnership (or an Alternative Investment Vehicle, as applicable), (iii) any collateral account of the Partnership into which the Capital Contributions by Limited Partners are to be made and (iv) any other assets of the Partnership permitted to be pledged under Section 7.8(a); *provided that* (A) any exercise of rights or remedies shall be in accordance with the terms of this Agreement and (B) in no way shall any Limited Partner be required to fund Capital Contributions to any account other than an account of the Partnership or an Alternative Investment Vehicle, as applicable.
- (b) Each Limited Partner hereby acknowledges and consents to the creation of any pledge or security interest created pursuant to Section 7.6(a) and further acknowledges and confirms for the benefit of one or more lenders or other Persons extending credit to the Partnership, any Alternative Investment Vehicle, any Portfolio Company or any entity through which the Partnership or any Alternative Investment Vehicle participates in any Portfolio Investment (each a “**Partnership Credit Party**”), that (i) it is obligated pursuant to this Agreement and its Subscription Agreement to make Capital Contributions without defense, counterclaim or offset of any kind, up to the amount of its Unused Capital Commitment to an account of the Partnership (or an account of an Alternative Investment Vehicle, if applicable), which amounts shall not satisfy such Limited Partner’s obligation to fund Capital Contributions until paid into such account, and which are called by or on behalf of the General Partner or by such lenders under one or more credit facilities if the Partnership is in default of its obligations (in accordance with the agreements between such lender, the General Partner and one or more Partnership Credit Parties), to pay such outstanding obligations of the Partnership and/or such other entities to such lenders; *provided that* the liability of the Limited Partners to make Capital Contributions shall not be increased thereby and shall not result in the loss of a Limited Partner’s limited liability status under this Agreement (even if such rights are pledged to multiple lenders (to the extent permitted hereunder)), (ii) any such lender may call Capital Contributions if the Partnership is in default of its obligations under one or more credit facilities in accordance with the agreements between such lender, the General Partner and one or more Partnership Credit Parties, (iii) certain provisions of this Agreement (including relating to the making of Capital Contributions, the incurrence of indebtedness and provisions of credit support) may not be modified without the consent of such lender, (iv) all Capital Contributions shall be made to an account of the Partnership (or an account of an Alternative Investment Vehicle, as applicable), (v) its Subscription Agreement and this Agreement constitute such Limited Partner’s legal, valid and binding obligation, enforceable against such Limited Partner in accordance with its terms and (vi) any lender may be relying (in whole or in part) on the funding by each Limited Partner of its Capital Contributions as its primary source of repayment. Further, each Limited Partner agrees to (x) reconfirm the acknowledgements set forth in this Section 7.6(b) in writing if requested by the General Partner and (y) provide such financial information to such lender regarding such Limited Partner as the General Partner reasonably deems necessary in connection with any indebtedness incurred or credit support provided by a Partnership Credit Party (and for the avoidance of doubt, each Limited Partner hereby

acknowledges and agrees to the matters outlined in this Section 7.6(b) for such lender and Persons extending credit to any Partnership Credit Party). No Limited Partner shall be required hereunder to pledge its Interest to any such lender.

- (c) In addition, and in connection with such credit facilities, the General Partner may request that each Limited Partner (i) provide information about such Limited Partner's beneficial owners and deliver copies of its formation documents and authorizing resolutions (or similar documents), in each case as reasonably requested by the lender in relation to such credit facilities and (ii) confirm to the Partnership or any lender (in accordance with the agreements between such lender and the Partnership and/or the General Partner) from time to time the amount of its Unused Capital Commitment. Each Partner acknowledges that lenders will rely on the foregoing agreement of the Limited Partners in connection with the extension of credit in accordance with Section 7.8(a). In connection with the foregoing, the General Partner shall have the right to agree (1) to subordinate distributions to the Limited Partners hereunder to payments required in connection with any indebtedness or credit support contemplated by this Agreement and (2) that during the term of any such indebtedness or credit support, the Partnership will not initiate bankruptcy, insolvency, liquidation, reorganization, dissolution proceedings or any analogous proceedings without the consent of any lender to the Partnership.
- (d) Notwithstanding anything herein to the contrary, upon the complete or partial withdrawal of a Limited Partner pursuant to Section 9.8 or Section 9.10(b), a Transfer of a Limited Partner's Interest pursuant to Section 9.1, or the exercise of any Limited Partner's right to terminate or cease funding of its Capital Commitment, with respect to such Limited Partner's share of the Partnership's obligation under any indebtedness incurred or credit support provided by any Partnership Credit Party, either (i) the amounts, if any, distributable to such transferring or withdrawing Limited Partner or such Limited Partner exercising a right to terminate or cease funding upon such withdrawal, Transfer or exercise of a right to terminate or cease funding, shall be reduced by its share of such obligations as provided herein, (ii) if such distributable amounts (which may equal zero) are less than its share of such obligations, such Limited Partner shall make a Capital Contribution (to the extent Unused Capital Commitments remain), at the time of or prior to such withdrawal, Transfer or exercise of a right to terminate or cease funding, equal to its share thereof as provided herein or the excess of such share over such distribution, as the case may be or (iii) such Limited Partner shall remain liable to the Partnership for such amount, if required by the terms of such indebtedness or credit support and such requirement is not waived by the relevant credit party and the General Partner.
- (e) Notwithstanding any provision of this Agreement to the contrary, (i) in the event that a Transfer of a Limited Partner's Interest or an exercise of a right to terminate or cease funding would result in a mandatory prepayment as a result of any reduction in the borrowing base under the terms of any credit facility of the Partnership, and the General Partner issues a Capital Call Notice to the Partners for purposes of making all or part of such prepayment, then, prior to the consummation of such Transfer or such exercise of a right to terminate or cease funding, such Limited Partner shall be obligated to fund Capital Contributions with respect to such Capital Call Notice in the amount and the manner set forth in Section 4.2 and (ii) any Limited Partner withdrawing pursuant to Section 9.8 or 9.10 or exercising a right to terminate or cease funding shall not be relieved of its obligation to make Capital Contributions for the payment of any indebtedness incurred or credit support provided by any Partnership Credit Party prior to the time such withdrawal or exercise of a right to terminate or cease funding occurs, which obligation to make Capital Contributions for the payment of such indebtedness or credit support thereupon shall be absolute and unconditional but shall not exceed

such Limited Partner's Unused Capital Commitment (or otherwise compromise or limit the rights and obligations of such Limited Partner under this Agreement).

## **7.7 No Limited Partner Management<sup>39</sup>**

### **(a) General**

No Limited Partner, in its capacity as such, shall take part in the management of the business and affairs of the Partnership or have any control over the business and affairs of the Partnership. Except as otherwise provided herein, no Limited Partner, in its capacity as such, shall have any right or authority to act for, deal with third parties on behalf of, or to bind the Partnership. For the avoidance of doubt, no Limited Partner, in its capacity as such, shall have any right or authority to vote or to direct the vote with respect to Portfolio Securities.

### **(b) [Requirement under the Special Taxation Measures Act]**

[If any of Limited Partners hope to receive benefit of the special exemptions under the Special Taxation Measures Act as stipulated in Section エラー! 参照元が見つかりません。 , all the Limited Partners shall not engage in any activities stipulated by the Order for Enforcement of the Special Taxation Measures Act (Cabinet Order No. 43 of 1957, as amended) as conduct of business operation under this Agreement, as defined in Article 41-21, Paragraph 1, Item 2 of the Special Taxation Measures Act . Any provisions of this Agreement that conflict with the immediately preceding sentence shall be interpreted and applied in a restrictive manner to ensure compliance with the immediately preceding sentence.]

### **(c) Certain Consents and Approvals**

- (i) Any matter for which the affirmative or negative consent or approval of the Advisory Committee is required under this Agreement or that may be waived by the Advisory Committee under this Agreement may instead be consented to, approved or waived by a Majority in Units of the Limited Partners, which action will be effective as if such consent, approval or waiver were given by the Advisory Committee; *provided that* (i) the General Partner shall not seek the approval of the Limited Partners for any matter after having received the affirmative disapproval of the Advisory Committee with respect to an identical matter and (ii) if the General Partner decides to seek the approval of the Limited Partners for a matter that is identical to, or substantially similar to, a matter in respect of which the General Partner initially sought the affirmative approval of the Advisory Committee and such approval was not received, then the General Partner agrees that it will inform the Limited Partners that the matter being referred to them was not approved by the Advisory Committee. The decision of whether a matter is submitted to a vote of the Advisory Committee or the Limited Partners shall be made by the General Partner in its sole discretion. If the General Partner receives advice from counsel that there is a reasonable likelihood that participation by any Advisory Committee member(s) or observer(s) appointed by one or more Limited Partners in any specific vote, approval, meeting or other action of the Advisory Committee is reasonably likely to result in legal or regulatory burdens or impediments that will have an adverse effect on the Partnership, the Investment Manager or their respective Affiliates (including on the consummation of any Portfolio Investment or operation of the related Portfolio Company pursuant to FDI Laws), the General Partner may determine in its discretion, that,

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<sup>39</sup> **Note to Draft:** Corresponding to Articles 17.1, 17.2 and 17.6 of the Japanese Model LPA.

notwithstanding any other provision of this Agreement, a vote of the relevant matter approved by a Majority in Units of the Limited Partners (including by written consent) may be substituted for, and have the same effect as, such vote, approval or other action of the Advisory Committee.

- (ii) Whenever the vote, consent or decision of the Limited Partners or of the Partners is required or permitted pursuant to this Agreement (including with respect to amendments to this Agreement pursuant to Section 11.1), such vote, consent or decision may, in the General Partner's discretion, be tabulated or made as if any non-responsive Limited Partner were not a Partner or a Combined Partner, as applicable so long as (i) a Majority in Units of the Limited Partners respond (whether in the affirmative or negative) to such vote, consent or decision prior to any deadline established by the General Partner and (ii) such deadline is no shorter than 15 Business Days; *provided that* the non-responsive Limited Partners excluded from such vote, consent or decision by the General Partner pursuant to this Section 7.7(c)(ii) shall not exceed 20% in Units of the Limited Partners. The General Partner will indicate within the notice of a requested vote, consent or decision of the Limited Partners whether the requested vote, consent or decision will be tabulated or made in accordance with this Section 7.7(c)(ii), and in such case will include an explanation of the effect of failing to respond prior to the relevant deadline.

(d) **Waiver of Rights**

Any Limited Partner will have the option, exercisable upon written notice to the General Partner, to irrevocably waive, to the fullest extent permitted by Applicable Rules, all or any portion of its rights under this Agreement, other than the right to make Capital Contributions called for hereunder.

## **7.8 Other Activities**

(a) **Borrowing Power and Limitations<sup>40</sup>**

- (i) For the purpose of making, holding or disposing of Portfolio Investments or to cover Partnership Expenses, the General Partner, on behalf of the Partnership, shall have the right, at its option to borrow funds and at the same time secure the borrowing by creating a security interest over the Capital Call Right in relation to the Unused Capital Commitments (including granting the lender of the Subscription Finance the right, authority or power to issue Capital Call Notices pursuant to Sections 4.3 or 4.4), *provided that* the borrowing does not remain outstanding in excess of [●] days, and the Outstanding Indebtedness do not exceed [●]% of the aggregated [Unused Capital Commitments / Capital Commitments] of all the Limited Partners as of the date of such borrowing.
- (ii) The General Partner may borrow funds for the purpose of Portfolio Investments or refinancing the debts related to the Partnership's borrowing, provision of guarantees or granting of security interests under this clause (a) and at the same time secure the borrowing by creating a security interest over the Partnership Assets (excluding the Capital Call Right; same in the proviso of subclause (iii) below), *provided that* the approval of the Advisory Committee is obtained and the Outstanding Indebtedness do not exceed [●]% of the Net Asset Amount as of the date of such borrowing.
- (iii) The General Partner may provide guarantees, create security interests over the Capital Call Right in relation to Unused Capital Commitment, and create

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<sup>40</sup> **Note to Draft:** Corresponding to Article 15.

security interests over the Partnership Assets in relation to borrowings by the Portfolio Companies, Etc. or the investee companies thereof in connection with Portfolio Investments; *provided that* (A) the Outstanding Indebtedness after providing the guarantee does not exceed [●]% of the aggregated Capital Contributions of all the Partners as of the date of the incurrence of such indebtedness, (B) the Outstanding Indebtedness after creating a security interest over the Capital Call Right in relation to the Unused Capital Commitments does not exceed [●]% of the aggregated [Unused Capital Commitments / Capital Commitments] of all the Limited Partners as of the date of the creation of such security interest, and (iii) the Outstanding Indebtedness after creating a security interest over Partnership Assets does not exceed [●]% of the Net Asset Amount as of the date of the creation of such security interest.

- (iv) In the event the General Partner undertakes the Subscription Finance, each Partner shall comply with the reasonable requests of the lender of the Subscription Finance, including confirming the conditions of their respective Capital Commitments, providing financial information, consenting to the creation of security interests over the Capital Call Right, waiving defences against the lender, submitting legal opinions of legal counsel, and executing agreements and other documents.

(b) **Conflict of Interest**<sup>41</sup>

- (i) A Limited Partner may (i) engage in the same or similar business as the business of the Partnership, or (ii) become a partner (including general partner), member (including member with unlimited liability), shareholder, investor, director, or business executor, or hold any similar position in any partnership, company or any other entity whose business purpose is to conduct investment activities and the same or similar to that of the Partnership.
- (ii) The General Partner shall not engage in the same or similar business as the business of the Partnership (excluding the formation of Successor Funds) or conduct investment activities as a general partner, member with unlimited liability, director, business executor, or any similar position in a Successor Fund, until the earlier of (A) the time when the total amount of the Invested Amount and the Capital Contributions used for the Partnership expenses and Management Fees [and the Capital Contributions reasonably expected to be used for these purposes] reaches [●]% of the aggregated Capital Commitment of all Partners, or (B) the expiration of the Investment Period; *provided that*, the restriction under this subclause (ii) does not apply if approved by [●]% or more of the Advisory Committee members or [●]% in Units of the Limited Partners.
- (iii) Notwithstanding the previous paragraph, the General Partner may form or cause to be formed a partnership, company or any other entity whose business purpose is to conduct investment activities (the “**Co-Investment Fund**”) solely for the purpose of making the Portfolio Investments where the acquisition cost of which exceeds the Maximum Single Investment Amount, but only to the extent of the amount exceeding the Maximum Single Investment Amount. The terms of co-investment (the “**Co-Investment**”) by the Co-Investment Fund shall be as follows:

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<sup>41</sup> **Note to Draft:** Corresponding to Article 19 of the Japanese Model LPA.



- (A) the Co-Investment shall be made on terms that are substantially the same as those of the Partnership's investment in the Portfolio Investment at the relevant Co-Investment opportunity; and
  - (B) the Co-Investment shall be disposed of at approximately the same time and on substantially the same terms as the Partnership's disposal of its Portfolio Investment acquired at the relevant Co-Investment opportunity,  
  
*provided that*, the General Partner may, in its sole discretion, structure any co-investment opportunity so that the proposed co-investors will not bear any broken deal expenses, in which case, the Partnership may be required to bear all such broken deal expenses.
- (iv) Notwithstanding subclause (ii) above, the General Partner is not prohibited from (A) managing and operating the Existing Funds as a general partner, member with unlimited liability, director, business executor, or in any similar position, and (B) managing and operating partnerships, companies, or similar entities formed for the purpose of [●] as a general partner, member with unlimited liability, director, business executor, or in any similar position.
  - (v) If the General Partner manages and operates the Existing Funds and the Successor Funds as a general partner, member with unlimited liability, director, business executor, or in any similar position, the General Partner may allocate investment opportunities among the Partnership, the Existing Funds, and the Successor Funds in a manner that the General Partner, in its discretion, considers appropriate.
  - (vi) A Limited Partner may engage in transactions with the Partnership for their own benefit or for the benefit of third parties.
  - (vii) The General Partner shall not:
    - (A) manage the Partnership Assets by entering transactions with the General Partner, its directors, executive officers, statutory auditors, officers, or employees;
    - (B) manage the Partnership Assets by entering transactions with assets managed for the benefit of client (*kenrisha*) as defined in Article 42, Paragraph 1 of the FIEA;
    - (C) engage in transactions with the Partnership for its own benefit or for the benefit of third parties (excluding transactions set out in items (A) and (B));
    - (D) invest in Portfolio Companies, Etc. or candidate Portfolio Companies for its own account except as contemplated under Section エラー! 参照元が見つかりません。; and
    - (E) cause the Partnership or any Portfolio Company, Etc. to engage in transactions with the Related Parties [or Other Funds ].
  - (viii) Notwithstanding subclause (vii)(A) above, the General Partner may manage the Partnership Assets by entering transactions that (A) satisfy all requirements under Article 128, item 2 of the Cabinet Office Order on Financial Instruments Business, with the consent of [a majority] in the number of Limited Partners representing at least [75]% in Units of the Limited Partners; *provided that* the Limited Partners that are the Related Parties [and Special Limited Partners] are

deemed not to have consented; *provided further* that if a Limited Partner that does not consent to the relevant transaction requests within [20] days of receiving an explanation of the transaction and the reasons for undertaking it, the Interest held by such Limited Partner shall be purchased with the Partnership Assets at a fair value by the date that is [60] days after the date of the transaction, or (B) have received the approval of the relevant Commissioner of the Financial Services Agency under Article 128, item 3 of the Cabinet Office Order on Financial Instruments Business.

- (ix) Notwithstanding subclause (vii)(B), the General Partner may manage the Partnership Assets by entering transactions that (A) satisfy all requirements under Article 129, Paragraph 1, Item 1 of the Cabinet Office Order on Financial Instruments Business, (B) satisfy all requirements under Article 129, Paragraph 1, Item 2 of the Cabinet Office Order on Financial Instruments Business with the consent of [a majority] in the number of the Limited Partners representing at least [75]% in Units of the Limited Partners; *provided that* the Limited Partners that are the Related Parties [and Special Limited Partners] are deemed not to have consented; *provided further* that if a Limited Partner that does not consent to the relevant transaction requests within [20] days of receiving an explanation of the transaction and the reasons for undertaking it, the Interest held by such Limited Partner shall be purchased with the Partnership Assets at a fair value by the date that is [60] days after the date of the transaction, or (C) have received the approval of the relevant Commissioner of the Financial Services Agency under Article 129, Paragraph 1, Item 6 of the Cabinet Office Order on Financial Instruments Business.
- (x) Notwithstanding subclauses (vii)(C) and (vii)(E) above, if the Investment Period expires within [●] days and the General Partner reasonably determines that it is not feasible to dispose of [all / the primary portion of] the Portfolio Securities held by the Partnership by the end of the Investment Period, the General Partner may, after giving the Advisory Committee an opportunity to provide comments or advice and subject to clauses (viii) and (ix) above, sell all or part of such Portfolio Securities to any partnership, company or any other entity (A) whose business purpose is to conduct investment activities and (B) of which the General Partner or any Related Party is involved in the management as a general partner, member with unlimited liability, director, business executor or in a similar role.
- (xi) Notwithstanding subclauses (vii)(C) through (vii)(E), if the General Partner or the Related Parties have given the Advisory Committee or the Limited Partners holding [●]% in Units of the Limited Partners an opportunity to provide comments or advice in advance, the General Partner and the Related Parties may enter the transactions as set out in subclauses (vii)(C) through (vii)(E); *provided that* such transactions are entered in compliance with Applicable Rules.
- (xii) The General Partner shall not be bound by the opinions or advice of the Advisory Committee members or Limited Partners as stipulated in this Section 7.8(b).
- (xiii) When seeking consent or providing an opportunity for comments or advice from the Advisory Committee members or Limited Partners under this clause (b), the General Partner shall provide prior written notice detailing the content of the proposed transactions (including the subject and value of the transactions) to the Advisory Committee members or Limited Partners, as applicable.

## **7.9 Valuation<sup>42</sup>**

The General Partner shall determine the value of Portfolio Securities held by the Partnership based on [the market value / the fair value in accordance with IFRS / their fair value in accordance with the United States generally accepted accounting principles / the method consistent with the guideline for the determination of the fair value as prescribed by International Private Equity and Venture Capital Valuation Guidelines].

## **7.10 Administration of Partnership Assets<sup>43</sup>**

- (a) The General Partner shall hold and manage any Capital Contributions made by the Limited Partners pursuant to this Agreement separately from any assets owned or held by the General Partner on its own behalf and any assets of the other businesses conducted by the General Partner in accordance with the requirements set forth in Article 40-3 of the FIEA and Article 125 of the Cabinet Office Order on Financial Instruments Business. The General Partner shall hold and manage the Partnership Assets separately from any assets owned or held by the General Partner on its own behalf and any other assets managed by the General Partner in accordance with the requirements set forth in Article 42-4 of the FIEA and the paragraphs in Article 132 of the Cabinet Office Order on Financial Instruments Business.
- (b) When the General Partner has acquired any Partnership Assets, the General Partner shall promptly take necessary procedures to change the name under the shareholders' register or otherwise to perfect the acquisition of such Partnership Assets.
- (c) Receipt, deposit and payment of cash belonging to the Partnership Assets shall be made through the Partnership Bank Account.
- (d) In addition to the foregoing, the Partnership Assets shall be administered in such manner as the General Partner in its discretion deems appropriate in accordance with the Applicable Rules.

## **7.11 Duty of Care of the General Partner<sup>44</sup>**

The General Partner shall conduct its operations with the care of a prudent manager, in accordance with Applicable Rules, and in line with the purpose of the Partnership's business. The General Partner shall manage and operate the Partnership Assets in good faith for the benefit of the Limited Partners.

## **7.12 Partner's Liability; Indemnification<sup>45</sup>**

### **(a) Exculpation**

To the fullest extent permitted by law, none of the General Partner, the Limited Partners, the Investment Manager, the Administrator, their Affiliates (excluding the Partnership), and the current and former Key Persons, officers, directors, employees, partners, stockholders, members, (to the extent specifically agreed by the General Partner on behalf of the Partnership) agents of any of the foregoing or any member of the Investment Committee or the Advisory Committee (each, a "**Covered Person**") will be liable to the Partnership, any Feeder Fund or any Alternative Investment Vehicle or to any Partner for any losses sustained or liabilities incurred as a result of any act or

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<sup>42</sup> **Note to Draft:** Corresponding to Article 25.4 of the Japanese Model LPA.

<sup>43</sup> **Note to Draft:** Corresponding to Article 24 of the Japanese Model LPA.

<sup>44</sup> **Note to Draft:** Corresponding to Article 16 of the Japanese Model LPA.

<sup>45</sup> **Note to Draft:** Corresponding to Article 22 of the Japanese Model LPA.

omission taken or suffered by the General Partner or any such other Person if the conduct of the General Partner or such other Person did not constitute willful misconduct or gross negligence. The termination of an action, suit or proceeding by judgment, order, settlement or upon a plea of *nolo contendere* or its equivalent will not, in and of itself, create a presumption or otherwise constitute evidence that the General Partner or such other Person is not entitled to exculpation hereunder; *provided that* a final, non-appealable judgment or order adverse to the General Partner or such other Person expressly covering the exculpation exceptions set forth in the preceding sentence will constitute evidence that the General Partner or such other Person is not so entitled to exculpation.

(b) **Actions of Other Partners or Agents**

To the fullest extent permitted by law, the General Partner, in its capacity as General Partner of the Partnership, will not be liable to the Partnership, any Feeder Fund or any Alternative Investment Vehicle or any other Partner for any action taken by any other Partner, nor will the General Partner (in the absence of willful misconduct or gross negligence by the General Partner) be liable to the Partnership or any other Partner for any action of any agent of the Partnership which has been selected and monitored in good faith by the General Partner with reasonable care.

(c) **Indemnification**

The Partnership shall indemnify and hold harmless the General Partner, the Limited Partners, the Investment Manager, the Administrator and their Affiliates, and all current and former Key Persons, officers, directors, employees, partners, stockholders, members, (to the extent specifically agreed by the General Partner on behalf of the Partnership) agents of any of the foregoing and any member of the Investment Committee or the Advisory Committee (each, an “**Indemnatee**”), to the fullest extent permitted by law from and against any and all losses, claims, demands, costs, damages, liabilities, reasonable expenses of any nature (including costs of investigation and attorneys’ fees and disbursements), judgments, fines, settlements and other amounts, of any nature whatever, known or unknown, liquidated or unliquidated, including repayment of the debts of the Partnership (collectively, “**Liabilities**”) arising from any and all claims, demands, actions, suits or proceedings, whether civil, criminal, administrative or investigative (collectively, “**Actions**”), in which the Indemnatee may be involved, or threatened to be involved as a party or otherwise, relating to any Portfolio Investments, or otherwise relating to the performance or non-performance of any act concerning the activities of the Partnership, any Feeder Fund or any Alternative Investment Vehicle, including providing advice or guidance to a Portfolio Company and acting, or deemed to be acting, as a director or the equivalent of a Portfolio Company during the period of time in which the Partnership or any Alternative Investment Vehicle holds an interest therein, or the performance or alleged non-performance by such Indemnatee of any of the General Partner’s responsibilities hereunder, unless any such conduct by the Indemnatee constituted willful misconduct or gross negligence. The termination of an action, suit or proceeding by judgment, order, settlement or upon a plea of *nolo contendere* or its equivalent will not, in and of itself, create a presumption or otherwise constitute evidence that the Indemnatee is not entitled to indemnification hereunder; *provided that* a final, non-appealable judgment or order adverse to the Indemnatee expressly covering the indemnification exceptions set forth in the preceding sentence will constitute evidence that the Indemnatee is not so entitled to indemnification. The General Partner is authorized to enter into such separate agreements on behalf of the Partnership with or benefitting Indemnitees on terms consistent with this Section 7.12(c) as the General Partner in its sole discretion considers necessary or desirable to give full and complete effect to the indemnity

provisions set forth herein. The General Partner is authorized to notify each Indemnatee of the provisions of this Section 7.12(c).

(d) **Advancement of Expenses**

Expenses incurred by an Indemnatee in defending any Action subject to this Section 7.12 will be advanced by the Partnership prior to any judgment or settlement of such Action (but not during any appeal therefrom) entered by any court of competent jurisdiction which includes a finding that such Indemnatee's conduct constituted willful misconduct or gross negligence, but only if the Partnership has received a written commitment by or on behalf of the Indemnatee to repay such advances to the extent that, and at such time as, it has been determined by a final, non-appealable judgment or settlement entered by any court of competent jurisdiction that (a) the act or failure to act of the Indemnatee was not in good faith or not in a manner it believed to be in, or not contrary to, the best interests of the Partnership or (b) the Indemnatee's conduct constituted willful misconduct or gross negligence. Notwithstanding the foregoing (but without overriding Section 7.12(c)), the Partnership will not advance any such expenses incurred in an Action brought (i) against an Indemnatee by at least a Majority in Units of the Limited Partners, whether such Action is brought directly or in the name of the Partnership by such Limited Partners, (ii) by an Indemnatee against the Partnership (other than in connection with an Action brought by such Indemnatee to enforce its right to indemnification hereunder) or (iii) among the General Partner, the Investment Manager, the Administrator, any other Related Party or their respective members, employees, partners (other than Limited Partners or limited partners in any Other Fund) or shareholders, as the case may be.

(e) **Indemnatee Obligations**

Each Indemnatee will use commercially reasonable efforts to pursue any insurance, contribution or indemnity claims it may have against third parties with respect to the expenses incurred in defending any Action subject to this Section 7.12; *provided that* no such claims, nor any efforts or obligation hereunder, will delay the availability of the advances provided in Section 7.12(d). Each Indemnatee, other than the General Partner, will obtain the written consent of the General Partner prior to entering into any compromise or settlement which would result in an obligation of the Partnership to indemnify such Indemnatee.

(f) **No Third-Party Beneficiaries**

The provisions of this Section 7.12 are for the benefit of the Indemnitees and will not be deemed to create any rights for the benefit of any other Person, except as otherwise provided in Section エラー! 参照元が見つかりません。 .

(g) **Limited Partner's Action**

If any Limited Partner receives any demand or other claim of any rights from any third party with respect to the business of the Partnership, such Limited Partner shall immediately notify the General Partner thereof. The General Partner shall, promptly after receipt of such notice, take necessary measures to ensure that the Limited Partner is not directly subject to such demand or claim and the Limited Partner shall cooperate with the measures taken by the General Partner.

## 7.13 Fees and Expenses

### (a) Expenses<sup>46</sup>

The Partnership will bear and be charged with Partnership Expenses, to the extent such expenses are not paid or reimbursed by Portfolio Companies or other Persons. The General Partner or its Affiliates may elect to pay such expenses subject to reimbursement by the Partnership. The General Partner will bear and be charged with all Other Expenses, to the extent such expenses are not paid or reimbursed by other Persons (except the Partnership and Portfolio Companies). Partnership Expenses and the repayment of any borrowing incurred or credit support provided by the Partnership may be allocated against and satisfied from (and expenses of any Alternative Investment Vehicle may be offset against and paid out of) items of, or amounts that would otherwise constitute, Disposition Proceeds, Other Investment Proceeds and Special Proceeds in a manner reasonably determined by the General Partner. Partners may be required to make Capital Contributions to the extent of their Unused Capital Commitments for the payment of such Partnership Expenses to the extent the Partnership does not have sufficient funds to pay such expenses. Amounts paid in respect of Partnership Expenses related to a Portfolio Investment may be treated as Capital Contributions for such Investment for all purposes of this Agreement if the General Partner in its good faith determination deems such treatment appropriate. The General Partner may withhold on a *pro rata* basis from any distributions amounts necessary to create, in its sole discretion, appropriate reserves for expenses and liabilities, contingent or otherwise, of the Partnership.

### (b) Management Fee<sup>47</sup>

- (i) The General Partner shall receive, from the Partnership Assets, the management fee as set forth in this Section 7.13(b) for managing the business affairs of the Partnership (the “**Management Fee**”).
- (ii) The General Partner shall receive the Management Fee for each Fiscal Year in the following amounts (each an annual amount) in cash in advance within [●] Business Days from the beginning of the Fiscal Year:
  - (A) for the first Fiscal Year, an amount equal to [●]% of the total Capital Commitments of all Partners (prorated on the basis of a 365-day year);
  - (B) for each of the second and subsequent Fiscal Years until the Fiscal Year in which the expiration date of the Investment Period falls, an amount equal to [●]% of the total Capital Commitments of all Partners; and
  - (C) thereafter, an amount equal to [●]% of the [Unrealized Invested Capital/Net Asset Amount] as of the end of the immediately preceding Fiscal Year.
- (iii) The General Partner shall be entitled to receive a commission, fee or other consideration (the “**Deductible Fees**”) from a Portfolio Company, Etc. in connection with a Portfolio Investment, or the management or technical guidance or advice or other management support provided by the General Partner to a Portfolio Company. If the General Partner or any Related Parties has received any Deductible Fees, the Management Fee to be payable on the next payment date therefor shall be reduced by an amount equal to [●]% of

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<sup>46</sup> **Note to Draft:** Corresponding to Article 32 of the Japanese Model LPA.

<sup>47</sup> **Note to Draft:** Corresponding to Article 33 of the Japanese Model LPA.

such Deductible Fees that the Partnership is allocated on a *pro rata* basis (determined by reference to the Partnership's actual or expected percentage share of the actual or expected aggregate ownership interests of the Partnership, Co-Investment Funds and/or Other Funds (if applicable) in such Portfolio Company, Etc.) (the "**Management Fee Deduction**"). Each Partner who made a contribution to a Portfolio Investment for such Portfolio Company, Etc. shall be relieved of its liability for the Management Fee payable on the payment date by its share of the Management Fee Deduction in proportion to its Sharing Percentage in respect of such Portfolio Investment. If the total amount of the Management Fee payable on the payment date thereof is less than the Management Fee Deduction, the deduction shall be made from the Management Fee payable on each of the next and subsequent payment dates until the Management Fee Deduction is applied in full.

- (iv) In the event that, as of the date of the final distribution in the liquidation of the Partnership, the aggregate amount of the Management Fee received by the General Partner exceeds the aggregate amount of the Management Fee Deduction, the General Partner shall pay in cash an amount equal to such excess to the Partnership Bank Account. Such cash shall be deemed as having been directly paid to each Partner in proportion in a manner similar to the treatment pursuant to the preceding paragraph (iii). Such payment shall not be treated as a capital contribution by the General Partner, and shall not affect any Partner's Capital Contributions and Unused Capital Commitment.

(c) **Feeder Fund Expenses**

Notwithstanding any other provision of this Agreement, the General Partner may in its sole discretion (a) specially allocate to a Feeder Fund any Partnership Expenses and any other expenses, obligations, indemnities or liabilities, contingent or otherwise, of the Partnership relating to such Feeder Fund and (b) withhold, on a non-*pro rata* basis, from any distributions otherwise payable to a Feeder Fund, or require such Feeder Fund to make Capital Contributions to fund, any amounts necessary to create appropriate reserves for, or pay, such expenses and liabilities and any Feeder Fund expenses and liabilities. Notwithstanding any other provision of this Agreement, the General Partner may in its sole discretion hold all or any portion of any Capital Contribution made by a Feeder Fund in reserve and apply such amounts at any time to satisfy any expenses, obligations, indemnities or liabilities, contingent or otherwise, of such Feeder Fund and any amounts so reserved or applied will not be deemed to have been contributed to the Partnership.

**7.14 Advisory Committee<sup>48</sup>**

- (a) The General Partner shall organize an advisory committee of the Partnership (the "**Advisory Committee**") pursuant to this Section 7.14.
- (b) The Advisory Committee shall consist of [individuals / officers or employees of the respective Limited Partners] appointed at their discretion by Limited Partners whose Capital Commitment is JPY[●] or more (excluding Limited Partners who are Related Parties[, Special Limited Partners,] or Defaulting Limited Partners); *provided that*, in the case of Limited Partners that are individuals, the Limited Partner themselves shall be the member of the Advisory Committee. No Limited Partner will have the right to appoint more than one voting member of the Advisory Committee.
- (c) Notwithstanding clause (b) above, the General Partner may, if there is any reasonable ground, (i) refuse the appointment of an individual designated by a Limited Partner to

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<sup>48</sup> **Note to Draft:** Corresponding to Article 20 of the Japanese Model LPA.

the Advisory Committee, and (ii) remove a member of the Advisory Committee; *provided that*, in the case of subclause (ii), the General Partner shall notify the other members of the Advisory Committee in writing of its intention to remove a specific member of the Advisory Committee in advance. If [●]% or more of such other members object to the removal within [●] Business Days from their receipt of the notice, the General Partner shall not carry out the proposed removal.

- (d) If a member of the Advisory Committee resigns, is removed, or dies, the Limited Partner who appointed the relevant member may appoint a successor.
- (e) If a Limited Partner becomes a Defaulting Limited Partner, such Limited Partner shall cease to be entitled to appoint a member to the Advisory Committee under clause (b) or (d), and any member appointed by such Limited Partner shall be deemed automatically dismissed.
- (f) The term of office for members of the Advisory Committee shall be indefinite.
- (g) The Advisory Committee shall be entitled to:
  - (i) [approve / approve, provide opinions or advice on] the actions specified in Section 7.8(b)(ii) and Sections 7.8(b)(vii)(C) through 7.8(b)(vii)(E), as requested in advance by the General Partner;
  - (ii) [approve / provide opinions or advice on] the actions or transactions of the General Partner or the Related Parties conflicting or potentially conflicting with the interests of the Partnership (excluding transactions specified in Sections 7.8(b)(vii)(A) and 7.8(b)(vii)(B)), as requested in advance by the General Partner;
  - (iii) provide opinions or advice on matters reported by the General Partner pursuant to clause (l) below; and
  - (iv) provide opinions or advice on matters related to the Partnership or approve matters, in each case as requested by the General Partner.

The General Partner may carry out the actions or transactions specified in subclauses (i), (ii) and (iv) above only if the General Partner has, pursuant to the relevant items, obtained the approval of the Advisory Committee or offered an opportunity for the Advisory Committee to provide its opinions or advice; *provided that*, with respect to subclauses [(i), (ii),] (iii) and (iv) above, the General Partner shall not be bound by the opinions or advice provided pursuant to the relevant items.

- (h) The General Partner shall convene meetings of the Advisory Committee. The individual designated by the General Partner shall act as the chairman.
- (i) The General Partner shall convene meetings of the Advisory Committee by providing a notice to each member at least [●] Business Days prior to the proposed date of meeting, *provided that* in case of urgency, the meetings may be convened with a shorter notice period.
- (j) Approval of the Advisory Committee shall be granted with the consent of [●]% or more members.
- (k) The General Partner shall prepare the minutes of the Advisory Committee meetings and keep them at the principal office of the Partnership for [●] years from the date of preparation.
- (l) The General Partner shall report, without delay, the following matters to the Advisory Committee; provided that, the reports on subclauses (ii) and (iii) shall only be required



if the relevant matters are highly likely to have a material adverse impact on the management or operation of the Partnership:

- (i) Calculation details for the amount to be deducted from the Management Fee when the General Partner or the Related Parties receive Deductible Fees exceeding JPY[●].
  - (ii) Disputes (including court proceedings by way or mediation, arbitration, etc.) related to the Partnership and the likelihood and details of future any such disputes.
  - (iii) Inspections and investigations by administrative agencies of the General Partner or the Related Parties and the details thereof.
- (m) The General Partner shall not pay any remuneration or other compensation to members of the Advisory Committee out of its own assets or the Partnership Assets.
- (n) The General Partner may reimburse members of the Advisory Committee for reasonable transportation and other actual expenses out of the Partnership Assets.
- (o) Limited Partners or their officers or employees participating in the Advisory Committee shall not bear any liability to the Partnership or other Partners for their activities as members of the Advisory Committee (except in cases of wilful misconduct or gross negligence).
- (p) [If any of the Limited Partners hope to receive benefit of the special exemptions under the Special Taxation Measures Act as stipulated in Section エラー! 参照元が見つかりません。 ,] all the Limited Partners in the Advisory Committee shall not engage in any activities stipulated by the Order for Enforcement of the Special Taxation Measures Act as conduct of business operation under this Agreement, as defined in Article 41-21, Paragraph 1, Item 2 of the Special Taxation Measures Act. Any provisions of this Agreement that conflict with the immediately preceding sentence shall be interpreted and applied in a restrictive manner to ensure compliance with the immediately preceding sentence.]
- (q)

## **8. Books and Records; Accounting; Reporting**

### **8.1 Books and Records; Accounting<sup>49</sup>**

The General Partner will cause to be kept, at the registered office of the Partnership, or at such other location as the General Partner reasonably deems appropriate, full and proper ledgers, other books of account and records of all receipts and disbursements, other financial activities and the internal affairs of the Partnership. The books of the Partnership will be maintained, for financial reporting purposes, in accordance with accounting procedures as prescribed by the Partnership Accounting Guidelines consistently applied in the base currency of the Partnership, which is Japanese yen.

### **8.2 Inspection<sup>50</sup>**

- (a) Each Limited Partner, personally or through an authorized representative, may, examine and copy (at its own cost and expense and subject to reasonable confidentiality restrictions established by the General Partner) the following books and records of the

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<sup>49</sup> **Note to Draft:** Corresponding to Articles 25.2 and 25.3 of the Japanese Model LPA.

<sup>50</sup> **Note to Draft:** Corresponding to Articles 17.3 through 17.5 of the Japanese Model LPA.

Partnership during business hours of the General Partner and upon [●] Business Days' prior written notice to the General Partner:

- (i) books and records stipulated in Section 8.1;
  - (ii) financial statements and quarterly financial information;
  - (iii) audit reports stipulated in Section 8.3(a); and
  - (iv) this Agreement
- (b) A Limited Partner shall have a right to have the financial status of the Partnership and the business operation conducted by the General Partner audited by an audit firm or a certified public accountant appointed at their own expense, with a [●] Business Days' prior written notice to the General Partner. If a significant error is found in the accounting of the Partnership as a result of the audit, the Limited Partner may, upon request, be reimbursed by the Partnership for the reasonable costs incurred for the audit.
- (c) A Limited Partner may at any time submit written questions to the General Partner regarding the financial status of the Partnership and the business operation conducted by the General Partner. Upon receiving such written questions, the General Partner shall respond to the questions in an appropriate manner within [●] Business Days.

### 8.3 Reports to the Limited Partners<sup>51</sup>

- (a) For each Fiscal Year, the General Partner shall prepare, as prescribed in the Partnership Accounting Guidelines, the Financial Statements. After the External Auditor's audit of the Financial Statements in accordance with generally accepted accounting principles in Japan (solely with respect to a balance sheet, a statement of income or loss and schedules annexed to the foregoing; the same applies in this Section 8.3), the General Partner shall send the Financial Statements to each Partner, together with an opinion (or a copy of it) regarding such audit, within three (3) months after the end of the relevant Fiscal Year.
- (b) Within [●] Business Days after the end of the first quarter, the second quarter and the third quarter of each Fiscal Year, the General Partner shall prepare documents that contain financial information including information reasonably necessary to the Limited Partners (the "**Quarterly Financial Information**") and deliver to each Limited Partner.
- (c) In the event that the General Partner has borrowed funds, provided guarantees or created security interests over the Partnership Assets pursuant to Section 7.8, the General Partner shall (i) with respect to those consummated during a period from the commencement of the first quarter to the end of the third quarter, include its terms and conditions and other necessary information in the Quarterly Financial Information and (ii) with respect to those consummated during the fourth quarter, notify such information in writing to each Limited Partner simultaneously with the delivery of the Financial Statements, except in each case for matters contained in the notice delivered pursuant to Section 3.3(e)(iv).
- (d) When the General Partner sends to each Limited Partner the Financial Statements pursuant to clause (a), the General Partner shall, concurrently therewith, provide information concerning profits, expenses, assets and liabilities allocated to the Limited Partner as the Limited Partner reasonably requires for its tax return in such manner as the General Partner in its discretion deems appropriate.

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<sup>51</sup> **Note to Draft:** Corresponding to Article 26 of the Japanese Model LPA.

- (e) The General Partner shall keep the Financial Statements, together with this Agreement and an opinion regarding the audit of the Financial Statements, at the principal office of the Partnership for five (5) years from the date on which such Financial Statements are prepared.
- (f) In the event that there is any Limited Partner that is not a Professional Investor, the General Partner shall prepare an investment report for each Fiscal Year pursuant to Article 42-7, Paragraph 1 of the FIEA and send such investment report to such Limited Partner simultaneously with the delivery of the Financial Statements pursuant to clause (a) above.

#### **8.4 Meetings of Partners<sup>52</sup>**

- (a) The General Partner shall organize and convene a meeting of the Limited Partners (each, a “Partners’ Meeting”) promptly after the delivery of the Financial Statements pursuant to Section 8.3(a), and in any case within [●] Business Days from the end of each Fiscal Year.
- (b) The General Partner shall convene a Partners Meeting by providing written notice to each Limited Partner at least [●] Business Days prior to the meeting date if requested by [●]% in Units of the Limited Partners, or whenever the General Partner deems it necessary.
- (c) At the Partners Meeting, the General Partner shall report on the management of the Partnership and the Partnership Assets, as well as any other matters that the General Partner deems necessary to report to the Limited Partners. The Limited Partners may express their opinions to the General Partner regarding these matters. For the avoidance of doubt, the General Partner shall not be bound by the opinions of the Limited Partners provided pursuant to this clause (c).
- (d) The Partners Meeting may be held through conference calls, video calls, or other equivalent communication tools, *provided that* all participants in the meeting can communicate with each other.

#### **8.5 Confidentiality of Information**

The General Partner has the right to keep confidential from the Limited Partners (and their respective agents and attorneys), for such period of time as the General Partner deems reasonable, any information that the General Partner reasonably believes to be in the nature of trade secrets or other information, the disclosure of which the General Partner in good faith believes is not in the best interests of the Partnership or any Portfolio Company or could damage the Partnership or such Portfolio Company or their respective businesses or which the Partnership or such Portfolio Company is required by law or by agreement with a third party to keep confidential. Notwithstanding anything to the contrary in this Agreement but subject to Applicable Rules, the General Partner shall not be required to provide any Limited Partner with any Sensitive Information of the Partnership or any Portfolio Company. This Section 8.5 shall be applied on a consistent basis with respect to all Limited Partners.

#### **8.6 Tax Exemptions and Refunds**

The General Partner agrees that, at the request of a Limited Partner (and at such Limited Partner’s expense, if determined by the General Partner), the General Partner will provide such information as may reasonably be necessary to assist the Limited Partner in making any filings, applications or elections to obtain any available exemption from, or refund of, any withholding

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<sup>52</sup> **Note to Draft:** Corresponding to Article 18 of the Japanese Model LPA.

or other taxes imposed by any taxing authority with respect to amounts distributable to the Limited Partner under this Agreement.

## **8.7 Tax Reporting Obligations**

If any Limited Partner fails to provide any information requested by the Partnership or General Partner that the Partnership or General Partner, as applicable, reasonably determines, in its sole discretion, the Partnership is required to receive in order to comply with applicable tax reporting obligations, then the General Partner will provide such Limited Partner with written notice of its failure to comply and the potential consequences thereof. If such Limited Partner fails to comply with the General Partner's request within 20 Business Days of receiving such written notice, then the General Partner shall be entitled to (a) treat such Limited Partner as if it were a Defaulting Limited Partner and/or exercise any of the remedies set forth in Section 4.9, (b) forfeit such Limited Partner's Interest in the Partnership, and/or (c) withhold any taxes required to be withheld pursuant to any applicable legislation, regulations, rules or agreements and/or to make any amendments to the allocations and distributions to Partners under Section 5 or Section 6 so as to ensure that the burden of any such taxes are borne by the Limited Partner whose failure to provide the information caused the tax liability. If requested by the General Partner, the Limited Partner shall execute any and all documents, opinions, instruments and certificates as the General Partner shall have reasonably requested or that are otherwise required to effect the foregoing. Alternatively, the General Partner may exercise any applicable power of attorney granted to it under this Agreement on behalf of each such Limited Partner to execute any such documents, opinions, instruments or certificates on behalf of such Limited Partner in order to carry out the above.

## **9. Interests; Transfers and Encumbrances of Interests**

### **9.1 Limited Partner Transfers<sup>53</sup>**

- (a) No Limited Partner or Assignee thereof may Transfer all or any portion of its Partnership Interest (or beneficial interest therein) without the prior written consent of the General Partner, which consent shall not be unreasonably withheld; *provided that* (i) it shall not be unreasonable for the General Partner to withhold its consent if (A) such Transfer would result in the number of the Limited Partners being 500 or more after the Transfer or (B) a lender of any Subscription Finance does not consent to such Transfer; and (ii) the General Partner may make the consent subject to such conditions (including the conditions set forth in Sections 9.7(c) and 9.7(d)) as are determined by the General Partner in its sole discretion. [Notwithstanding the foregoing, the General Partner will not unreasonably withhold or delay its consent to the Transfer by any Limited Partner of all or any part of its Partnership Interest to an Affiliate of such Limited Partner, and to the admission of such Affiliate as a Substitute Limited Partner; *provided that* (a) it shall not be unreasonable for the General Partner to withhold its consent if (i) any of the conditions set forth in Sections 9.5 and 9.7 are not satisfied, (ii) such Affiliate is not, at the time of the Transfer, of an acceptable credit quality as determined in good faith by the General Partner, or (iii) such Transfer would subject the Partnership, any Partner, the General Partner or any Affiliate of any of them to additional burdensome regulatory requirements (including those under FDI Laws) and (b) in connection with, and as a condition to, the General Partner providing such consent, such Affiliate will be required to covenant to the General Partner that it will remain an Affiliate of the transferor.] Any transferee to which the covenant in subclause (b) of the preceding sentence applies that is in violation of such covenant will be a Defaulting Limited Partner hereunder. Any purported Transfer pursuant to this Section 9.1 which is not in accordance with, or subsequently violates, this

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<sup>53</sup> **Note to Draft:** Corresponding to Articles 34, 35.1, 35.2, 35.8 and 35.9 of the Japanese Model LPA.

Agreement shall be null and void. Without limiting the foregoing, the General Partner may, in its sole discretion, require that any Transfer be effective only at the end or the beginning of a fiscal quarter or at such other times as may be determined by the General Partner in its sole discretion. For the avoidance of doubt, in evaluating whether a transferee is of an acceptable credit quality pursuant to this paragraph, it shall be reasonable for the General Partner to take into consideration whether the lender under any credit facility secured by the Partnership would include the transferee in the borrowing base calculation to the same extent as the transferring Limited Partner. [The obligations under the previous two sentences will survive the dissolution, liquidation and termination of the Partnership for the applicable statute of limitations period and will survive any partial or complete Transfer or redemption of a Partner's Interest in the Partnership.] In the case of merger or company split of a Limited Partner, such Limited Partner's status as a Limited Partner shall be comprehensively succeeded.

## **9.2 General Partner Transfers<sup>54</sup>**

The General Partner may not Transfer all or any portion of its Partnership Interest without the prior written consent of the Limited Partners. [Notwithstanding the foregoing or any other provision in this Agreement, the General Partner may, at any time prior to removal of such General Partner, and without the consent of any other Partner, be reconstituted as, convert or merge into, or otherwise Transfer its interest as the General Partner of the Partnership, including any portion thereof attributable to its Capital Commitment to, any other Person that is an Affiliate of the General Partner (including any Related Party), and such other Person will succeed, upon its execution of a transfer agreement, to the position of general partner of the Partnership effective immediately prior to such Transfer (and is hereby authorized to and will continue the business of the Partnership without dissolution), with all of the rights, powers and obligations associated therewith. If the General Partner converts to another type of Person pursuant to this Section 9.2, the General Partner will not cease to be the General Partner of the Partnership and, upon such conversion, the Partnership will continue without dissolution. If a merger of the General Partner into another Person pursuant to this Section 9.2 will not result in the General Partner being the surviving entity of the merger, the Person that will be the surviving entity in the merger with the General Partner will itself be admitted to the Partnership as an additional general partner of the Partnership immediately preceding the merger upon its execution of a transfer agreement and, upon such merger, is hereby authorized to and will continue the Partnership without dissolution.] Any purported Transfer pursuant to this Section 9.2 which is not in accordance with this Agreement shall be null and void. For the avoidance of doubt, the foregoing provisions of this Section 9.2 do not prevent the General Partner from assigning by way of security or otherwise pledging or granting security over its rights under this Agreement pursuant to the provisions of Section 7.2, Section 7.6, Section 7.8(a) or otherwise as permitted by this Agreement.

## **9.3 Encumbrances<sup>55</sup>**

No Partner or Assignee thereof may create an Encumbrance with respect to all or any portion of its Interest (or any beneficial interest therein). Any purported Encumbrance which is not in accordance with this Agreement shall be null and void.

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<sup>54</sup> **Note to Draft:** Corresponding to Articles 34, 35.6, 35.8 and 35.9 of the Japanese Model LPA.

<sup>55</sup> **Note to Draft:** Corresponding to Article 34 of the Japanese Model LPA.

#### 9.4 Indivisible Interest<sup>56</sup>

[An Interest corresponding to one unit of Capital Contribution shall be indivisible and a Partner may Transfer its Interest only in multiples of a unit of Capital Contribution.]<sup>57</sup>

#### 9.5 Further Restrictions

- (a) Notwithstanding any contrary provision in this Agreement, any otherwise permitted Transfer by a Limited Partner of an Interest (including any Transfer of Interest to another Limited Partner) shall be null and void if:<sup>58</sup>
  - (i) such Transfer would require the registration of such Transferred Interest pursuant to any applicable securities laws;
  - (ii) such Transfer would result in a violation of any Applicable Rules, including but not limited to applicable anti-corruption, anti-money laundering or sanctions laws;
  - (iii) such Transfer would cause the revaluation or reassessment of the value of any Partnership asset resulting in tax liability;
  - (iv) such Transfer is made to any Person who lacks the legal right, power or capacity to own such Interest;
  - (v) the Partnership does not receive written instruments (including copies of any instruments of Transfer and such Assignee's consent to be bound by this Agreement as an Assignee) that are in a form satisfactory to the General Partner, as determined in the General Partner's sole discretion;
  - (vi) the Assignee is a Disqualified Investor;
  - (vii) such Transfer would subject the Partnership to the requirements set forth in Article 234-2, Paragraph 2 or Paragraph 2 of the Cabinet Office Order on Financial Instruments Business;
  - (viii) with respect to a Transfer by any Limited Partner who is a Qualified Institutional Investor, the Assignee is not a Qualified Institutional Investor; or
  - (ix) the Limited Partner is not a Qualified Institutional Investor unless such Limited Partners Transfers its entire Interest to a Qualified Institutional Investor or a Permitted Investor.
- (b) In connection with a Transfer, the transferring Limited Partner shall notify the Assignee of the following matters prior to the date of completion of such Transfer:<sup>59</sup>
  - (i) that no registration has been made in accordance with Article 4, Paragraph 1 of the FIEA with respect to the solicitation of an application to acquire the status of a Partner since such solicitation does not fall under Article 2, Paragraph 3, Item 3 of the FIEA and constitutes "a solicitation for a small number of investors" (*shoninzu-muke kan'yu*) (as defined in Article 23-13, Paragraph 4 of the FIEA); and
  - (ii) that the Interests that convey the status of a Partner are specified securities that fall under the category of "interests in investment business for domestic

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<sup>56</sup> **Note to Draft:** Corresponding to Article 35.7 of the Japanese Model LPA.

<sup>57</sup> **Note to Draft:** Corresponding to Article 35.8 of the Japanese Model LPA.

<sup>58</sup> **Note to Draft:** Corresponding to Article 35.4 of the Japanese Model LPA.

<sup>59</sup> **Note to Draft:** Corresponding to Article 35.5 of the Japanese Model LPA.

securities” (*naikoku yukashoken toshijigyo kenri to*) as defined in Article 1, Paragraph 4, Item 2 of the Business Ordinance on Specified Securities and also fall under the rights as defined in Article 2, Paragraph 2, Item 5 of the FIEA.

## **9.6 Admissions, Withdrawals and Removals<sup>60</sup>**

No Person will be admitted to the Partnership as a Limited Partner, except in accordance with Section 4.10 (with respect to Persons receiving Interests directly from the Partnership) and Section 9.7 (with respect to Persons receiving Interests from a Partner or an Assignee), and in each such case, the consent of any other Limited Partner is not required. No Person will be admitted to the Partnership as a general partner except in accordance with Section 4.11 or Section 9.2. Notwithstanding the preceding two sentences, the total Capital Commitments of all Partners shall not be more than JPY[●], unless consented by [●]% in Units of the Limited Partners. No Limited Partner will be removed or entitled to withdraw from being a Partner of the Partnership except in accordance with Section 9.8 or Section 9.10. The General Partner will not be entitled to withdraw from being a Partner of the Partnership except in accordance with Section 9.2 or Section 9.8. Except as otherwise provided in Section 10.2(a)(iii), or as required by the Act, no admission, withdrawal or removal of a Partner will cause the dissolution of the Partnership. To the fullest extent permitted by law, any purported admission, withdrawal or removal which is not in accordance with this Agreement shall be null and void.

## **9.7 Admission of Assignees as Substitute Limited Partners<sup>61</sup>**

Unless otherwise waived by the General Partner, an Assignee will become a Substitute Limited Partner only if and when each of the following conditions is satisfied:

- (a) the General Partner consents in writing, for itself and the other Limited Partners, to such admission, which consent may be given or withheld, or made subject to such conditions as are determined by the General Partner, in the General Partner’s sole discretion;
- (b) the General Partner receives written instruments (including copies of any instruments of Transfer and such Assignee’s consent to be bound by this Agreement as a Substitute Limited Partner) that are in a form satisfactory to the General Partner (as determined in its sole discretion);
- (c) the General Partner receives an opinion of counsel to the effect that such Transfer is in compliance with this Agreement and all Applicable Rules; and
- (d) the parties to the Transfer, or any one of them, pay all of the Partnership’s reasonable expenses incurred by the Partnership or the General Partner in connection with such Transfer (including, but not limited to, the reasonable legal and accounting fees of the Partnership) or any taxes arising in connection therewith.

## **9.8 Withdrawal of Certain Partners<sup>62</sup>**

- (a) No Partner may withdraw from the Partnership, unless the participation of such Partner would reasonably likely to result in (i) a material violation of any Applicable Rules which is (A) reasonably likely to have a material adverse effect on such Partner and (B) not able to be cured by any way other than through a withdrawal from the Partnership or (ii) any other circumstance, in each case of subclauses (i) and (ii), that constitutes an unavoidable reason. A Partner withdrawing pursuant to this paragraph shall give no later than [●] Business Days prior written notice stating the reasons

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<sup>60</sup> **Note to Draft:** Corresponding to Articles 36.3 and 36.4 of the Japanese Model LPA.

<sup>61</sup> **Note to Draft:** Corresponding to Article 35.3 of the Japanese Model LPA.

<sup>62</sup> **Note to Draft:** Corresponding to Article 37 of the Japanese Model LPA.

therefor to, in the case of a Limited Partner withdrawing, the General Partner and, in the case of the General Partner withdrawing, the Limited Partners.

- (b) Without prejudice to the generality of clause (a) above, any Partner shall withdraw from the Partnership if any of the following occurs:
  - (i) dissolution (other than due to merger);
  - (ii) death (except in the event that the succession of such Partner's status as a Partner occurs pursuant to Section 9.9);
  - (iii) the receipt of an order to commence bankruptcy proceedings;
  - (iv) the receipt of an order to commence guardianship;
  - (v) a required withdrawal pursuant to Section 9.10(b); or
  - (vi) a removal pursuant to Section 9.11.
- (c) If the General Partner withdraws pursuant to this Section 9.8, the Limited Partners may, [unanimously / by [●] in Units of the Limited Partners], appoint a successor general partner within two (2) weeks from the date of occurrence of such event but no later than the day on which the dissolution of the Partnership is registered.
- (d) The General Partner who has withdrawn pursuant to this Section 9.8 shall continue to have the rights and obligations as the General Partner until the earlier of the appointment of a successor general partner pursuant to clause (c) above or the dissolution of the Partnership pursuant to Section 10.2(a)(iv).
- (e) [In the event that a successor general partner has been appointed pursuant to clause (c), the withdrawing General Partner shall (i) be entitled to receive the amount equal to [●]% of the Carry Distributions with respect to the Portfolio Investments that have been made as of the date of such withdrawal as and when such Carry Distributions are made (the balance being distributed to the successor general partner) and (ii) / In the event that a successor general partner has been appointed pursuant to clause (c), the withdrawing General Partner shall] return to the Partnership the amount equal to the Management Fees that it has received up to the date of such withdrawal *less* such Management Fees corresponding to the period of its office (prorated on the basis of a 365-day year), which amount shall be paid from Partnership Assets to the successor general partner as Management Fees. Section (iv) shall apply *mutatis mutandis* with respect to the withdrawing General Partner as if the date of its withdrawal were the date of the final distribution in the liquidation of the Partnership.
- (f) A Partner who is appointed as successor general partner pursuant to clause (c) above shall not be responsible for any liabilities in relation to the Partnership that accrued before such appointment and the withdrawing General Partner shall remain responsible for such liabilities; *provided that* the withdrawing General Partner and the successor general partner shall be responsible for any such liabilities that accrued with respect to the Carry Distributions and the Management Fees stipulated in clause (e) above *pro rata* based on the amounts of the Carry Distributions and the Management Fees attributable to the withdrawing General Partner and the successor general partner pursuant to clause (e) above.
- (g) The General Partner shall be relieved of any liability that may arise from affairs conducted by it without the knowledge that a Limited Partner has withdrawn, in the absence of the General Partner's gross negligence.



- (h) If a Partner withdraws from the Partnership, it shall receive a refund in an amount equal to the Interest Amount held as of the date of such withdrawal by such Partner. The General Partner shall make distributions of cash or Portfolio Securities in kind to such Withdrawing Partner pursuant to Section 6 each time when distributions of the Partnership Assets are made to other Partners pursuant to Section 6, until the aggregate amount of the distributions to such Withdrawing Partner reaches its Interest Amount at the time of withdrawal, and the aggregate of such distributions to the Withdrawing Partner shall constitute the refund of the Interest Amount.<sup>63</sup>

## **9.9 Death of a Partner<sup>64</sup>**

If a Partner who is a natural person dies, his/her heir may succeed to such Partner after providing the General Partner with a notice to the effect that such heir succeeds to such Partner's status as a Partner (and, in the event that there is more than one heir, a notice by such heirs to designate one of them as their representative) within [three (3)] months from death, as well as such materials as separately requested by the General Partner; *provided that* if the General Partner reasonably determines that the heir falls under any category of Anti-social Forces or the General Partner would, by admitting the heir as a Partner, cease to satisfy the requirements prescribed in Article 63, Paragraph 1 of the FIEA, the General Partner may refuse the heir's succession of such Partner's status of a Partner.

## **9.10 Limitations on Participation**

### **(a) Discontinuance**

Unless the provisions of Section 9.10(b) apply, the General Partner may discontinue any Limited Partner's participation in whole or in part in a Portfolio Investment (through an adjustment to such Limited Partner's Sharing Percentage for such Portfolio Investment) if the General Partner (a) determines that the continuation of such Limited Partner's participation therein will have a Material Adverse Effect and (b) gives five calendar days' prior written notice to any such Limited Partner of such determination. The General Partner will thereafter take commercially reasonable steps to discontinue such Limited Partner's participation in such Portfolio Investment, including by causing a portion of such Portfolio Investment equal to such Limited Partner's Sharing Percentage thereof promptly to be sold by the Partnership at a cash price not less than that determined by a nationally recognized investment bank or valuation expert chosen by the General Partner. The proceeds of such sale will be divided between such Limited Partner and the General Partner and distributed pursuant to Section 6.2. In the case of such sale, items of income, gain, loss or deduction will be divided among such Limited Partner and the General Partner and allocated pursuant to Section 5.2. Such Limited Partner's Sharing Percentage for such Portfolio Investment will thereafter be reduced to zero and the other Limited Partners' Sharing Percentage therefor will be adjusted accordingly. All costs and expenses in respect of the determinations and other matters referred to in this Section 9.10(a) will be borne by such Limited Partner.

### **(b) Required Withdrawal of Limited Partners<sup>65</sup>**

If at any time the General Partner determines that the continuing participation in the Partnership by any Limited Partner will have a Material Adverse Effect, the General Partner may, with the consent of the other Limited Partners, require such Limited Partner to withdraw from the Partnership. Nothing in this Section 9.10(b) shall prevent

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<sup>63</sup> **Note to Draft:** Corresponding to Article 41 of the Japanese Model LPA.

<sup>64</sup> **Note to Draft:** Corresponding to Article 38 of the Japanese Model LPA.

<sup>65</sup> **Note to Draft:** Corresponding to Article 39 of the Japanese Model LPA.

any claims for damages against any Limited Partner who is required to withdraw from the Partnership.

(c) **Material Adverse Effect**

A Capital Contribution to the Partnership or participation in a Portfolio Investment or in the Partnership by any Limited Partner will be deemed to have a “**Material Adverse Effect**” if (i) the Limited Partner continues to fail to perform any payment obligation under this Agreement for [●] Business Days, (ii) the Limited Partner conducts any act materially undermining confidence such as obstruction of the business of the Partnership without any justifiable reason, (iii) the General Partner reasonably determines that the Limited Partner is a Disqualified Investor or has breached any of the representations and warranties or covenants set forth in Sections 11.12 and 11.13, (iv) the Limited Partner violates any material obligation under this Agreement, or (v) the General Partner reasonably determines that such contribution or participation, when taken by itself or together with the contributions or participations by any other Partner, is reasonably likely to (A) result in a violation of a statute, rule, regulation or order of a Japanese or non-Japanese governmental authority which is reasonably likely to jeopardize the ability of the Partnership to consummate a Portfolio Investment or to have a material adverse effect on a Portfolio Investment, the General Partner, the Investment Manager, the Partnership or any Affiliate of the Partnership, (B) subject a Portfolio Investment, the General Partner, the Investment Manager, the Partnership or any Affiliate of the Partnership to any material filing or material regulatory requirement or impediment (including the registration or other requirements of the FIEA or FDI Laws), or make such filing or regulatory requirement or impediment substantially more burdensome, (C) cause the Partnership, any Alternative Investment Vehicle or the General Partner to be non-compliant with any obligations imposed on it under applicable tax reporting obligations, or (D) result in the imposition of conditions by a governmental authority that reduce the reasonably anticipated benefits to the Partnership of the Investment.

**9.11 General Partner Removal/Dissolution for Cause<sup>66</sup>**

- (a) Following an event constituting Cause (as defined in clause (b) below) and delivery of notice of the failure of the General Partner to cure such Cause within the period of time specified in clause (c) below, [●]% in Units of the Limited Partners may either (i) require the removal of the General Partner from the Partnership, effective as of a date not less than 30 calendar days and not more than 60 calendar days from the date of notice to the General Partner of such removal, and the substitution of another Person as general partner of the Partnership or (ii) require the dissolution and liquidation of the Partnership effective as of a date not less than 60 calendar days from the date of notice to the General Partner of such dissolution. Any removal pursuant to this clause (a) will be effected in accordance with the procedures set forth in this Section 9.11, and any successor to the General Partner under subclause (i) above will be substituted prior to, or at the same time as, the removal of the General Partner. Any removal or dissolution under this Section 9.11 will result in the cancellation of the obligation of the Partners to make Capital Contributions for the acquisition of new Portfolio Investments (including Follow-On Investments) (i) that are not then subject to a letter of intent or contractual or other legally binding commitment on behalf of the Partnership and (ii) for which the Partnership have not completed the primary preparation as of the date of such removal or dissolution, and the General Partner shall

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<sup>66</sup> **Note to Draft:** Corresponding to Article 40 of the Japanese Model LPA.

not cause the Partnership to incur borrowings for the making of any such new Portfolio Investments or Follow-On Investments.

- (b) For purposes of this Section 9.11, “Cause” means that: (i) the General Partner continues to fail to perform any payment obligation under this Agreement for [●] Business Days; (ii) the General Partner commits any material illegal act in connection with managing the business affairs of the Partnership or representing the Partnership; or (iii) the General Partner breaches any representation and warranty or material obligation under this Agreement, in each case of subclauses (i) through (iii) which has a material adverse effect on the business of the Partnership.
- (c) A cure of any event constituting Cause under this Section 9.11 must occur within [●] Business Days after a determination that such event constitutes Cause. An event of Cause shall be deemed to be cured if (i) the General Partner submits a plan to the Advisory Committee describing the intended course of action of the General Partner and period of time required to cure the event constituting Cause, (ii) the Advisory Committee approves such plan prior to the expiration of the cure period and (iii) the General Partner actually cures the event of Cause in the manner contemplated by the plan and in the time period specified therein. The General Partner also shall be deemed to have cured any event of Cause if the General Partner or the Investment Manager terminates or cause the termination of employment with the Investment Manager or other Related Party of all individuals who engaged in the conduct constituting such Cause and makes the Partnership whole for any actual financial loss that such conduct caused the Partnership. The General Partner will provide prompt written notice to the Limited Partners in the event that the General Partner fails to cure an event of Cause within the [●] Business-Day period specified in this clause (c).
- (d) Nothing in this Section 9.11 shall prevent any claims for damages against the General Partner who is removed from the Partnership.
- (e) **Use of [sponsor] Name**

In connection with any removal of the General Partner pursuant to this Section 9.11 or otherwise, the name of the Partnership will be changed to omit reference to “[●]” and no further use of “[●]” or any similar name or any derivations thereof will be permitted by the Partnership, any successor general partner or any other Person in relation to the activities of the Partnership.

## **9.12 Notice of Change in the Status of a Partner<sup>67</sup>**

A Limited Partner shall, in the event of any change in the status of such Limited Partner as prescribed in this Section 9, promptly notify the General Partner of such change in writing.

# **10. Dissolution, Liquidation and Termination**

## **10.1 Limitations**

The Partnership may be dissolved, liquidated and terminated only pursuant to the provisions of this Section 10, and the Partners hereby irrevocably waive, to the fullest extent permitted by law, any and all other rights they may have to cause a dissolution of the Partnership or a sale, accounting or partition of any or all of the Partnership’s assets.

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<sup>67</sup> **Note to Draft:** Corresponding to Article 42 of the Japanese Model LPA.

## 10.2 Dissolution<sup>68</sup>

- (a) The Partners hereby acknowledge and agree that the following and only the following events will cause the Partnership to be dissolved:
  - (i) the occurrence of the [●] anniversary of the Commencement Date;
  - (ii) the determination by the General Partner, with the consent of [●]% in Units of the Limited Partners, that the Partnership has accomplished its business purposes set forth in Section 2.4 or that it would be impossible to accomplish such business purposes;
  - (iii) the withdrawal of all Limited Partners;
  - (iv) the failure to appoint a successor general partner pursuant to Section 9.8(c);
  - (v) the determination by unanimous agreement by the Limited Partners; or
  - (vi) the determination of the General Partner that all Limited Partners have ceased to be Qualified Institutional Investors and it has become difficult to lawfully manage the Partnership.
- (b) No liabilities that any Partner has owed to the Partnership since prior to the dissolution of the Partnership shall be affected by such dissolution.
- (c) In connection with the dissolution of the Partnership, the Liquidator shall apply for a registration of dissolution pursuant to Article 21 of the Act.

## 10.3 Liquidator<sup>69</sup>

- (a) The General Partner shall serve as the liquidator of the Partnership; *provided that* in the event that the Partnership is dissolved pursuant to Section 10.2(a)(iv), a liquidator shall be appointed by [●]% in Units of the Limited Partners. The liquidator shall register its name and address in accordance with Article 22 of the Act.
- (b) The liquidator shall have any and all powers necessary to conduct the affairs set forth in the following items and to represent the Partnership in and out of a court:
  - (i) completion of pending affairs;
  - (ii) collection of receivables and repayment of debts;
  - (iii) distribution to the Partners of any residual assets of the Partnership; and
  - (iv) any other actions necessary for the affairs set forth in the preceding items.<sup>70</sup>
- (c) The liquidator shall be entitled to receive appropriate compensation for the performance of its services.

## 10.4 Method of Liquidation<sup>71</sup>

- (a) The liquidator shall, without delay after assuming office, investigate the current conditions of the Partnership Assets, prepare a list of assets and a balance sheet, develop a specific plan for the disposition of assets and send these documents to the Partners. The liquidator may appoint, at the expenses of the Partnership, lawyers,

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<sup>68</sup> **Note to Draft:** Corresponding to Article 43 of the Japanese Model LPA.

<sup>69</sup> **Note to Draft:** Corresponding to Articles 44 and 45.

<sup>70</sup> **Note to Draft:** Corresponding to Article 45 of the Japanese Model LPA.

<sup>71</sup> **Note to Draft:** Corresponding to Articles 46, 47.1 and 47.2 of the Japanese Model LPA.

certified public accountants, tax accountants, appraisers, advisors or other professionals for the investigation of the current conditions and calculation of values of the Partnership Assets.

- (b) The liquidator shall, promptly after assuming office, distribute to the Interested Partners any remaining Partnership Assets after repayment of all debts of the Partnership and expenses necessary for liquidation procedures in accordance with ratio of distribution of Partnership Assets to the Interested Partners as set forth in Section 6.2; *provided that* if the existence or amount of any debt is disputed, the liquidator may distribute the assets remaining after reserving such assets as the liquidator deems necessary for repayment of such debt. Any other matters relating to the liquidation shall be conducted in such manner as the Liquidator deems appropriate in its discretion.
- (c) The provisions of Sections 2.7(b), 2.7(c), 7.1, 7.8(a), 3.3, 3.4, 3.5, 4.13, 6.4, 6.6, 7.3, 7.13(a), 8.4, 9.1, 9.2, 9.4, 9.5, 9.7, 11.4, 11.7 and 11.13 shall apply *mutatis mutandis* to the liquidator.
- (d) Upon dissolution of the Partnership, the liquidator may, in its discretion, distribute any Portfolio Securities that remain in the residual assets of the Partnership pursuant to any of the following methods, regardless of whether such Portfolio Securities are Marketable Securities:
  - (i) an in-kind distribution of the Portfolio Securities; or
  - (ii) distribution of the proceeds from the sale of the Portfolio Securities after the deduction of expense and taxes and other public duties required for the sale.
- (e) The provisions of Sections 6.2(d), 6.2(g) and 6.2(i) shall apply *mutatis mutandis* to distribution under subclause (d) above.

## 10.5 Clawback<sup>72</sup>

If, immediately before the distribution pursuant to Section 10.4(b):

- (a) the amount of a Limited Partner's aggregate Capital Contributions *plus* a Preferred Return thereon exceeds the aggregate distributions of Partnership Assets (including the Value at the Time of Distribution in the case of distributions in kind; the same applies in this Section 10.5) that were made or to be made pursuant to Sections 6.2 and 10.4(b) (as applicable) to such Limited Partner, in each case calculated as of the date of the final distribution by the Partnership to the Limited Partner (for the avoidance of doubt, without taking into account the Clawback Amount to be returned by the General Partner) (such excess amount, the "**Preferred Return Shortfall Amount**"); or
- (b) the sum of the cumulative amount of Carry Distributions that were made to or to be made to [the General Partner / Special Limited Partner] with respect to a Limited Partner pursuant to Sections 6.2 and 10.4(b) (as applicable), as determined by the General Partner (the "**GP Amount**"), exceeds [Q]% of the sum of (i) the Net Distributions with respect to such Limited Partner and (ii) the GP Amount with respect to such Limited Partner (such excess amount, the "**Excess Carry Amount**");

then [the General Partner / Special Limited Partner] will return to the Partnership for distribution (subject to the Act) to such Limited Partner an amount in cash equal to the "Clawback Amount" (as defined below). The "**Clawback Amount**" with respect to any Limited Partner will equal the lesser of (A) the greater of the Preferred Return Shortfall Amount and the Excess Carry Amount, as applicable and (B) an amount equal to (i) the GP Amount with respect to such Limited Partner *minus* (ii) the amount of taxes imposed on the General

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<sup>72</sup> **Note to Draft:** Corresponding to Article 47.3 of the Japanese Model LPA.

Partner on allocations of taxable income related to distributions to the General Partner of the GP Amount taken into account for purposes of this Section 10.5 (which amount of taxes shall be calculated based on the tax rate applicable to the General Partner (in the event that multiple tax rates are applicable, the marginal tax rate)) (the “**Net GP Amount**”). If any Limited Partner contributes or pays an amount pursuant to Section 4.13 after the General Partner has, with respect to that Limited Partner, returned to the Partnership amounts pursuant to the first sentence of this Section 10.5 or determined that no such return is required, the General Partner will return to the Partnership or, subject to the Act, pay the Limited Partner directly such amount, if any, as is needed to reflect appropriately any additional amount the General Partner would have returned pursuant to the first sentence of this Section 10.5 if such contribution or payment pursuant to Section 4.13 and any other adjustments previously made pursuant to this sentence had been taken into account.

## **10.6 Extension of Fund Term<sup>73</sup>**

The General Partner may, with the approval of [●]% in Units of the Limited Partners, extend the term of the Partnership beyond the date referred to in Section 10.2(a)(i) by up to [[●] one-year periods / [●] years], in which case the Partnership will dissolve at the end of such extended term (unless dissolved earlier pursuant to the other provisions of Section 10.2). The General Partner will notify the Limited Partners in writing of any such extension of the term of the Partnership.

## **11. Miscellaneous**

### **11.1 Amendments<sup>74</sup>**

#### **(a) By the Partners**

In addition to amendments specifically authorized herein, any and all amendments to this Agreement may be made from time to time by the General Partner with the consent of a Majority in Units of the Limited Partners; *provided that* the Capital Commitment of a Partner may not be amended without the consent of such Partner. Notwithstanding the preceding sentence, no amendment to this Agreement that would affect the limited liability of a Limited Partner may be made without the consent of all Partners.

#### **(b) By the General Partner**

In addition to other amendments authorized herein, amendments may be made to this Agreement from time to time by the General Partner without the consent of any other Partner: (i) to increase the General Partner’s obligations or reduce its rights; (ii) to cure any manifest error of any provisions of this Agreement; (iii) to delete or add any provision of this Agreement required to be so deleted or added by any Japanese or non-Japanese governmental official, which addition or deletion is deemed by such official to be for the benefit or protection of one or more Partners so long as such addition or deletion does not adversely affect the Limited Partners in any material respect; (iv) to amend this Agreement, pursuant to the power of attorney granted to the General Partner, to reflect the admission of any Additional Limited Partner or Substitute Limited Partner or additional or substitute General Partner; (v) to reflect on the Schedule of Partners the admission of any Additional Limited Partner or Substitute Limited Partner or an increase or decrease in the Capital Commitment of any Limited Partner, if such increase or decrease is permitted by the terms of this Agreement; (vi) to make changes in connection with Feeder Funds and other entities permitted to be created under the terms of this Agreement, which changes are not inconsistent with this Agreement and do not

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<sup>73</sup> **Note to Draft:** Corresponding to Article 6.2 of the Japanese Model LPA.

<sup>74</sup> **Note to Draft:** Corresponding to Articles 55 of the Japanese Model LPA.

adversely affect the rights or increase the obligations of any Limited Partners in any material respect; (vii) to make any changes in connection with the admission of any Additional Partner so long as the General Partner, at its option, either (A) determines in good faith that such changes do not adversely affect the rights or increase the obligations of any existing Limited Partners in any material respect or (B) consents to such changes and a Majority in Units of the Limited Partners consent to such changes; and (viii) to make changes in connection with the approval of an individual as an additional or replacement Key Person by the Advisory Committee in accordance with the definition of “Key Person”. Notwithstanding any other provision hereof, the General Partner may amend this Agreement, without requiring the consent of any Partner to the extent that the General Partner determines in good faith that such amendments are necessary or appropriate, to obtain access to or maintain any credit facility, enter into any guarantee or otherwise incur borrowings or provide credit support pursuant to Section 7.8(a), so long as the General Partner determines in good faith that such amendments do not adversely affect the rights or increase the obligations of any Limited Partner.

(c) **Filings**

In making any amendments, there will be prepared and filed by, or for, the General Partner such documents, certificates and/or forms as may be required under the Act and under the laws of any other jurisdiction applicable to the Partnership.

(d) **No Third-Party Consents**

Notwithstanding any other term of this Agreement, the consent of any person who is not a party to this Agreement (including any Covered Person or Indemnitee) is not required for any variation of, amendment to, or release, rescission, or termination of this Agreement.

(e) **Notice of Amendments**

The General Partner will provide each Limited Partner with a copy of any amendment to this Agreement pursuant to this Section 11.1 as soon as reasonably practicable after the effective date of any such amendment.

## **11.2 Jurisdiction<sup>75</sup>**

The Tokyo District Court of Japan shall have the exclusive jurisdiction as a court of first instance over any dispute arising out of or in connection with this Agreement.

## **11.3 Further Assurances**

Each of the parties hereto covenants and agrees on behalf of itself, its successors and its assignees, without further consideration, to prepare, execute, acknowledge, file, record, publish and deliver such other instruments, documents and statements, and to take such other action, as may be required by law or reasonably necessary to effectively carry out the purposes of this Agreement.

## **11.4 Notices<sup>76</sup>**

- (a) All notices or requests to be given or made under this Agreement shall be (and shall be sufficient if) delivered by hand or sent or transmitted by mail with postage prepaid (if to any foreign country, by airmail) or email (*provided that* a sender immediately confirms receipt of such email), to the addresses or email addresses of each Partner as

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<sup>75</sup> **Note to Draft:** Corresponding to Article 57.3 of the Japanese Model LPA.

<sup>76</sup> **Note to Draft:** Corresponding to Article 49 of the Japanese Model LPA.

specified in Exhibit 1 (or any other address or email address changed by a Partner from time to time and notified to the General Partner in accordance with the manner stipulated in this Section 11.4). A notice or demand under this clause (a) shall be deemed to have reached, if sent by mail, [●] Business Days from the day of dispatch and, if sent by email, [at the time of transmission / [●] Business Days from the day of transmission].

- (b) Unless expressly prohibited under this Agreement or any Applicable Rules, a Partner may, with respect to any documents to be provided pursuant to this Agreement, provide matters to be included in such documents by electronic or magnetic means, in lieu of providing such documents (in which case, for the avoidance of doubt, such Partner shall be deemed to have provided such document).
- (c) To maintain Limited Partner confidentiality, Partner-specific information included in notices and reporting provided to Limited Partners (including Capital Call Notices, distribution notices, quarterly financial statements and annual financial statements) may not include the names of the Limited Partners and Limited Partners will instead be identified by reference numbers known to each Limited Partner.
- (d) Payment and receipt of funds between the Partnership and a Partner pursuant to this Agreement shall be (and shall be sufficient if) remitted to the Partner's bank account as specified in Exhibit 1 attached hereto (or any other bank account changed by the Partner from time to time and notified by it to the General Partner in accordance with the manner under clause (a)). Fees for remittance under this clause (d) shall be borne by [payer/each Partner].<sup>77</sup>

## **11.5 Governing Law<sup>78</sup>**

This Agreement, including its existence, validity, construction and operating effect, and any non-contractual obligations arising out of or in connection with this Agreement, and the rights of each of the parties hereto, shall be governed by and construed in accordance with the laws of [Japan].

## **11.6 Binding Effect**

Except as otherwise expressly provided herein, this Agreement shall be binding on and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and all other Persons hereafter holding, having or receiving an interest in the Partnership, whether as Assignees, Substitute Limited Partners or otherwise.

## **11.7 Confidentiality<sup>79</sup>**

- (a) Each Limited Partner shall not disclose or divulge to any third party or use other than for the purpose set forth in this Agreement: (i) information received from the Partnership, other Partners or any Portfolio Company, Etc. in connection with the Partnership and (ii) information (including the Financial Statements and Quarterly Financial Information) received pursuant to this Agreement, based on its status as Limited Partner or upon exercise of any right given to a Limited Partner under this Agreement; *provided that* such information shall not include information that: (i) is already in the public domain at the time of receipt; (ii) is already held by such Limited Partner at the time of the initial receipt; (iii) enters the public domain due to any event not attributable to such Limited Partner after its receipt; (iv) is duly acquired by such

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<sup>77</sup> **Note to Draft:** Corresponding to Articles 49.3 and 49.4 of the Japanese Model LPA.

<sup>78</sup> **Note to Draft:** Corresponding to Article 57.2 of the Japanese Model LPA.

<sup>79</sup> **Note to Draft:** Corresponding to Article 50 of the Japanese Model LPA.



Limited Partner from a third party that does not owe any confidential duty; and (v) is approved by the General Partner to be disclosed.

- (b) The General Partner shall not disclose or divulge to any third party or use other than for the purpose set forth in this Agreement: (i) information received from any Limited Partner in connection with the Partnership and (ii) information regarding any Limited Partner received pursuant to this Agreement, based on its status as General Partner or upon exercise of any right given to the General Partner under this Agreement; *provided that* such information shall not include information that: (i) is already in the public domain at the time of receipt; (ii) is already held by the General Partner at the time of the initial receipt; (iii) enters the public domain due to any event not attributable to the General Partner after its receipt; (iv) is duly acquired by the General Partner from a third party that does not owe any confidential duty; and (v) is approved by the relevant Limited Partner to be disclosed.
- (c) Notwithstanding clauses (a) and (b) above, the General Partner and the Limited Partners may disclose information, if (i) any Partner, the Partnership or any Portfolio Company, Etc. is required to make such disclosure by laws, administrative agencies, courts, financial instruments exchanges or authorized financial instruments firm associations, (ii) disclosure is required for a securities underwriting company's examination for the purpose of listing or a registration as over-the-counter securities of Portfolio Securities, or (iii) disclosure is made to (A) lawyers, certified public accountants or tax accountants, or (B) appraisers, advisors or other professionals that are subject to confidentiality obligations equivalent to those prescribed in clauses (a) and (b) above or lenders (or their agents) for borrowings, guarantees or creation of security interests pursuant to Sections 7.8(a)(i) through (iii) (*provided that* such lenders or agents are subject to confidentiality obligations equivalent to those prescribed in clauses (a) and (b) above).
- (d) A Partner shall ensure that its officers, employees and agents comply with the obligation prescribed in the preceding three paragraphs. A violation of any such obligations by any officer, employee or agent of a Partner shall be deemed as such Partner's violation of the obligations set forth in clauses (a) and (b).
- (e) If any Partner causes damages or losses to the Partnership in violation with this Section 11.7 due to its willful misconduct or negligence, the Partner shall compensate such damages or losses.
- (f) In order to preserve the confidentiality of certain information disseminated by the General Partner or the Partnership under this Agreement that a Limited Partner is entitled to receive pursuant to this Agreement, including quarterly, annual and other reports, information provided to the Advisory Committee and information provided at the Partnership's information meetings, or in situations where the General Partner determines in good faith that a Limited Partner has violated or is reasonably likely to violate the confidentiality provisions of this Agreement, the General Partner may (a) provide to such Limited Partner access to such information only on a website in password protected, non-downloadable, non-printable format, notwithstanding such Limited Partner's election referred to in Section 11.4(b), and (b) require such Limited Partner to return any copies of information provided to it by the General Partner or the Partnership.

## **11.8 Waivers**

No waiver by any Partner of any default or breach with respect to any provision, condition or requirement hereof shall be deemed to be a waiver of any other provision, condition or requirement hereof; nor shall any delay or omission of any Partner to exercise any right hereunder in any manner impair the exercise of any such right accruing to it hereafter; nor shall

any single or partial exercise of any right or remedy preclude any other or further exercise of it or the exercise of any other right or remedy.

### **11.9 Preservation of Intent<sup>80</sup>**

If any provision of this Agreement is determined by an arbitrator or any court having jurisdiction to be illegal or in conflict with any laws of any jurisdiction, then the Partners agree that such provision shall be modified to the extent legally possible so that the intent of this Agreement may be legally carried out. If any one or more of the provisions contained herein, or the application thereof in any circumstances, is held void, invalid, illegal, inoperative or unenforceable in any respect or for any reason, then the validity, legality and enforceability of any such provision in every other respect and of the remaining provisions hereof shall not be in any way impaired or affected, it being intended that all of the Partners' rights and privileges shall be enforceable to the fullest extent permitted by law. If this Agreement is held invalid with respect to, or cancelled by, any Partner, this Agreement shall be in full force and effect with respect to the other Partners.

### **11.10 Certain Rules of Construction**

Any ambiguities shall be resolved without reference to which party may have drafted this Agreement. All Section titles or other captions in this Agreement are for convenience only, and they shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions hereof. Unless the context otherwise requires: (a) a term has the meaning assigned to it; (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with generally accepted auditing standards in Japan; (c) "or" is not exclusive; (d) words in the singular include the plural, and words in the plural include the singular; (e) provisions apply to successive events and transactions; (f) "herein," "hereof" and other words of similar import refer to this Agreement as a whole and not to any particular Section or other subdivision; (g) all references to "subclauses," "clauses," or "Sections" refer to subclauses, clauses or Sections of this Agreement; (h) any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms; and (i) unless otherwise specified, the use of the words "include," "includes" and "including" in this Agreement shall be deemed to be followed by the phrase "without limitation." To the fullest extent permitted by law and notwithstanding any other provisions of this Agreement (other than Section エラー! 参照元が見つかりません。 ) or in any agreement contemplated herein or applicable provisions of law or equity or otherwise, whenever in this Agreement a Person is permitted or required to make a decision or a determination (i) in its "discretion" or "sole discretion" or under a grant of similar authority or latitude, the Person will be entitled to consider any interests and factors as it desires, including its own interests, (ii) in its "good faith" or under another express standard, the Person will act under such express standard and will not be subject to any other or different standards or (iii) no standard is expressed, the Person will apply relevant provisions of this Agreement in making such decision or determination.

### **11.11 Compliance with Japanese Regulations**

- (a) Notwithstanding any other provision of this Agreement to the contrary, the General Partner, in its own name and on behalf of the Partnership, shall be authorized without the consent of any Person, including any other Partner, to take such action as it determines in its sole discretion to be necessary or advisable to comply with any anti-money laundering or anti-terrorist laws, rules, regulations, directives or special measures, including the actions contemplated by the Subscription Agreements.
- (b) Each Limited Partner hereby confirms that:<sup>81</sup>

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<sup>80</sup> **Note to Draft:** Corresponding to Article 56 of the Japanese Model LPA.

<sup>81</sup> **Note to Draft:** Corresponding to Article 51 of the Japanese Model LPA.

- (i) it has been notified by the General Partner that no registration has been made in accordance with Article 4, Paragraph 1 of the FIEA with respect to the solicitation of an application to acquire the status of a Limited Partner, since such solicitation does not fall under the case prescribed in Article 2, Paragraph 3, Item 3 of the FIEA but falls under a “private placement for a small number of investors” as defined in Article 23-13, Paragraph 4 of the FIEA;
- (ii) it has been notified by the General Partner that the status of a Limited Partner (A) constitutes specified securities that fall under the category of interests in investment business for domestic securities (*naikoku yukashoken toshijigyo kenri to*) as set forth in Article 1, Item 5-2 of the Business Ordinance on Specified Securities and also (B) fall under the category of rights as set forth in Article 2, Paragraph 2, Item 5 of the FIEA;
- (iii) this document is a document as set forth in Article 23-13, Paragraph 5 of the FIEA and that it has received this document by way of retaining one counterpart of this Agreement after affixing its signature or name and seal on this Agreement;
- (iv) if it is not a Professional Investor, the General Partner has delivered, prior to the execution of this Agreement, the document setting forth the matters under Article 37-3, Paragraph 1 of the FIEA and the matters under Article 82, Article 83, Paragraph 1 and Article 87, Paragraph 1 of the Cabinet Office Order on Financial Instruments Business;
- (v) it does not require, or has received from the General Partner, (A) a sufficient explanation with respect to important matters as set forth in Article 4, Paragraph 1 of the Act on the Provision of Financial Services (No. 101, 2000, as amended), including that there is a risk of loss of principal in connection with contribution to the Partnership pursuant to this Agreement, and (B) a document stating such important matters;
- (vi) as of the date when it has become a Limited Partner, the matters stated in documents that it has presented or otherwise provided to the General Partner for verification at the time of transaction in connection with the execution of this Agreement or the matters that such Limited Partner has reported to the General Partner pursuant to Article 4, Paragraph 1 of the Act on Prevention of Transfer of Criminal Proceeds (Act No. 22 of 2007, as amended), Article 7, Paragraph 1, Item 1 (*ri*) and Articles 10 through 14 of the Order for Enforcement of the Act on Prevention of Transfer of Criminal Proceeds (Cabinet Office Order No. 20 of 2008, as amended) and Articles 6 through 14 of the Ordinance for Enforcement of the Act on Prevention of Transfer of Criminal Proceeds (Ordinance of Cabinet Office, Ministry of Internal Affairs and Communications, Ministry of Justice, Ministry of Finance, Ministry of Health, Labor and Welfare, Ministry of Agriculture, Forestry and Fisheries, Ministry of Economy, Trade and Industry and Ministry of Land, Infrastructure, Transport and Tourism No. 1 of 2008, as amended) are correct; and
- (vii) the Capital Contributions and other monies required to be paid by such Limited Partner under this Agreement are not criminal proceeds and do not violate the regulations of the Act on Punishment of Organized Crimes and Control of Proceeds of Crime (Act No. 136 of 1999, as amended) or the Act Concerning Special Provisions for the Narcotics and Psychotropics Control Act, etc. and Other Matters for the Prevention of Activities Encouraging Illicit Conducts and Other Activities Involving Controlled Substances through International Cooperation (Act No. 94 of 1991, as amended), and such Limited Partner shall

at all time ensure that its funds shall not violate the foregoing regulations. If such Limited Partner becomes aware that its funds violate such regulations, such Limited Partner shall immediately notify the General Partner, and shall subsequently investigate, confirm, and report the facts related to such violation as soon as possible.

#### **11.12 Specially Permitted Services for Qualified Institutional Investors, Etc.<sup>82</sup>**

- (a) Each Limited Partner represents and warrants to the General Partner that it is not a Disqualified Investor as of the date on which such Limited Partner becomes a Partner. No Limited Partner shall become a Disqualified Investor for as long as it is a Partner. A Limited Partner shall immediately notify the General Partner if the representations and warranties set forth in this clause (a) is or becomes untrue or inaccurate or if the Limited Partner becomes a Disqualified Investor.
- (b) A Limited Partner who acquires an Interest as a Qualified Institutional Investor represents and warrants to the General Partner that it is Qualified Institutional Investor as of the date on which such Limited Partner becomes a Partner. Such Limited Partner shall remain a Qualified Institutional Investor as long as it is a Partner, unless due to changes in law or as otherwise agreed in writing by the General Partner in advance. Such Limited Partner shall immediately notify the General Partner if the representations and warranties referred to in this clause (b) is or becomes untrue or inaccurate, or if such Limited Partner is no longer a Qualified Institutional Investor.
- (c) Each Limited Partner, who is not a Qualified Institutional Investor, represents and warrants to the General Partner that it is a Permitted Investor as of the date on which it becomes a Partner.
- (d) The General Partner represents and warrants to the Limited Partners that it is not a Person described under Article 63, Paragraph 7, Item 1(i) through (ho) of the FIEA as of the date of the execution of this Agreement, and shall not become such Person so long as it is the General Partner.

#### **11.13 Exclusion of Antisocial Force<sup>83</sup>**

- (a) Each Partner represents and warrants that it is not, and its officers and Persons substantially involved in its management do not, fall under the category of Anti-Social Forces and none of the Partner or such officers and Persons falls under any of the following items, and covenants that none of the Partner or such officers and Persons will fall under the category of Anti-Social Forces in future:
  - (i) having a relationship that is recognized as Anti-Social Forces controlling its management;
  - (ii) having a relationship that is recognized as Anti-Social Forces being substantially involved in its management;
  - (iii) having a relationship that is recognized as unjustly using Anti-Social Forces, such as for the purpose of seeking wrongful gain for itself or a third party or for the purpose of causing damage to a third party;
  - (iv) having a relationship that is recognized as engaging with Anti-Social Forces such as through providing funds, etc. or benefits to Anti-Social Forces; or

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<sup>82</sup> **Note to Draft:** Corresponding to Article 52 of the Japanese Model LPA.

<sup>83</sup> **Note to Draft:** Corresponding to Article 53 of the Japanese Model LPA.

- (v) its officers or Persons substantially involved in its management having a relationship with Anti-Social Forces that is socially criticized.
- (b) Each Partner covenants that it will not, by itself or by using a third party, engage in any of the following items:
  - (i) violent acts of solicitation;
  - (ii) unreasonable acts of solicitation beyond legal responsibility;
  - (iii) use of threatening words and behaviors or violence in connection with a transaction;
  - (iv) disseminating rumors, using fraudulent means or using force to damage the reputation of the Partnership or interfere with the business of the Partnership; or
  - (v) other acts analogous to those listed in the preceding items.
- (c) If a Partner or its officers or any Person substantially involved in the management of such Partner has, which such Partner is a Partner, engaged in any of the acts described in clause (a) or (b) above, or such Partner made any false statement with respect to the representations, warranties or covenants made pursuant to clause (b) above, it shall immediately notify the General Partner (or to each Limited Partner in the case of the General Partner) of the details thereof, and shall investigate and confirm the relevant facts and report to the General Partner (or each Limited Partner in the case of the General Partner) as soon as possible.
- (d) In connection with a Portfolio Investment, the General Partner shall require that the relevant Portfolio Company, Etc. make the substantially the same representations, warranties and covenants set forth in clauses (a) and (b) above.

#### **11.14 General Indemnification<sup>84</sup>**

A Limited Partner shall indemnify and hold harmless the Partnership and each Indemnitee to the fullest extent permitted by law from and against Liabilities arising from any breach by such Limited Partner of any agreement, covenant, representation or warranty in this Agreement, including Sections 11.11, 11.12 and 11.13.

#### **11.15 Language<sup>85</sup>**

This Agreement shall be prepared in English. If this Agreement is translated into any other language, such translation shall have no legal effect and, in the event of any conflict or inconsistency, the English language shall prevail.

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<sup>84</sup> **Note to Draft:** Corresponding to Article 54 of the Japanese Model LPA.

<sup>85</sup> **Note to Draft:** Corresponding to Article 57.1 of the Japanese Model LPA.

**In Witness Whereof**, the parties hereto have caused this Agreement to be duly executed in two original versions and delivered on the day and year first written above.

General Partner

*[address]*

*[name]*

*[title and name of authorized signatory]*

Limited Partner

[*address*]

[*name*]

[*representative*]

Limited Partner

[*address*]

[*name*]

[*representative*]



Limited Partner

[*address*]

[*name*]

[*representative*]

**Exhibit 1      Schedule of Partners**

<b>Name</b>	<b>Status: General Partner or Limited Partner (or Special Limited Partner)</b>	<b>(a) Address (b) Telephone Number (c) Email Address (d) Bank Account (e) Number of Investment Units</b>
[●]	[General Partner / Limited Partner]  [(Special Limited Partner)]	(a) [●]  (b) [●]  (c) [●]  (d) [●]  (e) [●] Units
[●]	[General Partner / Limited Partner]  [(Special Limited Partner)]	(a) [●]  (b) [●]  (c) [●]  (d) [●]  (e) [●] Units
[●]	[General Partner / Limited Partner]  [(Special Limited Partner)]	(a) [●]  (b) [●]  (c) [●]  (d) [●]  (e) [●] Units
[●]	[General Partner / Limited Partner]  [(Special Limited Partner)]	(a) [●]  (b) [●]  (c) [●]  (d) [●]  (e) [●] Units

## **Exhibit 2      Investment Guideline (sample)**

### **Part 1   Investment Strategy**

[•]

### **Part 2   Process of Sourcing Portfolio Companies, Etc.**

[•]

### **Part 3   Criteria of Selecting Portfolio Companies, Etc.**

#### **1.      Region**

[•]

#### **2.      Industry**

[•]

#### **3.      Business Size and Stage of Investments**

[•]

### **Part 4   Type and Method of Investments**

#### **1.      Type of Portfolio Securities for Acquisition**

[•]

#### **2.      Ownership Ratio**

[•]

#### **3.      Follow-on Investments**

[•]

### **Part 5   Size, Number of Times and Timing of Investments**

[•]

### **Part 6   Investment Restrictions**

[•]

### **Part 7   Reinvestments and Bridge Finance**

[•]

### **Part 8   Co-Investments with the General Partner or Other Funds**

[•]

### **Part 9   Investment Process**

[•]

## **Part 10 Strategy for Developing Portfolio Companies**

[•]

## **Part 11 Exit Strategy**

[•]