UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION,	)	
	)	
Plaintiff,	)	
	)	Case No. 4:12-cv-00080-CEJ
v.	)	
	)	
BURTON DOUGLAS MORRISS, et al.,	)	
	)	
Defendants, and	)	
	)	
MORRISS HOLDINGS, LLC,	)	
	)	
Relief Defendant.	)	

OBJECTION OF AMEET PATEL TO RECEIVER'S MOTION FOR AUTHORIZATION TO DISTRIBUTE FUNDS HELD BY INTEGRIEN ACQUISITION, LLC AND INTEGRIEN ACQUISITION II, LLC

Ameet Patel ("Mr. Patel"), an interested non-party, by and through his counsel, Carter Ledyard & Milburn LLP, respectfully submits this Objection, together with the Declaration of Robert J.A. Zito, dated May 16, 2013 (the "Zito Decl."), to the Receiver's Motion For Authorization To Distribute Funds Held By Integrien Acquisition, LLC and Integrien Acquisition II, LLC (the "Motion to Distribute"). As explained herein, the Motion to Distribute and the supporting distribution analysis prepared by Timothy S. O'Shaughnessy, CPA, Partner, CliftonLarsonAllen, LLP (the "Distribution Analysis"), fails to consider pertinent pre-Receivership data and, as a consequence, incorrectly proposes to distribute funds to Acartha Group, LLC ("Acartha") to the exclusion of Mr. Patel.

STATEMENT OF FACTS

On or about July 8, 2005, Mr. Patel was hired as the Chief Technology Officer of Acartha, as memorialized in an employment agreement (the "Employment Agreement") of even date. Zito Decl., ¶2, Ex. A. The Employment Agreement permitted the Chairman of Acartha, Burton Douglas Morriss ("Mr. Morris"), in his sole discretion, to allow Mr. Patel "to participate in, and receive a carry percentage with respect to, selected non-Fund investments by Acartha and its affiliates . . . ." Zito Decl., ¶3, Ex. A (paragraph 3(c)).

In or about March, 2009, Mr. Morriss granted Mr. Patel a carried interest with respect to Integrien Acquisition, LLC, as well as other Acartha-related investment funds, pursuant to Mr. Patel's Employment Agreement. Zito Decl., ¶4. The agreement between Mr. Morris, as Chairman of Acartha, and Mr. Patel, was memorialized in an email, dated March 19, 2009, from Wynne Morriss, Esq., Acartha's General Counsel, to Douglas Morriss and Mr. Patel (the "March 19 Agreement"). Zito Decl., ¶4, Ex. B. The March 19 Agreement states, in relevant part:

> This e-mail is intended to memorialize the agreement between you regarding the division of carried interest in all funds that have been established since Ameet joined Acartha in July, 2005 except Acartha Technology Partners ("ATP"). In particular, these include MIC VII, Integrien Acquisition Corp., Tervela Acquisition Corp., Tervela Acquisition Corp. II and Clearbrook Acquisition Corp. (the "Non ATP Vehicles"). . . .
>
> The basic division of carried interest to be allocated to Ameet will be [37.5%][1] of the overall carried interest actually distributed by any of the Non ATP Vehicles. The listed Non ATP Vehicles have invested in portfolio companies which Ameet had a substantial role in originating. . . . The carried interest vests in accordance with the terms of the employment agreement dated July 9 (sic), 2005, amongst Ameet, Acartha Group, LLC and Morriss Enterprises, LLC. The Non ATP Vehicles represent non-fund investments as contemplated by Section 3(c) of such employment agreement. That section states that Doug, as Chairman of Acartha Group LLC, has the sole right to decide whether or not to allow Ameet to have the right to participate in the carried interest of any investment outside the fund

[1] Mr. Patel has explained that the parties intended the carried interest to him to be 37.5%, not 40% as recited in the March 19 Agreement. Zito Decl., ¶5.

> contemplated to be established under the employment agreement. Doug has irrevocably stated that Ameet does have such right for those investments made as of today in the Non ATP Vehicles.[2]

Zito Decl., Ex. B. This agreement, which recognizes Mr. Patel's "substantial role" in creating value for investors, was confirmed and communicated to investors in a letter from Acartha, dated December 8, 2011. That letter advised that Mr. Morriss "agreed to grant [Mr. Patel] a net [37.5%] interest in the carried interest of . . . all [single purpose investment vehicles] in existence at the time of the [March 19 Agreement]." See Zito Decl., ¶6, Ex. C.

The March 19 Agreement was honored when distributions were made to Mr. Patel in 2010 and 2011. See Distribution Analysis. Those distributions were reviewed and approved by UHY, the former accountants for Acartha. Zito Decl., ¶7. The Distribution Analysis recognizes that the March 19 Agreement exists and that it was honored in 2010 and 2011, but then ignores its effect in calculating proposed distributions to Mr. Patel. Accordingly, Mr. Patel submits below his analysis of the distributions payable to him and to Acartha based on the March 19 Agreement.

DISTRIBUTIONS BASED ON THE MARCH 19 AGREEMENT

Mr. Patel does not take issue with the amount of the initial cash distribution to Acartha Merchant Partners, LLC ("AMP") as reflected in the Distribution Analysis, to wit, $59,668. However, the Distribution Analysis then relies on the AMP Operating Agreement to exclude Mr. Patel from receiving his interest in the $59,669 initial distribution to AMP. The AMP Operating Agreement, however, predates and was superseded, as relevant here, by the March 19 Agreement.

[2] The March 19 Agreement also states that the parties intended to prepare a "more comprehensive letter agreement" memorializing their understanding, and that Mr. Morriss would amending the governing documents of the Non ATP Vehicles to reflect Mr. Patel's right to carried interest. Although neither of these intentions were carried out, the parties nevertheless conducted themselves pursuant to the terms of the March 19 Agreement.

As explained above, the March 19 Agreement entitles Mr. Patel to a 37.5% carried interest in the distribution made to AMP arising out of the sale of Integrien Acquisition, LLC. According to Mr. Patel's calculations, the amounts that should be distributed to Mr. Patel, to Mr. Morriss, and to Acartha are as follows:

Cash Distribution to Acartha Merchant Partners	$59,668
Less allocable fees and expenses	<u>($10,315)</u>
	$49,353 distributable

	Actual 2010	Actual 2011	Calculated 2013
Amount Distributed	$30,798	$69,033	$49,353
Ameet Patel	$11,549	$25,888	$18,507
Douglass Morriss	$11,549	$25,888	$18,507
Acartha Group	$7,700	$17,258	$12,338

* *Other than the Calculated 2013 distribution figures, the amounts set forth above are as reported in the Distribution Analysis*

In contrast to the Calculated 2013 distributions shown above, the Motion to Distribute and the Distribution Analysis propose to exclude Mr. Patel from receipt of funds, in the amount of $18,507, to which he is contractually entitled. The Motion to Distribute provides no legal support for the Receiver's request that this Court approve the Receiver's decision to ignore the established course of dealing or for the Receiver's attempt to rescind the March 19 Agreement. Accordingly, the Court should deny the Motion to Distribute and order that the Receiver prepare a distribution analysis which appropriately considers and accounts for the March 19 Agreement.

CONCLUSION

For the foregoing reasons, Mr. Patel respectfully request that the Court deny the Receiver's request to distribute funds as set forth in the Distribution Analysis and order the Receiver to prepare a distribution analysis that appropriately considers and accounts for the March 19 Agreement.

Dated: New York, New York
May 16, 2013

CARTER LEDYARD & MILBURN LLP

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. BURTON DOUGLAS MORRISS, et al., Defendants, and MORRISS HOLDINGS, LLC, Relief Defendant.	)))))))))))))	Case No. 4:12-cv-00080-CEJ **DECLARATION OF ROBERT J.A. ZITO IN SUPPORT OF OBJECTION OF AMEET PATEL TO MOTION FOR AUTHORIZATION TO DISTRIBUTE FUNDS**

ROBERT J.A. ZITO, an attorney admitted *pro hac vice* to practice in this Court in connection with the matter referenced above, under penalty of perjury, declares as follows:

1. I am a partner in the law firm of Carter Ledyard & Milburn LLP, counsel for Ameet Patel ("Mr. Patel"). Mr. Patel is the former Chief Technology Officer of Acartha Group, LLC ("Acartha") and is an interested non-party to this proceeding. I submit this declaration in support of Mr. Patel's Objection to the Receiver's Motion For Authorization To Distribute Funds Held By Integrien Acquisition, LLC and Integrien Acquisition II, LLC.

2. On or about July 8, 2005, Acartha hired Mr. Patel as its Chief Technology Officer, as memorialized in an employment agreement (the "Employment Agreement") of even date. A true and correct copy of the Employment Agreement is annexed hereto as Exhibit A.

3. The Employment Agreement permitted Burton Douglas Morriss ("Mr. Morriss"), in his sole discretion, as Chairman of Acartha, to allow Mr. Patel "to participate in, and receive a

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carry percentage with respect to, selected non-Fund investments by Acartha and its affiliates . . . ." Ex. A (paragraph 3(c)).

4. In or about March, 2009, Mr. Morriss granted Mr. Patel a carried interest with respect to Integrien Acquisition, LLC, as well as other Acartha-related investment funds, pursuant to Mr. Patel's Employment Agreement. This agreement was memorialized in an email, dated March 19, 2009, from Wynne Morriss, Esq., Acartha's General Counsel, to Douglas Morriss and Mr. Patel (the "March 19 Agreement"). A true and correct copy of the March 19 Agreement is annexed hereto as Exhibit B.

5. Although the March 19 Agreement recites that Mr. Patel was to receive a 40% carried interest, Mr. Patel has explained that parties intended the carried interest to him to be 37.5%.

6. The March 19 Agreement subsequently was confirmed and communicated to investors in a letter from Acartha, dated December 8, 2011, a true and correct copy of which is annexed hereto as Exhibit C.

7. The March 19 Agreement was honored when distributions were made to Mr. Patel in 2010 and 2011 and those distributions were reviewed and approved by UHY, the former accountants for Acartha.

Dated: New York, New York
May 16, 2013

/s/ Robert J.A. Zito
Robert J.A. Zito

EXHIBIT A

EMPLOYMENT AGREEMENT

This Employment Agreement (this "Agreement"), effective as of July 8, 2005 between **Acartha Group, LLC**, a Delaware limited liability company ("Acartha"), and **Ameet Patel** (the "Executive").

Preliminary Statement

Acartha desires to retain the Executive, and the Executive wishes to be retained by Acartha, upon the terms and subject to the conditions set forth in this Agreement.

W I T N E S S E T H

NOW, THEREFORE, in consideration of the premises and the mutual covenants herein contained, the adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree hereby as follows:

1. **Employment**. Acartha hereby agrees to retain the Executive, and the Executive hereby agrees to serve Acartha, on the terms and conditions set forth herein. From and after the date hereof, the terms of this Agreement shall supersede in all respects the terms of any prior arrangement or agreement, if any, dealing with the matters herein.

2. **Position and Duties; Employment Term, Place of Performance.**

(a) **Employment Duties.** The Executive shall be a Partner and a member of the Board of Directors of Acartha (the "Board"). In addition, the Executive shall be the Chief Executive Officer of Acartha Technology Advisors, LLC, a wholly-owned subsidiary of Acartha ("Advisors"). The Executive shall be primarily responsible for the operations of Acartha Technology Partners, LLC (the "Fund"), for which a new entity to be created by Acartha shall act as the manager. The Executive shall have a 25% interest in the new entity. The Executive shall report directly to the Chairman of Acartha.

(b) **Term of Employment.** The term of employment shall commence on the date Acartha raises $5 million in capital earmarked for use by Advisors or for pre-funding the Fund. The term of employment be for a period of two (2) years from the date of commencement (the "Employment Term") or upon the earlier termination of the Employment Term pursuant to Section 6. The Employment Term shall be automatically extended for additional two year terms unless notice is given at least six months prior to the end of the then-current two-year period.

(c) **Other Activities.** During the Employment Term, the Executive will devote substantially all of his professional time to the exclusive benefit of Acartha, Advisors, the Fund and their respective affiliated entities. Acartha acknowledges that the Executive has existing passive investments. Acartha agrees that this Agreement shall not require the liquidation of any such investments unless such investment is made in any business or entity which is or may be deemed to be in direct competition with Acartha or the Fund's portfolio companies. The Executive agrees that he will notify Acartha of any future investments in entities competitive with Acartha or the Fund's portfolio companies which he intends to make or pursue during the Employment Term and agrees not to make any such investment unless approved by the Board. Acartha acknowledges that the Executive may engage in charitable and community activities and may serve as an officer or director thereof, provided such activities are not directly competitive with Acartha and do not substantially interfere with the Executive's performance of his obligations hereunder. The Executive represents and warrants that the execution, delivery or carrying on of his obligations under this Agreement shall not conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which the Executive is now obligated, including without limitation, any employment, non-competition or other agreement by which he is bound or has entered into with prior employers.

(d) **Board Memberships.** During the Employment Term, the Executive shall serve on the board of directors of any subsidiary, portfolio investment or affiliate of Acartha if requested to do so by the Board.

(e) **Place of Performance.** In connection with the Executive's employment hereunder, the Executive is to be based at the principal executive offices of Advisors in Somerset County, New Jersey, except for required reasonable travel on the Company's business, including to New York City and Acartha's headquarters in St. Louis.

3. **Compensation.**

(a) **Base Compensation.** The Executive shall be paid a base salary of not less than $750,000 per year, payable in accordance with Acartha's normal payroll policies. The Executive's base salary shall be paid by or on behalf of the Fund or Acartha. The Executive shall not be paid any base salary by Advisors. The Executive may receive a bonus from Advisors, as determined by the Board.

(b) **Grant of Shares in Morriss Enterprises.** Concurrently with, and as a condition to, the commencement of the Employment Term, Morriss Enterprises LLC ("Morriss Enterprises"), the majority owner of Acartha, shall grant to the Executive common shares equal to 8.00% of the total amount of common shares of Morriss Enterprises issued and outstanding as of the date hereof. Such shares shall vest in eight quarterly installments over the Employment Term.

(c) **Participation/Carry in Selected Acartha Transactions.** In the sole discretion of the Chairman of Acartha, Acartha may allow the Executive to participate in, and receive a carry percentage with respect to, selected non-Fund investments by Acartha and its affiliates, including those investments described in clause (d) below. It is anticipated that the carry percentage for each such non-Fund investment will vest in eight quarterly installments from the date of initial participation therein.

(d) **Related Business Opportunities.** During the Employment Term, the Executive agrees that he will bring all business opportunities of which he is aware which are within the scope of Acartha's investment strategy to the attention of Acartha for consideration regarding whether any Acartha entity desires to participate in such opportunity. The Executive agrees not to participate in any such business opportunity without the approval of the Board. Subject to the approval of the "conflicts committee" of Acartha, employees of Advisors may participate on advisory boards of companies. Any remuneration will be considered management fees of Advisors and redistributed as set forth in clause (e) below.

(e) **Management Fee and Carry in Fund Transactions.** Acartha shall pay the Executive twenty five percent (25%) of all management fees and carry amounts paid to it from the Fund during the Employment Term; provided, however, that the Executive's base salary shall be netted against such management fees and carry amounts, and no fees or amounts shall be due to the Executive until such times, if any, as the Executive's base salary has been recouped in full. If management fees and carry amounts do not exceed the Executive's salary, the Executive's salary shall be paid by Acartha or the Fund. The management fees and carry amounts vest in eight quarterly installments over the Employment Term. The Executive shall also have the right, subject to the consent of the Chairman of Acartha, to allocate up to an additional twenty five percent (25%) of all management fees and carry amounts paid to Acartha from the Fund during the Employment Term to the Executive and/or other employees who perform services for the Fund. Such allocation will be subject to similar vesting conditions as for the Executive.

(f) **Other Compensation.** The preceding sections shall not preclude the Board from awarding the Executive a higher compensation, base salary or any bonuses or stock options in its sole discretion at any time.

4. **Benefits.** Upon the commencement of the Employment Term, Acartha will make employee benefits available to the Executive, on the same terms and conditions as Acartha makes available from time to time to its most senior executives, including without limitation:

(a) the health, dental and medical package through Acartha's agreement with Administaff and United Healthcare or a similar package (and Acartha shall pay all deductibles associated therewith);

(b) term life insurance, executive and supplemental life insurance, accidental death & dismemberment, travel accident insurance, long-term disability insurance and long-term care insurance in amounts at least equivalent to the Executive's current insurance;

(c) indemnification by Acartha for the Executive's actions and omissions to the fullest extent permitted by Delaware law; and

(d) five (5) weeks of paid vacation during each calendar year during the Employment Term (prorated for 2005).

The Executive shall also be eligible for sick and emergency leave benefits in accordance with Acartha's normal policies therefor.

5. **Expenses.** Acartha shall reimburse the Executive for all reasonable out of pocket expenses incurred by him in the performance of his services for Acartha upon the receipt of

appropriate documentation of such expenses, in accordance with Acartha's expense reimbursement policies.

6. **Severance Benefits.**

(a) **"Cause" Defined.** "Cause" is exclusively defined herein as either (i) the Executive's conviction of, or entry of a plea of guilty to, or entry of a plea of *nolo contendere* with respect to, any crime (other than a traffic violation or infraction which is a misdemeanor) or (ii) a material breach by the Executive of any of his agreements in this Agreement which is not cured to the reasonable satisfaction of Acartha within thirty (30) days after notice thereof (or such longer period if more than thirty (30) days are required to cure such breach.) Any determination by Acartha of whether Cause exists pursuant to (ii) above to terminate the Executive shall be made by majority vote of the Board (with the Executive abstaining to vote as a Board member), which shall deliver to the Executive written notice of a meeting to be held for such purpose at least five (5) days prior to such meeting, which the Executive and his counsel shall be offered an opportunity to attend.

(b) **"Disability" Defined.** "Disability" shall mean the Executive's incapacity due to physical or mental illness that results in his being unable to substantially perform his duties hereunder for six consecutive months (or for six (6) months out of any nine (9) month period). During a period of Disability that occurs during the Employment Term, the Executive shall continue to receive his base salary hereunder, provided that payments of the Executive's base salary shall be reduced by the amount of any disability insurance payments received by the Executive due to such coverage. Acartha shall give the Executive written notice of termination at the end of such six-month period, which shall take effect thirty (30) days after the date it is sent to the Executive unless the Executive shall have returned to the performance of his duties hereunder during such thirty (30) day period (whereupon such notice shall become void). Notwithstanding the foregoing, the Executive shall automatically be deemed to be "Disabled" if suffers a loss of legal capacity which is in the opinion of a qualified a physician to be permanent and irreversible.

(c) **"Good Reason" Defined.** "Good Reason" shall mean a either a material breach of Acartha's requirements under this Agreement or a material diminution in the responsibilities and/or titles of the Executive (either in absolute terms or relative to the status of the Executive as of the date hereof) which, in either instance, remains uncured to the Executive's reasonable satisfaction within thirty (30) days after written notice of the same to Acartha or requiring the Executive to render services on a regular basis more than sixty (60) miles outside of Somerset County, New Jersey.

(d) **Termination.**

(i) If Acartha ends the Employment Term for Cause, or if the Executive elects not to renew the Employment Term, or if the Executive resigns as an employee of Acartha for reasons other than Good Reason or a material breach by Acartha of its obligations under this Agreement, then Acartha shall have no obligation to pay the Executive any amount, whether for salary, benefits, bonuses, or other compensation or expense reimbursements of any kind, accruing after the end of the Employment Term, and such rights shall, except as otherwise required by law, be forfeited immediately upon the end of the Employment Term.

(ii) If Acartha terminates the Employment Term without Cause, then any outstanding common shares of Morriss Enterprises issued to the Executive that are not already vested as of the date of termination of the Executive's employment shall immediately vest. In all other cases, all outstanding common shares of Morriss Enterprises issued to the Executive that are not already vested as of the date of termination of the Executive's employment for any reason shall be forfeited.

(iii) If during the Employment Term the Executive is terminated by Acartha without Cause or as a result of death or Disability, or if Executive terminates his employment for Good Reason, (A) Acartha shall continue to provide the Executive with all of the Executive's benefits described in Sections 4(a), 4(b) and 4(c) above for twelve months following such termination and pay the Executive his annual base salary as of the date of termination for twelve months following such termination, provided that payments of the Executive's base salary shall be reduced by the amount of any disability insurance payments received by the Executive due to such coverage, (B) Acartha shall reimburse the Executive for all reasonable out of pocket expenses related to any business of Acartha incurred by him prior to such termination, (C) the Executive shall be required, upon demand (which demand shall be made within five years after the Executive's termination), to sell all shares of Morriss Enterprises issued to the Executive and vested as of the date of termination back to Morriss Enterprises for a sale price equal to the greater of cost or fair market value of such shares on the date of Executive's termination (as determined by the Board of Directors of Morriss Enterprises in the exercise of its duties in good faith), and (D) the Executive shall be entitled to the vested amount of all payments described in Sections 3(c) and 3(e) with respect to investments made by the Fund prior to the date of termination, based on the vesting as of the date of termination.

(iv) In the event the Executive voluntarily resigns from Acartha prior to the end of the Employment Term without Good Reason, (A) the Executive shall be entitled to benefits, base salary and reimbursement of appropriate out of pocket expenses only through the date of his termination or resignation, (B) the Executive shall be required, upon demand (which demand shall be made within five years after the Executive's termination), to sell all shares of Morriss Enterprises issued to the Executive and vested as of the date of termination back to Morriss Enterprises for a sale price equal to the greater of cost or fair market value of such shares on the date of Executive's termination (as determined by the Board of Directors of Morriss Enterprises in the exercise of its duties in good faith), (C) the Executive shall be entitled to the vested amount of all payments described in Sections 3(c) and 3(e) with respect to investments made by the Fund prior to the date of termination, based on the vesting as of the date of termination.

(v) In the event of termination of the Executive with Cause, (A) the Executive shall be entitled to benefits, base salary and reimbursement of appropriate out of pocket expenses only through the date of his termination or resignation, (B) the Executive shall be required, upon termination, to sell all shares of Morriss Enterprises issued to the Executive and vested as of the date of termination back to Morriss Enterprises for a sale price equal to the greater of (x) one dollar and (y) the lower of cost or fair market value of such shares on the date of Executive's termination (as determined by the Board of Directors of Morriss Enterprises in the exercise of its duties in good faith), (C) the Executive shall have no entitlement to any payment, whether or not earned, described in Sections 3(c) and 3(e). Except as provided in the immediately preceding sentence, no Acartha entity shall have any other or further financial obligations to the Executive in the event of a termination for Cause.

(vi) The sale price for the Morriss Enterprises shares described in this Section 6(d) shall be paid, in the sole discretion of the Board of Directors of Morriss Enterprises, either in cash or by issuance of a promissory note (with non-cumulative interest accruing at the 1 year LIBOR rate plus 200 basis points and payable upon maturity of the note) with a maturity date not to exceed the fifth anniversary of the Executive's termination; provided, however, that the principal amount of the promissory note shall be reduced by the amount of any distributions paid to the Executive in respect of his Morriss Enterprises shares from and after the date of the Executive's termination until the fifth anniversary of the Executive's termination. Carry amounts payable under this Section 6(d) (by reference back to Sections 3(c) and 3(e)) with respect to a particular investment will be paid to the Executive at the same time as such amounts are paid to the other recipients.

7. **Confidentiality and Restrictive Covenants.**

(a) **Acknowledgements.** The Executive acknowledges that he has been informed that it is the policy of Acartha to maintain as secret and confidential all information (i) relating to the plans and operations of Acartha during the Employment Term and (ii) relating to the investors (including, without limitation, name address and contact person), and actual and prospective portfolio companies of Acartha and its subsidiaries and affiliates (all such information, except information that becomes generally available to the public other than as a result of disclosure by the Executive, or any person or entity affiliated with him, hereafter referred to as "Confidential Information"), and the Executive further acknowledges that such Confidential Information is of great value to Acartha.

(b) **Restrictions.** The parties hereto confirm that since it is reasonably necessary to protect Acartha's goodwill, the Executive agrees that he will not directly or indirectly (except where authorized by the Board for the benefit of Acartha or in accordance with his duties as customarily expected of similarly-situated employees), for or on behalf of himself or any Person (hereinafter defined):

(i) at any time during his tenure as an employee of Acartha or thereafter, for any reason, except as required by law or court order, divulge to any Person other than Acartha (hereinafter referred to collectively as a "third party"), or use or cause to authorize any third parties to use, any such Confidential Information, or any other information regarded as confidential and valuable by Acartha that he knows or should know is regarded as confidential and valuable by Acartha (excluding information which is generally available in the public domain or is actually known to others); or

(ii) at any time during his tenure as an employee of Acartha and for a period of one year thereafter, for any reason, act as or be an officer, director, stockholder, consultant or advisor, partner or employee of, or render any service for, or have any profit-sharing or other interest in, or lend money or make any other financial accommodation for or on behalf of, or own, manage, control, participate in or in any manner engage in or plan or prepare to engage in any business that is invested in or proposes to invest in any company (A) in which Acartha or any affiliate (including Advisors or the Fund) or any fund associated with Acartha has invested or (B) for which a term sheet has been prepared for a potential investment by Acartha or any affiliate (including Advisors or the Fund) (all of the foregoing investee companies shall be referred to herein as "Competitive Investments"); provided, however, that (1) the Executive may hold securities that are part of a publicly traded class of securities (not in excess of five percent (5%) of the outstanding total of any class of such securities) in Persons constituting or owning Competitive Investments so long as he discloses such holding to Acartha, (2) the Executive may work for a venture capital or private equity fund that owns or manages Competitive Investments, so long as the Executive does not have any management of, control over or participation in the operations of any Competitive Investments, (3) the Executive may become an employee of a Competitive Investment, so long as such employment constitutes all or significantly all of the Executive's business activities, or (4) the Executive may make co-investments in Competitive Investments if approved by the Chairman of Acartha; or

(iii) at any time during his tenure as an employee of Acartha and for a period of one year thereafter, for any reason, the Executive shall not directly or indirectly through another entity (A) induce, attempt to induce or hire any employee of Acartha or any affiliate (including Advisors or the Fund) to leave the employ of Acartha or such affiliate, or in any way willfully interfere with the relationship between Acartha or any affiliate and any employee thereof; or (B) induce or attempt to induce any investor, joint venturer, manager, customer, supplier, licensee or other business relation of Acartha or any affiliate to cease doing business with Acartha or such affiliate, or in any way interfere with the relationship between any such person or entity and Acartha or any affiliate; or

(iv) at any time during his tenure as an employee of Acartha and for a period of one year thereafter, for any reason, negotiate for or enter into an agreement, understanding or arrangement, or otherwise cause or authorize any Person, to take any of the actions prohibited by such this Section 7.

As used in this Agreement, the term "Person" means any person, corporation, partnership or other entity. Notwithstanding anything in this Agreement to the contrary, the provisions of this Section 7(b) shall not apply if Acartha fails to renew any two-year term of employment of the Executive in accordance with Section 2(b) after the Executive has indicated in writing its willingness to renew such term. In addition, in the event that the Executive's employment is termination by Acartha without Cause or by the Executive for Good Reason, then the provisions of Section 7(b) shall apply only for the amount of time (not to exceed one year) as Acartha is paying severance in accordance with Section 6(d).

(c) **Enforcement.** The Executive agrees that any breach or threatened breach by him of any provision of this Section 7 will, because of the unique nature of such services rendered by the Executive to Acartha and the Confidential Information entrusted to him as aforesaid, cause irreparable harm to Acartha and shall entitle Acartha, in addition to any other legal remedies available to it, to apply to any court of competent jurisdiction to enjoin such breach or threatened breach.

8. **Innovations Acknowledgement**. The Executive understands and acknowledges that any invention, process, innovation, or other property (intellectual or otherwise) he develops (in whole or in part) during the Employment Term which relates to the business of Acartha during the Employment Term and which is reducible to tangible form or evidenced in writing shall be the property of Acartha. The Executive agrees to cooperate with Acartha in evidencing or supporting any rights Acartha has with respect to the property described by this Section 8. Acartha agrees that in any dispute with the Executive involving the subject matter of this Section 8, Acartha shall bear the burden of affirmatively proving (in accordance with the applicable legal standard), its ownership of the property in question.

9. **Successors and Assigns.**

(a) **Executive.** This Agreement is a personal contract, and the rights and interests that the Agreement accords to the Executive may not be sold, transferred, assigned, pledged, encumbered, or hypothecated by him. All rights and benefits of the Executive shall be for the sole personal benefit of the Executive, and no other Person shall acquire any right, title or interest under this Agreement by reason of any sale, assignment, transfer, claim or judgment or bankruptcy proceedings against the Executive. Except as so provided, this Agreement shall inure to the benefit of and be binding upon the Executive and his personal representatives, distributees and legatees.

(b) **Acartha.** This Agreement shall be binding upon Acartha and inure to the benefit of Acartha and of its successors and assigns, including (but not limited to) any Person that may acquire all or substantially all of Acartha's assets or business or into or with which Acartha may be consolidated or merged. Acartha's obligations under this Agreement shall cease, however, if the successor to, the purchaser or acquirer either of Acartha or of all or substantially all of its assets, or the entity with which Acartha has affiliated, shall assume in writing Acartha's obligations under this Agreement (and deliver an executed copy of such assumption to the Executive), in which case such successor or purchaser, but not Acartha, shall thereafter be the only party obligated to perform the obligations that remain to be performed on the part of Acartha under this Agreement.

10. **Entire Agreement.** This Agreement represents the entire agreement between the parties concerning the Executive's employment arrangements with Acartha and supersedes all prior negotiations, discussions, understandings and agreements, whether written or oral, between the Executive and Acartha relating to the subject matter of this Agreement.

11. **Amendment or Modification, Waiver.** No provision of this Agreement may be amended or waived unless such amendment or waiver is agreed to in writing signed by the Executive and, only after approval by the Board, by a duly authorized officer of Acartha. No

waiver by any party to this Agreement of any breach by another party of any condition or provision of this Agreement to be performed by such other party shall be deemed a waiver of a similar or dissimilar condition or provision at the same time, any prior time or any subsequent time.

12. **Notices.** Any notice to be given under this Agreement shall be in writing and delivered personally or sent by overnight courier or registered or certified mail, postage prepaid, return receipt requested, addressed to the party concerned at the address indicated below, or to such other address of which such party subsequently may give notice in writing:

If to the Executive:	Mr. Ameet Patel 32 Fairhand Court Bridgewater, New Jersey 08807
If to Acartha:	Acartha Group, LLC 18500 Edison Avenue Chesterfield, Missouri 63005 Attention: Chairman

Any notice delivered personally or by overnight courier shall be deemed given on the date delivered and any notice sent by registered or certified mail, postage prepaid, return receipt requested, shall be deemed given on the date mailed.

13. **Severability.** If any provision of this Agreement or the application of any such provision to any party or circumstances shall be determined by any court of competent jurisdiction to be invalid and unenforceable to any extent, the remainder of this Agreement or the application of such provision to such person or circumstances other than those to which it is so determined to be invalid and unenforceable shall not be affected, and each provision of this Agreement shall be validated and shall be enforced to the fullest extent permitted by law. If for any reason any provision of this Agreement containing restrictions is held to cover an area or to be for a length of time that is unreasonable or in any other way is construed to be too broad or to any extent invalid, such provision shall not be determined to be entirely null, void and of no effect; instead, it is the intention and desire of both Acartha and the Executive that, to the extent that the provision is or would be valid or enforceable under applicable law, any court of competent jurisdiction shall construe and interpret or reform this Agreement to provide for a restriction having the maximum enforceable area, time period and such other constraints or conditions (although not greater than those contained currently contained in this Agreement) as shall be valid and enforceable under the applicable law.

14. **Survivorship.** The respective rights and obligations of the parties hereunder shall survive any termination of this Agreement to the extent necessary to the intended preservation of such rights and obligations.

15. **Headings.** All descriptive headings of sections and paragraphs in this Agreement are intended solely for convenience of reference, and no provision of this Agreement is to be construed by reference to the heading of any section or paragraph.

16. **Withholding Taxes.** All salary, benefits, reimbursements and any other payments to the Executive under this Agreement shall be subject to all applicable payroll and withholding taxes and deductions required by any law, rule or regulation of and federal, state or local authority.

17. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together constitute one and same instrument.

18. **Applicable Law.** The validity, interpretation and enforcement of this Agreement and any amendments or modifications hereto shall be governed by the laws of the State of New York (without regard to its conflicts of laws provisions), as applied to a contract executed within and to be performed in such State. The parties consent to the jurisdiction of the state and federal courts located in the county of the state where Acartha's chief executive office resides to adjudicate any disputes arising hereunder.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

ACARTHA GROUP, LLC

By:______________________________

Name: B. Douglas Morriss
Title: Chairman

EXECUTIVE:

Ameet Patel 7/08/05

Name: Ameet Patel

With respect to the provisions regarding the issuance and repurchase of shares of Morriss Enterprises LLC only:

MORRISS ENTERPRISES LLC

By:______________________________

Name: B. Douglas Morriss
Title: Chairman

EXHIBIT B

McDonough, Theodore Y.

From: Morriss, Wynne
Sent: Thursday, March 19, 2009 6:32 PM
To: 'dmorriss@acarthagroup.com'; Ameet Patel

Follow Up Flag: Follow up
Flag Status: Completed

Ameet and Doug:

This e-mail is intended to memorialize the agreement between you regarding the division of carried interest in all funds that have been established since Ameet joined Acartha in July, 2005, except Acartha Technology Partners (ATP). In particular, these include MIC VII, Integrien Acquisition Corp, Tervela Acquisition Corp, Tervela Acquisition Corp. II and Clearbrook Acquisition Corp. (the "Non ATP Vehicles"). It is both your expectations that this e-mail will be followed by a more comprehensive letter agreement, and that the necessary changes to the governing documents of the various Non ATP Vehicles will be enacted to give effect to the intent expressed here.

The basic division of carried interest to be allocated to Ameet will be 40% of the overall carried interest actually distributed by any of the Non ATP Vehicles. The listed Non ATP Vehicles have invested in portfolio companies which Ameet had a substantial role in originating. The balance of the carried interest in the Non ATP Vehicles will be allocated to Doug, who has indicated that he intends in turn to allocate a portion to John Wehrle. The carried interest vests in accordance with the terms of the employment agreement dated July 9th, 2005 amongst Ameet, Acartha Group, LLC and Morriss Enterprises, LLC. The Non ATP Vehicles represent non-fund investments as contemplated by Section 3(c) of such employment agreement. That section states that Doug, as Chairman of Acartha Group LLC, has the sole right to decide whether or not to allow Ameet to have the right to participate in the carried interest of any investment outside the fund contemplated to be established under the employment agreement. Doug has irrevocably stated that Ameet does have such right for those investments made as of today in the Non ATP Vehicles.

It is intended that carried interest in each Non ATP Vehicle will be distributed in accordance with the manner set forth in MIC VII operating agreement, that is 20% of aggregate cash profits available for distribution (after any reinvestment of proceeds) after the limited investors have been repaid their capital in full. Certain of the Non ATP Vehicles do not currently have provisions providing for carried interest distributions, although the investors in those vehicles understand that their investments are subject to the same carried interest distribution as the investors in MIC VII. Doug agrees that he will, with my assistance, start the process of amending the relevant documentation to properly document the manager's right for carried interest distributions.

If this does not reflect the understanding between you, or if either of you wish to add any relevant details, please let me know.

Wynne

EXHIBIT C

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Acartha Group, LLC
2 Tower Center Boulevard, 20th Floor
East Brunswick, NJ 08816

December 8, 2011

Dear Investor:

We are writing to describe the grave situation confronting Acartha Group, LLC ("Acartha" or the ("Company") and by extension the funds and special purpose vehicles which it manages on your behalf. This letter first gives some background on how Acartha has arrived at its current situation and then provides details on the current financial situation of the Company and the funds it manages. The last part sets forth a recommendation as to how to manage the Company and funds going forward. As detailed in this letter, Acartha has very limited cash reserves, owes substantial amounts to creditors and is on the verge of insolvency.

There are several important exhibits and schedules attached which should be read in conjunction with this letter. These include:

- Financial statements for Acartha, MIC VII, LLC ("MIC VII") and Acartha Technology Partners, L.P. ("ATP");
- A statement setting forth your current holdings in Acartha and each investment vehicle, a projection of your possible returns based on a range of assumed exit prices for portfolio companies, and your pro rata ownership percentage;
- A schedule with our estimates of the investments needed in the portfolio companies over the next 24 months in order to protect existing positions;
- A detailed Company budget which addresses the financial challenges and provides for a core staff to manage the Company and the funds; and
- A Summary of Terms outlining a financing structure which would enable the Company to implement the plan detailed in the budget.

We believe that an Acartha bankruptcy filing or the appointment of a receiver would destroy a large portion of the existing and potential value held today by investors in the Acartha funds. Given the range of potential purchasers, any distressed sale of positions in the portfolio companies would be at a very discounted price and, equally important, the mere perception that an Acartha fund is in a distressed situation will undoubtedly lead co-investors in successful Acartha portfolio companies to take aggressive actions that would increase their ownership percentage at your expense. We will contact you within the next few days to discuss the contents of this letter and your potential participation in the proposed plan to address the immediate challenges.

ABSENT SUPPORT FROM INVESTORS TO FINANCE ACARTHA THROUGH Q1 2012 AS OUTLINED IN THIS LETTER, AND ABSENT RECEIPT OF FUNDING BY DECEMBER 21, 2011, THE COMPANY WILL BE FORCED TO COMMENCE WIND-DOWN AND CEASE OPERATIONS ON DECEMBER 31, 2011.

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Background

For the last several years, Acartha has been attempting to adjust to the adverse fundraising environment for illiquid long term risk capital. Specifically, the Company's attempt to raise a substantial new venture capital fund has not been successful, the portfolio companies in which Acartha's investment vehicles are invested have required more additional rounds of funding than originally expected and, importantly, primarily as a result of not increasing its assets under management, Acartha's costs have outpaced its revenues. In addition, significant loans have been made by the Company to Morriss Holdings, LLC ("MH"), a company controlled by B. Douglas Morriss ("BDM"). Because of the deteriorating financial situation of MH and BDM, and the requirement that Acartha stop soliciting funds for the financing plan for the Company which was designed to enable MH to repay the loans, it now appears that these loans are not currently collectible. The loans are described below in *"Acartha Revenues, Expenses, Assets and Liabilities."* BDM has affirmed his intention to repay the loans and, as detailed further in this letter, has agreed to cause the entities under his control which are entitled to receive revenue from Acartha funds to pledge such revenues to secure repayment.

Addressing fundraising, investments in portfolio companies and Acartha's expenses in turn:

- After several years of fundraising, ATP had its initial close on September 22, 2008 (seven days after the bankruptcy of Lehman Brothers). At the time of the initial closing, the partners believed that a total of at least $100mm would be invested and that the final fund size would be $250mm or more. For a variety of reasons, all generally tied to the economic upheaval of 2008 and 2009, the institutional investors who were expected to invest backed out, and ATP never reached the initial $100mm size (much less $250mm). As a result, the management fees which were payable to Acartha Group as service provider for the general partner of ATP were a small fraction of what had been anticipated.

- As a bridge to ATP, and to capture the opportunities available at the time, Acartha had established MIC VII, LLC ("MIC VII") in July 2005. MIC VII invested in several portfolio companies, including Cirqit.com, Integrien, Tervela, Clearbrook Financial, X.eye, Evergrid (later Librato), Granite Edge (later Vantos) and Exegy. At the time they made their investment, investors in MIC VII generally contributed their full commitment amounts. This meant that no additional amounts were available to call from MIC VII investors after the initial investments were made in the portfolio companies. When several of the companies (Tervela, Integrien, Clearbrook Financial and Evergrid (Librato)) needed additional capital, single purpose investment vehicles ("SPVs") were established to provide MIC VII investors with the opportunity to protect the value of their investments through these investment vehicles. None of the SPVs established before 2010 charged a management fee, or explicitly provided for the recovery of expenses. Several did not provide for the payment of carried interest. At the time, the assets under management in these SPVs as compared to the expected size of the ATP fund made it appear that the foregone fees and carried interest would be relatively insignificant compared to the fees and carried interest revenue to be generated by ATP.

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While most of the investors in MIC VII chose to invest in additional rounds of funding for the MIC VII portfolio companies, several significant investors did not, as the expectation was that the ATP fund would cover any additional investment needs for MIC VII portfolio companies. Indeed, once ATP had its initial closing, it was partially able to provide support and thereby prevent punitive dilution for MIC VII investors.

However, because ATP could not raise the funds originally expected, and because the portfolio companies required additional financial support as a result of the economic downturn through "down rounds" (i.e., at lower valuations) of financing, additional requests to the original MIC VII investor base were made during 2008, 2009 and 2010 to protect the value of MIC VII's investment in the portfolio companies. Again, some but not all of the investors chose to participate and preserve their indirect pro rata interests. In several instances (most notably for Integrien) new investors stepped in to cover the gap. The result has been that in each situation in which Acartha believed that it was in its investors' best interests to provide additional funding to avoid dilution, conversion, or subordination of existing positions, Acartha accessed additional funding and, thereby, preserved the priority and value (to the extent possible) of the investments previously made. It is important to note that even investors who did not participate in additional financings were protected through these additional funds provided by other Acartha investors, and that existing investors were asked to participate before new funding sources were brought in.

- The net result of a much smaller ATP fund, combined with the structure for the distribution of carried interest in MIC VII and the overall lack of compensation for the manager in the SPVs, resulted in insufficient revenues for Acartha to support its operations. As this became apparent, the Company took several steps to address this imbalance on both the revenue side and the cost side.

On the cost side, since October 2008, the most significant move was to have all senior personnel agree to reduce their salaries by 70 to 80%[1], with the understanding that if and when either a successful portfolio company liquidity event occurred or Acartha was able to raise additional funds, the compensation foregone would be recovered. Partial deferred salary recoveries occurred after the sale of Integrien to VMware on August 30, 2010. The reduced salaries have continued through 2011. Recently, to reduce expenses as the financial situation deteriorated, several long-time employees were terminated and

[1] Salaries for Acartha senior employees were reduced effective October 1, 2008, resulting in total compensation paid being reduced from $2.6mm in 2008 to $961K in 2009. After adjustments for recent personnel reductions, Acartha's projected current annual payroll is $846K. In 2010, after Acartha recovered fees and expenses related to the sale of Integrien, the deferred salary balance ($3.5mm as of 9/30/10) was reduced by $1.65mm through payments to employees whose salaries had been previously reduced. The salary deferral balance as of 11/30/11 was $2.4mm. This deferred balance does not appear on the financial statements of the Company as a liability, although it has been the understanding of the Company and the employees whose salaries had been reduced that the deferred balance would be paid at such time as Acartha had sufficient resources as a result of fundraising or portfolio company liquidity events. Individual and aggregate amounts paid in compensation and carried interest for each of 2009, 2010 and 2011 are set forth on the Compensation Schedule attached to this letter.

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payments to key service providers have been delayed, including payables to the Company's auditors, accounting and legal firms, which, importantly, have generally been willing to work with us while we address the current situation.

On the revenue side, new managers with a focus on other alternative investment strategies were recruited to join the Acartha platform. Several took up residence in the St. Louis office and started to engage in active negotiations and fund raising. At least two managers had closed with sufficient funds such that revenue would have been generated immediately upon joining the Acartha platform. Based upon the projected revenues from these new managers plus revenues from existing Acartha funds, as well as a new hedge fund and venture fund to be run by long-term Acartha employees, a business plan was developed which would have funded the existing and projected expense base while providing an attractive return for new investors as well as the existing Acartha Series A investors. In July, 2011, an investor group provisionally agreed to a term sheet[2] that provided for $12.5mm of additional funding through the issuance of new Series B

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[2] The term sheet for the Acartha Series B Recapitalization called for the sale of the substantially all of the common shares in Acartha held by Morriss Enterprises, LLC, the issuance of a new series of senior participating preferred stock which was expected not to exceed $12.5mm and the restructuring of the terms of the existing Acartha Series A Preferred stock to provide for its retirement before distributions were made to common shareholders. Payment of a return on the new Acartha Series B senior participating preferred shares and ultimately the payment of the $19.766mm preference of the existing Acartha Series A preferred shares was to be largely funded from incremental revenues from new enterprises.

The business plan of the Company prepared in connection with the Series B Recapitalization reflected an overall strategic shift away from reliance on venture capital investment (where returns are back-loaded and variable) toward funds generating increased revenues in a more predictable manner, which would reduce operating risk by increasing the amount and predictability of Company cash flow. An important component was requiring any new manager to be cash flow positive from the moment they joined the Company to avoid incurring incremental expenses without incremental revenues. Reflecting Acartha's macro perspective that markets in general would be bearish and world economies would continue to be stressed for the foreseeable future, but that the growth in information technology would continue even in such an environment, the new enterprises identified in the business plan focused on (i) the increased expenditures in financial services technology in response to greater regulation, (ii) the global food shortage and (iii) specialty finance and opportunistic unlevered investment in real estate (given the macro view that real estate values were headed down before they recovered). New managers in response to these themes that had indicated they would join the Acartha platform were: Lifeline Capital, Sonde Capital, Abaris Capital and affiliated entities, Saturday Capital, and new Acartha funds Acartha Technology Partners II and Acartha Capital, a hedge fund which would invest in public companies in the same financial services information technology area that is the focus of ATP.

Revenue for Acartha would have been generated from each new enterprise by the 25% of net revenues (i.e., management fees after fund level expenses and carried interest) which Acartha would have received (consistent with the arrangements in place for MIC VII and ATP). In exchange for this new revenue, Acartha would have provided management and marketing services and would also have granted to the managers of the new enterprises a common equity interest in Acartha which would have been subordinated to the Series B and Series A Preferred Shares. The structure envisioned that the managements of the various new ventures would generally have been self-sufficient, so that each new venture would have been accretive to overall Acartha cash flow while not having any impact on the existing venture capital investment vehicles. *Consent of the holders of the Acartha Series A Preferred would have been required to implement the Series B Recapitalization.*

Preferred interests of Acartha (the "Series B Recapitalization"). The proceeds from the Series B Recapitalization were to be used to repay Acartha indebtedness and fund Acartha operations until the new funds identified in the business plan generated sufficient cash flow to make the Company cash flow positive, which was expected to take about a year. In late September it appeared that investors were willing to provide funding on the basis set forth in the term sheet.

But all that changed on September 27th, when Acartha received a subpoena from the Securities and Exchange Commission requesting the extensive production of documents. The Company and its officers immediately retained counsel, and on their advice, suspended fund raising efforts. In order to preserve cash, payment of invoices deemed non-essential to the day-to-day operation of the Company was suspended, including payment to the auditors who were working on the audit of Acartha Group and ATP for 2009-2010[3]. Since the delivery of the subpoena to Acartha, the Company has learned that it is the subject of an investigative order issued by the SEC, certain current and former officers have received document subpoenas. BDM has provided testimony to the SEC and another officer of the Company has been subpoenaed to provide testimony. Several Acartha investors have been contacted by the SEC, and we are aware of at least one fund investor who has been subpoenaed to provide documents and testimony. Acartha's banks have complied with document subpoenas. The end result of this activity has been that all new business activity, including the Series B Recapitalization, has been put on hold[4].

The balance of this letter first provides a summary of Acartha's current financial situation by describing its revenues, expenses, assets and liabilities. We then provide an analysis of the existing Acartha funds as well as significant issues with respect to their finances that will have an impact on the investors in those funds. With that background, we outline a proposed financing to keep Acartha from immediate bankruptcy and which, for fund investors, we believe will maximize the value of the existing portfolio in the Acartha investment vehicles while minimizing Acartha expenses.

Acartha Revenues, Expenses, Assets and Liabilities

Acartha Revenues: Acartha has two streams of revenue: management fees and carried interest. Acartha receives management fees from three sources: MIC VII, ATP and two of the SPVs, Librato Acquisition II, LLC ("LA II") and the newly formed Tervela Acquisition III, LLC ("TA III"). The aggregate management fee revenue for 2012 expected to be due to Acartha is \$973,200. In addition to management fees, Acartha's other source of revenue is its right to receive 25% of the aggregate carried interest distributed from MIC VII and ATP, as well as those

[3] The audit for MIC VII through 12/31/10 has been completed (and is attached) but the auditors have not been paid. The 2007/08 audited financial statements of Acartha are attached, as are the unaudited balance sheets and income statements of Acartha and ATP for the periods ending 12/31/10 and 9/30/11.

[4] On November 29 Ron Nixon, as Co-Trustee of the Bailey Quinn Daniel 1991 Trust, Wilmington Trust as Co-Trustee of the Bailey Quin [sic] Daniel 1991 Trust, JBG Interests, LLC, and HEG Interests LLC (the "Plaintiffs") filed a summons in the Circuit Court of St. Louis County, Missouri against defendants BDM, Acartha and MIC VII. The Plaintiffs, *inter alia,* allege breach of contract by Acartha and MIC VII and breach of fiduciary duties by Acartha and BDM. The Plaintiffs also request an accounting and the appointment of a receiver for Acartha and MIC VII. Acartha, MIC VII and BDM have engaged counsel who are responding to Plaintiff's counsel.

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SPVs which provide for the payment of carried interest. Carried interest distributions are made only after a realization event with respect to a portfolio company: for MIC VII, carried interest is paid only after investors have received a return of capital equal to the aggregate amount of capital they have contributed (which amount excludes management fees); for ATP, carried interest is distributed on a per portfolio company investment basis after accounting for the write-offs under GAAP of other portfolio companies held by ATP; and for those SPVs which provide for carried interest, it is distributed generally once the relevant SPV investors have received a return of their capital.

Carried interest distributions by their nature are unpredictable and depend first upon successful exits for portfolio companies. Using current estimates of the exit valuations of the portfolio companies, and applying those exit valuations against the matrix of which funds own what interests in the portfolio companies, and what obligations those funds have before carried interest is distributed to Acartha, the estimate of the aggregate carried interest distribution to Acartha once all companies have liquidity events is $1.239mm (the "Base Case Projected AG Carry")[5]. This estimate of course is highly variable, and while we are hopeful that it will prove to be a conservative estimate, the final amount could be zero or even a multiple of the Base Case Projected AG Carry. This estimate does not account for additional supporting investments in current portfolio companies, and it assumes that existing investments in portfolio companies retain their current pro rata ownership interests and priority (preference) in the respective portfolio company capitalization tables. Both assumptions don't reflect the likely reality – either

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[5] The Base Case Projected AG Carry assumes exits of $50mm for Tervela, $50mm for Clearbrook Financial, $30mm for Librato, $200mm for Cirqit (which means $740mm for LogicSource) and $50mm for Pollen. An exit at these levels results in an aggregate gross distribution of approximately $75mm to all Acartha entities. These valuations are broadly consistent with the FAS 157 valuations ascribed to the portfolio companies in the audited financial statements of MIC VII (Pollen is not an MIC VII portfolio company). The Base Case Projected AG Carry also assumes a return of the capital invested for Exegy, and a full write-down of the investment in Vantos. The calculation of the Base Case Projected AG Carry is based on the capitalization tables provided by each portfolio company as of 12/31/10 and the investments made in those companies by each Acartha investment vehicle. It does not assume any additional investments (including, for example, the TA III investment in Tervela) are made in portfolio companies. Except for approximately $1mm in convertible bridge loans made to Tervela, we are not aware of any material changes to the capitalization tables of the portfolio companies since 12/31/10. The Base Case Projected AG Carry is based upon Acartha's share of an aggregate carried interest distribution of $4.95mm.

Changes in the exit values for portfolio companies change the aggregate carried interest distribution significantly: for example, if the exit value of Cirqit increases from $200mm to $300mm (implying a LogicSource valuation of $1.11bn), the aggregate carried interest distribution, holding all other variables constant, would increase from $4.95mm to $8.74mm (the Acartha share would be $2.185mm; the aggregate gross distribution to all Acartha entities would be approximately $94mm). If the Cirqit valuation is increased to $400mm (i.e., implied LogicSource valuation at $1.48bn), and Tervela is increased from $50mm to $100mm (all other portfolio company valuations held at the valuations for the Base Case Projected AG Carry), the aggregate carried interest distribution would be $13.882mm (the Acartha Share would be $3.470mm; the aggregate gross distribution to all Acartha entities would be approximately $120mm). A downside case of Cirqit valued at $100mm (implying a LogicSource valuation of $370mm) and all other companies held at the valuations for the Base Case Projected AG Carry has an aggregate carried interest distribution of $2.21mm, an Acartha share of $553K and an aggregate gross distribution of approximately $61mm. The aggregate capital invested in the Acartha entities is $63.642mm, excluding the Series A preferred interests of Acartha Group, LLC and Gryphon Investments III, LLC, and the approximately $350K of capital contributed in 2011 to TA III.

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additional funds will be invested by the existing investors in the portfolio companies or the pro rata ownership interest and priority of the investments already made by those investors will be reduced. The final realized carried interest investment outcome is highly likely to be materially different from the Base Case Projected AG Carry. An important exclusion from the determination of Base Case Projected AG Carry is any carried interest from any new funds which Acartha might establish once the platform has been stabilized. Note that in preparing Scenario A of the Schedule of Individual Member Return Data (which accompanies this letter), we have used the same financial model and the same assumptions as we used to determine Base Case Projected AG Carry to project the gross (i.e., before any fees or expenses) return that might be expected from your current investments. This projected gross return is subject to the same caveats as the calculation of Base Case Projected AG Carry.

Acartha Expenses: Acartha expenses through 9/30/11 (unaudited) were $1,817,742. Excluding the non-cash interest accrual of $514,770 and depreciation of $2,422, the actual cash expense through 9/30/11 was $1,300,550. The largest cash expenditure was compensation and benefits ($631,089); rent for the St. Louis and East Brunswick offices ($214,442); and, auditing and consulting/accounting services ($214,037). As detailed in the Compensation Schedule and the financial statements of Acartha accompanying this letter, the large reduction in Company expenses for 2011 is directly attributable to the reduced compensation paid to the senior employees of the Company and delayed payment to service providers. The budget for 2012 reduces headcount, makes some payments to certain ongoing service providers and provides an increase in compensation to the management team from the unsustainable level of 2011. Details on the 2012 budget are provided in *"Proposed 2012 Plan for Acartha – 2012 Operating Budget"* and in the actual 2012 budget accompanying this letter.

Acartha Current Assets: As of December 7, 2011, Acartha has $18,405 in cash. Acartha has taken forward a portion of management fees from ATP for the first quarter of 2012 in order to extend its ability to operate through December 31, including winding down operations if necessary. This assumes not settling any accounts payable and continuing to pay key personnel at the reduced rates they have been receiving throughout 2011. Certain employees are being notified that they will be terminated as of December 15. Absent additional funding provided by investors, Acartha Group will wind-down operations and terminate all of its remaining employees by December 31. Depending on events, it may have to file for bankruptcy protection on or around that date.

Other Acartha Assets; the MH Note: Morriss Holdings, LLC ("MH") is the obligor under a demand note to Acartha in an aggregate amount of $6,840,416 (inclusive of interest through 9/30/11) (the "MH Note"). The MH Note consolidates in one global note all amounts which were advanced by Acartha to MH, other entities associated with BDM personally (collectively, "Morriss Entities") and various creditors of BDM and the Morriss Entities. The advances recorded in the MH Note were not deemed expenses of Acartha. The MH Note replaced a note dated 11/18/08 between ATP and MH as well as a financing arrangement between the Company and BDM pursuant to which BDM had from time to time advanced funds to the Company. The MH Note includes all amounts which were advanced to MH and the Morriss Entities through 9/30/11 including $2,022,000 in proceeds from the sale of Gryphon Investments III Series A

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membership interests (the "G-III Series A"). See "*Acartha Funds – Acartha Technology Partners, L.P.* for a description of the G-III Series A transaction.

Since the establishment of Acartha in 2006, BDM had from time to time funded operating deficits of the Company either directly or through MH. For example, in 2008, the last year in which audited financial statements were prepared for the Company, BDM advanced $780,133 to Acartha. In 2009, the Company repaid the amount borrowed and by 12/31/09 had become a net creditor to MH for $1,977,622 (including interest) according to the unaudited books and records of the Company. By 12/31/10, the amount due under the MH Note was $4,242,480 (including interest). The outstanding amount of the MH Note is subject to some adjustments, as the Company completes its audit process, for items such as the allocation of time spent by MH employees on Company matters for 2011. It had been the intention of BDM to cause MH to satisfy the MH Note through the sale or redemption of the common stock of the Company owned by Morriss Enterprises, LLC as part of the Series B Recapitalization. However, given that MH and BDM have limited financial resources and that the Series B Recapitalization has been suspended, the current collectability of any portion of the MH Note must be considered doubtful.[6]

<u>Acartha Liabilities to Vendors</u>: As of December 1, 2011, accounts payable aggregated $594,170. The top five liabilities were to UHY Advisors for accounting services ($234,975), Holtz Rubenstein Reminick for auditing services ($72,500), Two Tower Center for back rent ($81,112), Pryor Cashman for legal services ($94,110) and Armstrong Teasdale for legal services ($43,374).

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[6] One asset which may be available to at least partially satisfy the MH note (to the extent not applied against repayment of the financing described later in this letter) is the aggregate carried interest which entities related to or controlled by BDM (each a "BDM Entity") are entitled to receive from MIC VII and certain of the SPVs (the "BDM Carry"). Under the scenario which generates the Base Case Projected AG Carry of $1,239,000 for Acartha, the projected BDM Carry would be $1,710,000. The same variability and caveats apply to the actual amount of BDM Carry ultimately generated as were noted in connection with the determination of the Base Case Projected AG Carry: the BDM Carry could be substantially more, it could be zero but it almost definitely won't be $1,710,000. Specifically, increasing the exit value of Cirqit to $300mm from $200mm and holding all other exit values constant increases the BDM Carry to $3,216,430; increasing the exit value of Cirqit to $400mm and Tervela to $100mm (from $50mm) and holding all other exit values constant increases the BDM Carry to $5,236,748. A downside case with Cirqit's exit value at $100mm and all other exit values held constant with the exit values for the Base Case Projected AG Carry generates a BDM Carry of $616,211.

The BDM Carry is subject to an agreement between Ameet Patel ("AP") and BDM pursuant to which BDM agreed to grant a net 40% interest in the carried interest of MIC VII and all SPVs in existence at the time of the agreement (March 19, 2009). The amounts of BDM Carry projected above reflect this agreement. Economically, after giving effect to the agreement with AP, the BDM Entities related to MIC VII, Tervela Acquisition, LLC, Tervela Acquisition II, LLC, Evergrid/MIC VII, LLC, and Clearbrook Acquisition, LLC have the right to receive 45% of the aggregate net carried interest (if any) paid by such entities and the BDM Entities related to ATP, LA II, and TA III, LLC have the right to receive 25% of the aggregate net carried interest paid by such entities. The other recipients of carried interest in ATP are AP and the John S. Wehrle Revocable Trust, and in LA II and TA III are AP and T. Wynne Morriss. The payment of carried interest in ATP is subject to the satisfaction of certain preferred interests described below in *"Acartha Funds – Acartha Technology Partners, L.P."*

Other Acartha Liabilities: Acartha is the obligor under two original issue discount promissory notes (the "OID Notes") issued to a private investor. The OID Notes require the Company to repay $5,250,000 in exchange for an advance of $2,000,000 effective as of December 3, 2010 and $1,500,000 effective as of January 13, 2011. The terms of the OID Notes provide that if they are not retired by the third anniversary of their respective issuance dates, the investor will be granted a warrant for 1% of the outstanding fully diluted equity of Acartha for each calendar year they remain unpaid, up to a maximum of 7%. It is an event of default if the OID Notes are not paid in full by the tenth anniversary of their respective issuance dates. The OID Notes accelerate upon a bankruptcy of Acartha. Proceeds from the OID Notes were applied to fund Acartha operating expenses; certain amounts advanced thereunder are included in the MH Note.

Acartha is the borrower for each of the loans listed below:[7]

- Acartha is the obligor under a demand note to ATP in an aggregate amount of $3,775,391 as of September 30, 2011.

- Acartha is the obligor under demand notes with Tervela Acquisition, LLC ("TA") for $277,771 and with Tervela Acquisition II, LLC ("TA II") for $351,028. As described below under "*Acartha Funds – Acartha Technology Partners, L.P.,*" TA and TA II in turn are the obligors under demand notes to ATP for $184,755 and $285,355, respectively.

- Acartha is the obligor under a note payable to a trust affiliated with BDM for $374,423. This note is for amounts advanced in 2008 from the trust to the Company plus fees and accrued interest.

- Acartha is the obligor to MIC VII for a net amount of $313,475 as of 9/30/11. This obligation is reduced each month by management fees due Acartha to the extent not paid by MIC VII investor members.

- Acartha advanced $206,513 to Acartha & Company, LLC ("Acartha & Co.") to finance a portion of a $500,000 commitment by Acartha Specialty Finance Investment, LLC ("ASFI") to invest in Impact Ventures II, L.P., an unrelated venture capital fund. Acartha & Co. is the managing member of ASFI. Certain investors assumed and fully funded 60% of Acartha & Co.'s investment in ASFI. As of 9/30/11, Acartha is the obligor to ASFI for $134,927 and is the indirect beneficiary through Acartha & Co. of 40% of any amounts received by ASFI as a result of the investment made with the proceeds of the Acartha advance. Acartha & Co.'s share of the unfunded commitment to ASFI is $89,951. The aggregate amount invested by ASFI in the venture capital fund to date is $275,122 and the balance of the commitment is $224,878.

Any amount advanced to Acartha, but then not utilized for Acartha related expenses, is included in the consolidated MH Note.

[7] All promissory notes have interest set at 1 month LIBOR plus 1.5%, and the amounts due are as of the most recent date of calculation (generally 9/30/11, but in some instances 8/31/11 or 10/31/11.)

Acartha Funds

Acartha manages directly or indirectly two funds which invest in multiple companies, MIC VII and ATP, and ten SPVs which invest (with one exception -- ASFI) in enterprises which are portfolio companies of either or both of MIC VII and ATP. MIC VII, ATP and the SPVs are sometimes referred to as the "Acartha Funds." The description of the Acartha Funds below focuses on their respective assets, liabilities and any agreements or side letters which affect the cash flow from carried interest or management fees. Please refer to the financial statements accompanying this letter for further details on MIC VII and ATP.

MIC VII: Established in 2005, MIC VII has investments in five portfolio companies as of 12/31/10: Tervela (through TA – capital invested: $910,019), Librato (capital invested: 6,648,124), Clearbrook Financial (capital invested directly and through Clearbrook Acquisition, LLC: $6,000,000), Exegy ($500,000) and Cirqit.com (capital invested through notes convertible into Series D-1 preferred shares: $5,129,073). As of 12/31/10, these investments had a GAAP fair market value of $22,532,300. The investment in Cirqit.com constituted 52.49% of that value. MIC VII has exited x.eye (distribution net of escrow $5,474,221) and Integrien (distribution net of escrow $1,726,563). The investment in Granite Edge (now Vantos) has been valued at zero (basis of $1,506,904). For each of x.eye and Integrien, one escrow payment has been received and partially distributed and there is one remaining escrow distribution expected to be received in March, 2012.

In September and October, 2010, the managing member of MIC VII contributed $2,500,000 of additional capital to the fund which was applied to fully discharge an outstanding promissory note of MIC VII payable to Wachovia, N.A. guaranteed by BDM[8]. The source of the $2,500,000 was an investor group (the "MIC VII New Investors") which became a preferred interest holder in Acartha Group Funding, LLC, which in turn contributed the capital to MIC VII through Acartha as their common managing member. At the end of the transaction, the loan to Wachovia was extinguished, MIC VII had as an asset a $2,500,000 loan made to BDM by MIC VII[9], and through Acartha Group Funding, LLC and Acartha as managing member, the MIC VII New Investors had a 10.63% sharing percentage interest in the distributions of the fund. Members of MIC VII other than the MIC VII New Investors were diluted such that they were entitled to 89.37% of the ongoing distributions of the fund. Acartha and Morriss Enterprises, LLC ("ME") agreed in a side letter with the representative of the MIC VII New Investors that (i) the MIC VII New Investors were not entitled to any distributions related to x.eye (x.eye sold for cash and stock to Odyssey Financial; Odyssey Financial in turn was sold to Temenos Finance on October 18, 2010) or Integrien (sold to VMware on August 30, 2010), (ii) the MIC VII New Investors would not pay any management fee on their investment and (iii) Acartha would refund to the

[8] The loan proceeds had been applied to finance the purchase of certain Series B preferred shares of Integrien Corp., an MIC VII portfolio company. The purchase prevented existing preferred positions in Integrien Corp. from being converted into common and/or being substantially diluted.

[9] This loan is booked as a demand note to MIC VII which, with accrued interest, totals $2,581,975 through 9/30/11).

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MIC VII New Investors 50% of any carried interest paid to Acartha after the capital contributed by the MIC VII New Investors had been returned. Acartha and Morriss Enterprises, LLC also agreed to jointly and severally indemnify the MIC VII New Investors against any claim brought by any existing MIC VII investor with respect to the investment and related matters.

Acartha Technology Partners, L.P.: ATP was established on September 22, 2008. It has investments in five portfolio companies as of September 30, 2011: Clearbrook Financial (capital invested: $2,500,000), Pollen, Inc. (capital invested: $1,654,652); Librato (capital invested: $1,017,526); Cirqit.com (capital invested through notes convertible into Series D-1 shares (including accrued interest) -- $960,677) and Tervela (capital invested: $2,463,553). It has exited Integrien, with a distribution to investors net of the escrow of $7,859,340. The ATP basis in Integrien was $6,149,702 and as of 9/30/11 the distribution to investors from the Integrien sale $8,299,315, which included a partial distribution of the first escrow payment received in September, 2011. The second escrow payment is expected in March, 2012.

As noted above in "*Other Acartha Liabilities,*" ATP holds the following notes from Acartha and SPVs managed by Acartha:

- Acartha Group as the obligor to ATP for a total balance of $3,775.391;
- TA as the obligor to ATP for $184,755 (this amount was advanced by ATP to enable TA to invest in Tervela, Inc. in the amount subscribed for by TA investors);
- TA II as the obligor to ATP for $285,335 (this amount was advanced by ATP to enable TA II to invest in Tervela, Inc. in the amount subscribed for by TA II investors);
- Evergrid/MIC VII, LLC as the obligor to ATP for $69,773 (this amount was advanced by ATP to enable Evergrid/MIC VII to invest in Evergrid, Inc. (subsequently renamed Librato, Inc.) in the amount subscribed for by Evergrid/MIC VII investors)[10]

Acartha's ability to pay the amount due under its note to ATP depends upon Acartha's ability to generate sufficient positive cash flow after expenses. Absent Acartha collecting on at least a portion of the MH Note, it is not likely to have sufficient resources to meet its obligations to ATP.

ATP has granted a waiver on the payment of carried interest to limited partners who have contributed $6,000,000 to the fund.

The general partner of ATP, Gryphon Investments III, LLC ("G-III"), sold $3,750,000 of Series A Preferred membership interests in G-III (the "G-III Series A Interests") in 2008 and 2009. Proceeds from the sale were advanced by G-III to Acartha to meet expenses of Acartha. As

[10] ATP also has note receivables relating to investments in convertible notes issued by Cirqit.com, Inc. ($960,677 as of 9/30/11) and Tervela, Inc. ($703,969); these investments are included in the aggregate ATP investments in portfolio companies listed above. ATP has a note payable for $40,824 to MIC VII relating to $40,000 advanced by MIC VII for the benefit of ATP in connection with ATP's investment in portfolio company Librato.

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noted above in "*Acartha Revenues, Expenses, Assets and Liabilities – Other Acartha Assets; the MH Note,*" $2,022,000 of the total proceeds raised have been included in the MH Note. The holders of the G-III Series A Interests are entitled to receive from the net management fees payable to G-III a preferred distribution of 10% per annum, which if not paid, is cumulative and accrues. The holders of the G-III Series A Interests have the right to convert their interests into interests in ATP in an amount equal to their original subscription amounts. If not converted, the G-III Series A Interests have a liquidation preference and, in addition to the net management fee (if any) received by G-III, the right to receive cash flow in G-III derived from its right to receive carried interest in ATP. This does not include the 25% of the carried interest which is paid to Acartha. As of 9/30/11, the aggregate amount payable to the holders of the G-III Series A Interests was approximately $[4.8mm], including the accrued preferred return. As a result of the assets under management in ATP being substantially less than originally projected, it is not anticipated that investors will receive cash flow from carried interest in an amount sufficient to repay investors the amount contributed and accrued interest.

The audit of ATP is in process and is suspended pending the payment of outstanding invoices to Holtz Rubenstein Reminick.

Single Purpose Investment Vehicles: Acartha manages ten SPVs, each established to make investments in a single company, which in all but one instance are companies that are also held by MIC VII or ATP. TA, TA II and TA III were established to invest in Tervela, Inc. Evergrid Acquisition, LLC; Evergrid/MIC VII, LLC and LA II were established to invest in Librato, Inc. (originally named Evergrid). Integrien Acquisition, LLC ("IA") and Integrien Acquisition II, LLC ("IA II") were established to invest in Integrien Corporation (these will be liquidated once the final Integrien escrow distribution is received in March, 2012). Clearbrook Acquisition, LLC was established to invest in Clearbrook Financial, LLC. ASFI was established to invest in limited partnership interests of Impact Ventures II, L.P. (a fund which invests in technology companies).

Acartha receives a 2% per annum management fee only from LA II and TA III. Management fees are calculated based on capital contributed. The aggregate capital contributed to LA II and TA III is approximately$2.1 mm. Acartha receives carried interest distributions after investors have received a return of their capital contributed from the following funds: Integrien Acquisition, Integrien Acquisition II, TA II, TA III, LA II and Evergrid/MIC VII. The payment of carried interest in LA II is subject to a waiver of $500,000 relating to the first $1.5mm invested by certain investors. Under the documentation as executed, Acartha is not entitled to receive carried interest distribution from any of the other SPVs (Clearbrook Acquisition, Evergrid Acquisition, TA and ASFI). Excluding IA and IA II, the total capital invested in those entities which do provide for carried interest is $9,456,658 (TA II -- $5,715,831; TA III -- $302,182; LA II – $1,758,511; and Evergrid/MIC VII – $1,680,134).

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Proposed 2012 Plan for Acartha

The situation and prognosis for Acartha has dramatically deteriorated in the last nine weeks: In the third week of September it appeared that the Series B Recapitalization was within reach,[11] which would have enabled the MH Note to Acartha to be repaid and would have provided sufficient runway to enable the Company to be in a position to generate positive cash flow through both increased management fees, and the realization of carried interest from investments (such as hedge funds) which generate carried interest on a quicker timetable than venture capital funds. Once the Company became aware of the SEC investigation and suspended the Series B recapitalization, it became clear that an alternative course of action was needed to address the Company's situation and avoid bankruptcy.

We recognize the significance of the information contained in this letter and the attachments. We also strongly believe that there is significant value in the portfolio, and that with proper management and support, that value can be realized. We believe that the key to a satisfactory resolution for investors and for us personally is to be completely transparent with investors about the events which have occurred up to this point in time and to work with investors in whatever manner they desire to obtain the best possible outcome.

There are two fundamental issues which we believe need to be addressed.

The first is providing comfort that the books and records of the Company and the Acartha Funds are in good order. That requires completion of the audits for Acartha and ATP. We also believe that appointment of an administrator to provide fund accounting and investor servicing would help ensure improved reporting, as well the tracking, preparation and delivery of capital account statements and K-1s. Both of these initiatives were planned to be implemented after the close of the Series B Recapitalization; both require the expenditure of additional funds. For the audits, the heavy lifting has already been completed on the Acartha audit, and upon satisfaction of the outstanding invoices of Holtz Rubenstein Reminick, it should be completed in short order. The ATP audit process has started and does not appear to be particularly difficult or expensive as ATP has many common investments with MIC VII, which should expedite the portfolio company valuation process. For the fund administrator, we have received bids for the provision of fund accounting and investor services from two established fund service companies in connection with the proposed Series B Recapitalization; while these will need to be updated, we believe that for approximately $200,000 an independent administrator would provide basic services and handle all cash coming in to and out of the various funds and SPVs. The addition of an independent fund administrator does not reduce the ongoing expenses for accounting and related services already embedded in the budget for 2012.

The second issue is more difficult: structuring a decision making process which permits investors who are so inclined to support those portfolio companies which they believe will provide profitable returns, taking into account the amounts such investors have already invested in those companies through ATP, MIC VII and/or one or more of the SPVs as well as any new money which may need to be invested. In a traditional fund, the fund manager makes the

[11] See note 2 for a description of the Series B Recapitalization.

decision to invest more money in an existing fund position or to decide not make further investments. The manager accesses cash to fund additional investments by drawing down on commitments made by investors.

Our sense is that given the overall circumstances, investors are reluctant to make additional commitments to Acartha to manage the existing portfolio in this traditional manner. Instead, reasonably enough, investors want to spend as little as possible and harvest the returns from those companies which are successful while not investing new money into those companies which are destined to fail, or more precisely, which might have an adverse outcome that doesn't return the incremental capital invested. The trick, of course, is being sure which portfolio companies are worth supporting. It is a particularly complicated endeavor when there are potentially very adverse outcomes if additional funds are not invested in a new round of investment. We believe reasonable people can have different views with respect to particular investing situations, and accordingly we believe that any structure needs to accommodate both those who wish to make additional investments and those who prefer to not make additional investments.

Of course, this is venture capital, and investors need to realize that in general, when a portfolio company has a financing round that involves parties in addition to Acartha, that round most often has a "pay to play" provision. This means that if an investor fails to make their pro rata investment, their existing position will be disadvantaged. Most often the penalty is that the preference is lost: what was a senior preferred position becomes common equity, which means that in order to recoup an investment which has been converted, the portfolio company will have to be sold for more than the aggregate remaining preferences before anything is distributed to the common stockholders. Sometimes the penalty is a partial conversion to common if there is partial participation in the round (i.e., more than nothing but less than the pro rata). Sometimes the penalty is that existing investments are wiped out.

In addition, if the round is a "down round" (meaning the valuation on the portfolio company is lower than the valuation in the previous investment round), then failing to make an additional investment results in dilution, often significant, to investors who don't participate in the new round. Even if the transaction documentation provides for anti-dilution protection, the usual situation is for the controlling shareholders to waive that protection. This means that if an investor who is unable to block controlling shareholders has chosen not to invest in the new round, such investor loses their anti-dilution protection, despite their contractual protection (i.e., the protection is waived by the controlling shareholders).

Going forward, we believe that we can provide the most value to investors by giving them the detailed information on a transaction by transaction basis to make informed investing decisions, and then ensuring that those who take the risk of providing additional funding for a particular transaction receive all of the benefits. We also believe that because of the specific investments and our long-term involvement, we are in a good position to help maximize the value of those companies. Specifically, while we can't control macro-economic risk, we have historically been able to provide value to portfolio companies (and thus our investors) by helping them navigate through product development and marketing risks, competitive risks (positioning the portfolio company appropriately against competitors), sales risks (contacting the right individuals in portfolio company customer organizations that can "close the deal" for significant contracts), management risks (upgrading executive and engineering talent), capital risks (assisting in the raising of funds and locating co-investors to provide financing) and exit risks (positioning portfolio companies for sale).

Despite the current challenges, we believe Acartha overall has delivered good results to its investors, and can continue to do so going forward.

ASSF: The attached term sheet describes the establishment of Acartha Special Situations Funding, LLC ("ASSF") which would obtain commitments from you and other investors to support a reduced Acartha through 2012. The overall amount required (detailed below in "*– 2012 Operating Budget*" and in the 2012 Operating Budget attached to this letter) is expected to be between \$1.5mm and \$2.1mm, depending in part on whether a fund administrator is hired and the amount of outside legal fees required.

In addition to enabling the collection and on-lending of the funds needed to cover the projected operating deficit at Acartha for 2012, ASSF would also be an investment vehicle for those investors who choose to support additional rounds of funding for portfolio companies.

For the support of Acartha, contributions to ASSF would be collected and disbursed to Acartha on an as-needed basis pursuant a senior secured loan agreement between ASSF and Acartha (the "Senior Loan"). Interest on the Senior Loan would accrue at a rate of 6% per annum, compounded annually. The Senior Loan would be repaid by the pro rata contribution of all investors who benefit from Acartha avoiding insolvency (that is, investors in ATP, MIC VII, the SPVs and in Acartha). Such contribution would be deducted from amounts otherwise payable to investors from any Acartha source, such as portfolio company liquidity events and carried interest. Because MIC VII and the SPVs require that investors receive their capital back before any carried interest is distributed, it is expected that the initial source of repayment of the Senior Loan will be portfolio company liquidity events. In addition, BDM has agreed to cause the BDM Carry to be pledged to secure the repayment of the Senior Loan. Acartha will pledge its carried interest as well, net of expenses. To the extent that all or a portion of the Senior Loan has been repaid from the pro rata contributions of ATP, MIC VII and SPV investors to ASSF, any BDM Carry will be first be applied to reimburse such investors for the full amount that had been deducted from their distributions to satisfy the repayment of the Senior Loan by Acartha, including interest at 6% per annum, compounded annually. The calculation of amounts deducted from distributions to be applied to enable the Company to repay the Senior Loan to ASSF is determined by the pro rata portion (by capital contributed) of each entity that receives such distribution.

We are requesting that investors contribute an amount at least equal to their pro rata interest as set forth in the attached Schedule of Individual Member Return Data in order to enable ASSF to have the funding necessary to make the Senior Loan[12]. If insufficient

[12] For each investor, the Schedule of Individual Member Return Data sets forth such Member's pro rata ownership interest in Acartha and the several Acartha investment vehicles. The denominator for determining the pro rata ownership is calculated by summing all capital contributed to ATP, MIC VII and the SPVs (excluding IA, IA II and TA III), the preference of the Series A preferred shares of Acartha and the original issue amount of the G-III Series A. It

investors participate and Acartha is unable to access the funds required to maintain operations, Acartha will have to file for bankruptcy protection and, if you are an investor in Acartha Group, your investment will be wiped out while if you are an investor in MIC VII, ATP or any SPV, you will have a high likelihood of your venture capital investment being liquidated, sold or converted, resulting in collection of only a fraction of the potential value of such investment.

In addition to funding the Senior Loan, investors in ASSF will be solicited for each investment that is needed for a portfolio company (other than investments in Librato, which will be made through LA II and for Tervela, which will be made through TA III). These investments in ASSF would be tracked individually and separately from the Senior Loan investments, such that distributions from a portfolio liquidity event received by ASSF would be made pro rata based on the relative amount contributed for the related round(s) of investment. The concept is that only those investors who have made an investment in a particular round would receive proceeds from that round – in other words, instead of each investor having a pro rata sharing percentage of all of the investments of ASSF, such investor would have the right to receive distributions on a pro rata basis with the other investors who participated in that round. This prevents those who don't participate in a round from diluting the returns of those who do participate.

It remains true that to the extent participation by ASSF investors prevents the overall Acartha position from being eliminated, converted to common or otherwise disadvantaged, by avoiding the effects of a pay to play provision, non-participating investors will receive an indirect benefit from the ASSF investors who support the transaction. We note that this is basically what happened in the Integrien transaction – investors participating in the last round of financing (a down round) benefitted from buying shares at a lower price than those who had participated in earlier rounds, but the fact that these later investors participated at all prevented the earlier investors (who chose not to participate) from having their investment converted from a senior preferred position to a junior preferred position.

ASSF would be managed by an LLC which, consistent with the other Acartha Funds, would distribute 25% of any carried interest to Acartha and the balance to the management team as incentive compensation. No carried interest would be distributed with respect to any investment until the members of ASSF funding the Senior Loan as well as all members participating in that investment had received a return of their capital invested.

ASSF is not a permanent plan for Acartha, but we believe that given the current situation, it provides the best way to protect the value of the assets held by the Acartha Funds in the near term (through 2012) while requiring the least commitment of funds. Depending on how events evolve, Acartha could conceivably launch new funds which will lead to increase revenues in 2013 and beyond which could provide revenue possibilities for existing Acartha creditors and Series A investors. It is equally possible that events may make it clear that the best course for both Acartha Fund investors, and Acartha creditors and Series A investors, is an orderly wind-

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excludes the cross-investments of MIC VII in Clearbrook Acquisition, LLC and TA. The sum total of the denominator is $85,208,667. The numerator is the total such investor has invested in each entity, not adjusted for prior distributions. The resulting percentage is multiplied against an assumed capital raise for ASSF of $2mm to determine the amount such investor's contribution if such investor chose to support at a pro rata level.

down. Even if investors decide not to make any additional investments in portfolio companies through ASSF, funding the Senior Loan to avoid a disorderly bankruptcy would provide value.

The attached term sheet for ASSF envisions the creation of "ASSF Advisory Council" discussed below in *"—Management of Acartha."* As noted in the term sheet, the undersigned welcome whatever supervisory structure seems appropriate, including appointing an individual not associated with Acartha to represent the interests of investors. Issues which will need to be considered are the incremental cost and the skill-set of any such representative.

<u>2012 Operating Budget</u>: The overall operating budget for 2012 (the "2012 Operating Budget") is $1.7mm. In addition, there are $594,000 in accrued expenses currently owed to providers of ongoing services to the Company (detailed in the 2012 Operating Budget). The sum of this amount, plus the $160,000 needed to fund the Company in December, exceeds scheduled management fees by $1.49mm. This is the projected immediate deficit. The 2012 Operating Budget contains further details about the assumptions underlying the proposed operating plan.

The 2012 Operating Budget assumes that the personnel currently housed in the East Brunswick New Jersey office operate the Company, with assistance from UHY Advisors for accounting and tax matters, and Holtz Rubenstein Reminick for audit matters. The St. Louis office, which Acartha shared with MH (the lessee), will be closed after production of the documents needed to respond to the SEC subpoenas. AP will continue his current role with the companies that he has been primarily involved with over the last two years (Tervela and Librato; previously Ameet had been very involved with Integrien (sold last year)) and will assume responsibility from BDM for the other portfolio companies. Currently, BDM sits on the boards of Tervela, Librato, Pollen and LogicSource (Cirqit.com owns approximately 27% of LogicSource), and, depending on events, may continue to represent the Acartha Funds on the boards of Pollen and/or LogicSource. Service as a member of the board of any portfolio companies will be subject to obtaining satisfactory director and officer's insurance coverage.

The 2012 Operating Budget is structured to minimize the out-of-pocket advances from investors by delaying certain expenditures until such time as distributions from existing closed transactions (Integrien, x.eye) are received in March, at which point accrued management fees are collected and advance fees are collected as well against the distributions. **We project that $685,000 in funding is needed to cover expenses until then.** This funding would enable the Company to make partial payments to UHY so that they can continue to provide financial support (particularly with respect to tax preparation and timely distribution of K-1's as well as other analytical support). It would also allow Holtz Rubenstein Reminick to resume their audits of Acartha and ATP. Payments to the landlord of the East Brunswick office are included as well as compensation to the 2012 Management Team and other required operating expenses. This amount does not include payments to any fund administrator, ongoing legal expense beyond a minimal amount, or payments to any third party representative of investors.

<u>Management of Acartha</u>: BDM has agreed take a leave of absence from the day-to-day management of Acartha and hand over operational control while he attends to his personal matters. Our current expectation is that for administrative reasons BDM would retain his current title at Acartha and therefore would be available to execute documentation relating to the

Acartha Funds. This avoids a costly and premature redrafting of corporate and fund documentation. BDM stays on the payroll at a minimal rate in order to qualify for medical insurance in exchange for cooperating in the transition and generally assisting where appropriate, especially with respect to the portfolio companies where he has particular institutional knowledge, such as Cirqit/LogicSource.

The management team for 2012 would consist of Ameet Patel, Chief Technology Officer; T. Wynne Morriss, General Counsel; and Dixon Brown, Chief Administrative Officer (the "2012 Management Team"). We suggest that an advisory group be formed consisting of representative interested members of Acartha and the Acartha Funds who provide the interim financing (the "ASSF Advisory Council"). As noted above, an alternative approach would be for investors directly, or through the ASSF Advisory Council, to appoint a non-Acartha individual to act on behalf of the council and otherwise supervise the activities of the 2012 Management Team. Over the course of the year, in addition to providing ASSF members with information and recommendations on specific investment decisions, the 2012 Management Team would provide timely reports on Acartha and the portfolio companies to the ASSF Advisory Council (in addition to providing the reports required under the documentation governing the various Acartha Funds). The ASSF Advisory Council or its designee could also approve expenses not set forth in the 2012 Operating Budget, determine matters relating to the audits of the Company and the funds and otherwise provide such supervision as it determines is in the best interests of investors. Assuming that investors agree to support Acartha during 2012 through ASSF, the 2012 Management Team would continue to work in good faith at Acartha and would work with investors, and any third parties engaged by the investors, to address the issues facing the Company and the Acartha Funds.

As the portfolio develops and events evolve, the ASSF Advisory Council would determine the terms and conditions, if any, under which they might be willing to provide continued support for Acartha and the Acartha Funds. While the 2012 Management Team is hopeful that a long-term strategy can be developed for Acartha which provides a return for Acartha investors as well as opportunities for the members of the team, we also recognize that there are many uncertainties at the present time and it is premature to form a more permanent plan until at least some of those uncertainties are resolved.

BDM has reviewed this letter and indicated to us that he fully backs this plan and believes it is the best and most cost-efficient way to move forward. In exchange for the Company agreeing to forebear on the collection of the MH Note until such time as all investigations by government agencies are finally resolved, in addition to securing repayment of amounts contributed to fund the Senior Loan, BDM also has agreed to cause the BDM Entities to enter into such security agreements as are required to apply the BDM Carry (described in footnote 6 of this letter) to repay any remaining balance of the MH Note.

Given the cash situation of the Company, time is of the essence and accordingly we look forward to discussing the overall situation and this proposal to you in the next few days. Finally, while we cannot predict the outcome for the Company or the investments which it manages on your behalf, we do believe that the plan outlined here will lead to a better result for you than either an

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Acartha bankruptcy or attempting to transfer the portfolio of the Acartha Funds to new managers before stabilizing the platform.

This plan is designed to buy some time so that Acartha and Acartha Fund investors can understand their options, decide what is in their best interests and make appropriate decisions while at the same time ensuring that the value of their existing investments is not precipitously destroyed through a bankruptcy filing of Acartha, which, absent support from investors, will probably become inevitable within the next 30 days.

It is our sincere hope that together we can manage our way through this very difficult situation and realize the value that remains within Acartha and the Acartha Funds. Despite the challenges, we think this value can be harvested for our mutual benefit.

Please direct any questions you may have on this letter to the Company's General Counsel, Wynne Morriss, at 732-289-3368.

Very truly yours,

Ameet Patel T. Wynne Morriss Dixon R. Brown

Attachments: Schedule of Individual Member Return Data
Schedule of Investments in Portfolio Companies
Compensation Schedule
2012 Operating Budget
Acartha Special Situations Funding Summary of Terms
Unaudited 12/31/10 and 9/30/11 Balance Sheet and Income Statement of Acartha
Unaudited 12/31/10 and 9/30/11 Balance Sheet and Income Statement of ATP
MIC VII 12/31/10 Audited Financial Statements
Acartha Group 12/31/08 Audited Financial Statements

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2013, I electronically filed the Objection of Ameet Patel to the Receiver's Motion For Authorization To Distribute Funds Held By Integrien Acquisition, LLC and Integrien Acquisition II, LLC, together with the supporting Declaration of Robert J.A. Zito, with the Clerk of the Court through the Court's CM/ECF system, which will send a notice of electronic filing to the following:

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