

This Subscription Deed constitutes an application for Ordinary Units in the Pemba Cooper Trust (**Trust** or **Fund**).

The applicant named below (the **Applicant**) is applying to Pemba Trusco 1 Pty Ltd as trustee of the Trust (**Trustee**) to be admitted as a unitholder of the Trust.

This Subscription Deed is a deed poll made by the Applicant in favour of the Trust and the Trustee.

A capitalised term not otherwise defined in this Subscription Deed has the meaning given to it in the Trust Deed establishing and governing the Trust (**Trust Deed**). The rules of interpretation set out in Schedule 1 of the Trust Deed apply to this deed. This Subscription Deed is governed by the laws of New South Wales.

The Applicant must complete the AML Customer Identification Form set out in Attachment B to this Subscription Deed and provide such completed form to the Trustee (together with any supporting documentation identified as being required in the AML Customer Identification Form). The Applicant may be required to provide additional information so that the Trustee can comply with their obligations under AML/CTF Law (as defined below). The nature of the additional information required will depend on the information given by the Applicant in this Subscription Deed and the AML Customer Identification Form, including without limitation the type of entity that the Applicant is.

This Subscription Deed must be signed by each Applicant, and by each natural person who is a beneficial owner of an Applicant that is not itself a natural person (being a person who directly or indirectly owns 25% or more of an Applicant or otherwise controls an Applicant) (Beneficial Owner).

Section 1 – Name and Address

1. Name of Applicant

Echelon Superannuation Pty Ltd ACN 600 829 981 as trustee for the Echelon
Superannuation Fund ABN 91 428 166 039

(Full name of the Applicant including ABN or ACN if applicable. If the Applicant is a partnership, the firm name of the Applicant. If the Applicant is a partnership without a firm name, the full name of each partner of that partnership)

2. Nature of Applicant for AML purposes

☐ Individuals

☐ Companies

☒ Trustee of a trust

☐ Government bodies

☐ Partners in a partnership

☐ Associations

☐ Registered Co-operatives

☐ Agents of customer

3. Address

REGISTERED OFFICE & PRINCIPAL PLACE OF BUSINESS:

100 SKYRING TERRACE NEWSTEAD QLD 4006

(Full address of Applicant including country and postal code. If the Applicant is an individual, its principal place of residence. If the Applicant is a body corporate, its registered office or principal place of business. If the Applicant is a partnership, its registered office or principal office)

Section 2 – Capacity

4. Is the Applicant applying as a trustee, responsible entity, custodian, sub-custodian, nominee or general partner?

If the Applicant is to be admitted as a Unitholder other than in its personal capacity, please indicate that capacity:

- ☒ trustee
- ☐ responsible entity
- ☐ custodian
- ☐ sub-custodian
- ☐ nominee
- ☐ general partner
- ☐ other

of

Echelon Superannuation Pty Ltd as trustee for the Echelon Superannuation Fund

(Full name of fund or person for whom the Applicant holds the Ordinary Units as trustee, responsible entity, custodian, sub-custodian, nominee or general partner and fund number if applicable)

- ☐ not applicable

Section 3 – Tax details

5. Country of residence

AUSTRALIA

6. Tax exemption basis

(If the Applicant is exempt from tax in its country of residence, details of the basis on which the Applicant qualifies for the exemption)

7. Tax file number (or exemption)

795 329 224

Section 4 – Contact details

8. Mailing address

LOCKED BAG 1 FORTITUDE VALLEY QLD 4006

(If different to the address given at question 3)

9. Telephone number

0413 877 094

10. Facsimile number

11. Contact Person

MATTHEW NEIBLING

DIRECTOR OF ECHELON SUPERANNUATION PTY LTD

0413 877 094

(Name, position and telephone number including country and area code)

12. E-mail address of contact person

MATT@ACIS.NET.AU

Section 5 – Subscription details

13. Total Capital Commitment

\$300,000

(The Applicant's total Capital Commitment).

Section 6 – Declaration

The Applicant:

- (a) acknowledges that it has received a copy of the Trust Deed in the form attached as Attachment A, and confirms that it has read and understood each of the above documents and has been afforded an opportunity to:
 - (i) ask such questions or request such further information relating to the Trust; and
 - (ii) obtain independent legal, investment and tax advice regarding any investment in the Trust (including in respect of the contents of each of the above documents),as it deems appropriate;
- (b) acknowledges that it has received a copy of the AML Customer Identification Form attached as Attachment B;

- (c) acknowledges that in respect of any investment in the Trust, among other things:
 - (i) the investment is illiquid;
 - (ii) there is no guarantee as to the performance of the Fund and its success will rely on the decisions made by the Trustee and its investment team; and
 - (iii) like other investments, an investment in the Fund is exposed to macroeconomic and regulatory risk, including currency risk and changes in taxation laws;
- (d) acknowledges that any investment in the Trust is governed by the Trust Deed and agrees from the date of admission as a unitholder to be bound by and comply with the terms and conditions of the Trust Deed;
- (e) acknowledges that an investment in the Trust is not a deposit with, or any other type of liability of the Trustee, any related body corporate of the Trustee, or any of their respective officers, advisers, agents, employees or affiliates (each of the foregoing, a **Relevant Person**);
- (f) acknowledges that no Relevant Person guarantees the payment of distributions or repayment of capital by the Trust or any particular rate of return or the performance of the Trust;
- (g) acknowledges that there can be no assurance that the rates of return historically achieved by any other fund managed by a Relevant Person will be achieved by the Trust;
- (h) acknowledges that the Trust is not required to be registered by the Australian Securities and Investment Commission under Part 5C of the *Corporations Act 2001* (Cth) (**Corporations Act**) as a managed investment scheme and the Trustee is not required to prepare or lodge with the Australian Securities and Investment Commission a constitution or compliance plan;
- (i) acknowledges that:
 - (i) it has obtained whatever independent advice it considers appropriate in relation to the legal, financial, commercial and taxation aspects associated with an investment in the Trust and the terms and conditions of the Trust Deed;
 - (ii) it has relied in every respect on its own independent investigation, enquiries and appraisals in connection with the Trust before deciding to invest in the Trust; and
 - (iii) it has not relied on the contents of any statement, representation, warranty, promise, undertaking or agreement, whether made expressly or implied by any Relevant Person in deciding to invest in the Trust;
- (j) acknowledges and agrees that it does not have any right to require the Trustee to return any subscription amount, or realise or transfer any assets comprising the Trust Fund, except in accordance with the Trust Deed, and that the Trustee is not required to redeem or buy back any Units;
- (k) acknowledges and agrees that any Units held by it may not be transferred, secured or otherwise disposed of except in accordance with the Trust Deed;
- (l) is not aware or has no reason to suspect that the monies used to fund investment in the Trust have been or will be derived from or related to any conduct that is prohibited by the *Anti-Money Laundering and Counter-Terrorism Financing Act 2006* (Cth) or associated rules and regulations or otherwise prohibited under any international convention or agreement (**AML/CTF Law**) nor does it or will it constitute the proceed of crime as contemplated by the *Proceeds of Crimes Act 1987* (Cth) or *Proceeds of Crime Act 2002* (Cth);

- (m) is not aware and has no reason to suspect the proceeds of its investment in the Trust will be used to finance any illegal activities;
- (n) will provide all additional information and assistance that any Relevant Person may request in order for the Trustee to comply with any AML/CTF Law;
- (o) if the Applicant is not a natural person, represents and warrants that:
 - (i) it has provided details of each Beneficial Owner; or
 - (ii) it has no Beneficial Owner;
- (p) acknowledges that the Trustee may decide to delay or refuse the Applicant's application for an interest in the Trust if:
 - (i) the Applicant does not provide information requested by the Trustee; or
 - (ii) the Trustee is concerned that the subscription may result in a breach of any obligation, or cause the Trustee to commit or participate in an offence under, any AML/CTF Law,

and the Trustee will incur no liability to the Applicant if the Trustee elects to do so;

- (q) represents and warrants that:
 - (i) the details, statements, declarations and undertakings made or given by it in this Subscription Deed are complete and correct;
 - (ii) if it is a natural person or persons, it is over the age of 18 and not under any legal disability;
 - (iii) if it is a company or body corporate, it is duly registered and validly existing under the laws of its place of incorporation;
 - (iv) it has the power to enter into and perform its obligations in connection with the Trust without the consent of any other person;
 - (v) it has taken all action which is necessary to authorise the entry into and performance of its obligations in connection with the Trust;
 - (vi) this Subscription Deed constitutes legal, valid and binding obligations of it in accordance with its terms;
 - (vii) the execution and performance by it of this Subscription Deed comply with, and do not conflict with or breach or constitute a default under:
 - (A) any applicable law;
 - (B) its constitution or other constituent documents (if applicable); or
 - (C) any document, agreement, obligation or arrangement binding on it;
 - (viii) it is not and has not been the subject of an insolvency or bankruptcy or other similar event;
 - (ix) it agrees to contribute the amount specified in the Subscription Details section of this Subscription Deed as a contribution to the Trust Fund;
 - (x) if it is an Australian person, it is:
 - (A) a wholesale investor within the meaning of the Corporations Act; or

- (B) it has provided the Trustee with an accountant's certificate which is less than 2 years old indicating that the Applicant has either net assets of at least \$2.5 million or a gross income for each of the last 2 financial years of at least \$250,000 a year,
- (xi) if it is a US person:
 - (A) it is an "accredited investor" within the meaning of Rule 501 of Regulation D under the United States Securities Act of 1933;
 - (B) it is acquiring an interest in the Trust for its own account and not with a view to, or for resale in connection with, any distribution of such interest;
 - (C) it received or had access to all information it deemed relevant to evaluate the merits and risks of an investment in the Trust; and
 - (D) it has the ability to bear the economic risk of an investment in the Trust;
- (r) if it is the trustee of a trust, further represents and warrants that:
 - (i) the trust is duly constituted and has not terminated, nor has the date or any event occurred for the vesting of the trust assets;
 - (ii) the trust deed relating to the trust was properly executed and appropriately stamped;
 - (iii) nothing in the trust deed relating to the trust affects the representations and warranties made in this deed or the ability of the Applicant to perform its obligations under this deed;
 - (iv) the Applicant was validly appointed trustee of the trust in accordance with the terms of the trust deed relating to the trust;
 - (v) the Applicant is the sole trustee of the trust;
 - (vi) the Applicant is not in default under the terms of the trust deed relating to the trust and it has no notice of any circumstances which will or are reasonably likely to lead to the removal of the Applicant as trustee of the trust;
 - (vii) the Applicant has the right to be fully indemnified out of the assets of the trust in respect of all its obligations and liabilities under this deed;
 - (viii) the Applicant has full legal capacity and power under the trust deed relating to the trust, as trustee of the trust, to:
 - (A) own the trust assets and carry on the business of the trust as it is now being conducted;
 - (B) enter into this deed; and
 - (C) perform its obligations under this deed;
 - (ix) all action has been taken that is necessary or desirable under the trust deed relating to the trust or at law to:
 - (A) authorise the Applicant entering into this deed and carrying out the transactions contemplated by it;
 - (B) ensure that this document is legal, valid and binding on the Applicant as trustee of the trust and admissible in evidence against it in that capacity; and
 - (C) enable the Applicant to properly carry on the business of the trust.

Section 7 – Use of Personal Information

This section applies to each Applicant that is a natural person, and to each natural person who is a beneficial owner of an Applicant that is not itself a natural person (being a person who directly or indirectly owns 25% or more of an Applicant or otherwise controls an Applicant (**Beneficial Owner**) (each, a **Relevant Person**).

The Applicant acknowledges in respect of itself and each Relevant Person that:

- (a) the Trustee may disclose the Relevant Person's name, residential address and/or date of birth (**Personal Information**) to a credit reporting body (**CRB**) for the purpose of electronically verifying the Relevant Person's identity, as required by the AML/CTF Law;
- (b) the Trustee may request the CRB to provide an assessment of whether the Personal Information disclosed matches (in whole or in part) the information held by the body;
- (c) the CRB may use information held about the Relevant Person, and information held about other individuals, for the purpose of making such an assessment;
- (d) the assessment will consist of an overall assessment of the extent of the match between the Personal Information disclosed by the Trustee and the information held by the CRB and will not include separate assessments of the match between particular categories of that information;
- (e) the assessment will be provided to the Trustee for the sole purpose of verifying the Relevant Person's identity. If the Trustee is unable to verify the Relevant Person's identity using information held by a CRB, the Trustee will provide the Relevant Person with a notice to this effect and the name of the CRB and give the Relevant Person the opportunity to contact the CRB to update its information;
- (f) records of the verification request will be made by the Trustee and the CRB and retained for 7 years from the date of the request and for 7 years after the Trustee ceases to provide services to the Relevant Person. The records can be accessed by the Relevant Person at the Relevant Person's request;
- (g) by signing this Subscription Deed, the Relevant Person is providing its express consent to the Trustee making such a request and disclosing the Relevant Person's Personal Information to a CRB; and
- (h) if a Relevant Person does not wish to consent, alternative means of verifying the Relevant Person's identity, not reliant upon credit reporting information, are available at the Relevant Person's request.

Section 8 – Completing this application

Please forward:

- (a) your completed application; and
- (b) your completed AML Customer Identification Form and the required supporting documents,

to:

Attention: Susi Murphy
Email: susim@pemba.com.au
Office: Level 45, Gateway, 1 Macquarie Place
Sydney NSW 2000

Executed as a deed poll

Signed, sealed and delivered by **Echelon Superannuation Pty Ltd** in its capacity as trustee of **Echelon Superannuation Fund** in accordance with section 127 of the *Corporations Act 2001* (Cth) by:



Signature of director

Matthew James Neibling

Name of director (print)



Signature of director

Kristen Michelle Sanders

Name of director (print)

Attachment A
Trust Deed

Trust Deed Pemba Cooper Trust

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Date: 18 March 2022

Parties

- 1 **Pemba Trusco 1 Pty Ltd (ACN 648 986 832)** of Level 45, Gateway, 1 Macquarie Place, Sydney NSW 2000 Australia (**Initial Trustee**)
 - 2 **Pemba Capital Partners Pty Ltd (ACN 121 906 045)** of Level 45, Gateway, 1 Macquarie Place, Sydney NSW 2000 Australia (**Initial Manager**)
 - 3 **Mark Richard David Summerhayes** of 174 Hopetoun Avenue, Vaucluse NSW 2030 (**Settlor**)
-

Background

- (a) The Initial Trustee intends that this deed will be the Trust Deed for a unit trust known as Pemba Cooper Trust (**Trust**), or such other name as the Initial Trustee determines from time to time.
- (b) This Trust is intended to facilitate investment of the Unitholders in the Target, and make bolt-on investments in relation to the Target (the **Portfolio**).

The parties agree

1 Defined terms and interpretation

1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the Dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary;
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary has the meaning given to it in the Corporations Act.

1.2 Interpretation

The interpretation clause in Schedule 1 (**Dictionary**) sets out rules of interpretation for this deed.

2 The Trust

2.1 Establishment of the Trust

- (a) The Trust is established upon:
 - (i) execution of this deed; and
 - (ii) the earlier of payment into the Trust of \$10 by the Settlor and admission of a person as a Unitholder under clause 3.
- (b) The Trust is called the Pemba Cooper Trust or such other name as the Trustee notifies to Unitholders from time to time.

2.2 Fund held on trust

- (a) The Trustee must hold the Assets on trust for the Unitholders in accordance with the terms and conditions of this deed.
- (b) The Assets:
 - (i) vest in the Trustee; and
 - (ii) may be combined with other assets of the Trustee or of any other managed investment scheme or unit trust but must, at all times, be clearly identified by the Trustee as property of the Trust.

2.3 Purpose

- (a) The purpose of the Trust is to invest in the Target and the Portfolio.
- (b) The Trustee has absolute discretion to the making of the investments of the Trust, except that the Trustee must not cause the Trust to make any investment other than:
 - (i) the Target ; and
 - (ii) the Portfolio.
- (c) The Trustee may acquire an investment in the Target and the Portfolio in accordance with this deed.

2.4 Name and Registered Office

- (a) The Trustee may change the name of the Trust or the Registered Office.
- (b) The Trustee must give prompt notice to each Unitholder of any change of the name of the Trust or the address of the Registered Office.

2.5 Binding

- (a) This deed binds each Unitholder, and any person claiming through a Unitholder.
- (b) Once a person ceases to be a Unitholder, it continues to be bound by:
 - (i) in relation to matters occurring before it ceased to be a Unitholder – this deed; and
 - (ii) in relation to matters occurring from and after it ceased to be a Unitholder – those provisions of this deed which expressly apply to former Unitholders.
- (c) Once a person becomes a Unitholder, then from the time the person becomes a Unitholder:
 - (i) that person may enforce the provisions of this deed against each other current or former Unitholder; and
 - (ii) each other current or former Unitholder may enforce the provisions of this deed against that person.

2.6 MIT regime

- (a) The Trustee must use its reasonable endeavours (taking legal advice where necessary) to ensure that the Trust qualifies as, and continues to qualify at the relevant testing times required under the Tax Act as, a managed investment trust (**MIT**) under the Tax Act.
- (b) The Trustee must make a choice under section 275-115 (relating to capital gains tax choices of MITs) of the Tax Act within the period permitted under section 275-115 if the Trustee is entitled under section 275-115 to make that choice.
- (c) Without limiting clause 2.6(a), the Trustee must as soon as reasonably practicable promptly notify all Unitholders upon it becoming aware of the Trust not being able to qualify as a MIT after the period in s 275-20(6)(a) ceases to apply, or no longer qualifying as a MIT.

2.7 AMIT regime

- (a) If the Trustee is eligible to make a choice under the Tax Act for the Trust to be treated as an AMIT, and being an AMIT is not detrimental to the Trustee, Manager or Unitholders, the Trustee may (at its sole discretion) choose to make an election for the Trust to be treated as an AMIT.
- (b) Before making the choice referred to in clause 2.7(a), the Trustee must provide the Unitholders with reasonable prior notice of its election.
- (c) If the Trust is an AMIT in a Financial Year, but not otherwise, then the provisions in Schedule 2 will prevail over other provisions of this deed to the extent of any inconsistency.
- (d) The Trustee must as soon as reasonably practicable promptly notify all Unitholders after becoming aware that the Trust has started, or has ceased, to be an AMIT.

2.8 Settlor

The Settlor does not:

- (a) have power, whenever exercisable, to revoke or alter the Trust so as to acquire a beneficial interest in the income derived by the Trustee during the year of income, or the property producing that income, or any part of that income or property; or
- (b) have a child or children (under the age of 18 years) that any Trust income or property is payable for or accumulated for the benefit of.

The prohibition in this clause 2.8 is irrevocable and cannot be amended or varied in any way.

3 Interests in the trust

3.1 Units

- (a) The beneficial interest in the Assets is divided into units (each a **Unit**).
- (b) Subject to clause 3.5 and to any rights, obligations or restrictions attaching to any class of Units, each Unit confers on the Unitholder:

- (i) an equal, undivided interest in the Assets (taken as whole, but not in any specific Asset), subject to the Trust Liabilities;
- (ii) the same fixed beneficial interest, represented as one (1) divided by the total number of all issued Units, in the Assets; and
- (iii) a right to share in:
 - (A) any distributions made from the Trust's taxable income from a particular source or with a particular character; and
 - (B) any distributions otherwise than from the Trust's taxable income,
 in accordance with this deed.

3.2 Classes of Units

- (a) The Trustee may issue Ordinary Units or Sponsor Units in accordance with this deed.
- (b) The Trustee may create and issue any other class of Units with approval by Special Resolution.

3.3 Splits and consolidations

- (a) The Trustee may consolidate or split Units in its discretion, subject to the following:
 - (i) the Trustee must immediately amend the Unitholder Register to record the consolidation or split;
 - (ii) the Trustee must notify all Unitholders within 10 Business Days after the consolidation or split;
 - (iii) the Trustee must ensure that each Unit is consolidated or split on the same basis as each other Unit of the same class, treating holders of Units within the same class equally; and
 - (iv) the Trustee must ensure that in consolidating or splitting Units that the relative interests of Unitholders as to voting and distributions are maintained, and that holders of different classes of Units are dealt with fairly.
- (b) Any consolidation or split of Units pursuant to clause (a) does not constitute, and is not to be taken to be, a cancellation of any existing Units or an issue of new Units.

3.4 Fractions of Units

- (a) Beneficial interests in the Assets may be held in fractions of Units at the discretion of the Trustee provided that a holder of any such beneficial interests must hold at least one whole Unit. The value of, and all rights and obligations attaching to, a fractional Unit will be in proportion to those attaching to a whole Unit.
- (b) Where a holding comprises more than one fraction of a Unit, the Trustee may consolidate the fractions.

3.5 Partly Paid Units

- (a) The Trustee may offer and issue Units on terms that the issue price is payable by one or more instalments at such times as the Trustee determines in accordance with clause 6.
- (b) Unless this deed states otherwise, a Unit that is partly paid confers an interest of the same nature as any other Unit of the same class, subject to the need to pay the amount remaining to be paid up on the Unit.

3.6 Certification

The Units and holdings of Units need not be certificated.

4 Sponsor Units

4.1 Sponsor Units

- (a) The Sponsor Units are a different class to the Ordinary Units having the terms of issue set out in this clause, and these terms may not be varied, except:
 - (i) by amendment of this deed in accordance with clause 11.12; and
 - (ii) with the prior approval in writing of Sponsor Unitholders holding at least 75% of the number of Sponsor Units on issue at that time.
- (b) Sponsor Units have:
 - (i) all the rights and obligations attaching to Units generally under this deed;
 - (ii) no rights to vote except as expressly provided in this deed; and
 - (iii) the right to receive Sponsor Unit Distributions as provided in this deed.
- (c) The Sponsor Unit Distributions are, subject to clause 12.3, to be divided between the Sponsor Unitholders in the proportion that their respective number of Sponsor Units bears to the aggregate number of Sponsor Units of all Sponsor Unitholders.
- (d) For the avoidance of doubt, a reference to a distribution in this clause includes any distribution regardless of whether the distribution is of income, capital, any category of income or capital or any combination of income or capital.

4.2 Issue of Sponsor Units

- (a) The Trustee may, in its absolute discretion at any time, issue Sponsor Units to one or more persons.
- (b) The issue price of each Sponsor Unit is:
 - (i) if the Sponsor Unit is issued within 20 Business Days after the First Closing Date, \$0.01; and
 - (ii) if the Sponsor Unit is issued after the date referred to in clause 4.2(b)(i), the Net Unit Value of a Sponsor Unit at the date of issue.

4.3 Transfer of Sponsor Unit

- (a) Sponsor Unitholders must not Transfer any Sponsor Units, except:
 - (i) to a Certified Related Body Corporate;
 - (ii) by way of creation of any trust or change in any beneficial interest in any trust on which the Sponsor Unit is held;
 - (iii) by way of any change of the trustee of any trust on which the Sponsor Unit is held, or appointment of a custodian or nominee for any such trust;
 - (iv) to any other person that is a member of the Management Team (or his or her Affiliate); or
 - (v) any Transfer approved by Special Resolution.
 - (b) Sponsor Unitholders must keep their Sponsor Units free from any Security Interest unless the Security Interest is approved by a Special Resolution.
-

5 Issue of Ordinary Units

5.1 Invitation

- (a) In offering or inviting investments in the Trust:
 - (i) the Trustee must observe the laws of any relevant jurisdiction; and
 - (ii) any offer or invitation must be an Excluded Offer.
- (b) The Trustee may not make any Capital Commitment but an Affiliate or Associate of the Trustee may become an Ordinary Unitholder or Sponsor Unitholder in accordance with this deed.

5.2 Issue of Units

- (a) When a person becomes an Ordinary Unitholder, or after an Ordinary Unitholder increases its Capital Commitment under this deed, the Trustee must issue such number of Ordinary Units to that person that equals the Capital Commitment of that person (in the case of admission under clause 5.3 or 5.4) or the increase in the Capital Commitment of the person (in the case of increase under clause 5.4) divided by the Ordinary Unit Subscription Amount. Until the Ordinary Unitholder pays the full Ordinary Unit Subscription Amount in respect of an Ordinary Unit issued under this clause, the Ordinary Unit is regarded as partly paid in accordance with the Paid-Up Proportion of that Ordinary Unitholder.
- (b) Ordinary Units are taken to be issued to a person when the person is admitted as an Ordinary Unitholder or increases its Capital Commitment pursuant to this clause 5.
- (c) The Trustee may not issue Ordinary Units otherwise than in accordance with this clause 5.
- (d) No solicitation for the subscription for the Units shall be made in Japan or to a resident of Japan, unless such solicitation is made only to qualified institutional investors (as defined in Article 2, Paragraph 3, Item 1 of the Financial Instruments

and Exchange Act of Japan, **FIEA**) (**Qualified Institutional Investors**) in accordance with Article 2, Paragraph 3, Item 2(i) of the FIEA.

5.3 First Closing

- (a) On and from the date a person delivers to the Trustee a Subscription Deed duly executed in the manner specified by the Trustee, the person is a **Subscriber** for the purposes of this deed and the provisions of this deed relating to Subscribers apply to that person.
- (b) A Subscriber is not an Ordinary Unitholder and has no interest in the Trust unless and until the Subscriber is issued Ordinary Units under clause 5.3. The Trustee may impose conditions on such admission at its sole discretion
- (c) At any time prior to a Subscriber being admitted as an Ordinary Unitholder under this clause 5.3, the Trustee may in its absolute discretion and by notice to the Subscriber reduce (but not increase) the amount of Capital Commitment specified in the Subscription Deed in respect of the Subscriber.
- (d) The Trustee may admit a Subscriber as an Ordinary Unitholder on the First Closing Date or within 20 Business Days after the First Closing Date (such Subscriber to be treated for the purposes of this deed as if having been admitted on that First Closing Date) if:
 - (i) **(acceptance)** the Trustee notifies the Subscriber that the Trustee accepts the Subscription Deed (as the case may be, with a reduced Capital Commitment pursuant to paragraph (c)) in respect of the Subscriber, which the Trustee may in its absolute discretion decline to do including if:
 - (A) the offer of Ordinary Units to the Subscriber and the creation of an interest of the Subscriber in the Trust would not be an Excluded Offer;
 - (B) the Subscriber (and any person for whom it may have duly executed the Subscription Deed as trustee, nominee, custodian or sub-custodian) does not comply with any requirements that the Trustee has, in its absolute discretion, set in respect of the First Closing, including the Trustee receiving such information which it reasonably requires to issue Ordinary Units to the Subscriber and the issue of Units would not be of the type referred to in sub-paragraph (A); or
 - (C) the Subscription Deed specifies a Capital Commitment of less than \$100,000 unless the Trustee determines otherwise;
 - (ii) **(Capital Contribution)** the Subscriber pays a Capital Contribution of an amount equal to the Capital Commitment of the Subscriber as specified in the Subscription Deed duly executed by the Subscriber (or if that Capital Commitment is reduced under paragraph (c), as reduced under that paragraph) and accepted by the Trustee in accordance with sub-paragraph (i), multiplied by the Paid-Up Proportion as at the First Closing Date as notified by the Trustee to each Subscriber prior to the First Closing Date.
 - (iii) **(information and documents)** the Subscriber provides any information and executes and delivers any documents to the Trustee or any person specified by the Trustee, which the Trustee reasonably considers to be necessary or desirable to issue Units to a Subscriber, including any “know your customer” information required to satisfy the obligations of the Trustee or Manager under the AML/CTF Laws;

- (e) On a Subscriber being admitted as an Ordinary Unitholder in accordance with paragraph (d) but subject to clause 12.1(d), the Subscriber may enforce the provisions of this deed against each current or former Trustee as if the Subscriber were an Ordinary Unitholder under this deed from the First Closing Date and each other current or former Trustee may enforce the provisions of this deed against the person as if the person were an Ordinary Unitholder under this deed from the First Closing Date.
- (f) If a Subscriber is not admitted as an Ordinary Unitholder on the First Closing Date, any Capital Contribution of the Subscriber paid under paragraph 5.3(d)(ii), or if the Capital Commitment of the Subscriber is modified under paragraph (c), any Capital Contribution of the Subscriber paid in excess of the amount required under paragraph 5.3(d)(ii), must be repaid to the Subscriber as soon as practicable after the First Closing Date. No interest is payable to the Subscriber on any such Capital Contribution.
- (g) Within 3 months after the First Closing Date, the Trustee must use reasonable endeavours to ensure that it makes a capital election on behalf of the Trust if the Trust qualifies as a managed investment trust under the Tax Act such that the capital gains tax provisions of the Tax Act are the primary code for the gains and losses on the Trust's investments unless the types of Unitholders are such that the Trust cannot qualify as a managed investment trust.

5.4 Subsequent closings

- (a) Other than the First Closing Date, the Trustee may only admit a Subscriber as an Ordinary Unitholder on a subsequent Closing Date (or within 20 Business Days of such Closing Date, in which case such Ordinary Unitholder will be treated for the purposes of this deed as if having been admitted on that Closing Date) if:
 - (i) **(Closing Date)** the Closing Date is after the First Closing Date and on or before the Final Closing Date;
 - (ii) **(Subscription Deed)** the Subscriber duly executes a Subscription Deed in the manner specified by the Trustee and delivers it to the Trustee;
 - (iii) **(acceptance)** the Trustee notifies the Subscriber that the Trustee accepts the Subscription Deed, which the Trustee may in its absolute discretion decline to do including if:
 - (A) the offer of an interest in the Trust to the Subscriber and the creation of an interest of the Subscriber in the Trust would not be an Excluded Offer;
 - (B) the Subscriber (and any person for whom it may have duly executed the Subscription Deed as trustee, nominee, custodian or sub-custodian) does not comply with any requirements that the Trustee has, in its absolute discretion, set in respect of the Closing at which the person is to be issued Ordinary Units, including the Trustee receiving any information it reasonably requires to establish that the offer of Ordinary Units to the Subscriber and the creation of any interest of the Subscriber in the Trust would not be of the type referred to in sub-paragraph (A); or
 - (C) the Subscription Deed specifies a Capital Commitment of less than \$100,000 unless the Trustee determines otherwise;

- (iv) **(Capital Contribution)** the Subscriber pays, as notified to the Subscriber by the Trustee, the amounts of Capital Contributions that the Subscriber would have been required to contribute to the Trust according to the Paid-Up Proportion had the Subscriber been issued Ordinary Units at the First Closing Date with the Capital Commitment specified in the Subscription Deed duly executed by the Subscriber, and provided that the Trustee may determine that a Late Capital Interest Amount is payable at its discretion.
 - (v) **(information and documents)** the person provides any information and executes and delivers any documents to the Trustee or a person specified by the Trustee, which the Trustee reasonably considers to be necessary or desirable to issue Units to that person, including any “know your customer” information required to satisfy the obligations of the Trustee or Manager under the AML/CTF Laws; and
- (b) If an Ordinary Unitholder gives notice to the Trustee requesting an increase in its Capital Commitment, the Trustee may increase the Capital Commitment of an Ordinary Unitholder on a Closing Date if:
- (i) **(Closing Date)** the Closing Date is after the First Closing Date and on or before the Final Closing Date;
 - (ii) **(acceptance)** the Trustee notifies the Ordinary Unitholder that the Trustee accepts the increase, which the Trustee may in its absolute discretion decline to do;
 - (iii) **(Capital Contribution)** the Ordinary Unitholder pays, as notified to the Ordinary Unitholder by the Trustee, if any Capital Contributions have been paid prior to that Closing Date to the Trust the difference between the respective amounts that the Ordinary Unitholder would have contributed to the Trust as a Capital Contribution according to the Paid-Up Proportion had the person been admitted as an Ordinary Unitholder at the First Closing Date with the increased level of Capital Commitment and the amounts that the Ordinary Unitholder has actually contributed to the Trust at the Closing Date, and provided that the Trustee may determine that a Late Capital Interest Amount is payable at its discretion; and
 - (iv) Each Ordinary Unitholder has given the Trustee its written consent to that Ordinary Unitholder increasing its Capital Commitment.
- (c) When:
- (i) a Subscriber becomes admitted as a Ordinary Unitholder in accordance with paragraph (a), the Ordinary Unitholder is issued with that number of Ordinary Units which is equal to the Capital Commitment of that Ordinary Unitholder at the Closing Date divided by the Ordinary Unit Subscription Amount; and
 - (ii) there is an increase in a Ordinary Unitholder’s Capital Commitment in accordance with paragraph (b), the Ordinary Unitholder is issued with that number of additional Ordinary Units, which is equal to the amount of the increase in that Ordinary Unitholder’s Capital Commitment at the Closing Date divided by the Ordinary Unit Subscription Amount.

Each Ordinary Unitholder to which this paragraph (c) applies acknowledges and agrees that, pursuant to the terms of this deed, until the Ordinary Unitholder pays the full Ordinary Unit Subscription Amount that Ordinary Unit will be regarded as partly paid in accordance with that Ordinary Unitholder’s Paid-Up Proportion.

- (d) As soon as practicable after a Closing (other than the First Closing) any amount required to be paid pursuant to sub-paragraphs 5.4(b)(iii) and 5.4(a)(iv) as:
 - (i) **“Capital Contribution”** has to be distributed (less such portion of that amount which is attributable to Management Fees and/or the Administration Fees) to all Ordinary Unitholders who are admitted as Ordinary Unitholders before that Closing in the proportions that their respective Capital Commitments bear to the aggregate of all of their Capital Commitments as at immediately after that Closing to the extent necessary to ensure that the Paid-Up Proportion across all Ordinary Unitholders is the same after at that Closing Date; and
 - (ii) if applicable, any **“Late Capital Interest Amount”** must be distributed to the Ordinary Unitholders who were admitted as Ordinary Unitholders and entitled to the distribution prior to that Closing in the proportions that their respective Capital Commitments bears to the aggregate of all of their Capital Commitments and clause 9.4 does not apply with respect to such distributions.
- (e) At any time prior to the admission of a Subscriber as a Ordinary Unitholder under paragraph (a) or prior to accepting the increased level of Capital Commitment requested by an Ordinary Unitholder under paragraph (b), the Trustee may in its absolute discretion and by notice to the Subscriber or the Ordinary Unitholder (as applicable) reduce (but not increase) the amount of Capital Commitment or increased Capital Commitment (as applicable) specified in the Subscription Deed in respect of the Subscriber or the notice of the Ordinary Unitholder requesting the increase (as applicable).
- (f) On admission of a Subscriber as an Ordinary Unitholder under paragraph (a) but subject to clause 12.1(d), the Subscriber may enforce the provisions of this deed against each other current or former Trustee as if the Subscriber were an Ordinary Unitholder under this deed from the First Closing Date and each other current or former Trustee may enforce the provisions of this deed against the Subscriber as from the date that person was issued Units. Each Ordinary Unitholder consents to the admission of Ordinary Unitholders and increases in Capital Commitments of Ordinary Unitholders under clause 5.3 and this clause 5.4.

6 Capital calls

6.1 Capital calls

- (a) Subject to paragraph (b), if the Paid-Up Proportion is less than 100%, the Trustee may increase the Paid-Up Proportion to a percentage not exceeding 100%.
- (b) The Trustee may not increase the Paid-Up Proportion after the Investment Period other than for the purpose of:
 - (i) making an investment in an entity in which the Trustee on behalf of the Trust has already made or makes an investment in an Associate of the entity;
 - (ii) making an investment which the Trustee on behalf of the Trust already has an actual or contingent obligation to make (including an investment in respect of which a binding term sheet has been signed prior to the end of the Investment Period but the transaction has not been completed prior to the end of the Investment Period or an investment in respect of which the Trustee determines, acting reasonably, the Trust, Trustee or Manager may

incur a liability (to the extent the liability arises in connection with an investment which the Trustee on behalf of the Trust already has an actual or contingent obligation to make) if the investment does not proceed), provided further that the Trustee on behalf of the Trust notify the Ordinary Unitholders in respect of any investments to which this clause 6.1(b) will apply, on or soon after the end of the Investment Period;

- (iii) making an investment which has been approved for the purpose of this clause by Special Resolution; or
 - (iv) paying or satisfying a debt, obligation or Transaction Expense of the Trust other than the making of an investment.
- (c) If the Trustee determines an increase in the Paid-Up Proportion under paragraph (a), the Trustee must, by notice to each Ordinary Unitholder, request each Ordinary Unitholder to pay by a date specified in that notice, being the same date for all Ordinary Unitholders, an amount equal to the increase in the Paid-Up Proportion multiplied by the Capital Commitment of the Ordinary Unitholder as at the date of the notice which must be paid as a Capital Contribution to the Trust.
- (d) Within the period specified in a notice given under paragraph (c) or 10 Business Days after the notice is given, whichever is longer, each Ordinary Unitholder must comply with the request to pay the amount specified in the notice as directed in the notice.
- (e) Subject to clause 7, no premium or interest is payable on a Capital Contribution under this clause 6.

6.2 Timing of Capital Contributions

For the purposes of this deed, each Capital Contribution by an Ordinary Unitholder is deemed to have been paid at the later of:

- (a) 5:00 pm on the date on which the Capital Contribution is due pursuant to a notice given under clause 5.4 (or if that day is not a Business Day, 5:00 pm on the next Business Day); and
- (b) 5:00 pm on the date on which the Capital Contribution is actually received in cleared funds by the Trustee (or if that day is not a Business Day, 5:00 pm on the next Business Day).

6.3 Decrease in the Paid-Up Proportion

- (a) The Trustee may in its absolute discretion decrease the Paid-Up Proportion if:
- (i) the Trustee makes a distribution to the Ordinary Unitholders and gives notice with that distribution of the proportion of that distribution to which this clause 6.3(a) applies;
 - (ii) the distribution comprises cash which had been called under clause 6 for the purposes of making an investment; and
 - (iii) the investment did not proceed and the distribution is made within 3 months of the date of call under clause 6.
- (b) The decrease in the Paid-Up Proportion under clause 6.3(a) is the proportion that the amount of the distribution which comprises cash called under clause 6 to which

clause 6.3(a) applies bears to the total of the Capital Commitments of the Ordinary Unitholders as at the time of the distribution

- (c) The Paid-Up Proportion of an Ordinary Unitholder is decreased if a distribution (other than the Late Capital Interest Amount) is made to that Ordinary Unitholder under clause 5.4(d)(i) in which case the amount of the decrease will be equal to the proportion that the relevant amount distributed to that Ordinary Unitholder under clause 5.4(d)(i) bears to the Capital Commitment of that Ordinary Unitholder.

6.4 Borrowing and security by the Trust

- (a) A loan to the Trust or advance of money for the benefit of the Trust made by the Trustee or an Ordinary Unitholder (**Lender**) and which is permitted under this deed is not a Capital Contribution of the Lender, does not entitle the Lender to any greater share of distributions by the Trust.
- (b) The amount of the loan or advance by a Lender to the Trust is a debt owed by the Trustee as trustee of the Trust to the Lender on the terms and conditions, including as to interest on the loan or advance, agreed to by the Lender and the Trustee.

7 Contribution arrears and other default

7.1 Delinquent contributions

- (a) If an Ordinary Unitholder fails to pay a Capital Contribution when due under clause 6, the Ordinary Unitholder:
 - (i) must immediately pay into the Trust:
 - (A) all or that part (as relevant) of the Capital Contribution or other payment that the Ordinary Unitholder has not paid under clause 6;
 - (B) as a payment to the Trust as directed by the Trustee, capital amounts equal to interest on the amount of the payment that the Ordinary Unitholder is required to pay to the Trust under clause 6 but has failed to pay, which shall accrue from the date on which it was due to the date the amounts under this sub-paragraph (i) are paid, at a rate equal to Default Interest Rate; and
 - (ii) is a Defaulting Ordinary Unitholder until the earlier of:
 - (A) the conclusion of any action taken under clause 7.3(b) by the Trustee in accordance with the notice under paragraph (b); and
 - (B) unless action has been taken under clause 7.3(b)(ii) by the Trustee in accordance with the notice under paragraph (b), the Ordinary Unitholder pays to the Trust all the amounts referred to in sub-paragraph (i) and, if the Trustee gives notice under paragraph (b) to the Ordinary Unitholder, all other amounts required to be paid under the notice.
- (b) The Trustee must, within 10 Business Days of a Defaulting Ordinary Unitholder failing to make payment or a Defaulting Ordinary Unitholder failing to make payment to the Trust under clause 6, provide notice to the Defaulting Ordinary Unitholder which:

- (i) requires payment to the Trust, within 20 Business Days after the notice is given, of the total of:
 - (A) the amounts referred to in paragraph (a)(i);
 - (B) an amount which, in the reasonable opinion of the Trustee, would compensate the Trust for any losses suffered by the Trust as a result of the failure by the Defaulting Ordinary Unitholder to pay the Capital Contribution or other payment when due under clause 6; and
 - (C) the Outgoings, including legal fees, paid or incurred by the Trustee or the Manager in relation to the collection or attempted collection of any of the amounts under sub-paragraphs (A) and (B); and
- (ii) states that failure to pay an amount due under sub-paragraph (i) within that period may result in the Trustee taking action under clause 7.3(b).

7.2 Other default

If an Ordinary Unitholder is prohibited by an applicable law, as confirmed by relevant legal counsel, from being an Ordinary Unitholder and this has a materially adverse impact on the Trust (other than in the case of an ERISA Ordinary Unitholder, an applicable law, rule or regulation under the United States Employee Retirement Income Security Act of 1974, as amended (**ERISA**) to which clause 22.18(d) applies), then that Ordinary Unitholder is a Defaulting Ordinary Unitholder and the Trustee may, with 10 Business Days prior notice, take one or more of the actions set out in clause 7.3(b).

7.3 Consequences of default

- (a) Notwithstanding any other provision of this deed, while an Ordinary Unitholder is a Defaulting Ordinary Unitholder, the Ordinary Unitholder may not exercise any of the following rights under this deed or otherwise relating to its Ordinary Units:
 - (i) any right to vote, or to be consulted or notified, in its capacity as a Ordinary Unitholder;
 - (ii) any right to distributions from the Trust;
 - (iii) any right to transfer its Ordinary Units (this does not limit the rights of the Trustee under this clause 7.3); and
 - (iv) any right to receive reports under clause 10.2.
- (b) If the Trustee provides notice under clause 7.1(b) and the Ordinary Unitholder has not paid to the Trust the amounts stated in the notice within the time period specified therein, or any event in clause 7.2 occurs, the Trustee may take any of the following actions in respect of the Ordinary Unitholder:
 - (i) **(legal proceedings)** commence legal proceedings against the Ordinary Unitholder to collect all or part of the amounts stated in the notice under clause 7.1(b) or remedy or seek relief or damages in respect of any event in clause 7.2 or the cause of the Ordinary Unitholder being a Defaulting Ordinary Unitholder; or
 - (ii) **(forfeiture and sale of Ordinary Units)** require the forfeiture of the Ordinary Units of the Defaulting Unitholder, in which case the Trustee must attempt to sell the Ordinary Units (as attorney for the relevant Unitholder) on terms and

conditions the Trustee reasonably believes to be fair and equitable provided that the transferee of the Ordinary Units satisfies the requirements of any transferee under clause 12.1.

- (c) If the Trustee sells the Ordinary Units to another person pursuant to clause 7.3(b)(ii):
 - (i) the transferee of the Ordinary Units must assume the remaining obligations of the Ordinary Unitholder to pay the Capital Commitment in respect of the (including, in the case of a transferee who is not a Ordinary Unitholder, by execution of a Deed of Accession);
 - (ii) in the case of a transferee who is not an Ordinary Unitholder, the transferee of the Ordinary Units may enforce the provisions of this deed against each other current or former Ordinary Unitholder as from the time the person becomes an Ordinary Unitholder by executing a Deed of Accession, and each other current or former Ordinary Unitholder may enforce the provisions of this deed against the new Ordinary Unitholder as from the time the person becomes a Ordinary Unitholder; and
 - (iii) the proceeds of the sale will be distributed in the following order of priority:
 - (A) first, in paying on behalf of the Defaulting Ordinary Unitholder any Capital Contribution or other payment that is due under clause 6 and remains unpaid;
 - (B) second, in paying on behalf of the Defaulting Ordinary Unitholder a Capital Contribution or payment to the Trust of capital amounts in addition to the Defaulting Ordinary Unitholder's Capital Contribution which, in the reasonable opinion of the Trustee, equals the losses incurred by the Trust (to the extent the losses exceed those for which the Trust would be compensated on payment under the remainder of this paragraph (iii)) as a result of a failure by the Defaulting Ordinary Unitholder to pay a Capital Contribution when due under clause 6, the occurrence of an event under clause 7.2 or the cause of the Ordinary Unitholder being a Defaulting Ordinary Unitholder;
 - (C) third, in paying on behalf of the Defaulting Ordinary Unitholder a Capital Contribution or payment to the Trust of an amount equal to the Outgoings paid or incurred by the Trustee, the Manager or the Trust in relation to the matters referred to in sub-paragraph (B), including in relation to the sale;
 - (D) fourth, in paying on behalf of the Defaulting Ordinary Unitholder a Capital Contribution or payment of capital amounts to the Trust of any other amount which remains payable by the Defaulting Ordinary Unitholder;
 - (E) fifth, in payment of the balance (if any) remaining to the Defaulting Ordinary Unitholder (as relevant); and
 - (iv) to the extent the proceeds of the sale are insufficient to pay all amounts owing by the Defaulting Ordinary Unitholder to the Trust, the Defaulting Ordinary Unitholder remains liable for such amounts.
- (d) If the Trustee is not able to sell the Ordinary Units of the Ordinary Unitholder to another person within a reasonable period of time as determined by the Trustee,

the Trustee may, by notice to the Ordinary Unitholder, immediately cancel the Ordinary Units being forfeited under clause 7.3(b)(ii). In this case, the Ordinary Unitholder is not entitled to any consideration in respect of the Ordinary Units being forfeited and may not claim against any person connected to the Trust, including the Trustee, the Manager, the Trust or any other Unitholder, in relation to the forfeiture or its Ordinary Units.

- (e) Any action taken under this clause by the Trustee in respect of a Unitholder is in addition to and does not limit a right of the Trustee to take any other action under paragraph 7.3(b) in respect of the Unitholder or any other right or remedy of the Trustee.

7.4 Indemnity

Each Ordinary Unitholder indemnifies the Trust, the Trustee, the Manager and each other Ordinary Unitholder against any loss (including any Outgoing of the Trustee or Manager) which any of them pays, suffers, incurs or is liable for in respect of the Ordinary Unitholder's default as specified in the notice contemplated in clause 7.1 and clause 7.2.

7.5 Appropriateness of Remedies

- (a) Each Ordinary Unitholder acknowledges and agrees that:
 - (i) a default by an Ordinary Unitholder in making a required Capital Contribution to the Trust, or any event in clause 7.2 or the reason for an Ordinary Unitholder being a Defaulting Ordinary Unitholder may result in the Manager, the Trust or the Trustee incurring claims, losses or Outgoings that may be difficult or impractical to calculate;
 - (ii) the rights of the Trustee under clauses 7.1, 7.2 and 7.3 bear a reasonable relationship to the damages which the Ordinary Unitholders estimate may be suffered by the Trust, the Manager and the Trustee as a result of the failure by an Ordinary Unitholder to pay a Capital Contribution to the Trust when due under clause 6 or an event in clause , 7.2 or the reason for an Ordinary Unitholder being a Defaulting Ordinary Unitholder;
 - (iii) the exercise of any or all of the rights of the Trustee under clause 7.1, 7.2 or 7.3 is not unreasonable under the circumstances existing at the time;
 - (iv) a failure by the Trustee to exercise a right under clause 7.1, 7.2 or 7.3 does not relieve an Ordinary Unitholder of:
 - (A) its obligation to pay all amounts due under this clause 7; and
 - (B) any other obligation under this deed; and
 - (v) the Ordinary Unitholder and its employees, officers and agents are not entitled to any compensation as a result of the exercise of rights of the Trustee under clause 7.1, 7.2 or 7.3.
- (b) A waiver by the Trustee of a right under clause 7.1, 7.2 or 7.3 in respect of a particular event is not a waiver or limitation of the right to pursue an additional or

different right that may be available under this deed, at law or in equity, in respect of the event or any other or subsequent default.

7.6 Trustee's lien

- (a) The Trustee has a first and paramount lien over the Ordinary Units of the Defaulting Ordinary Unitholder for:
 - (i) any amounts owing by the Defaulting Ordinary Unitholder which are due but unpaid; and
 - (ii) any other amounts payable but not paid by the Defaulting Unitholder under or as a result of any action taken under this clause 7,

except where the Defaulting Ordinary Unitholder is a Regulated Superannuation Fund (or a trustee or custodian / custodian nominee of a Regulated Superannuation Fund) and the existence of such a lien would result in that Defaulting Ordinary Unitholder being in breach of regulation 13.14 of the *Superannuation Industry (Supervision) Regulations 1994*.

- (b) This lien extends to all distributions and other money payable to the Ordinary Unitholder from time to time in relation to the Ordinary Unitholder's Ordinary Units.

7.7 Statutory prohibition

If, under any statute, regulation or rule of any stock exchange of any jurisdiction:

- (a) an Ordinary Unitholder; or
- (b) if the Ordinary Unitholder is a Trustee Unitholder, the Fund of which a Trustee Unitholder is trustee, responsible entity, custodian, sub-custodian or nominee,

is, directly or indirectly, prohibited from, or likely to incur sanction or penalty as a result of, giving any of the undertakings in this clause 7 or entering into an agreement with any of the undertakings in this clause 7, the undertakings in this clause 7 are to be read down or amended to the extent that the undertakings are prohibited or likely to result in sanction or penalty to the Ordinary Unitholder or the Trust.

8 Income and accounting losses

- (a) The Trustee must collect the fees, interest and other income of the Assets.
- (b) The Trustee may apply the amounts collected under paragraph (a) to, or to make provision for, any Accounting Loss incurred or which, in the reasonable opinion of the Trustee, may be incurred.
- (c) At the end of each Financial Year, each Unitholder will be presently entitled to its share (being the share that it would receive in relation to that Financial Year calculated in accordance with clause 9.4) of the total Income in respect of that Financial Year.
- (d) Any tax credits or tax offsets included in Income shall be deemed to have been distributed to Unitholders under clause 9.1.

9 Distributions other than on winding up

9.1 General

- (a) Other than in respect of distributions under clauses 5 and 13.3 of this deed, the Trustee may in its sole discretion make distributions of Assets to the Ordinary Unitholders at any time and from time to time, but such distributions of Assets must be made to all Unitholders, in proportion to their respective Drawn Down Capital Commitments, and subject to the terms of the particular class of Units.
- (b) Any distributions calculated or determined pursuant to this clause 9 shall be calculated or determined in A\$.
- (c) The Trustee will, subject to clause 9.4, distribute Distributable Cash and Marketable Securities as soon as practicable after receipt, provided that in any event such Distributable Cash and Marketable Securities must be distributed by the Trustee within 30 days of receipt by the Trust
- (d) The Trustee may only make in specie distributions of Securities to an Ordinary Unitholder where with the approval of all Ordinary Unitholders by Special Resolution and each of the Ordinary Unitholders who will receive such distributions as contemplated in clause 13.3.
- (e) The entitlement as between Ordinary Unitholders and Sponsor Unitholders to distributions under this clause must be determined in accordance with clause 9.4.
- (f) The Trustee presently anticipates that it will distribute the Income for each Financial Year (to the extent not already distributed during the Financial Year under this clause) within three months after the end of each Financial Year.
- (g) Any amounts distributed under clause 9.4 will include tax credits, subject to having regard to the status or identity of a Unitholder entitled to receive such distribution, and whether such Unitholder could benefit from such tax credits in their country of residence.

9.2 Notice

The Trustee must give notice to the Ordinary Unitholders prior to making any distribution by the Trustee in its capacity as trustee of the Trust, which notice must include an estimate by the Trustee of the extent to which the distribution will be comprised of capital and non-capital amounts.

9.3 Limitation

The Trustee need not make any distribution by the Trust unless, in the reasonable opinion of the Trustee, the Trust will have sufficient funds to satisfy any actual, anticipated or contingent Outgoings of the Trust.

9.4 Priority

- (a) Any distributions payable to Management Team Ordinary Unitholders under clause 9.1 will be paid 100% to such participating Management Team Ordinary Unitholder.
- (b) Subject to any agreement with an External Ordinary Unitholder to the contrary (which for the avoidance of doubt does not affect Ordinary Unitholders who are not

party to it), a distribution by the Trustee under clause 9.1 to External Ordinary Unitholders must be made in accordance with the following priorities:

- (i) first, 100% to participating External Ordinary Unitholders until the total of all distributions to such participating External Ordinary Unitholders under this deed equals the sum of their aggregate Capital Contributions and any paid Management Fees;
- (ii) second, 100% to participating External Ordinary Unitholders until the total of all distributions to participating External Ordinary Unitholders under this deed equals the sum of their Aggregate 8% IRR Amounts;
- (iii) third, 100% to the Sponsor Unitholders as Carried Interest, until the aggregate amount paid to the Sponsor Unitholders under this clause is equal to 20% of the sum of:
 - (A) the amounts referred to in clause 9.4(b)(ii); and
 - (B) all amounts distributed under this clause 9.4(b)(iii);
- (iv) thereafter:
 - (A) 80% to the participating External Ordinary Unitholders; and
 - (B) 20% to the Sponsor Unitholders.
- (c) To the extent permissible by law, any distribution to Sponsor Unitholders shall be paid first from realised capital profits then from income to the extent that realised capital profits are insufficient. For the avoidance of doubt, the term 'Sponsor Unitholder' as used in this clause does not include an Outgoing Sponsor Unitholder. Notwithstanding clause 9.4(b)(iii), if the distributions to the Sponsor Unitholders pursuant to that clause would result in the Trust ceasing to satisfy the requirements to be a managed investment trust under the Tax Act, then the distributions to the Sponsor Unitholders will be reduced, and the distributions to the Ordinary Unitholders will be increased by such required amount to ensure that the Trust continues to satisfy its requirements of being a managed investment trust under the Tax Act (**Additional Distribution Amount**), and such Ordinary Unitholders irrevocably directs the Trustee to hold back from its distribution an amount equal to the Additional Distribution Amount, and to pay that amount to the Manager as a fee (in which case, for the purposes of all subsequent calculations of Carried Interest under this deed, the amounts so paid at the Ordinary Unitholders' direction to the Manager will be deemed to have been paid to the Sponsor Unitholder as a Carried Interest, and not to have been paid to the Ordinary Unitholders).
- (d) In relation to the distributions set out in this clause 9.4(b):
 - (i) any references to "**participating External Ordinary Unitholders**" will exclude Defaulting External Ordinary Unitholders; and
 - (ii) any distributions to participating Ordinary Unitholders will be in proportion to their respective Drawn Down Capital Commitments and will include any Tax Credits;

9.5 Retention

The Trustee may:

- (a) defer any distribution under clause 9.1 pending determination of the Carried Interest payable to the Sponsor Unitholders in respect of their entitlement under clause 9.4, provided the deferral applies to all Sponsor Unitholders equally; and
- (b) withhold from distribution under clause 9.1 such sums as reserves for the purpose of meeting deficits or contingencies (including, without limitation, for the payment of any Taxes) or amortisation of assets, or indemnification obligations or otherwise as the Trustee may think necessary, desirable or conducive to the interests of the Trust, the Ordinary Unitholders or the Sponsor Unitholders, provided the withholding applies to holders of Units within the same class equally and on a pro rata basis, subject to the terms of the particular class of Units.

9.6 Clawback

- (a) Within a reasonable period prior to the Clawback Date (or if that is not practicable given the nature of the Clawback Date, immediately after the Clawback Date), the Trustee must determine whether the aggregate amount of the Sponsor Unit Distribution paid to the Sponsor Unitholders prior to that Clawback Date is less than or exceeds the aggregate of amounts the Sponsor Unitholders are entitled to under this deed and.
- (b) If there is an excess of the type referred to in clause 9.6(a) (**Sponsor Excess**) or a deficiency of the type referred to in clause 9.6(a) (**Carried Interest Deficiency**), the Trustee must give notice to each External Ordinary Unitholder specifying:
 - (i) the amount of the Sponsor Excess or Carried Interest Deficiency (where such amount determined will be subject to Ordinary Resolution of the External Ordinary Unitholders); and
 - (ii) the relevant portion of the Sponsor Excess to which that External Ordinary Unitholder is entitled or the relevant portion of the Carried Interest Deficiency for which the External Ordinary Unitholder is liable (in each case, pro rata among the External Ordinary Unitholders based on their Drawn Down Capital Commitments).
- (c) The Sponsor Unitholders must pay or cause to be paid the amount of the Sponsor Excess (less any tax that has been paid on that amount) to the Trustee within 90 Business Days after the determination of the Sponsor Excess.
- (d) Each External Ordinary Unitholder must pay or cause to be paid the amount of the Carried Interest Deficiency (less any tax that has been paid on that amount) to the Trust within 90 Business Days after the determination of the Carried Interest Deficiency.
- (e) The Trustee must as soon as practicable, distribute:
 - (i) after receipt, the amount referred to in clause 9.6(c) to the External Ordinary Unitholders (other than Defaulting External Ordinary Unitholders) in the proportion that their respective Drawn Down Capital Commitments bears to the aggregate of all of their Drawn Down Capital Commitments; and
 - (ii) any amount to be paid by External Ordinary Unitholders under clause 9.6(d) to the Sponsor Unitholders.
- (f) No interest is payable by:

- (i) the Sponsor Unitholders in respect of any amount payable to the Trust by the Sponsor Unitholders under this clause; or
 - (ii) the External Ordinary Unitholders in respect of any amount payable to the Trust by the External Ordinary Unitholders under this clause.
- (g) The Trustee will procure that each person that is ultimately entitled to receive any share of Sponsor Unit Distributions will execute a deed poll in favour of the Trustee pursuant to which it agrees to repay any part of the Sponsor Excess (less any tax that has been paid on that amount unless a refund is able to be obtained in respect of such tax) that was distributed to it and which is enforceable, as against such person, by the Trustee.

9.7 Ordinary Unitholder Giveback

- (a) Notwithstanding any other provision of this deed, if any distribution is made to an Ordinary Unitholder contrary to the terms of this deed, then at any time prior to the third anniversary of the date such distribution was made, the Trustee may, as soon as reasonably practicable upon becoming aware that such distribution has been made, require such Ordinary Unitholder to return such distribution or part thereof as the Trustee determines is necessary to ensure that the amount distributed to such Ordinary Unitholder is in accordance with the terms of this deed.
- (b) Notwithstanding any other provision of this deed but subject to the restrictions set out in clause 9.7(c)9.6, the Trustee may require an Ordinary Unitholder to return distributions attributable to the Ordinary Units held by such Ordinary Unitholder for the purpose of satisfying:
- (i) the Trustee's indemnification obligations, howsoever so arising; and/or
 - (ii) any other liabilities (including any future or contingent obligations) of the Trust arising in connection with the making, holding, and/or disposal of Assets.
- (c) Each Ordinary Unitholder will be required to return distributions in respect of its share of any obligation or liability referred to in clause 9.7(b), such share to be determined as follows:
- (i) if the obligation or liability arises in connection with the Asset (or former Asset):
 - (A) first, up to the amount of the prior distributions made in connection with such Asset (or former Asset), in such amounts as result, to the maximum extent practicable, in such Ordinary Unitholder, retaining aggregate distributions from the Trust equal to the aggregate amount that would have been distributed to and retained with respect to the Ordinary Units held by such Ordinary Unitholder, had the amounts previously distributed in connection with such Asset (or former Asset) been, at the time of such distribution, reduced by the amount of such obligation or liability, as determined by the Trustee in good faith; and
 - (B) thereafter, in proportion to the amount of the Capital Contributions of each Ordinary Unitholder used to fund the Cost of such Asset (or former Asset) that bears to the Capital Contributions of all the Ordinary Unitholders which were used to fund the Cost of such Asset (or former Asset); or

provided that, subject to clause 9.7(d), no such distribution will be repayable by an Ordinary Unitholder after the second anniversary of the date on which it was made unless the Trustee determines (acting reasonably) that a longer period need apply (such period not exceeding the fourth anniversary of the date on which it was made) to account for any potential tax liabilities (including tax indemnities) or tax obligations which may be payable or owed to a purchaser (or any of such purchaser's Affiliates) in connection with the Asset (or former Asset); or

- (ii) if the obligation or liability arises other than in connection with an Asset (or former Asset), in proportion to the respective Capital Commitments of all Ordinary Unitholders, provided that:
 - (A) subject to clause 9.7(d), no such distribution will be repayable by a Ordinary Unitholder after the second anniversary of the date on which it was made; and
 - (B) the aggregate amount repayable by any Ordinary Unitholder under clause 9.7(b) will not exceed the greater of:
 - 25% of the Capital Commitment of such Ordinary Unitholder; and
 - 20% of aggregate distributions made with respect to the Ordinary Units held by such Ordinary Unitholder.
- (d) If, on the second anniversary of the date on which a distribution was made (or such other date, as modified by operation of the proviso in clause 9.7(c)(i)(A)) there is pending or threatened any legal action, suit or proceeding or any claim has been made against the Trust or any liability, whether actual or contingent, exists (any of the foregoing, a **Claim**), the Trustee or liquidating trustee will so notify the Ordinary Unitholders in writing at such time (which notice will include a brief description of each Claim), and the obligation of the Ordinary Unitholders to return any distributions for the purpose specified in clause 9.7(b) will, notwithstanding clause 9.7(c)(i) and 9.7(c)(ii) survive such period with respect to each such Claim set forth in such notice (or any related action, suit, proceeding, claim or liability based upon the same or a similar Claim) until the date that such Claim is ultimately resolved and satisfied.
- (e) The aggregate amount repayable by any Ordinary Unitholder under clause 9.7(d), when aggregated with any amount already paid by such Ordinary Unitholder under clauses 9.7(b) and 9.7(c), will not exceed the greater of:
 - (i) 25% of the Capital Commitment of such Ordinary Unitholder; and
 - (ii) 20% of aggregate distributions made with respect to the Ordinary Units held by such Ordinary Unitholder.
- (f) All amounts returnable by an Ordinary Unitholder pursuant to this clause 9.7 will be returned in cash except to the extent that aggregate cash distributions made to such Ordinary Unitholder pursuant to clause 9.1 are less than the amount returnable by such Ordinary Unitholder pursuant to this clause 9.7, in which case the Trustee may require that such Ordinary Unitholder return securities distributed to it in specie pursuant to clause 13.3(b), provided that the aggregate Fair Value of all securities to be returned by such Ordinary Unitholder determined at the date of return will not exceed the aggregate Fair Value of all equivalent securities distributed to such Ordinary Unitholder as determined at the date of distribution

such Ordinary Unitholder may elect, in lieu of returning securities or in circumstances where such securities were sold on behalf of and for the account of such Ordinary Unitholder pursuant to clause 13.3(d), to return cash in an amount equivalent to the Fair Value of securities that it would otherwise be required to return pursuant to this clause 9.7.

9.8 Change in the law

If the law changes in respect of Tax so that any of the Trust, Sponsor Unitholders or Trustee become subject to Taxes on income and gains derived by the Trust even where all available income is distributed to Ordinary Unitholders, or regardless of the present entitlement of the Ordinary Unitholders, then the Trustee does not have to make distributions in accordance with this clause 9 and instead the Trustee, at its discretion but acting in good faith, may choose when to make distributions of profits, income, capital or any taxation or franking credits that have become available in relation to the Trust, provided that this does not result in any increase in any Tax borne by any Ordinary Unitholder, the Trustee or the Trust or in any decrease in or loss of any Tax attribute available to any Ordinary Unitholder, the Trustee or the Trust.

9.9 Public Trading Trust

If and so long as the Trust is, for any reason (including that it is a public trading trust for the purposes of Division 6C of Part III of the Tax Act) to be taxed in a similar manner to a company, the Trustee may take any steps it reasonably considers necessary to comply with the law and the following applies (replacing clause 9.8):

- (a) the Unitholders do not have a vested and indefeasible interest in a share of the Income at the end of a Financial Year;
- (b) a distribution from the Trustee to a Unitholder will be paid from the after tax income of the Trust;
- (c) distributions paid under paragraph (b) will be distributed in accordance with clause 9.4; and
- (d) the Trustee may in good faith choose when to make distributions of profits, income, capital or any taxation or franking credits that have become available in relation to the Trust.

9.10 Authority to deduct on account of Taxes

The Trustee may deduct from a Unitholder's entitlement to a distribution under this clause 9.10 any amount of Tax required to be deducted by law, or which has been paid or which the Trustee determines is or may be payable by the Trustee, the Trust or any investee entity in respect of, or on behalf of the Trust or that Unitholder. Any amount so deducted will be deemed for all purposes to have been distributed to the Unitholder under clause 9.1 at the time paid or withheld (except to the extent reimbursed or paid by the Unitholder under clause 14.6).

10 Trust accounts, records and reports

10.1 Register

- (a) Subject to paragraph (b), the Trustee must establish and maintain a register (**Unitholder Register**), a copy of which is to be held at the Registered Office, which must specify the following in respect of each Unitholder:

- (i) the name, address, facsimile number and electronic address of the Unitholder;
 - (ii) the country of residence of the Unitholder under Australian Tax Law;
 - (iii) if the Unitholder is exempt from tax in its country of residence, details of the basis on which the Unitholder qualifies for the exemption;
 - (iv) the date the Unitholder is issued Units or transfers Units;
 - (v) the number of Units held by the Unitholder and the extent to which any partly paid Units remain unpaid; and
 - (vi) such other matters as the Trustee deems appropriate.
- (b) The Trustee is not obliged to record any interest in a Unit in the Unitholder Register, other than the details specified in clause (a).
 - (c) Each Unitholder must as soon as practicable notify the Trustee of any change of the matters referred to in paragraphs (a)(i), (ii) or (iii) in respect of the Unitholder.
 - (d) Each Unitholder may obtain a copy or extract of the Unitholder Register within 2 Business Days of providing a written request to the Trustee.
 - (e) Neither the Trustee nor the Manager is liable for a mistake in the Unitholder Register, if it reasonably believes that register to be complete and accurate.
 - (f) Each of the Unitholders is entitled to treat each person named in the Unitholder Register from time to time as the holder of a Unit as the absolute owner of that Unit and, except as ordered by a court of competent jurisdiction or as required by law, is not bound to recognise any equitable or other claim to or interest in a Unit even if the Unitholder has notice of it.

10.2 Trust Accounts, reports and tax information

- (a) Except for paragraph 10.2(d) which shall apply from the date of this deed, this clause 10.2 only applies from the date that the Assets first include an investment (whether in a company, partnership, trust or otherwise) or there is a material liability of the Trust.
- (b) Within 90 days after the end of each Financial Year, the Trustee must provide to each person who was an Ordinary Unitholder at any time during the Financial Year unaudited Trust Accounts and all information in relation to the Trust which is reasonably necessary for the preparation by the person of a tax return in its country of residence.
- (c) Within 60 days after the end of each Half Year, the Trustee must provide to each Ordinary Unitholder an unaudited portfolio review comprising a narrative statement in respect of the general performance the Trust and a narrative statement in respect of each investment in which the Trust holds an interest or has held an interest during that Half Year period, the name and address, location, a brief description of the company's business, the cost and current market value of such portfolio company, and the percentage of such portfolio company owned by the Trust and details of the acquisition, liquidation or realisation (including amounts realised) of an investment during the relevant reporting period.

- (d) Unless otherwise agreed by the Trustee, this deed sets out the full extent of information to be provided to Ordinary Unitholders and access by Ordinary Unitholders to information, books and records concerning the Trust.
- (e) Notwithstanding any other provision of this deed, by virtue of Article 59 and Article 14, Paragraph 1, Item 1 of the Act on Investment Trusts and Investment Corporations of Japan (act No. 198 of 1951, as amended, the **AITIC**), the management report in Japanese to the Unitholders (which would otherwise be required to be prepared and delivered pursuant to the AITIC) will not be prepared or delivered with respect to any Units issued or offered pursuant to Article 2, Paragraph 3, Item 2(i) of the Financial Instruments and Exchange Act of Japan (act No.25 of 1948, as amended).
- (f) The provision of information under this clause 10.2 is subject to any discretions the Trustee may exercise in accordance with clause 18.1.

10.3 Valuation of Assets

- (a) This clause 10.3 only applies from the date that the Trust first includes an investment (whether in a company, partnership, trust or otherwise) or there is a material liability of the Trust.
- (b) The Trustee must value the Assets as at:
 - (i) the end of each Half Year during the existence of the Trust; and
 - (ii) any other times as the Trustee determines in its absolute discretion.
- (c) A valuation by the Trustee under paragraph (b) must be in accordance with the Accounting Standards and the Valuation Guidelines, and to the extent there is an inconsistency between the Accounting Standards and the Valuation Guidelines with respect to a particular matter, the Accounting Standards shall prevail for the purposes of such matter the subject of the valuation.
- (d) If the Trustee retires or removed, the Trustee must require a valuation of the Assets by the Valuer consistent with this clause 10 for the purposes of determining the Accrued Carry in accordance with clause 12.3.
- (e) If any dispute arises between the Trustee and the Unitholders in relation to the valuation of any Asset, and such dispute cannot be resolved, then the Trustee must refer the valuation with is the subject of the dispute to the Valuer.
- (f) The determination of value by the Valuer for any purposes contemplated in this deed is final and binding on all Unitholders and the Trustee.

11 Management of the trust

11.1 Reinvestment

The Trustee must not apply proceeds of realisation of an Asset to make an investment of the Trust other than:

- (a) if the realisation is in connection with the restructure or consolidation of an investment in which the Trust will have a continuing interest, either directly or indirectly and the proceeds are to be reinvested in that investment no later than 4 months after the date of the initial realisation; or

- (b) as permitted by way of a Special Resolution.

11.2 Trustee and Manager

- (a) Where the Trustee also acts as Manager of the Trust, it is taken to act in a separate capacity and its retirement, removal or replacement as Trustee or Manager (as the case may be) in respect of the Trust does not affect the continuity of its appointment to the other office in respect of the Trust unless otherwise set out in this deed.
- (b) Subject to any restrictions on the Trustee under this deed, the Manager may exercise all powers, enforce all rights and perform all obligations of the Trustee under this deed and in connection with the Trust, including, without limitation, all portfolio management and risk management functions in respect of the Trust.
- (c) If the Manager exercises any powers, enforces any rights or performs any obligations of the Trustee under this deed or in connection with the Trust, the Manager must exercise those powers, enforce those rights and perform those obligations as if the Manager were the Trustee under this deed, including being subject to the duties of the Trustee under clause 11.6 in respect of those powers, rights and obligations.
- (d) For the avoidance of doubt, the Trustee remains liable for the performance of any obligations of the Trustee even if the Manager performs those obligations. However, any amount paid by or any act done by the Manager for the purposes of this deed or in respect of the Trust satisfies any obligation of the Trustee to make that payment or do that act.
- (e) Each Ordinary Unitholder must:
 - (i) perform for the Manager as if the Manager were the Trustee under this deed, the obligations of the Trustee in respect of any rights, powers or obligations exercised, enforced or performed by the Trustee as contemplated under paragraph (a); and
 - (ii) comply with any reasonable directions given by the Manager in accordance with the provisions of this deed in respect of, or in connection with, those rights, powers or obligations.

11.3 Powers of the Trustee

Subject to clauses 11.5, 11.6, 11.7 and 11.12 and the other provisions of this deed, the Trustee has:

- (a) in relation to the Trust, the Assets and the business of the Trust, all the powers of an individual and a body corporate within and outside Australia; and
- (b) the exclusive power to manage and control the Trust, the Assets and the business of the Trust,

including without consultation or consent of any other Unitholder, the power:

- (c) to incur Outgoings on behalf of the Trust and pay Outgoings of the Trust out of the assets of the Trust;
- (d) to act as it considers necessary or desirable in connection with the conduct of the business of the Trust;

- (e) to receive, buy, hold, sell, exchange, trade, effect, assign, dispose of and otherwise deal in and with Securities and other assets, rights or property on behalf of the Trust;
- (f) to open, conduct and close accounts with brokers and finders on behalf of the Trust and pay fees and charges applicable to transactions in those accounts;
- (g) to open, maintain and close bank accounts and custodial accounts of the Trust and draw cheques and other orders for the payment of money by or on behalf of the Trust;
- (h) to prepare and lodge, on behalf of the Trust, any tax returns or other documents relating to the Trust;
- (i) to commence or defend litigation that relates to the Trust or any Assets, to prosecute, settle or compromise claims by the Trust, to settle or compromise claims against the Trust and to execute documents and make representations, admissions and waivers which the Trustee considers to be necessary or advisable in connection with any of those things;
- (j) to invest in, or enter into, any of the following hedging arrangements on behalf of the Trust designed to reduce or eliminate the risk of changes in the value of any Assets:
 - (i) currency hedges;
 - (ii) interest rate hedges; or
 - (iii) direct securities hedges;
- (k) in the ordinary course of business of the Trust, to create any Security Interest over the Assets;
- (l) to enter into, make, give, amend, waive and perform on behalf of the Trust agreements, arrangements, understandings, representations, warranties, guarantees, indemnities and obligations, and to do any other acts the Trustee considers to be necessary or desirable for, or that are incidental to, the conduct of the business of the Trust;
- (m) in the ordinary course of business of the Trust, to cause the Trust to incur indebtedness for or in respect of financial accommodation, give guarantees and incur lease obligations, in each case, subject to the limitations contemplated in clause 11.5;
- (n) to grant in favour of any provider of financial accommodation (or any agent or trustee acting on its behalf) (**Financier**) to the Trust an irrevocable power of attorney entitling the Financier to exercise the rights of the Trustee in connection with capital calls (including, without limitation, the right to make calls and call in capital from Ordinary Unitholders) on behalf of the Trustee for so long as there is an event of default subsisting under the terms of the financial accommodation provided by that Financier to the Trust;
- (o) to disclose, on a confidential basis, the identity of each Ordinary Unitholder and the size of its Capital Commitment, aggregate Capital Contributions, Capital Commitment available for drawdown in connection with any Borrowing of the Trust or hedging arrangements entered into by the Trust;

- (p) to effect the redemption and/or withdrawal, in full or in part, of any Ordinary Unitholder to the extent contemplated under this deed and any increase in Capital Commitment by another Ordinary Unitholder or prospective Ordinary Unitholder;
- (q) to fetter any discretion of the Trustee or the Trust;
- (r) to do anything incidental to any other power of the Trustee under this deed; and
- (s) to do in the name of the Trust and in respect of the Assets and business of the Trust anything which the Trustee has the power to do on behalf of the Trust subject to any applicable law and regulation.
- (t) to take any action necessary to cause the Trust to qualify or continue to qualify as “an operating company” within the meaning of the Department of Labor regulation at 29 CFR 2510.3-101, as amended by Section 3(42) of ERISA (**ERISA Plan Assets Regulation**);
- (u) to make any filing required in connection with AIFMD or with other private placement legislation in any other jurisdiction;
- (v) to cause the Trust to be treated, for US Federal income tax purposes, as a partnership and not as an association taxable as a corporation, including without limitation, the filing of any elections or statements by the Trustee with the applicable US authorities including the filing of an entity classification election on Form 8832 with the United States Internal Revenue Service pursuant to US Treasury Regulation Section 301.7701 – 3 electing that the Trust will be classified as a partnership for US Federal income tax purposes, and the Trustee must exercise the power contemplated under this clause 11.3(v); and
- (w) to cause the Trust to make any other tax-related determinations or elections (or enter into any tax-related agreements) not inconsistent with the election described in clause 11.3(v) hereof.

11.4 Alternative Investment Vehicles

- (a) Subject to clause 11.4(b), the Trustee or the Manager may:
 - (i) cause any investment of the Trust, or cause any Units of the Trust to be transferred to; and/or
 - (ii) request the participation by one or more of the Unitholders to be restructured through,

an additional trust or other entity or investment structure established by the Trustee or Manager (or its or their Affiliates) (**Alternative Investment Vehicle**).
- (b) An Alternative Investment Vehicle may be established by the Trustee or the Manager only if all of the following apply (unless otherwise approved by Special Resolution):
 - (i) any investments of the Trust that are transferred to the Alternative Investment Vehicle will be transferred at a price equal to at least Fair Value;
 - (ii) any proposed transfer of Units held by a Unitholder of the Trust to an Alternative Investment Vehicle will require such Unitholder’s approval, not to be unreasonably withheld in the event the transfer is at a price equal to at least Fair Value;

- (iii) if the Unitholders are requested to participate in an Alternative Investment Vehicle, then:
 - (A) such Unitholders must be no worse off as a participant in the Alternative Investment Vehicle than as a participant in the Trust (unless otherwise approved by the Unitholder);
 - (B) the constituent documentation for the Alternative Investment Vehicle must be provided to all Unitholders prior to its finalisation; and
 - (C) the Unitholder must receive consideration (whether by cash or scrip in the Alternative Investment Vehicle) equal to the pro rata consideration that the Unitholder would have otherwise received from the Trust as a result of the sale of investment by the Trust to the Alternative Investment Vehicle;
- (iv) all Unitholders must be treated pari passu;
- (c) The Unitholders must co-operate with the Trustee and Manager in respect of any Alternative Investment Vehicle established by the Trustee or Manager pursuant to this clause 11.4, including executing any required documentation and doing all other things necessary to provide for their participation in the investment of the Trust through the Alternative Investment Vehicle (where applicable).

11.5 Limitations on authority of Trustee

- (a) The Trustee may not at any time:
 - (i) without approval by Ordinary Resolution:
 - (A) cause the Trust to invest in entities that are not the Target or the Portfolio;
 - (B) cause the Trust to incur a Borrowing unless:
 - (I) the aggregate of all Borrowings of the Trust does not exceed the Borrowing Limit at that time; and
 - (II) that Borrowing remains outstanding for a period of less than 18 months (save where a Borrowing is a counter-indemnity obligation in respect of a Contingent Instrument in which case no time restriction will apply);
 - (C) grant a Security Interest over the Assets securing amounts in excess of the Borrowing Limit at that time (unless and to the extent that the Security Interest secures Borrowings permitted under paragraph (A) above or guaranteed amounts permitted under paragraph (C) below); or
 - (D) grant a guarantee guaranteeing amounts in excess of the Borrowing Limit at that time;
 - (ii) use or otherwise deal with an Asset for an improper purpose; or
 - (iii) except as provided in clauses 12.2, 12.3 and 12.4, admit a person as the Trustee.

- (b) Without obtaining approval by Ordinary Resolution, the Trustee may not, except where expressly contemplated in this deed approve a proposal relating to any transaction (including incurring indebtedness for or in respect of financial accommodation) or other matter involving any actual or potential conflict with the interests of, or any proposal relating to any transaction, contract, arrangement or understanding between the Trustee or the Manager, or any of their respective Associates, officers or executives, on the one hand and the Trust or any Ordinary Unitholder (other than an Ordinary Unitholder or an Associate of a Ordinary Unitholder which is an Authorised Deposit-Taking Institution) on the other hand.
- (c) If a Change of Control Event occurs, the Trustee must:
 - (i) notify the Ordinary Unitholders of the Change of Control Event promptly and in any event no later than 7 Business Days after the event;
 - (ii) convene a meeting of Ordinary Unitholders as soon as reasonably practicable but in any case within 3 months following the Change of Control Event to consider a Special Resolution as to whether the Trustee may make New Investments; and
 - (iii) not commit the Trust to any New Investments after the Change of Control Event occurs unless a Special Resolution is passed approving the making of such commitments.
- (d) The Trustee must not, on behalf of the Trust, commence legal action without first consulting with the Ordinary Unitholders, except in circumstances where, in the reasonable opinion of the Trustee, it would be detrimental to the interests of the Trust to delay such action.
- (e) The Trustee must not on behalf of the Trust invest into any derivatives (but excluding warrants, rights, options, convertible notes, or any combination of them) other than for hedging purposes.
- (f) Following the Final Closing Date, the Trustee must notify the Ordinary Unitholders if there are any Transfers of more than 25% in aggregate of the voting and/or economic rights in either the Trustee or the Manager, provided that where such Transfers are made to anyone that is not ultimately a Qualifying Person, then the Trustee must first obtain approval by Ordinary Resolution (which must not be unreasonably withheld or delayed).

11.6 General Obligations of the Trustee

The Trustee must:

- (a) operate the Trust in accordance with this deed;
- (b) in connection with the Trust, its Assets and the business of the Trust, exercise due care and the level of skill that may reasonably be expected from an experienced manager of private equity investments in performing the obligations of the Trustee under this deed and otherwise in relation to the Trust;
- (c) manage, operate and administer the business and affairs of the Trust in a proper and efficient manner and honestly;
- (d) subject to the provisions of this deed, act in the overall best interests of the Ordinary Unitholders in connection with the Trust, its Assets and the business of the Trust;

- (e) have a reasonable basis for forming opinions referred to in this deed (including requiring a particular form of Deed of Accession in the case of a transfer of all or any portion of the Ordinary Units of a Ordinary Unitholder);
- (f) give notice within 7 Business Days after becoming aware to each Ordinary Unitholder of any event which constitutes, or would constitute (with the giving of notice, fulfilment of a condition or both) an Insolvency Event in respect of the Trustee or its parent company; and
- (g) without limiting any other obligation of the Trustee under this deed, not make use of information acquired through being the Trustee in order to:
 - (i) gain an improper advantage for itself or another person; or
 - (ii) cause detriment to the Trust.

11.7 Appointments by the Trustee

- (a) Subject to paragraph (b), the Trustee may from time to time appoint a person to:
 - (i) exercise some or all of the rights and powers of the Trustee under this deed;
 - (ii) perform some or all of the obligations of the Trustee under this deed; or
 - (iii) provide advice or services to the Trust or the Trustee in its capacity as trustee of the Trust.
- (b) The Trustee may not, other than in respect of the performance by the Manager of the functions of the Trustee under this deed as contemplated in clause 11.2, and the Manager may not, in respect of the performance by the Manager of the functions of the Trustee under this deed as contemplated in clause 11.2, further delegate their overall discretion to make investment decisions in respect of the Assets to any other person or persons without the prior approval of Ordinary Unitholders by Special Resolution.
- (c) The Trustee must exercise due care in:
 - (i) selecting, appointing and agreeing the terms of appointment of an Appointee (including believing in good faith and on reasonable grounds that the Appointee is, if appointed to provide services, including information or advice, appropriately experienced in providing those services);
 - (ii) reviewing and monitoring the performance of each Appointee under the terms of appointment of the Appointee and in exercising any rights or performing any obligations of the Trustee in respect of which the Appointee has been appointed; and
 - (iii) evaluating any information or advice provided by the Appointee.
- (d) To the fullest extent permitted by law and unless otherwise agreed by the Trustee in writing, the Trustee, the Pemba Group, the Pemba Executives, the Partnership Representative and the Manager will not be liable to the Trust or any Ordinary Unitholder for the wilful misconduct, fraud, gross negligence or dishonesty of any agent acting on behalf of the Trustee, the Pemba Group, the Pemba Executives, the Partnership Representative and the Manager or the Trust provided that such agent was selected, appointed and monitored by Trustee, the Pemba Group, the

Pemba Executives the Partnership Representative and the Manager applying reasonable care and so long as such agent is not a member of the Pemba Group.

- (e) Each Ordinary Unitholder undertakes not to bring any claim, demand, action, suit or proceeding against the Trustee, the Pemba Group, the Pemba Executives, the Partnership Representative and the Manager which might reasonably be regarded as contrary to clause 11.7(d).

11.8 Ordinary Unitholders must comply with directions of Appointees

If the Trustee gives notice to an Ordinary Unitholder that the Trustee has appointed an Appointee in accordance with clause 11.7(a) to exercise rights or powers or perform obligations of the Trustee under this deed as specified in the notice, the Ordinary Unitholder must:

- (a) perform for the Appointee as if the Appointee were the Trustee under this deed, the obligations of the Ordinary Unitholder in respect of those rights, powers or obligations; and
- (b) comply with any reasonable directions given by the Appointee in accordance with the provisions of this deed in respect of, or in connection with, those rights, powers or obligations.

11.9 Powers and obligations of Ordinary Unitholders

- (a) Except as expressly provided otherwise in this deed, none of the Trustee, the Manager, any Appointee or any other person appointed by the Trustee, the Manager or an Appointee in accordance with this deed is the agent of any Ordinary Unitholder in respect of or in relation to the Trust or its business, including in respect of or in relation to:
 - (i) any decision, discussion, negotiation or representation in connection with an existing or proposed investment or investment opportunity of the Trust;
 - (ii) any discussion, negotiation or representation in connection with an Ordinary Unitholder or any other person to whom the Ordinary Units have been offered or promoted; or
 - (iii) any conduct of the business of the Trust, including:
 - (A) preparation of any information memorandum, promotional material, catalogues, display stands, signs, films, plates, television or print media material or material of a similar nature used in the business of the Trust; and
 - (B) a determination of any Income or distribution or its allocation under this deed.
- (b) Except as otherwise provided in this deed, no Ordinary Unitholder has any right or authority to:
 - (i) act on behalf of, or enter into any agreement or arrangement for or on behalf of, the Trust, the Trustee or any Ordinary Unitholder in any matter; or

- (ii) direct the Trustee in respect of any matter, including any right or power of the Trustee:
 - (A) under this deed; or
 - (B) in respect of any Asset.
- (c) No Ordinary Unitholder may hold itself, or any other Ordinary Unitholder, out as acting on behalf of the Trust or the Trustee.
- (d) No Ordinary Unitholder has any interest in any Asset and may not require any Asset to be transferred to the Ordinary Unitholder or any other person except as otherwise provided in this deed.
- (e) Subject to the obligations of the Trustee under this deed in relation to matters which require approval by Ordinary Resolution or Special Resolution, the Trustee
 - (i) must consult with the Ordinary Unitholders in respect of any audit or compliance matter which it reasonably considers may adversely affect the Trust;
 - (ii) must consult with the Ordinary Unitholders if expressly required under this deed; and
 - (iii) may consult with the Ordinary Unitholders in respect of any other matter,
 but will not be required to follow any decision, advice or recommendation of the Ordinary Unitholders which results from a consultation with the Ordinary Unitholders under this deed or otherwise.

11.10 Disclosures

The Trustee may not provide to a Government Agency (other than a Subscriber or Ordinary Unitholder) any information in relation to the Trust or an Ordinary Unitholder unless the Trustee reasonably considers it to be necessary to comply with any law or regulation (including, without limitation, FATA and AIFMD) or requirement of a recognised stock exchange.

11.11 Name, Mark and IP Rights

Despite any provision of this deed to the contrary:

- (a) the Trust Name and Trust-Marks used by the Trust and any intellectual property rights associated with the Trust Name and Trust-Marks are the property of the Trustee or any of its Affiliates;
- (b) the power of the Trust to use the Trust Name and Trust-Marks may be withdrawn by the Trustee or any of its Affiliates at any time without compensation to the Trust; and
- (c) no Ordinary Unitholder other than the Trustee or any of its Affiliates has any right, title or interest in or to the Trust Name or Trust-Marks.

11.12 Amendment of this deed

- (a) Subject to paragraph (c) or paragraph (d), this deed may be modified, or repealed and replaced, by a deed executed by the Trustee if:
 - (i) the amendment is approved by an Ordinary Resolution, unless the proposed amendment amends any requirement in this deed for a Special Resolution, in which case the amendment must be approved by a Special Resolution;
 - (ii) the amendment is made to correct an error, cure any ambiguity or correct or supplement any provision of this deed or to correct any printing, stenographic or clerical error or omission and the Trustee has consulted with the Ordinary Unitholders where such amendment is to be made after the Final Closing Date;
 - (iii) the amendment is made to comply with, reduce, eliminate or otherwise modify the impact of, or applicability of AIFMD;
 - (iv) in order for the Trust to qualify as an AMIT or which the Trustee considers necessary or expedient in order for it to be able to make distributions and allocate Trust related income tax liabilities in a manner which is compliant with the AMIT Regime (provided that no amendments are made which alter the economic or beneficial interests which a Unitholder may have in the Trust); or
 - (v) the amendment is necessary or advisable to address any change in applicable law, regulation or accounting practice;
 - (vi) the amendment is of an administrative nature and is necessary or desirable to address the consequence of events provided for in this deed, including amendments;
 - (vii) the amendment is necessary to enable the admission of investors who are or may become subject to ERISA or the US Bank Holding Company Act of 1956 and related regulations.
- (b) For the avoidance of doubt, the Ordinary Unitholders may not modify, or repeal and replace, this deed but may consent to the Trustee modifying, repealing or replacing this deed.
- (c) If a proposed modification, or repeal and replacement, of this deed may adversely directly or indirectly affect the rights of the current or a former Trustee, a Pemba Executive or any member of the Pemba Group, as determined by the Manager, the prior written approval of the Trustee or former Trustee (as relevant) must be obtained before the modification, or repeal or replacement, may take effect.
- (d) If a proposed modification, or repeal and replacement, of this deed will:
 - (i) adversely affect a Unitholder (other than a modification, or repeal and replacement, which by its terms applies generally to all Unitholders); or
 - (ii) result in an increase in the Capital Commitment of an Ordinary Unitholder,then the prior written approval of the affected Unitholder must be obtained before the modification, or repeal or replacement, may take effect.

- (e) The Trustee must (in connection with the subsequent quarterly report made pursuant to clause 10.2(c) and in the form the Trustee thinks fit) notify each Ordinary Unitholder of each modification or repeal and replacement of this deed.
- (f) If:
 - (i) this deed is required to be amended to comply with a legal requirement imposed by statute or any relevant Government Agency;
 - (ii) the deed is not amended in accordance with this clause 11.12 despite the Trustee using reasonable endeavours to amend the deed; and
 - (iii) failure to amend the deed may result in penalty to, material additional liability for or material additional obligations on the Trustee or the Trust,

the Trustee may, by notice to the Ordinary Unitholders, after discussing the issue with them in good faith, commence wind-up of the Trust in accordance with clause 13.3.

12 Transfers and withdrawals

12.1 Transfer of Units of a Unitholder

- (a) An Ordinary Unitholder may only Transfer all or any number of its Ordinary Units (including in any such case any ultimate beneficial interest) to another person (including another Ordinary Unitholder) if:
 - (i) **(information and documents)** the Ordinary Unitholder and the other person have each provided any information and executed and delivered any documents to the Trustee or any person specified by the Trustee, which the Trustee reasonably considers to be necessary or desirable to effect the Transfer of those Ordinary Units of the Ordinary Unitholder to the other person;
 - (ii) **(Defaulting Ordinary Unitholder)** neither the Ordinary Unitholder nor the other person is a Defaulting Ordinary Unitholder or an Affiliate of a Defaulting Ordinary Unitholder;
 - (iii) **(payment of expenses)** the Ordinary Unitholder or the other person has paid all reasonable Outgoings of the Trustee and the Manager on behalf of the Trust, and all duties and Taxes, governmental charges, transfer fees, registration fees, brokerage fees and other charges, in connection with the Transfer of those Ordinary Units of the Ordinary Unitholder to the other person;
 - (iv) **(Deed of Accession)** where the proposed transferee is not already an Ordinary Unitholder, the Ordinary Unitholder and the other person execute a Deed of Accession which is delivered to the Trustee, and the Trustee notifies the Ordinary Unitholder and the other person that the Trustee accepts the Deed of Accession;
 - (v) **(Trustee consent)** the Trustee consents to the Transfer, such consent not being unreasonably withheld (in particular, in circumstances of a Transfer of all of the Ordinary Units of a Ordinary Unitholder where there is no change in the beneficial ownership of those Ordinary Units as a result of the Transfer or the Transfer is to a Certified Related Body Corporate of the Ordinary

Unitholder or a custodian appointed by the Ordinary Unitholder) unless the Trustee determines that:

- (A) the Transfer is contrary to any applicable law;
 - (B) registration of the Transfer may allow a person to control, whether directly or indirectly, the passing of an Ordinary Resolution unless approved by Special Resolution except where the Transfer does not result in a change in beneficial ownership;
 - (C) registration of the Transfer would be prejudicial to the interests of Ordinary Unitholders as a whole;
 - (D) the Transfer may prejudice the taxation treatment of the Partnership, the Trust or any Unitholder;
 - (E) the Transfer may prejudice the Trust from qualifying as a managed investment trust under the Tax Act such that the capital gains tax provisions of the Tax Act may no longer be the primary code for the gains and losses on the Trust's investments, except where each Ordinary Unitholder that is not Transferring any number of its Ordinary Units to another person (including another Ordinary Unitholder) has consented to the Transfer in writing;
 - (F) there is a real risk that the proposed transferee may be unable to meet future capital calls under this deed;
 - (G) the Transfer will or is expected to cause the Trust to hold "plan assets" subject to ERISA or Section 4975 of the Code;
 - (H) the Transfer will subject the Trust, the Trustee or any Affiliate of the Trustee to any additional regulatory requirements or taxes, including those under the United States Securities Act of 1933, the United States Investment Company Act of 1940, the United States Investment Advisers Act of 1940, the Code and the Treasury Regulations promulgated thereunder (including the "publicly traded partnership" provisions and Section 1446(f) thereof) or ERISA; or
 - (I) the Transfer does not comply with the requirements of this paragraph (a);
- (vi) **(soft pre-emptive right)** the requirements of paragraph (b) are satisfied; and
- (vii) **(Qualified Institutional Investor)** in case the Ordinary Unit was offered to and acquired by any Qualified Institutional Investor (as defined in Article 2, Paragraph 3, Item 1 of the Financial Instruments and Exchange Act of Japan, FIEA), the transferee of the Ordinary Unit is a Qualified Institutional Investor. For the avoidance of doubt, any Ordinary Unit offered to and acquired by any Qualified Institutional Investor can only be transferred to one or more Qualified Institutional Investors.
- (b) An Ordinary Unitholder (**Selling Ordinary Unitholder**) proposing to sell, exchange, transfer or give all or any number of its Ordinary Units (including in any such case any ultimate beneficial interest) to another person must give notice to the Trustee of that proposal specifying the number of its Units that it proposes to sell, exchange, transfer or give to that other person and the key commercial terms of

the sale, exchange, transfer or gift. The Trustee must give notice of the Selling Ordinary Unitholder's proposal (including the key commercial terms) to each Ordinary Unitholder unless the proposal to Transfer all or the relevant number of the Selling Ordinary Unitholder's Ordinary Units is:

- (i) to another person as a trustee, responsible entity, custodian, sub-custodian or nominee of the Fund for which the Selling Ordinary Unitholder is trustee, responsible entity, custodian, sub-custodian or nominee;
 - (ii) to another person as a trustee, responsible entity, custodian, sub-custodian or nominee of a Fund which is managed by the same manager as the Fund for which the Selling Ordinary Unitholder is a trustee, responsible entity, custodian, sub-custodian or nominee;
 - (iii) to a Certified Related Body Corporate of the Selling Ordinary Unitholder (unless the Trustee may reasonably withhold its consent to the Transfer by virtue of sub-paragraphs 12.1(a)(v)(A) through (H));
 - (iv) if the Selling Ordinary Unitholder held its Ordinary Units as nominee of another person, to that other person; or
 - (v) if the Selling Ordinary Unitholder is a Government Agency, to the same Government Agency or a Government Agency of the same jurisdiction.
- (c) If notice is required to be given under paragraph (b), the Selling Ordinary Unitholder must not sell, exchange, transfer or give all or any number of its Ordinary Units until at least 10 Business Days have elapsed since the notice to Ordinary Unitholders referred to in paragraph (b) has been given.
- (d) On and from the date of Transfer of all of a Ordinary Unitholder's Ordinary Units in accordance with this clause 12.1, the Trustee and each other Ordinary Unitholder release the former Ordinary Unitholder from all obligations (other than under clause 19) and liabilities under this deed arising on or after that date.

12.2 Voluntary retirement of the Trustee

- (a) Subject to clauses 12.3 and 12.4, the Trustee may not retire as trustee of the Trust other than by operation of law unless:
- (i) **(replacement)** the Trustee selects a person to replace the Trustee as the trustee of the Trust;
 - (ii) **(sufficient resources)** the Trustee is satisfied that the person has sufficient resources and ability to perform the obligations of the Trustee under this deed;
 - (iii) **(consent)** the person consents in writing to assuming the rights and obligations of the Trustee under this deed, including by execution of a Deed of Accession;
 - (iv) **(Deed of Accession)** the person delivers the Deed of Accession duly executed by it to the Trustee, and the Trustee notifies the person that the Trustee accepts the Deed of Accession;
 - (v) **(laws)** the replacement does not breach an applicable law;

- (vi) **(notice to Ordinary Unitholders)** except if the person is an Affiliate of the Trustee, the Trustee gives notice to each Ordinary Unitholder of the proposed retirement of the Trustee and details of the person;
 - (vii) **(Special Resolution)** except if the person is an Affiliate of the Trustee, the person is approved by a Special Resolution;
 - (viii) **(execute documents)** the Trustee has executed any documents, and the person has provided any information and executed and delivered any documents to the Trustee or any person specified by the Trustee, which the Trustee reasonably considers to be necessary or desirable to effect the replacement of the Trustee by that person; and
 - (ix) **(payment of expenses)** the Trustee or the person has paid all reasonable Outgoings of the Trust in connection with the replacement.
- (b) If the Trustee is replaced as the trustee of the Trust by a person in accordance with paragraph (a):
- (i) the Trustee who is replaced must do all things necessary to effect the transfer to or within the control of the person of any Assets held by or within the control of the Trustee; and
 - (ii) if the name of the Trust contains the name, or in any way relates to the name, of the Trustee or any of its Affiliates, the retiring Trustee may change the name of the Trust.
- (c) No withdrawal of the Trustee in violation of this deed is valid or effective.

12.3 Obligatory retirement of the Trustee

- (a) Subject to paragraph 12.3(b), the Trustee must retire as trustee of the Trust if:
- (i) notice of removal is served on the Trustee pursuant to an Ordinary Resolution within 90 days after the Trustee notifies the Ordinary Unitholders of a Cause Event, such notice to be served by the Trustee as soon as reasonably practicable following such Cause Event;
 - (ii) the Trustee or the Manager ceases to carry on business;
 - (iii) an Insolvency Event occurs in respect of the Trustee or the Manager;
 - (iv) under any applicable law of Australia:
 - (A) the Trustee is prohibited from being the trustee of the Trust;
 - (B) the Trustee is prohibited from participating in the management of the business of the Trust; or
 - (C) the Trust will suffer material penalty under an applicable law as a result of the Trustee continuing to be the trustee of the Trust.
- (b) The Trustee is not required to retire under sub-paragraph (a)(ii), (a)(iii) or (a)(iv)(C) if the continuation of the Trustee as the trustee of the Trust is approved by Special Resolution.

- (c) If the Trustee is required to retire as trustee from the Trust under paragraph 12.3(a):
 - (i) the Trustee must use all reasonable endeavours to ensure that as soon as practicable another person becomes the trustee of the Trust in accordance with clause 12.4; and
 - (ii) the Trustee who retires must be paid all amounts owing to it in accordance with clause 12.8(a).
- (d) If the Trustee is required to retire as trustee of the Trust under any of the following paragraphs 12.3(a)(ii), 12.3(a)(iii) and 12.3(a)(iv), all Accrued Carry must be distributed to Sponsor Unitholders as soon as it is able to be satisfied from cash and realisations of the Trust and in any case, as soon as practicable and without unreasonable delay but no later than 12 months following the date of retirement.
- (e) Each of the payments in sub-paragraph (d) is a debt owed by the Trust to the Trustee and the Sponsor Unitholders (as applicable) until those payments are made in full by the Trust and take priority over any distributions to Ordinary Unitholders.
- (f) The accrued but unpaid Sponsor Unit Distributions will be calculated by the Valuer within 10 Business Days following the date of retirement and will be calculated as if:
 - (i) the Assets were disposed of on the Removal Date at their respective valuations on that date, as determined by the Valuer in accordance with clause 10.3; and
 - (ii) the distribution allocation provisions in relation to payment of Carried Interest set out in clauses 9.4 and 9.6 apply,
 (the **Accrued Carry**).
- (g) If the Trustee is required to retire as trustee of the Trust under paragraph 12.3(a)(i), the incoming Trustee (in its capacity as trustee) must make a Sponsor Unit Distribution equal to no more than 75% of the Accrued Carry in accordance with clause 12.3(e), as and when each Asset included in the calculation of Accrued Carry is realised.
- (h) For the avoidance of doubt, the Outgoing Sponsor Unitholder will from the Removal Date not be entitled to any Sponsor Unit Distributions other than in respect of the Accrued Carry.
- (i) Where the Trustee has been required to retire as trustee of the Trust under paragraph 12.3(a)(i), the amount (as agreed or finally judicially determined) of any damages, award or settlement relating to the event(s) giving rise to the removal of the Trustee as trustee of the Trust under paragraph 12.3(a)(i) may be set off against any Accrued Carry payable to the Outgoing Sponsor Unitholders.
- (j) When the Accrued Carry is paid in full, the Trustee may cancel the Sponsor Unit held by the Outgoing Sponsor Unitholder.

12.4 Interim, successor and liquidating Trustees

- (a) The Trustee will cease to be the trustee of the Trust if:
 - (i) **(required to retire)** the Trustee is required to retire under clause 12.3;
 - (ii) **(replacement)** a Special Resolution has been passed at a meeting of Ordinary Unitholders convened in accordance with clause 15.2 to 15.4 to appoint a person to replace the Trustee as the Trustee;
 - (iii) **(sufficient resources)** the person replacing the retiring Trustee has provided a statement to the retiring Trustee for the benefit of Ordinary Unitholders that the person has sufficient resources and ability to perform the obligations of the Trustee under this deed;
 - (iv) **(consent)** the person replacing the retiring Trustee consents in writing to assuming the rights and obligations of the Trustee under this deed, including by execution of a Deed of Accession;
 - (v) **(Deed of Accession)** the person or partnership replacing the retiring Trustee delivers the Deed of Accession executed by it to the retiring Trustee to be held for the benefit of Ordinary Unitholders;
 - (vi) **(laws)** the replacement of the Trustee by the person does not breach an applicable law; and
 - (vii) **(Registered Office)** the person replacing the retiring Trustee gives notice to the retiring Trustee for the benefit of Ordinary Unitholders of any new address of the Registered Office of the Trust.
- (b) If the Trustee:
 - (i) is required to retire under clause 12.4 and a person is not, cannot or is unlikely to be appointed under paragraph (a) to replace the Trustee as the trustee of the Trust within 90 days of the Trustee being required to retire; or
 - (ii) ceases to be the Trustee and no other person is or becomes the Trustee at that time,

the Ordinary Unitholders may by Ordinary Resolution appoint another person to be the Trustee if the conditions in paragraph (a)(iii)-(vii) are satisfied in respect of that other person.
- (c) As soon as practicable after the Trustee is replaced as the trustee of the Trust by the Interim Trustee under paragraph (b), the Interim Trustee must provide notice to each Ordinary Unitholder stating that each Ordinary Unitholder may, by notice within 20 Business Days to the Interim Trustee, nominate:
 - (i) if the Investment Period has lapsed, up to 2 persons to:
 - (A) replace the Interim Trustee as the trustee and manager of the Trust; and
 - (B) unless the Ordinary Unitholders pass a Special Resolution to the contrary, wind up the Trust in accordance with clause 13.3; and

- (ii) in other circumstances, up to 2 persons to replace the Interim Trustee as the trustee of the Trust,
- provided that in each case:
- (iii) (**sufficient resources**) the Ordinary Unitholder is satisfied that the nominee has sufficient resources and ability to perform the obligations of the Trustee under this deed, including to wind up the Trust in accordance with clause 13.3;
 - (iv) (**consent**) the nominee provides to the Interim Trustee the consent in writing of the nominee to the assumption by it of the rights and obligations of the Trustee under this deed, including by execution of a Deed of Accession;
 - (v) (**Deed of Accession**) the nominee delivers the Deed of Accession duly executed by it to the Interim Trustee;
 - (vi) (**laws**) the Ordinary Unitholder is satisfied that any replacement of the Trustee by the nominee would not breach an applicable law; and
 - (vii) (**Registered Office**) the person notifies the Ordinary Unitholder of its address and obtains all consents which are necessary to change the Registered Office to that address.
- (d) If at least one person is nominated under paragraph (c), the Interim Trustee must within 7 days after the expiry of the period for the nomination convene a meeting of Ordinary Unitholders in accordance with clauses 15.2 to 15.4 at which:
- (i) if the Investment Period has lapsed, a resolution must be proposed, which may only be passed by a Special Resolution, to wind-up the Trust;
 - (ii) if the resolution to wind-up the Trust is not passed or the Investment Period has not lapsed, the Ordinary Unitholders may by Special Resolution elect one of the persons nominated under paragraph (c)(i) or (ii) (as relevant) to be the new trustee or manager of the Trust; and
 - (iii) if the resolution to wind-up the Trust is passed, the Ordinary Unitholders may by a Special Resolution elect one of the persons nominated under paragraph (c)(i) to be the trustee and manager of the Trust and to wind up the Trust in accordance with clause 13.3.
- (e) The notice of meeting for the purposes of paragraph (d) must include or attach:
- (i) details of each nominee under paragraph (c):
 - (A) in respect of whom the conditions in paragraphs (c)(iii) to (iv) are satisfied; and
 - (B) who the Interim Trustee is satisfied would not breach an applicable law by becoming the trustee and manager of the Trust; and
 - (ii) any other information concerning those nominees that the Interim Trustee, in its discretion, considers necessary or desirable to assist the Ordinary Unitholders in respect of the resolutions under paragraph (d).

- (f) If a person replaces the Trustee as the trustee of the Trust under this clause 12.4:
 - (i) the Trustee who is replaced must do all things necessary to effect the transfer to or within the control of the replacement Trustee any Assets held by or within the control of the Trustee who is replaced; and
 - (ii) if the name of the Trust contains the name, or in any way relates to the name, of the Trustee or any of its Affiliates, the retiring Trustee may change the name of the Trust.
- (g) If no person is nominated under paragraph (c) or no person is elected under paragraph (d), the Interim Trustee will continue to be the Trustee until it is replaced as the Trustee in accordance with clause 12.2, 12.3 or this clause 12.4.

12.5 Prohibited and permitted interests of Trustee in Trust

- (a) Despite any other clause of this deed:
 - (i) a person cannot be appointed as the trustee of the Trust if that person is a beneficiary of or holds any Units;
 - (ii) a person appointed as the trustee of the Trust cannot be or become a beneficiary of or hold any Units; and
 - (iii) any purported allotment, issue or transfer of Units to a person in breach of the provisions of this clause 12.5 is void and of no effect.
- (b) The prohibitions contained in clause 12.5 are irrevocable.

12.6 Transmission Event in respect of a Unitholder

- (a) Notwithstanding any other provision of this deed, in the case of the death of a Unitholder, the only persons the Trustee will recognise as having any title to the Units or any benefits accruing in respect of the Units of the Unitholder are:
 - (i) the legal personal representative of the Unitholder if the Unitholder was the sole holder of its Units; and
 - (ii) the survivor or survivors of the Unitholder if the Unitholder was a joint holder of its Units.
- (b) Nothing in paragraph (a) releases the estate of a Unitholder from any liability in respect of the Units of the Unitholder, whether those Units were held by the Unitholder solely or jointly with other persons.
- (c) Notwithstanding clause 12.1, a Transfer of all of the Units of a Unitholder on the occurrence of a Transmission Event in respect of the Unitholder may be made to the legal personal representative or the successor of the Unitholder if the Trustee is satisfied in its absolute discretion that the Transfer would not breach an applicable law and the legal personal representative or successor has provided any information, paid any expenses of the Trustee or Trust and executed and delivered any documents (including a Deed of Accession) to the Trustee or any person specified by the Trustee, which the Trustee reasonably considers to be necessary or desirable to effect the Transfer to the legal personal representative or successor.

- (d) If two or more persons become jointly entitled to the Units of a Unitholder under a Transmission Event, those persons are taken to hold the Units as joint tenants on Transfer of those Units to them.
- (e) In the case of a Transmission Event occurring to an Ordinary Unitholder:
 - (i) the provisions of this deed which relate to the registration of transfers apply to an instrument of Transfer upon a Transmission Event as if the instrument of Transfer were executed by a Selling Ordinary Unitholder; and
 - (ii) for the avoidance of doubt, a transferee under this clause must assume the obligation to pay the undrawn Capital Commitment of the Ordinary Unitholder that experienced the Transmission Event.

12.7 Retirement and removal of the Manager

- (a) Subject to clause 12.3(b), the Trustee must procure that the Manager ceases to be able to exercise any powers, enforce any rights or perform any obligations of the Trustee under this deed or in connection with the Trust on and after any of the following dates:
 - (i) the date the Manager ceases to carry on business;
 - (ii) the Removal Date of the Trustee other than in the context of a voluntary retirement for the purposes of effecting a corporate reorganisation of the Trustee and its Related Bodies Corporate where the Trustee is replaced with an Affiliate of the Trustee as trustee of the Trust; or
 - (iii) the date specified in a notice given by the Trustee to the Manager indicating that the Manager must retire on that date, being a date not less than 55 days after the date of the notice.
- (b) The Manager may continue to be a party to this deed and exercise any powers, enforce any rights or perform any obligations of the Trustee under this deed in circumstances of sub-paragraph 12.7(a)(ii) if this is approved by Special Resolution.

12.8 Rights and obligations on retirement

- (a) If the Trustee retires:
 - (i) it must make the adjustments to the Management Fee and/or the Administration Fee as required by clause 16.3(d);
 - (ii) subject to clause 12.3(e), the Trustee in its capacity as trustee of the Trust must in accordance with clause 16.3(a), procure that the relevant Ordinary Unitholders pay to the Manager or the Manager must repay to the relevant Ordinary Unitholders the amount by which the Management Fee and/or Administration Fee for that period which the Trustee or the Manager has already received from the Trust is less or more respectively than the amount calculated under clause 12.8(a)(i).
 - (iii) it is automatically released from all obligations and liabilities in respect of the Trust, except:
 - (A) under clause 18;

- (B) to the extent arising from unremedied breaches of its obligations under this deed prior to the Removal Date; and
- (C) to the extent that such obligations or liabilities cannot be released by virtue of any applicable law;
- (iv) it may change the name of the Trust to a name that does not contain the name of the removed Trustee or Manager and which otherwise has no association with the business of the removed Trustee or Manager including the words, "Pemba";
- (v) it must vest the Assets in the incoming Trustee; and
- (vi) it must do all things necessary or reasonably required to effect and facilitate the appointment of the incoming Trustee (including delivery of books and records relating to the Trust which are in the Trustee/Manager's possession or control).
- (b) Without in any way limiting the provisions of clause 22.10, where the Trustee has been removed as trustee of the Trust for cause pursuant to clause 12.3(a)(i) the Trustee in its capacity as trustee of the Trust must set off against any payment by the Trustee on behalf of the Trust to the Manager under clause 16.3(d) the amount (as agreed or finally judicially determined) of any damages, award or settlement relating to the event(s) giving rise to the removal of the Trustee as trustee of the Trust under clause 12.3(a)(i).

13 Duration and termination of the trust

13.1 Dissolving events

- (a) The Trust continues until it is wound-up.
- (b) The Trust must be immediately wound-up on the earlier of:
 - (i) subject to clause 13.2, the Termination Date;
 - (ii) when all investments of the Trust have been disposed of; and
 - (iii) when a Special Resolution is passed to wind-up the Trust, which may not be prior to the date which is 5 years after the establishment of the Trust.
- (c) The Trustee must promptly notify each Unitholder of the winding-up of the Trust.

13.2 Extension of the term of the Trust

The Trustee may extend the Termination Date, at its discretion, for a two year period and may then extend the Termination Date, with approval by Special Resolution, for another consecutive one year period.

13.3 Winding up of the Trust and distributions in specie generally

- (a) If the Trust is to be wound-up:
 - (i) the Trustee must wind up the business of the Trust, liquidate the Assets, and pay the debts, liabilities and claims against the Trust;

- (ii) the Trust must not engage in any further business other than as may be necessary to wind up the business of the Trust, liquidate the Assets, pay the debts, liabilities and claims against the Trust and distribute the Assets; and
 - (iii) the Trustee must establish any reserves which the Trustee reasonably considers to be necessary for the payment of any contingent or unforeseen obligation of the Trust.
- (b) Subject to paragraph (c), distributions in liquidation may be made in cash or in specie, or partly in cash and partly in specie.
- (c) Distributions of property other than cash may be:
 - (i) subject to reasonable conditions and restrictions necessary or advisable in the discretion of the Trustee in order to preserve the value of the Assets so distributed; and
 - (ii) made only with approval by Special Resolution passed after the Trustee has disclosed details of the Assets to be transferred.
- (d) Within 5 Business Days after a Special Resolution is passed in accordance with clause 13.3(c)(ii), a Unitholder, who does not want to receive such distribution of property other than cash, may elect, by giving written notice to the Trustee, to have the Trustee arrange for the sale of its share of the relevant distributions of property other than cash on behalf of and for the account of such Unitholders, provided that such arrangement will not result in a violation of applicable laws or the delegation of fiduciary responsibility to the Trustee.
- (e) Upon receipt of any notice issued in accordance with clause 13.3(d), the Trustee will cause the relevant property to be held in escrow and will use reasonable endeavours to cause such property to be sold at the best price reasonably obtainable in the circumstances to a third party, including another Unitholder.
- (f) If the Trustee is unable to sell the property referenced in the notice issued in accordance with clause 13.3(d) within a reasonable time, the Trustee may, in its discretion, appoint an agent to dispose of such property at the best price reasonably obtainable in the circumstances. The fees, costs and expenses of any such agent, and all other fees, costs and expenses of such transaction will be borne by the Unitholder (and will not, for the avoidance of doubt, increase the Paid-Up Proportion of any Unitholder) and may be deducted by the Trustee or agent from the proceeds of sale.
- (g) For the purposes of clause 9, any Unitholder which issues a notice in accordance with clause 13.3(d) will be deemed to have received a distribution of the relevant property held in escrow and/or sold on the date on which the corresponding property is distributed to other Unitholders in an amount equal to the value attributable to the property held in escrow and/or sold pursuant to clauses 13.3(e) and/or (f) (as calculated in respect of the corresponding property distributed to other Unitholders pursuant to clause 13.3(h)), notwithstanding that the actual net proceeds of sale received by such Unitholder may be of a different amount.
- (h) All property distributed in specie pursuant to this deed will for all purposes of this deed be valued in accordance with clause 10.3.
- (i) The Trustee must allocate Income in accordance with clause 8.

- (j) Any property (other than cash) distributed to a Unitholder after winding-up of the Trust must for the purposes of the distribution be valued in accordance with clause 10.3.
- (k) The proceeds from the liquidation of an Asset must be applied and distributed by the end of the Financial Year in which liquidation occurs (or, if later, within 120 days after the date of such liquidation):
 - (i) first, to creditors of the Trust and any Unitholders to whom the Trust is indebted, in the order of priority as provided by applicable law;
 - (ii) then, in accordance with clause 9.4.
- (l) Subject to clause 13.2, this deed terminates on distribution of all of the Assets under this clause 13.3.

14 Liability and indemnification

14.1 Liability of Ordinary Unitholders

Except by operation of clause 7, clause 9.7, clause 11.1 and clause 14.6 of this deed, or any applicable law:

- (a) the liability of an Ordinary Unitholder to contribute to the debts, obligations and liabilities of the Trust (but excluding, for the avoidance of doubt, Invoiced Outgoings) is limited to the total amount of the Capital Commitment of the Ordinary Unitholder from time to time; and
- (b) no Ordinary Unitholder, in its capacity as a Ordinary Unitholder, has any liability to the Trust or the Trustee in excess of that contemplated under paragraph (a).

14.2 Liability of Trustee

- (a) Subject to the provisions of this deed, the Trustee is not personally liable for the return of a Capital Contribution paid by an Ordinary Unitholder.
- (b) The Trustee, the Manager any other member of the Pemba Group and the Pemba Executives (together, the **Indemnified Persons**) will have no responsibility or liability (including liabilities in contract, tort or otherwise) for any loss (including those matters set out in paragraph (e)) incurred by the Trust or any Ordinary Unitholder howsoever arising in connection with their activities on behalf of, or their association with the Trust, provided however that such exculpation will not apply:
- (c) With respect to any Indemnified Person, save in circumstances where the relevant Indemnified Person's actions are undertaken in good faith and in reliance upon and in accordance with the advice of reputable Australian legal counsel having an appropriate speciality in the relevant subject matter, with respect to any matter resulting from such Indemnified Person's gross negligence, wilful misconduct, dishonesty, fraud, bad faith, breach of fiduciary duties, material breach of applicable laws, or material breach of the terms of this deed.
- (d) Each of the parties undertakes not to bring any claim, demand, action, suit or proceeding against any Indemnified Person which might reasonably be regarded as contrary to clause 14.2(b).
- (e) The matters referred to in paragraph (b) include:

- (i) an act or omission to act as required by law or in accordance with any decree, order or judgment of any court;
- (ii) reliance upon any signature, marking or documents;
- (iii) any payment made to any fiscal authority on any basis even if the payment need not have been made;
- (iv) acting in accordance with a valid resolution under this deed; and
- (v) acting in accordance with a recommendation or advice received in accordance with this deed.

14.3 Dealings

Despite any other provision of this deed, the Trustee need not take any action (including enter into any contract or commitment):

- (a) unless in the opinion of the Trustee or the Manager (as applicable), the Assets are sufficient to indemnify it for any actual, anticipated or contingent claim, loss, damage or Outgoing of or against the Trust or the Trustee in relation to the action; or
- (b) which involves the Trust or the Trustee incurring any actual or contingent liability (other than to a Unitholder under this deed) unless the liability of the Trust, the Trustee or the Manager respectively is limited in a manner satisfactory to the Trustee or the Manager (as applicable) in its absolute discretion.

14.4 Indemnity of the Indemnified Persons

- (a) In addition to any indemnity under applicable law and the indemnity under clauses 14.6 and 14.7, each Indemnified Person has a right to be fully indemnified out of the Assets:
 - (i) in respect of any liability, loss, damage or Outgoing of:
 - (A) the Indemnified Person in relation to the role, rights, powers and obligations of such Indemnified Person under this deed; or
 - (B) the Trust payable under this deed to the Indemnified Person; and
 - (ii) against all actions, proceedings, claims and demands, suits or proceedings, whether civil, criminal, contractual, administrative or investigative (whether threatened or incurred) brought against the Indemnified Person by reason of such person:
 - (A) being, or having been, an Indemnified Person; or
 - (B) having undertaken any activities on behalf of, or in connection with, any current or former asset of the Trust,

except:

- (iii) with respect to any Indemnified Person save in circumstances where the relevant Indemnified Person's actions are undertaken in good faith and in reliance upon and in accordance with the advice of reputable legal counsel or, where appropriate, other qualified professional advisers, with respect to

any gross negligence, wilful misconduct, dishonesty, fraud, bad faith or material breach of the terms of this deed;

- (iv) to the extent the liability, loss, damage or Outgoing of the Indemnified Person is to the current or former Manager who is a Pemba Executive or member of the Pemba Group if the liability, loss, damage or Outgoing is the result of a dispute with another current Pemba Executive or current member of the Pemba Group;
 - (v) in respect of Overheads of the Indemnified Person or an Appointee; or
 - (vi) to the extent prohibited by applicable law.
- (b) The right of indemnity under paragraph (a) in respect of any loss, damage, Outgoing, action, proceeding, claim or demand is not lost or impaired by reason of a separate act or omission (whether before or after the occurrence of the loss, damage, Outgoing, action, proceeding, claim or demand) in breach of this deed.
- (c) Subject to clause 14.4(a), the Trustee:
- (i) may make an advance on behalf of the Trust to a person in respect of costs or expenses incurred by reason of such person claiming to be an Indemnified Person, provided that in connection with an action against any Indemnified Person hereunder brought by Ordinary Unitholders representing more than 50% of the Capital Commitments, the Trustee must not on behalf of the Trust advance the expenses incurred by such Indemnified Persons; and
 - (ii) must take all reasonable steps to enforce the Trust's rights as contemplated in clause 14.4(d) against the relevant person, having regard to the prevailing circumstances and the fiduciary duties it owes to the Trust.
- (d) As a condition to any Indemnified Person making any claim to be indemnified pursuant to clause 14.4(a), such Indemnified Person must have agreed in writing with the Trust that:
- (i) such Indemnified Person will use its reasonable endeavours to exercise any rights of recovery which it may have against its insurer or the relevant third party or their insurers provided that such Indemnified Person will be indemnified out of the assets of the Trust for its reasonable costs and expenses in seeking to exercise such rights of recovery;
 - (ii) to the extent that such Indemnified Person subsequently recovers monies in relation to the same matter from an insurer or third party, then such Indemnified Person will account to the Trust for the amount so recovered (after deduction of all costs and expenses incurred in procuring recovery);
 - (iii) to the extent that it is subsequently determined that such Indemnified Person does not have the entitlement to such indemnification then such Indemnified Person will account to the Trust for the amount of the indemnification provided out of the Assets; and
 - (iv) where the Trustee has made an advance to such Indemnified Person pursuant to clause 14.4(c), such Indemnified Person will repay to the Trust any sums so advanced if it is subsequently determined that no right of indemnity exists under this clause 14.4 in respect of such Indemnified Person.

- (e) The Trustee holds the benefit of the indemnities and rights under this clause 14.4 and clause 14.5 in its own capacity and as trustee severally for each other Indemnified Person and each person who benefits from the indemnities and rights under clause 14.5 (as relevant).
- (f) Without prejudice to the generality of clause 14.4(a), notwithstanding the Trustee's removal as a trustee of the Trust, or the termination of the Trust, or the termination of appointment of the Manager, the Indemnified Persons will, for the avoidance of doubt and without prejudice to their rights to receive any other amounts due to them under the terms of this deed, remain entitled to exculpation and indemnification from the Trust in accordance with this clause 14.

14.5 Indemnity of directors of investee companies

- (a) The Trustee may in its absolute discretion, but having regard to any relevant insurance policies, indemnify out of Assets any person who is or has, as a result of the existence, exercise or performance of any rights or obligations of the Indemnified Person under this deed, been a director, alternate director or shadow director of a company in which any Assets have been, are or are proposed or required to be invested, or of an Affiliate of such company, in relation to any loss, damage or Outgoing paid, suffered or incurred by the person in relation to the position of the person as such a director, except for any loss, damage or Outgoing paid, suffered or incurred by the person as a result of fraud, gross negligence or dishonesty of the person, a breach of director duties by the person or where the person is entitled to be indemnified by the investee company.
- (b) No Indemnified Person who continues to be a director, alternate director or shadow director of a company in which any Assets or assets of the Trust have been after the Trust has entirely disposed of all of its investment in such company and has received all proceeds in respect thereof will be entitled to indemnification under clause 14.4(a) in respect of any event or cause of action relating to such company which occurs wholly after such disposal and receipt of proceeds and is unconnected to events which occurred prior to such time.

14.6 Tax

Without limiting clause 14.4, each current or former Ordinary Unitholder indemnifies the Trust and each current or former Trustee against any actual or contingent liability for any Tax in respect of any Income or proceeds of any Assets allocated to the current or former Ordinary Unitholder which has been paid by or for which the Trust or the relevant current or former trustee of the Trust is liable. In addition, each current or former Ordinary Unitholder indemnifies the Trust and each current or former trustee of the Trust against any actual or contingent liability for any Tax attributable to such current or former Ordinary Unitholder pursuant to clause 22.18(e). The previous sentence of this clause 14.6 shall survive the winding-up, termination, and dissolution of the Trust.

14.7 Indemnity as attorney

Each current or former Ordinary Unitholder indemnifies each current or former trustee of the Trust against any claim, loss, damage or Outgoing arising directly or indirectly from the lawful exercise of a power of the current or former trustee of the Trust under clause 14.4 on behalf of the Ordinary Unitholder except:

- (a) to the extent the liability of the current or former trustee of the Trust is due to wilful misconduct, fraud, gross negligence, dishonesty or material breach of its obligations under this deed; and

- (b) in respect of Overheads of the current or former trustee of the Trust, Manager or an Appointee.

14.8 Enforcement of rights

This deed operates as a deed poll in respect of each right contemplated in this deed in circumstances where a person has the benefit of such right and is not a party to this deed.

15 Meetings of Ordinary Unitholders

15.1 Application

- (a) This clause 15 applies to meetings convened for the purpose of passing an Ordinary Resolution or Special Resolution under this deed.
- (b) No decision or resolution of Ordinary Unitholders is valid and binding on the Ordinary Unitholders unless it is an Ordinary Resolution or Special Resolution contemplated by and passed in accordance with this deed.

15.2 Convening of meeting

Subject to this clause 15, the Trustee may determine the time and place at which a meeting of all Ordinary Unitholders will be convened and the manner in which the meeting will be conducted provided that such meeting is held in Sydney, Australia.

15.3 Notice

A meeting of Ordinary Unitholders may be convened by the Trustee by notice in writing sent to every Ordinary Unitholder entitled to attend and vote at the meeting. The notice of meeting must contain adequate notice of:

- (a) the time and place of the meeting and the form of technology to be used for the meeting and the relevant contact information for joining the meeting;
- (b) the general nature of the business to be transacted at the meeting; and
- (c) any resolutions to be put to the meeting of which the Trustee is aware.

15.4 Requisition

- (a) A meeting of Ordinary Unitholders must be convened by the Trustee as soon as practicable, and in any case within 10 Business Days, after the Trustee receives a requisition in writing to convene a meeting signed by Ordinary Unitholders (other than Defaulting Ordinary Unitholders) whose Capital Commitments together represent at least 30% of the Capital Commitments of all Ordinary Unitholders (other than Defaulting Ordinary Unitholders) as of that date.
- (b) If the Trustee fails to requisition a meeting in accordance with clause (a), an Ordinary Unitholder may within 5 Business Days convene the meeting at a reasonable time and after providing at least 10 Business Days' notice to each Ordinary Unitholder, the Trustee and the Manager.

15.5 Notice period

At least 10 Business Days' notice of a meeting must be given to Ordinary Unitholders, unless the Ordinary Unitholders unanimously agree in writing to shorten the notice period.

15.6 Non-receipt

A meeting of Ordinary Unitholders is not invalidated if the notice was accidentally or in error omitted to be given to an Ordinary Unitholder.

15.7 Quorum

- (a) The quorum for a meeting is 2 Ordinary Unitholders, or 1 Ordinary Unitholder if there is only one person that holds Ordinary Units (other than Defaulting Ordinary Unitholders) present in person whose Capital Commitments together represent at least 50% of the Capital Commitments (other than Defaulting Ordinary Unitholders) as of midnight on the previous Business Day.
- (b) An Ordinary Unitholder is present at a meeting of Ordinary Unitholders if the Ordinary Unitholder attends in person, by proxy, by representative or by attorney, or with the consent of the chair, the Ordinary Unitholder or such other person attends by telephone, video conferencing or other similar method.

15.8 No quorum

- (a) If a quorum is not present within 30 minutes after the scheduled time for the meeting, the meeting is:
 - (i) if convened on the requisition of Ordinary Unitholders – dissolved; or
 - (ii) otherwise – adjourned to the date which is 10 Business Days after the date scheduled for the meeting and is to be held at such venue and at the time notified by the Trustee to all Ordinary Unitholders with such notice being sent to Ordinary Unitholders at least 5 Business Days before the scheduled meeting.
- (b) At any adjourned meeting those Ordinary Unitholders present in person or by proxy constitute a quorum.

15.9 Chair

- (a) Subject to this paragraph (a), the Trustee may appoint a person to chair a meeting of Ordinary Unitholders. The chair need not be an Ordinary Unitholder.
- (b) If the meeting of Ordinary Unitholders has been requisitioned by Ordinary Unitholders, the Trustee must appoint a person to chair the meeting which has been nominated by the Ordinary Unitholders by Ordinary Resolution.
- (c) Representatives of the Trustee are entitled to attend, but not vote at, any meeting of the Ordinary Unitholders.
- (d) The chair of any meeting of the Ordinary Unitholders must:
 - (i) act fairly, reasonably and impartially in respect of its conduct of the meeting; and

- (ii) conduct the meeting in accordance with generally accepted principles for conduct of general meetings of public companies which are not admitted to a stock exchange.
- (e) The decision of the chair on any matter relating to the conduct of the meeting is final.

15.10 Adjournment

The chair has power to adjourn a meeting to such venue, date and time as the chair thinks fit.

15.11 Voting

- (a) Voting is by a show of hands, unless a poll is duly demanded or the resolution proposed is required by this deed or by law to be decided by proportion of Capital Commitments or by the number of Ordinary Units held by Ordinary Unitholders.
- (b) Each Ordinary Unitholder which is present in person or by proxy has one vote on a show of hands and, on a poll, one vote for each dollar of its Capital Commitment.
- (c) In the case of an equality of votes, the chair does not have a casting vote.
- (d) Unless this deed requires that a matter be determined by Special Resolution, all matters to be decided by the Ordinary Unitholders must be decided by Ordinary Resolution.

15.12 Poll

A poll may be demanded before or on declaration of the result of a show of hands by:

- (a) the chair;
- (b) a representative of the Trustee in attendance at the meeting; or
- (c) Ordinary Unitholders (other than Defaulting Ordinary Unitholders) present in person or by proxy whose Capital Commitments represent at least 10% of the total Capital Commitments of all Ordinary Unitholders (other than Defaulting Ordinary Unitholders) as at midnight on the previous Business Day.

15.13 Proxies

An Ordinary Unitholder may be represented at a meeting by proxy. Proxies are governed by the Corporations Act as if all meetings were meetings of a Registered Scheme convened under the Corporations Act and the Trustee was the Responsible Entity of that Registered Scheme.

15.14 Representatives

A body corporate may be represented at a meeting by a person appointed in the manner provided in the Corporations Act as if the Trust was a Registered Scheme and the Trustee was the Responsible Entity of that Registered Scheme. The Trustee may accept a certificate of appointment as evidence of the person's appointment.

15.15 Other attendees

The Trustee may attend and speak at any meeting, or invite any other person to attend and speak.

15.16 Resolutions binding

An Ordinary Resolution or Special Resolution binds all Ordinary Unitholders in relation to matters which this deed requires to be passed by Ordinary Resolution or Special Resolution (as the case may be), whether or not they are present at the meeting or sign a document prepared under clause 15.17. No objection may be made to any vote cast unless the objection is made at the meeting.

15.17 Minutes

The minutes of a meeting of Ordinary Unitholders signed by the chair of the meeting or the next subsequent meeting are conclusive evidence of the matters stated in them unless the contrary is proved.

15.18 Resolutions without meetings

- (a) Subject to paragraph (c), a resolution may be passed in respect of the Trust or this deed without a meeting being held, if:
 - (i) all Ordinary Unitholders have been provided with the form of the resolution at least 2 Business Days before it is passed;
 - (ii) the relevant Ordinary Unitholders required to pass an Ordinary Resolution, sign a document containing a statement that they are in favour of the resolution set out in the document; and
 - (iii) the relevant Ordinary Unitholders required to pass a Special Resolution, sign a document containing a statement that they are in favour of the resolution set out in the document.
- (b) For the purposes of paragraph (a):
 - (i) the document may be sent to Ordinary Unitholders in any manner described in clause 22.1;
 - (ii) the resolution is passed when the respective required percentage for either the Ordinary Resolution or Special Resolution (as relevant) is first satisfied;
 - (iii) separate copies of a document may be used for signing by Ordinary Unitholders if the wording of the resolution and statement is identical in each copy; and
 - (iv) the Trustee may accept any form of signature that it considers to be sufficient evidence of approval of a resolution, including without limitation:
 - (A) a signature of an Ordinary Unitholder transmitted to the Trustee by a facsimile or a scanned portable document format (pdf) file;
 - (B) a digital signature provided in a manner approved by the Trustee (in its sole discretion); and

- (c) an email from the email address of an Ordinary Unitholder as set out in the Unitholder Register attaching the document and stating in the email or replying to an email that attached the document that the relevant Ordinary Unitholder approves the resolution contained in the document (or words to that effect); and

the Trustee, the Manager and each Ordinary Unitholder consents to the use by each Ordinary Unitholder of the methods of signature set out in this clause (iv).

- (c) Where a document is signed in accordance with paragraph (a) the document is to be taken as a minute of the passing of the resolution.

16 Management Fees, Administration Fees and Outside Fees

16.1 Invoiced Outgoings

- (a) Management Fees will be invoiced by the Trustee directly to the External Ordinary Unitholders by the Trustee giving written notice.
- (b) Administration Fees will be invoiced by the Trustee directly to all Ordinary Unitholders by the Trustee giving written notice.
- (c) Ordinary Unitholders must pay an invoice under this clause 16.1 in immediately available funds (including any GST payable on such amounts) within 10 Business Days of receipt of such notice, and will not be paid from the Assets.

16.2 Outside Fees

The amount of any Outside Fees retained by the Trustee or Manager as its own property for services provided to portfolio companies invested in by the Trust is not an Asset, and the Trust has no right, title or interest in and to such Outside Fees.

16.3 Entitlement to Management Fee and Administration Fee

- (a) The Manager or its appointed person is entitled to:
 - (i) the Management Fee; and
 - (ii) the Administration Fee,

which is payable by the Trustee or its nominated person by providing an invoice to the Trustee in its capacity as trustee of the Trust which may then invoice the relevant Ordinary Unitholders or External Ordinary Unitholders directly for such amounts in accordance with clause 16.1.

- (b) The Manager may invoice Management Fees and Administration Fees in advance at any time, provided that any such Management Fees cannot exceed the amount 12 months in advance.
- (c) The Management Fee or Administration Fee payable to the Manager or its nominated person is pro-rated in any Fee Period for the number of days during that Fee Period in respect of which the Manager is the manager of the Trust.
- (d) On the date of termination of this deed or the Removal Date:
 - (i) the Trustee in its capacity as trustee of the Trust must, in accordance with clause 16.3(a), procure that the relevant Ordinary Unitholders pay to the Trustee or Manager, the amount (if any) by which the total of the fees received by the Trustee or Manager on or before the termination of this deed or the Removal Date (as relevant) is less than the total of the Management Fee and/or Administration Fee for the period from (and including) the date on which the Trustee became trustee of the Trust or the Manager became the manager of the Trust to (and including) the date of the termination of this deed or the Removal Date (as relevant); or
 - (ii) the Trustee or Manager must repay to the relevant Ordinary Unitholders the amount (if any) by which the total of the fees received by the Trustee or Manager under 16.3(a) on or before the termination of this deed or the Removal Date (as relevant) exceeds the total of the Management Fee and/or Administration Fee for the period from (and including) the date on which the Trustee became trustee of the Trust or the Manager became the manager of the Trust to (and including) the date of termination of this deed or the Removal Date (as relevant).
- (e) Notwithstanding this clause 16.3, no Management Fees will be payable by Management Team Ordinary Unitholders.

17 Power of attorney and agent for service

17.1 Power of attorney

- (a) Each Ordinary Unitholder irrevocably appoints the Trustee and the Manager from time to time, as the attorney of the Ordinary Unitholder, with full power and authority in the name and place of the Ordinary Unitholder, to do any of the following or anything incidental to the following:
 - (i) execute and deliver any document that the Trustee is entitled to request under clause 20;
 - (ii) exercise any rights under clause 7.3, including the Transfer of any of the Ordinary Units of the Defaulting Ordinary Unitholder to any other person and to complete and sign any documents under hand or under seal on behalf of the Ordinary Unitholder which the Trustee requires to give effect to a transfer of any of the Ordinary Units of the Ordinary Unitholder;
 - (iii) execute, record and lodge all documents and instruments which are necessary or appropriate to amend the Unitholder Register in accordance with this deed;

- (iv) execute a document amending this deed in accordance with clause 11.12 if the Ordinary Unitholder fails to comply within 10 Business Days to a request by the Trustee to execute the document;
 - (v) execute and deliver any deed or agreement under which:
 - (A) a person (other than the Ordinary Unitholder) covenants to be bound by or comply with the provisions of this deed as a Ordinary Unitholder; and
 - (B) the Ordinary Unitholder agrees that the other person may enforce the provisions of this deed against it;
 - (vi) do any other act that the Trustee or an Appointee is expressly authorised to do under this deed; and
 - (vii) stamp and register this power of attorney if required.
- (b) The Trustee or the Manager may exercise or concur in exercising its powers under paragraph (a) even if the Trustee or the Manager has a conflict of duty in exercising powers or has a direct or personal interest in the means or result of that exercise of powers.
 - (c) Each Ordinary Unitholder must on request by the Trustee or Manager:
 - (i) ratify and confirm whatever the Trustee or Manager lawfully does or lawfully causes to be done under paragraph (a); and
 - (ii) give to the Trustee or the Manager any power of attorney, instrument of transfer or other instrument that the Trustee reasonably requires for the purpose of paragraph (a).
 - (d) The power of attorney under paragraph (a) is not affected by the bankruptcy, insolvency, death, disability or other legal incapacity of the Ordinary Unitholder.

17.2 Agent for service

Each Ordinary Unitholder that is not resident in Australia appoints the Manager as agent of the Ordinary Unitholder for service unless the Ordinary Unitholder specifies in the Subscription Deed or Deed of Accession executed by the Ordinary Unitholder, an alternate agent for service in Australia.

18 Confidentiality

18.1 Unitholder

No current or former Unitholder may disclose any provision of this deed or other information about the Trust, (including, without limitation, information provided to the Unitholder or any of its Affiliates in connection with such Unitholder's investment in the Trust,) the Trust, the Assets, the business of the Trust, a party to this deed or any current or former Unitholder except:

- (a) to an officer, employee, financier, professional adviser, auditor or insurer of the Ordinary Unitholder, if the current or former Ordinary Unitholder discloses the information to those persons on a confidential basis;

- (b) to a person for whom the Ordinary Unitholder holds the Ordinary Units of the Ordinary Unitholder as custodian, sub-custodian, nominee or investment manager if the current or former Ordinary Unitholder discloses the information to those persons on a confidential basis;
- (c) to a person to whom the Ordinary Unitholder proposes and is entitled to Transfer its Ordinary Units in accordance with clause 12.1(a), if the person undertakes to the Trustee and the Trust to keep the information confidential as if it were an Ordinary Unitholder;
- (d) to the extent reasonably required by the Ordinary Unitholder to perform its obligations to report to the managers, members or beneficiaries of a Fund for which the Ordinary Unitholder holds its Ordinary Units as trustee, responsible entity, custodian, sub-custodian or nominee;
- (e) to actual or prospective managers, members or beneficiaries of a Fund for which the Ordinary Unitholder (if it is a Trustee Unitholder) acts as trustee, responsible entity, custodian, sub-custodian or nominee (or a proposed Fund for which the Ordinary Unitholder proposes to act as trustee, responsible entity, custodian, sub-custodian or nominee) for the purpose of promoting investment in the Fund:
 - (i) to the extent the information could be disclosed under paragraph (d) to those persons if they were managers, members or beneficiaries of the Fund; and
 - (ii) otherwise as approved by the Trustee (with such approval not to be unreasonably withheld);
- (f) as a media announcement in the form approved by the Trustee;
- (g) after obtaining the written consent of the Trustee;
- (h) as reasonably required by an Ordinary Unitholder to perform its obligations to report to a trustee, custodian, sub-custodian or nominee of a Fund for which the Ordinary Unitholder holds its Ordinary Units;
- (i) information which relates exclusively to the current or former Ordinary Unitholder;
- (j) to the extent the information is in the public domain other than as a result of a breach of this clause 18.1;
- (k) as required by an applicable law, Government Agency (including any anti-money laundering agency) or stock exchange, provided that the current or former Ordinary Unitholder has consulted with the Trustee about the form and content of the disclosure; or
- (l) to enforce or conduct a claim or proceeding which arises in connection with the Trust, Assets, the business of the Trust, a party to this deed or any current or former Unitholder,

and must use its best endeavours to ensure all disclosures by it under paragraphs (a), (b), (d), (e), (h) and (l) are kept confidential. Notwithstanding the foregoing or anything else in this deed to the contrary, each Ordinary Unitholder (and each employee, representative or other agent of such Ordinary Unitholder) may disclose to any and all persons, without limitation of any kind, the tax treatment and tax structure of the Trust and its investments and strategies. For this purpose, the terms “tax structure”, “tax treatment” and “tax strategies” include only those facts and information that are relevant to the U.S. federal income tax treatment of the transaction and do not include (A) information relating

to the identity of the Trust, any Ordinary Unitholders or any investment or (B) the terms of this deed and the other agreements and documents referred to herein or information relating to any investment to the extent such terms or information are not relevant to such tax treatment, structure or strategies.

- (m) notwithstanding any other provision of this deed, with the exception of the information to be provided pursuant to clause 10.2 above, the Trustee shall have the right not to provide the Ordinary Unitholders, for such period of time as the Trustee in good faith determines to be advisable, with any information with respect to the Trust, the Assets, the business of the Trust or any of its investments (including any Affiliate thereof) that the Ordinary Unitholders would otherwise be entitled to receive or to have access to pursuant to this deed or applicable law if the Trustee, the Manager (or any of their respective owners, employees or Affiliates) is required by law or by agreement with a third party to keep such information confidential. Each Ordinary Unitholder acknowledges that all information with respect to the Trust, the Assets, the business of the Trust or any of its investments provided by the Trustee, including without limitation, this deed and its terms, are proprietary and confidential and constitutes trade secrets, other than any such information that has become generally available, or the Trustee has otherwise consented in writing to its disclosure, to the public.
- (n) In addition, the Trustee shall have the right to:
 - (i) redact any information it provides to a Ordinary Unitholder and/or withhold any information from an Ordinary Unitholder if such Ordinary Unitholder is a competitor (as determined by the Trustee, acting reasonably); and
 - (ii) cease providing any Ordinary Unitholder that is subject to any Disclosure Laws with information on Securities or other investments held by the Trust in the manner and format provided to other Ordinary Unitholders if:
 - (A) such Ordinary Unitholder receives a request to disclose information on Securities or other investments held by the Trustee and determines that such disclosure is required;
 - (B) either such Ordinary Unitholder or the Trustee determines in good faith that such Trustee is reasonably likely to be required to disclose information on Securities or other investments held by the Trustee (whether as a result of any court proceeding, court decision or order or otherwise);
 - (C) such Ordinary Unitholder receives written advice of counsel that disclosure of information on Securities or other investments held by the Trustee is required; or
 - (D) there is a change in policy of such Ordinary Unitholder under which such Ordinary Unitholder will disclose information on Securities or other investments held by the Trustee,

(each, a **Triggering Event**).

The Trustee will provide an Ordinary Unitholder with prompt notice upon any determination by it pursuant to paragraph (B) above. Each Ordinary Unitholder will provide the Trustee with prompt notice upon the occurrence of a Triggering Event and, unless otherwise prohibited by law, will use its reasonable best efforts to provide the Trustee with such notice, prior to its disclosure of any information on Securities or other investments held by the Trust and as to whether an exemption might be available with

respect to the information requested to be disclosed, provided that the failure to provide such notice shall not be considered a breach of this deed. Such Ordinary Unitholder will use its reasonable best efforts to allow the Trustee the reasonable opportunity to provide support to such Ordinary Unitholder regarding any exemption from public disclosure (if any), and, if necessary, permit the Trustee to work together with such Ordinary Unitholder to contest the potential release of the affected records or information. However, the Trustee shall not make any claim against any Ordinary Unitholder if, despite compliance with this clause, such Ordinary Unitholder makes available to the public any information on Securities or other investments held by the Trust that such Ordinary Unitholder has received from the Trustee which such Ordinary Unitholder has determined in good faith is required to be made public pursuant to applicable Disclosure Laws or court order. Upon the occurrence of a Triggering Event, the Trustee shall continue to provide such Ordinary Unitholder with the information on Securities or other investments held by the Trustee that the Trustee provides to other Ordinary Unitholders via a non-downloadable, non-printable website or in such other manner or format reasonably acceptable to the Trustee and such Ordinary Unitholder, provided that in each case the information delivered in such manner and in such format is not subject to any Disclosure Laws applicable to such Ordinary Unitholder.

18.2 Trustee

The Trustee, the Manager and any of their Affiliates may, in connection with any right, power or obligation under this deed, disclose any information about this deed, the Trust, its business, a party to this deed or any current or former Ordinary Unitholder without the prior consent of any Ordinary Unitholder or former Ordinary Unitholder, including where:

- (a) the Trustee or the Manager includes such information in a report that is required to be produced under this deed; or
- (b) the Trustee or the Manager is of the opinion that the disclosure is required (whether or not as a result of a voluntary act or omission of the Trustee, the Manager or any other person) by:
 - (i) law (including, without limitation, FATA);
 - (ii) a Government Agency; or
 - (iii) the rules of a stock exchange.

18.3 No disclosure

The Trustee and the Manager are not obliged to disclose to any Ordinary Unitholder any information relating to the Trust and Assets to the extent that they are bound by confidentiality obligations in respect of that information or consider in their absolute discretion that such information is commercially sensitive or otherwise that such disclosure would not be in the best interests of the Trust the Ordinary Unitholders or direct or indirect investments of the Trust. The Trustee and the Manager must use reasonable endeavours to negotiate contractual confidentiality exclusions to permit it to report to any Ordinary Unitholder.

18.4 Anti-money laundering

- (a) Ordinary Unitholders (the **Information Provider**) agree to provide any information and documents reasonably required by the Trustee (the **Information Recipient**) to comply with any applicable anti-money laundering or counter-terrorism financing laws including, without limitation, any applicable laws imposing "know your

customer" or other identification checks or procedures on the Information Recipient (**AML/CTF Laws**).

- (b) The obligation to provide information under paragraph (a) applies only to the extent that such information is in the possession of, or otherwise readily available to, the Information Provider and subject to any confidentiality, privacy or general trust law obligations owed by the Information Provider to any person in relation to whom the information or documents requested relates (except to the extent that the foregoing may be overridden by the relevant AML/CTF Laws).
- (c) Each party must comply with any AML/CTF Laws applicable to it, to the extent required to comply with its obligations under this deed.
- (d) Any party may decline to perform any obligation under this deed to the extent that it forms the view, in good faith and based on competent legal advice, that notwithstanding that it has taken all action to comply with any applicable AML/CTF Laws, it is required or permitted to decline to perform those obligations under any such AML/CTF Laws.
- (e) To the maximum extent permitted by law, each party releases the other party (a **Released Party**) from any confidentiality, privacy or general trust law obligations that a Released Party would otherwise owe to it in connection with this deed and to the extent to which it is able, any applicable confidentiality and privacy laws, to the extent that the existence of these obligations or laws would otherwise prevent a Released Party from providing any information or documents requested in accordance with this clause 18.4.
- (f) Each Ordinary Unitholder acknowledges that the Trustee seeks to prohibit the investment of funds in the Trust by any persons or entities that are acting, whether directly or indirectly (x) in contravention of any Australian anti-money laundering laws, regulations or conventions, or (y) on behalf of terrorists or terrorist organizations, including, without limitation, those persons or entities that are included on any relevant lists, all as may be amended from time to time (**Proscribed Investments**). Each Ordinary Unitholder hereby represents and warrants that its investment in the Trust will not constitute such a Proscribed Investment. The Trustee shall be entitled to rely upon such representation in connection with the issue of Ordinary Units to that Ordinary Unitholder.
- (g) The Trustee shall be authorised, without the consent of any person, including any Ordinary Unitholder, to take such action as it determines to be necessary or advisable to comply, or to cause the Trust to comply, with any applicable anti-money laundering or anti-terrorist laws, rules, regulations, directives or special measures. Notwithstanding anything to the contrary contained in any document, if, at any time following any Ordinary Unitholder's acquisition of Ordinary Units, it is discovered that such Ordinary Unitholder's investment is a Proscribed Investment, such Ordinary Unitholder shall be deemed to have withdrawn from the Trust effective immediately and such Ordinary Unitholder shall have no claim arising out of such deemed withdrawal for any form of damages against the Trustee or any of its affiliated persons, other than, if permitted by applicable laws, the right to receive payment for its Ordinary Units, in a manner corresponding to that set forth in clause 22.18(d) applicable to withdrawing Ordinary Unitholders. Any proceeds of such Ordinary Unitholder's interest in the Trust pursuant to this clause or otherwise will be paid to the same account from which the Ordinary Unitholder's investment in the Trust was originally remitted, unless the Trustee, in its sole discretion, agrees otherwise.

- (h) The Trustee may release confidential information about any Ordinary Unitholder and, if applicable, any beneficial owner(s) of such Ordinary Unitholder to proper authorities, if the Trustee:
 - (i) in its sole discretion, determines that it is in the best interests of the Trust in light of relevant rules and regulations concerning Proscribed Investments; and
 - (ii) has obtained the written consent of the affected Ordinary Unitholders, except where the disclosure is:
 - (A) required by law (including, without limitation, FATA); or
 - (B) pursuant to the demand of any Government Agency.

19 Limitation of liability of trustee unitholders

19.1 Capacity

A Trustee Unitholder is bound by this deed only in its capacity as trustee, responsible entity, custodian, sub-custodian or nominee respectively of the Fund for which the Trustee Unitholder holds the Units as trustee, responsible entity, custodian, sub-custodian or nominee and in no other capacity.

19.2 Rights of other parties

Subject to clause 19.5, the rights of other parties and the Trust under or in respect of this deed (whether express or implied by applicable law or otherwise) are not exercisable against a Trustee Unitholder other than in the capacity specified in clause 19.1.

19.3 Enforcement

Subject to clause 19.5, but despite any other provision of this deed, a Trustee Unitholder is not liable to pay or satisfy, and none of the Trust nor any party is entitled to enforce against the Trustee Unitholder, any damages suffered by or amounts owing to the party or the Trust, which result from a breach or non-performance of an obligation, representation or warranty (whether express, implied by law or otherwise) of the Trustee Unitholder under or in respect of this deed (including in relation to any conduct, omission or transaction in relation to this deed) except to the extent the Trustee Unitholder is entitled to be indemnified (whether from the Fund for which the Trustee Unitholder holds its Units, by way of insurance or otherwise) and is actually indemnified in the capacity specified in clause 19.1 in respect of that obligation, representation or warranty and those damages and amounts are recoverable by the Trustee Unitholder under that indemnity.

19.4 Winding up

Subject to clause 19.5, if a party does not recover all damages suffered and amounts owing to it as a result of a breach or non-performance of any obligation of a Trustee Unitholder under or in respect of this deed (whether express or implied by applicable law or otherwise), the party may not seek to recover the shortfall by applying to have the Trustee Unitholder wound up.

19.5 Exceptions

Subject to clause 19.6, the limitations in clauses 19.1 to 19.4:

- (a) do not apply to the extent that those damages or amounts owing are not able to be satisfied because the entitlement of the Trustee Unitholder to be indemnified in the capacity specified in clause 19.1 is reduced as a result of:
 - (i) any gross negligence, wilful default, fraud or dishonesty by the Trustee Unitholder or any other trustee, responsible entity, custodian, sub-custodian or nominee of the Fund for which the Trustee Unitholder holds the Units of the Trustee Unitholder; or
 - (ii) any waiver, relinquishment or surrender by the Trustee Unitholder or any other trustee, responsible entity, custodian, sub-custodian or nominee of the Fund for which the Trustee Unitholder holds the Units of the Trustee Unitholder of any right of indemnity under the terms of appointment of that person relating to the Fund for which the Trustee Unitholder holds the Units in respect of those damages or amounts; and
- (b) do not limit the rights of the Trustee under clause 7 of this deed.

19.6 Relevant persons

If:

- (a) the Trustee Unitholder is the trustee of a Fund for which the Trustee Unitholder holds the Units of the Trustee Unitholder;
- (b) another person (**Relevant Person**) is appointed to perform a particular function (**Relevant Function**) in relation to the relevant Fund; and
- (c) the Relevant Person is not an Affiliate of the Trustee Unitholder,

then no act or omission of the Trustee Unitholder (including a related failure to satisfy any of its obligations under this deed) will to the extent the act or omission was caused by a failure by the Relevant Person to perform the Relevant Function will be considered to be gross negligence, default, fraud or dishonesty by the Trustee Unitholder for the purposes of clause 19.5(a)(i).

19.7 Attorney

- (a) No attorney or agent appointed in accordance with this deed has the authority to act on behalf of a Trustee Unitholder in a way which exposes the Trustee Unitholder to any personal liability (for the avoidance of doubt, this does not limit the attorney or agent's authority which may result in liability to the Trustee Unitholder in the capacity specified in clause 19.1 and as contemplated by this clause 19).
- (b) No act or omission of any attorney or agent appointed in accordance with this deed will be considered gross negligence, default, fraud or dishonesty of the Trustee Unitholder for the purpose of clause 19.5(a)(i).

19.8 No other limitation

No provision of this deed other than clauses 19.1 to 19.7 will operate to limit the liability of a Unitholder to the Trust or to the Trustee in relation to a breach or non-performance of

an obligation, representation or warranty (whether express, implied by law or otherwise) of the Unitholder under or in relation to this deed (including in relation to any conduct, omission or transaction in relation to this deed).

20 Compliance

20.1 Side Letters

The Manager or the Trustee may enter into any side letter or similar agreement (**Side Letter Recipient**), which relates to such Side Letter Recipient's interest(s) in the Trust and which may have the effect of establishing rights or otherwise providing economic benefit to the relevant Side Letter Recipient in a manner which may be favourable to such Side Letter Recipient than the rights and benefits established in favour of Ordinary Unitholders by this deed.

20.2 Documents and lodgings

- (a) The Trustee may request a person who has signed a Subscription Deed or Deed of Accession seeking to be admitted as a Unitholder or new Trustee (as relevant) to provide any information and execute and deliver any documents to the Trustee or any person specified by the Trustee which the Trustee reasonably considers to be necessary or desirable to:
 - (i) give effect to a provision of this deed;
 - (ii) conduct the business of the Trust, where not in conflict with this deed;
 - (iii) comply with an applicable law or requirement of a body that has jurisdiction over the Trust or the Trustee in its capacity as trustee of the Trust;
 - (iv) comply with FATA or any equivalent laws of any country in respect of any investment or potential investment of the Trust; or
 - (v) give effect to a dissolution or winding-up of the Trust or termination of this deed in accordance with this deed or an applicable law.
- (b) If a request is made to a person under paragraph (a), the person must comply with that request within 2 Business Days after the request (in respect of any obligation on the Trust or Trustee to comply with any law), promptly after the request (in respect of any other matter) or within such other reasonable time specified by the Trustee.

21 GST

21.1 Definitions

In this clause 21:

- (a) each of the terms "GST", "Supply", "Taxable Supply", "Tax Invoice", "Input Tax Credit" and "Adjustment Note" have the meaning given in the GST Law; and
- (b) "GST Adjustment Event" means "Adjustment Event" as that term is defined in the GST Law.

21.2 Consideration exclusive of GST

Any consideration or payment obligation in or under this deed (including all amounts payable to the Trustee under this deed) is exclusive of GST unless stated otherwise.

21.3 Consideration

- (a) The consideration (including non-monetary consideration) for a Supply made under or in connection with this deed which is a Taxable Supply is increased by an additional amount or value equal to the amount of that consideration multiplied by the relevant GST rate.
- (b) The additional amount under paragraph (a) is payable at the same time and in the same manner as the consideration for the Supply to which the additional amount relates.

21.4 Tax Invoice

A party who receives consideration, whether monetary or otherwise, must provide the other party a Tax Invoice in a form which complies with the GST Law within 10 Business Days after the end of the month in which any consideration is paid, or an invoice issued, in relation to the Taxable Supply, whichever occurs first.

21.5 Payments

Unless otherwise stated in this deed, the following principles apply when determining the amount of a payment under this deed:

- (a) if a party is entitled under this deed to be reimbursed or indemnified by another party in respect of any loss, damage or Outgoing paid, suffered or incurred by, or any action, proceeding, claim or demand against, the first mentioned party in connection with this deed, the reimbursement or indemnity payment must not include any GST component of the loss, damage or Outgoing for which an Input Tax Credit may be claimed by the first mentioned party (or the representative member of a GST group of which the first mentioned party is a member); and
- (b) if a party sets off an amount under this deed, the same principles apply to calculate the amount to be set-off, as if the amount had been paid in accordance with paragraph (a).

21.6 GST Adjustment Event

If a GST Adjustment Event occurs in respect of any Supply made under or in connection with this deed, the parties must do all things necessary to make sure that the GST Adjustment Event may be properly accounted for, including the issue of an Adjustment Note.

22 General

22.1 Notices

- (a) Any notice or other communication given under this deed including, but not limited to, a request, demand, consent or approval, to or by a party to this deed:
 - (i) must be in legible writing and in English;

- (ii) must be addressed to the addressee at the address or email set out below or to any other address or email that the party notifies to the other parties (if the party is the Trustee or Manager) or the Trustee or Manager (if the party is not the Trustee or Manager) under this clause:
 - (A) if to the Trustee or Manager:

Address: Level 45, Gateway, 1 Macquarie Place, Sydney NSW 2000

Attention: Mark Summerhayes

Email: MarkS@pemba.com.au

with a copy to (which does not constitute notice):

MagnusH@pemba.com.au, TomM@pemba.com.au and MarkL@pemba.com.au.
 - (B) if to any Unitholder, the address or email specified in the Unitholder Register established under clause 10.1; or
 - (C) if to a Subscriber, the address or email specified in the Subscription Deed relating to the Subscriber;
 - (iii) must be signed by (or, in the case of notification by email, sent by or on behalf of) an officer or attorney or under the common seal of the sender if the sender is a body corporate; and
 - (iv) is regarded as received by the addressee in accordance with paragraph (b).
- (b) A notice is regarded as received under paragraph (a):
- (i) if sent by hand, when delivered to the addressee;
 - (ii) if by post:
 - (A) 3 Business Days from and including the date of postage if posted to and from a place within Australia; or
 - (B) 7 Business Days from and including the date of postage if posted to or from a place outside Australia;
 - (iii) if sent by email, on the earlier of:
 - (A) the time that the sender receives an automated message that the email was delivered; and
 - (B) 6 hours after being sent unless the sender receives an automated message that the email was undeliverable or that the recipient is out of office,

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00 pm (addressee's time) it is regarded as received at 9.00 am on the next Business Day.

- (c) An email is regarded as legible unless the addressee telephones the sender within 2 hours after the email is received or regarded as received under paragraph (b)(iii) and informs the sender that it is not legible.
- (d) In this clause a reference to an addressee includes a reference to a person who is, or who the sender reasonably believes to be, an officer, agent or employee of the addressee.

22.2 Governing Law and Jurisdiction

- (a) The laws of New South Wales, Australia govern this deed.
- (b) Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales, Australia and its appellate courts.

22.3 Invalidity

- (a) If a provision of this deed, or a right or remedy of a party under this deed is void or unenforceable in a particular jurisdiction:
 - (i) it is read down or severed in that jurisdiction only to the extent it is void or unenforceable;
 - (ii) it does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions in any jurisdiction.
- (b) This clause is not limited by any other provision of this deed in relation to severability, invalidity or unenforceability.

22.4 Waivers

- (a) A waiver of a provision of this deed or a right or remedy arising under this deed, including this clause, must be in writing and signed by the party granting the waiver.
- (b) A single or partial exercise of a right or remedy does not preclude a further exercise of that right or remedy or the exercise of another right or remedy.
- (c) Failure by a party to exercise or delay in exercising a right or remedy does not prevent the further exercise of that or any other right or remedy or operate as a waiver.
- (d) A waiver is only effective in the specific instance and for the specific purpose for which it is given.

22.5 Exclusion of statutes and laws

To the extent permitted by law applicable to the Trust or the Trustee in any Australian jurisdiction:

- (a) any implied obligation of any Unitholder; and
- (b) any other rule or law,

which may be excluded or amended by or is subject to either express or implied agreement between the Ordinary Unitholders and Sponsor Unitholders or this deed is

excluded and does not apply to the Trust, the Trustee, the Ordinary Unitholders or the Sponsor Unitholders in relation to the Trust.

22.6 Cumulative rights

The rights and remedies of a party under this deed are in addition to and do not exclude or limit any other right or remedy provided by law.

22.7 Survival of rights

Clauses 1, 3 8, 9, 10, 12.3, 13, 14, **Error! Reference source not found.**, 18, 19, 20, and REF_Ref265230999 \w \h * MERGEFORMAT 21 and this clause 22 survive termination of this deed together with any other term which by its nature is intended to do so. Clause 11 survives termination of this deed to the extent that it applies to other surviving clauses referred to in this clause 22.7. Subject to the restrictions against unauthorised assignment or transfer in this deed, the provisions of this deed continue for the benefit of, and are binding on, each Ordinary Unitholder, Sponsor Unitholder and the Trustee and the heirs, devisees, legatees, personal representatives, successors and assigns of the Ordinary Unitholder, Sponsor Unitholder, and the Trustee (as relevant). A person who ceases to be a party to this deed remains subject to clause 18 and retains any accrued rights under and remains liable for any prior breaches of this deed as at the time the person ceases to be a party.

22.8 Non-merger

No term in this deed merges on completion of any transactions contemplated by this deed.

22.9 Payments

- (a) A payment which is required to be made under this deed must be in Australian Dollars and in the form of cash or by bank cheque or other immediately available funds.
- (b) A payment which is required to be made to the Trust under this deed must be made to the Trustee as trustee of the Trust.

22.10 Set-off

The Trustee may set off against any payment by the Trustee on behalf of the Trust to a person under this deed, any amount that is due and payable by the person to the Trust under this deed.

22.11 Costs and expenses

- (a) Subject to clauses 14.4 and **Error! Reference source not found.**, each party must pay its own costs and expenses of negotiating, preparing, signing, delivering and registering this deed and any other agreement or document entered into or signed under this deed.
- (b) Subject to clauses 14.4, 14.6 and 14.7, a party must bear the costs and expenses of performing its obligations under this deed, unless otherwise provided in this deed.

22.12 Further action

Each party must do all things necessary to give full effect to this deed and the transactions contemplated by this deed.

22.13 Entire agreement

- (a) This deed, the Subscription Deed, any Deed of Accession contain the entire agreement among the Ordinary Unitholders, Sponsor Unitholders, the Manager and the Trustee in relation to the Trust, and supersedes any prior written or oral agreement between them in respect of the subject matter of this deed or the Trust.
- (b) Notwithstanding clause (a), the Trustee and Manager may enter into one or more agreements with Ordinary Unitholders and the terms of such side agreements will govern with respect to such Ordinary Unitholders.

22.14 Third party rights

Except as otherwise provided in this deed:

- (a) each party executes this deed solely in its own legal capacity and not as an agent or trustee of any other person or entity; and
- (b) only the parties have or are intended to have a right or remedy under this deed or obtain a benefit under it.

22.15 Legal advice

Each party acknowledges that it has received legal advice about this deed or has had the opportunity of receiving legal advice about this deed.

22.16 Litigation fees

The parties who do not prevail in any legal action arising out of or in connection with this deed must reimburse to the prevailing parties the amount of the reasonable legal, accounting and expert fees and the costs of those actions paid or incurred by the prevailing parties.

22.17 Counterparts

This deed may be executed in any number of counterparts and when so executed, all of such counterparts constitute a single instrument binding on all parties notwithstanding the fact that all parties are not signatories to the original or to the same counterpart.

22.18 Certain ERISA, U.S. Tax Matters and FATCA

- (a) **(Certain ERISA and UBTI Matters)** In carrying out the objects and purposes set forth in clause 2 above:
 - (i) the Trustee will use its reasonable efforts to either (i) conduct its and the Trust's affairs and operations in such a manner that the Trust will, commencing on the date it makes its first investment (other than a short-term investment pending long-term commitment), qualify as a "venture capital operating company" within the meaning of the ERISA Plan Assets Regulation or (ii) limit investment in the Trust by "benefit plan investors" (within the meaning of Section 3(42) of ERISA) so that investment by such benefit plan investors is not significant within the meaning of the ERISA Plan

Assets Regulation. In furtherance of this objective, if participation in the Trust by benefit plan investors is or is expected to be significant, the Trustee will use its reasonable efforts to be granted and to exercise management rights with respect to its investments that are sufficient to permit the Trust to qualify as such a “venture capital operating company” and which shall be exercised by the Trustee solely for its own benefit, notwithstanding that the Trust may have co-invested in such portfolio companies with any other co-investors. Subject to the foregoing, none of the co-investors shall be precluded from obtaining comparable additional rights from such investments for their own benefit. Notwithstanding the use of its reasonable efforts as contemplated by this paragraph (a), in the event that the Trustee actually becomes aware that it has failed to meet the requirements of a “venture capital operating company” and participation by benefit plan investors (within the meaning of Section 3(42) of ERISA) is significant within the meaning of the ERISA Plan Assets Regulation, the Trustee shall promptly deliver written notice of such failure to each Ordinary Unitholder that is an employee benefit plan subject to Title I of ERISA or a “plan” within the meaning of Section 4975 of the Code, or an entity whose underlying assets include “plan assets” within the meaning of the ERISA Plan Assets Regulation by reason of investment in the entity by any such plan (each such Ordinary Unitholder being herein referred to as an **ERISA Unitholder**); and

- (ii) the Trustee will use its reasonable efforts not to take any action (including, without limitation, the making of any investment) or otherwise conduct its affairs and operations in a manner that would cause any Ordinary Unitholder (or any limited partner of a Ordinary Unitholder that itself is a partnership) that is a U.S. organization or entity exempt from United States federal income taxation pursuant to Section 501(a) of the Code, to recognise “unrelated business taxable income” within the meaning of Sections 511 through 514 of the Code; it being understood and agreed that none of the provisions of, or arrangements or actions contemplated by, clause **Error! Reference source not found.** of this deed shall be deemed to violate this paragraph (ii). Further, no Borrowing of the Trust with a term permitted under this deed shall be deemed to violate this paragraph (ii). In addition, the Trust shall in no event be deemed to violate this paragraph (ii) as a result of any action required to be taken by it (or the Trustee) pursuant to this deed or any other agreement referred to herein.
- (b) **(Payment of Initial Instalment)** If participation in the Trust by “benefit plan investors” (within the meaning of Section 3(42) of ERISA) is or is expected to be significant within the meaning of the ERISA Plan Assets Regulations, an ERISA Unitholder will not be required to pay the initial instalment of its Capital Contribution to the Trust prior to the date on which the Trustee makes its first investment (other than a short-term investment pending long-term commitment) and qualifies as a “venture capital operating company” under the ERISA Plan Assets Regulations. In such event, the Trustee shall provide to each ERISA Unitholder an opinion of counsel (in form and content reasonably satisfactory to the ERISA Unitholders) confirming that the Trust should qualify as a “venture capital operating company” in connection with such first portfolio company investment. In the event that the date of such first portfolio company investment shall occur after the Initial Payment Date, the ERISA Unitholder shall be treated as a “new Unitholder” for all purposes of clause 5.4 and accordingly such ERISA Unitholder shall be required to pay the amounts described in clause 5.4.
- (c) **(Provision of Information)** The Trustee shall provide each ERISA Unitholder, upon the written request of such ERISA Unitholder, with such information with respect to such ERISA Unitholder’s interest in the Trust as is reasonably available

to the Trustee and as may be reasonably requested in order for such ERISA Unitholder to comply with its reporting requirements under Form 5500, and the disclosure of such information shall not violate the terms of this deed. If the Trust initially distributes a “venture capital operating company” opinion (as referenced in this clause 22.18) the Trustee will, annually thereafter upon request, provide each requesting ERISA Unitholder with a certificate to the effect that the Trust should continue to qualify as a “venture capital operating company”.

(d) **(ERISA Withdrawal)**

(i) In the event that:

- (A) the Trustee shall determine that it is necessary for any ERISA Unitholder to withdraw from (or reduce its interest in) the Trust in order to avoid a violation or breach described in either (I) or (II) of subparagraph (B) below; or
- (B) any ERISA Unitholder shall determine that it is necessary for such ERISA Unitholder to withdraw from (or reduce its interest in) the Trust, in either case in order to avoid:
 - (I) a violation of, or breach of the fiduciary duties of any person under ERISA which arises by reason of any amendment to ERISA (or change in the United States Department of Labor's interpretation thereof) subsequent to the date on which the first instalment of its Capital Contribution is made; or
 - (II) a violation of any rule or regulation adopted under ERISA subsequent to such date; or
- (C) the Trustee or any ERISA Unitholder shall determine that it is necessary for such ERISA Unitholder to withdraw from (or reduce its interest in) the Trust in order to avoid a material risk of violating any of the “prohibited transaction” provisions of ERISA (which material risk shall include the failure of the Trust to meet the requirements of a “venture capital operating company” or it is reasonably likely that the Trust is holding “plan assets” subject to ERISA or Section 4975 of the Code), then the Trustee or such ERISA Unitholder, as the case may be, shall deliver to the other a notice to that effect, accompanied by an opinion of counsel (which may be counsel employed by the Trustee or such ERISA Unitholder, as the case may be), confirming the necessity of such withdrawal or reduction, and explaining in reasonable detail the reasons therefor (and, in the case of a reduction, specifying the amount of reduction of its capital percentage in the Trust). In the case of such notice from the Trustee or an ERISA Unitholder, as the case may be, unless within 60 days after receipt thereof, the Trustee is able to eliminate the necessity for such withdrawal or reduction to the reasonable satisfaction of such ERISA Unitholder and its counsel, whether by correction of the condition giving rise thereto or amendment of this deed in accordance with the provisions of clause 11.12 or otherwise, such ERISA Unitholder shall be required to withdraw its entire interest in the Trust (or to effect the specified reduction in its interest in the Trust). Any such withdrawal or reduction in interest shall be effective on the last day of the month:
 - (I) that includes the sixtieth day after such notice from the Trustee was received; or

- (II) in the case of notice from an ERISA Unitholder, in which such 60 day period expired, as the case may be,

provided however, that, in the case of such notice from the Trustee, at the request of such ERISA Unitholder, the Trustee will cooperate reasonably with such ERISA Unitholder in seeking to eliminate the necessity for such withdrawal.

- (ii) In the event the Trustee receives a notice from one or more ERISA Unitholders pursuant to sub-paragraph (II) above or determines that it would otherwise be entitled to require one or more ERISA Unitholders to withdraw from (or reduce their respective interests in) the Trust pursuant to paragraph (i) above, the Trustee shall be entitled to amend this deed in accordance with the provisions of clause 11.12, in a manner that will, in the opinion of counsel for the Trustee, eliminate the necessity for such withdrawal or reduction in interest.
- (iii) The withdrawing ERISA Unitholder shall be entitled to receive within 60 days after the date of such withdrawal an amount equal to its Liquidating Share determined as of the date of such withdrawal. The ERISA Unitholder effecting a reduction in its interest in the Trust shall be entitled to receive within 60 days after the date of such reduction a portion of its Liquidating Share, determined as of the date of such reduction, equal to its entire Liquidating Share as so determined multiplied by the percentage reduction in its interest, and thereafter for purposes hereof the Capital Contribution of such ERISA Unitholder shall be deemed to be adjusted appropriately.
- (iv) Any distribution to a withdrawing ERISA Unitholder, or to a ERISA Unitholder effecting a reduction in its interest in the Trust, pursuant to this clause 22.18(d) may be made in cash or Securities in the sole discretion of the Trustee (including, if deemed reasonably necessary by the Trustee by reason of transfer or other restrictions arising by contract or by operation of applicable laws or regulations, assignment of an undivided beneficial interest in a portion of the Trust's holdings of one or more Securities), provided that the percentage of the amount of any issue of any Securities held by the Trust that may be distributed (or an undivided beneficial interest in which may be assigned as aforesaid) pursuant to this paragraph (iv) may not exceed the percentage which results from dividing the amount distributable to such withdrawing ERISA Unitholder, or to a ERISA Unitholder effecting a reduction in its interest in the Trust, by the sum of the closing capital accounts of the Ordinary Unitholders on the date of such withdrawal or reduction, determined on the basis referred to in paragraph (iii) above. Any undivided beneficial interest so distributed shall be subject to the same transfer and other restrictions as the interest in the Trust in respect of which such distribution was made. The foregoing provisions of this paragraph (iv) to the contrary notwithstanding, no distribution of a Security shall be made to any withdrawing ERISA Unitholder (whose withdrawal or reduction is being made upon its notice pursuant to paragraph (i) above) if the effect of such distribution, in the opinion of counsel for such ERISA Unitholder, would be to continue to subject such ERISA Unitholder to a material risk of violating ERISA. In such a case, the Trust shall cooperate with such ERISA Unitholder in seeking an alternative means to effect the distribution to such ERISA Unitholder contemplated by this paragraph (iv).
- (e) **(Certain U.S. Tax Matters)** The Trustee is hereby designated as (or shall designate) the Partnership Representative and shall have all powers conferred on a "partnership representative" pursuant to the Code and the regulations thereunder

and all other powers necessary to perform thereunder. The Partnership Representative may make, amend or revoke such elections under the Code and the regulations thereunder (including an election under Section 6226 of the Code) as the Partnership Representative determines, in its sole discretion, to be in the interest of the Trust, but is not required to make any such election. If the Trust makes an election pursuant to the Partnership Audit Rules, the Trustee and the Unitholder shall comply with the corresponding requirement under the Partnership Audit Rules. The Ordinary Unitholders shall cooperate with the Trustee to give effect to the requirements of an election made by the Trust pursuant to or as contemplated by the Partnership Audit Rules (including any action requested by the Trustee with respect to the Partnership Audit Rules). Any Tax imposed on the Trust (or economically borne by the Trust due to payment by or to any pass-through entity in which the Trust invests) pursuant to Section 6232 of the Code that the Trustee reasonably determines is attributable to one or more Ordinary Unitholders, shall be deemed distributed to Ordinary Unitholder in accordance with clause 9. The provisions of this clause (e) shall survive the winding-up, termination, and dissolution of the Trust and the withdrawal of any Trustee or Ordinary Unitholder and shall remain binding on all current and former Trustee and Ordinary Unitholder as long a period of time as is necessary to resolve with the U.S. Internal Revenue Service (or state, local, or foreign taxing authorities, as the case may be) any and all matters regarding the taxation of the Trust, Trustee or Ordinary Unitholders.

- (f) **(FATCA Compliance)** Notwithstanding anything in this deed to the contrary, the Trustee may take such actions as it determines necessary or appropriate (including causing an Ordinary Unitholder to withdraw from the Trust under such terms and conditions established by the Trustee) to comply with FATCA. Each Ordinary Unitholder agrees to promptly provide the Trustee such information regarding the Ordinary Unitholder and its beneficial owners and forms as the Trustee requests so that the Trust may avoid any adverse consequences under FATCA, including that which would allow any member of any “expanded affiliated group” (as defined in Section 1471(e)(2) of the Code) to which the Trust belongs to:
 - (i) enter into, maintain or otherwise comply with the agreement contemplated by Section 1471(b) of the Code or under any applicable intergovernmental agreement entered into between the United States and another country (or under any applicable local country legislation enacted pursuant to such intergovernmental agreement) to which the Trust may be subject;
 - (ii) satisfy any information reporting requirements imposed by FATCA; and
 - (iii) satisfy any requirements necessary to avoid withholding taxes under FATCA with respect to any payments to be received or made by the Trust,

if any Ordinary Unitholder fails to provide such information and FATCA withholding is imposed, the Trustee may take such actions as it determines necessary or appropriate to ensure that the economic burden of any such FATCA withholding is borne by such Ordinary Unitholder or Ordinary Unitholders whose failure to provide information gave rise to the withholding.

- (g) **(Amendments)** Notwithstanding any provision contained in clause 11.12 to the contrary:
 - (i) no amendment to paragraphs (a), (b), (c), (d), (e) or any other provisions of this clause 22.18 or clause 7.2 which adversely affects any ERISA Unitholder will be effective against such ERISA Unitholder without its consent;

- (ii) no amendment to this paragraph (g) will be effective against any ERISA Unitholder, or any Unitholder referred to in paragraph (i) above, without its consent.
- (h) **(Bank Holding Company Act Requirements)** If an Ordinary Unitholder and any of its Affiliates at any time holds Ordinary Units in the Trust representing 4.9% or more of the total issued Ordinary Units in the Trust, the Trustee shall disregard any vote by the Ordinary Unitholder with respect to its Ordinary Units representing in excess of 4.99% of the total issued Ordinary Units (the **Non-Voting Units**). Whenever the vote, consent or decision of a Unitholder is required or permitted pursuant to this deed, the Ordinary Unitholder shall not be entitled to participate in such vote or consent, or to make such decision with respect to its Ordinary Units, representing in excess of 4.99% of the total issued Ordinary Units in the Trust. The Ordinary Unitholder further irrevocably waives its corresponding right to vote with respect to any Non-Voting Units, which waiver shall be binding upon such any assignee or transferee of such Non-Voting Units.

22.19 No representations or warranties

Except for any representation set out in a written instrument executed by the Trustee or the Manager expressly in favour of a Ordinary Unitholder, neither the Trustee, Manager, their Affiliates nor any of their respective employees, officers or agents gives any express or implied warranties or representations to any person in connection with, or regarding the subject matter of, this deed (including, without limitation, any disclosures or any information provided to any person in connection with the Trust).

22.20 Undertakings

Each Ordinary Unitholder acknowledges and agrees that the Trustee or its Affiliates may enter into side agreements or letters with Ordinary Unitholders in respect of the provision of information or giving of undertakings to those Ordinary Unitholders to satisfy legal, taxation or other requirements of those Ordinary Unitholders, and the terms of such letter agreements will govern with respect of such Ordinary Unitholders.

1 Dictionary

In this deed:

Accounting Loss means an accounting loss of the Trust determined in accordance with the Accounting Standards.

Accounting Standards means the accounting principles and practices recommended by the Manager from time to time.

Accrued Carry has the meaning given in clause 12.3(f).

Additional Distribution Amount has the meaning given in clause 9.4(c).

Administration Fee means an amount equal to A\$50,000 per annum, payable pro-rata amongst the Ordinary Unitholders based on the Trust's Capital Commitments, from time to time.

Affiliate means, in respect of an entity or other person, an entity or other person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with the entity or other person.

Aggregate Drawn Down Capital Commitments means the Drawn Down Capital Commitments of participating Ordinary Unitholders.

Aggregate 8% IRR Amount means, in relation to any Ordinary Unitholder, that amount that results in an Internal Rate of Return to that Ordinary Unitholder (for investments under this deed) of 8% per annum (compounded annually) in respect of the aggregate of its then current Drawn Down Capital Commitments and any paid Management Fees, less the amount of its then current Aggregate Drawn Down Capital Commitments and any paid Management Fees.

AIFMD means the European Union Alternative Investment Fund Managers Directive, as amended, and all rules, rulings and regulations thereunder.

AML/CTF Laws has the meaning given in clause 18.4(a).

Alternative Investment Vehicle has the meaning given in clause 11.4(a). **Appointee** means a person appointed under clause 11.7(a).

AMIT has the meaning given in section 276-10 of the Tax Act.

AMIT Document means a document which complies with section 276-255(2) of the Tax Act and which contains a statement of the Determined Trust Components.

AMIT Law Guidelines includes any rulings, guidance or other explanatory materials produced by the Commissioner of Taxation in respect of AMITs.

AMIT Regime means the regime for the taxation of AMITs and Members contained in the Tax Act and any other relevant law.

AMMA Statement has the meaning given in subdivision 276-H of the Tax Act.

Assets means an asset or other property from time to time of the Trust, including any Securities or rights held from time to time by or on behalf of the Trustee for the benefit of the Trust.

Associate means, in respect of a company or other entity, or a trust, partnership, scheme or arrangement:

- (a) an associate (as defined in section 11 of the Corporations Act) of the company or other entity, or the trust, partnership, scheme or arrangement;
- (b) a company or other entity, or a trust, partnership, scheme or arrangement that would be an associate of the company or other entity, or trust, partnership, scheme or arrangement under paragraph (a) if a trust, partnership, scheme or arrangement was a body corporate;
- (c) a company or other entity, or a trust, partnership, scheme or arrangement that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with the company or other entity, or trust, partnership, scheme or arrangement; and
- (d) a company or other entity, or a trust, partnership, scheme or arrangement that directly, or indirectly through one or more intermediaries, controls any of the rights of the company or other entity, or trust, partnership, scheme or arrangement under this deed.

Australian Tax Law means the Tax Act, bi-lateral and multi-lateral tax treaties entered into by the Australian Commonwealth Government and all tax rulings of the Australian Taxation Office and judgments in respect of any of them by a court of Australia.

Authorised Deposit-Taking Institution has the meaning given in the *Banking Act 1959* (Cth).

Borrowing means, in respect of any financial accommodation at any time, the aggregate outstanding principal, capital or notional amount (or, in the case of Contingent Instruments, Face Value Amount) of any indebtedness for or in respect of that financial accommodation at that time but excluding:

- (a) any unrealised mark-to-market exposure under the hedging agreements; and
- (b) any indebtedness under any lease which would, in accordance with the Accounting Standards, prior to the introduction of IFRS 16, be an operating lease, whether or not the lease is entered into before or after the date of this deed or the date of any change in the Accounting Standards.

Borrowing Limit means, in respect of any Borrowing of the Trust, Security Interest over the Assets or guarantee by the Trustee in respect of the Trust and at any time, that amount which, when added to (without double counting):

- (a) the aggregate of all Borrowings of the Trust and the lesser of:
 - (i) the aggregate of all Borrowings secured by all Security Interests over the Assets; and
 - (ii) the aggregate value of the Assets over which a Security Interest exists,
- in each case, at that time but only to the extent those amounts are not taken into account under paragraph (a) or (b); and

- (b) amounts guaranteed by the Trustee in respect of the Trust at that time but only to the extent those amounts are not taken into account under paragraph (a) above;

equals 20% of the aggregate (at that time) of:

- (c) the aggregate Capital Commitments that have yet to be drawn down; and
- (d) the lesser of:
 - (i) the aggregate of the Capital Contributions of all Unitholders which have been applied to investments of the Trust; and
 - (ii) the aggregate of the estimated net asset value of the investments of the Trust determined in accordance with the valuation methodology contemplated in clause 10.3(b).

Business Day means a day on which banks are open for business in Sydney, New South Wales excluding a Saturday, Sunday or public holiday.

Capital Commitment means, in respect of an Ordinary Unitholder, the total of the amounts as specified as the capital commitment of the person to the Trust under Subscription Deeds or Deeds of Accession duly executed by the Ordinary Unitholder and delivered to and accepted by the Trustee in accordance with this deed, as increased or decreased from time to time in accordance with this deed. **Capital Contribution** means a capital contribution to the Trust excluding any Late Capital Interest Amount paid and allocated under clause 5 or any amounts paid or allocated in relation to a Defaulting Ordinary Unitholder under clause 7.

Carried Interest means the amount payable to the Sponsor Unitholders in respect of the performance of the Trust by way of Sponsor Unit Distributions.

Carried Interest Deficiency has the meaning given in clause 9.6(b).

Carry-Forward Trust Component Deficit has the meaning given in section 276-330(5) of the Tax Act.

Cause Event means a determination by a court of competent jurisdiction that either the Trustee or the Manager has committed:

- (a) fraud;
- (b) gross negligence;
- (c) wilful misconduct; or
- (d) a breach of any of its obligations under this deed and which breach, if capable of remedy, is not remedied within 30 days of delivery of written notice (by the Ordinary Unitholders to the Trustee) of such breach to the reasonable satisfaction of the Ordinary Unitholders (for which purpose any dissatisfaction must be evidenced by an Ordinary Resolution), in each case which results in the Trust suffering material financial loss.

Certified Related Body Corporate means, in respect of a person proposing to transfer some or all of its Ordinary Units or Sponsor Units, a Related Body Corporate of the person in respect of which the person has provided a written representation to the Trustee that the Related Body Corporate will remain a Related Body Corporate of the person.

Change of Control Event means, with respect to the Trustee or the Manager at any time, an event after which if the Trustee or the Manager (as relevant) is a body corporate, the shareholders of the Trustee at the date which is 12 months prior, cease to be entitled to 50% or more of the voting shares or economic interests in the Trustee or the Manager (as relevant).

Claim has the meaning given to it in clause 9.6(d).

Clawback Date means each of the following dates:

- (a) the date which is immediately prior to the completion of the winding up of the Trust; and
- (b) the Removal Date.

Closing means completion of:

- (a) the First Closing; or
- (b) the increase in the Capital Commitment of an Ordinary Unitholder under clause 5.4,

Closing Date means the date of a Closing.

Code means the United States Internal Revenue Code of 1986, as amended.

Contingent Instrument means a guarantee, indemnity, bond, standby or documentary letter of credit or any other similar instrument issued by a bank or financial institution.

Corporations Act means the *Corporations Act 2001* (Cth).

Cost means, in relation to the cost of an Asset or contribution to an Asset, the amount invested or paid by the Trustee for the Asset or contribution to an Asset and includes all third party fees and transaction costs incurred by the Trustee in acquiring the Asset (but which does not include, for the avoidance of doubt, any third party portfolio level indebtedness), in each case, as recorded in the Trust Accounts.

Deed of Accession means, in any context contemplated under this deed, a deed poll under which a person undertakes to comply with the terms of this deed as they apply to an Ordinary Unitholder or the Trustee (including, in respect of a transfer of a portion of its Ordinary Units, the assumption by the person of the remaining obligations of the transferring Ordinary Unitholder to pay the Capital Commitment in respect of the portion of the Ordinary Units to the Trust) or Trustee (as relevant in the context).

Defaulting External Ordinary Unitholder means a Defaulting Ordinary Unitholder that is a External Ordinary Unitholder.

Defaulting Ordinary Unitholder means an Ordinary Unitholder as described under clause 7.1 and 7.2.

Default Interest Rate means a per annum interest rate equal to the 90 day bank bill rate as published in the Australian Financial Review on the date the relevant payment was due and reset each 90 days thereafter plus 7%.

Determined Trust Component has the meaning given in subdivision 276-H of the Tax Act.

Disclosure Laws means any “freedom of information”, “sunshine”, “open records” or other similar law, rule or regulation that imposes upon a Unitholder an obligation to make information available to the public.

Distributable Cash means any cash or other immediately available funds which the Trustee considers to be available for distribution by the Trust after paying the expenses of the Trust, and payments in respect of the debts of the Trust, and after establishing reserves to meet current and reasonably expected obligations and Outgoings of the Trust and other purposes and uses of the Trust to the extent the Trustee determines that such reserves are necessary or advisable. However, Distributable Cash does not include any cash or other immediately available funds if the payment of such cash or other immediately available funds to the Ordinary Unitholders or Trustee would be restricted or prohibited by any note, mortgage, agreement of trust or other agreement to which the Trustee is a party or by which the Trustee is bound in its capacity as trustee of the Trust.

Dollars, A\$ and \$ means the lawful currency of Australia.

Drawn Down Capital Commitments means in respect of an Ordinary Unitholder the aggregate of that Ordinary Unitholder’s Capital Contributions from time to time.

ERISA has the meaning given in clause 22.18(a).

ERISA Plan Assets Regulation has the meaning given in clause 11.3(t).

ERISA Unitholder has the meaning given in clause 22.18(a)(i).

Excluded Offer means:

- (a) where an offer of, or invitation to subscribe for, Ordinary Units is made or received in a jurisdiction in which the Corporations Act applies, an offer or invitation which does not require disclosure by virtue of section 708, 708AA or 708A of the Corporations Act or which is made to a wholesale client for the purposes of section 761G(4) of the Corporations Act; or
- (b) otherwise, an offer of, or invitation to subscribe for, Ordinary Units in connection with which the offer or invitation and the provisions of this deed comply with all applicable laws in the relevant jurisdiction.

External Ordinary Unitholder means an Ordinary Unitholder that is not a Management Team Ordinary Unitholder.

Face Value Amount means, in respect of a Contingent Instrument at any time, the amount specified in a Contingent Instrument as the maximum amount payable under it less any amounts previously drawn under that Contingent Instrument at the time the Face Value Amount is calculated.

Fair Value means the value as determined by reference to the valuation of Assets conducted in accordance with clause 10.3.

FATA means the *Australian Foreign Acquisitions and Takeovers Act 1975* (Cth) and the *Foreign Acquisitions and Takeovers Regulation 2015* (Cth).

FATCA means Sections 1471 through 1474 of the Code or any successor provision that is substantively the equivalent thereof, any rules, regulations, and other guidance promulgated thereunder or official interpretations therefore, any agreements entered into pursuant thereto, any intergovernmental agreements (as well as any corresponding provisions of non-U.S. law) and any substantively similar non-U.S. legislation, including

(without limitation) the OECD Standard for Automatic Exchange of Financial Accounting Information in Tax Matters – the Common Reporting Standard and, in each case, any regulations promulgated thereunder or official interpretations thereto, and any other legislation, rules, regulations, guidance or practices in any jurisdiction that give effect to the foregoing items.

FIEA has the meaning given in clause 5.2(d).

Final Closing Date means the date determined by the Trustee as the final date upon which additional Ordinary Unitholders may be admitted, which will be no later than the date which is 12 months after First Closing or such later date as determined by Special Resolution.

Financial Year means each period commencing on 1 January and ending on 31 December and includes:

- (a) the period commencing on the date of this deed and ending on 31 December 2022; and
- (b) the period commencing on the last 1 January before the date of termination of this deed and ending on that date of termination.

Financier has the meaning given in clause 11.3(m).

First Closing means the admission of one or more persons as Unitholders under clause 5.3(d).

First Closing Date means the date of the First Closing, being a date which is as soon as practicable following receipt by the Trustee of applications which, at the Trustee's discretion, reach the desired level of applications for the First Closing to proceed and subject to clause 5.3(d) and which will be notified by the Trustees to persons admitted as Ordinary Unitholders under clause 5.3(d).

Fee Period means where Management Fees and/or Administration Fees are invoiced pursuant to clause 16.3(b), the relevant period for which Management Fees and/or Administration are invoiced, beginning on the date immediately after the last day of the Fee Period, and ending on a date that must not be more than 12 months in advance.

Fund means:

- (a) a trust;
- (b) a superannuation fund, approved deposit fund, pooled superannuation trust or public sector superannuation scheme (each within the meaning of the *Superannuation Industry (Supervision) Act 1993* (Cth));
- (c) a Managed Investment Scheme; or
- (d) a listed investment company.

Government Agency means a government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

GST means goods and services tax under the GST Law.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Half Year means each period of 6 months ending on 30 June or 31 December in any calendar year.

Income means the net income of the Trust in any Financial Year determined in accordance with section 95(1) of the Tax Act.

Indemnified Person has the meaning given in clause 14.2(b).

Information Provider has the meaning given in clause 18.4(a).

Information Recipient has the meaning given in clause 18.4(a).

Initial Manager has the meaning given in the “parties” section.

Initial Trustee has the meaning given in the “parties” section.

Initial Payment Date means the date on which Subscribers first paid a portion of their Capital Commitment to the Trust.

Insolvency Event means in respect of a person:

- (a) an application is made to a court for an order that it be wound up, declared bankrupt or that a liquidator or provisional liquidator or receiver or receiver and manager be appointed, and the application is not withdrawn, struck out or dismissed within 15 Business Days after it is made;
- (b) a liquidator or provisional liquidator is appointed to the person and the appointment is not terminated within 15 Business Days after it is made;
- (c) an administrator or a Controller is appointed to any of assets of the person and the appointment is not terminated within 15 Business Days after it is made;
- (d) the person enters into an arrangement or composition with one or more of its creditors, or an assignment for the benefit of one or more of its creditors;
- (e) the person proposes a winding-up or dissolution or reorganisation, moratorium, deed of company arrangement or other administration involving one or more of its creditors;
- (f) the person is insolvent as disclosed in its accounts, or otherwise states that it is insolvent, or it is presumed to be insolvent under an applicable law;
- (g) the person becomes an Insolvent Under Administration or proceedings are taken which could result in that event and which are not dismissed within 15 Business Days after being taken;
- (h) the person is taken to have failed to comply with a statutory demand as a result of section 459F(1) of the Corporations Act;
- (i) a notice is issued to or against the person under sections 601AA or 601AB of the Corporations Act and is not withdrawn or dismissed within 15 Business Days after it is issued;

- (j) a writ of execution is levied against it or a material part of its property which is not dismissed within 15 Business Days after the writ is levied;
- (k) the person ceases to carry on business or threatens to do so; or
- (l) anything occurs under the law of any jurisdiction which has a substantially similar effect to any of the above paragraphs of this definition,

other than for the purpose of amalgamation, reconstruction or other similar purpose, in each case not affecting the continued existence of the person.

Interim Trustee has the meaning given in clause 12.4(b).

Internal Rate of Return means, at any given time, the discount rate, expressed as an annual percentage, which when applied to:

- (a) cash flows to an Ordinary Unitholder by the Trustee on behalf of the Trust;
- (b) the Trust from the Ordinary Unitholder (including, in respect of Capital Contributions and paid Management Fees, with effect from the date those Capital Contributions and Management Fees are regarded as being paid under clause 6.2 of this deed),

results in a net present value of zero as at the relevant date.

Investment Period means the period from the later of (i) the First Closing Date and (ii) the date on which the Trust first engages in any business activity as determined by the Trustee, acting reasonably, until the earlier of:

- (a) the date that is 5 years following the first day of the Investment Period, or such later date approved by a Special Resolution; and
- (b) such date that is before the date referred to in paragraph (a), if approved by a Special Resolution.

Invoiced Outgoings means the Management Fees and Administration Fees invoiced to Ordinary Unitholders outside of the Trust pursuant to clauses 16.1 and 16.3.

Late Capital Interest Amount means an amount (if any) equal to interest at the Late Capital Interest Rate on each amount determined under the relevant paragraph of clause 5.4 for the period:

- (a) from the date each portion of that amount would have been paid if the additional Ordinary Unitholder had been admitted at the First Closing Date or the existing Ordinary Unitholder had been admitted at the First Closing Date with the increased level of Capital Commitment (as applicable); and
- (b) until the Closing Date at which the additional Ordinary Unitholder is admitted or the increased level of Capital Commitment was accepted (as applicable).

Late Capital Interest Rate means 8% per annum.

Lender has the meaning given in clause 6.4.

Liquidating Share means, with respect to any Ordinary Unitholder, an amount determined as of:

- (a) the date of withdrawal of any Ordinary Unitholder pursuant to clause 22.18(d); or
- (b) the date of the termination and liquidation of the Trust, as the context may require, equal to the capital account of such Ordinary Unitholder on such date (determined as to paragraph (a) as if such date were the date of termination of the Trust), which capital accounts shall reflect unrealised appreciation and depreciation of the assets of the Trust and shall reflect the amounts that would be distributed to the Ordinary Unitholders if all of the Trust's liabilities were satisfied and the remaining assets were distributed to the Ordinary Unitholders.

Management Fee means an amount equal to A\$100,000 per annum, payable pro-rata amongst the External Ordinary Unitholders based on the Trust's Capital Commitments (determined from time to time).

Management Team means the management team of the Pemba Group business.

Management Team Commitments means the Capital Commitments of the members of the Management Team or their nominees.

Management Team Ordinary Unitholder means an Ordinary Unitholder who is or who is a nominee of a member of the Management Team.

Manager means the Initial Manager or any person that replaces the Initial Manager in accordance with this deed.

Marketable Securities means a Security that is freely tradable by the holder thereof on one or more established public markets.

Member has the meaning given in section 995-1 of the Tax Act.

Member Component has the meaning given in clause 2.3 of Schedule 2.

MIT means a managed investment trust, as defined in section 995-1 of the Tax Act.

Net Asset Value Per Unit means the net asset value of each Unit determined in accordance with the Accounting Standards and Valuation Guidelines.

New Investment means any investment by the Trust but excluding investments contemplated under clauses 6.1(b)(i), 6.1(b)(ii) and 6.1(b)(iii).

Non-Voting Units has the meaning given under clause 22.18(h).

Ordinary Resolution means, at any time:

- (a) the approval in writing of Ordinary Unitholders in accordance with clause 15.18(a);
- (b) at a meeting of Ordinary Unitholders convened in accordance with clauses 15.2 to 15.4:
 - (i) on a show of hands, the approval of a majority of Ordinary Unitholders (other than a Defaulting Ordinary Unitholders) present and entitled to vote at the meeting; or
 - (ii) on a poll, the approval of Ordinary Unitholders (other than a Defaulting Ordinary Unitholders) with Capital Commitments of more than 50% of the total Capital Commitments (other than a Defaulting Ordinary Unitholders) as at that time who are present and entitled to vote at the meeting,

except that in respect of clause 12.3(a)(i), approval is required of Ordinary Unitholders with Capital Commitments of more than 50% of the total Capital Commitments (other than a Defaulting Ordinary Unitholders) who are entitled to vote (and not just those that are *present* and entitled to vote at the meeting).

Ordinary Unit means a Unit other than a Sponsor Unit or any other class of Units created pursuant to clause 3.2.

Ordinary Unitholder means a holder of an Ordinary Unit.

Ordinary Unit Subscription Amount means, in respect of a Unit to be issued at or about a Closing Date pursuant to clauses 5.3 or 5.4 (as applicable):

- (a) if the Unit is issued on or before a Capital Contribution is made to the Trust, \$1.00;
- (b) if the Unit is issued after a Capital Contribution is made to the Trust on or before the Final Closing Date, \$1.00; and
- (c) if the Unit is issued after the Final Closing Date, an amount which represents the Net Asset Value Per Unit of each unit currently on issue in the Trust as at the date of that Closing Date.

Outgoings means in respect of a current or former Trustee or the Manager, all of the fees, costs, charges, expenses, liabilities, Taxes, payments or outgoings of any kind incurred in connection with and for the benefit of the Trust that are reasonable, but excluding Overheads.

Outgoing Sponsor Unitholder means a Sponsor Unitholder associated with a person that has retired or been removed as trustee of the Trust.

Outside Fees means, in any given Financial Year, in on an aggregate basis:

- (a) any monitoring or director fees, consulting fees, management fees, deal fees;
- (b) break fees received from third parties in relation to potential transactions of Trust which have not proceeded; and
- (c) other fees, share issues or options or other forms of remuneration (determined on an aggregate basis),

earned and retained by the Trustee or any of its respective Pemba Executives in relation to investments by the Trust, with respect to such Financial Year but excludes:

- (d) any fees charged to an investee of the Trust to recover costs, expenses and outgoings incurred on behalf of that investee; and
- (e) any amounts necessary to reimburse all otherwise reimbursed costs and expenses (excluding Overheads) incurred in connection with generating such fees.

Overheads means:

- (a) in respect of the Manager and the Trustee, the rent, office maintenance, insurance, wage, salary, travel (other than in relation to investments or potential investments of the Trustee made on behalf of the Trust such as attendance at board meetings), placement agent and personal income tax expenses of those persons; and

- (b) in respect of an appointee under this deed, the rent, office maintenance, wage, salary and personal income tax expenses of the appointee.

Paid-Up Proportion means the proportion which is the aggregate of that Ordinary Unitholder's Capital Contributions to the Trust bears to that Ordinary Unitholder's Capital Commitment at that time, adjusted appropriately to account for any decrease in the Paid-Up Proportion as determined in accordance with clause 6.3.

Partnership Audit Rules means Chapter 63 of the Code (and any U.S. Treasury Regulations or other guidance that may be promulgated in the future relating thereto) and, in each case, an analogous provisions of state, local, and foreign law.

Partnership Representative means the representative of the Trust within the meaning of Section 6223(a) of the Code.

Pemba Executive means, with respect to any member of the Pemba Group, a current or former:

- (a) director;
- (b) officer;
- (c) Associate;
- (d) employee or consultant.

Pemba Group means the Manager, Pemba Capital Partners Pty Ltd (ACN 121 906 045) and their respective Associates.

Portfolio has the meaning given in the 'Background' section.

Proscribed Investment has the meaning given in clause 18.4(f).

Qualified Institutional Investors means qualified institutional investors (as defined in Article 2, Paragraph 3, Item 1 of the FIEA).

Qualifying Person means:

- (a) any current or former Pemba Executive;
- (b) any relative (being a spouse, former spouse, brother, sister, lineal descendant or lineal ascendant) of any person mentioned in (a);
- (c) the trustee of any trust the main beneficiary or beneficiaries of which are persons described in (a) and/or (b); and
- (d) any company or arrangement creating rights in the nature of ownership or co-ownership the principal interest in which is held for persons described in (a), (b) and/or (c).

Quarter means each period of three months ending on 31 March, 30 June, 30 September or 31 December in any calendar year.

Realised Investments means Assets which have been sold, redeemed or otherwise realised or distributed in specie by the Trust (including as redemption proceeds).

Registered Office means the *registered* office from time to time of the Trustee, being Level 45, Gateway, 1 Macquarie Place, Sydney NSW 2000 or such other office notified to the *Registrar* under clause 2.4.

Regulated Superannuation Fund means a regulated superannuation fund or pooled superannuation trust, each as defined in the *Superannuation Industry (Supervision) Act 1993* (Cth) and associated regulations.

Released Party has the meaning given in clause 18.4(e).

Relevant Function has the meaning given in clause 19.6(b).

Relevant Person has the meaning given in clause 19.6(b).

Removal Date means the date the Trustee retires or is removed under clause 12.2, 12.3 or 12.4 or the Manager is removed under clause 12.7.

Securities means shares (including ordinary shares and preferred shares), derivatives (including warrants, rights, options or any combination of them), notes, bonds, debentures, units, trust receipts, loans, deposits, bills of exchange, promissory notes, certificates of deposit, letters of credit, cheques, obligations, instruments or evidences of indebtedness, and other property or interests commonly regarded as securities (including cash and bank deposits).

Security Interest means a right, interest, power or arrangement in relation to an asset which provides security for the payment or satisfaction of a debt, obligation or liability including without limitation under a bill of sale, mortgage, charge, lien, pledge, trust, power, deposit, hypothecation or arrangement for retention of title, and includes an agreement to grant or create any of those things.

Selling Ordinary Unitholder has the meaning given in clause 12.1(b).

Settlor has the meaning given under the “parties” section.

Side Letter has the meaning given in clause 20.1.

Side Letter Recipient has the meaning given in clause 20.1.

Special Resolution means, at any time:

- (a) other than at a meeting of Ordinary Unitholders convened in accordance with clauses 15.2 to 15.4, the approval in writing of Ordinary Unitholders (other than a Defaulting Ordinary Unitholders) with Capital Commitments of at least 75% of the total Capital Commitments (other than a Defaulting Ordinary Unitholders) as at that time; or
- (b) at a meeting of Ordinary Unitholders convened in accordance with clause 15.2 to 15.4:
 - (i) on a show of hands, the approval of at least 75% of Ordinary Unitholders (other than a Defaulting Ordinary Unitholder) present and entitled to vote at the meeting; or
 - (ii) on a poll, the approval of Ordinary Unitholders (other than a Defaulting Ordinary Unitholder) with Capital Commitments of at least 75% of the total Capital Commitments (other than a Defaulting Ordinary Unitholder) as at that time, who are present and entitled to vote at the meeting.

Sponsor Excess has the meaning given in clause 9.6(b).

Sponsor Unit means a Unit subject to the terms of issue set out in clause 4.

Sponsor Unitholder means a holder of a Sponsor Unit.

Sponsor Unit Distribution means any distribution made to Sponsor Unitholders under clause 9.

Subscriber has the meaning given in clause 3.

Subscription Deed means, in any context contemplated under this deed, a deed poll in a form approved by the Trustee (including, without limitation, in the form of a subscription agreement) under which a person undertakes to comply with the terms of this deed as they apply to a Unitholder.

Target means an investment, including any follow-on investments; by the Trustee on behalf of the Trust, directly or indirectly, in any of the following:

- (a) Outsourced Quality Assured Services Pty Ltd (ABN 99 133 198 651);
- (b) Outsourced Quality Assured Services Inc; and
- (c) any other investment as approved by Special Resolution,

including any vehicles created as part of a, direct or indirect, restructuring of the above entities.

Tax means a tax, levy, charge, impost, fee, deduction, withholding or duty of any nature, including stamp and transaction duty or any goods and services tax (including GST), value added tax or consumption tax, which is imposed or collected by a Government Agency, except where the context requires otherwise, including any interest, fine, penalty, charge, fee or other amount imposed in addition to those amounts.

Tax Act means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth), as the case requires.

Termination Date means the date that is 10 years after the Final Closing Date.

Transaction Expenses means all fees, charges, expenses, Taxes or outgoings including legal, accounting and printing fees, in respect of or incidental to the acquisition, holding, management, supervision, valuation or disposal or attempted or proposed acquisition or disposal of investments (including abort or broken deal costs or any other costs where such investments do not proceed) of the Trust.

Transfer means any sale, withdrawal, exchange, transfer, gift, assignment or other disposition, whether voluntary or involuntary.

Transmission Event means in respect of an Ordinary Unitholder who is an individual:

- (a) the death of the Ordinary Unitholder;
- (b) the bankruptcy of the Ordinary Unitholder; or
- (c) the Ordinary Unitholder becoming of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health; and

in respect of an Ordinary Unitholder who is a body corporate, the winding-up of the Unitholder or the succession by another body corporate to the assets and liabilities of the Unitholder.

Triggering Event has the meaning given in clause 18.1(n)(ii).

Trust means the trust governed by this deed.

Trust Accounts means, in respect of a period, the financial statements of the Trust for the period prepared in accordance with the directions of the Manager or otherwise this deed.

Trust Components has the meaning given in section 276-260 of the Tax Act.

Trust Deed means this deed as amended from time to time.

Trust Liabilities means the aggregate of the following as calculated by the Trustee in accordance with the Accounting Standards:

- (a) each liability of the Trust; and
- (b) each provision in respect of any liability of the Trust,

excluding “net assets attributable to Ordinary Unitholders” which are recognised as a liability in accordance with the Accounting Standards.

Trustee means the Initial Trustee and any replacement trustee of the Trust appointed in accordance with the terms of this deed.

Trust-Mark means a mark from time to time of the Trust.

Trust Name means the name of the Trust, being “Pemba Cooper Trust” or such other name as the Trustee notifies to Unitholders from time to time.

Trustee Unitholder means a Unitholder which holds its Units as trustee, responsible entity, custodian, sub-custodian or nominee of a Fund which has been disclosed in the Subscription Deed or Deed of Accession executed by the Unitholder and delivered to and accepted by the Trustee in accordance with this deed.

Unit has the meaning given in clause 3.1.

Unitholder means the holder of at least one Unit, and any other person approved under clause 3.2(b) who holds Units, or to whom the Units are Transferred, including for the avoidance of doubt, both, or either or, an Ordinary Unitholder and a Sponsor Unitholder.

Unitholder Register has the meaning given in clause 10.1.

Valuation Guidelines means the guidelines recommended by the Manager, which may include:

- (a) the International Private Equity and Venture Capital Valuation (**IPEV**) Guidelines as at the date of this deed; and
- (b) any amendment or replacement of those guidelines by IPEV Board or any successor body.

Valuer means an independent qualified person or entity (including, without limitation, a leading investment bank in the Australian market) appointed by the Trustee (which must act reasonably and in good faith in making such appointment) to value an asset of the Trust.

2 Interpretation

- (a) In this deed unless the context otherwise requires:
 - (i) words importing the singular include the plural and vice versa;
 - (ii) words which are gender neutral or gender specific include each gender;
 - (iii) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;
- (b) a reference to a person includes an individual, company, partnership, joint venture, association, corporation or other body corporate and a Government Agency;
- (c) a reference to a thing (including, but not limited to, a chose-in-action or other right) includes a part of that thing;
- (d) a reference to a clause, party, schedule or attachment is a reference to a clause of this deed, and a party, schedule or attachment to, this deed and a reference to this deed includes a schedule and attachment to this deed;
- (e) a reference to this deed includes this Dictionary and the other attachments;
- (f) a reference to a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a rule of an applicable stock exchange and is a reference to that law as amended, consolidated or replaced;
- (g) a reference to a document includes all amendments or supplements to that document, or replacements or novations of it;
- (h) a reference to a party to a document includes that party's successors and permitted assigns;
- (i) **guarantee** means any guarantee, letter of credit, bond, indemnity or similar assurance against loss, or any obligation, direct or indirect, actual or contingent, to purchase or assume any indebtedness of any person or to make an investment in or loan to any person or to purchase assets of any person where, in each case, such obligation is assumed in order to maintain or assist the ability of such person to meet its indebtedness;
- (j) **indebtedness** includes any obligation (whether incurred as principal or as surety) for the payment or repayment of money, whether present or future, actual or contingent;
- (k) an agreement expressly jointly by and on behalf of two or more persons binds them jointly and severally;
- (l) a reference to an agreement, other than this deed, includes an undertaking, agreement or legally enforceable arrangement or understanding, whether or not in writing; and

- (m) where a thing or act is stated to include another thing or act, the inclusion is without limitation.
- (n) Where the day on or by which something must be done is not a Business Day, that thing must be done on or by the following Business Day.
- (o) Headings are for convenience only and do not affect the interpretation of this deed.
- (p) This deed may not be construed adversely to a party just because that party prepared this deed.
- (q) A term or expression starting with a capital letter and not in italics:
 - (i) which is defined in this Dictionary, has the meaning given to it in this Dictionary;
 - (ii) which is defined in the Corporations Act but is not defined in this Dictionary, has the same meaning as in the Corporations Act; and
 - (iii) which is defined in the GST Law but is not defined in this Dictionary, has the same meaning as in the GST Law.

Schedule 2 AMIT provisions

1 Trustee's powers and obligations

1.1 Trustee's powers and obligations

The Trustee has all of the powers and rights which are necessary and expedient to enable the Trust to comply with the AMIT Regime.

1.2 Unitholders' clearly defined interests

- (a) The terms in this Schedule 2 are intended to ensure that the rights to income and capital arising from each Unit are clearly defined for the purposes of section 276-10(1)(b) and section 276-15 of the Tax Act.
- (b) The Trustee has an obligation to treat holders of Units of the same class equally and holders of Units in different classes fairly.
- (c) The Trustee may not exercise any rights or powers in a manner which would be contrary to clauses 1.2(a) and 1.2(b) of this Schedule 2.

1.3 Guidance from the Commissioner of Taxation

To the extent possible, the Trustee must exercise its powers and rights in a manner which is consistent with the AMIT Law Guidelines.

2 Attribution of Trust income

2.1 Multiple classes of Units

Where the Trust has multiple classes of Units, the Trustee must make an election to treat each class of Units as being a separate AMIT for a Financial Year except where the differences in each class of Units relate solely to:

- (a) the fees or charges imposed by the Trustee on the Unitholders of the Trust;
- (b) the issue and redemption prices of Units in the Trust; and
- (c) the exposure of the Units in the Trust to foreign exchange gains or losses.

2.2 Determination of Trust income

Each Financial Year, for each class of Units,

- (a) the Trustee must determine the Trust Components;
- (b) the Trustee may make an adjustment to one or more of the Trust Components in accordance with Subdivision 276-F of the Tax Act, which may include a Carry-Forward Trust Component Deficit for the next Financial Year or the reissuing of a revised AMMA Statement; and
- (c) the Trustee must create an AMIT Document.

2.3 Member Components

- (a) Subject to paragraphs (b) and (c), each Unit of a particular class confers on each Unitholder an equal and proportionate right to the applicable Determined Trust Components of that class of Units (**Member Component**).
- (b) Without limiting the operation of clause (c), the Trustee has the power to direct an amount arising from the sale of an Investment to a particular Unitholder, if:
 - (i) the Unitholder redeems one or more Units in the Trust; and
 - (ii) the direction of the amount is made to fund the redemption.
- (c) The Trustee has the power to adjust a Unitholder's Member Component in a manner which is consistent with sections 276-210(5), (6) and (7) of the Tax Act.

2.4 AMMA Statements

Within 90 days after the end of the Financial Year, the Trustee must prepare and send AMMA Statements to the Unitholders in a form approved or recommended by the Commissioner of Taxation.

Execution page

Executed as a deed.

Signed, sealed and delivered by **Pemba Trusco 1 Pty Ltd** as initial trustee in accordance with section 127 of the *Corporations Act 2001* (Cth) and in the presence of:



Signature of director

Karl Magnus Fredrik Hildingsson

Name of director (print)



Signature of director/secretary

Mark Richard David Summerhayes

Name of director/secretary (print)

Signed, sealed and delivered by **Pemba Capital Partners Pty Ltd** as initial manager in accordance with section 127 of the *Corporations Act 2001* (Cth) and in the presence of:



Signature of director

Karl Magnus Fredrik Hildingsson

Name of director (print)

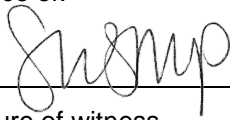


Signature of director/secretary

Mark Richard David Summerhayes

Name of director/secretary (print)

Signed, sealed and delivered by **Mark Richard David Summerhayes** as settlor in the presence of:



Signature of witness

Susi Murphy

Name of witness (print)



Signature of **Mark Richard David Summerhayes**

Attachment B
AML Customer Identification Form

Document electronically signed



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Document Details

Document ID	01775cef-78e9-4627-a977-621be3b1fa60
Document Bundle ID	6fa49b08-e5db-4974-b7f7-c0c3d9cad0d8
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Initiator email	t.saltmarsh@snellemantom.com.au
Signed by	Matthew Neibling (matt@acis.net.au +61 xxxxxxx 094), Kristen Sanders (kristens1709@gmail.com +61 xxxxxxx 678)
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Verification Mode	SmsToSign



DOCUMENT AUDIT LOG

DATE TIME	USER	TRANSACTION
2022-03-25 14:53 +10:00	T.SALTMARSH@SNELLEMANTOM.COM.AU	DOCUMENT BUNDLE CREATED BY TAYLAH SALTMARSH (T.SALTMARSH@SNELLEMANTOM.COM.AU)
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More Information

For more information on electronic signatures and to validate this document was signed by the parties listed above, please visit www.fusesign.com