

PEP Gateway Co-investment Investors Administration Access Pty Limited (ACN 672 637 008)

PEP Gateway Management Pty Limited (ACN 655 960 795)

## Trust Deed

Pacific Equity Partners Gateway Co-investment Access Trust

## Contents

<b>1</b>	<b>Definitions and interpretation</b>	<b>1</b>
1.1	Definitions	1
1.2	Interpretation	1
1.3	Appointment of Trustee and Manager and declaration of Trust	1
1.4	Name	1
1.5	Purpose of the Trust	2
1.6	Term	2
<b>2</b>	<b>Wholesale Trust</b>	<b>2</b>
<b>3</b>	<b>Units and Unitholders</b>	<b>2</b>
3.1	Units	2
3.2	Classes	2
3.3	Ordinary Units	2
3.4	Sponsor Units	3
3.5	Consolidation and re-division	3
3.6	Rights attaching to Units	3
3.7	Unitholders not to interfere	3
3.8	Voting rights	3
3.9	Dealing with Units	4
3.10	Redemption or cancellation of Units	4
<b>4</b>	<b>Issue of Units</b>	<b>4</b>
4.1	Minimum Subscription	4
4.2	Maximum Subscription	4
4.3	Acceptance or rejection	4
4.4	Terms of Issue	5
4.5	Ordinary Unit Series	5
4.6	Issue of Units	5
4.7	Number of Units issued	5
4.8	No fractions of Units	5
4.9	Certificates	5
4.10	Joint tenancy	6
4.11	Unitholders	6
4.12	Restriction on issue and redemption of Units	6
4.13	Interest on application monies	6
<b>5</b>	<b>Issue Price</b>	<b>6</b>
5.1	Issue Price for Ordinary Units	6
5.2	Issue Price for Sponsor Units	6
5.3	Satisfaction of Issue Price	6
<b>6</b>	<b>Transferring Investments between Series</b>	<b>7</b>
<b>7</b>	<b>No reinvestment</b>	<b>7</b>
<b>8</b>	<b>Register</b>	<b>7</b>
<b>9</b>	<b>Redemption of Units</b>	<b>7</b>
9.1	Terms of Issue	7
9.2	Redemption on terms of Deed	8
9.3	Redemption in case of material adverse effect	8
9.4	Redemption Price	9
<b>10</b>	<b>Transmission of Units</b>	<b>9</b>

10.1	Entitlement to Units on death	9
10.2	Registration of Persons entitled	9
10.3	Distributions and other rights	9
10.4	Deed of accession	10
<b>11</b>	<b>Powers, Duties and Liabilities of the Trustee and the Manager</b>	<b>10</b>
11.1	Powers and duties	10
11.2	Trustee may delegate	11
11.3	Trustee covenants	12
11.4	Role of Manager	12
11.5	Manager covenants	12
11.6	Manager may delegate	13
11.7	Exclusions	13
11.8	Discretion and reliance	14
11.9	Insufficient funds	14
11.10	Liability and indemnification	14
11.11	Information from Unitholders	15
11.12	Unitholders' liability	16
<b>12</b>	<b>Distributions and Allocations</b>	<b>16</b>
12.1	Application of income and distribution provisions	16
12.2	Income of the Trust	16
12.3	Capital	16
12.4	Present entitlement and impact of transfers	16
12.5	Timing of distributions	17
12.6	Distribution of securities	17
12.7	Distribution Waterfall	18
12.8	Withholding	18
12.9	Use of Distributable Cash to fund capital contributions	19
12.10	Currency of Cash distributions	19
12.11	Distribution notice	19
12.12	Trustee elections	19
12.13	Impact of Schedule 3 if the Trust is not an AMIT	20
12.14	Classification of items	20
12.15	Tax	20
12.16	Reserves	20
12.17	Excess distribution	21
<b>13</b>	<b>Expenses and Management Fee</b>	<b>21</b>
13.1	General	21
13.2	Class and Series expenses	23
13.3	Establishment Costs	23
13.4	Management Fee	23
13.5	Allocation of fees, Expenses and other Trust Liabilities	23
<b>14</b>	<b>Allocation and acceptance of Investment opportunities</b>	<b>24</b>
<b>15</b>	<b>Business Activities with Affiliates</b>	<b>24</b>
<b>16</b>	<b>Retirement of the Manager</b>	<b>24</b>
16.1	Voluntary retirement	24
16.2	Mandatory retirement	24
16.3	Procedure on retirement	24
16.4	Modification of Sponsor Distributions	25
<b>17</b>	<b>Retirement or Removal of the Trustee</b>	<b>25</b>
17.1	Retirement	25

17.2	Removal without cause	25
17.3	Removal with cause	25
17.4	Procedure on removal	26
<b>18</b>	<b>Amendments</b>	<b>26</b>
<b>19</b>	<b>Assignment and Transfer</b>	<b>26</b>
19.1	Transfer of Units	26
19.2	Method of transfer	27
19.3	Registration of transfer	27
19.4	Adjustment of Unitholding	27
19.5	Notice of transfer	27
19.6	Indemnity	27
<b>20</b>	<b>Dissolution and Winding Up</b>	<b>28</b>
20.1	Trustee may terminate	28
20.2	Trustee to give notice	28
20.3	Unitholders may terminate	28
20.4	Issue and redemption stops	29
20.5	Action on termination	29
20.6	Realisation of Trust Property	29
20.7	Auditing of winding-up accounts	29
20.8	Transfer of assets	29
20.9	Retention of assets	29
<b>21</b>	<b>Reports</b>	<b>29</b>
21.1	Appointment of Auditor	29
21.2	Remuneration of Auditor	30
21.3	Duty to Keep Proper Records	30
21.4	Preparation	30
21.5	Audit	30
21.6	Provision of Audited Accounts to Unitholders	30
21.7	Reports	30
21.8	Application of Accounting Principles and Standards	30
<b>22</b>	<b>Meetings of Unitholders and Written Resolutions</b>	<b>30</b>
22.1	Convening of Meeting	30
22.2	Meeting by Requisition	31
22.3	Notice of Meeting	31
22.4	Time, Place and Conduct of Meeting	31
<b>23</b>	<b>Power of Attorney</b>	<b>31</b>
<b>24</b>	<b>Intellectual Property</b>	<b>32</b>
<b>25</b>	<b>Valuation</b>	<b>32</b>
<b>26</b>	<b>Contribution</b>	<b>32</b>
26.1	Obligation to contribute	32
26.2	No Third Party Rights	33
26.3	Provisions to Survive	33
<b>27</b>	<b>Default</b>	<b>33</b>
27.1	Non-receipt of notice	33
27.2	Notice requiring payment of sums payable	33
27.3	Deductions for outstanding payments	34
27.4	Rights of Trustee on non-compliance with notice	34

27.5	Disposal of forfeited Units	34
27.6	Transfer of forfeited Units	34
27.7	Liability despite forfeiture	35
27.8	Trustee's lien	35
27.9	Sale of Units to enforce lien	35
27.10	Proceeds of sale	35
27.11	No claims against the Trustee	36
27.12	Other rights not affected	36
<b>28</b>	<b>Miscellaneous</b>	<b>36</b>
28.1	Allocations Between Investments	36
28.2	Form of Payments; Setoff	36
<b>29</b>	<b>Confidentiality</b>	<b>36</b>
29.2	Exceptions	37
29.3	Counterparts	37
29.4	Notices	37
29.5	Successors	38
29.6	Entire Agreement	38
29.7	Governing Law	38
29.8	Currency	38
29.9	GST	38
29.10	Severability of Provisions	38
29.11	Electronic execution	38
	<b>Schedule 1</b>	<b>40</b>
	<b>Definitions and Interpretation</b>	<b>40</b>
	<b>Schedule 2</b>	<b>47</b>
	<b>Meetings (clause 22)</b>	<b>47</b>
	<b>Schedule 3</b>	<b>50</b>
	<b>AMIT provisions</b>	<b>50</b>

This Deed is made on 28 November 2023

## Parties

- 1 **PEP Gateway Co-investment Investors Administration Access Pty Limited (ACN 672 637 008)** of Level 31, 126 Phillip Street, Sydney, New South Wales, Australia 2000 (**Trustee**).
- 2 **PEP Gateway Management Pty Limited (ACN 655 960 795)** of Level 31, 126 Phillip Street, Sydney, New South Wales, Australia 2000 (**Manager**).

## Recitals

- A The Trustee and the Manager have resolved to, and are entering into this trust deed to, establish a trust to be known as the Pacific Equity Partners Gateway Co-investment Access Trust (**Trust**) which will serve as a feeder fund into the Pacific Equity Partners Gateway Co-investment Trust.
- B The Trustee has agreed to serve as trustee of the Trust, and the Manager has agreed to manage the Trust, in each case, on the terms of this Deed.

**It is declared** as follows.

## 1 Definitions and interpretation

### 1.1 Definitions

A term or expression starting with a capital letter:

- (a) which is defined in paragraph 2 of Schedule 1 (the Dictionary), has the meaning given to it in the Dictionary; and
- (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

Paragraph 2 of Schedule 1 sets out rules of interpretation for this Deed.

### 1.3 Appointment of Trustee and Manager and declaration of Trust

- (a) The Trustee agrees to act as trustee of the Trust and the Manager agrees to act as manager of the Trust.
- (b) The Trustee holds the Trust fund on trust for the Unitholders in accordance with this Deed.
- (c) The Trust commences on the date the first Unit is issued (which Unit may be a Sponsor Unit or an Ordinary Unit).
- (d) The Trustee must hold the Trust fund as a separate fund which is not available to meet liabilities of any other trust.
- (e) This Deed binds the Unitholders, the Trustee and the Manager in accordance with its terms.

### 1.4 Name

By this Deed the Trustee and the Manager constitute a unit trust called the 'Pacific Equity Partners Gateway Co-investment Access Trust'. The Trustee may change the name of the Trust in its discretion. Any rights or property of every description of the Trust that is conveyed to or vested in or held on behalf of the Trustee or which is conveyed into or vested in the name of the Trust shall be held or deemed to be held by the Trustee upon trust as an asset of the Trust in accordance with the

terms of this Deed. All letters, contracts, deeds, instruments or documents whatsoever shall be entered into by or on behalf of the Trustee (or any agent or delegate of the Trustee) as trustee of the Trust.

### **1.5 Purpose of the Trust**

The primary purpose of the Trust is to operate as a feeder fund into the Pacific Equity Partners Gateway Co-investment Trust, and conduct any activities reasonably incidental or necessary with respect to the foregoing. The Trust may make investments directly, or indirectly, through one or more interposed companies, trusts or other entities.

### **1.6 Term**

The Trust shall continue until terminated in accordance with the terms of this Deed.

## **2 Wholesale Trust**

The Trust has been established with the intention that an offer of Units will only be made by the Trustee to wholesale clients (as such term is defined in the Corporations Act).

## **3 Units and Unitholders**

### **3.1 Units**

The beneficial interest in the Trust fund will be divided into Units which may be issued by the Trustee at any time. Unless the Terms of Issue of a Unit or a Class otherwise provides, all Units will carry all rights, and be subject to all the obligations, of Unitholders under this Deed.

### **3.2 Classes**

- (a) Different Classes may be issued, and the Trustee may convert any Units of one Class into Units of another Class if necessary or desirable to give effect to this Deed.
- (b) If the Trustee determines in relation to particular Units, the Terms of Issue of those Units (including Units in a particular Series) may:
  - (i) except in the case of Sponsor Units, provide for a Redemption Price calculated in a way that is different from the redemption price set out in this Deed;
  - (ii) vary the Trust Property or Trust Liabilities which relate to such Units;
  - (iii) designate Trust Property (as varied), or the rights and obligations under that Trust Property or Trust Liabilities (as varied) as relating to a specified Series or Class; and
  - (iv) allocate any Expenses or other Trust Liabilities (including Management Fees, and Administrative Fees) which are referable to a particular Class or Series to that Class or Series.
- (c) Subject to paragraph (b), the Trustee may issue the following Classes of Units:
  - (i) Ordinary Units; and
  - (ii) Sponsor Units.
- (d) Ordinary Unit and Sponsor Units have the respective rights and obligations set out in this Deed.

### **3.3 Ordinary Units**

- (a) The Trustee may issue any number of Ordinary Units.

- (b) Ordinary Units shall bear Management Fees, Administrative Fees, Expenses and Sponsor Distributions, if any, calculated and paid as disclosed in the Disclosure Document from time to time.
- (c) Ordinary Unitholders are entitled to distributions of Income and Trust Property in accordance with clause 12.

### **3.4 Sponsor Units**

- (a) The Trustee may issue any number of Sponsor Units to a Sponsor.
- (b) Sponsor Units shall not bear Management Fees, Administrative Fees, Expenses or (for the avoidance of doubt) Sponsor Distributions.
- (c) Sponsor Unitholders are entitled to Sponsor Distributions calculated and paid as disclosed in the Disclosure Document from time to time.
- (d) Sponsor Units carry no rights (including with respect to votes and distributions) except for any entitlement to distributions under clause 12 (if any) and their voting rights under clauses 3.6(b) and 18.

### **3.5 Consolidation and re-division**

- (a) Subject to paragraph (b), the Trustee may at any time consolidate or divide the Trust fund referable to Ordinary Units into any number of Ordinary Units other than the number into which the Trust fund referable to Ordinary Units is for the time being divided.
- (b) A consolidation or division of a kind referred to in paragraph (a) must not change the ratio of Units of a Class or Series registered in the name of any Unitholder to the Units on issue in that Class or Series (as the case may be).

### **3.6 Rights attaching to Units**

- (a) A Unitholder holds a Unit subject to the rights and obligations attaching to that Unit.
- (b) Subject to clause 18, the rights and entitlements attaching to Units may not be varied by amendment of this Deed or otherwise, except with the prior approval of an Ordinary Resolution of the:
  - (i) Ordinary Unitholders, in the case of an amendment which has the effect of varying the rights and entitlements attaching to Ordinary Units; or
  - (ii) Sponsor Unitholders, in the case of an amendment which has the effect of varying the rights or entitlements attaching to Sponsor Units.

### **3.7 Unitholders not to interfere**

A Unitholder (other than the Trustee or the Manager) will not:

- (a) take any part in the conduct or management of the Trust, Trust Property or Trust Liabilities;
- (b) have any power or authority to bind the Trust, the Trustee or the Manager; or
- (c) interfere with, or exercise powers of, the Trustee or the Manager in respect of any Trust Property, Trust Liability or obligation (including by lodging a caveat affecting any Trust Property).

### **3.8 Voting rights**

- (a) Subject to clause 3.4(d) and paragraph (b), each Unit carries one vote regardless of whether the Unit is fully or partly paid.



- (b) An Ordinary Unitholder who is a Manager Affiliate has no voting rights except for their voting rights under clauses 3.6(b) and 18.
- (c) A Trustee Unitholder may elect, with the consent of the Manager, to use 'look-through voting' and exercise its voting rights in a manner that reflects the underlying votes of its members or beneficiaries, based on their ownership percentage of such Trustee Unitholder.

### **3.9 Dealing with Units**

- (a) A Unitholder must not dispose of or otherwise deal with its Units other than in accordance with this Deed.
- (b) A Unitholder may not create any Security Interest over a Unit without the consent of the Trustee.
- (c) Any disposal or other dealing in a Unitholder's Units other than in accordance with this Deed has no effect unless the Trustee determines otherwise.

### **3.10 Redemption or cancellation of Units**

Units can only be redeemed or cancelled by the Trustee:

- (a) where the Trustee is proposing to redeem or cancel Ordinary Units in accordance with clause 9; and
- (b) where the Trustee is proposing to redeem or cancel Sponsor Units, with the prior consent of the relevant Sponsor Unitholder provided that a redemption or cancellation of Sponsor Units must not result in the Sponsor Unitholder becoming entitled to a Sponsor Distribution that would not otherwise be payable to the Sponsor Unitholder at the time of the redemption or cancellation; and
- (c) in accordance with clause 27.5.

## **4 Issue of Units**

### **4.1 Minimum Subscription**

- (a) The minimum Subscription which must be made in an Application Form is any amount that the Trustee in its discretion determines and notifies to any applicant for Ordinary Units (and may, for the avoidance of doubt, vary between applicants). In this clause 4.1 notification includes but is not limited to disclosure made in the Disclosure Document.
- (b) No minimum subscription requirement applies in respect of an application for Sponsor Units.

### **4.2 Maximum Subscription**

Without limiting clause 4.3, there is no maximum limit on the value of a prospective Unitholder's Subscription in an application for Ordinary Units.

### **4.3 Acceptance or rejection**

- (a) The Trustee may accept Subscriptions in accordance with clause 4.5, provided that the Trustee has absolute discretion as to whether to accept or reject a proposed Subscriptions in whole or in part.
- (b) The Trustee must reject a proposed Subscription if such proposed Subscription does not comply with clause 4.1.

#### **4.4 Terms of Issue**

Subject to the provisions of this Deed:

- (a) the Trustee may allot and issue Units for such consideration as may be determined by the Trustee; and
- (b) the allotment and issue of Units shall be made in such manner, at such times and on such terms and conditions and generally in such manner as the Trustee may determine.

#### **4.5 Ordinary Unit Series**

- (a) If a proposed Subscription is accepted by the Trustee, then the relevant Ordinary Unitholder will generally be issued Ordinary Units in a Series against the payment of the Issue Price for those Ordinary Units.
- (b) All Ordinary Units which are issued in a particular Financial Year will be designated to the same Series (unless otherwise determined by the Trustee in its discretion).
- (c) The Trustee and the Unitholders acknowledge and agree that, to the extent required to comply with this paragraph (b) and the other provisions of this Deed, the Trustee may designate some or all of the Units issued to an Ordinary Unitholder in respect of the same Subscription to one or more Series.

#### **4.6 Issue of Units**

Units are taken to be created and issued on the day on which:

- (a) the:
  - (i) Trustee makes an appropriate entry in the Register; and
  - (ii) application money, paid in a form acceptable to the Trustee as consideration for the Units, becomes Trust Property;
- (b) or at such other time as the Trustee determines in good faith.

Units issued against consideration paid other than in cleared funds are void and of no effect if the funds are not subsequently clearer or the consideration is not provided or transferred at or within the time specified by the Trustee.

#### **4.7 Number of Units issued**

The number of Units issued at any time in respect of a subscription for Units will be calculated as follows:

- (a) by dividing the application money paid by the applicant (and received by the Trustee) by the applicable Issue Price at the time of issue; and
- (b) by rounding down to the nearest Unit.

#### **4.8 No fractions of Units**

The Trustee must not issue fractions of a Unit. If a calculation performed in accordance with this Deed results in the issue or redemption of a fraction of a Unit, the number of Units issued or redeemed must be rounded down to the nearest whole number of Units. Any money or property that remains as a result of rounding becomes part of the Trust Property.

#### **4.9 Certificates**

No certificates will be issued for Units (unless the Trustee determines otherwise in relation to some Units, a Class or all Units).

#### **4.10 Joint tenancy**

Persons registered jointly as the Unitholder of a Unit hold as joint tenants and not as tenants in common.

#### **4.11 Unitholders**

Subject to the express terms of this Deed, the Manager and any Manager Affiliate may be a Unitholder (including, for the avoidance of doubt, a Sponsor Unitholder).

#### **4.12 Restriction on issue and redemption of Units**

The Trustee cannot issue or redeem any Units or any other interests in the Trust from the 80th anniversary of the Trust Commencement Date if that issue or redemption would cause a contravention of the rule against perpetuities or any other rule of law or equity. This clause prevails over all other provisions of this Deed.

#### **4.13 Interest on application monies**

- (a) Subject to clause 4.13(b), any interest earned on application money held in an applications or other trust account prior to the issue of Ordinary Units must be dealt with as set out in the Disclosure Document in respect of those Ordinary Units.
- (b) If the Disclosure Document in respect of any Ordinary Unit does not specify the way in which interest earned on application money held in an applications or other trust account will be dealt with, the Trustee may determine in its discretion how to deal with such interest, including:
  - (i) by determining that such amounts will be payable to, and may be retained by, the Trustee, without the Trustee being liable to account to the Trust or to any Unitholder; and
  - (ii) if the Trustee makes a determination referred to in paragraph (i), such interest becomes property of the Trustee immediately upon its accrual, and the Trustee may deal with any such interest in any way it determines from the time of accrual (including prior to the issue of the Ordinary Units to which the relevant application money relates).

### **5 Issue Price**

#### **5.1 Issue Price for Ordinary Units**

Unless the Trustee determines otherwise, the Issue Price for Ordinary Units will be:

- (a) in respect of the first Ordinary Units issued in a particular Series (the ***Initial Ordinary Units***), A\$1.00 per Unit; and
- (b) in respect of any Ordinary Units issued in a particular Series that are not the Initial Ordinary Units in respect of that Series, calculated based on a fraction, the numerator of which is equal to the Net Asset Value of the relevant Series and the denominator of which is equal to the number of Units on issue in the relevant Series.

#### **5.2 Issue Price for Sponsor Units**

Subject to clause 16.3(d), the Issue Price for Sponsor Units will be \$0.01.

#### **5.3 Satisfaction of Issue Price**

The Issue Price must be satisfied by payment of Cash or as the Trustee otherwise agrees.

## **6 Transferring Investments between Series**

Notwithstanding anything to the contrary in this Deed but subject to the duties it owes to Unitholders at law and under the terms of this Deed, the Trustee:

- (a) may cause the transfer of all or any portion of an Investment from one Series to another Series for consideration which the Trustee determines (taking into account its aforementioned duties) is appropriate in the circumstances; and
- (b) shall be entitled to construe each other provision of this Deed (acting reasonably and in good faith) so as to give effect to this clause 6.

## **7 No reinvestment**

The Trustee shall not have the right to reinvest Proceeds without the consent of all Ordinary Unitholders, other than in Short Term Investments pending distribution to the Unitholders.

## **8 Register**

- (a) The Trustee shall cause to be maintained in the principal office of the Trustee or at such other location as the Trustee may from time to time determine a record which may include, among other things:
  - (i) the name and address of each Unitholder, the date on which a person became a Unitholder and the date on which a person ceased to be a Unitholder;
  - (ii) the Class and Series of each Unit;
  - (iii) the amount paid and unpaid (if any) on each of the Unitholder's Units, the date on which any Units are entered into the Register, and to which one or more Series they relate; and
  - (iv) such other information as the Trustee may deem necessary or desirable,(the **Register**).
- (b) The Register shall not be part of this Deed and the Trustee may update the Register from time to time without the consent of any other Person to reflect any changes in the information contained therein.
- (c) Every Unitholder must promptly notify the Trustee of any change of name or address of the Unitholder.
- (d) The Trustee must alter the Register to reflect any changes in the particulars of a Unitholder.
- (e) Only the Persons entered into the relevant Register are recognised as having any interest in a Unit.
- (f) The Trustee may treat the registered Unitholder as the absolute owner of the relevant Units for all purposes. The entry on the Register will be conclusive except where the Trustee is satisfied of manifest error. Except as required by law, the Trustee is not bound to recognise (notwithstanding receipt of any notice, whether actual, implied, imputed or constructive) any equitable, contingent, future or partial interest in any Unitholding.

## **9 Redemption of Units**

### **9.1 Terms of Issue**

This clause 9 has effect in respect of each Class but are subject to the Terms of Issue of that Class or Series.

## 9.2 Redemption on terms of Deed

Except as determined by the Trustee (in its sole discretion), no Ordinary Unitholder will have any right to redeem its Ordinary Units.

## 9.3 Redemption in case of material adverse effect

- (a) The Trustee may at its election, on notice to a Unitholder, redeem all or a portion of the Units held by that Unitholder (a **Withdrawing Unitholder**) in its absolute discretion if:
- (i) the Trustee believes that the Units are held in breach of prohibitions set out in this Deed;
  - (ii) the Trustee believes Units are held in circumstances which might result in a violation of an applicable law or regulation, or subject the Trust to taxation or otherwise adversely affect the Trust in any material respect;
  - (iii) the Trustee determines that the continued participation of a Unitholder might cause the Trustee or any Unitholders to violate any law or if any litigation is commenced or threatened against the Trustee or any Unitholder arising out of the participation of the Unitholder in the Trust;
  - (iv) the Trustee has reasonable ground to suspect that the Unitholder does not meet, or is likely not to meet, any criteria for being a Unitholder as determined from time to time by the Trustee;
  - (v) the Trustee suspects that the law prohibits the person from legally being a Unitholder;
  - (vi) the Trustee reasonably believes the Unitholder made a misrepresentation in acquiring its Units;
  - (vii) the Trustee reasonably believes the Holder has breached its obligations to the Trustee;
  - (viii) the Trustee is required to satisfy any amount of money due by the Unitholder to the Trustee (in its capacity as trustee of the Trust);
  - (ix) the Trustee is required to satisfy any amount of money the Trustee (in its capacity as trustee of the Trust) owes someone else in relation to the Unitholder;
  - (x) the Unitholder is a registered holder of Units having an aggregate holding of Units (by number or value) of less than the minimum amount determined by the Trustee from time to time;
  - (xi) the Trustee determines that the Trust is uneconomical to operate;
  - (xii) the Trustee considers it to be in the best interest of Unitholders as a whole to do so;
  - (xiii) the Trustee determines that the investment objectives in respect of the Trust, as set out in the Disclosure Document given or otherwise made available in connection with the issue of Units to the Unitholder, cannot be met;
  - (xiv) the Disclosure Document given or otherwise made available in connection with the issue of Units to the Unitholder contemplates the redemption;
  - (xv) where all the assets of the Trust allocated or referable to a Class or Series under this Deed have been realised and the Trustee has determined that the Class or Series is to cease; or
  - (xvi) the terms of issue contemplate the redemption.
- (b) The Trustee must:

- (i) give a Withdrawing Unitholder at least five Business Days' advance notice of the redemption under paragraph 9.3(a);
- (ii) redeem the Units of the Withdrawing Unitholder for the Redemption Price and use commercially reasonable efforts to pay the redemption proceeds to the Withdrawing Unitholder within six months of the redemption; and
- (iii) following the redemption, cancel the Units of the Withdrawing Unitholder.

#### **9.4 Redemption Price**

- (a) The Redemption Price for a Sponsor Unit will be equal to the Issue Price for that Sponsor Unit.
- (b) Subject to the Terms of Issue of a Unit or a Class, the Redemption Price for any Ordinary Unit will be calculated based on a fraction, the numerator of which is equal to the Net Asset Value of the relevant Series and the denominator of which is equal to the number of Units on issue in the relevant Series, in each case calculated as at or immediately prior to the proposed date of redemption (in each case as determined by the Trustee acting reasonably and in good faith).

### **10 Transmission of Units**

#### **10.1 Entitlement to Units on death**

In the case of the death of a Unitholder who is a natural person:

- (a) where the deceased was a joint holder, the survivor or survivors; and
  - (b) where the Unitholder was a sole holder, the legal personal representatives of the deceased,
- will be the only persons recognised by the Trustee as having any title to the Unitholder's interest in the Units. This does not release:
- (c) the estate of a deceased joint holder from any liability in respect of a Unit that had been jointly held by the Unitholder with others; or
  - (d) where the Unitholder was a sole holder, the legal personal representative or the trustee of the Unitholder's estate from any liability in respect of Units held by the deceased Unitholder.

#### **10.2 Registration of Persons entitled**

- (a) If a person becoming entitled to a Unit in consequence of the death or, subject to the *Bankruptcy Act 1966* (Cth), bankruptcy of a Unitholder or, subject to the Corporations Act, the insolvency of a Unitholder produces all information that is properly required by the Trustee, that person may elect either:
  - (i) by written notice to the Trustee to be registered as the holder of the Unit; or
  - (ii) to nominate some other person to be registered as the transferee of the Unit and execute a transfer of the Unit to that other person.
- (b) All the limitations, restrictions and provisions of this Deed relating to transfers of Units are applicable to a notice or transfer under clause 10.2(a) as if the death, bankruptcy or insolvency of the Unitholder had not occurred and the notice of transfer were a transfer signed by that Unitholder.

#### **10.3 Distributions and other rights**

- (a) Where a Unitholder dies or becomes bankrupt, the Unitholder's personal representative, or the trustee of the Unitholder's estate, is entitled to the same rights and distributions as the

Unitholder would have been entitled to if the Unitholder had not died or become bankrupt, but only upon the production of information that is properly required by the Trustee.

- (b) Where two or more persons are jointly entitled to any Unit in consequence of the death of the Unitholder, they will be taken to be joint holders of the Unit.

#### **10.4 Deed of accession**

A transferee or other recipient of title to Units under this clause 10 accedes to the terms and obligations of this Deed and must if required by the Trustee execute a deed of accession in the form required by the Trustee.

### **11 Powers, Duties and Liabilities of the Trustee and the Manager**

#### **11.1 Powers and duties**

- (a) Management, operation and policy of the Trust shall be vested exclusively in the Trustee, which shall have the power by itself and shall be authorised and empowered on behalf and in the name of the Trust to carry out any and all of the powers, objectives and purposes of the Trust and to perform all acts and enter into and perform all contracts and other undertakings and engage in all activities and transactions which it may in its sole discretion deem necessary or advisable or incidental thereto, subject only to the limitations contained in this Deed.
- (b) The Unitholders shall take no part in the conduct or control of the Trust business and shall have no authority or power to act for or bind the Trust or the Trustee. The Unitholders shall not take any action on behalf of the Trust or the Trustee or in any way commit the Trust or the Trustee to any agreement or contract and shall have no right or authority to do any of the foregoing. Except as explicitly provided herein or under relevant law, no Unitholder shall be liable for any debt, liability or other obligation of the Trust.
- (c) The Trustee shall have all powers permitted under applicable laws to do any and all things deemed by the Trustee to be necessary or desirable in furtherance of the purposes of the Trust in accordance with applicable law and in the best interests of the Unitholders as a whole. Without limiting the foregoing general powers and duties, but subject to the limitations contained in this Deed, the Trustee is hereby authorised and empowered on behalf and in the name of the Trust:
  - (i) to elect or appoint, delegate authority to, remove and terminate such agents and officers as it considers appropriate;
  - (ii) to employ one or more custodians of the assets of the Trust and authorise such custodians to employ sub-custodians and agents and to deposit all or any part of such assets in a system or systems for the central handling of securities or with such other Person or Persons as the Trustee may determine;
  - (iii) subject to clause 1.5, clause 1.6, clause 7 and the provisions of any Other Agreement, to invest and reinvest the assets of the Trust in interests in, including, without limitation, equity, debt obligations, and other securities of, any form of issuer, wherever such issuer may be located, organised or operated, whether within or outside Australia, without limitation as to marketability of the securities or other interests reflecting such investments;
  - (iv) to vote, give assent and otherwise to exercise all rights, powers, privileges and other incidents of ownership or possession with respect to the securities or other assets of the Trust and to execute and deliver proxies or powers of attorney to such Person or Persons as the Trustee shall deem proper, granting to such Person or

Persons such power and discretion with relation to securities or other assets as the Trustee shall deem proper;

- (v) to exercise powers and rights which in any manner arise out of ownership of securities, including without limitation subscription rights, on behalf of the Trust;
- (vi) to institute, prosecute, defend, settle, compromise or otherwise adjust all claims (including but not limited to claims for taxes) and litigation arising out of the conduct of the affairs of the Trust or the Trustee or in the enforcement of obligations due either of them, including all rights of appeal;
- (vii) to employ or consult with such agents or independent contractors as the Trustee may deem necessary or advisable, including without limitation, brokers, auditors, counsel, consultants or managers or specialists in any field of endeavour whatsoever, including such Persons, firms or companies as may be Unitholders or Affiliates of any Unitholder;
- (viii) to pay or cause to be paid out of the capital or income of the Trust, or partly out of capital and partly out of income, as the Trustee deems fair, all Expenses, fees, charges, taxes and liabilities incurred or arising in connection with the conduct of the affairs of the Trust, or in connection with the management thereof, including but not limited to, such Expenses and charges for the services of the Trust's consultants, auditors, counsel, custodians, and such other agents or independent contractors and such other Expenses and charges as the Trustee may deem necessary or proper to incur;
- (ix) subject to the provisions of any Other Agreement, to endorse, accept or guarantee the payment of any notes, drafts or other obligations of any Person in connection with the activities of the Trust; to make contracts of guaranty or suretyship, or otherwise assume liability for payment thereof, including reimbursement obligations; and to mortgage and pledge any part of the property or rights of the Trust (including the rights of the Trust and/or the Trustee described in this clause 11.1(c)(ix) but not all or substantially all of the other property or rights of the Trust) and the Trustee to secure any of or all such obligations;
- (x) subject to the terms of this Deed, to borrow money, to obtain letters of credit and any other financing and make, issue, accept, endorse and execute promissory notes, drafts, bills of exchange and other instruments and evidences of indebtedness, and secure the payment thereof by mortgage, pledge or assignment of or Security Interest in all or any part of the securities and other property then owned or thereafter acquired by the Trust, for the benefit of the Trust and any Investment (and not for the benefit of any other Person, including, without limitation, the Trustee or its Affiliates);
- (xi) to enter, make and perform such other contracts, agreements and other undertakings as may be necessary or advisable or incidental to the carrying out of any of the foregoing powers, objects or purposes; and
- (xii) to execute all other instruments of any kind or character and to take all action of any kind or character which the Trustee may in its sole discretion determine to be necessary or appropriate in connection with the business of the Trust.

## **11.2 Trustee may delegate**

- (a) Subject to paragraph (e), the Trustee, by power of attorney, agency, contract or otherwise, may authorise one or more persons whether or not related to or associated with it, to do anything that it may lawfully delegate, including holding any Trust Property, executing documents on its behalf or exercising or discharging any or all of the duties, powers,



discretions and other functions of the Trustee under this Deed or otherwise in relation to the Trust.

- (b) The Trustee must exercise reasonable care and skill in selecting, authorising and monitoring a person who is authorised pursuant to paragraph (a).
- (c) The Trustee is responsible for the acts or omissions of a person authorised pursuant to paragraph (a).
- (d) Any act or omission of a person authorised pursuant to paragraph (a) is deemed to be an act or omission of the Trustee for the purposes of clause 11.10.
- (e) The Trustee must not appoint a person to exercise the overall rights and perform the overall obligations of the Trustee under this Deed except with approval by Special Resolution of the Ordinary Unitholders (and without limiting, for the avoidance of doubt, the appointment of the Manager pursuant to this Deed).
- (f) The Trustee delegates control of the affairs and operations of the Investments to the Manager and, without limiting the foregoing, the Trustee delegates to the Manager all approval and voting powers in relation to certain key decisions pertaining to the affairs or operations of the Investments.

### **11.3 Trustee covenants**

The Trustee will:

- (a) treat the Unitholders who hold interests of the same Class or Series equally and Unitholders who hold interests in different Classes or Series fairly; and
- (b) not exercise a discretion under this Deed which materially diminishes or expands the rights of Unitholders to income or capital of the Trust.

### **11.4 Role of Manager**

- (a) The Manager will manage the Trust in accordance with the provisions of this Deed until such time as it retires as manager of the Trust.
- (b) Subject to this Deed, the Manager may:
  - (i) take all steps and engage in all activities and transactions which it determines are desirable in connection with the investigation or negotiation for the acquisition or disposal of Trust Property and the management of the Trust, Trust Property and Trust Liabilities;
  - (ii) make recommendations and provide advice or instructions to the Trustee in relation to the Trust, Trust Property and Trust Liabilities; and
  - (iii) collect all monies and assets payable or receivable in respect of the Trust and pay or transfer them to the Trustee.
- (c) The Trustee will delegate to the Manager all approval and voting powers in relation to certain key decisions pertaining to the affairs or operations of the Investments.

### **11.5 Manager covenants**

The Manager must:

- (a) manage the Trust, Trust Property and Trust Liabilities in accordance with this Deed, including:

- (i) performing the day-to-day investment and administrative operations of the Trust and supervising the management of the Trust's business and affairs, including distributions to Unitholders and provision of information to Unitholders;
- (ii) keeping materially complete and materially accurate books and records of the activities of the Trust; and
- (iii) providing other clerical services for the Trust as reasonably required;
- (b) act honestly;
- (c) exercise due care and skill of an experienced manager of private equity investments in performing the obligations of the Manager under this Deed and otherwise in relation to the Trust;
- (d) treat the Unitholders who hold interests of the same Class or Series equally and Unitholders who hold interests in different Classes or Series fairly;
- (e) not exercise a discretion under this Deed which materially diminishes or expands the rights of Unitholders to income or capital of the Trust; and
- (f) conduct the affairs of the Trust in compliance with all applicable laws (including but not limited to any anti-money laundering and anti-corruption laws and regulations applicable to the Trust) where non-compliance would have a material adverse effect on the Unitholders as a whole.

#### **11.6 Manager may delegate**

- (a) Subject to paragraph (b), the Manager, by power of attorney, agency, contract or otherwise, may authorise one or more persons whether or not related to or associated with it, to do anything that it may lawfully delegate, including holding any Trust Property, executing documents on its behalf or exercising or discharging any of the duties, powers, discretions and other functions of the Manager under this Deed or otherwise in relation to the Trust. Without limiting the previous sentence, and to avoid doubt, the Manager may also sub-delegate anything which the Trustee has delegated to the Manager.
- (b) The Manager must not appoint a person to exercise the overall rights and perform the overall obligations of the Manager under this Deed except with approval by Special Resolution of the Unitholders.
- (c) The Manager must exercise reasonable care and skill in selecting, authorising and monitoring a person who is authorised pursuant to paragraph (a).
- (d) The Manager is responsible for the acts or omissions of a person authorised pursuant to paragraph (a).
- (e) The acts or omissions of a person authorised pursuant to paragraph (a) is deemed to be an act or omission of the Manager for the purposes of clause 11.10.

#### **11.7 Exclusions**

- (a) Except to the extent set out in this Deed, all obligations of the Trustee and the Manager which might otherwise be implied by law are expressly excluded to the extent permitted by law.
- (b) Subject to anything in this Deed expressly to the contrary, nothing restricts the Trustee or the Manager from:
  - (i) dealing with itself on an arm's length basis (as trustee or responsible entity of a trust, managed investment scheme, joint venture or scheme or in another capacity);

- (ii) being interested in any Contract or transaction with itself (as trustee or responsible entity of a trust, managed investment scheme, joint venture or scheme or in another capacity) or with any Unitholder or retaining for its own benefit profits or benefits derived from any such Contract or transaction;
- (iii) acting in the same or similar capacity in relation to any other trust, managed investment scheme or joint venture; or
- (iv) entering into a transaction with a related entity.

#### 11.8 Discretion and reliance

Subject to anything in this Deed, the Trustee and Manager may each determine whether to exercise, and the manner, mode and time of exercise of their respective powers, in their absolute discretion. Without limiting the foregoing, the Trustee and Manager may each rely on any advice, opinion, or information provided by a Person of a category contemplated by clause 11.2 or clause 11.6, or an adviser or any trustee, custodian, or administrator of any Investment of the Trust.

#### 11.9 Insufficient funds

Neither the Manager nor the Trustee need take any action unless in its opinion the Trust Property is sufficient to indemnify it for any costs and liabilities incurred.

#### 11.10 Liability and indemnification

- (a) None of the Trustee, the Manager, or any current or former director, officer, employee, partner, member, stockholder, controlling Person or agent of the Trustee or the Manager, or any member of the Trustee or the Manager which is not a natural person, any Person serving or having served at the request of the Trustee or the Manager as a director or non-executive officer of another partnership, corporation, limited liability company, joint venture, trust or other enterprise (all of the foregoing Persons being referred to collectively as **Indemnified Parties** and individually as an **Indemnified Party**) shall be liable to the Trust or any Unitholder for any act or omission suffered or taken by such Indemnified Party in its capacity as an Indemnified Party that:
  - (i) is not in material breach of this Deed; and
  - (ii) does not constitute fraud, Gross Negligence, recklessness, wilful misconduct or wilful violation of law.
- (b) To the maximum extent permitted by applicable law, each Indemnified Party shall be fully protected and indemnified by the Trustee out of Trust assets against all liabilities and losses (including amounts paid in respect of judgments, fines, penalties or settlement of litigation, and legal fees and Expenses reasonably incurred in connection with any pending or threatened litigation or proceeding) suffered by virtue of such Indemnified Party's serving as an Indemnified Party with respect to any action or omission suffered or taken that:
  - (i) is not in material breach of this Deed; and
  - (ii) does not constitute fraud, Gross Negligence, recklessness, wilful misconduct or wilful violation of law.
- (c) Each Indemnified Party shall use commercially reasonable efforts to seek recovery under any other indemnity or insurance policies by which such Person is indemnified or covered, as the case may be, but only to the extent that the applicable indemnitor or insurer provides the applicable indemnity or coverage on a timely basis.

- (d) No Indemnified Party shall be entitled to any indemnification pursuant to this clause 11.10 in connection with any internal dispute, claim or action between the Trustee and any of its Affiliates that does not otherwise involve the Trust or an Investment of the Trust.
- (e) The Trustee may advance out of the assets of the Trust expenses, including legal fees, for which any Indemnified Party would be entitled by this Deed to be indemnified upon receipt of an unsecured undertaking by such Indemnified Party to repay such advances if it is ultimately determined that indemnification for such expenses is not permitted by law or authorised by this Deed, provided, however, that the Trust shall not advance any expenses, including legal fees, to which any Indemnified Party would otherwise be entitled pursuant to this clause 11.10 in connection with a dispute, claim or action brought against such Indemnified Party by a majority in interest of Unitholders.
- (f) Each Indemnified Party may consult with recognised experts (including, but not limited to, legal counsel, accountants, investment bankers, and appraisers), and any action or omission taken or suffered in good faith in reliance and in accordance with the opinion or advice of such experts, to the fullest extent permitted by law, shall be subject to a rebuttable presumption that such action or omission did not materially violate this Deed, did not constitute fraud, Gross Negligence, recklessness, or wilful violation of law, provided, however, that such expert has been selected by the Indemnified Party in good faith and with reasonable care.
- (g) The provisions of this clause 11.10 shall continue to afford protection to each Indemnified Party regardless of whether such Indemnified Party remains in the position or capacity pursuant to which such Indemnified Party became entitled to indemnification under this clause 11.10 and regardless of any subsequent amendment to this Deed. No amendment to this Deed shall reduce or restrict the extent to which these indemnification provisions apply to actions taken or omissions made prior to the date of such amendment. The provisions of this clause 11.10 shall inure to the benefit of the successors, assigns, heirs and personal representatives of the Indemnified Parties.
- (h) Subject to applicable provisions of law and equity, whenever in this Deed the Trustee is permitted or required to make a decision in its 'sole discretion' or 'discretion' or under a grant of similar authority or latitude, or in its 'good faith' or under another express standard, the Trustee shall act under such express standard and shall not be subject to any other or different standard.
- (i) To the extent that, at law or in equity, an Indemnified Party has duties (including fiduciary duties) and liabilities relating thereto to the Trust or to the Unitholders, neither the Trustee nor any other Indemnified Party acting in connection with the Trust's business or affairs shall be liable to the Trust or to any Unitholder for its good faith reliance on the provisions of this Deed. The provisions of this Deed, to the extent that they restrict or eliminate the duties and liabilities of an Indemnified Party otherwise existing at law or in equity, are agreed by the Unitholders to replace such other duties and liabilities of such Indemnified Party, provided that nothing herein shall constitute a waiver or limitation of any rights that a Unitholder or the Trustee may have under applicable securities laws or other laws and that may not be waived or limited under such applicable laws.
- (j) For the avoidance of doubt, the Trustee will hold in trust for each Indemnified Party other than the Trustee and the Manager the rights of that Indemnified Party under this Deed.

#### **11.11 Information from Unitholders**

Each Unitholder agrees promptly to provide the Trustee with information about such Unitholder that the Trustee reasonably requests when necessary to comply with regulatory, legal, tax or other requirements related to the business of the Trust or the consummation, ownership, or disposal of an Investment. The Trustee agrees that such information will be kept confidential by the Trustee, except

as required by applicable law or legal process, provided, however, that the Trustee may disclose such information or portions thereof to those directors, officers, employees, and professional advisers of the Trustee who need to know such information for the purpose of assisting the Trustee in its efforts to comply with such regulatory, legal or tax requirements.

#### **11.12 Unitholders' liability**

- (a) Notwithstanding clause 11.10, but without limiting the liability of a Unitholder in respect of a breach of its obligations under this Deed or otherwise in respect of the Trust, the liability of a Unitholder is limited to the amount (if any) which remains unpaid in relation to the Unitholder's application for Units. This is subject to any separate written agreement between a Unitholder and the Trustee.
- (b) Joint Unitholders and former joint Unitholders are jointly and severally liable in respect of all:
  - (i) obligations and payments in respect of their Units; and
  - (ii) their obligations in respect of the Trust, including under this Deed.

### **12 Distributions and Allocations**

#### **12.1 Application of income and distribution provisions**

If the Trustee makes an election under clause 12.12 for the provisions contained in Schedule 3 to apply that is effective in respect of a particular Income Year, then the provisions of this clause 12 will operate subject to, and will be qualified by, the provisions of Schedule 3 for that Income Year.

#### **12.2 Income of the Trust**

- (a) The Trustee shall determine the income of the Trust (the ***Income of the Trust*** or ***Income***).
- (b) If no determination is made in accordance with clause 12.2(a) prior to the end of the relevant period, the Income of the Trust is:
  - (i) for any Quarter, the operating profit after abnormal items and extraordinary items of the Trust for that Income Year, determined in accordance with Australian generally accepted accounting principles or such other principles as the Trustee, with the approval of the Auditor, may have adopted; and
  - (ii) for any Income Year, the greater of:
    - (A) the sum of the amount determined for each Quarter in the Income Year; and
    - (B) the Net Income for the Income Year.

#### **12.3 Capital**

- (a) The Trustee may pay out of the capital of the Trust all Expenses, costs and liabilities incurred in connection with the Trust.
- (b) The Trustee may distribute all or part of the capital of the Trust fund in accordance with the entitlements of Unitholders pursuant to this Deed.

#### **12.4 Present entitlement and impact of transfers**

- (a) On the last day of each Income Year:
  - (i) each Ordinary Unitholder which holds Units in a Series will have an absolute vested and indefeasible interest in so much of the Income of the Trust for that Income Year (less any portion of that Income previously distributed) available to be distributed to

- Ordinary Unitholders under clause 12.7(a) in respect of that Series in proportion to the proportion which their Unitholding in respect of that Series bears to the Unitholdings of all the Ordinary Unitholders in respect of that Series; and
- (ii) each Sponsor Unitholder will have an absolute vested and indefeasible interest in so much of the Income for that Income Year (less any portion of that Income previously distributed) available to be distributed to Sponsor Unitholders, if any, to be calculated and paid as disclosed in the Disclosure Document from time to time.
- (b) Income allocated but not distributed when a transfer or transmission of Units is registered remains credited to the transferor. For the purposes only of calculating an Ordinary Unitholder's and a Sponsor Unitholder's (if any) distribution entitlement under clause 12.7, transfers of Units are to be disregarded.

## 12.5 Timing of distributions

The Trustee may make distributions at any time, but must:

- (a) not reinvest Disposition Proceeds and must make a distribution of such Disposition Proceeds as soon as practicable after receipt and, in any event, no later than 90 days after receipt by the Trustee;
- (b) effect a distribution when required under clause 20.5; and
- (c) after the end of each Income Year, distribute all of the Income of that Income Year.

## 12.6 Distribution of securities

- (a) The Trustee may at any time make a distribution of:
  - (i) Traded Securities, provided that the Traded Securities are able to be traded on a financial market and will not, immediately following distribution of the Traded Securities to Unitholders, be restricted, escrowed or subject to a holding lock pursuant to the rules of the relevant financial market; and/or
  - (ii) Non-Traded Securities.
- (b) In the case of a distribution of Traded Securities, the Traded Securities will be valued at:
  - (i) the average of the closing trading price of the relevant class of Traded Securities on the 10 most recent trading days prior to the date on which their distribution is effected (**Trading Value**); or
  - (ii) if a Trading Value is not readily available, the average of the closing bid price of the relevant class of Traded Securities on the ten most recent trading days prior to the date on which their distribution is effected,

and after the date of such distribution, the Trustee will have no liability to the relevant Unitholder for any subsequent diminution in the value of the relevant Traded Securities so distributed, any such diminution being deemed as having occurred after those Traded Securities are alienated from Trust Property.
- (c) In the case of a distribution of Non-Traded Securities, the Non-Traded Securities will be valued shortly before the distribution in good faith by applying the valuation guidelines of AIC, modified as necessary on a case-by-case basis.
- (d) In respect of a proposed distribution of Traded Securities or Non-Traded Securities, a Unitholder (**Requesting Unitholder**) may request the Trustee to sell the Traded Securities or Non-Traded Securities (as the case may be) that would otherwise be distributed to the Requesting Unitholder and remit the net proceeds of sale to the Requesting Unitholder as a Cash distribution. The Trustee will endeavour, but is not obliged, to accommodate such a

request. Notwithstanding anything to the contrary in this Deed, any gain, loss or Expense incurred by the Trust in respect of such sale will be attributed to, or borne by (as the case may be) the Requesting Unitholder. The Trustee will have absolute authority as to the timing of the sale, and the sale price, of such Traded Securities or Non-Traded Securities and will have no liability whatsoever in respect of the time or price at which the relevant Traded Securities or Non-Traded Securities are sold.

- (e) Notwithstanding anything to the contrary in this clause 12.6, the Trustee may, from time to time in connection with a Trust recapitalisation or similar transaction and subject to such limitations or restrictions as the Trustee may impose, in its sole discretion, offer each Unitholder the opportunity to express its preference to receive distributions of assets in lieu of cash for such Investments as the Trustee determines in its sole discretion. Each Unitholder electing to receive a distribution in kind within the time period provided for by the offer shall receive such asset in kind, subject to any such applicable limitations or restrictions. In the case of any Unitholder electing to receive a distribution in kind, the value of any assets distributed in kind shall be determined by Trustee based on the disposition price of the asset for the portion of such asset otherwise disposed of with respect to non-electing Unitholders.

## 12.7 Distribution Waterfall

- (a) Subject to clause 27.4, distributions of Income or Trust Property (including on termination of the Trust) referable to Ordinary Units in a particular Series must be effected such that the Ordinary Unitholders who hold Ordinary Units in the relevant Series receive such distributions in proportion to their Ordinary Unitholding in the relevant Series, subject, to any distributions to be paid to the Sponsor Unitholders, if any, set out in the Disclosure Document applicable to that particular Series.
- (b) Subject to clause 27.4, distributions of Income of the Trust or Trust Property (including on termination of the Trust) referable to Sponsor Units must be effected on the terms disclosed in the Disclosure Document applicable to the Series of Ordinary Units to which the relevant Income or Trust Property would otherwise be paid.

## 12.8 Withholding

- (a) The Trustee may withhold, at the maximum applicable statutory rate, and pay as directed by any law, any withholding of Taxes payable by the Trustee on any distribution to a Unitholder imposed as a result of such Unitholder's status as a Unitholder (including in each case such portion of any amounts in connection with an audit for which the Trust is liable and that the Trustee determines, in its sole discretion, is attributable to such Unitholder or former Unitholder) (**Withheld Amount**).
- (b) A Withheld Amount withheld from a distribution to a Unitholder will be deemed to have been a distribution to the relevant Unitholder as at the time the Withheld Amount is paid by the Trustee.
- (c) Any amounts paid by the Trustee on account of Taxes attributable to a Unitholder, but not withheld, will be a loan from the Trust to the Unitholder, which loan:
  - (i) will, at the option of the Trustee, be repayable on demand by the Trustee or discharged out of distributions or other payments to which the Unitholder would otherwise be entitled under this Deed; and
  - (ii) may, at the option of the Trustee, bear interest at the rate of the Bank Bill Rate, calculated from the date that loan is made to the date of repayment.
- (d) Further and in addition to any other indemnity provision of this Deed, unless otherwise agreed by the Trustee in writing, each Unitholder agrees severally to indemnify the Trust,

the Trustee and the Manager (and their respective directors, officers, employees, Related Bodies Corporate, agents and Associates) against any liability for Taxes payable on any distribution to that Unitholder which the Trust or that relevant person incurs in connection with any such distribution, as contemplated by clause 12.8(c) or otherwise, except to the extent that any such liability (including any liability for penalties, additions to tax or interest) is the direct result of Gross Negligence, fraud or wilful misconduct of the Trustee or such relevant person.

- (e) It is understood that if any entity in which the Trust directly or indirectly invests withholds or makes any payment to any governmental authority in respect of any tax liability of any Unitholder, then any such amount shall be treated in the manner provided in this clause 12.8.
- (f) The provisions of this clause 12.8 shall survive the dissolution, winding up and termination of the Trust or the transfer or withdrawal of a Unitholder from the Trust.

#### **12.9 Use of Distributable Cash to fund capital contributions**

- (a) The Trustee may determine to retain Cash that would otherwise be distributable under this clause 12 to an Ordinary Unitholder (**Distributable Cash**) to pay all or part of any amount required to be paid by the Ordinary Unitholder under the terms of this Deed.
- (b) The amount of Distributable Cash so retained will be deemed to have been distributed under this clause 12 to the Ordinary Unitholder.
- (c) The Trustee will notify the relevant Ordinary Unitholder in writing of the retention of the Distributable Cash under this clause 12.9.

#### **12.10 Currency of Cash distributions**

All Cash distributions must be made in Australian dollars.

#### **12.11 Distribution notice**

The Trustee must, as soon as practicable, give to each Unitholder a notice containing such information the Trustee determines in relation to the proposed distribution, but including:

- (a) the proposed distribution date;
- (b) the amount to be distributed to the Unitholder;
- (c) a summary description of the manner in which the proposed distribution arose; and
- (d) details of imputation credits, if any, attaching to the proposed distribution.

#### **12.12 Trustee elections**

- (a) The Trustee may elect in writing for the provisions contained in Schedule 3 to apply on and from the date specified in the election. Any such election will continue to have effect subject to the provisions contained in Schedule 3.
- (b) The Trustee may elect in writing for subsections 276-20(2) and (3) of the Tax Act to apply to each Class or Series of Units of the Trust for the Income Year in which the election is made and for every subsequent Income Year.
- (c) The Trustee may notify the Unitholders of the making of an election under this clause 12.12.
- (d) Nothing in this clause 12.12 imposes an obligation on the Trustee to:
  - (i) elect to apply the AMIT Regime to the Trust;
  - (ii) elect to treat each Class of Units as a separate AMIT;



- (iii) facilitate the Trust being able to elect to apply the AMIT Regime to the Trust;
  - (iv) make any amendments to this Deed; or
  - (v) make any of the elections provided for under this clause 12.12.
- (e) Where the Trust qualifies as a managed investment trust (as that term is defined in the Tax Act), the Trustee must make a choice under section 275-115 of the Tax Act that covers the Trust within the time period set out in section 275-115.

#### **12.13 Impact of Schedule 3 if the Trust is not an AMIT**

- (a) If the Trust is not an AMIT for an Income Year but the Trustee purports to exercise a power under Schedule 3 on the basis that the Trustee believes that the Trust is or will be an AMIT for that Income Year, then the following provisions apply in respect of the exercise of the relevant power.
- (b) The exercise of the powers by the Trustee will, to the maximum extent possible but subject to the following provisions, be treated as a proper exercise of the Trustee's powers under this Deed or at law.
- (c) To the extent that the operation of any of these powers depends, for its operation, on the Trust being an AMIT for the relevant Income Year, the Trust will be treated as if it were an AMIT for the purposes of that power.
- (d) Nothing in Schedule 3 or the terms of this clause will be taken to invalidate any action that is undertaken by the Trustee pursuant to its powers under clause 12 and those powers may be exercised by the Trustee despite any contrary powers provided under Schedule 3.

#### **12.14 Classification of items**

Without limiting clause 12.2, the Trustee has the power to determine:

- (a) the classification of any item as being Income of the Trust, on income account, on capital account, or otherwise;
- (b) the extent to which reserves or provisions need to be made; and
- (c) whether any item should be recognised as it is received or as it accrues (but not yet received).

#### **12.15 Tax**

The Trustee may take any action that it considers is necessary (including without limitation by distributing or applying capital to or for the benefit of the Unitholders) to ensure to the extent possible that any Tax liability under the Tax Act in respect of the Net Income of the Trust is borne by the Unitholders in proportions that correspond with the shares of Income of the Trust to which they are presently entitled, and that the Trustee incurs no liability to pay Tax under section 99 or section 99A of the Tax Act as trustee of the Trust.

#### **12.16 Reserves**

The Trustee may make any provisions or reserves of amounts that the Trustee determines proper for the purposes of the Trust and, if the Trustee so determines, an item of income received or receivable in an Income Year may be treated as having been received in an Income Year and an Expense paid or payable in an Income Year may be treated as having been paid in a different Income Year.

### **12.17 Excess distribution**

If the Trustee determines that the total amount of the distributions actually made to Unitholders during or with respect to an Income Year exceeds the Income of the Trust for the Income Year, the Trustee may treat the excess as a distribution of capital.

## **13 Expenses and Management Fee**

### **13.1 General**

All costs and Expenses reasonably and properly incurred by the Trustee in the performance of its duties, including in connection with the following matters or of the following nature, in relation to the Trust, are payable or reimbursable out of the Trust Property (and if referable to more than one trust, Class or Series, apportioned in a manner determined by the Trustee):

- (a) preparation, approval, stamping, execution, publishing and printing of this Deed and any deed amending this Deed;
- (b) preparation, approval, execution, publishing and printing of an application;
- (c) preparation, approval, execution, publishing and printing of any terms of issue relating to a Unit;
- (d) any fees or expenses incurred in connection with the registration of the Trust as a registered scheme;
- (e) retirement and appointment of the Trustee and any custodian;
- (f) institution, prosecution, defence or compromise of any claim, investigation, dispute, court proceedings, arbitration or dispute resolution proceedings in relation to this Deed or the Trust (but the Trustee must repay to the Trust any amount it has been advanced in respect of outgoings in connection with proceedings in which it is found by a court to be liable for its own fraud, negligence or breach of trust);
- (g) convening and holding a meeting and implementing a resolution of the meeting;
- (h) preparing, circulating and processing a resolution by Unitholders and implementing such a resolution;
- (i) bank fees, interest, discount and acceptance fees for bill facilities and like amounts;
- (j) all Taxes;
- (k) any actual or proposed investment (including in respect of any due diligence), acquisition, realisation, disposal, valuation, maintenance, alteration, improvement, enhancement, development, receipt, collection or distribution of any Trust Property;
- (l) borrowing, raising money or otherwise obtaining financial accommodation or granting a Security Interest;
- (m) accommodation and travel costs and related costs suffered or incurred by the Trustee's representatives in connection with:
  - (i) raising debt or equity capital in relation to the Trust;
  - (ii) promoting the Trust; or
  - (iii) the operation, administration and management of the Trust or the Trust Property;
- (n) all expenses in connection with ongoing compliance costs in respect of the Trust;
- (o) foreign exchange transactions, foreign exchange hedging transactions, interest rate hedging transactions and any other transactions involving any other derivative;

- (p) authorising a person to hold Trust Property;
- (q) fees and costs payable to ASIC or any other regulatory authority;
- (r) obtaining or maintaining a credit rating for the Trust, the Units or any other instrument issued by the Trustee in relation to the Trust;
- (s) establishing and maintaining the Register, the Trust accounting system and records and the investment register (including operation and development of computer facilities, both software and hardware, salaries and on-costs);
- (t) preparing, publishing and printing reports, notices, accounts, cheques and documents, posting them to Unitholders, or paying Unitholders;
- (u) any offer or invitation in respect of Units, including the preparation, lodgement, registration, distribution, promotion, publishing and printing of any Disclosure Document;
- (v) the engagement of any administrators, advisers, agents, brokers, contractors, custodians, investment managers, asset managers, property managers, project managers, development managers, calculation agents, collection agents, underwriters, counterparties to any derivatives transactions or contracts entered into by the Trustee or its agents or any other persons engaged by the Trustee under this Deed (including legal costs on a full indemnity basis);
- (w) fees incurred in establishing a gearing facility or amounts payable to the provider of or a service provider (including a calculation agent) in relation to, any derivative in which the Trust invests;
- (x) handling fees and commissions for arranging for persons to become Unitholders of Units;
- (y) fees incurred by an auditor of the Trust or compliance plan auditor of the Trust;
- (z) preparation and lodgement of taxation and other returns for the Trust;
- (aa) terminating and winding up of the Trust;
- (bb) facilitating or otherwise making Units available for acquisition through an investor directed portfolio service or any other investment platform;
- (cc) entering the Trust in a survey;
- (dd) fees payable to a ratings or research organisation;
- (ee) fees payable to a securities system authorised by the Trustee to hold Trust Property;
- (ff) performance of the Trustee's duties, exercise of the Trustee's rights or powers, compliance with the law or administration of the Trust;
- (gg) establishment, development, maintenance and operation of computer facilities, both software and hardware for the administration of the Trust;
- (hh) dealing with applications and redemptions, and determining the Issue Price and Redemption Price;
- (ii) any restructuring of the Trust;
- (jj) any fees, costs, charges and expenses incurred in giving effect to Schedule 3;
- (kk) rates, levies, development, insurance and redevelopment costs, insurance broking and quantity surveyor's fees, subdivision and building costs, normal building operating expenses and other expenses not paid by tenants and costs of leasing any Trust Property; and
- (ll) fees and costs payable to a related body corporate or other associate of the Trustee for services provided to the Trustee in connection with the Trust, where if these fees and costs

had been properly incurred by the Trustee they would be reimbursable out of the Trust Property under this clause 13.1.

### **13.2 Class and Series expenses**

Subject to the terms of issue of Units and this Deed, the Trustee may determine that a Cost (whether paid or payable) of the Trust is referable, in whole or part, to a particular Class or to a particular Series.

### **13.3 Establishment Costs**

- (a) Without limiting clause 13.1, the Trustee may:
  - (i) pay from or seek reimbursement out of the Trust Property for Establishment Costs; or
  - (ii) enter into arrangements so that the Trust bears Establishment Costs.
- (b) The Establishment Costs may be amortised, by a method, in the amounts and at a time or times, determined by the Trustee.

### **13.4 Management Fee**

- (a) In consideration of the Manager's obligations under this Deed, the Trustee must pay to the Manager (out of Trust Property) a Management Fee in accordance with this clause 13.4, unless waived by the Manager.
- (b) The Management Fee (plus GST), if any, will be calculated in respect of each Series and accrued on a daily basis and will be payable by the Trustee to the Manager on the terms set out in the Disclosure Document applicable to the relevant Series, provided that:
  - (i) each Unitholder will bear its pro rata share (based on its Series Proportion) of the Management Fee for each Series in which it holds Units;
  - (ii) the Manager may exercise its discretion as to when to call for or defer any such actual payment by the Trustee;
  - (iii) the Trustee is not obliged to make any payment if, at the time required for payment, the Trustee does not hold sufficient Cash proceeds in Trust Property to fund the payment, in which case any non-payment will not constitute a breach of the terms of this Deed and the Trustee must pay any unpaid amounts as and when it has the Cash proceeds to do so or otherwise as directed by the Manager; and
  - (iv) any unpaid amounts as contemplated by paragraphs (b)(iii) and (iv) will not bear interest.

### **13.5 Allocation of fees, Expenses and other Trust Liabilities**

- (a) Each Series shall bear fees, Expenses and other Trust Liabilities, as allocated among the Series by the Trustee in good faith and on a fair and reasonable basis.
- (b) Each Ordinary Unitholder shall be allocated:
  - (i) its pro rata share (determined on the basis of its Series Proportion) of fees (including the Management Fee pursuant to clause 13.4), Expenses and other Trust Liabilities that are attributable to a Series in which it holds Units; and
  - (ii) its pro rata share (determined on the basis of its Trust Proportion) of fees (including the Administrative Fee pursuant to clause 13.5(c)), Expenses and other Trust Liabilities that are not attributable to a Series.

- (c) An annual administrative fee may, in respect of a Series and if set out in the Disclosure Document applicable to that Series, be payable by the Trustee to the Manager (out of Trust Property of that Series) (**Administrative Fee**). The Administrative Fee will be payable on the terms set out in the relevant Disclosure Document.

#### **14 Allocation and acceptance of Investment opportunities**

- (a) By making a Subscription, each Ordinary Unitholder acknowledges and agrees that neither the Trustee nor the Manager shall have any obligation to allocate or offer to the Trust any potential Investment opportunity.

#### **15 Business Activities with Affiliates**

- (a) The Trustee may from time to time in the conduct of Trust affairs consult with, utilise the services of, or otherwise engage in business activities with one or more Affiliates of the Trustee.
- (b) Manager Affiliates may have business interests and engage in business activities in addition to those connected with the Trust, which interests and activities may be similar to or different from those of the Trust and may include investment activities and providing investment advisory services and management services for persons or clients not associated or affiliated with the Trust or the Manager Affiliates.

#### **16 Retirement of the Manager**

##### **16.1 Voluntary retirement**

The Manager may at any time retire as manager of the Trust if the retirement is approved by Special Resolution of the Ordinary Unitholders.

##### **16.2 Mandatory retirement**

The Manager must retire if the "Manager" (as such term is defined in the Pacific Equity Partners Gateway Co-investment Trust Deed) of Pacific Equity Partners Gateway Co-investment Trust retires or is removed from its role in accordance with the terms of the Pacific Equity Partners Gateway Co-investment Trust Deed and is replaced by a Person other than a Manager Affiliate.

##### **16.3 Procedure on retirement**

If the Manager retires from office under clause 16.1 or 16.2:

- (a) the retirement will not take effect until a new Manager has been approved by Special Resolution of the Ordinary Unitholders and the new Manager undertakes (on such terms as approved by the Ordinary Unitholders by Special Resolution) by deed to be bound by this Deed;
- (b) on or as soon as practicable after retirement of the Manager, the Trustee shall settle with the retiring Manager the amount of any sums payable to the retiring Manager or by the retiring Manager in accordance with this Deed;
- (c) Sponsor Distributions will be modified in accordance with clause 16.4;
- (d) on appointment of the new Manager, the Trustee must issue such number of Sponsor B Units to the new Manager or other persons the new Manager nominates (as directed by the new Manager) at an Issue Price representing (proportionately) the Net Asset Value at the date of issue (as adjusted to reflect the rights attaching to those Sponsor B Units); and

- (e) any accrued rights of the retiring Manager and its directors, officers, employees, Related Bodies Corporate, agents and Associates under this Deed survive retirement of the retiring Manager.

#### **16.4 Modification of Sponsor Distributions**

Notwithstanding anything to the contrary in this Deed, from the date of retirement of the Manager from office (the **Retirement Date**), the Trustee must effect Sponsor Distributions as follows:

- (a) if the Manager retires under clause 16.1, all Sponsor Distributions which are referable to a Series which is in existence at the Retirement Date will be allocated to the Outgoing Manager Sponsor Unitholders exclusively;
- (b) if the Manager is required to retire under clause 16.2, all Sponsor Distributions which are referable to a Series which is in existence at the Retirement Date will be allocated as follows:
  - (i) 80% of the Sponsor Distributions will be allocated to the Outgoing Manager Sponsor Unitholders (in proportion to their Unitholdings);
  - (ii) 20% of the Sponsor Distributions will be allocated to the New Manager Sponsor Unitholders (in proportion to their Unitholdings);
- (c) all Sponsor Distributions which are referable to a Series which was not in existence at the Retirement Date will be paid exclusively to the New Manager Sponsor Unitholders (in proportion to their Unitholdings); and
- (d) in addition to any amount payable under paragraph (b) to the Outgoing Manager Sponsor Unitholders (the **Relevant Amount**), the Trustee must pay simple interest on such amount per annum equal to 2% plus the Bank Bill Rate, calculated from the Retirement Date until the date of payment of the Relevant Amount.

### **17 Retirement or Removal of the Trustee**

#### **17.1 Retirement**

The Trustee may at any time retire as trustee of the Trust if the retirement is approved by Special Resolution of the Ordinary Unitholders.

#### **17.2 Removal without cause**

The Trustee may be removed at any time and for any reason if the removal is approved by a Special Resolution of the Unitholders.

#### **17.3 Removal with cause**

The Trustee must retire if:

- (a) the Trustee ceases to carry on business;
- (b) the Trustee suffers an Insolvency Event and, within 90 days of the Insolvency Event first occurring, removal of the Trustee is approved by a Special Resolution of the Ordinary Unitholders;
- (c) the Trustee remains convicted of fraud with respect to the Trust (after all appeals and expiration of time to appeal) and within 90 days after the later of the date on which the final appeal is determined and the date on which the time to appeal has expired, removal of the Trustee is approved by a Special Resolution of the Ordinary Unitholders; or

- (d) a court of competent jurisdiction has finally determined (after all appeals and the expiration of time to appeal) that the Trustee has materially breached this Deed or engaged in Gross Negligence or wilful misconduct and, within 90 days of the date of final determination (after all appeals and the expiration of time to appeal), removal of the Trustee is approved by Special Resolution of the Ordinary Unitholders.

#### **17.4 Procedure on removal**

If the Trustee retires from office under clause 17.1, 17.2 or 17.3:

- (a) the retirement will not take effect until a new Trustee has been approved by a Special Resolution of the Ordinary Unitholders and the new Trustee undertakes (on such terms as approved by Special Resolution of the Ordinary Unitholders) by deed to be bound by this Deed;
- (b) on or as soon as practicable after retirement of the Trustee, the Manager shall settle with the retiring Trustee the amount of any sums payable to the retiring Trustee or by the retiring Trustee in accordance with this Deed; and
- (c) any accrued rights of the retiring Trustee and its directors, officers, employees, Related Bodies Corporate, agents and Associates under this Deed survive retirement or removal of the Trustee.

### **18 Amendments**

- (a) This Deed may be amended by the Trustee in any of the following circumstances:
  - (i) without Unitholder consent, if the Trustee determines (acting reasonably and in good faith) that the amendment:
    - (A) is not materially adverse to the interests of Unitholders; and
    - (B) would not expose the Trustee or the Trust to liabilities or risks that the Trustee deems unacceptable;
  - (ii) without Unitholder consent, to the extent necessary (as determined by the Trustee, acting reasonably and in good faith) to cure any ambiguity or fix any error following a re-designation of Ordinary Units in accordance with, and to give effect to the terms of, clause 4.5(b); and
  - (iii) if the amendment is approved by Ordinary Resolution of the Ordinary Unitholders, provided that any such amendment that would:
    - (A) adversely affect a Unitholder's rights or obligations under this Deed in a manner which is disproportionate to the effect on the rights or obligations under this Deed of other Unitholders holding Units in the same Class, must also be approved by that Unitholder; and
    - (B) increase the liability of the Manager or the Trustee under this Deed or otherwise adversely affect the rights or obligations of the Manager or the Trustee under this Deed must also be approved by the Manager or the Trustee (as the case may be).
- (b) Any amendment of this Deed must be effected by supplemental deed.

### **19 Assignment and Transfer**

#### **19.1 Transfer of Units**

A Unitholder may only dispose, transfer, gift, assign, sell, transmit or otherwise part with any of its Units:

- (a) with the consent of the Trustee or the Manager, which consent (subject to paragraph (c)) may be withheld at the absolute discretion of the Trustee or the Manager;
- (b) as expressly permitted in accordance with the terms of this Deed;
- (c) to an Affiliate of the Unitholder (or to another person in connection with the merger of a Unitholder's business) provided that:
  - (i) in the case where the transfer is to an Affiliate of the Unitholder (the **Initial Unitholder**), the Affiliate to which Units are transferred covenants with the Trustee (if required by the Trustee, acting reasonably), at the time of the transfer that while it holds Units it will remain an Affiliate of the Initial Unitholder; and
  - (ii) the Trustee or the Manager consents to the transfer, which consent must not be unreasonably withheld;
- (d) in the case of a Trustee Unitholder, to the replacement trustee, responsible entity, custodian, sub custodian or nominee of the trust or other collective investment vehicle for which the Trustee Unitholder holds the Units on trust or for the benefit of, provided that the transfer would not result in a change in the beneficial ownership of the Units; or
- (e) in accordance with clause 10.

## **19.2 Method of transfer**

A transfer of Units under this Deed (other than a transfer under clause 10) must be effected by an instrument in writing which contains an undertaking by the transferee to be bound by the terms of this Deed and which is otherwise in a form approved by the Trustee. The instrument must be executed by, or on behalf of, the transferor and transferee.

## **19.3 Registration of transfer**

- (a) The instrument of transfer must be left for registration at the address where the Register is kept as soon as reasonably practicable after execution of the instrument of transfer. It must be left together with any information that the Trustee properly requires to show the right of the transferor to make the transfer.
- (b) The transfer must bear evidence that the appropriate amount of stamp duty (if any) has been paid.
- (c) A transferor of Units remains the holder of the Units transferred until the transfer is registered and the name of the transferee is entered on the Register in respect of the Units.

## **19.4 Adjustment of Unitholding**

On a transfer, transmission or cancellation of Units under this clause 19 or otherwise in accordance with this Deed, the Unitholding of the Unitholder will be adjusted to reflect the transfer, transmission or cancellation (as the case may be) of the relevant Units.

## **19.5 Notice of transfer**

The Trustee must give the relevant Unitholder reasonable notice of its intention to:

- (a) sell any Units under clause 27.5 or 27.9; or
- (b) give its consent to a transfer under clause 19.1(a).

## **19.6 Indemnity**

Without limiting any other indemnity in this Deed, to the fullest extent permitted by law, unless otherwise agreed to by the Trustee in writing, the transferring Unitholder will also indemnify the



Trustee, the Manager and their respective Affiliates for any losses, claims, damages, liabilities or Taxes (including interest, penalties, additions to Tax, and associated charges) to which any of them may become subject in connection with such transfer or attempted transfer, except to the extent such losses, claims, damages, liabilities or Taxes are caused by an act or omission of the Trustee, the Manager or their respective Affiliates that constitutes a material breach of this Deed or constitutes fraud, Gross Negligence, recklessness, wilful misconduct or wilful violation of law. The foregoing provisions shall survive any termination of this Deed and the dissolution and winding up of the Trust.

## **20 Dissolution and Winding Up**

### **20.1 Trustee may terminate**

The Trustee may terminate the Trust if:

- (a) the Manager or the Trustee retires or (in the case of the Trustee) is removed under clause 16 or 17 (as the case may be) and no person has, within 90 days of the Retirement Trigger Date, been appointed by the Ordinary Unitholders under clause 16.3 or 17.4 (as the case may be) to replace the retiring Manager or the Trustee (as the case may be); or
- (b) it determines in good faith that:
  - (i) changes in any applicable law or regulation would have a material adverse effect on the continuation of the Trust; or
  - (ii) termination is necessary or desirable in order for the Trust not to be in material violation of any material law or regulation (including any applicable rule against perpetuities).

### **20.2 Trustee to give notice**

The Trustee must, in respect of an exercise of its rights under clause 20.1(b), use commercially reasonable efforts to give at least three months' advance notice to the Unitholders of the new termination date of the Trust.

### **20.3 Unitholders may terminate**

- (a) The Ordinary Unitholders may at any time terminate the Trust if approved by Special Resolution of the Ordinary Unitholders, where:
  - (i) the Manager or the Trustee retires from office under clause 16 or 17 (as the case may be) and no person has, within 90 days of the Retirement Trigger Date, been appointed by the Ordinary Unitholders under clause 16.3 or 17.4 (as the case may be) to replace the retiring Manager or the Trustee (as the case may be); and
  - (ii) in the case where a replacement Trustee has not been appointed under clause 17.4 within 90 days of the Retirement Trigger Date, the Ordinary Unitholders have, by Ordinary Resolution, appointed a person to act as a liquidating trustee, the sole purpose of which liquidating trustee will be to give effect to termination of the Trust pursuant to this clause 20.3.
- (b) For the purpose of clause 20.2 and this clause 20.3, **Retirement Trigger Date** means:
  - (i) in respect of the Manager, the date on which a resolution is passed under clause 16.1 or the date on which the Manager is required to retire pursuant to clause 16.2; and
  - (ii) in respect of the Trustee, the date on which a resolution is passed under clause 17.1, 17.2, 17.3(b), 17.3(c) or 17.3(d) or the date on which the Trustee ceases to carry on business.

#### **20.4 Issue and redemption stops**

From the date that a notice is given under clause 20.2 or the effective date of the resolution under clause 20.3 (as appropriate), the issue and redemption of Units stops.

#### **20.5 Action on termination**

On termination of the Trust, the Trustee must:

- (a) subject to clause 20.9, as soon as practicable realise all Trust Property by selling, calling in and converting into money the Trust Property; and
- (b) pay, discharge or provide for all Trust Liabilities and expenses of termination.

#### **20.6 Realisation of Trust Property**

The Trustee may postpone realising Trust Property if it reasonably determines that such postponement is necessary for the proper and orderly realisation of the Trust Property and will not be responsible for any resulting loss unless caused by its negligence or breach of trust.

#### **20.7 Auditing of winding-up accounts**

The Trustee must, if a court so requires, cause the accounts of the winding-up to be independently checked and signed-off by a registered company auditor or firm of chartered accountants of which at least one partner is a registered company auditor and, in either case, independent of the Auditor.

#### **20.8 Transfer of assets**

Despite clause 20.5, the Trustee may, having regard to the interests of all Unitholders and only if approved by Special Resolution of the Ordinary Unitholders:

- (a) appropriate Investments out of the Trust Property; and
- (b) transfer those Investments to any Unitholder which gives written approval of the transfer,

in satisfaction of that person's or those persons' entitlement to the Trust Property. The Expenses incurred in transferring the assets will be borne by the Unitholder or Unitholders to whom the assets are transferred.

#### **20.9 Retention of assets**

- (a) The Trustee may retain under its control for as long as it thinks fit, that part of the Trust Property which in its reasonable opinion may be required to:
  - (i) meet any outgoings or liabilities (actual or contingent) in respect of the Trust; or
  - (ii) fund any existing commitments of the Trust made prior to termination of the Trust in respect of any Investments.
- (b) If any part of the Trust Property retained is ultimately found not to be required, then it will remain subject to the Trust for conversion and distribution under clause 20.5.

### **21 Reports**

#### **21.1 Appointment of Auditor**

- (a) The Trustee must appoint a registered company auditor to be the Auditor of the Trust.
- (b) The Trustee shall promptly notify the Unitholders following any change of the Auditor so appointed.

## **21.2 Remuneration of Auditor**

The remuneration of the Auditor will be fixed by the Trustee.

## **21.3 Duty to Keep Proper Records**

The Trustee must cause proper books of account to be kept in relation to the Trust and will allow the Auditor and the Unitholders to inspect them during normal business hours.

## **21.4 Preparation**

The accounts of the Trust must be prepared in accordance with Australian generally accepted accounting principles.

## **21.5 Audit**

The Trustee must cause the Auditor to audit the accounts of the Trust at the end of each Financial Year (the **Audited Accounts**).

## **21.6 Provision of Audited Accounts to Unitholders**

The Trustee will cause a copy of the Audited Accounts for the period ending 31 December to be provided to each Unitholder.

## **21.7 Reports**

The Trustee must give Unitholders the financial reports (if any) specified in the information memorandum or any other disclosure document relating to the Trust and at the times indicated in such document (in each case as updated from time to time).

## **21.8 Application of Accounting Principles and Standards**

- (a) Where the effect of this Deed is that a value or amount is to be calculated for Trust operational purposes by applying Australian generally accepted accounting principles or accounting standards as generally accepted or in force from time to time, the value or amount is to be calculated for Trust operational purposes by applying such Australian generally accepted accounting principles or accounting standards determined by the Trustee.
- (b) Without limiting the generality of paragraph (a), values or amounts required by this Deed to be calculated for Trust operational purposes include:
  - (i) Trust Liabilities;
  - (ii) the Income of the Trust;
  - (iii) the Net Asset Value;
  - (iv) the amount to be paid (if any) on a withdrawal from the Trust;
  - (v) remuneration or fees payable to the Manager; and
  - (vi) the value of an investment of the Trust.

## **22 Meetings of Unitholders and Written Resolutions**

### **22.1 Convening of Meeting**

The Trustee may at any time convene a meeting of Unitholders.

## **22.2 Meeting by Requisition**

If the Trustee receives an application that a meeting of Unitholders be held, and the application is signed by Unitholders holding not fewer than 20% of the Units, then the Trustee must, within 10 Business Days after the application is received, convene a meeting of Unitholders.

## **22.3 Notice of Meeting**

The Trustee will convene a meeting by sending a notice to each Unitholder:

- (a) not less than 90 days nor more than 120 days prior to such meeting; and
- (b) which specifies:
  - (i) the time, place and date of the meeting; and
  - (ii) the general nature of the business to be transacted at the meeting, including any resolutions proposed to be put to Unitholders at the meeting.

## **22.4 Time, Place and Conduct of Meeting**

A meeting of Unitholders will be held at the time and place specified in the notice to be presided over by a nominee of the Trustee (unless the Unitholders, at the meeting, select another person to be the chairman by Ordinary Resolution) and will otherwise be conducted as set out in Schedule 2 or, in so far as this Deed makes no provision, as directed by the person presiding at the meeting.

## **23 Power of Attorney**

- (a) For valuable consideration under the terms of this Deed, each Ordinary Unitholder irrevocably and unconditionally appoints the Manager and the Trustee and each director of the Manager or the Trustee from time to time (acting on behalf of the entity of which he or she is the director), jointly and severally, as agent and attorney of the Unitholder to execute all instruments, documents and certificates and do all things which are required or the Trustee or the Manager (as the case may be) reasonably considers to be necessary or desirable to give effect to:
  - (i) clause 9;
  - (ii) clause 10;
  - (iii) clause 27.6;
  - (iv) any notification to be made to amend the Register of Unitholders;
  - (v) any obligation of the Unitholder under this Deed;
  - (vi) the stamping or registration of the power of attorney, if applicable,subject to the below provisions of this clause 23.
- (b) Each Ordinary Unitholder indemnifies and holds harmless each of the Trust, the Manager, the Trustee and each director of the Manager or the Trustee against all liabilities that the Trust, Trustee or the Manager or any such director may incur in connection with the good faith exercise of the authority granted under paragraph (a) on behalf of the relevant Unitholder.
- (c) The power of attorney granted under paragraph (a) will terminate:
  - (i) in respect of the Manager or any director of the Manager, upon the retirement of the Manager in accordance with clause 16, but only with respect to such retired Manager and its directors; and

- (ii) in respect of the Trustee or any director of the Trustee, upon the retirement or removal of the Trustee in accordance with clause 17, but only with respect to such retired or removed Trustee and its directors.
- (d) If an Insolvency Event occurs in relation to the Manager or the Trustee, then for the time period ending on the date which is 90 days after the occurrence of the Insolvency Event, the power of attorney granted under paragraph (a) may only be exercised by the appointed attorneys in respect of an Ordinary Unitholder with the prior consent of that Ordinary Unitholder.

## **24 Intellectual Property**

- (a) At any time and for any reason the Manager may require the name of the Trust to be changed to a name which does not include the terms 'PEP', 'Pacific Equity Partners', 'Co-investment' or 'Gateway', or otherwise imply an association with the Manager or its business or with any Related Body Corporate of the Manager or its business.
- (b) Notwithstanding any other clause to the contrary:
  - (i) the Firm Intellectual Property is the property of the Manager or a Manager Affiliate and is not the property of the Trust;
  - (ii) the Manager or a Manager Affiliate may use the Firm Intellectual Property or any portion of it for any transaction and in any manner without any fee, royalty or other compensation to the Trust;
  - (iii) the power of the Trustee to use the Firm Intellectual Property may be withdrawn by the Manager or a Manager Affiliate at any time without compensation to the Trust;
  - (iv) no person other than the Manager or a Manager Affiliate has any right, title or interest in the Firm Intellectual Property; and
  - (v) on termination of the Trust, all right, title and interest in the Firm Intellectual Property is held solely by the Manager or a Manager Affiliate.

## **25 Valuation**

- (a) The Manager must value the Trust Property annually and at such other times as are provided in this Deed or determined by the Manager.
- (b) All securities and property shall be valued by the Manager in a manner consistent with the valuation of such securities and property by Pacific Equity Partners Gateway Co-investment Trust, which will include (but will not be limited to) the application of the valuation guidelines of AIC, as modified as necessary on a case-by-case basis.

## **26 Contribution**

### **26.1 Obligation to contribute**

Each Ordinary Unitholder covenants for itself and its executors, administrators, estate, heirs, legal representatives, successors and assigns, that in the event the Trustee incurs (or the Trustee reasonably expects it could incur) any liability or loss of any kind on account of or in connection with any matter or transaction occurring or state of affairs existing during the time that Ordinary Unitholder held Units, that Ordinary Unitholder will, at any time upon at least 10 Business Days' prior notice, including any time after all of its Units have been redeemed, contribute to the Trust (or, if the Trust has wound up, pay to PEP Gateway Co-investment Investors Administration Access Pty Limited or its designee) its proportionate share of such liability or loss, provided, however, that the aggregate amount of such contributions from any Unitholder under this clause 26 shall not exceed the lesser of:

- (a) 50% of that Unitholder's Subscription amount; and
- (b) the aggregate amount of distributions received from the Trust by such Ordinary Unitholder referable to that Unitholder's Subscription.

## 26.2 No Third Party Rights

The provisions of this Deed (including this clause 26) are intended solely to benefit the Unitholders and, to the fullest extent permitted by applicable law, shall not be construed as conferring any benefit upon any creditor (other than an Indemnified Party) of the Trust (and no such creditor (other than an Indemnified Party) shall be a third party beneficiary of this Deed), and shall have any duty or obligation to any creditor (other than an Indemnified Party) of the Trust to make any contributions to the Trust or to cause the Trustee to request any Unitholder to make any contributions to the Trust. The obligations of the Unitholders under this clause 26 are payable only to the extent, and only in the amount, provided for in this Deed.

## 26.3 Provisions to Survive

The provisions of this clause 26 shall survive the dissolution, winding up and termination of the Trust.

## 27 Default

### 27.1 Non-receipt of notice

A notice sent to a Unitholder in accordance with this Deed is not invalidated because the Unitholder does not actually receive it.

### 27.2 Notice requiring payment of sums payable

- (a) If an amount required to be paid by a Unitholder pursuant to the terms of this Deed is not paid in full by the due date specified in the relevant notice (the **Original Notice**), the Trustee will (unless the relevant Unitholder has failed in two or more previous instances to pay any amount due under this Deed) give to the relevant Unitholder a copy of the Original Notice and a notice (**First Notice**) requiring payment of the amount specified in the Original Notice to be made within 10 Business Days of the First Notice and the Trustee will use reasonable endeavours to contact the Unitholder to confirm that address details for the service of notices are correct.
- (b) If such payment is not received within that further period or if a Unitholder has failed in two or more previous instances to pay any amount due under this Deed, then the Trustee may at any time give a notice (**Default Notice**) to the Unitholder requiring payment of the unpaid amount (as originally requested in the Original Notice) and an additional capital contribution to the Trust (which will not be treated as a payment towards the Issue Price of Units) of an amount equal to accrued Interest on the unpaid amount calculated from the original due date to the time of actual payment. The Default Notice must:
  - (i) appoint a day (which may be one or more Business Days after the date of the Default Notice) by which the payment required by the Default Notice is to be made; and
  - (ii) state that, if the payment is not made by the day appointed, the Units (if any) to which the Original Notice relates or will relate may not be issued or, if issued, may be liable to be suspended or forfeited at the discretion of the Trustee.

### 27.3 Deductions for outstanding payments

If all or part of an amount requested in an Original Notice is not paid by the due date specified in that Original Notice, the Trustee will apply any amount payable to the relevant Unitholder under this Deed (whether under clause 12 or otherwise) to pay:

- (a) the unpaid amount; and
- (b) an additional capital contribution to the Trust (which additional amount will not be treated as a payment towards the Issue Price of the relevant Units) of an amount equal to Interest on the unpaid amount calculated as accruing from the date of the Default Notice, and all costs and expenses (including reasonable legal fees) incurred by the Trustee in relation to the unpaid amount.

### 27.4 Rights of Trustee on non-compliance with notice

- (a) If a Unitholder does not comply with the Default Notice referred to in clause 27.2 (**Defaulting Unitholder**):
  - (i) the Trustee may borrow the amount of the defaulted payment and specially allocate the related interest expense to the Defaulting Unitholder;
  - (ii) any or all of the Units of the Defaulting Unitholder may be suspended;
  - (iii) any or all of the Units of the Defaulting Unitholder may be forfeited, including after suspension of such Units; and
  - (iv) the Trustee must notify the other Unitholders of the failure to comply with the Default Notice referred to in clause 27.2.
- (b) Suspension or forfeiture of the Units may be effected by a notice from the Trustee to all the Unitholders, with effect from the date of the notice.
- (c) A Defaulting Unitholder will forfeit:
  - (i) all voting rights attaching to the suspended or forfeited Units; and
  - (ii) all distributions and other monies payable to the Defaulting Unitholder in respect of suspended or forfeited Units (as the case may be) which have not been paid to a Defaulting Unitholder before the suspension or forfeiture (as the case may be), except to the extent that such amounts have already been applied under clause 27.3.
- (d) The Trustee may, at its absolute discretion, lift a suspension from any or all Units of a Defaulting Unitholder, in which case the voting and distribution rights attaching to those Units in respect of which the suspension is lifted are restored.

### 27.5 Disposal of forfeited Units

The Trustee may:

- (a) cancel forfeited Units; or
- (b) sell (or otherwise dispose of) forfeited Units in the manner the Trustee determines on terms and conditions determined by the Trustee in its discretion,

and the Trustee must update the Register accordingly.

### 27.6 Transfer of forfeited Units

- (a) On any sale of forfeited Units, the Trustee will receive the consideration for those Units and the Trustee will effect a transfer of those Units from the name of the Defaulting Unitholder to the person to whom the Units have been sold.

- (b) The Defaulting Unitholder hereby authorises the Trustee to take these steps and irrevocably appoints the Trustee as its attorney to do so (but only for that purpose). The Defaulting Unitholder indemnifies the Trustee against any claim or liability the Trustee may incur in connection with doing so.
- (c) Upon effecting the transfer, the transferee must be registered by the Trustee as the holder of the Units, and (to avoid doubt) those Units will not be forfeited as regards the transferee. The transferee's title to the Units will not be affected by any irregularity or invalidity in connection with the forfeiture or sale of the Units.

#### **27.7 Liability despite forfeiture**

A Defaulting Unitholder whose Units have been forfeited ceases to be a Unitholder in respect of the forfeited Units from the date the Trustee gives a notice under clause 27.4(b). Despite this:

- (a) the Defaulting Unitholder remains liable to pay to the Trustee all amounts due and payable by the Defaulting Unitholder under this Deed except to the extent that the proceeds of the disposal of the forfeited Units under clause 27.5 are applied towards those unpaid amounts under clause 27.10 which are referable to the forfeited Units. That liability ceases when the Trustee is paid all amounts due under clause 27.10 or otherwise in relation to the Units; and
- (b) unless the Trustee transfers all of the forfeited Units, the Defaulting Unitholder remains liable to pay the amount of all further drawdowns in respect of the Undrawn Commitments of the Defaulting Unitholder (as adjusted to reflect the transfer or cancellation of any forfeited Units) on the terms of this Deed as if the Defaulting Unitholder remained the holder of the forfeited Units.

#### **27.8 Trustee's lien**

To the extent permitted by law, the Trustee has a first and paramount lien upon every Unit for monies payable to the Trustee by the relevant Unitholder in connection with this Deed, as at the time when the Unitholder fails to make a payment in respect of that Unit by the relevant due date for payment. That lien extends to all distributions and other money from time to time payable in relation to that Unit.

#### **27.9 Sale of Units to enforce lien**

For the purpose of enforcing the Trustee's lien, the Trustee may sell the Units subject to the lien, in the same manner, so far as is applicable, as if the Units had been forfeited provided that the provisions in clauses 27.2 to 27.7 and clause 27.11 will apply, mutatis mutandis, in respect of the enforcement of the Trustee's lien.

#### **27.10 Proceeds of sale**

Net proceeds of any disposal of forfeited Units under clause 27.5(b) or the sale of Units to enforce a lien (including all distributions and other money from time to time payable to the Defaulting Unitholder in relation to those Units) must be applied:

- (a) first, in paying all costs incurred by the Manager, Trustee or Trust in relation to enforcing the lien or the forfeiture (as the case may be) and the sale;
- (b) second, in satisfying the amount unpaid and any unpaid additional capital contribution to the Trust by the Defaulting Unitholder as required under clause 27.2; and
- (c) third, in payment of any other amounts payable and unpaid by the Defaulting Unitholder under this Deed.

The balance (if any) must then be paid to the Defaulting Unitholder whose Units have been forfeited under this Deed. If the net proceeds of any sale are insufficient to pay the amounts in paragraphs (a),



(b) and (c), then the Unitholder remains liable for the difference between the net proceeds of sale and the sum of those amounts.

#### **27.11 No claims against the Trustee**

Subject to an obligation of the Trustee to exercise its rights in respect of the forfeiture of Units in a manner which in the opinion of the Trustee is in the overall best interests of the non-defaulting Unitholders, neither a Defaulting Unitholder whose Units have been forfeited nor any other person (including a Unitholder whose Units have not been forfeited) may question or have any claim against the Trustee in relation to either the price at which or the terms upon which the forfeited Units may be or are sold by the Trustee and the Unitholders (including the Defaulting Unitholder) release the Trustee in respect of any liability the Trustee may have in relation to the forfeited Units.

#### **27.12 Other rights not affected**

The rights, powers and remedies conferred on the Trustee and Manager by this clause 27 are in addition to other rights, powers or remedies given by law independently of this Deed in respect of a breach of this Deed.

### **28 Miscellaneous**

#### **28.1 Allocations Between Investments**

The Trustee shall reasonably and in good faith determine to which Investment (and Series) a particular distribution relates.

#### **28.2 Form of Payments; Setoff**

Subject to clause 29.8, all payments required to be made to the Trust, the Trustee or the Manager pursuant to this Deed shall be made in immediately available funds denominated in Australian dollars by certified bank check or by wire transfer to such account as may be designated from time to time by the Trustee. In the sole discretion of the Trustee, the Trustee may apply all or any portion of any payment otherwise to be paid by the Trust under this Deed to any Unitholder to amounts owed by such Unitholder to the Trust pursuant to this Deed.

### **29 Confidentiality**

Unless approved by the Trustee in writing, or otherwise required by law, each Ordinary Unitholder must and must cause each of its Affiliates and agents to maintain the confidentiality of information furnished to it or them by the Trust, the Manager or the Trustee other than information:

- (a) generally known to the public or wholesale funds management industry (other than as a result of dissemination by that Ordinary Unitholder or its Affiliates and agents in breach of this clause 29);
- (b) obtained by that Ordinary Unitholder from a third party who insofar as known to such Ordinary Unitholder is not prohibited from transmitting that information to that Ordinary Unitholder by a contractual, legal or fiduciary obligation to the Trust; or
- (c) already in the possession of that Ordinary Unitholder or its Affiliates or agents prior to receipt of such information from the Trustee,

provided however that an Ordinary Unitholder may disclose information about the Trust or its Investments:

- (d) to such of its Affiliates or agents as they need to know to oversee, manage and operate the investment in the Trust but only if such persons have been requested to maintain the confidentiality of such information;

- (e) in the case of a Trustee Unitholder, to investors in the trust or other collective investment vehicle for which it holds Units as Trustee Unitholder and in marketing materials given to prospective investors but only if all such investors or potential investors are instructed to keep the information confidential; or
- (f) if permitted under clause 29.2.

## **29.2 Exceptions**

An Ordinary Unitholder may make any disclosures in relation to this Deed or information provided to it under this Deed as, in its reasonable discretion, it thinks necessary:

- (a) to its professional advisers, bankers, financial advisers, financiers and insurers to whom it is reasonably necessary to disclose such information (and only to the extent reasonably necessary), if those persons are instructed to keep the information disclosed confidential;
- (b) to comply with any applicable law or requirement of any regulatory authority or Government Agency, any rules of a recognised stock exchange, or legal process provided that the Ordinary Unitholder must endeavour to consult with the Trustee or the Manager prior to the disclosure about the form and content of the required disclosure;
- (c) to any of its employees or its related entities' or officers to whom it is reasonably necessary to disclose such information (and only to the extent reasonably necessary) if that employee or officer is instructed to keep the information confidential; or
- (d) without limiting clause 29(c), for the purposes of reporting to relevant investing entities, nominees or custodians as required under their respective constituent documents (if any).

For the avoidance of doubt, nothing in this clause 29 prevents the Trustee or the Manager from disclosing to any person information about the Trust, its Investments and the performance of the Trust.

## **29.3 Counterparts**

This Deed may be executed in any number of counterparts. All executed counterparts constitute one document.

## **29.4 Notices**

- (a) Any notice, demand or other communication given to a Unitholder, the Trustee or the Manager under this Deed shall be deemed to be given if given in writing (including facsimile or electronic mail transmission) addressed, or sent by facsimile or electronic mail transmission, as provided below (or to the addressee at such other address, electronic mail address or facsimile number as the addressee shall have specified by notice actually received by the addressor), and if:
  - (i) actually delivered in fully legible form to such address (evidenced, in the case of delivery by same day or overnight courier, by confirmation of delivery from the courier service making such delivery); or
  - (ii) in the case of a letter, five days shall have elapsed after the same shall have been deposited in the Australian mail, with first-class postage prepaid, and any notice, demand or other communication sent by facsimile or electronic mail transmission shall be deemed to have been given on the Business Day following the day such transmission shall have been sent.
- (b) For the purposes of paragraph (a) above, notices, demands or other communications shall be given as follows:

- (i) If to the Manager or the Trustee (as the case may be), at the relevant address specified in the 'Parties' section of this Deed or as otherwise notified by the Trustee.
- (ii) If to any Unitholder, to it at its address specified in its Application Form or as otherwise notified by the Unitholder.

#### **29.5 Successors**

This Deed shall be binding on the executors, administrators, estates, heirs, legal representatives, successors and assigns of the Unitholders.

#### **29.6 Entire Agreement**

This Deed, together with any Application Forms and any Other Agreements, constitutes the entire agreement among the parties thereto pertaining to the subject matter hereof and supersedes all prior agreements and understandings pertaining thereto. Notwithstanding the provisions of this Deed, including, without limitation, clause 18, it is hereby acknowledged and agreed that the Trustee on its own behalf or on behalf of the Trust without the approval of any Unitholder or any other Person may enter into a side letter or similar agreement (an **Other Agreement**) to or with a Unitholder which has the effect of establishing rights under, or altering or supplementing the terms hereof (including in respect of a specific Investment).

#### **29.7 Governing Law**

This Deed shall be governed by and construed in accordance with the laws of New South Wales without giving effect to any conflict or choice of law provisions that would make applicable the substantive law of any other jurisdiction. The Trustee and the Unitholders submit to the exclusive jurisdiction of the courts of New South Wales.

#### **29.8 Currency**

The functional currency of the Trust shall be Australian dollars. All currency references herein shall be to Australian dollars unless otherwise stated. All cash capital contributions shall be made in Australian dollars.

#### **29.9 GST**

If the Trustee or the Manager (**Supplier**) (or the representative member of any GST group of which the Supplier is a member) is liable for GST on any supply (as defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)) made under or in connection with this Deed (including the supply of any goods, services, rights, benefits or things), the Supplier is entitled to receive, unless otherwise provided, an additional amount on account of GST, equal to the GST payable on the supply, and the Supplier is entitled to be reimbursed or indemnified for the amount out of the Trust Property.

#### **29.10 Severability of Provisions**

Each provision in this Deed shall be considered severable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Deed which are valid, enforceable and legal.

#### **29.11 Electronic execution**

A party may sign this Deed electronically, and bind itself accordingly. In addition, if a party signs this Deed electronically, the intention is to print out this Deed after all parties that are signing

electronically have done so, so that the first such print-out will also be an executed original counterpart of this Deed. Each signatory confirms that their signature appearing in this Deed, including any such print-out, is their personal signature authenticating it.

## Schedule 1

### Definitions and Interpretation

#### 1 Definitions

##### 1.1 Defined Terms

The following terms shall have the meanings specified:

**Administrative Fee** has the meaning given in clause 13.5(c).

**Affiliate** means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and, with respect to Persons that are individuals, also means the parents, grandparents, children, grandchildren and spouse of such individual, and trusts established for the benefit of any of the foregoing provided, however, that an Investment (or entity thereof) shall not be treated as an 'Affiliate' of the Trust or the Trustee for purposes of this Deed.

**AIC** means Australian Investment Council Limited (ACN 056 885 708).

**AMIT** means, for an income year, a trust which is an attribution managed investment trust for the purposes of section 276-10 of the Tax Act.

**AMIT Legislation** means all or any of the:

- (a) Tax Act;
- (b) *Tax Laws Amendment (New Tax System for Managed Investment Trusts) Act 2016* (Cth);
- (c) *Income Tax Rates Amendment (Managed Investment Trusts) Act 2016* (Cth);
- (d) *Medicare Levy Amendment (Attribution Managed Investment Trusts) Act 2016* (Cth); and
- (e) *Income Tax (Attribution Managed Investment Trusts - Offsets) Act 2016* (Cth),

as appropriate and as the context requires.

**AMIT Regime** means the regime for the taxation of AMITs, as set out in the AMIT Legislation.

**Application Form** means each Ordinary Unitholder's application or equivalent document (as determined by the Trustee) for Ordinary Units.

**ASIC** means the Australian Securities and Investments Commission.

**Associate** has the meaning attributed to it in section 11 of the Corporations Act.

**Auditor** means the last person appointed under clause 21.1.

**Bank Bill Rate** on any day means:

- (a) the Australian Bank Bill Swap Reference Rate (Bid) administered by ASX Benchmarks Pty Limited (or any other person which takes over the administration of that rate) for 90 days displayed on the BBSY page of the Thomson Reuters Screen at 12.00pm (or any replacement Thomson Reuters page which displays that rate) or on the appropriate page of such other information service which publishes that rate from time to time in place of Thomson Reuters; or
- (b) if no such rate is available, the rate that the Manager states is the nearest practical equivalent.

**Business Day** means any day on which commercial banks in Sydney, Australia are open and conducting regular business.

**Cash** includes cheques and electronic transfer of funds for immediate value.

**Class** means a class of Units, being Units which have the same rights and obligations.

**Contract** means any deed, agreement or arrangement whether in writing or not.

**Controller** means a controller as defined in section 9 of the Corporations Act.

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

**CPI** means the Consumer Price Index (all groups – weighted average of eight capital cities) published by the Australian Bureau of Statistics.

**Disclosure Document** means the information memorandum, private placement memorandum or similar document issued by the Trustee in respect of the Trust from time to time.

**Disposition Proceeds** means:

- (a) proceeds received from the sale or transfer of all or any portion of an Investment (including any capital component) as determined in good faith by the Trustee; and
- (b) any dividends and other receipts received in respect of an Investment.

**Distributable Cash** has the meaning given in clause 12.9(a).

**Establishment Costs** are all costs incurred (or to be incurred) by the Trustee or the Manager, or an associate of the Trustee or the Manager, in connection with the establishment of the Trust and the offering of Units under the first Disclosure Document (whether incurred before or after the establishment of the Trust), including:

- (a) government registration charges;
- (b) legal fees and other expenses in relation to the preparation of the Organisational Documents;
- (c) accounting, audit and taxation adviser fees;
- (d) commissions and fees payable to and expenses of persons who promote or distribute the first offering of Units;
- (e) the publishing Costs and other promotional Costs of the first Disclosure Document; and
- (f) administrator and custodian set-up fees.

**Expenses** means all expenses of the Trust in accordance with the terms of this Deed, and includes the expenses listed under clause 13.1.

**Financial Year** means the calendar year.

**Firm Intellectual Property** means the name 'Pacific Equity Partners' or 'PEP' and any trade mark associated with or used in connection with either of those names and any other intellectual property rights associated with such names or trademarks.

**Government Agency** means a government or governmental, semi-governmental, administrative or fiscal body, court or other judicial body, department, commission, authority, agency or entity anywhere in the world.

**Gross Negligence** means gross negligence, as such term is construed by the courts of Australia.

**GST** means any goods and services tax, consumption tax, value-added tax or any similar, impost or duty which is or may be levied or becomes payable in connection with the supply of goods or services.

**Income of the Trust** or **Income** has the meaning given in clause 12.2(a).

**Income Year** means the 12 month period beginning on 1 July and ending on 30 June in each year, unless the Trustee has successfully applied for a substituted accounting period to use the calendar year in which case Income Year means calendar year.

**Indemnified Party** has the meaning given in clause 11.10(a).

**Insolvency Event** means in respect of a person:

- (a) a winding up or other dissolution of the person commences, or an order is made by a court of competent jurisdiction to commence such a winding up or other dissolution;
- (b) a liquidator or provisional liquidator, receiver, receiver and manager or administrator is appointed in respect of the person or an order is made by a court of competent jurisdiction to make such an appointment;
- (c) the person enters into or resolves to enter into a scheme of arrangement or a deed of company arrangement or a composition with or an assignment for the benefit of all or any class of its creditors;
- (d) a Controller or trustee in bankruptcy is appointed over any assets or undertaking of the person; or
- (e) the person is insolvent or presumed to be insolvent under the Corporations Act.

**Investment** means any:

- (a) any investment in the Pacific Equity Partners Gateway Co-Investment Trust; and
- (b) Short Term Investment.

**Issue Price** in relation to a Unit means the price at which that Unit is issued, calculated in accordance with clause 5.

**Management Fee** means, in respect of each Series, an amount equal to 1.0% of the Net Asset Value referable to that Series.

**Manager Affiliate** means any one of:

- (a) the Manager and Trustee and their respective Related Bodies Corporate, officers, employees and members;
- (b) a person (whether alone or together with another person or persons) that directly or indirectly controls, through one or more intermediaries, the Manager or the Trustee;
- (c) a person that is directly or indirectly controlled, through one or more intermediaries, by the Manager or the Trustee, other than in circumstances where such control is exercised through an arms-length investment management arrangement or power of attorney;
- (d) where the Manager or the Trustee is an individual, the parents, grandparents, children, grandchildren and spouse of the Manager or the Trustee (as the case may be); and
- (e) any trust established for the benefit of any person referred to in paragraphs (b) to (d).

**Net Asset Value** means:

- (a) in respect of the Trust at any given time, the Trust Value less the Trust Liabilities; and
- (b) in respect of a Series or Class at any given time, the Trust Value less the Trust Liabilities (in each case as adjusted by the Trustee to reflect the allocation of Trust Value and Trust Liabilities to the relevant Class or Series).

**Net Income** has the meaning given in section 95 of the *Income Tax Assessment Act 1936* (Cth).

**New Manager Sponsor Unitholders** means, in the context of a new Manager appointed to replace a Manager who is retiring under clause 16, the Sponsor Unitholders who are issued Sponsor B Units pursuant to clause 16.3(d).

**Non-Traded Securities** means any financial product other than Traded Securities.

**Ordinary Resolution** means:

- (a) a resolution passed at a meeting by a majority of the votes cast by Unitholders who are present at the meeting or who have otherwise validly appointed a proxy to vote on their behalf and who are entitled to vote on the resolution; or
- (b) a resolution passed in writing by Unitholders who are entitled to vote and who, between them, hold the majority of votes that are able to be cast.

**Ordinary Unit** means a Unit with the rights set out in clause 3.3.

**Ordinary Unitholder** means the person for the time being registered on the Register as the holder of an Ordinary Unit, and, where the context dictates, an Ordinary Unitholder shall include a person who has made a Subscription (and had that Subscription accepted by the Trustee, in whole or in part) but has not yet been issued Ordinary Units.

**Other Agreement** has the meaning given in clause 0.

**Outgoing Manager Sponsor Unitholders** means, in the context of a new Manager appointed to replace a Manager who is retiring under clause 16, the Sponsor Unitholders who are entitled to Sponsor Distributions as calculated pursuant to clause 16.4.

**PEP** means Pacific Equity Partners Pty Limited.

**Pacific Equity Partners Gateway Co-investment Trust** means the trust known as Pacific Equity Partners Gateway Co-investment Trust, constituted by the Pacific Equity Partners Gateway Co-investment Trust Trust Deed.

**Pacific Equity Partners Gateway Co-investment Trust Trust Deed** means the trust deed dated 12 August 2022 (as amended from time to time).

**Person** means any individual or any business, corporation, partnership, joint venture, limited liability company, unincorporated association, trust or other enterprise.

**Proceeds** means cash or property received by the Trust with respect to any Investment, whether in connection with a sale of an Investment or otherwise.

**Quarter** means a period of three months ending on 31 March, 30 June, 30 September and 31 December in each year (or that part of such a period occurring at the commencement or winding up of the Trust) and **Quarterly** has a corresponding meaning.

**Redemption Price** means the amount calculated for the relevant Class of Units in accordance with clause 9.4.

**Register** has the meaning given in clause 8(a).

**Related Body Corporate** has the meaning given in the Corporations Act.

**Reserve Amount** means the sum of the Follow-on Funding Reserve Amount and the Expenses Reserve Amount.

**Security Interest** means any mortgage, hypothecation, charge, pledge, lien, encumbrance, arrangement for the retention of title or any other similar right, interest, power or arrangement of any nature having the effect of providing security.

**Series** means, in each case, a group of Ordinary Units:

- (a) designated by the Trustee in accordance with clause 4.5(b); and



(b) entered in the Register,

as belonging to a single group.

**Series Proportion** in relation to an Ordinary Unitholder in respect of a Series, means a percentage, the numerator of which is the total number of Ordinary Units held by the Ordinary Unitholder in that Series and denominator of which is the total number of Ordinary Units on issue in that Series.

**Short Term Investment** means:

- (a) an investment which is guaranteed by a Government Agency;
- (b) securities (as defined in section 761A of the Corporations Act), loans, deposits, bills of exchange, promissory notes, certificates of deposit or other negotiable instruments of an authorised deposit taking institution within the meaning of the *Banking Act 1959* (Cth) or any other entity (with aggregate capital, surplus and undivided profits of at least \$250,000,000) conducting the business of banking anywhere in the world;
- (c) an Investment in a Cash management trust which is rated not less than AAA;
- (d) an Investment in an entity which is rated not less than prime-one or A-1 or their equivalents by Moody's Investor Service Inc or Standard & Poor's Ratings Group or their respective successors;
- (e) an Investment in any repurchase agreement secured by any one or more of the foregoing;
- (f) liquid securities intended to provide for the preservation of principal; or
- (g) an Investment in a fund that invests primarily in one or more of the Investments referred to in paragraph (a), (b), (c), (d), (e) or (f).

**Special Resolution** means:

- (a) a resolution passed at a meeting by at least 75% of the votes cast by Unitholders who are present at the meeting or who have otherwise validly appointed a proxy to vote on their behalf and who are entitled to vote on the resolution; or
- (b) a resolution passed in writing by Unitholders who are entitled to vote and who, between them, hold at least 75% of the votes that are able to be cast.

**Sponsor** means the Trustee or the Manager or any person nominated by the Manager.

**Sponsor B Unit** means a Sponsor Unit issued to a New Manager Sponsor Unitholder.

**Sponsor Distribution** means a distribution to which Sponsor Unitholders are entitled under this Deed or as disclosed in the Disclosure Document from time to time.

**Sponsor Unit** means a Unit with the rights set out in clause 3.4.

**Sponsor Unitholder** means the person for the time being registered in the Register as a holder of a Sponsor Unit.

**Subscription** means a subscription for fully paid Ordinary Units submitted to the Trustee by a prospective or existing Unitholder (in a form acceptable to the Trustee in its discretion, whether as an application form, subscription deed or otherwise), whereby the total Issue Price for those Units is payable together with that subscription (unless otherwise determined by the Trustee in its discretion).

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth) and/or the *Income Tax Assessment Act 1997* (Cth), as applicable, and where appropriate, includes the *Taxation Administration Act 1953* (Cth), applicable imposition and/or collection legislation, and any subordinate legislation in relation to those Acts or that legislation.

**Taxes** means all income tax, GST, recoupment tax, land tax, sales tax, payroll tax, fringe benefits tax, group tax, profit tax, interest tax, property tax, undistributed profits tax, withholding tax, municipal

rates, stamp duty and other taxes, charges and levies assessed or charged or assessable or chargeable by or payable to any national, federal, state or municipal taxation or excise authority, including any interest, penalty, charge, fee or other amount imposed or made on or in respect of the failure to file a return in respect of or to pay any such tax, rates, duties, charges or levies.

**Terms of Issue**, in relation to a Unit, means the terms and conditions on which that Unit is issued.

**Traded Securities** means financial products that are quoted on a financial market.

**Trust** has the meaning given in the recitals.

**Trust Commencement Date** means the date on which the Trust commences in accordance with clause 1.3(c).

**Trust Liabilities** at any time, means the aggregate of the following at that time:

- (a) each liability in respect of the Trust or, where appropriate, a provision in accordance with Australian generally accepted accounting standards in respect of such liability;
- (b) each other amount (including any indemnity) payable out of the Trust Property or, where appropriate, a provision in accordance with Australian generally accepted accounting standards in respect of such liability; and
- (c) other appropriate provisions in accordance with Australian generally accepted accounting standards,

as calculated by the Manager but excluding any amounts included as liabilities for accounting purposes reflecting funds available to pay Unitholders. Where more than one Class or Series is on issue and the Net Asset Value of the Trust Property referable to a particular Class or Series (as the case may be) is being calculated, reference to "liabilities" means that proportion of the liabilities in respect of the Trust that the Trustee considers are properly referable to each Class or Series (as the case may be).

**Trust Property** means all property (including income) of the Trust.

**Trust Proportion** in relation to an Ordinary Unitholder, means a percentage, the numerator of which is the total number of Ordinary Units held by the Unitholder and denominator of which is the total number of Ordinary Units on issue.

**Trustee Unitholder** means a Unitholder which holds Units as trustee, responsible entity, custodian, sub-custodian or nominee of a trust or other collective investment vehicle.

**Trust Value** at any time means the aggregate value of the following at that time:

- (a) all Investments of the Trust at the relevant time as determined by the Manager in accordance with this Deed;
- (b) the amount of money comprised in the Trust Property (to the extent not included in paragraph (a)); and
- (c) any other Trust Property,

as calculated by the Manager in accordance with this Deed.

**Unit** means an interest in the Trust Property and includes an Ordinary Unit, a Sponsor Unit and any other Class of Units issued by the Trustee pursuant to clause 3.2.

**Unitholder** means the person for the time being registered in the Register as the holder of a Unit.

**Unitholding** means the Units held by an Ordinary Unitholder or a Sponsor Unitholder (as the context requires).

## 2 Interpretation

The following rules of interpretation apply unless the context requires otherwise:

- (a) the singular includes the plural and conversely;
- (b) a gender includes all genders;
- (c) headings are for convenience only and do not affect interpretation;
- (d) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to a person includes a body corporate, an unincorporated body or other entity and conversely;
- (f) a reference to any party to this Deed or any other agreement or document includes the party's successors and permitted assigns;
- (g) a reference to any agreement or document is to that agreement or document as amended, novated, supplemented, varied or replaced from time to time;
- (h) a reference to any legislation or to any provision of any legislation includes any modification, re-writing or re-enactment of it, any legislative provisions substituted for it, and all regulations and statutory instruments issued under it;
- (i) a reference to currency, an amount of money, **dollars** or **\$** is to Australian currency;
- (j) a word or phrase appearing in a certain context which is defined in the Corporations Act, has that defined meaning in this Deed;
- (k) a reference to conduct includes, without limitation, any omission, statement or undertaking, whether or not in writing;
- (l) the listing rules of a stock exchange will be regarded as a law;
- (m) a reference to a clause or schedule is to a clause of, or schedule to, this Deed;
- (n) a reference to writing includes a facsimile and email transmission and any means of reproducing words in a tangible and permanently visible form; and
- (o) mentioning anything after **include**, **includes** or **including** does not limit what else might be included.

## **Schedule 2**

### **Meetings (clause 22)**

#### **1 Effect of Non-Receipt of Notice**

Non-receipt of the notice convening a meeting or of a written resolution by, or accidental omission to give the notice to, any person entitled to receive the notice will not invalidate the proceedings at or any resolution passed at a meeting or the written resolution.

#### **2 Quorum**

- (a) No business will be transacted at any meeting unless a quorum of Unitholders is present at the time when the meeting proceeds to business. The quorum for a meeting of Unitholders will be two Unitholders holding not less than 30% of the Units, unless there is only one Unitholder, in which case the quorum will be one.
- (b) For the purpose of determining whether a quorum is present, a person attending as a proxy for a Unitholder will be taken to be a Unitholder.

#### **3 If Quorum Not Present**

If a quorum is not present within half an hour from the time appointed for the meeting:

- (a) where the meeting was convened upon the requisition of Unitholders, the meeting will be dissolved; or
- (b) in any other case:
  - (i) the meeting stands adjourned to a day, and at a time and place, as the Trustee determines or, if no determination is made by the Trustee, to the same day in the next week at the same time and place; and
  - (ii) if at the adjourned meeting a quorum is not present within half an hour from the time appointed for the meeting, the meeting will be dissolved.

#### **4 Adjournments**

- (a) The chairman may with the consent of any meeting at which a quorum is present, and must if directed by the meeting, adjourn the meeting from time to time and from place to place. No business will be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- (b) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting will be given as for the original meeting.
- (c) Except as provided by paragraph (b), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

#### **5 Voting**

- (a) Every question arising at a meeting of Unitholders will be decided in the first instance by a show of hands of Unitholders, except that a poll must be taken in any case where:
  - (i) it is required by this Deed that the question be decided by a majority which is to be measured by a percentage of the votes of those present; or
  - (ii) it is demanded, either before or immediately after any question is put to a show of hands, by Unitholders present personally or by proxy, holding between them at least 10% of the Units or by the Trustee.

- (b) Unless a poll is demanded, a declaration by the chairman that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Unitholders, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (c) The demand for a poll may be withdrawn before it is taken.

## **6 Procedure for Polls**

- (a) Subject to paragraph (b), if a poll is properly demanded, it will be taken in the manner, either at once or after an interval or adjournment or otherwise, as the chairman directs, and the result of the poll will be the resolution of the meeting at which the poll was demanded.
- (b) A poll demanded on the election of a chairman or on a question of adjournment will be taken immediately.

## **7 Joint Unitholders**

Where there are joint Unitholders only one may vote in respect of their Units and, if there is more than one present, that person will be the person whose name stands first on the Register.

## **8 Objections to Qualification to Vote**

- (a) An objection may be raised to the qualification of a voter only at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- (b) Any objection must be referred to the chairman of the meeting, whose decision is final.
- (c) A vote not disallowed as a result of an objection is valid for all purposes.

## **9 Number of Proxies**

A Unitholder will be entitled to attend and vote at any meeting of Unitholders, and will be entitled to appoint another person (whether a Unitholder or not) as the Unitholder's proxy to attend and vote. A proxy will have the same rights as the Unitholder to vote whether on a poll or show of hands, to speak and to be counted in a quorum.

## **10 Form of Proxy**

- (a) An instrument appointing a proxy will be in writing under the hand of the appointor or of the appointor's attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised.
- (b) An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy does so, the proxy is not entitled to vote on the resolution except as specified in the instrument but may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.
- (c) An instrument appointing a proxy will be taken to confer authority to demand or join in demanding a poll.
- (d) An instrument appointing a proxy will be in the form reasonably determined by the Trustee.

## **11 Lodgement of Proxy**

An instrument appointing a proxy will not be treated as valid unless the instrument, and the power of attorney or other authority (if any) under which the instrument is signed or a notarially certified copy of that power or authority, is or are deposited:

- (a) not less than 24 hours (or a lesser period that the Trustee may permit) before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote; and
- (b) in the case of a poll, not less than 24 hours (or a lesser period that the Trustee may permit) before the time appointed for the taking of the poll,

at the office maintaining the Register or at another place within Australia as is specified for that purpose in the notice convening the meeting. For the purposes of this paragraph, any document a facsimile of which is received upon a telephonic facsimile machine installed at a place will be taken to be received at that place at the time when the facsimile is received upon the machine.

## **12 Validity of Proxy**

A vote given under an instrument of proxy is valid despite the previous death or unsoundness of mind of the principal, the revocation of the instrument (or of the authority under which the instrument was executed), or the transfer of the Unit in respect of which the instrument or power is given, if no intimation in writing of the death, unsoundness of mind, revocation or transfer has been received by the Trustee at the office maintaining the Register before the start of the meeting or adjourned meeting at which the instrument is used or the power is exercised.

## **13 Where Proxy is Incomplete**

No instrument appointing a proxy will be treated as invalid merely because it does not contain the address of the appointor or of a proxy or is not dated or does not contain in relation to any or all resolutions an indication of the manner in which the proxy is to vote and, in any case where the instrument does not contain the name of a proxy, the instrument will not for that reason be invalid and will be taken to be given in favour of the chairman of the meeting.

## **14 Right of Director to Attend General Meeting**

A director of the Trustee who is not a Unitholder will, by virtue of that person's office as director, be entitled to be present and to speak at any meeting.

## **15 Written Resolutions**

- (a) If a matter under this Deed requires the consent of all or a particular majority of the Unitholders, that consent may be obtained in respect of the Unitholders by written resolution signed by or on behalf of the requisite majority of the Unitholders and that resolution may consist of one or more instruments in like form each signed by one or more Unitholders.
- (b) A resolution in writing may consist of several documents in the same form. A document produced by mechanical or electronic means is considered to be a document in writing.
- (c) Any resolution proposed to be effected in writing must be sent to all Unitholders entitled to vote in respect of the resolution.
- (d) Any breach of paragraph (c) will not invalidate the written resolution.

## **16 Technology**

A meeting of Unitholders may be held by telephone or by using any other technology, as long as each person present may hear, and be heard by, each other person present.

## Schedule 3

### AMIT provisions

Unless the contrary intention appears, in this schedule capitalised terms not defined have the same meaning as in this Deed, and:

- (a) **AMIT Income Year** means a year of income for the purposes of the Tax Act that the Trust is an AMIT.
- (b) **AMMA Statement** has the meaning given to that phrase in subsection 995-1(1) of the Tax Act.
- (c) **Assessable Income** has the meaning given to it in subsection 995-1(1) of the Tax Act.
- (d) **Constituent Documents** mean the 'constituent documents' referred to in section 276-210(3) of the Tax Act.
- (e) **Determined Member Component** has the meaning given to that phrase in section 276-205 of the Tax Act.
- (f) **Determined Trust Component** has the meaning given to that phrase in section 276-255 of the Tax Act.
- (g) **Discovery Year** has the meaning given to that phrase in subsection 995-1(1) of the Tax Act.
- (h) **Exempt Income** has the meaning given to it in subsection 995-1(1) of the Tax Act.
- (i) **Member** means a Unitholder.
- (j) **Member Component** has the meaning given to that phrase in subsection 995-1(1) of the Tax Act.
- (k) **Member Objection Choice** means a choice made by a Member under the AMIT Regime for the Member's Determined Member Component to be the Member's Member Component, including a choice made by a Member under section 276-205(5) of the Tax Act.
- (l) **Non-assessable, Non-exempt Income** has the meaning given to it in subsection 995-1(1) of the Tax Act.
- (m) **Over** has the meaning given to that phrase in subsection 995-1(1) of the Tax Act.
- (n) **Tax Off-set** has the meaning given to it in subsection 995-1(1) of the Tax Act.
- (o) **Trust Component** has the meaning given to that phrase in subsection 995-1(1) of the Tax Act.
- (p) **Trust Component Deficit** has the meaning given to it in subsection 995-1(1) of the Tax Act.
- (q) **Under** has the meaning given to that phrase in subsection 995-1(1) of the Tax Act.

## 2 Trustee's Powers

### 2.1 AMIT election

- (a) The Trustee may make the choice for the Trust to be an AMIT for the purpose of section 276-10 of the Tax Act.
- (b) The Trustee may make a choice that each Class will be treated as a separate AMIT for the purposes of section 276-20 of the 1997 Tax Act.

## 2.2 General provisions

The Trustee has, without limiting its other rights and powers provided for under this Deed and this Schedule 3, all of the powers and rights which are necessary or desirable to enable:

- (a) the Trust to be eligible to apply the AMIT Regime;
- (b) the Trustee to comply with the requirements of the AMIT Regime;
- (c) the Trust to be properly administered and operated under the AMIT Regime;
- (d) the Trustee to maintain equity among Members in the operation of the AMIT Regime; and
- (e) the Trustee to exercise any discretions in the Tax Act relating to the administration and operation of AMITs, including the allocation of Unders, Overs and Trust Component Deficits.

## 2.3 Specific powers

For each Income Year during which the Trust is an AMIT, the Trustee must:

- (a) determine the total amounts of particular characters of Assessable Income, Exempt Income, Non-assessable, Non-exempt Income and Tax Off-sets for the Trust and any Class;
- (b) determine the taxable income of the Trust for each Income Year, including a determination of the taxable income of a particular category, source or character for tax purposes. This includes determining all of the Trust's Determined Trust Components and Trust Components under the AMIT Regime for any AMIT Income Year;
- (c) apply any Unders, Overs and Trust Component Deficits to the amounts in clause 2.3(a) of this Schedule 3 in accordance with subdivision 276-F of the 1997 Tax Act and subject to the discretions in that subdivision;
- (d) subject to the Terms of Issue of any particular Unit or Class, allocate the amounts so determined after the application of clause 2.3(b) of this Schedule 3:
  - (i) first, to Unitholders where their Units have been redeemed during the Income Year, in the proportion that is equal to the amount of the Income of the Trust or Class, as relevant, to which the Unitholder was entitled in relation to their redeemed Units for the Income Year divided by the total Income of the Trust or Class available for distribution for the Income Year;
  - (ii) in relation to the remainder amounts after the allocations in paragraph 2.3(d)(i) of this Schedule 3, to each Unitholder who is on the Register on the last day of the Income Year in the proportion that is equal to the sum of:
    - (A) the amounts of Income distributed to the Unitholder from the Trust or Class during the Income Year; and
    - (B) any other entitlements of the Unitholder to a portion of the Income of the Trust or Class for the Income Year,divided by the total Income of the Trust or Class for the Income Year after it has been reduced by any amounts allocated under paragraph (i) above; and
- (e) ensure that clause 3.1 of this Schedule 3 is complied with; and
- (f) comply with the documentation requirements under subdivision 276-H of the 1997 Tax Act, including the preparation of AMMA Statements within the prescribed time frames.

## 2.4 Units and Classes of Units

- (a) Subject to paragraph 2.4(b) of this Schedule 3, the Trustee may under the AMIT Regime issue Units of a single Class or single Series or different Classes or different Series. Each



different Class of Units or Series must have distinct rights, obligations and restrictions from the rights, obligations and restrictions of all other Classes or Series of Units issued, but the rights to income and capital of a particular Class or Series must be the same for every membership interest in that Class or Series. All Units in a Class or Series rank equally. Unless the Trustee has made a choice under section 276-20 that each Class or Series will be treated as a separate AMIT, a separate Class does not constitute a separate trust.

- (b) Paragraph 2.4(a) of this Schedule 3 does not permit the Trustee to attach rights, obligations or restrictions to a Class to the extent that section 601GA of the Corporations Act requires those matters to be set out in this Deed.

## **2.5 Members' acknowledgement regarding choice for Unders/Overs**

Each Member acknowledges or is taken to acknowledge:

- (a) that the Trustee has, under the AMIT Regime in respect of an AMIT Income Year a choice with respect to how the Trustee is to address any amounts which may give rise to Unders or Overs of a particular character for the Trust, including whether such amounts should be addressed by the Trustee by:
  - (i) issuing amended AMMA Statements to Members under section 276-455(4) of the Tax Act (as may be amended from time to time), for the year of income for the Trust to which the Under or Over relates; or
  - (ii) treating the amount as an Under or Over of a particular character for the Trust, and adjusting the Trust's Trust Component of that particular character in the Discovery Year for the relevant amount under section 276-305 of the Tax Act, (as may be amended from time to time); and
- (b) choices made by the Trustee pursuant to paragraph 2.2(a) of this Schedule 3 may result in:
  - (i) greater amounts of a character relating to assessable income or lesser amounts of a character relating to tax offsets being attributed to a Member in the Discovery Year; or
  - (ii) greater amounts of a character relating to assessable income or lesser amounts of a character relating to tax offsets being attributed to a Member in an earlier income year,

than if the Trustee did not make that choice or made the choice in a different way.

## **2.6 Trustee's limitation of liability for AMIT Regime powers**

Without limiting clause 11.10 and to the maximum extent permitted by law, the Trustee does not incur any liability and it is not obliged to account to anyone (including any Member or former Member) nor is it liable for any loss or damage as a result of the exercise of any power, discretion or choice under this paragraph 2 of this Schedule 3, or in respect of any determination of fact or law made as part of, or as a consequence of, any exercise of such a power, discretion or choice despite any error or miscalculation in any provision made for Tax.

## **3 Attribution of Taxable Income to Member**

### **3.1 Trustee must make 'fair and reasonable' allocation**

- (a) Following the end of an Income Year which is an AMIT Income Year, the Trustee must attribute the taxable income of the Trust for the Income Year to Members under the AMIT Regime, including the attribution of taxable income of each particular category or source (or both) for tax purposes to Members.

- (b) The Trustee must perform the attribution under paragraph (a), including the attribution of taxable income of each particular category or source (or both), in accordance with the following principles:
  - (i) the amount of each Member's Member Components and Determined Member Components of a particular character is so much of the Trust's Determined Trust Component of that particular character as is attributable to the Units held by the Member;
  - (ii) the attribution must be worked out on a fair and reasonable basis, in accordance with this Deed and any other documents that constitute Constituent Documents for the Trust; and
  - (iii) the Trustee must not attribute any part of a Determined Trust Component of the Trust to a Member's Units because of the tax characteristics of the Member.

### **3.2 Attribution must be in accordance with existing distribution provisions**

Without limiting paragraph 3.1(b) of this Schedule 3, the Trustee must attribute in respect of an AMIT Income Year to each Member so much of any Determined Trust Components of the Trust for the Income Year as the Trustee reasonably determines are reflected in the Member's present entitlement to the Income of the Trust for the Income Year.

## **4 Member's Objections**

### **4.1 Member must notify, provide information and indemnify Trustee in relation to objections**

If a Member objects to the basis of the attribution of the taxable income of the Trust for the purposes of the AMIT Regime, including by making a Member Objection Choice, the Member agrees to:

- (a) provide the Trustee with written notice of the Member's intention to make an objection at least five Business Days prior to notifying the Commissioner of Taxation of its objection;
- (b) include, in the notice provided to the Trustee, a summary of the reasons why the Member considers the attribution to be inappropriate;
- (c) provide to the Trustee any information the Trustee reasonably requests in order to assess the Member's objection or proposed objection; and
- (d) indemnify the Trustee against all costs and liabilities incurred by the Trustee as a result of the objection or proposed objection.

### **4.2 Members acknowledge consequences if objection made**

Each Member is taken to agree that if any Member makes an objection to the basis of attributing the taxable income of the Trust under the AMIT Regime, including by making a Member Objection Choice:

- (a) it may be necessary or desirable for the Trustee to amend its attribution of the relevant taxable income to the Members and issue amended AMMA Statements to Members;
- (b) the Trustee may issue or reissue any AMMA Statement to a Member;
- (c) the Determined Member Components of the Member and any other Members in the Trust may, under the AMIT Regime, be equal to the Member Components of the Member and any other Members in the Trust; and
- (d) the Determined Trust Components of the Trust may, under the AMIT Regime, be equal to the Trust Components of the Trust.

#### **4.3 Limitation of liability**

The Trustee has no liability in respect of any act, matter or thing done or omitted to be done by a Member in relation to an objection to the basis of attribution of the taxable income of the Trust under the AMIT Regime, including by the Member making a Member Objection Choice.

### **5 Trustee Indemnity**

#### **5.1 Trustee has a right to be indemnified for Tax payable**

Each Member is required to indemnify the Trustee for:

- (a) any Tax payable by the Trustee as a result of the application of the AMIT Regime which the Trustee reasonably determines relates to the Member, Units held by the Member, or an attribution of taxable income made to the Member; and
- (b) any other costs, expenses or liabilities incurred by the Trustee as a result of being liable to such Tax, and claiming on the indemnity provided by the Member under paragraph 5.1 of this Schedule 3 or under the AMIT Regime.

#### **5.2 Trustee may prescribe terms and conditions**

The Trustee may prescribe particular terms and conditions which apply in the event that the Trustee is entitled to be indemnified by a Member under paragraph 5.1 of this Schedule 3, or under the AMIT Regime.

#### **5.3 Methods through which indemnity may be satisfied**

The Members agree that the Trustee may, if it is entitled to be indemnified by a Member under paragraph 5.1 of this Schedule 3, or under the AMIT Regime undertake the following actions in order to satisfy that indemnity:

- (a) deduct from any amounts owing to the particular Member the aggregate of any amounts which the Trustee is entitled to be indemnified under paragraph 5.1 of this Schedule 3, or under the AMIT Regime; and
- (b) compulsorily redeem such number of units held by the Member which the Trustee reasonably determines is sufficient to cover the amounts for which the Trustee is entitled to be indemnified under paragraph 5.1 of this Schedule 3 or under the AMIT Regime.

**Executed and delivered** as a deed in Sydney.

**Executed** as a deed in accordance with  
section 127 of the *Corporations Act 2001*  
(Cth) by **PEP Gateway Co-investment  
Investors Administration Access Pty Limited:**



\_\_\_\_\_  
Director Signature

**Simon David Pillar**

\_\_\_\_\_  
Name of director (print)



\_\_\_\_\_  
Director/Secretary Signature

**Wai Sum Kong**

\_\_\_\_\_  
Name of director/secretary (print)

**Executed** as a deed in accordance with  
section 127 of the *Corporations Act 2001*  
(Cth) by **PEP Gateway Management Pty  
Limited:**



\_\_\_\_\_  
Director Signature

**Cameron Blanks**

\_\_\_\_\_  
Name of director (print)



\_\_\_\_\_  
Director/Secretary Signature

**Wai Sum Kong**

\_\_\_\_\_  
Name of director/secretary (print)