

**Acorn Capital Private Opportunities Fund L.P.**

# Private Placement Memorandum

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**28 September 2015**

# Table of contents

<b>1</b>	<b>Important notice</b>	<b>3</b>
1.1	Binding.....	3
1.2	Issuer.....	3
1.3	Private placement to wholesale investors.....	3
1.4	Content.....	3
1.5	Due diligence.....	3
1.6	Advice.....	3
1.7	Confidentiality.....	3
1.8	Risks.....	4
1.9	Forward looking statements.....	4
1.10	Gross returns.....	4
<b>2</b>	<b>Executive summary</b>	<b>5</b>
2.1	Introduction.....	5
2.2	Tax Status.....	5
2.3	Track Record.....	5
2.4	Summary of features of the Fund.....	5
2.5	How to apply.....	7
<b>3</b>	<b>Investment plan</b>	<b>7</b>
<b>4</b>	<b>Track Record</b>	<b>11</b>
<b>5</b>	<b>Manager</b>	<b>14</b>
<b>6</b>	<b>Investment team</b>	<b>14</b>
<b>7</b>	<b>Investment allocation and conflicts of interest</b>	<b>15</b>
<b>8</b>	<b>Taxation</b>	<b>17</b>
8.1	General.....	17
8.2	Non-resident Limited Partners.....	17
8.3	Australian resident Limited Partners.....	17
8.4	Foreign Account Tax Compliance Act.....	17
<b>9</b>	<b>Risk considerations</b>	<b>18</b>
9.1	General.....	18
9.2	Macroeconomic uncertainty and industry specific factors.....	18
9.3	Business risks.....	18
9.4	Failure to achieve investment objectives.....	18
9.5	Leverage and financial risk.....	18
9.6	Diversification.....	18
9.7	Competition for investments.....	18
9.8	Illiquidity of investments.....	18
9.9	No control by investors.....	18
9.10	Management.....	19
9.11	Limited information available to investors.....	19
9.12	Minority interests.....	19
9.13	Risks associated with offshore investments.....	19
9.14	Currency risk.....	19
9.15	Dependence on management of investee entities.....	19
9.16	Reliance on past performance.....	19
9.17	Significant adverse consequences for default.....	19
9.18	Investee entity directors.....	19
9.19	Changes in legal, tax and regulatory regimes.....	19
9.20	Market conditions.....	20
9.21	Contingent liabilities on disposal of investments.....	20
9.22	Conflicts of interest.....	20

# Contents

	9.23 Follow-on investments.....	20
<b>10</b>	<b>Summary of key fund terms</b>	<b>21</b>
<b>11</b>	<b>Glossary</b>	<b>26</b>
	<b>Attachment</b>	
	<b>Subscription form</b>	

## **1 Important notice**

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### **1.1 Binding**

By accepting this Memorandum, each recipient of this Memorandum agrees to be bound by this section 1.

### **1.2 Issuer**

This Memorandum was prepared and issued by the Manager.

No person other than the Manager has been authorised to give any information or to make any representation in connection with the Fund, the General Partner, the Manager or this Memorandum.

### **1.3 Private placement to wholesale investors**

This Memorandum is solely for the internal use of a limited number of wholesale clients (within the meaning of the Corporations Act) in connection with their consideration of an investment in the Fund.

The Fund will not be registered as a managed investment scheme under the Corporations Act.

The offer or issue of interests in the Fund does not require, and this Memorandum is not, a disclosure document or product disclosure statement within the meaning of the Corporations Act.

Limited Partner Interests are being offered as a private placement to a limited number of persons.

This Memorandum is not an offer, invitation or solicitation to any person in any jurisdiction other than:

- (a) a State or Territory of Australia; or
- (b) a jurisdiction in which such an offer, invitation or solicitation would not be prohibited by law.

### **1.4 Content**

This Memorandum contains certain information regarding the Fund, the General Partner and the Manager.

This Memorandum is incomplete without reference to, and should be viewed in conjunction with, the Constituent Documents and the contents of any relevant Data Room.

The contents of this Memorandum are qualified in their entirety by the terms, conditions or other provisions of the Constituent Documents, which should be reviewed carefully before making any decision to invest in the Fund.

This Memorandum and any other written and oral information provided by the Manager or any of its Associates or any agent, officer, employee or adviser of any of them does not purport to be complete, accurate or contain all information that a recipient of this Memorandum may require to make an informed assessment regarding an investment in the Fund.

## **1.5 Due diligence**

Recipients of this Memorandum should conduct their own due diligence investigations regarding the appropriateness, accuracy and completeness of the contents of this Memorandum.

The Manager and each of its Associates and each agent, officer, employee and adviser of any of them:

- (a) do not represent or warrant the accuracy, completeness or currency of, or accept any responsibility for errors or omissions in, this Memorandum or any other written and oral information provided by any of them in connection with the Fund, the General Partner, the Manager or this Memorandum; and
- (b) disclaim and exclude all liability (to the maximum extent permitted by law) for all losses and claims arising in any way out of or in connection with this Memorandum or any such other information, including by reason of reliance by any person on the contents of this Memorandum or any such other information.

## **1.6 Advice**

Recipients of this Memorandum should not construe the contents of this Memorandum as legal, financial, tax, accounting, investment or other advice.

No financial product advice is provided in this Memorandum and nothing in this Memorandum or in any other written and oral information provided by the Manager or any of its Associates or any agent, officer, employee or adviser of any of them should be taken to constitute a recommendation or statement of opinion that is intended to influence a person or persons in making an investment decision.

This Memorandum and any other written and oral information provided by the Manager or any of its Associates or any agent, officer, employee or adviser of any of them does not take into account the objectives, circumstances (including financial situation) or needs of any particular person.

Before acting on the information contained in this Memorandum or any other written or oral information provided by the Manager or any of its Associates or any agent, officer, employee or adviser of any of them, or making a decision to invest in the Fund, recipients of this Memorandum should seek their own, independent professional advice.

## **1.7 Confidentiality**

This Memorandum and its contents:

- (a) must be kept confidential;
- (b) must not be used except for the sole purpose of considering a possible investment in the Fund; and
- (c) may not be reproduced or used by or distributed to any person, in whole or in part, without the prior written consent of the Manager, other than on a confidential basis to

the extent reasonably determined to be necessary or desirable to a professional advisor of the recipient.

Upon request by the Manager, this Memorandum and any copies of all or part of this Memorandum are to be returned to the Manager.

### 1.8 Risks

An investment in the Fund will involve significant risks due to, among other things, the nature of the potential investments by the Fund.

There is no assurance that the investment objectives for the Fund will be achieved or that Limited Partners will receive a return on any investment in the Fund. See section 8 of this Memorandum.

Limited Partners must have the financial ability and willingness to accept the risks and lack of liquidity of an investment in the Fund.

There will be no public market for interests in the Fund.

The Fund Constitution prohibits:

- (a) transfers of or dealings with Limited Partner Interests by Limited Partners (except with approval by the General Partner); and
- (b) withdrawals or redemptions of Limited Partner Interests by Limited Partners.

### 1.9 Forward looking statements

Certain information contained in this Memorandum constitutes forward looking statements that can be identified by the use of forward-looking terminology such as 'may', 'will', 'should', 'expect', 'anticipate', 'estimate', 'intend', 'continue' or 'believe' or the

negatives or other variations of such words or comparable terminology.

Any projections or other estimates in this Memorandum, including estimates of returns or performance, are 'forward looking statements' and are based upon certain assumptions that may change.

Due to various risks and uncertainties, including those described in section 8 of this Memorandum, actual events or results or the actual performance of the Fund may differ materially from those reflected or contemplated in forward-looking statements in this Memorandum.

Future events are difficult to project and often depend upon factors that are beyond the control of the General Partner, the Manager and any Associate of the General Partner or of the Manager.

In considering information in this Memorandum regarding past performance, prospective Limited Partners should bear in mind that past performance is not necessarily indicative of future results, and there can be no assurance that the Fund will achieve comparable results, that unrealised returns referred to in this Memorandum will be met, or that the Fund will be able to make investments similar to the historical investments referred to in this Memorandum.

### 1.10 Gross returns

Unless specified otherwise in this Memorandum, contents of this Memorandum regarding returns, are presented on a gross basis, before management fees and other fund-level expenses are deducted.

## 2 Executive summary

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### 2.1 Introduction

Acorn Capital Private Opportunities Fund L.P. (the **Fund**) has been established to invest in a portfolio of Australian emerging growth companies. The Fund will provide investors with access to Australian growth private equity and venture capital, an asset class that aims to provide investors with returns through capital growth on successful investments. The objective of the Fund will be to achieve annualised after-fee returns for investors that exceed 20%. The General Partner has applied to AusIndustry for conditional registration of the Fund as a VCLP under the Venture Capital Act. The Fund will seek to raise a minimum of \$10 million of total Committed Capital of Limited Partners to invest in companies that generally are seeking early stage or expansion capital.

### 2.2 Tax Status

Once the Fund is unconditionally registered as a VCLP under the Venture Capital Act, the Fund will provide for flow-through tax treatment and an exemption for Eligible Venture Capital Partners from income tax on profits (capital or revenue) from the disposal by the Fund of Eligible Venture Capital Investments. An Eligible Venture Capital Partner includes any taxable foreign resident of any foreign country, whose Committed Capital is less than 10% of the total Committed Capital of the Limited Partners.

### 2.3 Track Record

The Manager has invested in unlisted Australian companies since 2009 and has been involved in a number of highly successful investments that the Manager considers would be likely to qualify as Eligible Venture Capital Investments for a VCLP. Through to 31 August 2015, the Manager has undertaken 23 private investments, investing approximately \$127 million. Of these investments, 14 have reached liquidity events. The average duration of all unlisted investments (those that have reached liquidity and still unlisted) is approximately 2.5 years. The estimated aggregate annualised internal rate of return on investments that the Manager has completed (and that the Manager considers would be likely to qualify as Eligible Venture Capital Investments for a VCLP) that have reached a liquidity date is 24% (refer to section 4 of this Memorandum for further information).

The Manager possesses a strong and stable team of investment professionals who are experienced investors in early stage, unlisted Australian companies.

### 2.4 Summary of features of the Fund

<b>Feature</b>	<b>Summary</b>
<i>Investment Vehicle</i>	Acorn Capital Private Opportunities Fund L.P., a limited partnership incorporated under the <i>Partnership Act 1958</i> (Vic) with the registration number L0000407X.
<i>General Partner</i>	Acorn Capital GP Pty Limited (ACN 608 108 292), a wholly owned subsidiary of the Manager.
<i>Manager</i>	Acorn Capital Limited (ABN 51 082 694 531), which holds an Australian Financial Services Licence (No. 227605).
<i>Fund Size</i>	Minimum of \$10 million of total Committed Capital of Limited Partners.

	Maximum of \$100 million of total Committed Capital of Limited Partners.
<i>Purpose</i>	To provide investors with exposure to emerging growth companies.
<i>Investor Type</i>	Investors in the Fund are restricted to wholesale clients (as defined in the Corporations Act).
<i>Minimum Investment Amount</i>	\$50,000.
<i>Closing</i>	<p>First Closing Date will occur on the raising of at least \$10 million of Committed Capital.</p> <p>Final closing will occur on the earlier of:</p> <ul style="list-style-type: none"> <li>• the raising of \$100 million of Committed Capital; and</li> <li>• 18 calendar months after the end of the calendar month in which the First Closing Date occurs.</li> </ul>
<i>Initial Capital Contributions</i>	Initial drawdown on the First Closing Date of 20% of the Committed Capital of each Limited Partner.
<i>Tax Status</i>	The Fund will provide for flow-through tax treatment and an exemption for Eligible Venture Capital Partners from income tax on profits (capital or revenue) from the disposal by the Fund of Eligible Venture Capital Investments. More details are set out in section 8 of this Memorandum.
<i>Term of Investment</i>	<p>Investment period of 4 years from the First Closing Date.</p> <p>Commencement of winding up within 7 years after the First Closing Date, with a right of the General Partner to extend the period by up to an additional 3 years.</p>
<i>Risks</i>	See section 9 of this Memorandum.
<i>Applications</i>	See the attachment to this Memorandum.
<i>Management Fee</i>	<p>Management fee of 2% per annum will be payable to the Manager:</p> <ul style="list-style-type: none"> <li>• calculated during the Investment Period, on the total Committed Capital of the Limited Partners; and</li> <li>• calculated after the Investment Period, on the Acquisition Cost of the Investments at that time held by the Fund (other than Liquid Investments and Investments that the General Partner has determined to value permanently at nil value).</li> </ul> <p>The Manager may agree to rebate to a Limited Partner, a portion of the Management Fee that is borne by the Limited Partner. The Manager may in its absolute discretion agree to such a rebate for any reason, including if the Committed Capital of the Limited Partner exceeds an amount determined by the General Partner.</p> <p>All amounts are exclusive of GST.</p>
<i>Carried Interest</i>	20% subject to a preferred return of 8% per annum to the Limited Partners.
<i>Expenses</i>	Subject to certain exceptions, the Fund must indemnify the General Partner and the Manager in respect of any Reimbursable Expenses.

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Reimbursable Expenses include fees payable to placement agents or other persons in connection with finding or arranging for persons to become Limited Partners, to the extent such fees do not exceed 3% of the Committed Capital of the Limited Partners. Any excess of such fees will be borne by the Manager.

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## 2.5 How to apply

Wholesale clients (as defined in the Corporations Act) may apply for a Limited Partner Interest by completing and executing the subscription form attached to this Memorandum and returning it to the General Partner before the Final Closing Date. In addition, the General Partner may request that an applicant complete and return a customer identification form accompanied by certified copies of identity documents.

## 3 Investment plan

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### Introduction

The Fund will seek to invest in a diverse (by industry and stage of development) set of opportunities. An investment undertaken by the Fund will ordinarily be one that the Manager considers:

- has a relatively more attractive valuation than that of companies in a comparable listed peer-set;
- is at an early or expansion stage of development and has strong growth prospects;
- possesses key management with strong track records;
- has a defined business model with an articulated competitive advantage for the market in which the company operates; and
- has a path to liquidity within 3 to 5 years.

The Fund has applied to AusIndustry for conditional registration as a VCLP under the Venture Capital Act. Following conditional registration, the Fund will apply for unconditional registration when the total Committed Capital of the Limited Partners is at least \$10 million. The investment plan in this section has been designed to meet the requirements for a VCLP under the Venture Capital Act and the Income Tax Assessment Act. These requirements include limitations on what the Fund may invest in.

### Portfolio Objectives

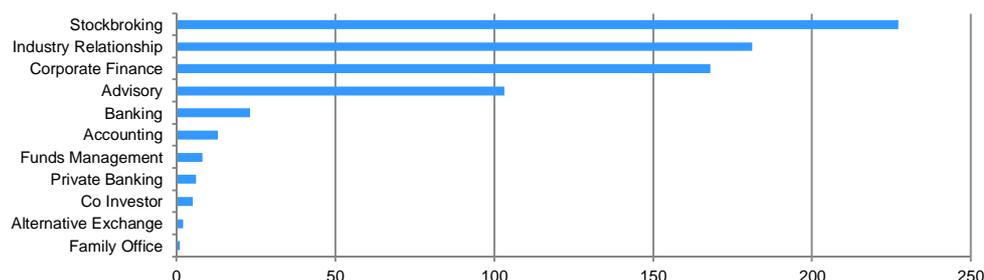
It is intended that the Fund invest alongside other funds that are managed by the Manager on the basis of the investment allocation policy of the Manager. More information about the investment application policy is set out in section 7 of this Memorandum. The Manager believes that such manner of investing will increase the number of investments that the Fund can make. This potentially provides investors with diversification benefits which they may not otherwise receive in a portfolio that is more concentrated and has fewer investments.

**Table 1 – Summary of Desired Portfolio Characteristics**

Total Committed Capital	\$10 million to \$100 million.
Targeted Number of Investments	Approximately 8 to 15.
Investment Period	4 years from the First Closing Date.
Fund Period	Commencement of winding up within 7 years after the First Closing Date, with a right of the General Partner to extend the period by up to an additional 3 years.
Target Returns	20% per annum (after management fees) on capital contributions to the Fund.

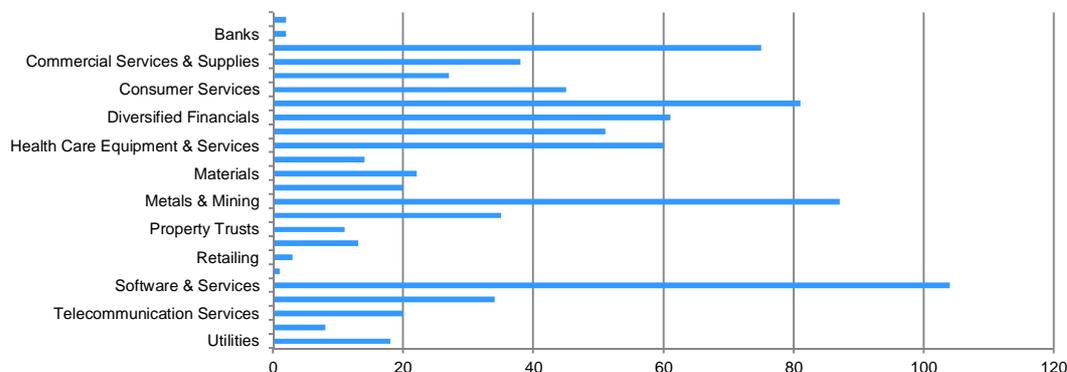
**Investment Opportunity Origination and Portfolio Industry Diversification**

The Manager will leverage its extensive network in the identification of private investment opportunities across all industry sectors. The Manager's three largest sources of deal flow are stockbrokers, corporate finance advisers and industry relationships as illustrated by Figure 1. Since 2009, the Manager has reviewed more than 830 potential private investment opportunities.

**Figure 1 – Distribution of Deal flow by Source**

Source: Estimated by the Manager as at 31 August 2015

The Manager believes that it has an extensive deal origination network that will assist it in its goal of the Fund holding a balanced portfolio across industry sectors and stage of investment. Figure 2 below illustrates the diversity of potential investments reviewed by the Manager across industry sectors.

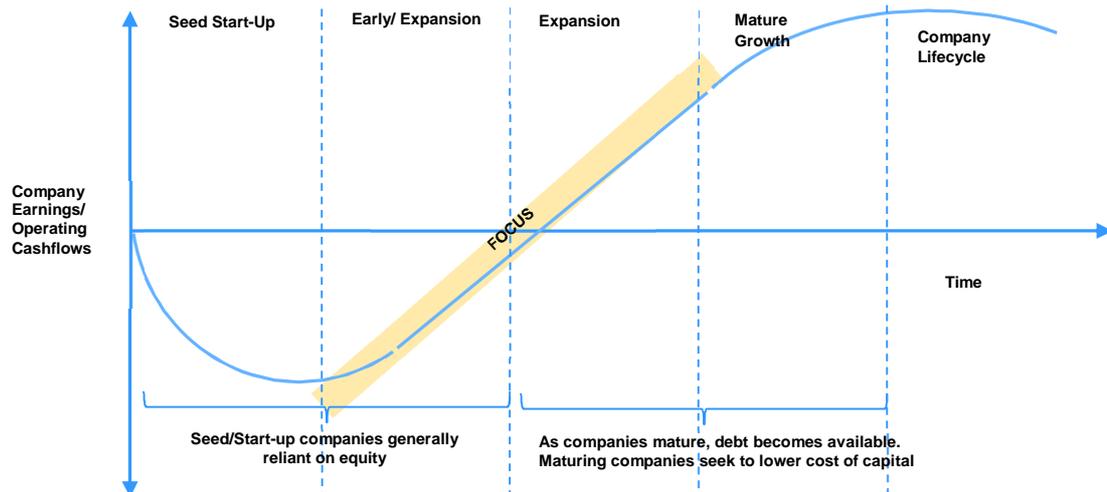
**Figure 2 – Distribution of Deal Flow Across Industry Sectors**

Source: Estimated by the Manager as at 31 August 2015

### Proposed Investee Companies

The Manager will seek to balance the portfolio by industry, and number of investments in an attempt to manage portfolio risk. Investee companies will typically be those seeking expansion capital at a later stage of development. Generally, such companies will be generating revenue (although may not be profitable at the time of investment). The Fund will focus on companies that are seeking equity capital and that are at the expansion stage of development as illustrated in Figure 3 below.

**Figure 3 – Illustration of Fund Investment Stage Focus**



As illustrated above, an early or expansion stage company typically does not generate positive operating cashflow and is dependent on external capital (which generally has equity characteristics) until its business model becomes economic.

The Fund is targeting a maximum investment amount in seed or start-up companies (as determined by the Manager at the time of initial investment) of 10% of the total Committed Capital of the Limited Partners.

### Fund Approach to Making and Holding Eligible Investments

Consistent with the historical investment approach of the Manager, the Fund proposes to take minority equity positions in investment opportunities. The Manager believes that the risk profile of a portfolio can be managed through diversification by investment number and industry sector and trades off investee company control for such diversification. The Manager further believes that investee companies are well served by a properly constituted board that has the capacity to assist management in the development and growth of the company. The Manager will have regular engagement with the management and boards of investee companies and will often require status as an observer to such boards as a condition to investment by the Fund. It is not expected that the Fund will have the right to appoint a director to the boards of investee companies.

### Investment Process

The investment process for the Fund is based on the record of the Manager in managing long-term investments in both public and private companies. Central to the philosophy for the investment process is the belief that an investor should be rewarded for the risks of liquidity, governance and transactional complexity that may be relatively higher than those of publicly traded securities. A simplified outline of the investment process is illustrated in Figure 4 below.

**Figure 4 – Illustration of the Investment Process for the Fund**

### **Skills and Resources to Implement Investment Process**

The Manager has a team of 11 investment professionals to draw upon for identifying and managing investments for the Fund. The broad skill sets of the investment team can be grouped as follows:

- Private markets investment experience. The Manager has a dedicated Private Markets group for managing the investment process for the Fund. The biographies of the senior members of this team are set out in section 5 of this Memorandum.
- Industry Expertise. The Manager employs 5 Australian-focused Portfolio Managers, each of whom focuses on specific industry sectors. The experience of the Portfolio Managers can be called upon by the Private Markets team in the evaluation, due diligence and execution of investment opportunities for the Fund. The extensive relationships of the Portfolio Managers has historically also been a source of exclusive investment opportunities.

The principal members of the investment team are described further in section 5 of this Memorandum.

### **Initial Screen and Preliminary Due Diligence**

The Manager will initially screen investment opportunities for potential investment by the Fund. Considerations in the screening of an investment opportunity include:

- determination of whether the opportunity generates an appropriate, risk-adjusted, absolute return and is relatively more attractive than comparable Australian listed companies, such that valuation of the investment recognises the elevated risks of private company investment;
- a defined business model with an articulated competitive advantage for the market in which the entity operates;
- determination of whether the underlying business has strong growth prospects;
- whether key management personnel, with demonstrated track records, are in place;
- preliminary assessment that the potential investment will fall within the relevant investment parameters under the Venture Capital Act and the Income Tax Assessment Act; and
- an articulated path to liquidity within 3 to 5 years.

Depending on the opportunity, there may be a need to conduct preliminary due diligence to either validate or better define the investment thesis.

### **Transaction Pricing and Structure**

The Manager aims to leverage its public and private markets experience to determine an appropriate valuation and investment transaction structure for the Fund, which is then negotiated with the investee company. The Manager believes the transaction pricing and structure should (where possible) reflect:

- an appropriate risk adjusted absolute return that is relatively more attractive than comparable opportunities available on the ASX and other securities exchanges and their relative valuation;
- elevated risks of liquidity, governance and transactional complexity;
- the commercial risks of executing the business plan;
- an alignment of interests among key stakeholders; and
- a proposed path to liquidity.

The transaction pricing and structure will vary between transactions.

#### **Detailed Research and Due Diligence**

Following progression of the transaction pricing and structure, the Manager will generally conduct research and due diligence to validate the investment thesis as well as representations made by the prospective investee entity. Internal research will generally be conducted by the Manager through leveraging the experience of its:

- Private Markets group; and
- 5 Australian-focused sector portfolio managers and analysts.

Where considered necessary by the Manager, internal due diligence may be supplemented by external due diligence. Categories of external due diligence may include:

- legal;
- financial;
- technical; and
- commercial.

#### **Legal Documentation and Investment Approvals**

The Private Markets group of the Manager is responsible for the preparation and execution of legal documentation to reflect and facilitate the investment transaction. The assistance of external legal advisors may also be sought at this stage.

Once due diligence is completed and legal documentation substantially progressed, the Manager will prepare an investment recommendation for approval by its Investment Committee. The Investment Committee will generally approve an investment recommendation only if an agreed compliance framework has been followed and the investment recommendation has the support of the Private Markets group as well as the relevant industry sector portfolio manager of the Manager.

#### **Investment Management and Liquidity**

Post investment, the Private Markets group and relevant industry sector portfolio manager of the Manager will remain engaged with the board and management of the investee company. Such engagement will generally involve monitoring the performance of business plan execution of the investee company. As a function of its large team and size, the Manager will often work with investee companies in strategy development and also assist their plans for liquidity.

## **4 Track Record**

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On behalf of its clients, the Manager has made investments in private companies since 2009. In that period, its managed funds have made 23 private investments.

To illustrate the Manager's experience in private investing, Table 2 below provides an overview of the key metrics. Not all of the 23 private investments would qualify as a Eligible Venture Capital Investments for a VCLP. The figures quoted below set out returns for all of the 23 private investments. In addition and for illustrative purposes only, the returns on a sub-set of these private investments that the Manager considers would be likely to qualify as Eligible Venture Capital Investments for a VCLP, are set out in Table 2 below.

**Table 2 –Investment Metrics <sup>(1)</sup>**

<b>Item</b>	<b>Metric</b>
Number of unlisted investments <sup>(2)</sup>	23
Number of unlisted investment that have reached a liquidity event (eg IPO or trade sale)	14
Capital invested in unlisted investments	\$127 million
Weighted average duration (calculated to liquidity date, including investments yet to reach liquidity)	2.5 years
Estimated aggregate annualised internal rate of return <sup>(3)</sup> on all investments that have reached a liquidity event	20%
Estimated aggregate annualised internal rate of return on investments that have reached a liquidity event and that the Manager considers in its opinion would be likely to qualify as Eligible Venture Capital Investments for a VCLP <sup>(3)(4)</sup>	24%

(1) All figures unaudited and are intended as a guide

(2) Total number of unlisted investments completed by the Manager since February 2009

(3) Calculated using a Zero-Base Time ITT method, which assumes that all the investments were completed at the same time. The calculation is before any fees and costs. Under current investment mandates, the Manager has the ability to hold unlisted investments that become listed investments on an ongoing basis in the listed portfolio, accordingly to attribute the performance of unlisted investments the VWAP on the first day of the IPO is used as the measure of cash flow received on liquidity

(4) Predominantly excludes investments in property, financial and mining sectors. Returns estimated on 8 of the 14 investments that have reached liquidity

### Selected Unlisted Investments

The Manager manages a wide variety of unlisted investments across a range of industry sectors. The selected list below is aimed to highlight the Manager's experience and has not been verified as to whether the listed investments would meet the criteria of Eligible Venture Capital Investments for a VCLP.

#### Amaysim



#### Telecommunications

[www.amaysim.com.au](http://www.amaysim.com.au)

Amaysim is a Mobile Virtual Network Operator, which is a low cost mobile service provider that focuses on simplicity and low prices. Since the initial investment in October 2011, the amaysim customer base grew from approximately 100,000 customers to over 715,000 at the time the company successfully listed on ASX in July 2015.

#### Redbubble



#### Consumer Discretionary

[www.redbubble.com](http://www.redbubble.com)

Redbubble is an online marketplace for print on-demand products based on user submitted artwork. The company was founded in 2006 in Melbourne, Australia, and also maintains offices in San Francisco. The company has annual revenues of approximately \$100 million and more than 93% of its revenues derived from non-Australian markets.

**QMS Media****Media**[www.qmsmedia.com.au](http://www.qmsmedia.com.au)

QMS Media is one of the fastest growing outdoor media company in Australia, specialising in providing clients and agency partners with quality advertising solutions across a portfolio of products including premium digital and static large format billboards, exclusive street furniture opportunities and retail advertising at path to purchase. QMS successfully listed on ASX in June 2015.

**Carbon Revolution****Industrials**[www.carbonrevolution.com.au](http://www.carbonrevolution.com.au)

Carbon Revolution produces the world's only one-piece carbon fiber wheel, which is one of the most technically advanced wheels available, and one of the most advanced lightweight technologies on any car. The company also has the support of Ronal Group in its capacity as a world leading manufacturer of alloy wheels for automotive and commercial uses. The technology that has been developed by Carbon Revolution also has application in aerospace and defence.

**TPI Enterprises****Pharmaceuticals**[www.tpienterprises](http://www.tpienterprises)

Headquartered in Melbourne and with facilities in Tasmania and Portugal, TPI is one of the world's nine licensed suppliers of licit narcotics (specifically morphine, oripavine, codeine and thebaine) to the global pharmaceutical sector. TPI has developed its water based, solvent free process to extract, concentrate and purify the narcotic active ingredient from poppy straw. It then exports licit narcotics to the international pharmaceutical industry. TPI is one of three licensed poppy processors in Australia, and the only Australian-owned company. It is one of nine processors worldwide producing Narcotic Raw Material for the international pharmaceutical industry. TPI has developed an innovative, efficient and environmentally-sustainable extraction and purification manufacturing process. TPI listed on ASX in August 2015.

**HSE Group****Industrials**[www.hsemining.com.au](http://www.hsemining.com.au)

HSE is a leading specialist provider of large-scale complex contract mining operations to Australia's major mining companies. HSE provides pre-stripping and mining services for miners and operates a large fleet of specialised mining equipment that provides earthmoving services. HSE was purchased by a member of the Swire Group in November 2013.

**Mitula****Information Technology**[www.mitulagroup.com.au](http://www.mitulagroup.com.au)

The Mitula Group is a leading "vertical search" website operator. Its vertical search functionality gives its website users the ability to search across classifieds listings from multiple verticals, being real estate, automotive, employment and holiday rentals to obtain search results from multiple advertisers with one search query. It operates its websites under the "Mitula" and "Nestoria" brands. Mitula successfully listed on ASX in July 2015.

**Midway****Industrials**

Midway is a forestry company based in Geelong which processes plantation hardwood and softwood timber into woodchips for export to international paper mill purchasers. The company owns significant chipping and port facilities in Geelong and Brisbane as well as a joint venture interest in South West Fibre in Portland.

### **PAFtec**

#### **Industrials**

PAFtec is a Sydney-based company specialising in respirator design and manufacture of devices for high level personal respiratory protection. Its device, CleanSpace is the world's smallest powered respirator with breath responsive, patented technology for respiratory protection against particles and dust. The company's respirators and accessories are designed and assembled in Australia and conform to Australian and international quality standards.

**PAFtec**

[www.paftec.com.au](http://www.paftec.com.au)

## **5 Manager**

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The Manager is a fund manager that specialises in investment in smaller companies for its clients. It was founded in 1998 and is located in Melbourne, Australia. It is the holder of an Australian Financial Services Licence (No. 227605). The Manager is majority-owned by its employees and directors and their related parties, with the remainder owned by subsidiaries of Australian Unity, which has been a shareholder of the Manager since shortly after formation of the Manager. The Manager has a long-term track record of managing microcap equities for institutional investors.

The Manager operates in three separate investment classes:

- investments in smaller-capitalised ASX-listed companies;
- investments in smaller-capitalised Asian-listed companies; and
- investments in private or unlisted Australian companies.

The Manager's investment philosophy is based on the following beliefs:

- continual research on investee (and potential investee) companies is the key to investment performance;
- asset prices generally reflect the available information at any point in time;
- it is difficult to consistently add value through market timing; and
- diversification is essential to reduce risks.

The Manager aims to exploit inefficiencies in the pricing of companies. These inefficiencies typically result from information gaps due to what the Manager considers to be a lack of research amongst the companies. The Manager seeks to identify opportunities for long-term capital growth through research which includes sector analysis and investee company interaction.

The Manager's investment team is continuously searching for investment opportunities that represent the best relative value within each industry sector.

## **6 Investment team**

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The Manager has a large investment team with experience in private and public market investing. The Manager draws upon the resources of the Manager's Private Markets group and the Asia Pacific investment experience of its portfolio managers and analysts, each of whom specialises in particular industry sectors.

Key personnel of the Manager are:

**Barry Fairley (Founder and Managing Director)**

Barry Fairley is responsible for the strategic direction and management of the Manager. Barry founded the Manager in 1998 and has more than 40 years of investment experience. Prior to forming the Manager, Barry was the Managing Director at Triako Resources. During his 15 years at Triako Resources, Barry was responsible for the company's strategic direction and management including the acquisition and financing of major projects. Barry also served as a Partner/Director at McIntosh Securities. Barry began his career at Colonial Mutual Life where he was a Financial Analyst. Barry holds a Diploma in Mining Engineering and is a Senior Associate of the Financial Services Institute of Australasia.

**Robert Routley (Head of Private Markets)**

Robert Routley has product management responsibilities for private/unlisted investments undertaken by the Manager on behalf of its clients. He is responsible for the identification, investment and ongoing portfolio management of unlisted investments. He has over 15 years of investment experience. Robert joined the Manager in 2007 and has been responsible for the establishment and implementation of the Manager's private investment strategy. Prior to joining the Manager, Robert held investment management roles with Colonial First State Private Equity and Baron Corporation. Robert holds Bachelor of Commerce and Masters of Business Administration degrees from the University of Melbourne. He is also a Chartered Accountant.

**Matthew Sheehan (Investment Director)**

Matthew Sheehan is responsible for the origination, assessment and ongoing management of private investments with a particular focus on the structuring and documentation of private investments. Matthew began his career as a private practise lawyer and worked at firms in Melbourne, New York and London. Prior to joining the Manager in 2009, Matthew worked at Macquarie Group in its Funds Management division. Matthew holds a Bachelor of Economics (Honours) from Monash University and Bachelor of Laws (Honours) and Masters of Applied Finance qualifications from the University of Melbourne.

**Robert Bruce (Head of Australian Research)**

Robert Bruce is the Head of Australian Research at the Manager. Robert joined the Manager in 2014 and his responsibilities include the co-ordination of the Manager's public markets investment expertise in the assessment of private market investment opportunities. Prior to joining the Manager, Robert spent the previous 17 years as a sell and buy side research analyst in Australia and Asia, most recently at CLSA Asia Pacific Markets. Robert holds a Bachelor of Commerce from the University of Melbourne and is a Chartered Accountant.

## 7 Investment allocation and conflicts of interest

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The Manager and its Associates act as investment managers for various clients (including funds), including in relation to finding, making and managing investments that are similar to those that may be found, made or managed for the Fund. The current policy of the Manager (which the Manager may change from time to time) is to allocate investment opportunities among the Fund and such other clients in a manner:

- that satisfies the relevant investment strategy, return objective and portfolio construction guidelines for the Fund or such other clients pro rata on the basis of the total invested and undrawn capital of the Fund or such other client; or
- in a manner determined in good faith by the Manager if the Manager considers that a different allocation would be prudent or equitable in the context of:

- the size, nature and type of investment opportunity;
- the investment guidelines and limitations in respect of the Fund or such other clients;
- the availability of cash;
- rights or obligations to distribute or return capital in respect of the Fund and rights or obligations to distribute or return capital or redeem interests in respect of such other clients;
- a determination by the Manager that the investment opportunity is inappropriate in whole or part for the Fund or such other clients;
- any requirement by an issuer or arranger of an investment or any other person in respect of the minimum, maximum or other amounts in which an investment may be held or realised; or
- such other factors as the Manager may consider relevant.

In respect of the ongoing management and divestment of investments allocated among the Fund and such other clients, the Manager, the General Partner and their respective Associates will endeavour to manage any conflict of interest or potential conflict of interest that arises fairly and equitably, and otherwise in accordance with the terms of Constituent Documents and the constituent documents of such other funds and client accounts.

## 8 Taxation

The following is a general description of the Australian income tax consequences for Limited Partners in respect of the Fund. It is based upon the Australian law and administrative practice in effect at the date of this Memorandum, but it is general in nature and is not intended to be an authoritative or complete statement of the laws applicable to the particular circumstances of every Limited Partner. Each Limited Partner should seek independent professional advice in relation to their own particular circumstances.

In particular, Limited Partners who are tax residents of a country other than Australia (whether or not they are also residents, or are temporary residents, of Australia for tax purposes) should take into account the tax consequences under the laws of their country of residence, as well as under Australian law, of investing in the Fund.

### 8.1 General

Once unconditionally registered as a VCLP under the Venture Capital Act, the Fund will be treated as a partnership for Australian tax purposes. The tax implications will depend on whether or not the Limited Partner is a resident of Australia.

### 8.2 Non-resident Limited Partners

The Australian tax law provides exemption for Eligible Venture Capital Partners from income tax on profits (capital or revenue) from the disposal by the Fund of Eligible Venture Capital Investments.

Eligible Venture Capital Partners includes any taxable foreign resident of any foreign country, whose Committed Capital is less than 10% of the total Committed Capital of the Limited Partners.

Distributions of interest and unfranked dividends by the Fund will be subject to Australian withholding tax. The relevant rate will depend on the residence of the Limited Partner. In summary:

- (a) distributions of interest are generally subject to withholding at the rate of 10%; and
- (b) distributions of dividends that are 'unfranked' and are not declared to be 'conduit foreign income' are generally subject to withholding at the rate of:
  - (1) if the Limited Partner is resident in a country with which Australia has a double tax agreement, 15%; and
  - (2) otherwise, 30%.

### 8.3 Australian resident Limited Partners

Once unconditionally registered as a VCLP under the Venture Capital Act, the Fund will be treated as a partnership for Australian tax purposes and consequently the Fund will be subject to flow-through tax treatment. Subject to our comments below,

Australian resident Limited Partners will be taxed on revenue or capital gains, and entitled to a deduction for losses, arising from the disposal of Eligible Venture Capital Investments by the Fund.

In ATO Taxation Determination TD 2011/25, the ATO concluded that the gains made by a private equity fund under a leveraged buy-out would generally be of a revenue rather than capital nature. Given the limited investment period, the intended investment approach of the Fund and the low likelihood of any material dividend during the investment period, it would be open to the ATO to conclude that the gains made by the Fund were of a revenue rather than capital nature, although the gain on each investment will depend on its own facts and circumstances.

Subject to the comments below, if a gain is of a revenue nature, Australian resident Limited Partners will not be entitled to apply the capital gains tax discount to reduce the amount of the gain.

In ATO Interpretative Decision ATO ID 2011/7 the ATO stated that the modifications to the tax legislation that deem gains on disposal of assets made by a complying superannuation fund would apply where a complying superannuation fund is a partner in a VCLP, such that gains on disposal of assets flowing to the complying superannuation fund by reason of being a partner are taxed as capital gains.

The deduction allowable to a Limited Partner in respect of a loss by the Fund cannot exceed the amount of the financial exposure of the Limited Partner to the loss, as determined in section 92(2AA) of the *Income Tax Assessment Act 1936* (Cth).

### 8.4 Foreign Account Tax Compliance Act

The US passed the *Foreign Account Tax Compliance Act*, which is designed to assist the US in collecting tax revenues from US residents. The Australian Government has entered into an inter-governmental agreement with the US government in relation to the application of the *Foreign Account Tax Compliance Act* to Australian institutions, including the General Partner in its capacity as general partner of the Fund.

If the General Partner fails to comply with its obligations under the FATCA Law (including to provide certain information about the Limited Partners to government and other bodies), tax may be withheld at a rate of 30% on some payments to the Fund. If a Limited Partner fails to provide the General Partner with all necessary information, as required under the Fund Constitution, to enable the General Partner to comply with its obligations under the FATCA Law and, as result of that failure, tax is withheld from an amount payable to the Fund, the General Partner may, in accordance with the Fund Constitution, seek to recover from the Limited Partner the amount of any tax withheld.

## **9 Risk considerations**

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### **9.1 General**

Some of the risks of investment in the Fund are outlined in sections 9.2 to 9.23 of this Memorandum. These outlined risks are not exhaustive.

Prospective Limited Partners should:

- (a) consult their professional advisers in relation to the legal, commercial, accounting and tax implications of an investment in the Fund; and
- (b) take into account their individual circumstances and requirements.

### **9.2 Macroeconomic uncertainty and industry specific factors**

The performance of the investments of the Fund will depend to some extent on the general level of economic activity and risks within specific industries in which the Fund may be invested. The returns to Limited Partners from the Fund may be impacted by:

- (a) the general condition of the Australian and other economies;
- (b) market forces affecting the particular industries in which the Fund may be invested;
- (c) fluctuations in securities markets; and
- (d) the cost and availability of debt financing of Entities in which the Fund may be invested.

### **9.3 Business risks**

The investments of the Fund will consist primarily of securities issued by Entities that are privately owned. Operating results of such Entities will be difficult to predict. Such investments involve a high degree of business and financial risk that can result in substantial losses.

### **9.4 Failure to achieve investment objectives**

The performance of the Fund relies principally on the ability of the Manager to source and assist in the making and profitable realisation of investments of the Fund within a specific period of time. There is no assurance that suitable investments will be or can be acquired in a timely manner or that the investments will be profitable. Past performance is not necessarily a guide to future performance. There is no assurance that any Limited Partner will receive any distribution from the Fund. Accordingly, an investment in the Fund should be considered only by persons who can afford the loss of their entire investment.

### **9.5 Leverage and financial risk**

Investments of the Fund may be leveraged by borrowings by Entities in which the Fund is invested. Such leveraging, although potentially providing enhanced returns to the Fund, can substantially increase the risk of loss for the Fund, including in that loans to an Entity would typically rank in priority

to any investment by the Fund in the Entity as regards any returns on the loan or investment.

An investment of the Fund in an Entity may be among the most junior in the capital structure of the Entity and may therefore be subject to the greatest risk of loss. Generally, there will be no security or collateral to protect an investment of the Fund.

### **9.6 Diversification**

A limited number of investments are proposed to be made by the Fund. Several investments may be made in one industry or one segment of an industry. Geographic diversity of investments may also be limited. As a result, the investments of the Fund could become highly concentrated, and the performance of one or more investments of the Fund may substantially affect the total return to Limited Partners from the Fund. Furthermore, to the extent that the total Committed Capital of the Limited Partners is less than the targeted amount, the Fund may invest in fewer Entities and therefore be less diversified.

### **9.7 Competition for investments**

As there will be competition with others for investment opportunities that would be available to the Fund, the Manager may be unable to find a sufficient number of investments to meet the investment objectives of the Fund. This could result in an increase in the valuations of Entities in which there is an investment opportunity for the Fund, and could adversely affect the terms of the investment of the Fund in the Entity or result in the investment not being made.

### **9.8 Illiquidity of investments**

The investments of the Fund could be highly illiquid and difficult to realise. Disposal of investments of the Fund may require a lengthy period of time, potentially exceeding the commencement of the winding-up of the Fund. Investments of the Fund may be distributed to Limited Partners in the circumstances provided in the Constituent Documents, in which case Limited Partners may become holders of investments of the Fund.

Limited Partner Interests are also highly illiquid. There will be no public market for Limited Partner Interests and none is expected to develop.

The Fund Constitution prohibits:

- (a) transfers of or dealings with Limited Partner Interests by Limited Partners (except with approval by the General Partner); and
- (b) withdrawals or redemptions of Limited Partner Interests by Limited Partners.

### **9.9 No control by investors**

Limited Partners will not be able to control or participate in the day to day operations of the Fund. Limited Partners will not be able to make investment

or other decisions on behalf of the Fund or have any role in transactions for the Fund.

### **9.10 Management**

The degree of success of the Fund will depend on the expertise and experience of employees of the Manager. There can be no assurance that employees will continue to be employed by the Manager or will be dedicated to the activities of the Fund.

### **9.11 Limited information available to investors**

Generally, Limited Partners will not receive any financial information or other information provided to the Manager or the General Partner by Entities in which the Fund is or may become invested.

Limited Partners will not have the opportunity to consider the type, location and terms of, and other information relevant to, investments of the Fund. However, persons who are admitted as Limited Partners, or increase their Committed Capital, after the First Closing Date may have more information regarding investments of the Fund than the other Limited Partners.

### **9.12 Minority interests**

It is anticipated that the Fund will have investments in Entities that do not confer control of those Entities, which may therefore limit the ability to influence the performance of those Entities.

### **9.13 Risks associated with offshore investments**

Investments of the Fund may be in Entities that have substantial revenue or operations outside Australia.

Such investments may be subject to additional risks, including:

- (a) potentially unsettled points of applicable governing law;
- (b) capital repatriation requirements;
- (c) complex Australian and non-Australian tax requirements;
- (d) possible imposition of non-Australian taxes on the Fund or the Limited Partners;
- (e) possible non-Australian tax return filing requirements for the Fund or the Limited Partners;
- (f) economic or political dislocations;
- (g) less publicly available information;
- (h) less well-developed regulatory institutions;
- (i) possible political or social instability; and
- (j) greater difficulty of enforcing legal rights.

### **9.14 Currency risk**

The Committed Capital of the Limited Partners will be denominated in Australian currency. However, investments of the Fund may be made in, be

exposed to, or sold for, other currencies. Foreign currency exposure of the Fund may be unhedged or may be fully or partly hedged, although hedging may also adversely affect performance of the Fund.

### **9.15 Dependence on management of investee entities**

The Fund is reliant on the management teams of Entities in which the Fund is invested to deliver superior operational and financial performance. Investments of the Fund will tend to be highly dependent on the skill and commitment of such management teams. Although the performance of such management teams can often be managed through the implementation of incentives designed to align the interests of such management teams and the Fund, there can be no assurance that such management teams will continue to work for the Entities in which the Fund is invested.

### **9.16 Reliance on past performance**

The past performance of previous or other existing funds managed by the Manager or its Associates or staff are not necessarily indicative of future performance. There can be no assurance that the investment objectives of the Fund will be achieved.

### **9.17 Significant adverse consequences for default**

A Limited Partner that does not pay a required capital contribution to the Fund, or is otherwise in breach of the Fund Constitution or any document contemplated in the Fund Constitution may be subject to significant remedies and consequences as provided in the Fund Constitution. Those remedies and consequences include the forfeiture and transfer of Limited Partner Interests of the Limited Partner. Additional payments of the Committed Capital of other Limited Partners may be required as a consequence, which may increase the Limited Partner Interests of those other Limited Partners. These matters could have an adverse effect on the Fund and Limited Partners.

### **9.18 Investee entity directors**

The General Partner may have the right to appoint one or more of the directors of Entities in which the Fund is invested. Such directors of an Entity will generally be required to act in the best interests of the Entity, which may not accord with the best interests of the Fund or Limited Partners. Such directors may be indemnified from the Fund in connection with their roles as such directors as provided in the Fund Constitution.

### **9.19 Changes in legal, tax and regulatory regimes**

Changes in legal, tax and regulatory regimes may have an adverse effect on the Fund and Limited Partners.

## 9.20 Market conditions

Any material change in the condition of the economy in Australia, elsewhere or globally, including a slow-down in economic growth or changes in interest rates or foreign exchange rates, may have an adverse effect on the performance or valuation of Entities in which the Fund is invested. The performance of the Fund can be affected by deterioration in public markets and by market events that can impact the earnings multiples used to value Entities. Changes in foreign exchange rates may adversely affect the performance of the Fund, including the investments of the Fund. Following the onset of the global financial crisis in 2008, the rate of investment of funds slowed and any future market shock may have an analogous effect. An impact of such a shock may be that investment holding periods may be longer as the rate of realisation of investments slows while market conditions for initial public offerings and mergers and acquisitions activity may also decline. The value of publicly traded securities may be volatile and difficult to sell as a block, even following a listing. Future market shocks may also affect the ability to raise funding to support the investment objectives for the Fund and also the level of profitability achieved on realisations of investments.

adversely affected if such additional investment is not made by the Fund.

## 9.21 Contingent liabilities on disposal of investments

The General Partner may be required to make representations or give warranties and indemnities to a purchaser of an investment of the Fund in an Entity. The representations, warranties and indemnities may relate to the business and financial and tax affairs of the Entity. Any liability in respect of such representations, warranties and indemnities may be satisfied from the assets of the Fund or from payments by Limited Partners to the Fund as provided in the Fund Constitution.

## 9.22 Conflicts of interest

The Manager, the General Partner and their respective Associates may encounter conflicts of interest in connection with the activities of the Fund. Further details regarding conflicts of interest are set out in section 7 of this Memorandum. By investing in the Fund, each Limited Partner will be deemed to have consented to any such conflicts of interest and to have waived any claim regarding any liability of the Manager, the General Partner and their respective Associates in connection with any such conflicts of interest.

## 9.23 Follow-on investments

There may be opportunities for additional investment in Entities in which the Fund is invested. There is no assurance that there will be sufficient funds available for such additional investment to be made by the Fund or that a decision would be made that such additional investment be made by the Fund. Such Entities, the Fund and Limited Partners may be

## 10 Summary of key fund terms

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The following is a general summary of the key terms of the Constituent Documents. Due to its generality, this summary may not be an accurate description of those terms. This summary and the other contents of this Memorandum are qualified in their entirety by the terms, conditions and other provisions of the Constituent Documents, which should be reviewed carefully before making a decision to invest in the Fund.

**Minimum and maximum committed capital** A person may be admitted as a Limited Partner only if (other than in the case of a transfer of Limited Partner Interest) the total Committed Capital of the Limited Partners immediately after the admission would be:

- at least \$10 million; and
- not more than \$100 million unless approved by Special Resolution.

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**Additional closings** A person may be admitted as a Limited Partner (other than in the case of a transfer of a Limited Partner Interest) only on or before the Final Closing Date.

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**Initial drawdown** A person to be admitted as a Limited Partner (other than in the case of a transfer of a Limited Partner Interest) must pay 20% of its Committed Capital to the General Partner on the date of its admission as a Limited Partner.

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**Subsequent drawdowns** The General Partner may give notice of at least 5 Business Days requiring each Limited Partner to pay a proportion of its Committed Capital (less its Called Proportion).

The General Partner must ensure that no capital contribution is called from any Limited Partner whose Called Proportion is greater than or equal to that of any other Limited Partner, unless after such notices are given the Called Proportion of that Limited Partner is equal to the Called Proportion of each such other Limited Partner.

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**Limited partner default** If a Limited Partner does not pay a required capital contribution to the Fund or is otherwise in breach of the Fund Constitution, the General Partner may require the Limited Partner to pay as a non-participating capital contribution to the Fund:

- an amount equal to interest at the rate of 20% per annum on the unpaid amount from when the unpaid amount became due; and
- an amount equal to any Expense or loss of the General Partner, the Manager or the Fund in connection with any unpaid amount or other breach.

If a Limited Partner fails to pay all such required capital contributions within 10 Business Days after the General Partner gives notice to the Limited Partner:

- the General Partner may suspend the voting rights of the Limited Partner;
- the General Partner may determine that the Limited Partner Interests of the Limited Partner are forfeited, and may transfer those Limited

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Partner Interests; and

- the Limited Partner fully indemnifies the General Partner and the Fund in respect of each Expense and loss in relation to the failure or breach.

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**Transfer** Each Limited Partner must not transfer or deal with its Limited Partner Interest except with the approval of the General Partner.

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**Investment restrictions** The General Partner must not make an Investment after the end of the Investment Period, except in the limited cases specified in the Fund Constitution.

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**Co-investment** The General Partner and the Manager:

- may (in any capacity) co-invest or allow any person to co-invest with the Fund in an Entity; and
- may manage or provide other services in respect of any co-investment by any person with the Fund.

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**Distribution** The General Partner may distribute:

- cash;
- assets that are quoted on a securities exchange; or
- other assets as approved by Special Resolution.

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**Distribution priority** The General Partner must make distributions of Liquid Investment Proceeds to the Limited Partners in the proportion of the Paid Capital of the Limited Partner to the total Paid Capital of the Limited Partners.

The General Partner must allocate all other distributions to the Limited Partners in the proportion of the Paid Capital of the Limited Partner to the total Paid Capital of the Limited Partners, and must make distributions allocated to a Limited Partner as follows:

- 1 **(return of capital contributions)** to the Limited Partner until the Distribution Amount of the Limited Partner in respect of the distributions under paragraphs 1 and 2 of this section equals the capital contributions of the Limited Partner to the Fund that have been applied by the General Partner (other than to make a Liquid Investment or to distribute Liquid Investment Proceeds);
  - 2 **(preferred return of 8% per annum)** then to the Limited Partner until the Distribution Amount of the Limited Partner in respect of the distributions under paragraphs 1 and 2 equals:
    - a total amount at the rate of 8% per annum on each capital contribution of the Limited Partner to the Fund that has been applied by the General Partner (other than to make a Liquid Investment or to distribute Liquid Investment Proceeds); less
    - a total amount at the rate of 8% per annum on each Distribution Amount of the Limited Partner, accruing from the date on which the amount became a Distribution Amount of a Limited Partner and compounding on the same date of each year as the date of the distribution;
  - 3 **(catch up on preferred return)** then to the General Partner, until the
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total Distribution Amount of the General Partner in respect of the Limited Partner equals 20% of the excess (if any) of:

- the total Distribution Amount of the General Partner in respect of the Limited Partner; and
  - the total Distribution Amount of the Limited Partner less the capital contributions of the Limited Partner to the Fund that have been applied by the General Partner (other than to make a Liquid Investment or to distribute Liquid Investment Proceeds); and
- 4 **(80:20 apportionment)** then 80% to the Limited Partner and 20% to the General Partner.

**Advisory committee**

The General Partner may form an Advisory Committee.

Each member of the Advisory Committee will be appointed (and may be removed) by the General Partner, and will be:

- a Limited Partner who is an individual;
- an officer, director, or employee of a Limited Partner;
- any individual nominated by, related to or otherwise associated with a Limited Partner; or
- any individual that is not an officer, director or employee of the General Partner or the Manager.

**Borrowing**

The General Partner may not borrow money or guarantee a borrowing of money except if:

- the borrower proposes to repay the borrowing within 12 months; and
- the total amount of such borrowings that have not been repaid does not exceed the total Committed Capital less the total Paid Capital of the Limited Partners at the time of the borrowing or guarantee.

**Liability**

The General Partner is not liable to any current or former Limited Partner, current or former General Partner or the Fund for any Expense or loss:

- arising from any reasonable act or reasonable omission to act as a consequence of the impracticability or impossibility of exercising a right or performing an obligation for any reason beyond the control of the General Partner;
- arising from any act or omission of, or any service, advice or information provided by, any person (other than the General Partner); or
- arising otherwise, except to the extent the General Partner is in material breach of the Fund Constitution.

The Fund is not liable to any current or former Limited Partner for any Expense or loss of the current or former Limited Partner:

- arising from any reasonable act or reasonable omission to act as a consequence of the impracticability or impossibility of exercising a right or performing an obligation for any reason beyond the control of the General Partner;
- arising from any act or omission of, or any service, advice or information provided by, any person (other than the General Partner); or

- arising otherwise, except to the extent the Fund is in material breach of the Fund Constitution.

The Manager is not liable to any current or former Limited Partner, current or former General Partner or the Fund for any Expense or loss:

- arising from any reasonable act or reasonable omission to act as a consequence of the impracticability or impossibility of exercising any right or performing an obligation for any reason beyond the control of the Manager;
- arising from any act or omission of, or any service, advice or information provided by, any person (other than the Manager); or
- arising otherwise, except to the extent the Manager is in material breach of the Management Deed.

Each member of the Advisory Committee is, to the maximum extent permitted by law, not liable to any current or former Limited Partner, current or former General Partner or the Fund for any Expense or loss arising from any act or omission of the member as a member of the Advisory Committee, other than an act or omission constituting fraud, dishonesty or wilful misconduct.

#### **Indemnity**

In addition to any indemnity under the law, the Fund must fully indemnify each current or former General Partner and each current or former Manager in respect of any Reimbursable Expenses to the extent they would not be liable for such Reimbursable Expenses if such Reimbursable Expenses were Expenses of the Fund.

The Fund must fully indemnify any other person in respect of Reimbursable Expenses of the person, except for any Reimbursable Expenses of that person incurred, paid or suffered as a result of any fraud, dishonesty or wilful misconduct of that person.

The Fund must indemnify each current or former member of the Advisory Committee in respect of an expense or liability suffered or incurred in relation to their position as a member of the Advisory Committee that results from a claim by a person that the current or former member is liable for an act or omission of the Advisory Committee, to the extent the current or former member would not be liable in respect of the expense or liability if such expense or liability were an expense or liability of the Fund.

#### **Reports**

The General Partner must provide to each Limited Partner:

- a monthly valuation of the Limited Partner Interest of the Limited Partner within 20 Business Days after the end of the month;
- an annual financial report (including audited accounts of the Fund and the report of the auditor) for each Financial Year prepared as a special purpose financial report within 90 Business Days after the end of each Financial Year; and
- a statement to each Limited Partner and each former General Partner within 60 Business Days after the end of each Financial Year, which includes a statement of the entitlements of the Limited Partner or the former General Partner to a proportion of the net income or partnership loss (each as defined in section 90 of the *Income Tax Assessment Act 1936* (Cth)) for each Financial Year, and the amount of tax credits that have been made available to the Limited Partner or former General Partner in respect of distributions during the Financial Year.

<b>Termination</b>	<p>The Fund will:</p> <ul style="list-style-type: none"> <li>• remain in existence for not less than 5 years; and</li> <li>• terminate on the earlier of: <ul style="list-style-type: none"> <li>• 15 years after commencement of the Fund; and</li> <li>• completion of winding up of the Fund.</li> </ul> </li> </ul> <p>The General Partner must commence winding up of the Fund on the later of:</p> <ul style="list-style-type: none"> <li>• 7 years after the First Closing Date; and</li> <li>• any determined by the General Partner that is: <ul style="list-style-type: none"> <li>• 8 years after the First Closing Date;</li> <li>• 9 years after the First Closing Date; and</li> <li>• 10 years after the First Closing Date.</li> </ul> </li> </ul>
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<b>Change of general partner</b>	<p>The General Partner may be removed by Special Resolution.</p> <p>The General Partner may retire as approved by Special Resolution.</p> <p>The Management Deed will terminate upon the General Partner being removed or retiring as the General Partner.</p> <p>If the General Partner is removed:</p> <ul style="list-style-type: none"> <li>• the General Partner must pay a fee equivalent to 12 months of Management Fees to the Manager; and</li> <li>• the rights of the General Partner to distributions from the Fund will continue.</li> </ul>
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<b>Management fee</b>	<p>The General Partner must pay the Management Fee quarterly in advance to the Manager.</p> <p>The Management Fee is:</p> <ul style="list-style-type: none"> <li>• during the Investment Period, 2% per annum of the total Committed Capital of the Limited Partners (calculated as if each admission of a Limited Partner occurred on the First Closing Date); and</li> <li>• thereafter, 2% per annum of the Acquisition Cost of the Investments at that time held by the Fund (other than Liquid Investments and Investments that the General Partner has determined to value permanently at nil value).</li> </ul>
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## 11 Glossary

The meanings of the terms used in this document are set out below.

Term	Meaning		
			Capital of that Limited Partner that has been called by the General Partner as a capital contribution to the Fund.
<b>Acquisition Cost</b>	the acquisition cost as calculated by the General Partner in accordance with the Fund Constitution.	<b>Committed Capital</b>	in respect of a Limited Partner, the total amounts of committed capital specified in the Subscription Forms of the Limited Partner.
<b>Advisory Committee</b>	the committee formed under the Fund Constitution.	<b>Constituent Documents</b>	1 the Fund Constitution; and 2 the Management Deed.
<b>ASIC</b>	the Australian Securities and Investments Commission constituted under the <i>Australian Securities and Investments Commission Act 1989</i> (Cth).	<b>Corporations Act</b>	the <i>Corporations Act 2001</i> (Cth).
<b>ASX</b>	the Australian Securities Exchange.	<b>Data Room</b>	the virtual data room established by or on behalf of the Manager in relation to the Fund.
<b>Associate</b>	in respect of a person:  1 an associate (as defined in section 11 of the Corporations Act) of the person (other than a person who is such an associate solely as a result of being such an associate of a Fund Entity); or  2 a person who would be such an associate of the first mentioned person if the first mentioned person were a body corporate.	<b>Distribution Amount</b>	in respect of a Limited Partner or the General Partner, the total amount of:  1 the distributions from the Fund to the Limited Partner or General Partner (as applicable) other than distributions of Liquid Investment Proceeds; and  2 the tax credits that have been made available to the Limited Partner or General Partner (as applicable) in respect of distributions from the Fund.
<b>ATO</b>	the Australian Taxation Office.	<b>Eligible Venture Capital Investment</b>	eligible venture capital investment (as defined in section 995-1 of the Income Tax Assessment Act).
<b>Business Day</b>	a day other than a Saturday or Sunday or a public holiday in the city of the registered office of the Fund.	<b>Eligible Venture Capital Partner</b>	eligible venture capital partner (as defined in section 995-1 of the Income Tax Assessment Act).
<b>Called Proportion</b>	in respect of a Limited Partner, the proportion of the Committed		

<b>Entity</b>	an entity (including a company, partnership, trust, unincorporated association, scheme or arrangement).	Internal Revenue Service, the US government or any Government Agency or taxation authority in any other jurisdiction.
<b>Expense</b>	<ol style="list-style-type: none"> <li>1 in respect of the General Partner or the Manager, any taxes, costs, expenses, liabilities or other outgoings of any kind of the General Partner or the Manager (other than rent, office maintenance expenses, salaries, placement agent fees and expenses and any other overhead expenses (other than insurance premiums to the extent attributable to insurance in relation to the Fund));</li> <li>2 in respect of the Fund, any taxes, costs, expenses, liabilities or other outgoings of any kind that are payable from the Fund; and</li> <li>3 in respect of any other person, any taxes, costs, expenses, liabilities or other outgoings of the person (other than rent, office maintenance expenses, salaries, travel expenses, placement agent fees and expenses and any other overhead expenses).</li> </ol>	<p><b>Final Closing Date</b> the date which is 18 months after the end of the calendar month in which the First Closing Date occurs.</p> <hr/> <p><b>Financial Year</b> each period from the beginning of 1 July to the end of the next 30 June.</p> <hr/> <p><b>First Closing Date</b> the earliest date of admission of a person as a Limited Partner after the conditional registration of the Fund as a VCLP under the Venture Capital Act.</p> <hr/> <p><b>Fund</b> Acorn Capital Private Opportunities Fund L.P..</p> <hr/> <p><b>Fund Constitution</b> the limited partnership deed of the Fund (as amended from time to time).</p> <hr/> <p><b>General Partner</b> the general partner of the Fund.</p>
<b>FATCA Law</b>	<ol style="list-style-type: none"> <li>1 sections 1471 to 1474 of the US Internal Revenue Code of 1986 and any associated regulations and other official guidance;</li> <li>2 each treaty, law, regulation and other official guidance enacted in any other jurisdiction, or relating to an intergovernmental agreement between the US and any other jurisdiction that (in either case) facilitates the implementation of paragraph 1 of this definition; and</li> <li>3 each agreement pursuant to the implementation of paragraph 1 or 2 of this definition with the US</li> </ol>	<p><b>Government Agency</b> a government or a governmental, semi-governmental, administrative or fiscal body, court or other judicial body, department, commission, authority, agency or entity anywhere in the world.</p> <hr/> <p><b>GST</b> a goods and services tax or similar value added tax levied or imposed in Australia on a supply.</p> <hr/> <p><b>Income Tax Assessment Act</b> the <i>Tax Assessment Act 1997</i> (Cth).</p>

<b>Investment</b>	any type of investment (including an investment involving the incurring of a debt, obligation or other liability of any kind) that any person may make, including the pursuit of gain or the protection against loss.	<b>Manager</b>	Acorn Capital Limited (being the person appointed under the Management Deed to provide services to the General Partner).
<b>Investment Period</b>	the period from the beginning of the First Closing Date to the end of 4 years after the First Closing Date.	<b>Memorandum</b>	this private placement memorandum (as amended or supplemented from time to time).
<b>Limited Partner</b>	a limited partner of the Fund.	<b>Paid Capital</b>	in respect of a Limited Partner, the participating capital contributions of the Limited Partner to the Fund.
<b>Limited Partner Interest</b>	an interest created under the Fund Constitution with the rights and restrictions provided for 'Limited Partner Interests' under the Fund Constitution.	<b>Register</b>	the register kept by the General Partner under the Fund Constitution.
<b>Liquid Investment</b>	Investments that may under their terms be realised within 12 months after being made (other than Investments determined by the General Partner as not being short term liquid investments).	<b>Reimbursable Expenses</b>	any Expenses of a current or former General Partner, a current or former Manager, or any other person (with the approval or ratification of the General Partner) relating to or arising out of the establishment or operation of the Fund, including in relation to: <ol style="list-style-type: none"> <li>1 the establishment and promotion of the Fund (including fees payable to placement agents or other persons in connection with finding or arranging for persons to become Limited Partners);</li> <li>2 the preparation, execution and any amendment or proposed amendment of the Fund Constitution, the private placement memorandum in respect of any of the Fund and any other documents contemplated in the Partnership Deed;</li> <li>3 the acquisition, holding, management, supervision, valuation or disposal or potential acquisition or disposal of an asset of the Fund;</li> <li>4 travel in relation to an</li> </ol>
<b>Liquid Investment Proceeds</b>	proceeds of Liquid Investments of the Fund to the extent the Liquid Investments are made from the proceeds of capital contributions to the Limited Partners to the Partnership that have not been applied by the General Partner (other than to make Liquid Investments).		
<b>Management Deed</b>	a written deed dated on or before the First Closing Date between the Manager, the General Partner and the Fund.		
<b>Management Fee</b>	the management fee payable under the Management Deed to the Manager.		

	Investment or potential Investment of the Fund;	Limited Partners of the Fund were present; or
	5 the fees and indemnities payable by the current or former General Partner or the current or former Manager under the Fund Constitution; and	2 in the case of any other resolution: <ul style="list-style-type: none"> <li>• a resolution passed at meetings of Limited Partners, with the total votes given in favour of the resolution being at least 75% of the votes given by the Limited Partners that are present and voting; or</li> <li>• a written resolution signed by Limited Partners with at least 75% of the total Paid Capital of the Limited Partners.</li> </ul>
	6 the exercise of any rights or performance of any obligations of any person under or in connection with any of the documents referred to in this definition, but excluding:	
	7 Expenses in relation to rent, office maintenance, information technology, and salaries, except to the extent that such Expenses are specifically listed in this definition; and	
	8 fees payable to placement agents or other persons in connection with finding or arranging for persons to become Limited Partners, to the extent such fees exceed 3% of the Committed Capital of the Limited Partners.	
		<hr/>
	<b>Subscription Form</b>	in respect of a person, a written deed substantially in the form of the subscription form attached to this Memorandum between the person, the General Partner and others (if any) pursuant to which the person agrees to become a party and bound by the Fund Constitution.
		<hr/>
	<b>US</b>	the United States of America.
		<hr/>
<b>Security Interest</b>	1 a security interest (as defined in section 12 of the Personal Property Securities Act 2009 (Cth)); and	<b>VCLP</b> a venture capital limited partnership (as defined in section 995-1 of the Income Tax Assessment Act).
	2 any other mortgage, 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.	
		<hr/>
	<b>Special Resolution</b>	<b>Venture Capital Act</b> the <i>Venture Capital Act 2002</i> (Cth).
	1 in the case of a resolution to remove the General Partner, a resolution passed at meetings of Limited Partners, with the total votes given in favour of the resolution being at least 75% of the votes that the Limited Partners would be entitled to give if all of the	
		<hr/>

## Subscription form

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This subscription form is a deed between Acorn Capital Private Opportunities Fund L.P. (the **Fund**), Acorn Capital GP Pty Limited (ACN 608 108 292) (acting as general partner of the Fund) and the Subscriber described below under which the Subscriber subscribes for limited partner interests in the Fund.

Capitalised terms used but not defined in this subscription form have the meaning given to them in the private placement memorandum dated 28 September 2015 issued by Acorn Capital Limited in respect of the Fund.

### 1 Subscriber details

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The full name of the Subscriber is:

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The Australian business number (if any) of the Subscriber is:

---

The Subscriber is:

Natural Person

---

Body Corporate

---

Other (please describe):

---

The Subscriber is a party in its capacity as (select 1 or none only):

Trustee of a trust

---

Custodian (other than trustee) of a trust or other entity

---

Sub custodian of a trust or other entity or nominee of a custodian or sub-custodian of a trust or other entity

---

The name of the trust referred to above (if any):

---

The name and position of a contact person of the Subscriber is:

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The address of the Subscriber is:

---

The postal address of the Subscriber is (if different to the address above):

---

The telephone number of the Subscriber is:

---

The e-mail address of the Subscriber is:

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The facsimile number of the Subscriber is:

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The tax file number of the Subscriber is:

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## 2 Subscriber tax status

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The country of residence (for tax purposes) of the Subscriber is:

---

The details of tax exemption (if any) of the Subscriber are:

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## 3 Committed capital

---

The committed capital of the Subscriber under this subscription form to the Fund on admission of the Subscriber as a Limited Partner under this subscription form is: \$

---

The percentage of such committed capital of the Subscriber that is due and payable by the Subscriber to the Fund on such admission: 20%

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## 4 Bank accounts

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### 4.1 Subscriber

Payments by the General Partner or the Fund under this subscription form or the Fund Constitution to the Subscriber may be made to the following bank account (unless the Subscriber otherwise gives notice to the other parties):

Account name

---

BSB

---

Account number

---

IBAN

---

Bank

---

#### **4.2 Fund**

Payments by the Subscriber as capital contributions to the Fund under this subscription form or the Fund Constitution may be made to the following bank account (unless the General Partner otherwise gives notice to the Subscriber):

Account name

---

BSB

---

Account number

---

IBAN

---

Bank

---

#### **5 Identification information**

If the Subscriber is an individual, the Subscriber must attach a certified true copy of their current passport (which includes the photograph and signature of the Subscriber).

If the Subscriber is not an individual, the Subscriber must complete and attach the customer identification form provided by the General Partner, and must attach certified true copies of the identity documents required under the identification form.

## 6 Subscription

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- (a) Subject to clause 6(b), the General Partner must admit the Subscriber as a Limited Partner.
- (b) The General Partner:
  - (1) may elect not to admit the Subscriber as a Limited Partner; and
  - (2) must refund the payments (if any) by the Subscriber to the Fund that are referred to in clause 3 if the General Partner elects not to admit the Subscriber as a Limited Partner as provided in clause 6(b)(1).
- (d) The Subscriber is not entitled to receive interest in respect of any payments by the Subscriber to the Fund (including in respect of any payments that are refunded under clause 6(b)(2)).

## 7 Compliance

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- (a) The Fund Constitution will be binding on the Subscriber, the General Partner and the Fund as from the admission of the Subscriber as a Limited Partner.
- (b) The Subscriber will be a party to the Fund Constitution as from the admission of the Subscriber as a Limited Partner.
- (c) The Subscriber consents to the conflicts of interest set out in section 7 of the Memorandum and to the rights of the General Partner and the Manager set out in clauses 11.6 and 11.7 of the Fund Constitution, and waives any rights or remedies against each current or former Manager, each current or former General Partner and their respective Associates and the Fund, and release each of them from any liability to the Subscriber, in connection with any such conflicts of interest and any conflicts of interest in connection with such rights of the current or former General Partner and the current or former Manager.
- (d) The Fund Constitution and the Management Deed will prevail to the extent of any inconsistency with the Memorandum.

## 8 Information

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The Subscriber must promptly:

- (a) provide any information reasonably requested by any of the General Partner to assist any of them to assess the accuracy of the information in this subscription form or in the identity documents of the Subscriber and
- (b) give notice to the General Partner of any change of any information in this subscription form or in the identity documents of the Subscriber.

## 9 Acknowledgements

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The Subscriber acknowledges that:

- (a) the Limited Partner Interests are illiquid and not readily realisable and involve a significant degree of risk;
- (b) none of the Manager, the General Partner, their respective Associates, officers, directors, executives, advisers or affiliates, the Fund or any other person, guarantees, or has represented or warranted any particular rate of return of the Fund or the Manager, the performance of the Fund or any return of any capital of the Fund;
- (c) the Subscriber will be required to make capital contributions to Fund as required under the Fund Constitution;
- (d) the Subscriber does not have any right to require a return of any capital contribution made to the Fund except in accordance with the Fund Constitution;
- (e) the Limited Partner Interests may not be transferred or otherwise dealt with (other than in the significantly limited circumstances and subject to the significant restrictions under the Fund Constitution);
- (f) Limited Partner Interests held by the Subscriber may be forfeited and may subsequently be transferred by the General Partner, and the Subscriber may be required to make additional capital contributions and other payments, in accordance with the Fund Constitution, if the Subscriber does not pay amounts in accordance with or is otherwise in breach of the Fund Constitution, this subscription form or any other document contemplated in the Fund Constitution or is prohibited by law from being a Limited Partner;
- (g) the General Partner is appointed as attorney of the Subscriber under the Fund Constitution;
- (h) the Fund is not required to be registered by ASIC under Part 5C of the Corporations Act as a managed investment scheme; and
- (i) the General Partner may elect whether or not to admit other persons as Limited Partners.

## 10 Representations and warranties

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The Subscriber represents and warrants that:

- (a) the Subscriber has read and understood the following documents:
  - (1) the Fund Constitution;
  - (2) the Management Deed; and
  - (3) the Memorandum;
- (b) the Subscriber has been afforded the opportunity to request copies and read such additional documents in relation to the Fund and the Manager and to ask such questions as the Subscriber has considered appropriate;
- (c) the Subscriber is aware of the taxation risks associated with the Fund and being a Limited Partner, including in relation to the status and treatment of the Fund and any profits or other income of the Fund for taxation purposes;

- (d) the Subscriber has relied in every respect on its own independent investigation, enquiries and appraisals in connection with the Fund before deciding to execute this subscription form;
- (e) the Subscriber has obtained independent advice as it has considered appropriate in relation to the legal, financial, commercial and taxation aspects of being a Limited Partner and of the Fund and the Fund Constitution and the Management Deed;
- (f) the Subscriber has the financial capacity to make and satisfy its obligations under this subscription form, the Fund Constitution and any other documents contemplated in the Fund Constitution;
- (g) in deciding to execute this subscription form, the Subscriber has not relied on the contents of any statement, representation, warranty, promise, undertaking or agreement (other than the Memorandum but subject to the important notice, qualifications, disclaimers and exclusions in the Memorandum), whether express or implied, by any of the Manager, the General Partner, their respective Associates, officers, directors, executives, advisers or affiliates, the Fund or any other person;
- (h) the Subscriber is a wholesale client (within the meaning of section 761G of the Corporations Act) who may be admitted as a Limited Partner under this subscription form and the Fund Constitution without any requirement for a disclosure document to be prepared or lodged under Part 6D.2 of the Corporations Act or a product disclosure statement to be prepared or lodged under Part 7.9 of the Corporations Act;
- (i) the Subscriber has no intention of dealing (within 12 months after being admitted as a Limited Partner under this subscription form) with any Limited Partner Interest in a manner that would result in anyone other than a wholesale client (within the meaning of section 761G of the Corporations Act) having a Limited Partner Interest;
- (j) the Subscriber is a person who may be admitted as a Limited Partner under this subscription form and the Fund Constitution without the General Partner, the Manager, their respective Associates, the Fund or any other person, breaching, or becoming subject to any additional regulation, under any applicable law;
- (k) the Subscriber has correctly completed and provided all of the information and documents required or requested under this subscription form;
- (l) the Subscriber is not aware and has no reason to suspect that any amounts payable by it in connection with this subscription form or the Fund Constitution have been or will be derived from or related to any money laundering, terrorism financing or other similar or illegal activities, whether prohibited under any applicable law of any jurisdiction or international law or convention;
- (m) the Limited Partner Interests held by the Subscriber on admission of the Subscriber as a Limited Partner under this subscription form will not be subject to any Security Interest (other than a Security Interest that the Subscriber is entitled to create or grant under the Fund Constitution);
- (n) the Subscriber is over 18 years of age and not under any legal disability (if the Subscriber is an individual) or is validly existing under all applicable laws and duly registered as may be required under all applicable laws (if the Subscriber is not an individual);
- (o) the Subscriber is not prohibited by law from being admitted as a Limited Partner under this subscription form;
- (p) the Subscriber has the power to enter into and perform its obligations in connection with this subscription form and the Fund Constitution;
- (q) the Subscriber has taken all action necessary to authorise the entry into and performance of its obligations in connection with this subscription form and the Fund Constitution;
- (r) this subscription form constitutes legal, valid and binding obligations of the Subscriber in accordance with its terms;
- (s) the execution and performance of this subscription form comply with each, and do not conflict with or breach or constitute a default under, any applicable law, the constitution or other constituent documents (if applicable) of the Subscriber and each other document, agreement, obligation or arrangement binding on the Subscriber;
- (t) the Subscriber is not and has not been the subject of an insolvency or bankruptcy or other similar event;
- (u) the Subscriber is entitled to be fully indemnified from the assets of the trust or other entity that is provided in clause 1 in respect of the obligations of the Subscriber in connection with this subscription form, the Fund Constitution and any other documents contemplated in the Fund Constitution; and
- (v) there has not been any action to terminate or wind up the trust or other entity that is provided in clause 1 or terminate the authority of any person to act or make decisions regarding the trust or other entity (whether by removal of that person or otherwise).

## 11 Attorney

Without limiting clause 7, the Subscriber:

- (a) irrevocably appoints the General Partner as agent and attorney of the Subscriber to have the power as agent and attorney and in the name of the Subscriber to execute the Fund Constitution and any amendment of the Fund Constitution;
- (b) fully indemnifies each current or former General Partner against all liabilities that the current or

former General Partner may incur in connection with the exercise of any power under clause 11(a); and

- (c) releases each current or former General Partner from all liabilities that the current or former General Partner may otherwise have to the Subscriber in connection with the exercise of any power under clause 11(a); and
- (d) authorises the General Partner, as its agent and attorney, to appoint the Manager or any other person as a sub-agent and sub-attorney, to undertake any actions the General Partner may undertake as its agent and attorney under clause 11(a).

## 12 Notices

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A notice to a person under this subscription form will be taken to have been duly given:

- (a) 5 Business Days after being sent if sent by post and addressed to the person at the address last entered in the Register (or otherwise the address specified in this subscription form) as the address of the person;
- (b) 1 Business Day after being sent if sent by e-mail to the e-mail address last entered in the Register (or otherwise the e-mail address specified in this subscription form) as the e-mail address of the person; or
- (c) upon receipt by the machine from which the notice was sent of confirmation of receipt or of a complete transmission if sent by facsimile to the facsimile number last entered in the Register (or otherwise facsimile number specified in this subscription form) as the facsimile number of the person.

## 13 Parties

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Each party is bound by this subscription form.

## 14 Relationship of parties

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Except to the extent provided otherwise in this subscription form:

- (a) the rights and obligations of each party (other than the Subscriber) under this subscription form are several and not joint;
- (b) if the Subscriber is 1 person, the rights and obligations of the Subscriber under this subscription form are several and not joint;
- (c) if the Subscriber is more than 1 person, the rights and obligations of the Subscriber under this subscription form are joint and several;
- (d) the rights and obligations of each party under this subscription form are of the party in its own capacity and not as agent of any other party; and
- (e) nothing in this subscription form will be deemed to constitute a partnership between any of the

parties or constitute any party as an agent or trustee of any other party.

## 15 Waiver

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A waiver by a party of a right under this subscription form:

- (a) is not effective unless made by notice by the party; and
- (b) is not a waiver or limitation of a right to pursue an additional or different right that may be available under this subscription form, at law or in equity in respect of the event or any other event.

## 16 Prohibition and enforceability

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- (a) Any provision or the application of any provision of this subscription form or any right under this subscription form that is prohibited in any jurisdiction is ineffective in the jurisdiction only to the extent of the prohibition.
- (b) Any provision of or the application of any provision of this subscription form that is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of the provision in any other jurisdiction or of the remaining provisions in the jurisdiction or any other jurisdiction.

## 17 Further assurances

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Each party must do all things and execute all other documents necessary to give full effect to this subscription form.

## 18 Entire agreement

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The following documents embody the entire agreement in respect of the subject matter of this subscription form as between the Subscriber and all or any of the other parties:

- (a) this subscription form;
- (b) the Fund Constitution; and
- (c) each agreement contemplated in clause 30 of the Fund Constitution to which the Subscriber is a party or otherwise bound.

## 19 Amendment

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This subscription form may be amended only by a written agreement between the parties.

## 20 Assignment

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Each party may not assign or novate any rights or obligations under this subscription form except as provided under this subscription form.

## 21 Counterparts

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This subscription form may be executed in any number of counterparts, all counterparts of which, taken together, constitute 1 instrument, and a party may execute this subscription form by signing any counterpart.

## 22 Governing law

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This subscription form is governed by the laws of the State of Victoria, Australia, and each current or former party submits to the exclusive jurisdiction of courts exercising jurisdiction there.

## 23 Interpretation

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In this subscription form, the following rules of interpretation apply unless the context applies otherwise:

- (a) headings and bold type are for convenience only and do not affect the interpretation of this subscription form;
- (b) anything specified after the word "including" or a similar expression does not limit what else is included
- (c) the singular includes the plural and the plural includes the singular;
- (d) words of any gender includes all genders;
- (e) other parts of speech and grammatical forms of a word or phrase defined in this subscription form have a corresponding meaning; and
- (f) a reference to:
  - (1) a clause is to a clause of this subscription form;
  - (2) legislation includes all delegated legislation made under the legislation and amendments, consolidations, replacements or re-enactments of any of them;
  - (3) a document includes all amendments of the document;
  - (4) a party is to a party to this subscription form, including a person who executes a subscription form under which the person covenants to the other parties to be a party to and bound by this subscription form and which is accepted by the other parties by giving notice to the person;
  - (5) a party to a document includes the successors and permitted assignees of the party;
  - (6) an agreement includes a deed;
  - (7) an amendment of a document includes a supplement, restatement, replacement or novation of the document;
  - (8) a right includes a power;
  - (9) a power includes an authority or discretion;

- (10) an obligation includes a duty;
- (11) a person includes any individual, Entity or Government Agency;
- (12) a transfer includes an assignment; and
- (13) a capacity of a person includes a capacity as a fiduciary or agent and a personal capacity other than as a fiduciary or agent.

## 24 Business Day

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In this subscription form, where the day on or by which any thing is to be done is not a Business Day, the thing must be done on or by the next Business Day.

# Signing page

Executed as a deed

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## Subscriber who is an individual

Signed sealed and delivered by

*print  
name of  
subscriber* \_\_\_\_\_

*sign here ►* \_\_\_\_\_  
Subscriber

*sign here ►* \_\_\_\_\_  
Witness

*print name  
of witness* \_\_\_\_\_

*print  
address of  
witness* \_\_\_\_\_

**Subscriber executing by attorney**

Signed sealed and delivered by

*print  
name of  
subscriber* \_\_\_\_\_

by his/her/its attorney

*sign here* ► \_\_\_\_\_  
Attorney\*

*print name* \_\_\_\_\_

in the presence of

*sign here* ► \_\_\_\_\_  
Witness

*print name* \_\_\_\_\_

*print  
address* \_\_\_\_\_

\*The attorney confirms that it has not received notice of revocation of the power of attorney under which it executes this deed.

\*This deed must be accompanied by a copy of the power of attorney.

**Subscriber executing by director or company secretary**

Signed sealed and delivered by

*print  
name of  
subscriber* \_\_\_\_\_

*sign here ▶* \_\_\_\_\_  
Director or company secretary

*print name* \_\_\_\_\_

*sign here ▶* \_\_\_\_\_  
Director

*print name* \_\_\_\_\_

Accepted on \_\_\_\_\_ by

**General Partner**

Signed, sealed and delivered by  
**Acorn Capital GP Pty Limited**  
by

*sign here* ► \_\_\_\_\_  
Company Secretary/Director

*print name* \_\_\_\_\_

*sign here* ► \_\_\_\_\_  
Director

*print name* \_\_\_\_\_

**Fund**

Signed, sealed and delivered by  
**Acorn Capital Private Opportunities Fund L.P.**  
by **Acorn Capital GP Pty Limited**  
by

*sign here* ► \_\_\_\_\_  
Company Secretary/Director

*print name* \_\_\_\_\_

*sign here* ► \_\_\_\_\_  
Director

*print name* \_\_\_\_\_