

INDUSTRY FUNDS MANAGEMENT (NOMINEES) LIMITED
ACN 003 969 891
(Initial Trustee)

IFM INTERNATIONAL PRIVATE EQUITY FUND III

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DEED dated 1 June 2007

PARTY **INDUSTRY FUNDS MANAGEMENT (NOMINEES) LIMITED**
ACN 003 969 891 of Level 29, Casselden Place, 2 Lonsdale Street, Melbourne,
in the State of Victoria (**Initial Trustee**)

OPERATIVE PART

1. **ESTABLISHMENT:** By this Deed, the Initial Trustee constitutes a unit trust (**Trust**) called IFM International Private Equity Fund III (or any other name determined by the Trustee from time to time) which will be maintained by the Trustee as a pooled superannuation trust as defined in Superannuation Law.

The Trustee is appointed as trustee of the Trust and consents to the appointment. The beneficial interest in the Trust is divided into units (**Units**). The Trust is constituted for the benefit of holders of Units (**Holders**). The Trustee and every Holder is bound by this Deed.

2. **DURATION:** Subject to this Deed, the Trust begins when the Trustee first receives subscription monies for Units in the Trust and ends on the earlier of the day before the 80th anniversary of the commencement of the Trust or the date the Trust is terminated under this Deed or as required by law.

3. **SUPERANNUATION LAW:** All provisions of Superannuation Law (if any) that must be included in this Deed from time to time in order for the Trust to be a pooled superannuation trust in any Year are deemed to be included in this Deed, but only for so long as the inclusion is necessary for that purpose (or for such longer period as the Trustee may determine). The Trustee may comply with the requirements of Superannuation Law and of the Regulator (**Relevant Requirements**) even if the Relevant Requirements are inconsistent with this Deed. Any breach of:

- (a) a provision of this Deed which is inconsistent with any Relevant Requirement; or
- (b) a Relevant Requirement,

does not constitute a breach of trust.

This clause prevails over all other provisions of this Deed (including any which purport to prevail over it).

4. **VESTING:** All property, rights and income of the Trust (**Trust Property**) vest in the Trustee on trust for Holders on the terms of this Deed.
5. **FUND:** The Trustee must hold all Trust Property of the Trust as a separate fund (**Fund**) which is not available to meet Trust Liabilities of any other trust not comprised in this Trust. The Trustee may mingle Trust Property with other property.

6. **UNITS:** The Trustee may issue Units as fully or partly paid with such interests and rights, and subject to such conditions, as determined by the Trustee at or before the Applicant agrees to make subscriptions and which are not inconsistent with this Deed. Partly paid units are subject to the provisions set out in Schedule 1, in addition to the other provisions of this Deed. A Unit confers on its Holder an undivided beneficial interest in the Fund as a whole, subject to Trust Liabilities, not in parts nor in single assets. The Trustee may at any time consolidate, divide, issue or grant options to subscribe for, Units or fractions of Units. Fractions will be dealt with for all purposes as Units, but in the proportion that the fraction bears to a whole Unit. A Holder may neither interfere with, nor exercise rights or powers of, the Trustee in respect of any Trust Property, Trust Liability or obligation and has no right to lodge any caveat affecting any Trust Property.
7. **TIME:** The Trustee may nominate (and whenever it elects, vary) one or more times (**Times**) during each Business Day, for purposes of subscriptions for and issues of Units, each Time being applicable to a given method of communication or payment. Each day comprises 24 hours ending at midnight.
8. **SUBSCRIPTIONS:** Units will only be issued to persons who are eligible to invest in a pooled superannuation trust and who meet such other criteria as the Trustee determines from time to time (**Eligible Investor**). An Eligible Investor intending to subscribe for Units (**Applicant**) must execute a subscription agreement with and in a form acceptable to the Trustee (**Subscription Agreement**) under which the Applicant agrees to:
 - (a) make subscriptions for Units in respect of which the total subscription monies are up to a specified total amount (**Commitment**);
 - (b) immediately notify the Trustee if the Applicant at any time ceases to be an Eligible Investor; and
 - (c) pay any relevant fee.

The Trustee may at any time require an Applicant or a Holder to provide evidence that the Applicant or Holder is an Eligible Investor. In determining the amount or value of Issue Price with which an Applicant will be credited, the Trustee may deduct from the subscription monies any Taxes and other costs incurred by the Trust or Trustee by reason of receiving the subscription monies. Except where the Trustee otherwise agrees, the amount subscribed must exceed such sum as the Trustee from time to time determines. The Trustee may refuse to enter into a Subscription Agreement without giving any reason. The Trustee may determine an offer period for Applicants to execute Subscription Agreements for Units (**Offer Period**). Units are created and issued on the Issue Price becoming Trust Property. Units paid for by cheque subsequently dishonoured are void.

9. **VALUATIONS:** The Trustee is not to be regarded as having any special expertise in valuation. The Trustee may cause any of the Trust Property to be valued or revalued whenever it thinks fit. The value of any Trust Property comprising an interest in a fund will be determined by reference to the valuations provided by the fund or its adviser or manager (as the case may be). The value of any Trust Property comprising a portfolio of interests in funds will be determined by reference to the valuations provided by the adviser or manager responsible for the portfolio. The value of any other Trust Property will be determined by reference to a source or method determined by the Trustee (including estimates of the value where actual figures are not available). The Trustee will (or will

arrange for another person to) review and monitor the values. The Trustee may adjust the values or adopt other values if it is considered in the best interests of Holders.

10. **NET ASSET VALUE:** Net Asset Value in respect of the Trust Property as a whole means the total value of Trust Property less Trust Liabilities (**Net Asset Value**). The Trustee may calculate Net Asset Value as at any time (**Valuation Time**) (not limited to once a day), and must do so as at the close of business on the last Business Day of each month on the basis of the most recent valuation of each item of relevant Trust Property and determination of relevant Trust Liabilities, as at the Valuation Time.
11. **ISSUE:** The following provisions apply to the issue of Units except to the extent the Trustee reasonably considers other arrangements to be more appropriate in the circumstances:
 - (a) Except as otherwise provided in this Deed, the Trustee may only request subscriptions by a person who has a Subscription Agreement in respect of Units if, within 5 Business Days, the Trustee requests subscriptions by each other person who has a Subscription Agreement in respect of Units so that the subscription monies paid (or required to be paid) by the person (excluding the amount of any Cost of Capital Premium paid or payable by the person) bear the same (or as close as practicable to the same) proportion to the Commitment of the person (less any Cost of Capital Premium paid or payable by the person) as, in respect of each other person who has a Subscription Agreement in respect of Units, the subscription monies paid (or required to be paid) by the other person (excluding the amount of any Cost of Capital Premium paid or payable by the other person) bear to the Commitment of the other person (less any Cost of Capital Premium paid or payable by the other the person).
 - (b) The price at which Units will be issued (**Issue Price**) is determined as follows:
 - (i) Units to be issued during the Offer Period to a person in respect of the initial subscriptions for Units will be issued at a price of US\$1 (and, for the purposes of this clause 11, a subscription will be treated as an initial subscription for Units if it is requested by the Trustee within 5 Business Days of a request in respect of the first subscription for Units).
 - (ii) Units to be issued during the Offer Period to a person as the first subscriptions for Units by the person but which are not in respect of the initial subscriptions for Units will be issued at a price of:
 - (A) US\$1; plus
 - (B) interest at the rate (accruing and compounding at the times) specified in the information memorandum, product disclosure statement or other offer document in respect of the subscription monies payable on issue of such Units from the date such amount would have been payable by the person as subscription monies in respect of Units if all Subscription Agreements in respect of Units (including the Subscription Agreement of the person) had been entered into at the same time (**Cost of Capital Premium**).

- (iii) Units to be issued during the Offer Period to a person in respect of a second or subsequent subscription by the person for Units will be issued at a price of US\$1.
 - (iv) Units issued after the Offer Period will be issued at a price derived by dividing the Net Asset Value as at the last Valuation Time before the first Time occurring after acceptance by the Trustee of the subscription for the Units, and, if appropriate in the opinion of the Trustee, a proportionate allowance for the Trustee's estimate of the total transaction cost which, in the opinion of the Trustee, would be incurred in respect of the acquisition and purchase of Trust Property identified by the Trustee as referable to those Units afresh (irrespective of whether any Trust Property is acquired with the subscription monies), by the number of Units in issue as at that Valuation Time or such other price as may be determined by the Trustee in accordance with Superannuation Law.
 - (c) During the Offer Period, if the Trustee enters into a Subscription Agreement after Units are issued in respect of the initial subscriptions, the Trustee must (separate from any subscriptions to fund any other transaction or Trust Liability):
 - (i) request subscriptions by the Applicant for such number of Units and redeem such number of existing Units held by the existing Holders (for a Redemption Price of US\$1 for each such Unit) so that the proportion that the aggregate subscription monies paid (or required to be paid) by a Holder (excluding the amount of any Cost of Capital Premium paid or payable by the Holder and deducting from such aggregate subscription monies the amount of any redemption proceeds paid or payable to the Holder under this clause 11(c)(i)) bears to the Commitment of the Holder (less any Cost of Capital Premium paid or payable by the Holder) is the same (or as close as practicable to the same) for all Holders; and
 - (ii) issue to the existing Holders (for nil consideration) further Units for which the aggregate Redemption Price is equal to the aggregate Cost of Capital Premium paid by the Applicant (such Units being allocated among the existing Holders in proportion to their respective holdings of Units) and immediately redeem such Units.
 - (c) For the purposes of this clause 11, an increase in the Commitment by a person during the Offer Period is treated as having been made under a separate Subscription Agreement by a different person.
 - (d) Nothing in this clause 11 requires the Trustee to relate any subscription monies to any identifiable Trust Property.
12. **REDEMPTION:** A Holder is not entitled to require the Trustee to redeem its Units except as provided in this Deed. The Trustee may, in its absolute discretion, in response to a request by one or more Holders or whenever it thinks fit, redeem all or any Units if the Trustee is satisfied that either:
- (a) the redemption of Units is in the best interests of all Holders of Units (including, without limitation, in circumstances where a Holder ceases to be an Eligible Investor or fails to produce evidence to the Trustee's satisfaction that it is an Eligible Investor); or

- (b) the redemption of Units is appropriate having regard to such special circumstances as the Trustee may from time to time determine.

The Trustee will use reasonable endeavours to redeem any Units which the Trustee has decided to redeem out of available cash within a period determined by the Trustee. The price payable on redemption (**Redemption Price**) of a Unit is, except as otherwise provided in this Deed, the amount derived by:

- (c) dividing the Net Asset Value as at such Valuation Time as the Trustee selects, minus, if appropriate in the opinion of the Trustee, a proportionate allowance for the Trustee's estimate of the total transaction cost which, in the opinion of the Trustee, would be incurred in respect of the sale and realisation of Trust Property identified by the Trustee as referable to the relevant Units (irrespective of whether any Trust Property is sold or realised to meet the redemption), by the number of Units in issue as at that Valuation Time; or
- (d) such other price as may be determined by the Trustee in accordance with Superannuation Law.

Nothing in this clause 12 requires the Trustee to relate any redemption proceeds to any identifiable Trust Property. The Trustee may satisfy any amount due to a Holder on redemption of any Units by payment in cash or by transfer to the Holder of assets which the Trustee determines are of the same value.

13. **POWERS:** Subject to this Deed, the Trustee has within and outside Australia all the powers in relation to the Trust, Trust Property and Trust Liabilities, that it is legally possible for a natural person or corporation to have, including (but not limited to) powers to invest in or become entitled to an interest in real or personal property of any nature, and to borrow and incur liabilities and obligations of any kind, and as if it were the absolute and beneficial owner of all Trust Property, and to provide statements and reports to Holders. In addition, the Trustee may exercise any powers conferred by Superannuation Law including (without limitation) to implement Holder's directions. The Trustee, by power of attorney or otherwise, may authorise one or more persons (whether or not related to or associated with the Trustee) to do anything that the Trustee may lawfully delegate, including, but not limited to, acting as custodian, holding any Trust Property and executing documents on its behalf. The Trustee will exercise all due diligence and vigilance in carrying out its functions and duties under this Deed and in protecting the rights and interests of the Holders.
14. **MANAGEMENT:** Subject to this Deed, the Trustee will manage the Trust, the Trust Property and Trust Liabilities until none remain. Subject to this Deed, the Trustee may, as it sees fit, in connection with performance of its management duties engage any administrators, advisers, agents, brokers, contractors, custodians, investment managers, underwriters or other persons (whether or not related to or associated with the Trustee). The Trustee must exercise due care in the engaging, monitoring and reviewing the performance of any person so appointed.
15. **REMOVAL OF MANAGER:** If the Trustee has appointed an investment manager to manage Trust Property, the Trustee must terminate the investment manager's appointment, if directed to do so by a Special Resolution of the Holders in circumstances where Holders who voted, in person or by proxy, on the Special Resolution held Units which represented,

in aggregate, not less than 50% of the total value of the interests of all Holders at the time at which the Special Resolution was passed.

16. **DISCRETION:** The Trustee may determine whether to exercise and the manner, mode and time of exercise of its powers in its absolute discretion.
17. **INDEMNITY:** The Trustee is not required to do anything for which it does not have a full right of indemnity out of Trust Property available for that purpose or in relation to which it is not satisfied that its liability is appropriately limited. Any indemnity to which the Trustee is entitled under this Deed is in addition to any indemnity allowed by law.

Except where the Trustee or a director of the Trustee fails to act honestly or intentionally or recklessly fails to exercise the degree of care and diligence that the Trustee or director was required to exercise, the Trustee and each of its directors shall be indemnified out of the Trust Property against all liabilities and losses (but excluding any liability for a monetary penalty under a civil penalty order imposed under Superannuation Law) incurred in the exercise (or purported or attempted exercise) of the trusts, powers, authorities and discretions vested in the Trustee and shall have a lien over and may use the Trust Property for the purposes of the indemnity.

18. **NOTICES TO HOLDERS:** A notice, consent or other communication to any Holder under this Deed is effective if it is in writing, signed and either:
 - (a) left at the Holder's address (as it appears in the Register, or in the case of joint Holders the address of the first named Holder in the Register); or
 - (b) sent to the Holder's address by prepaid post; or
 - (c) faxed to the Holder (to a number notified to the Trustee from time to time); or
 - (d) emailed to the Holder (to an email address notified to the Trustee from time to time).

A notice, consent or other communication that complies with this clause is regarded as given and received:

- (e) if sent by post, 3 working days after it is posted;
 - (f) if sent by fax, when the addressee actually receives it in full and in legible form; and
 - (g) if sent by email, on the day on which it was transmitted or, if transmitted after 5.00 pm (Sydney time), on the next Business Day.
19. **REGISTER:** The Trustee will establish and keep a Unit register (**Register**). The Trustee may establish and keep branch registers anywhere in Australia. The Trustee need not enter notice of any trust on the Register and is not obliged to register any more than three persons as joint Holders. The Trustee must not register a transfer or assignment of Units in the Register unless the transfer or assignment has first been approved by the Trustee in accordance with clause 22. The Trustee must not register a redemption of Units unless the redemption has been effected by the Trustee in accordance with clause 12. The Trustee may treat the registered Holder as the absolute owner of Units registered in that Holder's name and will not be bound to take notice of any trust or equity affecting any Unit. Entry on the Register is conclusive evidence of a Holder's title to Units.

20. **CERTIFICATES:** No certificates will be issued for Units. The Trustee at any time may send any Holder details of Units held by or any Unit transactions of the Holder
21. **DEFAULT BY A HOLDER:** Except where the failure to make a payment relates to a call on a partly paid Unit, in which case clause 2.4 of Schedule 1 will apply, if a Holder fails to make any payment to the Trustee as required under this Deed or a Subscription Agreement, the Holder must:
- (a) on demand by the Trustee pay to the Trustee interest on the outstanding amount at an annual rate which is the higher of the rate charged from time to time by Westpac Banking Corporation (or any successor bank) plus 3% per annum and the highest rate payable by the Trustee to any other person in connection with that failure by the Holder (including without limitation in connection with a failure by the Trustee in connection with that failure by the Holder);
 - (b) on demand by the Trustee pay to the Trustee the amount of any losses, liabilities, expenses, fees or damages incurred by or asserted against the Trustee in connection with that failure by the Holder (including without limitation in connection with a failure by the Trustee in connection with that failure by the Holder); and
 - (c) on demand by the Trustee offer the Units held by the Holder for sale to the persons, in the proportions, at the value and for the periods determined by the Trustee, failing which the Trustee may do so on behalf of the Holder.
22. **PROHIBITION ON TRANSFER OF UNITS:** A Holder may only transfer or assign Units with the prior written approval of the Trustee. Subject to this clause 22, the Trustee has an absolute discretion whether or not to give its approval to any proposed transfer or assignment of Units. The Trustee must not give its approval to a proposed transfer of any Units unless the transfer or assignment is to an Eligible Investor and the Trustee considers it to be:
- (a) in the best interests of all Holders; or
 - (b) appropriate having regard to such special circumstances as the Trustee may from time to time determine.
- A transfer or assignment of Units may only be effected in such manner as the Trustee from time to time prescribes. Without derogating in any way from the Trustee's discretion whether or not to approve any proposed transfer or assignment of a Holder's Units, the Trustee may from time to time in its absolute discretion and in such manner as it may determine assist a Holder, who gives written notice to the Trustee that it wishes to transfer or assign all or any of the Holder's Units, to identify a suitable Eligible Investor to be a possible transferee or assignee of all or any of these Units. A transfer or assignment of Units takes effect only on registration in the Register.
23. **DEATH AND INSOLVENCY:** The Trustee will only recognise surviving joint Holders, the legal personal representatives of a deceased Holder and the person legally entitled to Units consequent on bankruptcy or liquidation, respectively, as having rights or title to the Units in those circumstances.

24. **TERMINATION:** The Trustee at any time may terminate the Trust and must do so if so directed by a Special Resolution of Holders (**Termination**). On Termination, the Trustee will realise all Trust Property, pay, discharge or provide for all Trust Liabilities and expenses of administration and termination and distribute the net proceeds among Holders pro rata to the aggregate Redemption Price of the Units held by each Holder. The Trustee may postpone realisation and will not be responsible for any resulting loss unless caused by the Trustee failing to act honestly or intentionally or recklessly failing to exercise the required degree of care and diligence. The Trustee may make partial distributions to Holders pro rata to the number of Units held by each Holder.

25. **INDEPENDENT RIGHTS:** The Trustee and any related body corporate or associate of the Trustee may, subject always to acting in good faith to Holders:

- (a) hold Units, if eligible to hold Units in a pooled superannuation trust;
- (b) represent or act for, or contract with, individual Holders;
- (c) deal in any capacity with the Trustee or with any related body corporate or associate of the Trustee or with any other trust;
- (d) invest in any entity in which the Trust invests; or
- (e) act in any capacity in relation to any other trusts including buying and selling Trust Property,

without in any such case being liable to account to the Trust, to the Trustee or to any Holder.

26. **TRUSTEE'S LIABILITY:** Except if the Trustee or a director of the Trustee fails to act honestly, or intentionally or recklessly fails to exercise the degree of care and diligence that the Trustee or the director was required to exercise, and except in relation to any liability for a monetary penalty under a civil penalty order imposed under Superannuation Law, the Trustee will not be liable to any Holder or any future Trustee or any other person:

- (a) for loss caused by:
 - (i) the Trustee's acts or omissions in reliance on:
 - (A) the Register;
 - (B) information or documents supplied by any of its agents;
 - (C) the authenticity of any document;
 - (D) the opinion, advice or information of any barrister, solicitor, accountant, valuer or other expert instructed by the Trustee; or
 - (E) information from any banker or the Trust auditor,

provided the Trustee has no reason to believe the relevant material not to be authentic or the expert not to have the relevant expertise;
 - (ii) any act, omission, neglect or default of any other person;

- (iii) any act or omission required by law, the Relevant Requirements or by any court of competent jurisdiction;
 - (iv) any particular price or reserve not having been realised;
 - (v) any unnecessary payment having been made to any fiscal authority;
 - (vi) any assistance given under clause 22 to a Holder in respect of the transfer or assignment in respect of Units or consequence thereof;
 - (vii) any act or omission of an operator of any securities title, transfer or holding system;
 - (viii) any person to whom the Trustee has lawfully delegated authority to do anything that the Trustee may lawfully delegate including (but not limited to) the holding of any Trust Property; or
 - (ix) any other matter or reason; and
- (b) in any event, the Trustee will not be liable to make payments or satisfy any money or damages out of any funds, property or assets (including its personal assets and the fund of any other trust of which it is the trustee) to any Holder or to any other person in relation to any Trust except as follows:
- (i) as to amount: to the extent of the proceeds of realisation of such of the Trust Property actually vested in the Trustee (or received by it) in accordance with the provisions of this Deed in respect of the Trust as are available to it by virtue of its rights from time to time to be indemnified from the Trust (**Realised Trust Proceeds**); and
 - (ii) as to timing: only once the Realised Trust Proceeds have become available to the Trustee for payment to the Holder or other person.

27. **TRUSTEE'S FEES AND OUTGOINGS:** The Trustee and its directors are entitled to be paid fees out of the Trust Property as specified in any information memorandum, product disclosure statement or other offer document in respect of Units. All costs, charges, expenses and outgoings reasonably and properly incurred by the Trustee and its directors in relation to the Trust are payable or reimbursable out of Trust Property including (without limitation) costs, charges, expenses and outgoings in connection with the following matters or of the following nature:

- (a) preparation, approval, stamping, execution and printing of this Deed and any deed amending this Deed;
- (b) retirement, removal and appointment of any Trustee;
- (c) institution, prosecution, defence and compromise of any court proceedings, arbitration or dispute resolution proceedings in relation to this Deed or the Trust (but the Trustee and its directors must repay to the Trust, and are not entitled to be reimbursed for, any amount of outgoings in connection with proceedings to the extent that they are found by a court to be liable for failing to act honestly or intentionally or recklessly failing to exercise the required degree of care and diligence);

- (d) convening and holding any Meeting and implementing any resolution of the meeting;
- (e) bank fees, interest, discount and acceptance fees for bill facilities, all borrowing costs and like amounts;
- (f) Taxes;
- (g) any actual or proposed investment, acquisition, realisation, disposal, valuation, maintenance, alteration, improvement, enhancement, receipt, collection or distribution of any Trust Property;
- (h) fees payable to any person authorised by the Trustee to hold Trust Property;
- (i) establishing and maintaining the Register, the Trust accounting system and records and the investment register (including operation and development of computer facilities, both software and hardware, salaries and on costs);
- (j) fees payable to any regulatory authority;
- (k) preparing, printing and posting accounts, cheques and documents, or making payments to Holders;
- (l) any offer or invitation in respect of Units, including preparation, lodgement, registration, distribution and promotion of Trust prospectuses, product disclosure statements or information memoranda;
- (m) amounts payable to administrators, advisers, agents, brokers, contractors, custodians, investment managers (including any performance fees), underwriters or other persons engaged by the Trustee under this Deed (including legal costs on a full indemnity basis);
- (n) the Trust auditor's fees;
- (o) preparing and lodgement of Trust taxation or other returns;
- (p) termination of the Trust;
- (q) entering the Trust in any survey;
- (r) fees payable to any ratings organisation;
- (s) performance of the Trustee's duties, exercise of the Trustee's rights or powers, compliance with the law or administration of the Trust;
- (t) fees payable to Austraclear Limited or any other securities system authorised by the Trustee to hold Trust Property;
- (u) dealing with subscriptions for and redemption of, and determining the Issue Price and Redemption Price of Units; and
- (v) dealing with any requests by a Holder for approval to transfer or assign Units.

28. **RECOVERIES:** Each Holder is liable for all Taxes and costs in relation to that Holder's entitlement to, or payment of, income or capital to, or any act requested by, that Holder and for unpaid amounts. The Trustee may withhold payment of any money payable to a Holder until the liability is discharged, or may meet the liability and recover the amount from any money or property held for, or distribution or other amount payable to, the Holder.
29. **INCOME COLLECTION:** The Trustee will collect all Trust income.
30. **POOLED SUPERANNUATION TRUST:** For so long as the Trust is a pooled superannuation trust, the provisions of Schedule 2 do not apply and the income of the Trust will form part of the Fund and will not be distributed and no holder will have any present entitlement to any of that income. The Trustee may, however, at any time make a distribution of any amount of capital or income provided that the Trustee makes a distribution to each Holder of their Proportional Entitlement of that amount (determined in accordance with Schedule 2). The Trustee may, in consultation with the Auditor, classify any item as being on income or capital account and decide the extent to which any reserves or provisions should be made, having regard to the definition of Trust Liabilities. If the Trust ceases to be a pooled superannuation trust for any reason whatsoever, the provisions of Schedule 2 will apply.
31. **PAYMENTS:** The obligations of the Trustee will be fully discharged in respect of any money payable to any Holder which is deposited into an account with a bank or other financial institution nominated by the Holder and approved by the Trustee or, if the Trustee so agrees, paid by cheque posted to the Holder, or (if the Trustee so agrees) applied in such other manner as the Holder directs.
32. **ACCOUNTS:** Accounts for the Trust will be prepared in accordance with Superannuation Law. The Trustee must annually prepare (or arrange for the preparation of) Special Purpose Financial Statements which must be provided to Holders after audit by the Auditor. A Holder may make written requests for such additional accounting information as is required to satisfy specifically all of its information needs. The Trustee must provide such additional accounting information within a reasonable period of time.
33. **AUDITOR:** The Trustee must appoint and may at any time replace as Trust auditor an auditor who is an approved auditor, or a firm of chartered accountants of which at least one partner is an approved auditor for the purposes of Superannuation Law (**Auditor**).
34. **MEETINGS:** The Trustee may at any time and must, at the request of Holders who, at the date of the request, hold not less than 30% of all the Units in the Trust convene a meeting of Holders (**Meeting**) by giving at least 10 Business Days' notice to Holders. Accidental omission to give notice to, or non-receipt of notice by, a Holder, does not invalidate a Meeting nor any resolution passed at a Meeting. At a Meeting, each Holder is entitled to vote personally or by proxy. A proxy given by facsimile may be accepted if the Trustee has no reason to believe that it is not genuine. A Holder's proxy is invalid only if it is more than 12 months old or when the Trustee receives written notice of revocation, or of the death or insanity of the Holder.
35. **CONDUCT OF MEETINGS:** The Trustee may nominate the chairman, who need not be a Holder, of any Meeting. The quorum for a Meeting is the lesser of all the Holders and 5 persons present holding, or representing by proxy, between them not less than 10% of all Units in issue in the Trust when at the time the Meeting is due to begin. If a quorum is not

present within 15 minutes after the Meeting is due to start, then if convened by the Trustee at the request of one or more Holders, the Meeting is dissolved, and, in any other case, the Meeting stands adjourned to such place and time as the Trustee determines. At a Meeting so adjourned, Holders and persons holding proxies present when the adjourned Meeting is due to start will constitute a quorum. Every question arising at a Meeting shall be decided by a show of hands, unless a poll is demanded (before or on the declaration of the result) by the chairman or by the lesser of all the Holders and 5 or more persons, holding between them or representing by proxy not less than 10% of all Units in the Trust. Each Holder is entitled to 1 vote on a show of hands and 1 vote per Unit on a poll at a Meeting. The joint Holder first named in the Register (or if that person does not vote, the next named joint Holder, or if that person does not vote, the next named and so forth) may exercise the voting rights of jointly-held Units. A resolution is passed if a simple majority of votes cast are in favour unless it is a matter requiring a Special Resolution as provided for in the Deed. The chairman's declaration of the validity of any vote and result of voting is conclusive. The chairman is responsible for the conduct of the Meeting and may adjourn any Meeting to such time and place as the chairman sees fit. A resolution duly passed at a Meeting binds all Holders, whether or not present at the Meeting. Minutes of a Meeting signed by the chairman constitute conclusive evidence of the proceedings of the Meeting.

36. **POSTAL BALLOT:** A Meeting may be conducted by postal ballot in accordance with such arrangements as the Trustee considers appropriate, reflecting, as closely as may be practicable, the provisions of this Deed with respect to Meetings.
37. **REMOVAL AND REPLACEMENT OF TRUSTEE BY HOLDERS:** Subject to Superannuation Law, Holders may remove the Trustee provided that:
 - (a) a Special Resolution has been passed in favour of removing the Trustee;
 - (b) a Special Resolution has been passed at the same Meeting in favour of a particular person replacing the Trustee (and such person is permitted under Superannuation Law to be the Trustee);
 - (c) Holders who voted, in person or by proxy, on each Special Resolution contemplated in paragraphs (a) and (b) at the Meeting, hold Units which represent, in aggregate, not less than 50% of the total value of the interests of all Holders at the time at which each such Special Resolution is passed; and
 - (d) the person approved to replace the Trustee under the Special Resolution contemplated in paragraph (b) has accepted that appointment and agrees to become the Trustee immediately after the removal of the Trustee approved under the Special Resolution contemplated in paragraph (a) takes effect.
38. **TRUSTEE'S RETIREMENT:** The Trustee, by deed:
 - (a) may at any time; and
 - (b) shall, if it becomes disqualified for the purposes of Superannuation Law, retire as Trustee of the Trust.

Whenever a Trustee retires or otherwise ceases to be Trustee (other than in accordance with clause 37), the Trustee by deed may appoint another constitutional corporation as Trustee,

such constitutional corporation being approved by the Holders by a Special Resolution passed at a Meeting. If the Trustee fails to appoint another constitutional corporation, the Holders may do so by Special Resolution passed at a Meeting.

39. **LIABILITY OF HOLDERS:** Subject to this Deed, the liability of each Holder is limited to the amount subscribed, or agreed to be subscribed by it, for Units. Without in any way limiting the rights of the Trustee to recover unpaid amounts from Holders, recourse of the Trustee and Trust creditors in respect of the Trust shall be limited to Trust Property. Any relationship of partnership or agency between the Trustee and any Holder is expressly excluded.
40. **RECLAIM OF DISTRIBUTIONS:** If the Trustee (or a custodian) is required to return any distribution received by the Trustee (or a custodian), the Holders must on written demand by the Trustee promptly return to the Trustee the amount required to be returned by the Trustee. The proportion of that amount to be returned by each Holder is equal to the proportion of the total amount of the distribution which was received by the Holder (by way of distribution or redemption proceeds in respect of the distribution). The obligations of a Holder under this clause continue after the Holder ceases to hold Units.
41. **AMENDMENTS TO DEED:** The Trustee may, by supplemental deed, make any modification, addition or deletion to this Deed, provided that:
 - (a) the Trustee reasonably believes that such modification, addition or deletion does not adversely affect any Holder's rights; or
 - (b) the modification, addition or deletion is approved by a Special Resolution of Holders.
42. **MEANINGS:** Unless a contrary intention appears, the singular includes the plural and vice versa. Legislation is referred to as amended or replaced from time to time. This Deed is governed by the law of Victoria. Terms which are defined in Superannuation Law have the same meaning when used in this Deed.

The following definitions apply in this Deed:

Business Day means any day on which Australian banks are generally open for business in Melbourne.

Deed means this deed as amended, replaced or rewritten from time to time.

Regulator means, as the context requires, the Australian Prudential Regulation Authority or the Australian Securities and Investments Commission.

Special Purpose Financial Statements means financial statements prepared for users who have specialised needs (such as Holders) and who possess the authority to command the type and nature of the accounting information they require to meet those needs.

Special Resolution means a resolution of Holders passed by a majority of at least 75% of the votes cast (and at least 75% by number of Holders who voted), in person or by proxy, were in favour.

Superannuation Law means the *Superannuation Industry (Supervision) Act 1993 (Cth)* and any regulations made under that act as modified in their application to the Trust by any subsisting declaration, modification or exemption granted by the Regulator.

Taxes means all income, capital gains, recoupment, debits, land, sales, payroll, fringe benefits, group, profit, interest, property, undistributed profits, GST, withholding and other taxes, stamp, documentary, financial institutions, registration and other duties, municipal rates, and all other imposts, deductions and charges, related interest, penalties, charges, fees or other amounts assessed, charged, assessable or chargeable by or payable to any national, state or municipal taxation authority.

Trust Liabilities means all liabilities of the Trustee in respect of the Fund, including borrowings, liabilities for Taxes, unpaid costs, charges, expenses, outgoings and fees, contingent liabilities, provisions the Trustee approves and which are in accordance with generally accepted accounting principles and applicable accounting standards or as required by Superannuation Law or which the Trustee otherwise considers should be made for Taxes or other potential liabilities (including for any fee in the nature of a performance fee which may or may not be payable in the future) and unpaid amounts due and payable to Holders and unpaid remuneration due to the Trustee and the Manager but unless the Trustee decides otherwise in any particular case, does not include the general liabilities of the Trustee to Holders in their capacity as such. For the avoidance of doubt, the Trustee may adjust any provision to take account of tax credits or other tax offsets as it considers appropriate.

Trustee means the trustee of the Trust from time to time.

Year means a year of income for the purposes of the *Income Tax Assessment Act 1997 (Cth)*.

EXECUTED as a deed.

SIGNED, SEALED and DELIVERED for
Industry Funds Management (Nominees)
Limited under power of attorney in the
 presence of:



Signature of Attorney

DAMIAN MOLOONEY

Name (please print)



Signature of Attorney

DANIA WRIGHT

Name (please print)



Signature of Witness

ADAM CLARK

Name (please print)



Signature of Witness

ADAM CLARK

Name (please print)

Schedule 1

Partly Paid Units (See Clause 6)

1. DEFINITIONS

In this Schedule:

Drawn Capital means, in respect of a partly paid Unit:

- (a) the total amount which has been paid on application for the Unit; plus
- (b) the total amount paid under clause 2 of this Schedule in respect of the Unit (but excluding any accrued interest included in that amount).
- (c) the total amount which is required to be paid under clause 2.1 of this Schedule in respect of the Unit, but which has not yet been paid (but excluding any accrued interest included in that amount).

Suspended Unit means a partly paid Unit which has been forfeited or in respect of which the rights are suspended from time to time under clause 2.4 of this Schedule.

Suspended Holder means a Holder in respect of a Suspended Unit.

Undrawn Capital means, in respect of a partly paid Unit, the amount of the Issue Price of the Unit, less the Drawn Capital.

2. Calls on partly paid units

2.1 Trustee may make calls

The Trustee may call on a Holder to pay all or any of the Undrawn Capital in respect of its partly paid Units at any time in accordance with this clause 2.

2.2 Circumstances of a call

Except as otherwise provided in any Subscription Agreement, the Trustee may only make a call if:

- (a) in the opinion of the Trustee, the call is required to provide funding for the Trust whether for the purpose of investment, payment of fees and expenses or otherwise; and
- (b) a call is made at the same time on all partly paid Units in respect of which the Drawn Capital is the same and the Drawn Capital following the call in respect of each partly paid Unit would not be greater than the Drawn Capital on any other partly paid Unit.

2.3 Notice of call

Except as otherwise provided in any Subscription Agreement, the Trustee must give a Holder at least 5 Business Days' written notice of the amount and due date of a call.

2.4 Failure to pay a call in full

- (a) The unpaid amount of any call will accrue interest at a rate equal to the annual rate charged by the Westpac Banking Corporation (or any successor bank) on overdrafts from time to time plus 3% per annum on the daily balance of the unpaid amount (including interest) on and from the first Business Day after the due date for the call until the earlier of the date of payment of the unpaid amount (including interest) or the date of forfeiture of the Unit.
- (b) The Trustee may, if the amount of a call is not paid in full by the due date of the call, give written notice to the Holder which specifies:
 - (i) a date for payment of the unpaid amount of the call (including interest) being no earlier than 5 Business Days from the date the notice is given; and
 - (ii) a statement that the Units of the Holder will be liable to be forfeited if the unpaid amount of the call (including interest) is not paid in full by that date.
- (c) The rights attaching to a Unit, including without limitation the right to participate in any distributions of net income or other distributions and the right to vote at a Meeting, are suspended on and from the first Business Day after the due date for a call on the Holder until the earlier of the date of payment of the unpaid amount (including interest) or the date of forfeiture of the Suspended Units.
- (d) Without limitation to clause 2.4(c), from the first Business Day after the due date for a call on the Holder until the earlier of the date of payment of the unpaid amount (including interest) or the date of forfeiture of the Suspended Units of the Holder:
 - (i) the provisions of this Deed dealing with Holders' rights to attend, be counted in a quorum or vote at any Meeting or in any postal ballot are determined; and
 - (ii) any income or other distribution entitlements which may arise are calculated; as if the Suspended Units were not on issue.
- (e) The Trustee may determine at any time after the date for payment of the unpaid amount of the call (including interest) specified in a written notice under clause 2.4(b) and before the unpaid amount (including interest) is paid in full that the Units of the Holder are from that date forfeited (together with any entitlement to distributions of net income or other distributions which may have accrued but not at that time been paid).
- (f) The forfeiture of any Units may be cancelled by the Trustee if the Trustee receives the unpaid amount of the call (including interest) on the Holder in full prior to the sale of that Unit under clause 2.4(g).
- (g) The Trustee may sell a forfeited Unit on such terms as the Trustee thinks fit and on completion of such sale and registration of the transfer, the Unit will be credited as paid up to the amount paid up on the Unit.

- (h) The Trustee may, and each Holder appoints the Trustee as its agent and attorney and authorises the Trustee to, execute a transfer of a forfeited Unit in favour of the purchaser.
- (i) The Trustee must, and each Holder appoints the Trustee as its agent and attorney and authorises the Trustee to, receive the proceeds of the sale of a forfeited Unit and:
 - (i) the purchaser will not be required to ensure that the proceeds are properly applied, paid or treated in accordance with this Deed;
 - (ii) the title of the purchaser will not be affected by any irregularity or invalidity in the procedures in relation to the forfeiture or sale of the Unit; and
 - (iii) the interests of the purchaser will be free from any rights or liabilities between the former holder of the Unit and the Trustee in respect of the Unit.
- (j) A Holder ceases to be a Holder in respect of a Unit from the date of forfeiture but remains liable to pay to the Trustee until payment is received by the Trustee in full:
 - (i) all costs and expenses in respect of the forfeiture and sale of the Unit;
 - (ii) any interest on the unpaid amount of any calls which were payable by the former Holder on or before the day of sale; and
 - (iii) any unpaid amount of any calls payable by the former Holder on or before the date of sale.
- (k) The proceeds of the sale of a forfeited Unit must be applied by the Trustee:
 - (i) first, to the payment of all costs and expenses in respect of the forfeiture and sale of the Unit;
 - (ii) second, to the payment of any interest on the unpaid amount of any calls which were payable by the former Holder on or before the day of sale;
 - (iii) third, to the payment of any unpaid amount of any calls payable by the former Holder on or before the day of sale; and
 - (iv) fourth, in payment of the balance (if any) to the former Holder.

2.5 Application of distributions

The Trustee may apply all or any of a distribution entitlement of a Holder to satisfy all or any part of the unpaid amount of a call (including interest) or any liability referred to in clause 2.4(j) in respect of a Unit which is held or has been forfeited by the Holder.

Schedule 2

Distributions (See Clause 30)

1. DEFINITIONS

In this Schedule:

Commissioner means the Commissioner of Taxation

Corporate Unit Trust has the same meaning as in section 102J of the Tax Act of 1936

Distribution Calculation Date means:

- (a) for the purposes of clause 2 of this Schedule, the last day of each Financial Year and such other date or dates as the Trustee may determine from time to time; and
- (b) for the purposes of clause 3 of this Schedule, such date or dates as the Trustee may determine from time to time.

Distribution Period means:

- (a) the period from the date of this Deed to the first Distribution Calculation Date;
- (b) each subsequent period beginning the day after the previous Distribution Calculation Date and ending on the next Distribution Calculation Date; and
- (c) the period beginning the day after the last Distribution Calculation Date and ending on the termination of the Fund.

Financial Year means:

- (a) the period from the date of this Deed to midnight on the next 30 June;
- (b) each subsequent period of 12 months ending at midnight on each 30 June preceding the termination of the Fund; and
- (c) the period beginning at midnight on the 30 June immediately preceding the termination of the Fund and ending on the termination of the Fund.

Net Income means:

- (a) in respect of a Distribution Period ending on the last day of a Financial Year, an amount equal to the "net income" of the Trust as defined in section 95 of the Tax Act of 1936 less:
 - (i) amounts included in the net income only as notional gross ups under rules relating to underlying tax paid such as franking rules or foreign tax credit rules; and
 - (ii) amounts previously distributed (or required to be distributed) under clause 2.3 in respect of Distribution Periods during the relevant Financial Year; and

- (b) in respect of a Distribution Period other than a Distribution Period ending on the last day of a Financial Year, an amount which the Trustee determines to be the “net income” of the Trust as defined in section 95 of the Tax Act of 1936 less amounts included in the net income only as notional gross ups under rules relating to underlying tax paid such as franking rules or foreign tax credit rules, calculated as if the Distribution Period were a Financial Year.

Proportional Entitlement means in respect of a distribution (or other amount), in respect of any person who held any Unit, the amount of the distribution (or other amount) bearing the same proportion to the total distribution (or other amount) that the Units held by that person at the relevant time bears to the total number of issued Units at the relevant time.

Public Trading Trust has the same meaning as in section 102R of the Tax Act of 1936.

Tax Act of 1936 means the *Income Tax Assessment Act 1936 (Cth)*.

Tax Act of 1997 means the *Income Tax Assessment Act 1997 (Cth)*.

2. INCOME AND CAPITAL DISTRIBUTION

2.1 Application

This clause 2 applies to the exclusion of clauses 3.2 to 3.6 except in respect of distributions in respect of any Financial Year for which a determination under clause 3.1(a) has effect.

2.2 Treatment

- (a) The Trustee may, in consultation with the Auditor, classify any item as being on income or capital account and decide the extent to which any reserves or provisions should be made, having regard to the definition of Trust Liabilities.
- (b) The Trustee may, before the last Business Day of a Distribution Period ending on the last day of a Financial Year, determine that any amount which would otherwise be included in the Net Income for that Distribution Period, but does not represent actual income or capital of the Fund, shall not be included in the Net Income for that Distribution Period.

2.3 Income distribution

- (a) The Trustee must determine the Net Income for a Distribution Period ending on the last day of a Financial Year as soon as reasonably practicable after the end of that Distribution Period.
- (b) A person who held any Unit at the end of a Distribution Period is presently entitled to their Proportional Entitlement of the Net Income for the Distribution Period (irrespective of any subsequent transfer or transmission of the Units).
- (c) The Trustee must make a distribution to each Holder (or former Holder) of their Proportional Entitlement of the Net Income for a Distribution Period within 3 months after the end of the Distribution Period (but interest is not payable by the Trustee in respect of such distributions).

2.4 Capital distribution

The Trustee may at any time make a distribution of any amount of capital or other amount not included in Net Income provided that the Trustee makes a distribution to each Holder of their Proportional Entitlement of that amount.

2.5 Non-cash distributions

The Trustee may transfer Trust Property to a Holder (or former Holder entitled to a distribution) instead of cash otherwise payable as a distribution (either in whole or part) if:

- (a) the value of the Trust Property and any cash payment is equal to the total distribution due to the Holder; and
- (b) the transfer is approved by:
 - (i) Special Resolution; and
 - (ii) the transferee Holder (or former Holder entitled to a distribution) by giving written notice to the Trustee if the transfer of the Trust Property is not made to the Holders (or former Holders entitled to a distribution) in proportion to their Proportional Entitlements of that distribution in all respects (including both the value and the nature of the Trust Property).

2.6 Insufficient cash

The Trustee may, to the extent that there is not sufficient cash available for distribution to satisfy the distribution entitlements of the Holders under this clause 2, require the Holders to reinvest the distribution by subscription for further Units in proportion to their respective distribution entitlements by giving written notice to the Holders in which case:

- (a) the Trustee will be taken to have received and accepted subscriptions for those further Units on the first day after the end of the relevant Distribution Period; and
- (b) the further Units must be issued as fully paid (but the subscription for further Units will not be treated under this Deed as a payment by the Holder of any uncalled capital in respect of any other Units held by the Holder).

2.7 Notice of distributions

The Trustee must send to each Holder (or former Holder entitled to a distribution) a written notice at least 3 Business Days before a payment of a distribution which sets out:

- (a) the date on which the distribution is to be paid;
- (b) the amount of the distribution to be paid to the Holder (or former Holder entitled to a distribution); and
- (c) the portion of the distribution to be paid to the Holder (or former Holder entitled to a distribution) representing income and the portion representing capital.

3. INCOME AND CAPITAL DISTRIBUTIONS IF TRUST TAXED AS A COMPANY

3.1 Trust to be taxed as a company

- (a) If at any time during a Financial Year the Trustee or the Commissioner determines that the Trust is a Corporate Unit Trust or a Public Trading Trust, then:
 - (i) this clause 3 applies to the exclusion of clause 2 in respect of that and all subsequent Financial Years (subject to clause 3.1(b)) in respect of any distributions of Net Income of the Trust;
 - (ii) within 5 Business Days of such determination being made, the Trustee must provide written notice of the determination to any person who holds or held any Unit during the Financial Year in which the determination is made; and
 - (iii) the Trustee must take all steps reasonably necessary to enable it to comply with all relevant provisions of the Tax Act of 1936 or the Tax Act of 1997 that apply where the Trust is a Corporate Unit Trust or a Public Trading Trust (as the case may be).
- (b) If at any time after a determination under clause 3.1(a) has been made, the Trustee or the Commissioner determines that the Trust is no longer either a Corporate Unit Trust or a Public Trading Trust, then:
 - (i) this clause 3 no longer applies and clause 2 will apply in respect of all subsequent Financial Years in respect of any distributions of Net Income of the Trust; and
 - (ii) within 5 Business Days of such determination being made, the Trustee must provide written notice of the determination to any person who holds Units at the beginning of the Financial Year in which the determination first applies.

3.2 Treatment

The Trustee may, in consultation with the Auditor, class any item as being on income or capital account and decide the extent to which any reserves or provisions should be made having regard to the definition of Trust Liabilities.

3.3 Income distribution

- (a) At the end of each Distribution Period, the Trustee must:
 - (i) as soon as reasonably practicable, determine the Net Income for that Distribution Period; and
 - (ii) either:
 - (A) within the time required by applicable law, pay out of the Trust Property any Tax payable by the Trustee in respect of the Distribution Period; or
 - (B) if no Tax is immediately payable, allocate out of the Trust Property, that amount of Tax that would be required to be paid in respect of the

Distribution Period and make such payment when it becomes payable within the time required by applicable law.

- (b) At or after the end of each Distribution Period, the Trustee may in its absolute discretion declare that a distribution will be made of all or part of the Net Income in respect of that Distribution Period or a previous Distribution Period to which this clause 3 applies.
- (c) Subject to any rights or restrictions attached to any Units, the Trustee must make a distribution to each person who held a Unit at the end of the relevant Distribution Calculation Date of their Proportional Entitlement of the total distribution (irrespective of any subsequent transfer or transmission of the Units).
- (d) A distribution must be paid by the Trustee as soon as reasonably practicable after it is declared (but interest is not payable by the Trustee in respect of any such distribution).

3.4 **Capital distribution**

The Trustee may at any time make a distribution of any amount of capital provided that the Trustee makes a distribution to each Holder of their Proportional Entitlement of that capital.

3.5 **Non-cash distributions**

The Trustee may transfer Trust Property to a Holder (or former Holder entitled to a distribution) instead of cash otherwise payable as a distribution (either in whole or part) if:

- (a) the value of the Trust Property and any cash payment is equal to the total distribution due to the Holder; and
- (b) the transfer is approved by:
 - (i) Special Resolution; and
 - (ii) the transferee Holder (or former Holder entitled to a distribution) by giving written notice to the Trustee if the transfer of the Trust Property is not made to the Holders (or former Holders entitled to a distribution) in proportion to their Proportional Entitlements of that distribution in all respects (including both the value and the nature of the Trust Property).

3.6 **Notice of distributions**

Without limiting the obligations of the Trustee under applicable law (including, if applicable, laws concerning provision of statements relating to the “franking” of distributions) the Trustee must send to each Holder (or former Holder entitled to a distribution) a written notice at least 3 Business Days before a payment of a distribution which sets out:

- (a) the date on which the distribution is to be paid;
- (b) the amount of the distribution to be paid to the Holder (or former Holder entitled to a distribution); and

- (c) the portion of the distribution to be paid to the Holder (or former Holder entitled to a distribution) representing income and the portion representing capital.