

3.

DATED at Brisbane this 18th day of April

1996

WITNESS to the above signatures:

Signature of witness:

Personal Information

Name of witness:

SADIE WAWRZYNIAK

Address:

58 ROCKFIELD RD, DEGLANDELLA QLD 4077

Occupation:

EXECUTIVE ASSISTANT

QUEENSLAND

Corporations Law

A COMPANY LIMITED BY SHARES

MEMORANDUM AND ARTICLES OF ASSOCIATION

of

QCTF PTY LTD

CLAYTON UTZ

SOLICITORS AND ATTORNEYS

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QUEENSLAND

Corporations Law

A COMPANY LIMITED BY SHARES

ARTICLES OF ASSOCIATION

of

QCTF PTY LTD

PRELIMINARY

1. The Regulations contained in Table "A" in the Schedule 1 to the *Corporations Law* shall not apply to this Company except in so far as the same are repeated or contained in these Articles.

2. In the interpretation of these Articles or any alteration thereof or addition thereto the expressions defined in the *Corporations Law* or any statutory modification thereof shall have the meanings so defined and the following words and expressions shall have the several meanings hereby assigned to them unless such meanings are excluded by or are repugnant to the context or subject matter (that is to say):

words importing the singular number only shall include the plural number and vice versa;

words importing the masculine gender only shall include the feminine gender:

"**Articles**" shall mean these Articles of Association and all supplementary substituted or amended Articles for the time being in force;

"**Bert Fund**" means the Building Employees Redundancy Trust constituted by Deed of Trust dated 12 December 1989;

"**Board**" shall mean a meeting of Directors or the Directors assembled at a Board as the case may be;

"**capital**" shall mean the capital for the time being raised or authorised to be raised for the purposes of the Company;

"**CITC**" shall mean the Construction Industry Council (Queensland) Inc

"**Construction Industry**" or "**the Industry**" means the industry or industries comprising those sectors of industry or commerce commonly known and characterised as and associated with the Building, Housing, General, Civil and Engineering Construction Industries and the expressions where used or required shall mean each and every one of those industries or any of those industries;

"Corporations Law" means the *Corporations (Queensland) Law* and any amendment or modification thereof for the time being in force;

"Directors" shall mean the Directors for the time being of the Company or such number of them as have authority to act for the Company. The term "Director" shall also include a person duly appointed and for the time being acting as an attorney for a Director or as an alternate Director but does not include an Associate Director;

"Fund" or "Trust Fund" shall mean the charitable trust called "The Queensland Construction Training Fund" ("QCTF") constituted by the Trust Deed;

"letter" shall include circular or post card;

"Managing Director" shall include the Managing Director or the Acting Managing Director for the time being of the Company;

"Management Rules" shall mean the rules which shall be in force for the time being for the management of the Company;

"month" shall mean calendar month;

"Office" shall mean the registered office for the time being of the Company;

"persons" shall include partnerships, associations, corporations and bodies political or corporate as well as individuals;

"property" shall mean any legal or equitable estate or interest of the Company whether present or future and whether vested or contingent in real or personal property of any description and includes choses in action;

"Secretary" or "Manager" shall include the Acting Secretary or Acting Manager for the time being of the Company;

"Register" shall mean the Register of Members to be kept pursuant to section 209 of the *Corporations Law*;

"relative" has the meaning assigned thereto for the time being in section 6(1) of the *Income Tax Assessment Act 1936* of the Commonwealth;

"Seal" shall mean the Common Seal of the Company;

"State" means the State of Queensland;

"Trust Deed" means the Deed of Trust dated 18 October 1991 and varied by Deeds of Variation dated 8 June 1993, 21 June 1994, 29 November 1994, 21 February 1995 and 5 March 1996 constituting the Fund;

"writing" and "written" shall include printing, lithography, photography, typewriting and other modes of representing or reproducing words, figures, drawings or symbols in visible form;

any headings or marginal notes to these Articles shall not affect the construction hereof

In every case where in these presents general expressions are used in connection with powers, discretions, or things such general expressions shall not be limited to or controlled by the particular powers, discretions or things with which the same are connected, any words and expressions denoting authority or permission shall be construed as words or expressions of authority merely and shall not be construed as words or expressions denoting directions or compulsory trusts. Subject as aforesaid any words defined in the *Corporations Law* shall if not inconsistent with the subject or the context bear the same meaning in these presents.

EXERCISE OF POWERS

3. The company is to act solely as trustee of the Fund but nothing in this Article shall be taken to restrict or limit in any way the capacity or powers of the company

PROPRIETARY COMPANY

4. The Company is registered as a proprietary company and accordingly:
- (a) the right to transfer shares is restricted in the manner hereinafter provided;
 - (b) the number of members of the Company is limited to not more than 50 (counting joint holders of shares as one person and not counting any person in the employment of the Company or of its subsidiary or any person who while previously in the employment of the Company or of its subsidiary was and thereafter has continued to be a member of the Company);
 - (c) any invitation to the public to subscribe for and any offer to the public to accept subscription for any shares in or debentures of the Company is prohibited;
 - (d) any invitation to the public to deposit money with the Company for fixed periods or payable at call whether bearing or not bearing interest is prohibited

SHARE CAPITAL AND VARIATION OF RIGHTS

5. (a) The capital of the company is \$100,000.00 divided into 100,000 ordinary shares of \$1.00 each.
- (b) The rights, privileges and conditions attached to the ordinary shares of the company are as follows:
- (i) no ordinary shares shall be issued to or held by persons other than any one or more of the following:
 - (a) CITC;

- (b) a representative or nominee of CITC:
 - (ii) the holder of an ordinary share shall have the right to vote at general meetings of the company while the holder remains eligible to be a Member of the company;
 - (iii) the ordinary shares of the company do not confer any right to participate in the income, profits or property of the company;
 - (iv) the ordinary shares of the company do not confer any right to a dividend;
 - (v) on a winding up, the ordinary shares of the company do not confer any right to participate in the income, profits or property of the company.
- (c) Where any person ceases to be eligible to be a Member pursuant to sub-article 5.(b)(i), the directors may at any time give notice to that person requiring the person to transfer within seven (7) days the shares held in the company to a nominee of the directors who is eligible to be a Member at their par value.

SHARES

- 6 The funds of the Company shall not be applied in the purchase of or lent on the security of its own Shares except as is authorised by the *Corporations Law*. The Directors may however in their discretion accept a surrender of shares by way of compromise of any question as to whether or not the same have been validly issued or in any other case where a surrender is within the powers of the Company. Any shares so surrendered may be sold or re-issued in the same manner as forfeited shares.
- 7 Without prejudice to any special rights previously conferred upon the holders of any shares or class of shares and save as provided by contracts to the contrary the shares shall be under the control of the Directors who may allot or otherwise dispose of the same to such persons on such terms and conditions and with such rights and privileges (including so far as the law allows redeemable or other rights and privileges) and either at a premium or otherwise and at such time or times as the Directors may think fit with full powers to give to any person the call of any shares either at par or at a premium and for such time or times and for such consideration as the Directors may think fit.
- 8 The Company may at any time pay a commission to any person for subscribing or agreeing to subscribe (whether absolutely or conditionally) for any shares debentures or debenture stock of the Company or procuring or agreeing to procure subscriptions (whether absolute or conditional) for any shares debentures or debenture stock of the Company and so that:
 - (a) the statutory conditions and requirements for the time being in force shall be observed and complied with;

- (b) the commission shall not exceed 10% per centum of the price at which the shares debentures or debenture stock are issued:
 - (c) the commission may be paid either in cash or in fully paid shares debentures or debenture stock of the company or any class taken at par or in such other manner as the Directors may determine;
 - (d) the Company may grant to any person so subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions an option to require the Company to allot to himself or his nominee any further shares of the company at not less than par;
 - (e) the powers conferred by this clause upon the Company may be exercised on its behalf by the Directors.
9. An application for shares in the Company signed by or on behalf of the applicant and followed by an allotment of any shares thereon shall be deemed to be an acceptance of such shares within the meaning of these Articles entitling the Company to place the name of the allottee on the Register in respect thereof.
 10. Any sum which by the terms of issue of a share becomes payable on allotment or at any fixed date whether on account of the amount of the share or by way of premium shall for all the purposes of these presents be deemed to be a call duly made and payable on the date on which by the terms of issue the same becomes payable and in case of non-payment all the relevant provisions of these presents as to payment of interest and expenses forfeiture or otherwise shall apply as if such sum had become payable by virtue of a call duly made and notified
 11. If 2 or more persons are registered as joint owners of any share the person first named on the register in respect of such share shall as regards service of notices and all or any other matters connected with the Company (except the transfer of shares the right to vote receipt of dividends and delivery of Certificates) be deemed the sole owner thereof. The joint holders of a share shall be severally as well as jointly liable for the payment of all instalments and calls due in respect of such share
 12. The Company shall be entitled to treat the registered holder of any share as the absolute owner thereof for all the purposes of these Articles (including the provisions as to liens) and accordingly shall not be bound except as ordered by a Court of competent jurisdiction or as by Statute required to recognise even when having notice thereof any equitable or other claim to or interest in such share on the part of any other person save as herein provided
 13. No person shall be recognised by the Company as having title to a fractional part of a share or otherwise than as the sole or a joint holder of the entirety of such share
 14. If by the conditions of allotment of any share the whole or part of the amount of issue price thereof shall be payable by instalments, every such instalment shall, when due be paid to the Company by the person who for the time being and from time to time shall be the registered holder of the share or his legal representative

- 15 The Company may make arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid and the time of payment of such calls.

CERTIFICATES

- 16 The Certificates of Title to shares shall be issued under the seal of the Company and signed autographically by the Managing Director or by one Director and countersigned by the Secretary or some other person appointed by the Directors.
- 17 Every member shall be entitled free of charge to one certificate for all the shares registered in his name or to several certificates each for a reasonable number of such shares. Every certificate shall specify the number and denoting numbers of the shares in respect of which it is issued and the amount paid up thereon. In the case of joint holders the delivery of the certificate to any one of them shall be a sufficient delivery to them all.
- 18 Subject to the *Corporations Law* if any certificate be worn out or defaced then upon production thereof to the Directors they may order the same to be cancelled and may issue a new certificate in lieu thereof and if any certificate be lost or destroyed then upon proof thereof to the satisfaction of the Directors and on such indemnity as the Directors deem adequate being given a new certificate in lieu thereof shall be given to the party entitled to such lost or destroyed certificate. A sum not exceeding 50¢ or such smaller sum as the Directors may determine shall be paid to the Company for every certificate issued under this Article together with the costs of the said indemnity. Such new certificate shall not contain any statement that it is issued in place of the certificate so worn out lost or destroyed.

CALLS

- 19 The Directors may from time to time make calls as they think fit upon the members in respect of any moneys unpaid on the shares held by them respectively and not by the conditions of allotment thereof made payable at fixed times and each member shall pay to the amount of every call so made on him to the person and at the time and place appointed by the Directors. A call may be made payable by instalments. This Article shall be without prejudice to the rights of any member in respect of any share which has been issued to him on special conditions as to payment by instalments or otherwise.
- 20 A call shall be deemed to have been made at the time when the resolution of the Directors authorizing such call was passed.
- 21 At least 14 days' notice of any call shall be given specifying the time and place of payment and to whom such call shall be paid. Before the time for payment the Directors may by notice in writing to the members revoke the call or extend the time for payment.
- 22 If a sum payable in respect of any call allotment money or instalment be not paid on or before the day appointed for payment thereof the registered holder for the time

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being of the share in respect of which the call shall have been made or the allotment money or the instalment shall be due shall pay interest for the same at the rate of 16% per annum from the day appointed for the payment thereof to the time of actual payment or at such less rate as the Directors may determine but the Directors shall have power to remit such interest or any part thereof

- 23 On the trial or hearing of any action for the recovery of any money due for any call it shall be sufficient to prove that the name of the member sued is entered in the register of the Company as the registered holder or one of the registered holders of the shares in respect of which such debt accrued that the resolution making the call is duly recorded in the minute book and that notice of such call was duly given to the member sued in pursuance of these presents and it shall not be necessary to prove the appointment of the Directors who made such call nor any other matters whatsoever but the proof of the matters aforesaid shall be conclusive evidence of the debt.
- 24 The Directors may if they think fit receive from any member willing to advance the same all or any part of the money unpaid upon the shares held by him beyond the sums actually called for and upon the money so paid in advance or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made the Company may pay interest at such rate as the member paying such sum in advance and the Directors agree upon but no shareholders shall be entitled as of right to any interest on any money so paid in advance and the Directors may decline to pay any interest

FORFEITURE AND LIEN

- 25 If any member fails to pay any call allotment money instalment or other moneys payable in respect of a share on or before the day appointed for the payment of the same the Directors may at any time thereafter during such time as the call instalment or other moneys remains unpaid serve a notice on such member requiring him to pay the same together with any interest that may have accrued and all expenses that may have been incurred by the Company by reason of such non-payment
- 26 The notice shall name a further day (not being less than 14 days from the date of the notice) on and a place at which such call instalment or other moneys and such interest and expenses as aforesaid are to be paid. The notice shall also state that in the event of non-payment at or before the time appointed and at the place appointed the shares in respect of which the call was made or instalment or other moneys may be payable will be liable to be forfeited
- 27 If the requirements of any such notice as aforesaid are not complied with any shares in respect of which the notice has been given may at any time thereafter before payment of all calls or instalments interest and expenses due in respect thereof be forfeited by a resolution of the Directors to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited shares and not actually paid before the forfeiture
- 28 When any share shall have been forfeited notice of the resolution shall be given to the member in whose name it stood immediately prior to the forfeiture and an entry of the

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forfeiture with the date thereof shall forthwith be made in the register but the failure to give such notice or to make such entry shall not in any way invalidate the forfeiture

- 29 A member whose shares have been forfeited shall cease to be a member in respect of the forfeited shares but shall notwithstanding be liable to pay and shall forthwith pay to the Company all calls, instalments or other moneys interest and expenses owing upon or in respect of such shares at the time of the forfeiture together with interest thereon from the time of forfeiture until payment at the rate of 16% per annum and the Directors may enforce the payment of such moneys or any part thereof if they think fit without any allowance for the value of the shares at the time of forfeiture but shall not be under any obligation so to do
- 30 The forfeiture of a share shall involve the extinction at the time of forfeiture of all claims and demands against the Company in respect of the share and all other rights incident to the share except only such of those rights and liabilities as by these Articles are expressly saved or are by Statute given or imposed in the case of members.
- 31 Any share so forfeited shall be deemed to be the property of the Company and the Directors may re-allot or otherwise dispose of the same in any manner they think fit. The Directors may at any time before any share so forfeited shall have been sold re-allotted or otherwise disposed of annul the forfeiture upon such conditions as they may think fit
- 32 The Company shall have a first and paramount lien upon all shares registered in the name of each member and upon all dividends from time to time declared in respect thereof and upon the proceeds of sale of such shares for all his debts liabilities and engagements to or with the Company or on his account and whether alone or jointly with any other person and the costs and expenses of enforcing the Company's lien whether the period for the payment fulfilment or discharge thereof shall have actually arrived or not. Such lien for or in respect of unpaid calls shall extend only to the specific shares on which such calls are for the time being unpaid and to all dividends from time to time declared in respect of such shares. Any moneys paid by the Company for or on account of a member shall carry interest at current bank rates from the time of payment until repayment and such moneys and interest may notwithstanding such lien be recovered by action from such member or his legal representative as a debt due by such member or his deceased estate to the Company. Unless otherwise agreed the registration of a transfer of shares shall operate as a waiver of the Company's lien if any on such shares
- 33 For the purpose of enforcing such lien the Directors may sell all or any of the shares subject thereto in such manner as they think fit, but no sale shall be made until such period as aforesaid shall have arrived and until notice in writing of the intention to sell shall have been served on such member his executors or administrators and default shall have been made by him or them in the payment fulfilment or discharge of such debts liabilities or engagements for 7 days after such notice
- 34 The net proceeds of any such sale shall be applied in or towards satisfaction of such debts liabilities or engagements the accrued interest and expenses and the residue (if any) shall be paid to such member his executors administrators or assigns.

35. Upon any sale after forfeiture for enforcing a lien in purported exercise of the powers hereinbefore given the Directors may cause the purchaser's name to be entered in the register in respect of the shares sold and the purchaser shall not be bound to see to the regularity of the proceedings nor to the application of the purchase money and after his name has been entered in the register in respect of such shares the validity of the sale shall not be impeached by any person and the remedy of any person aggrieved by the sale shall be in damages only and against the Company exclusively.
36. In the event of the re-allotment or sale of a forfeited or surrendered share or the sale of any share to enforce a lien of the Company a certificate in writing under the hand of one or more of the Directors or of a person duly authorised by the Directors in that behalf that the share has been duly forfeited surrendered or sold in accordance with these Articles shall as against all persons claiming to be entitled to such share adversely to such re-allotment or sale be conclusive evidence of the facts therein stated. A certificate of proprietorship shall be delivered to such new purchaser or allottee and he shall be registered in respect thereof and thereupon he shall be deemed the holder of the share discharged from all calls or other money interest and expenses due prior to such purchase or allotment

LOCAL MANAGEMENT

37. (a) The Directors may at any time and from time to time by power of attorney under the Company's seal appoint any person or persons to be the attorney or attorneys of the Company for such purposes and with such powers authorities and discretions (not exceeding those vested in or exercisable by the Directors under these presents) and for such period and subject to such conditions as the directors may from time to time think fit and any such appointment may (if the Directors think fit) be made in favour of any company or of the members, directors, nominees or managers of any company or firm or in favour of any fluctuating body of persons whether nominated directly or indirectly by the Directors and any such power of attorney may contain such provisions for the protection or convenience of persons dealing with such attorney or attorneys as the Directors may think fit
- (b) Any such delegates or attorneys as aforesaid may be authorised by the Directors to sub-delegate all or any of the powers authorities and discretions for the time being vested in them
- (c) The Company may cause to be kept in any State, Territory or place in which it transacts business or elsewhere a branch register or registers of members resident in that State, Territory or place and the Directors may from time to time appoint any authority in that State Territory or place in which a branch register is kept to approve of or reject transfer and to direct the registration of approved transfers in the branch register of such State. Territory or place and every such authority may in respect of transfers of other entries proposed to be registered in the branch register for which such authority is appointed exercise all the powers of the Directors in the same manner and to the same extent and effect and as if the Directors themselves were actually present in that State. Territory or place aforesaid and

exercising the same and the Directors may from time to time make such provisions as they think fit respecting the keeping of such branch register or registers.

TRANSFER AND TRANSMISSION OF SHARES

- 38 The instrument of transfer of any share shall be signed both by the transferor and transferee and the transferor shall be deemed to remain the holder of such share until the name of the transferee is entered in the register in respect thereof but the Directors shall not in any case be bound to inquire into the validity, regularity, effect or genuineness of any such instrument produced by or on behalf of a person claiming as transferee of any share in accordance with these Articles and whether they abstain from so inquiring or do so inquire and are misled the transferor named in such instrument shall have no claim whatever against the company in respect of the share the subject of such instrument except for dividends (if any) previously declared in respect thereof and unpaid and the remedy (if any) of such transferor shall be only against the transferee named in such instrument or person claiming to be such
- 39 The instrument of transfer of any share shall be in writing in the usual or common form or such other form as the Directors may from time to time prescribe or approve or in particular case accept
- 40 The Directors may in their discretion or without assigning any reason therefor decline to register any transfer of shares to a transferee of whom they do not approve not being already a member of the Company
- 41
- (a) Subject to the specific provisions of these Articles no shares in the Company shall except as hereinafter provided be transferred unless and until the rights of pre-emption hereinafter conferred shall have been exhausted.
 - (b) Every member or other person referred to in Article 46 hereof who intends to transfer shares (hereinafter called the "Vendor") shall give notice in writing to the Company of his intention. That notice shall constitute the Company his agent for the sale of the said shares in one or more lots at the discretion of the Company to members of the Company at a price to be agreed upon by the Vendor and the Company or in case of difference at a price which an independent chartered accountant shall certify, by writing under his hand to be in his opinion a fair selling value thereof as between a willing vendor and a willing purchaser.
 - (c) Upon the price being fixed as aforesaid the Board shall forthwith give notice to all the members of the Company of the number and price of the shares to be sold and invite each of them to state in writing within 21 days from the date of the said notice whether he is willing to purchase any and if so what maximum of the said shares.
 - (d) At the expiration of the said 21 days the Board shall allocate the said shares to or amongst the member or members who shall have expressed his or their willingness to purchase as aforesaid and (if more than one) so far as may be pro rata according to the number of shares already held by them

respectively, **PROVIDED THAT** no member shall be obliged to take more than the said maximum number of shares so notified by him as aforesaid. Upon such allocation being made the Vendor shall be bound on payment of the said price to transfer the shares to the purchaser.

42. Every instrument of transfer must be left duly stamped (if necessary) at the office for registration accompanied by the certificate of the shares to be transferred and such other evidence as the Company may require to prove the title of the transferor or his right to transfer the shares.
43. All powers of attorney granted by members for the purpose (inter alia) of the transferring shares which may be lodged produced or exhibited to the Company or any of its proper officers shall be deemed to continue and remain in full force and effect and the same may be acted upon until such time as express notice in writing of the revocation of same shall have been given and lodged at the office. The Company shall not be bound to allow the exercise of any act or matter by an agent for a member unless a duly certified copy of such agent's authority be produced and filed with the Company.
44. All instruments of transfer which shall be registered shall be retained by the Company but any such instrument of transfer which the Directors may decline to register shall be returned to the person depositing the same. No transfer fee shall be charged.
45. The transfer books and register may be closed during such times as the Directors think fit not exceeding in the whole 30 days in each year or may suspend the registration of transfers from time to time for a period not exceeding one month at any one time.
46. In the case of the death of a member the survivors or survivor where the deceased was a joint holder and the executors or administrator of a deceased member where the deceased was a sole holder shall be the only person recognised by the Company as having any title to the shares registered in the name of such member and in case of the death or any one or more of the joint holders of any registered shares the survivors shall be the only persons recognised by the Company as having the title to or interest in such shares but nothing herein contained shall be taken to release the estate of a joint holder from any liability on the shares held by him jointly with any other person.
47. (a) Any committee of a mentally sick member or any person becoming entitled to shares in consequence of the mental sickness death or bankruptcy of any member or otherwise than by transfer upon producing such evidence that he sustains the character in respect of which he proposes to act under this Article or of his title as the Directors think sufficient may with the consent of the Directors be registered as a member in respect of such shares or may subject to the Articles as to transfers hereinbefore contained transfer such shares. This clause is hereinafter referred to as the "transmission clause".
 (b) If the person so becoming entitled elects to be registered himself he shall deliver to or send to the Company a notice in writing signed by him stating that he so elects. If he elects to have another person registered he shall testify his election by executing to that person a transfer of the share. All the limitations restrictions and provisions of these regulations relating

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to the right to transfer and the registration of transfers of shares shall be applicable to any such notice or transfer as aforesaid as if the death or bankruptcy of the member had not occurred and the notice or transfer were a transfer signed by that member.

- (c) Where the registered holder of any shares dies or becomes bankrupt his personal representative or the assignee of his estate as the case may be shall upon the production of such evidence as may from time to time properly required by the Directors in that behalf be entitled to the same dividends and other advantages and to the same rights (whether in relation to meetings of the Company or to voting or otherwise) as the registered holder would have been entitled to if he had not died or become bankrupt and where two or more persons are jointly entitled to any share in consequence of the death of the registered holder they shall for the purposes of these Articles be deemed to be joint holders of the share

CONVERSION OF SHARES INTO STOCK

- 48 (a) The Company may by ordinary resolution passed at a General Meeting convert any paid up shares into stock and may reconvert any stock into paid up shares of any denomination;
- (b) Such of the Articles as are applicable to paid up shares shall apply to stock and the words "share" and "Shareholder" therein shall include "stock" and "stockholder"
- 49 When any shares have been converted into stock the several holders of such stock may thenceforth transfer their respective interests therein or any part of such interests in such manner as the Company in General Meeting may direct but in default of any such direction then in the same manner and subject to the same Articles and Management Rules as shares in the Company's capital may be transferred or as near thereto as circumstances will admit. But the Directors may from time to time if they think fit fix the minimum amount of stock transferable and direct that fractions of a dollar shall not be dealt with but with power nevertheless at their discretion to waive such rules in any particular case. No transfer fee shall be charged.
- 50 The stock shall confer on the holders thereof respectively the same privileges and advantages as regards participation in profits and voting at meetings of the Company and for other purposes as would have been conferred by shares of equal amount in the capital of the Company but so that none of such privileges or advantages except the participation in profits of the Company shall be conferred by such aliquot part of consolidated stock as would not if existing in shares have conferred such privileges or advantages and save as aforesaid all the provisions herein contained shall as far as circumstances will admit apply to stock as well as shares. No such conversion shall affect or prejudice any preference or other special privilege.

INCREASE IN CAPITAL

51. The Company in General Meeting may whether all the shares authorised for the time being have or have not been issued or fully called up or not from time to time by ordinary resolution increase its capital by the creation of new shares of such aggregate amount and divided into shares of such denominations as may be deemed expedient
52. The new shares shall be issued for such consideration and upon such terms and conditions and with such rights and privileges annexed thereto as the General Meeting resolving upon the creation thereof shall direct and if no direct be given as the directors shall determine and in particular such shares may be issued with a preferential or qualified right to dividends and in the distribution of assets of the Company and with a special or without any right of voting
53. The Company in General Meeting may before the issue of any new shares determine that the same or any of them shall be offered in the first instance and either at part or at premium to all the then members or to any class thereof in proportion to the amount of capital held by them or make any other provisions to the issue and allotment of the new shares. In every case where new shares are offered to existing shareholders fractional rights shall be disregarded
54. Except so far as otherwise provided by the conditions of issue or by these presents any capital raised by the creation of new shares shall be considered part of the original capital and shall be subject to the same provisions with reference to the payment of calls, instalments, transfer, transmission, forfeiture, lien, surrender, voting and otherwise as if it had been part of the original capital.

REDUCTION AND SUBDIVISION OF CAPITAL

55. Subject to the *Corporations Law* and to Article 56 the Company may from time to time by special resolution reduce its capital by paying off capital or cancelling capital which has been lost or is unrepresented by available assets or reducing the liability on the shares or otherwise as may seem expedient and capital may be paid off upon the footing that it maybe called up again or otherwise and paid up capital may be cancelled as aforesaid without reducing the nominal amount of the shares by the like amount to the intent that the unpaid and callable capital shall be increased by the like amount.
56. The Company may by ordinary resolution:
 - (a) subdivide or consolidate its shares or any of them;
 - (b) cancel any shares which at the date of the passing of the resolution have not been taken or agreed to be taken by any person or which have been forfeited and diminish the amount of its share capital by the amount of the shares so cancelled

MODIFICATION OF RIGHTS

57. (a) If at any time the share capital is divided into different classes of shares, the rights attached to any class (unless otherwise provided by the terms of issue of the shares of that class) may be varied (but **SUBJECT ALWAYS** to the provisions of the Memorandum of Association of the Company) with the consent in writing of the holders of three-quarters of the issued shares of that class or with the sanction of a special resolution passed at a separate general meeting of the holders of the shares of the class. To every such separate general meeting the provisions of these Articles relating to general meetings shall mutatis mutandis apply, but so that the necessary quorum shall be 2 persons at least holding or representing by proxy one-third of the issued shares of the class and that any holder of shares of the class present in person or by proxy may demand a poll **PROVIDED ALWAYS** that if at any such meeting the necessary majority shall not be obtained then and in such case the consent in writing of the holders of at least three-quarters of the issued shares of the class of the modification abrogation alteration or repayment of capital shall if obtained within 2 months from the date of such meeting have the same force and effect as a resolution duly passed in accordance with this Article.
- (b) The rights conferred upon the holders of the shares of any class issued with preferred or other rights shall unless otherwise expressly provided by the terms of issue of the shares of that class be deemed to be varied by the creation or issue of further shares ranking equally therewith.

BORROWING POWERS

58. The Directors may from time to time at their discretion raise or borrow or secure the payment of any sums of money for the purpose of the Company and generally exercise all the powers of borrowing and raising money vested in the Company
59. The Directors may raise or secure the repayment of such moneys in such manner and upon such terms and conditions in all respects as they shall think fit and in particular by the issue of debentures or debenture stock or notes of the Company charged upon all or any part of the property and rights of the Company (both present and future) including its uncalled capital for the time being or upon bills of exchange, bills of sale, promissory notes or other obligations.
60. Debentures, debenture stock and other securities may be made assignable free from any equities between the Company and the original or any intermediate holders.
61. Any debentures, debenture stock, bonds or other securities may be issued at a discount premium or otherwise and with any special privileges as to redemption, surrender, drawings, allotment of shares, attending and voting at General Meetings of the Company appointment of Directors and otherwise
62. A proper register shall be kept in accordance with the *Corporations Law* in force for the time being of all mortgages and charges specifically affecting the property of the Company

63. If any uncalled capital of the Company is included in or charged by any mortgage or other security the Directors may by instrument under the Company's Seal authorize the person in whose favour such mortgage or security is executed or any other person in trust for him to make calls on the members in respect of such uncalled capital and to sue in the name of the Company or otherwise for the recovery of moneys becoming due in respect of calls so made and to give valid receipts for such moneys and the provisions hereinbefore contained in regard to calls shall *mutatis mutandis* apply to calls made under such authority and such authority may be made exercisable either conditionally or unconditionally and either presently or contingently and either to the exclusion of the Directors' powers or otherwise and shall be assignable if expressed so to be.
64. The Directors may from time to time at their discretion give any guarantee for the payment of money or the performance of any obligation or undertaking by the Company and give any security whatsoever in support of any guarantee or any joint or third party advance or liability

MEETINGS

65. For so long as the Company is trustee of the Fund, the Company in general meeting shall have no power other than as required by the *Corporations Law*
66. The Company shall in each year hold a general meeting as its annual general meeting in addition to any other meetings in that year and shall specify the meeting as such in the notices calling it; and not more than 15 months shall elapse between the date of one annual general meeting of the Company and that of the next **PROVIDED THAT** so long as the Company holds its first annual general meeting within 18 months of its incorporation it need not hold it in the year of its incorporation or in the following year. The annual general meeting shall be held at such time and place as the Directors shall appoint.
67. All general meetings other than annual general meetings shall be called extraordinary general meetings.
68. (a) The Directors may whenever they think fit and they shall on requisition as provided by section 246 of the *Corporations Law* convene an extraordinary general meeting of the Company.
- (b) Save as aforesaid no member may call any meeting of the Company
- (c) Paragraph (b) hereof shall be read as "*other provision*" relating to the calling of meetings within the meaning of section 247(1) of the *Corporations Law*
69. Subject to the provisions of the *Corporations Law* relating to special resolutions and agreements for shorter notice 14 days' notice at the least (exclusive of the day on which the notice is served or deemed to be served, but inclusive of the day for which notice is given) specifying the place the day and the hour of meeting and in case of special business the general nature of that business shall be given to such persons as are entitled to vote at the meeting.

16.

70 The accidental omission to give any such notice to or the non receipt of such notice by any member shall not invalidate any resolution passed at any such meeting or any of the proceedings thereat.

71 Subject to the provisions of section 253(4) of the *Corporations Law* whenever it is proposed to pass a special resolution not less than 21 days' notice specifying the intention to propose the resolutions as a special resolution shall be given.

PROCEEDINGS AT GENERAL MEETINGS

72 All business shall be special that is transacted at an extraordinary general meeting and also all that is transacted at an annual general meeting with the exception of declaring a dividend the consideration of the accounts balance sheets and the report of the Directors and Auditors the election of Directors in the place of those retiring and the appointment and fixing of the remuneration of the auditors.

73 No business shall be transacted at any General Meeting unless the quorum requisite shall be present at the commencement of the business

74 2 members present personally or by proxy attorney or Agent shall be a quorum for a General Meeting for the choice of a Chairman the declaration of a dividend and the adjournment of the meeting For all other purposes the quorum for a General Meeting shall be members present personally or by proxy attorney or agent not being less than 2 in number and holding or representing by proxy not less than one-twentieth part of the issued capital of the Company

75 For the purpose of these Articles, the contemporaneous linking together by telephone, radio, closed circuit television or other electronic means of audio or audio-visual communication or other means of communication of a number of members not less than the quorum shall be deemed to constitute a general meeting of the members and all the provisions in these Articles as to general meetings of the members shall apply to such meetings as long as the following conditions are met:

- (a) each of the members taking part in the meeting by telephone or other means of communication must be able to hear each of the other members taking part at the commencement of the meeting;
- (b) at the commencement of the meeting each member must acknowledge his presence for the purpose of a general meeting of the members of the company to all the other members taking part;
- (c) the general meeting in question has not been convened in relation to the issue of shares at a discount or the alteration of capital or in relation to the alteration of shareholders' rights, or in relation to the provision of financial assistance for the acquisition of shares, or in relation to the removal of directors.

- 76 A minute of the proceedings at a general meeting of the members by telephone or other means of communication as detailed in Article 75 shall be sufficient evidence of such proceedings and of the observance of all necessary formalities if certified as a correct minute by the Chairman of the meeting.
- 77 The Chairman of Directors shall be entitled to take the chair at every General Meeting of if there be no such Chairman or if at any meeting he shall not be present within 10 minutes after the time appointed for holding such meeting or being present shall be unwilling to act as Chairman the members personally present shall choose another Director as Chairman or if no Director be present or if all the Directors decline to take the chair then the members personally present shall choose one of their number to be Chairman.
- 78 If within 15 minutes from the time appointed for the meeting a quorum is not present the meeting if convened upon such requisition as aforesaid shall be dissolved but in any other case it shall stand adjourned to such day and place as may be appointed by the Chairman and in default of such appointment to the same day in the next week unless such day shall be a public holiday when it shall be adjourned to the day following at the same time and place provided such place be available and if at such adjourned meeting a quorum is not present those members who are present personally or by proxy attorney or agent shall be a quorum and may transact the business for which the meeting was called.
- 79 The Chairman may with the consent of the meeting at which a quorum is present (and shall if so directed by the meeting), adjourn the meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place. When a meeting is adjourned for one month or more, notice of the adjourned meeting shall be given as in the case of the original meeting. Save as aforesaid it shall not be necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
80. At any general meeting a resolution put to the vote of the meeting shall be decided on a show of hands unless a poll is (before or on the declaration of the result of the show of hands) demanded:
- (a) by the Chairman;
 - (b) by at least 2 members present in person or by proxy;
 - (c) by any member or members present in person or by proxy or representing not less than one-tenth of the total voting rights of all the members having the right to vote at the meeting; or
 - (d) by a member or members holding shares in the company conferring a right to vote at the meeting being shares on which an aggregate sum has been paid up equal to not less than one-tenth of the total sum paid up on all the shares conferring that right.

Unless a poll is so demanded a declaration by the Chairman that a resolution has on a show of hands been carried or carried unanimously or by a particular majority or lost and an entry to that effect in the book containing the minutes of the proceedings of the Company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution. The demand for a poll may be withdrawn.

81. In the case of an equality of votes the Chairman shall neither on a show of hands nor at the poll have a casting vote in addition to the vote or votes to which he may be entitled as a member.
82. If a poll is demanded it shall be taken in such manner and at such time and place as the Chairman of the meeting directs and either at once or after an interval or adjournment or otherwise and the result of the poll shall be conclusive and shall be deemed to be the resolution of the meeting at which the poll was demanded. The demand of a poll may be withdrawn. In the case of any dispute as to the admission or rejection of a vote the Chairman shall determine the same and such determination if made in good faith shall be final and conclusive.
83. No poll shall be demanded on the election of a Chairman of a meeting and a poll demanded on any question of adjournment shall be taken at the meeting and without adjournment. The demand of a poll shall not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded.
84. Subject to the provisions of the *Corporations Law* a resolution signed by all the members of the Company for the time being shall be as valid and as effectual as if it had been passed at a meeting of the members duly called and constituted and the members can sign separate copies of the resolution or document circulated for that purpose and evidence of any signatures by facsimile transmission shall be deemed to be sufficient evidence of the validity of the resolution of the members.

VOTES OF MEMBERS

85. Subject to any special terms as to voting upon which any shares may be issued and subject to any provision in these Articles to the contrary on a show of hands every person present in person shall have one vote and upon a poll every member present in person or by proxy attorney or agent shall have one vote for every share held by him. No member shall be entitled to vote at any general meeting unless all calls or other sums presently payable by him in respect of shares in the Company have been paid.
86. No objection shall be made to the validity of any vote except at the meeting which such vote shall be tendered and every vote not disallowed at such meeting or poll by the Chairman whether given personally or by agent shall be deemed valid.
87. Any person entitled under the "*Transmission Clause*" to transfer any shares may vote at any General Meeting in respect thereof in the same manner as if he were the registered holder of such shares **PROVIDED THAT** 48 hours at least before the time of holding the meeting or adjourned meeting as the case may be at which he proposes

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to vote he shall satisfy the Directors of his right to transfer such shares or the Directors shall have previously admitted his right to vote at such meeting in respect thereof

88 Where there are joint registered holders of any shares any one of such persons may vote at any meeting either personally or by proxy attorney or agent in respect of such shares as if he were solely entitled thereto and if more than one of such joint holders be present at any meeting personally or by proxy attorney or agent that one of the said persons so present whose name first appears on the register in respect thereof shall be accepted to the exclusion of the votes of the other joint holders. Several executors or administrators of a deceased member in whose name any shares stand shall for the purposes of this clause be deemed joint holders thereof.

89. On a poll votes may be given personally or by proxy attorney or agent. A Proxy need not be a member of the Company

90 (a) A proxy or agent may be appointed in writing under the hand of the appointer or his attorney or if such appointer is a Corporation under its Common Seal or the hand of its attorney but appointment by writing letter or telegram or cable to the satisfaction of the Directors shall be sufficient;

(b) Where it is desired to afford members an opportunity of voting for or against a resolution the instrument of proxy may be endorsed:

*"This form is to be used *in favour of the resolution
against*

**Strike out which is not desired (Unless otherwise
instructed the proxy may vote as he thinks fit) "*

91 The writing letter telegram or cable appointing a proxy or agent and the power of attorney (if any) under which it is signed or proof thereof to the satisfaction of the Directors shall be deposited at the Office before the time for holding the Meeting or adjourned meeting at which the proxy or agent proposes to vote.

92 Any member may by power of attorney duly executed in the presence of one witness at least appoint any attorney to act on his behalf at all meetings of the Company and such power of attorney or proof thereof to the satisfaction of the Directors shall before the attorney shall be entitled to act thereunder be produced for inspection at the office together with such evidence of the due execution thereof as the Directors may require and such attorney may be authorised to appoint a proxy or agent for the member granting the power of attorney

93 A vote given in accordance with the terms of an instrument appointing a proxy or agent or power of attorney shall be valid notwithstanding the previous death of the principal or revocation of such proxy or power of attorney or transfer of the share in respect of which the vote is given unless an intimation in writing of the death revocation or transfer shall have been received at the office before the meeting

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DIRECTORS

- 94 Until otherwise determined the number of Directors shall not be less than 2 nor more than 8
- 95 The number of the directors and the names of the first directors shall be determined in writing by the subscribers to the Memorandum of Association or if there be more than 2 subscribers by a majority of them.
- 96 It shall not be necessary for a director to hold any share in the Company
- 97 The Directors may receive reasonable travelling and other expenses properly incurred by them, as they may resolve out of the income of the Trust Fund and any accountant solicitor or other professional person or adviser who is a Director shall be entitled to receive and retain out of the Trust Fund for his own use and benefit such reasonable remuneration and expenses as may from time to time be resolved by the Directors. Nothing contained within the Trust Deed shall prevent or prohibit any such Director or any partner or other person associated therewith (including any servant or agent of such director) from being employed retained or otherwise engaged by the Directors for remuneration in connection with any of the powers discretions and functions of the Trustee so exercisable as contained within the Trust Deed
- 98 The Directors shall have power at any time and from time to time to appoint any qualified person as a Director to fill a casual vacancy so that the total number of Directors shall not at any time exceed the maximum number and any Director so appointed shall hold office only until the next following annual general meeting of the Company and shall then be eligible for re-appointment as a Director
- 99 The continuing Directors may act notwithstanding any vacancy in their body but if and so long as their number is reduced below the minimum number fixed for the time being the continuing Directors may act for the purpose of filling vacancies, of calling an annual general meeting of the Company or of dealing with matters of emergency but for no other purpose
- 100 The Executive of CITC shall have power to appoint additional directors in a manner which is consistent with the provisions of these Articles and of the Trust Deed and for the purposes set out in these Articles and in the Trust Deed Any director so appointed holds office only until the next annual general meeting of the company and upon the conclusion of such meeting the Director shall retire from and vacate their office in accordance with Article 103 but such Director is then eligible for re-appointment
- 101 (a) The office of director shall become vacant if the director:
- (i) dies;
 - (ii) ceases to be a director by virtue of the *Corporations Law*;
 - (iii) becomes bankrupt or makes any arrangement or composition with his creditors generally;
 - (iv) becomes prohibited from being a director by reason of any order made under the *Corporations Law*;

- (v) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (vi) resigns his office on giving not less than thirty (30) days written notice to the company;
- (vii) refuses or neglects to act or for any other reason is absent without permission of the directors from meetings of the directors held for more than 3 months;
- (viii) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of his interest in the manner required by the *Corporations Law*;
- (ix) if the Director were a Trustee of the Fund, cease to be a Trustee for any reason provided in the Trust Deed; or
- (x) if the Director were a Trustee of the Fund, otherwise becomes incapable or unfit to act as a Trustee of the Fund.

- (b) No Director shall be disqualified by his office from contracting with the Company either as Vendor or Purchaser or otherwise nor shall any such contract or any contract or arrangement entered into by or on behalf of the Company in which any Director shall be in any way interested be avoided nor shall any Director so contracting or being so interested be liable to account to the Company for any profit realised by any such contract or arrangement by reason only of such Director holding the Office or of the fiduciary relationship thereby established but it is declared that the nature of his interest must be disclosed by him at the meeting of the Directors at which the contract is determined if his interest then exists or in any other case at the first meeting of the Directors after the acquisition of his interest. **PROVIDED THAT** the necessity of disclosing the nature of a Director's interest shall not apply to contracts or arrangements between this company and any other public or incorporated company in which he is interested as a shareholder or Director and the obligation to disclose may at any time be relaxed or suspended to any extent by a General Meeting. Any Director may as a Director vote in respect of any contract or arrangement in which he is or may be in any way interested a Director of this Company may be or become a Director of any other Company promoted by this Company or having dealings with this Company. A Director shall not be deemed to be interested or to have been at any time interested in any contract or proposed contract with the Company by reason only in a case where the contract or proposed contract relates to any loan to the Company whether by way of Bank Overdraft or otherwise that he has given or joined in giving or intends to give or join in giving any indemnity or security in respect thereof or in a case where the Contract or proposed contract has been made or will be made with or for the benefit or on behalf of any other corporation that he is a Director of or Shareholder in that other Corporation

It is acknowledged and it is an agreed principle that insofar as is possible and subject to the provisions hereof at all material times the composition of the Board (and hence the Directors hereunder) shall be as follows:-

- (a) the Chairman being a representative or nominee of CITC as provided for and subject to the provisions of Article 119;
- (b) up to three representatives or nominees of associations or other legal entities operative within the Construction Industry representing employers who are shareholders in any corporate trustee of and/or sponsors of the BERT Fund in the State of Queensland nominated by the Executive of the CITC;
- (c) up to three representatives or nominees of associations or other legal entities operative within the Construction Industry representing employees who are shareholders in any corporate trustee of and/or sponsors of the BERT Fund in the State of Queensland nominated by the Executive of the CITC;
- (d) a member of the Institute of Chartered Accountants in Australia or the Australian Society of Certified Practising Accountants ACN 008 392 452 (or any successor body or organisation of either or both of such bodies) and familiar with the operations of the Construction Industry nominated by the Executive of the CITC,

with the intent and to the effect that there shall be an equality of representatives of the respective bodies referred to in 102.(b) and 102 (c) above and accordingly any power of appointment of new Directors shall be exercised (to the extent possible) consistently with this acknowledgement and agreed principle. The expression "the Executive of the CITC" shall mean the Executive of the CITC as that expression is used in the Rules and By-laws of the CITC from time to time and shall also include any successor body to that Executive exercising like or similar powers of governance of the CITC which the Executive at the date hereof exercises

ROTATION OF DIRECTORS

103 Save as otherwise herein provided and subject to Article 105 which concerns the non-applicability to certain specified Directors of the provisions of these Articles with respect to retirement by rotation or being taken into account in determining the rotation or retirement of Directors and subject to any special rights and privileges which may be granted or accrue to the holders of any share or class of shares or under any debenture, trust deed or security whatsoever given by the Company whether alone or jointly:

- (a) each Director shall hold office for a maximum term not exceeding the period calculated in accordance with the provisions hereinafter appearing but each such Director shall be eligible for re-appointment in accordance with the provisions hereof;
- (b) each of the first Directors then still in office shall retire from and vacate the respective offices at that annual general meeting of Directors which is held in the third calendar year following the date of the first annual general meeting of the Directors **PROVIDED THAT** any previous service by the Director as a Trustee of the Fund as at the time of appointment as a

Director is included in the calculation of the three year period. The retirement and vacation contemplated by this Article shall take effect at the conclusion of the said annual general meeting. In the event that no such meeting is held in that third calendar year, then upon the expiration of such year, each such Director shall *ipso facto* cease to hold office as Director and shall vacate that office

- (c) each Director (other than the first Directors and a Director appointed pursuant to Article 98 or Article 100), and any of the Directors subsequently re-appointed to the office of Director in accordance with the provisions hereof, shall hold office for a period not exceeding three (3) calendar years calculated from the date of appointment or re-appointment of that Director to the office of Director (as the case may be or require)
- (d) a Director so appointed pursuant to Article 98 or Article 100 shall hold office only for the period referred to but thereafter, that Director, if eligible for re-appointment and if re-appointed shall hold office for a period not exceeding that applicable to Directors hereinbefore mentioned. All vacancies in office arising in circumstances other than those contemplated by this sub-Article (that is to say, where a Director does not hold office for the maximum time herein provided for any reason), shall be termed a casual vacancy and the provisions of Article 98 and Article 100 shall thereby be attracted
- (e) the Chairman of the Board shall be subject to the provisions as to retirement, vacation and re-appointment herein contained.
- (f) the retiring Directors shall retain office until the dissolution or adjournment of the meeting at which their successors are elected;
- (g) a retiring Director shall be eligible for re-appointment;
- (h) Notwithstanding anything else contained in these Articles no person attaining the age of seventy-two (72) years or over shall be appointed to hold the office of Director and any Director attaining the age of seventy-two (72) years shall cease to hold office and vacate that office *ipso facto*
- (i) this Article is subject to the provisions of any Article relating to the Governing Directors and Managing Directors and the powers conferred upon the Governing Director and Managing Director

104 Where a Director retires from and vacates his office in accordance with Article 103 the Executive of CITC shall by appropriate resolution fill the vacated office by appointing a person to that office in stead of the retiring and vacating Director in accordance with the provisions contained in the Articles. Any retiring and vacating Director may offer himself for re-appointment to such office and may hold and be appointed to such office if he is eligible for appointment to such office under the provisions of the *Corporations Law* and if the Director were a Trustee under the Trust Deed, eligible for appointment under the provisions of the Trust Deed

- 105 The shareholders in General Meeting may from time to time specify those Directors of the Company who shall not (whilst holding that office) be subject to retirement by rotation or be taken into account in determining the rotation or retirement of Directors
- 106 If at any General Meeting at which any appointment of Directors ought to take place the places of the retiring Directors are not filled up the retiring Directors or such of them as have not had their places filled up shall continue in office until the annual meeting in the next year and so on from year to year until their places are filled up unless it shall be determined at such meeting to reduce the number of Directors
- 107 The Company in General Meeting may from time to time increase or reduce the number of Directors and may alter their qualifications and may also determine in what rotation such increased or reduced number is to go out of office.
- 108 The Company may by ordinary resolution remove any Directors before the expiration of his period of office and by Ordinary Resolution appoint another qualified in his stead. The person so appointed shall hold office during such time only as the Director in whose place he is appointed would have held the same if he had not been removed.

MANAGING DIRECTOR

- 109 The Directors may from time to time appoint one or more of their body to be Managing Director or Managing Directors of the Company for a term not exceeding 5 years and may from time to time remove or dismiss him or them from office and appoint another or others in his or their place or places
- 110 A Managing Director shall not while he continues to hold that office be subject to retirement by rotation and he shall not be taken into account in determining the rotation or retirement of Directors but he shall (subject to the provisions of any contract between him and the Company) be subject to the same provisions as to resignation and removal as the other Directors of the company and if he ceases to hold the office of Director from any cause he shall ipso facto and immediately cease to be a Managing Director
- 111 The remuneration of a Managing Director or Manager shall from time to time be fixed by the Directors and may be by way of salary or commission or participation in profits or by any or all of those modes and unless otherwise determined shall be in addition to any remuneration which he may receive as a Director from the Company. No objection shall be taken to the payment of any such being otherwise interested in the Company. Provided nevertheless that where such remuneration consists wholly or partly of a commission or participation in profits such remuneration is to be disclosed to the members in General Meeting
- 112 The Directors may from time to time entrust to and confer upon the Managing Director or Manager from the time being such of the powers exercisable under these presents by the Directors as they may think fit and may confer such powers for such time and to be exercised for such objects and purposes and upon such terms and conditions and with such restrictions as they think expedient and they may confer

such powers either collaterally with or to the exclusion of and in substitution for all or any of the powers of the Directors in that behalf and may from time to time revoke withdraw alter or vary all or any of such powers

PROCEEDINGS OF DIRECTORS

113. The Directors may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as they think fit. The convening, adjournment, regulation and practice and procedure shall be under the control of the Chairman. The Chairman shall give appropriate and reasonable notice of all meetings to the Directors. A Director may at any time and the Chairman shall on the requisition of a Director summon a meeting of the Directors and the Chairman shall thereupon convene a meeting at such date and place as he thinks convenient to all Directors and having regard to the nature of any matter proposed to be dealt with at the meeting.
114. Subject to these regulations each Director shall have one vote. Questions arising at any meeting of Directors shall be decided by a majority of votes and a determination by a majority of Directors shall for all purposes be deemed a determination of the Directors. In case of an equality of votes the Chairman of the meeting shall have the second or casting vote.
115. The contemporaneous linking together or communication by telephone, radio, closed circuit television or other means of audio or audiovisual communication (including satellite or video link-up) or other means of communication of a number of Directors not less than the quorum shall be deemed to constitute a relevant proceeding or meeting of the Directors and all the provisions in these Articles as to meetings or other proceedings of the Directors shall apply to such meetings as long as the following conditions are met:-
- (a) each of the Directors taking part in the meeting by telephone or other means of communication must be able to hear each of the other Directors taking part at the commencement of the meeting or other proceeding;
 - (b) at the commencement of the meeting each Director must acknowledge his presence for the purpose of a meeting or proceeding of the Directors to all the other Directors taking part.
116. No business shall be transacted at any proceedings of the Directors unless a quorum of Directors is present personally at the time when the meeting proceeds to business. The quorum of Directors shall be four (4) Directors personally present provided that for the purposes of constituting a quorum there shall be at least one (1) representative or nominee of the kind referred to in Article 102 (b) personally present and one (1) representative or nominee of the kind referred to in Article 102.(c) personally present. Unless and until each of such representatives or nominees as aforesaid are personally present, a quorum shall not be constituted. If within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned to such other day and at such other time and place as the Chairman (or failing him the Directors so present) may determine

117. A Director may at any time and the Chairman shall upon request of a Director convene a meeting of the Directors at the place where meetings of Directors are usually held. No Director who is and whilst out of the Commonwealth of Australia shall be entitled to notice of any such meeting. Questions or motions arising at any meeting shall be decided by a majority of votes. In case of equality of votes the Chairman of the meeting shall have a second or casting vote. A Director may attend and vote by proxy at any meeting of Directors provided such proxy is a member and has been approved of as such by a majority vote of the Directors and has been appointed by writing under the hand of the appointer. The appointment may be general or for any particular meeting or meetings. The appointee may be another Director of the Company.
118. There shall be a Chairman of Directors' who shall while he remains in office and at all meetings at which he is present be Chairman both of the Board of Directors and of all General Meetings of the Company.
119. It is acknowledged that the Chairman shall be a Director and a nominee or representative of CITC (or any successor-in-title thereto) unless CITC consents in writing to some person other than its nominee or representative being the Chairman of the Board. It is expressly declared that such nominee or representative may be the Chairman of CITC. The said Chairman shall preside as Chairman at all meetings and other proceedings of the Board, or if there is no Chairman in such office at such time, or if he is not present within fifteen minutes after the time appointed for the holding of the meeting or proceeding or is unwilling to act, the Directors present shall elect one of their number to be Chairman of that particular meeting or proceeding and who shall hold office for that purpose and for the duration of that meeting or proceeding and for such other time as necessary to give effect to any resolution passed at such meeting only and for no other period.
120. A duly convened meeting of the Directors for the time being at which a quorum is present shall be competent to exercise all or any of the authorities powers and discretions by or under the Articles of the Company for the time being vested in or exercisable by the Directors generally.
121. The Directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit and may from time to time revoke withdraw alter or vary such delegation. Any committee so formed shall in the exercise of the powers so delegated conform to any Management Rules that may from time to time be imposed upon it by the Directors.
122. A committee may elect a chairman of its meetings; if no such chairman is elected or if at any meeting the chairman is not present within 10 minutes after the time appointed for holding the meeting the members present may choose one of their number to be chairman of the Meeting. The meetings and proceedings of any such committee consisting of 2 or more members shall be governed by the provisions herein contained for regulating the meetings and proceedings of the Directors so far as the same are applicable thereto and are not superseded by any Management Rules made by the Directors under the last preceding clause.

27.

- 123 All acts bona fide done at any meeting of the Directors or of a committee of Directors or by any person acting as a Director shall notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of any such Director Committee or person acting as aforesaid or that they or any of them were disqualified be as valid as if every such person had been duly appointed and was qualified to be a Director
- 124 A resolution in writing signed by all the Directors entitled to receive notice of a meeting of the Directors or by their alternates shall be as valid and effectual as if it had been passed at a meeting of the Directors duly called and constituted. Any such resolution may consist of several documents in like form, each signed by one or more Directors and evidence of any signatures by facsimile transmission shall be deemed to be sufficient evidence of the validity of the resolution of the Directors.

MINUTES

- 125 The Directors shall cause Minutes to be kept in books provided for the purpose:
- (a) of all appointments of officers made by the Directors;
 - (b) of the names of the Directors present at each meeting of the Directors and of any Committee of Directors;
 - (c) of all orders made by the Directors and Committees of Directors;
 - (d) of all resolutions and proceedings had by and at all meetings of the Company and of the Directors and Committees of Directors;

and any such Minutes of any meetings of the Directors or of any committee or of the Company if purporting to be signed by the Chairman of such meeting or by the Chairman of the next succeeding meeting shall be received as prima facie evidence of the matters stated in such Minutes.

POWERS OF DIRECTORS

- 126 The management of the business of the Company shall be vested in the Directors who in addition to the powers and authorities by these presents or otherwise expressly conferred upon them may subject nevertheless to any contract (if any) made with a Governing Director or Managing Director in which the Directors delegate certain powers exercise all such powers and do all such acts and things as may be exercised or done by the Company and are not hereby or by the *Corporations Law* expressly directed or required to be exercised or done by the Company in General Meeting but subject nevertheless to the provisions of the *Corporations Law* and of these presents and to any Management Rules from time to time made by the Company in General Meeting **PROVIDED THAT** no new Management Rules so made shall invalidate any prior act of the Directors which would have been valid if such Management Rules had not been made

ALTERNATE DIRECTORS

127. Each Director shall have the power to nominate any person (other than a partner of or an employee with the auditor of the Company) whether a member or not approved for that purpose by a majority of the other Directors to act as alternate Director in his place and at his discretion to remove such alternate Director and on any such appointment being made the alternate Director shall save as above be subject in all respect to the terms conditions and qualifications existing with reference to the other Directors and each alternate Director whilst acting in the place of an absent Director whom he represents shall exercise and discharge all the duties of such Director but shall look to such Director solely for his remuneration and shall not be entitled to claim remuneration from the Company. The appointment of an alternate Director shall be cancelled and the alternate Director shall cease to hold office whenever the Director who appointed him shall cease to be a Director or shall give notice in writing to the Secretary that the alternate Director representing him shall have ceased to do so. A Director retiring at any Annual General Meeting and being re-elected or retaining his office pursuant to Article 103 hereof shall not for the purposes of this clause be deemed to have ceased to be a Director. An alternate Director appointed under this clause shall have notice of all meetings of Directors in addition to the notices to be sent to the Director he represents.

ASSOCIATE DIRECTORS

128. The Directors may from time to time appoint any person to be an associate director and may from time to time cancel any such appointment. The Directors may fix, determine and vary the powers duties and remuneration of any person so appointed but a person so appointed shall not be required to hold any shares to qualify him for appointment nor have any right to attend or vote at any meeting of directors except by the invitation and with the consent of the Directors.

ATTORNEYS

129. The Directors may from time to time by power of attorney appoint any corporation firm or person or body of persons whether nominated directly or indirectly by the director to be the attorney or attorneys of the Company for such purposes and with such powers authorities and discretions (not exceeding those vested in or exercisable by the directors under these Articles) and for such period and subject to such conditions as they may think fit and any such powers of attorney may contain such provisions for the protection and convenience of persons dealing with any such attorney as the directors may think fit and may also authorise any such attorney to delegate all or any of the powers authorities and discretions vested in him.
130. The Secretary shall in accordance with the *Corporations Law* be appointed by the Directors for such term at such remuneration and upon such conditions as they may think fit and any secretary so appointed may be removed by them.

CHEQUES, ETC.

131. All cheques bills of exchange drafts promissory notes or other negotiable instruments and orders for payment shall be made accepted drawn or endorsed for and on behalf of the Company by 2 Directors or any Director and the Secretary or such other person as the Directors from time to time appoint or in such manner as the Directors may from time to time determine
132. Cheques or other negotiable instruments paid to the Company's banker for collection and requiring the endorsement of the Company may be endorsed on its behalf by the Secretary or such other officer as the Directors from time to time appoint or in such manner as the Directors may from time to time appoint

THE SEAL

133. The Directors shall forthwith provide a Common Seal for the Company and they shall have power from time to time to destroy the same and substitute a new Seal in lieu thereof. Subject to these Articles every instrument to which the Seal is affixed must be signed by at least one Director and every such instrument shall be countersigned by the Secretary or by another Director or some other person appointed by the Directors. Any instrument bearing the Common Seal of the Company and issued for valuable consideration shall be binding on the Company notwithstanding any irregularity touching the authority of the Directors to issue the same. A Director, Secretary or other person appointed as aforesaid may affix the Seal to or sign any instrument as aforesaid notwithstanding that he may be in any way interested in the transaction
134. The Company may exercise the powers conferred by section 182(8) of the *Corporations Law* and such power shall accordingly be vested in the Directors
135. The Directors may exercise all the powers of the Company in relation to any official seal for use outside the State and in relation to branch registers

ACCOUNTS

136. The Directors shall cause proper accounting and other records to be kept and shall distribute copies of balance sheets as required by the *Corporations Law* and shall from time to time determine whether and to what extent and at what times and places and under what conditions or rules the accounting and other records of the Company or any of them shall be open to the inspection of members not being directors and no member (not being a director) shall have any right of inspecting any account or book or paper of the Company except as conferred by Statute or authorized by the directors or by the Company in general meeting.

NOTICES

137. In every or any case in which a notice is by these Articles directed or authorised to be given or served the same may be given or served by the Company upon any member either personally or by sending it through the post in a prepaid envelope addressed to such member at his registered place of address or by posting or by

leaving such notice in an envelope directed to such member at the office where he ordinarily transacts business if the Company has a knowledge of such office but if not by leaving such notice at the Office

138. Each registered holder of shares shall notify to the Company in writing an address in the Commonwealth of Australia which shall unless and until a fresh notification is given be deemed his registered place of address within the meaning of the last preceding clause. If a fresh address is notified that shall be the registered address
139. As regards those members who have no registered place of address as aforesaid a notice shall be deemed to be well served on the member at the expiration of 24 hours after it is posted up in the Office.
140. All notices shall with respect to any share to which persons are jointly entitled be given to whichever of such persons is named first on the register and notice so given shall be sufficient to all the holders of such shares
141. Any notice sent by post shall be deemed to have been served on the day following that on which the envelope or wrapper containing the same is posted and in proving such service it shall be sufficient to prove that the envelope or wrapper containing the notice was properly addressed according to the name and address entered in the Register and put in the post office or other public postal receptacle. A certificate in writing signed by the manager secretary or other officer of the Company that the envelope or wrapper containing the notice was so addressed and posted shall be conclusive evidence thereof.
142. Every person who by operation of law transfer or other means whatsoever shall become entitled to any share shall be bound by every notice in respect of such share which previously to its name and address being entered on the Register shall have been duly given to the person from whom he derives his title to such share.
143. Any notice or document delivered or sent by post to or left at the registered address of any member in pursuance of these presents shall notwithstanding such member be then deceased or be in any way incapacitated and whether or not the Company have notice of his decease or incapacity be deemed to have been duly served in respect of any registered shares whether held solely or jointly with other persons by such member until some other person be registered in his stead as the holder or joint holder thereof and such service shall for all purposes of these presents be deemed a sufficient service of such notice or document on his heirs executors or administrators and all persons (if any) jointly interested with him in any such share
144. The signature to any notice to be given by the Company may be written typewritten or printed.
145. Where a given number of days' notice or notice extending over any other period is required to be given the day of service shall be counted but the day upon which such notice will expire shall not be counted in such number of days or other period

31.

WINDING UP

- 146 If the company is wound up, and if the company at or immediately before that time was acting as the trustee of the Fund, then to the extent permitted by law the liquidator shall vest all of the surplus profits and assets of the company in a new trustee upon trust for the Fund.

INDEMNITY

- 147 The Company shall indemnify every officer or auditor of the Company to the maximum extent permissible under Section 241 of the *Corporations Laws* as amended from time to time.

OBLIGATION OF SECRECY

- 148 The Directors Secretary or Manager Auditors and all other officers agents and clerks of the Company shall be bound to observe secrecy except in the course and performance of their respective duties towards the Company or under compulsion or obligation of law with respect to all transactions of the Company with its clients or customers and all matters relating thereto. Every such Director Secretary Manager Auditor Officer agent or clerk shall if and when required by the Directors sign a declaration in a book or on a form or forms to be kept for that purpose that he will not reveal or make known any of the matters affairs or concerns which may come to his knowledge as a director secretary manager auditor officer agent or clerk to any person or persons whomsoever except in the course and in the performance of his duties or under compulsion or obligation of law or when officially required so to do by the directors or by any general meeting of members.

PARAMOUNT CLAUSE

- 149 The provisions of Clause 9 of the Trust Deed in relation to Trustees and to the extent necessary or required under any other provision of the Trust Deed shall be read as one with the provisions of these Articles and in the event of any inconsistency, the provisions of the Trust Deed shall be of paramount force and effect and shall govern the construction of these Articles.

WE, the undersigned several persons whose names and addresses are subscribed being subscribers to the Memorandum of Association hereby agree to the foregoing Articles of Association:

Signatures, Names, Addresses and Descriptions of Subscribers	Number of Shares taken by each Subscriber
--	---

Personal Information

One

GREGORY ROGER SHANNON

CONSTRUCTION INDUSTRY TRAINING COUNCIL (QUEENSLAND) INC One

THE COMMON SEAL of The Construction Industry Training Council (Queensland) Inc was affixed by the authority of the Executive in the presence of:

Personal Information

(Signature of a Secretary/Executive Member)

Personal Information

(Signature of member of the Executive)

Walter H. Sullivan
(Name of Member in Full)



GREGORY ROGER SHANNON
(Name of Secretary/Executive Member in Full)

DATED at Brisbane this 18th day of April

1996

WITNESS to the above signatures:

Signature of witness:

Personal Information

Name of witness:

SADIE WAWRZYNIAK

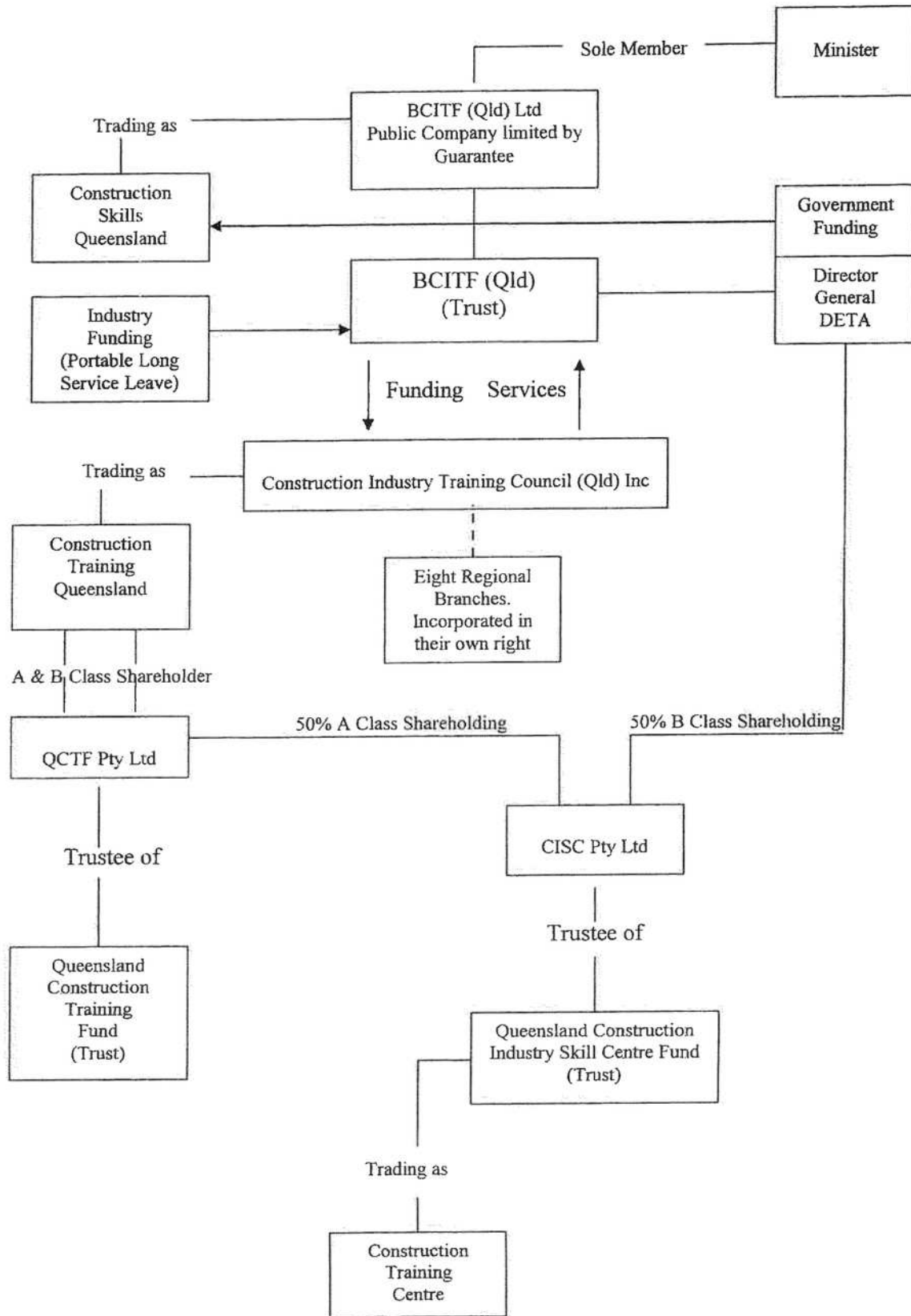
Address:

58 ROCKFIELD RD, ORLANDO QLD 4077

Occupation:

EXECUTIVE ASSISTANT

CTQ – QCTF – CTC – CSQ Relationship Diagram





ANNUAL FINANCIAL REPORT

OF

BUILDING EMPLOYEES WELFARE TRUST

ABN 91 064 281 353

FOR THE YEAR ENDED 30 JUNE 2015

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BUILDING EMPLOYEES WELFARE TRUST
STATEMENT OF FINANCIAL POSITION
AS AT 30 JUNE 2015

	Note	30-Jun-15 \$	30-Jun-14 \$
ASSETS			
Cash at Bank		4,870,454	4,377,790
Cash on Hand		10	10
Receivables - Contributions		110,517	116,002
GST Receivable		3,596	2,587
TOTAL ASSETS		4,984,577	4,496,389
LIABILITIES			
Creditors		21,992	55,467
Welfare Fund Distribution		4,962,575	4,440,912
TOTAL LIABILITIES		4,984,567	4,496,379
NET ASSETS		10	10
REPRESENTED BY:			
EQUITY			
Settled Sum		10	10
Reserve	3	-	-
TOTAL EQUITY		10	10

BUILDING EMPLOYEES WELFARE TRUST
STATEMENT OF FINANCIAL POSITION
AS AT 30 JUNE 2015

	Note	30-Jun-15 \$	30-Jun-14 \$
REVENUE			
CONTRIBUTIONS			
Employer		5,095,673	4,578,904
		<u>5,095,673</u>	<u>4,578,904</u>
OTHER REVENUE			
Bank Interest		61,671	41,148
Sundry Income		14,656	24,633
		<u>76,327</u>	<u>65,781</u>
TOTAL REVENUE		<u>5,172,000</u>	<u>4,644,685</u>
EXPENDITURE			
Management Fees		155,595	141,450
Compliance Costs		21,250	35,125
Administration		32,580	27,198
TOTAL EXPENDITURE		<u>209,425</u>	<u>203,773</u>
PROFIT / (LOSS) BEFORE TAX		<u>4,962,575</u>	<u>4,440,912</u>
Income Tax Benefit/(Expense)		-	-
PROFIT / (LOSS) AFTER TAX		<u>4,962,575</u>	<u>4,440,912</u>
Welfare Fund Distribution	4	(4,962,575)	(4,440,912)
SURPLUS AFTER DISTRIBUTION		<u><u>-</u></u>	<u><u>-</u></u>

The accompanying notes form part of these financial statements

BUILDING EMPLOYEES WELFARE TRUST
STATEMENT OF CASH FLOWS
AS AT 30 JUNE 2015

	30-Jun-15 \$	30-Jun-14 \$
CASH FLOWS FROM OPERATING ACTIVITIES		
Employer contributions received	5,101,158	4,588,560
Payments to suppliers	(229,253)	(166,956)
Interest received	61,671	41,148
NET CASH PROVIDED BY / (USED IN) OPERATING ACTIVITIES	<u>4,933,576</u>	<u>4,462,752</u>
CASH FLOWS FROM FINANCING ACTIVITIES		
Distribution paid to Welfare Fund	(4,440,912)	(402,370)
NET CASH PROVIDED BY / (USED IN) FINANCING ACTIVITIES	<u>(4,440,912)</u>	<u>(402,370)</u>
Net increase in cash held	492,664	4,060,382
Cash at beginning of the year	4,377,790	317,408
Cash at end of year	<u><u>4,870,454</u></u>	<u><u>4,377,790</u></u>
CASH PER BALANCE SHEET	<u><u>4,870,454</u></u>	<u><u>4,377,790</u></u>

The accompanying notes form part of these financial statements

**BUILDING EMPLOYEES WELFARE TRUST
NOTES TO THE FINANCIAL STATEMENTS
AS AT 30 JUNE 2015**

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

Reporting Basis and Conventions

The Directors of the Trustee company have prepared the financial statements of the Trust on the basis that the Trust is a non-reporting entity because there are no users dependant on general purpose financial reports. This financial report is therefore a special purpose financial report that has been prepared in order to satisfy the requirements of the trust deed to prepare a financial report and to meet the needs of, and for use by, the Directors.

The financial report has been prepared in accordance with the significant accounting policies disclosed below, which the directors have determined are appropriate to meet the requirements of the trust deed and the needs of Directors. Such accounting policies are consistent with the previous period unless stated otherwise.

The financial statements have been prepared on an accruals basis and are based on historical costs unless otherwise stated in the notes. The accounting policies that have been adopted in the presentation of this report are stated below.

The financial statements are presented in Australian dollars and were approved by the Board on 7 October 2015.

Accounting Policies

1.1 Revenue and Other Income

All revenues are measured at the value of the consideration received and, where applicable, are stated net of the amount of goods and services tax (GST). Dividends and other distributions from investments are recognised when the right to receive the dividend or distribution has been established. Interest revenue is recognised using the effective interest rate method, being the rate inherent in the instrument. Contributions from employers are recognised when the underlying contribution returns are processed.

1.2 Assets

Assets such as loans and receivables are carried at their recoverable amount.

1.3 Income Tax

Income tax is accounted for on a payables basis. Where no tax is payable in respect of a particular year, there is no tax expense in profit or loss for that year. Any tax payable is calculated at the applicable rate.

1.4 Provisions

Provisions are recognised when the trust has a legal obligation, as a result of past events, for which it is probable that an outflow of economic benefits will result and that outflow can be readily measured. Provisions recognised represent the best estimate of amounts required to settle the obligation at reporting date.

1.5 Goods and Services Tax (GST)

Revenues, expenses and assets are recognised net of the amount of GST, except where the amount of GST incurred is not recoverable from the Tax Office. In these circumstances, the GST is recognised as part of the cost of acquisition of the asset or as part of the expense. Receivables and payables in the statement of financial position are shown inclusive of GST.

**BUILDING EMPLOYEES WELFARE TRUST
NOTES TO THE FINANCIAL STATEMENTS
AS AT 30 JUNE 2015**

1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

1.6 Creditors

Creditors and other payables are recognised at the nominal transaction value without taking into account the time value of money.

2. NATURE OF FUND

Date Trust Established	22 December 2003
Type of Fund	Welfare Trust
Industry Covered	Building & Construction Industry in Queensland
Trustee Company	B.E.W.T. Pty Ltd
Employer Contributions	Determined by Trust Deed
Member Contributions	Determined by Trust Deed

	30-Jun-15	30-Jun-14
	\$	\$
3. RESERVE		
Beginning of year	-	-
Surplus for the year after income tax	4,962,575	4,440,912
Welfare Fund Distribution	(4,962,575)	(4,440,912)
Net surplus / (deficit) for the year	<u>-</u>	<u>-</u>
End of year	<u><u>-</u></u>	<u><u>-</u></u>

**BUILDING EMPLOYEES WELFARE TRUST
NOTES TO THE FINANCIAL STATEMENTS
AS AT 30 JUNE 2015**

4. RELATED PARTIES DISCLOSURE

The Trustee of the Trust is B.E.W.T Pty Limited ABN 91 064 281 353. The Directors of the Trustee Company who held office during the period are:

G Battershill	K Pearson	- Resigned 17 November 2014
P Fitzgerald	M Ravbar	
D Hanna	C Stanley	
P Masters	K Tidmarsh	
B O'Carroll		

- Appointed 27 January 2015

B.E.R.T. Fund no 2, a Trust administered by B.E.R.T. Pty Ltd, provided management, accounting and administrative services to the Trust at the cost of \$151,800 (2014: \$138,000)

Certain Directors are associated with The Construction, Forestry, Mining and Energy Union and the Plumbers Union. These unions provided compliance services to the Trust at the cost of \$21,250 (2014: \$ 35,125)

The Trust distributed \$ 4,962,575 (2014: \$4,440,912) to the BERT Welfare Fund, an entity controlled by the Directors.

There have been no other transactions between any of the Directors of the trustee, or related parties of those Directors and the Trust.

5. DIRECTORS REMUNERATION

No Directors' fees were paid during the year or payable at year end.

6. AFTER BALANCE DATE EVENTS

During July 2015, the Sponsors removed B.E.W.T. Pty Ltd as Trustee of the Trust and appointed BEWT Fund Ltd as Trustee of the Trust.

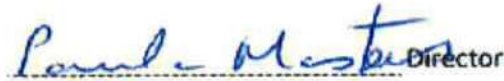
**BUILDING EMPLOYEES WELFARE TRUST
TRUSTEE DECLARATION
AS AT 30 JUNE 2015**

The Directors of the trustee company declare that the trust is not a reporting entity and resolve that this special purpose financial report should be prepared in accordance with the accounting policies outlined in Note 1 to the financial statements.

The directors of the trustee company declare that:

1. The financial statements and notes, as set out on pages 3 to 8, present fairly the trust's financial position as at 30 June 2015 and its performance for the year ended on that date in accordance with the accounting policies described in Note 1 to the financial statements and the Trust Deed; and
2. In the Directors' opinion there are reasonable grounds to believe that the trust will be able to pay its debts as and when they become due and payable.

This declaration is made in accordance with a resolution of the Board of Directors of the Trustee company.

 Director

Personal Information

Director

Signed at Brisbane, this 7th day of October 2015.

INDEPENDENT AUDITOR'S REPORT TO THE MEMBERS OF THE BUILDING EMPLOYEES WELFARE TRUST

We have audited the accompanying financial report, being a special purpose financial report, of the Building Employees Welfare Trust ("the trust"), which comprises the statement of financial position as at 30 June 2015, the statement of profit or loss and other comprehensive income and the statement of cash flows, notes comprising a summary of significant accounting policies and other explanatory information, and the Trustee's declaration. The financial report has been prepared by the trustee based on the requirements of the Trust Deed.

Trustee's Responsibility for the Financial Report

The Trustee of the trust is responsible for the preparation and fair presentation of the financial report and has determined that the basis of preparation described in Note 1 to the financial report is appropriate to meet the requirements of the trust deed and are appropriate to meet the needs of the directors of the Trustee. The Trustee's responsibility also includes such internal control as the Trustee determines is necessary to enable the preparation and fair presentation of a financial report that is free from material misstatement, whether due to fraud or error.

Auditor's Responsibility

Our responsibility is to express an opinion on the financial report based on our audit. We conducted our audit in accordance with Australian Auditing Standards. Those standards require that we comply with relevant ethical requirements relating to audit engagements and plan and perform the audit to obtain reasonable assurance about whether the financial report is free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial report. The procedures selected depend on the auditor's judgement, including the assessment of the risks of material misstatement of the financial report, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation and fair presentation of the financial report in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by the Trustee, as well as evaluating the overall presentation in the financial report.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Auditor's Opinion

In our opinion, the financial report presents fairly, in all material respects, the financial position of the Building Employees Welfare Trust as of 30 June 2015 and of its financial performance for the year then ended in accordance with the accounting policies described in Note 1 to the financial statements.

Basis of Accounting

Without modifying our opinion, we draw attention to Note 1 to the financial report, which describes the basis of accounting. The financial report has been prepared for the purpose of fulfilling the Trustee's financial reporting responsibilities under the trust deed. As a result, the financial report may not be suitable for any other purpose.

PKF Hacketts Audit**Personal Information**


Shaun Lindemann
Partner

Brisbane, ¹ October 2015

Deed poll - amendment and restatement of the Building Employees Welfare Trust trust deed

B.E.W.T. Pty Limited ACN 108 313 622

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Deed poll - amendment and restatement of the Building Employees Welfare Trust trust deed

Dated 16 July 2015

By

Trustee B.E.W.T. Pty Limited ACN 108 313 622

of Level 1, 35 Astor Terrace, Spring Hill, Queensland 4000

Background

- A Clause 19.1 of the Building Employees Welfare Trust trust deed provides the Trustee with the power to alter, revoke or add to any of the provisions in the Building Employees Welfare Trust trust deed by a supplemental deed provided that alteration, revocation or addition has the prior approval of a Special Resolution.
- B By a Special Resolution, the Sponsors have approved the alteration, revocation or addition to the Building Employees Welfare Trust trust deed as set out in this document.

Agreed terms

1 Definitions and interpretation

1.1 Definitions

In this document, terms defined in the Building Employees Welfare Trust trust deed have the same meanings when used in this document, and:

Term	Definition
Building Employees Welfare Trust trust deed	means the trust deed for the Building Employees Welfare Trust dated 22 December 2003 made by the Trustee (as trustee) and James Kristen Peterson (as settlor) and amended from time to time.
Effective Date	means 29 June 2015.

1.2 Interpretation

Clause 1.2 of the Building Employees Welfare Trust trust deed is incorporated in this document as if it was set out in full in this document.

2 Amendment to Building Employees Welfare Trust trust deed

2.1 Amendment and restatement

With effect from the Effective Date, the Building Employees Welfare Trust trust deed is amended (as identified in redline and strike-out in the document set out in the Annexure to this document) and restated so that it is in the form attached in the Annexure to this document.

2.2 Amendment not to affect validity rights or obligations

The amendment and restatement of the Building Employees Welfare Trust trust deed does not affect the validity or enforceability of the Building Employees Welfare Trust trust deed.

2.3 References

On and from the Effective Date, any reference in any related document (other than this document) to the Building Employees Welfare Trust trust deed is a reference to the Building Employees Welfare Trust trust deed as amended and restated under this document under clause 2.1.

Execution

EXECUTED as a deed poll

Signed sealed and delivered
by B.E.W.T. Pty Ltd ACN 108 313 622 by:

Personal Information

A Director

GLEN ROSS WALTER DINTERSHILL

A Full name of Director

Personal Information

A Director/Secretary

WILLIAM JAMES WALLACE

A Full name of Director/Secretary

Annexure

Trust deed – Building Employees Welfare Trust



Trust deed - Building Employees Welfare Trust

James Kristen Peterson

B.E.R.T. Pty Limited ACN 010 917 281

Version: 1

Level 11 Central Plaza Two 66 Eagle Street Brisbane QLD 4000 | GPO Box 1855 Brisbane QLD 4001 Australia | ABN 42 721 345 951
Telephone +61 7 3223 9988 | Fax +61 7 3229 9949
Offices Brisbane Sydney Newcastle

www.mcculloughrobertson.com.au

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Trust deed - Building Employees Welfare Trust

Dated

Parties

Settlor **James Kristen Peterson**
of **[#insert address]**

Trustee **B.E.R.T. Pty Limited ACN 010 917 281**
of Level 11, 120 Edward Street, Brisbane, Queensland 4000

Background

- A The Settlor wishes to establish a trust to provide benefits for the Construction Industry and to confer certain powers on the Trustee.
- B The Trustee has agreed to act as trustee of the Trust and accept those powers.

Agreed terms

1 Definitions and interpretation

1.1 Definitions

The following definitions apply in this document:

Term	Definition
A-Share	means an 'A' class share issued in the capital of B.E.R.T. Pty Limited;
Accounting Year	means each of: - the period from the date of this deed to the next 30 June; - the period from 1 July in any year to 30 June in the next year; and - the period from the 1 July preceding the <u>Termination Date/Vesting Date</u> to the <u>Termination Date/Vesting Date</u>.
Active Employer Organisation	means Queensland Master Builders Association Industrial Organisation of Employers and - any other employer organisation which, with the written agreement of all Active Sponsors, is accepted as an Active Employer Organisation; - any other employer organisation which, by

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Term	Definition
	<u>reason of reorganisation or amalgamation of an Active Employer Organisation is the successor in whole or in part of that Active Employer Organisation; and</u>
	(c) <u>any Federally or Queensland registered counterpart of an Active Employer Organisation provided the Federally registered counterpart is only an Active Employer Organisation if both the Queensland and Federal counterparts confirm this in writing to all other Active Sponsors and then the Federally registered body is an Active Employer Organisation to the exclusion of (and not in addition to) its Queensland registered counterpart;</u>
Active Sponsor	<u>means the Active Employer Organisations and the Active Unions but does not include:</u> (a) <u>any Active Employer Organisations or Active Union which, by notice given by it to the other Active Sponsors, and the Trustee has ceased to be an Active Sponsor; and</u> (b) <u>any Active Employer Organisation or Active Union in respect of which, by agreement of a Special Resolution of the Active Sponsors, is determined no longer to be an Active Sponsor;</u>
Active Union	<u>means each of:</u> (a) <u>the Construction, Forestry, Mining and Energy, Industrial Union of Employees, Queensland;</u> (b) <u>Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Unions of Australia, Plumbing Division, Queensland Branch;</u> (c) <u>any other union of employees which, with the written consent of all Active Sponsors, is accepted as an Active Union;</u> (d) <u>any other union of employees which, by reason of reorganisation or amalgamation of an Active Union, is the successor of the whole or part of that Active Union; and</u> (e) <u>any Federally or Queensland registered counterpart of a Union provided that the Federally registered counterpart is only a union if both the Queensland and Federal counterparts confirm this in writing to the Active Sponsors (which they are deemed to have done in relation to any Federally registered body described in this clause) and then the Federally registered body is an Active Union to the exclusion of (and not in addition to) its Queensland registered counterpart;</u>
Annual Income	<u>means, in respect of each Accounting Year, the amount</u>

Term	Definition
	determined under clause 6.10 for that Accounting Year.
Approved Institution	means a charitable or public educational institution or fund established for public charitable purposes: (a) approved by the Trustee on the basis that the relevant institution or fund has objects likely to benefit the Construction Industry; and (b) endorsed by the Commissioner of Taxation as a deductible gift recipient and an income tax exempt charity under divisions 30 and 50 respectively of the <i>Income Tax Assessment Act 1997</i> (Cth).
B-Share	means a 'B' class share issued in the capital of B.E.R.T. Pty Limited.
Beneficiary	means: (a) the Active Sponsors; and (b) any Approved Institution.
BERT Fund No. 2	means the fund established pursuant to the B.E.R.T. Fund No. 2 Trust Deed dated on or about 22 December 2003 by BERT Pty Limited.
BERT Pty Limited	means B.E.R.T. Pty Limited ACN 010 917 281.
Contribution	(+) means a payment to the Fund by a Participating Employer or a Former Employer in accordance with the provisions of this Deed, any Industrial Instrument or Deed of Adherence.
Construction Industry	means those sectors of commerce or industry commonly known and characterised as being associated or connected with or incidental to: (a) industrial, commercial or residential construction; (b) civil engineering construction; and (c) mechanical engineering construction, and includes all services, maintenance associated or connected with or incidental to any of those forms of construction and also includes each and every one of those sectors or any of those sectors or allied industries whether work is performed on site or off site.
Corporations Act	means the <i>Corporations Act 2001</i> (Cth).
Deed	means this document, including any Schedule or Annexure to it.
Deed of Adherence	means a deed subsequently the same in terms of the deed set out in Schedule 2.
Employer	means a person required to pay Contributions under the terms of this Deed, any Industrial Instrument or Deed of Adherence.
Employer Organisation	Employer Organisation means the Queensland Major Contractors Association (formerly known as Australian Federation of Civil Engineering Contractors (Queensland

Term	Definition
	Branch)) and:
	(a) any other employer organisation which, with the written agreement of all other Sponsors is accepted as an Employer Organisation; and
	(b) any other employer organisation which by reason of the reorganisation or amalgamation of an Employer Organisation is the successor in whole or in part of that Employer Organisation, but does not mean or include:
	(c) any Employer Organisation which by notice given by it to the other Sponsors and the Trustee has ceased to be a Sponsor; or
	(d) any Employer Organisation in respect of which by agreement of all the existing Sponsors less one it is determined no longer to be a Sponsor;
Excluded Class	means:
	(a) the Settlor and any person claiming under or in right of the Settlor;
	(b) the Trustee other than in its capacity as trustee of another trust (but not any director, other officer or shareholder of the Trustee);
	(c) any current or past employee of or person engaged under a contract for services by, a Participating Employer; and
	(d) any person whom the Trustee determines to exclude from being a Beneficiary even though the person otherwise is or may become a Beneficiary and, as from the date of the determination, the Beneficiaries are reduced accordingly, the Trustee may make the determination either revocable or irrevocable, but if this is not stated the determination is revocable.
Fund	means the trust fund established by this Deed.
Fund Administrator	means a person appointed in accordance with clause 11.
Industrial Instrument	has the same meaning as provided for that term in section 136(1) of the <i>Fringe Benefits Tax Assessment Act</i> .
Marketable Securities	means:
	(a) debentures, stocks, shares, rights, options or bonds of or deposits with or loans to at call or for a term or prescribed interests (as that term is defined in the Corporations Act) made available by, any government, any local government authority, any body corporate (wherever incorporated), any association, any society, any partnership, any joint venture, any trust or any person;
	(b) any right or option in respect of any items

Term	Definition
	specified in paragraph (a);
	(c) any bills of exchange or promissory notes;
	(d) any loan to or deposit with for a term or at call, or any certificate of deposit issued by, any bank or financial institution in Australia or elsewhere;
	(e) any exchange traded option;
	(f) any futures contract or option to enter any futures contract;
	(g) an interest rate swap or a currency swap;
	(h) a forward exchange rate contract or a forward interest rate contract;
	(i) any other contract traded upon any exchange or screen trading system; and
	(j) any financial instrument of any kind, wherever in the world they might be located and even if of a kind becoming available only after the date of this deed.
Participating Employer	means an Employer who makes contributions to the Trust Fund.
Security	means: (a) a mortgage, pledge, lien, charge, assignment by way of security, hypothecation, secured interest, title retention arrangement, preferential right, trust arrangement or other arrangement (including, without limitation, any set-off or 'flawed-asset' arrangement) having the same or equivalent commercial effect as a grant of security; or (b) an agreement to create or give any arrangement referred to in paragraph of this definition.
Special Resolution	means a resolution signed: (a) by not less than 75% of the Active Sponsors; (b) by more than 50% of the Active Sponsors who are Active Employer Organisations; and (c) by more than 50% of the Active Sponsors who are Active Unions.
Sponsors	means the Employer Organisations and the Unions.
Tax Act	means the <i>Income Tax Assessment Act 1997</i> (Cth).
Transaction	includes any contract, agreement, arrangement or dealing (whether formal or informal, whether in writing or oral and whether or not enforceable).
Trust	means the trust established by this deed under the name set out in clause 2.5.
Trust Fund	means the sum paid to the Trustee by the Settlor recorded in clause 2.1 and all further money or property paid to or received by the Trustee as trustee of the Trust (including, but subject to clause 6.3(b), amounts

Term	Definition
	accumulated under clause 6.3) and the assets and investments of the Trust from time to time.
Trustee	means the trustee or trustees of the Trust from time to time.
Unions	means each of: (a) Construction, Forestry, Mining & Energy; Industrial Union of Employees, Queensland; (b) Australian Building Construction Employees and Builders Labourers Federation Union of Employees (Queensland Branch); and (c) Communications, Electrical, Electronic, Energy; Information, Postal, Plumbing and Allied Services Union of Australia; Plumbing Division; Queensland Branch; and (d) any other union of employees which, with the written consent of all other Sponsors, is accepted as a Union; and (e) any other union of employees which by reason of the reorganisation or amalgamation of a Union is the successor of the whole or in part of that Union; but does not mean or include: (f) any Union which by notice given by it to the other Sponsors and the Trustee has ceased to be a Sponsor; or (g) any Union in respect of which by agreement of all the existing sponsors less one it is determined no longer to be a Sponsor.
Vesting Date	means: (a) 80 years from the date of this Deed; and (b) an earlier date nominated by the Trustee as the Vesting Date with the prior approval of a Special Resolution of the Active Sponsors.

1.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
- (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document agreement or provision as amended, supplemented, replaced or novated;

- (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
- (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
- (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to an affiliate, in relation to a body corporate, is to each of that body's related bodies corporate, directors and substantial shareholders (as that term is defined in section 708(4) of the Corporations Act, assuming the body to be a 'company' as defined in section 707(1) of the Corporations Act).
- (g) A reference to a charity is to an unincorporated association or body corporate or trustee of a trust, in each case with purposes that are charitable in the legal meaning.
- (h) A reference to dollars or \$ is to Australian currency.
- (i) A reference to an officer of a body corporate, partnership or entity is to a director, secretary, office-bearer or employee of that body corporate, partnership or entity.
- (j) A reference to a professional person is to a barrister, solicitor, accountant, investment adviser, valuer, architect, engineer, insurance broker or person carrying on any other business of supplying services.
- (k) A reference to an entity which may be or become a Beneficiary is any person or entity who from time to time until the ~~Termination Date~~Vesting Date is a Beneficiary even if that person or entity is not yet in existence or does not yet qualify as a Beneficiary.

2 Establishment of Trust

2.1 Settlement

The Settlor has paid to the Trustee the sum of \$10.

2.2 No liability of Settlor

The Settlor has no liability whatever:

- (a) in relation to the Trust, the Trust Fund or any Beneficiary;
- (b) to make any contribution to the Trust Fund; or
- (c) to indemnify, or make any payment to, or on behalf of, the Trustee, any creditor of the Trustee, any person claiming through the Trustee or any Beneficiary.

2.3 Original Trustee

~~The Trustee~~ BERT Pty Limited is the first Trustee of the Trust.

2.4 Declaration of Trust

The Trustee holds, and must continue to hold, the Trust Fund and the income from the Trust Fund on the trusts set out in this Deed.

2.5 Name of Trust

The Trust's name is the Building Employees Welfare Trust.

2.6 Duration of Trust

The Trust commences on the execution of this deed and expires on the ~~Termination Date~~ Vesting Date.

2.7 Excluded benefits

- (a) The Excluded Class and every member of the Excluded Class are excluded from any benefit from the Trust and its income (apart from in the case of the Trustee, indemnity or remuneration permitted by this Deed).
- (b) No part of the capital or income of the Trust may be paid or lent to or applied for I the benefit of the Excluded Class or any member of the Excluded Class in any manner.
- (c) No power conferred upon the Trustee by this Deed or by law or by anything done under this Deed is capable of being exercised in such a manner that the Excluded I Class or any member of the Excluded Class becomes entitled to any benefit under this Deed in any manner or in any circumstance.
- (d) The provisions of paragraphs (a) of this clause 2.7 inclusive override any inconsistent provision in this Deed.
- (e) The provisions of clause 2.7 do not prevent the Trustee from revoking a revocable deed which the Trustee declared a person to be a member of the Excluded Class.

2.8 No resulting trust

There is no resulting trust of the Trust Fund (or any of it) in favour of the Settlor.

2.9 Incomplete trust

If the Trust Fund (or any of it) has not been effectively or validly disposed of by a trust declared by this deed (as amended from time to time), the Trustee holds that part of the Trust Fund affected on trust for any Beneficiary:

- (a) that the Trustee may select in writing on or before the ~~Termination Date~~ Vesting Date; and
- (b) if the Trustee does not make a selection in accordance with paragraph (a), the Supreme court of Queensland decides.

3 Contributions

3.1 Contributions

Every Employer must pay to the Trustee, or as directed by it, within 14 days after the end of each month the Contribution calculated in accordance with clause 3.2.

3.2 Amount of Contribution

The Contribution payable by a Participating Employer for a month is the amount stipulated by an Industrial Instrument to which the Participating Employer is bound (or if there is no such amount stipulated, 1/11 of the Contribution paid by that Participating Employer to the BERT Fund No. 2 Fund for that same month).

3.3 Interest

If a Participating Employer defaults in the payment of Contributions due in accordance with clause 3.1 it must pay interest from the date the Contributions became due until the date on which they are paid at a rate determined by the Trustee to be equal to 2% over the overdraft rate as advised by the Commonwealth Bank of Australia.

3.4 Recovery of Expenses

A Participating Employer must reimburse the Trustee in respect of all reasonable expenses (including collection fees) incurred by the Trustee (or on behalf of the Trustee by the Fund's Administrator or otherwise) in obtaining payment by any Participating Employer of any outstanding Contribution.

4 Application of Trust Fund for the benefit of the construction industry

Despite clauses 5 and 6, the Trustee may pay, apply or expend in each Accounting Year all or any part of the Contributions received in that Accounting Year to or on an entity the Trustee determines should benefit the welfare or otherwise provide assistance to the Construction Industry (whether or not the recipient is an Approved Institution so long as the recipient is not a member of the Excluded Class)). By way of example, the Trustee may determine to apply, set aside or expend monies, received from Contributions during the Accounting Year to or on an entity which will use those funds:

- (a) to promote, assist or advance education and training in the Construction Industry;
- (b) to promote, assist or benefit the provision of chaplaincy, counselling and welfare services for participants in the Construction Industry;
- (c) to promote, assist or benefit persons or institutions undertaking investigations or enquiries into issues which have affect for the Construction Industry (such as the incidents of suicide by workers in the Construction Industry and steps which might usefully be taken to reduce such incidents).

5 Capital

5.1 Trust of capital

The Trustee, subject to clauses 4 and 5.7, holds the Trust Fund on trust:

- (a) for any Beneficiary to which any or all of the Trust Fund is appointed under clause 5.4; but
- (b) if not all of the Trust Fund has been the subject of appointment under clause 5.4 on or before the ~~Termination Date~~Vesting Date, for Active Sponsors in the proportions set out in clause 5.5.

5.2 Mode of exercise of special power to appoint capital

The Trustee may only exercise its powers under clause 5.4:

- (a) on or before the ~~Termination Date~~Vesting Date (but may do so any number of times);
- (b) if it has the prior approval of a resolution;
- (c) by instrument in writing;
- (d) irrevocably, unless when exercising the power the Trustee states that the appointment is revocable;
- (e) consistently with the law relating to remoteness of vesting; and
- (f) so that it does not invalidate any previous payment or application of some or all of the Trust Fund or its Annual Income made under any other power conferred by this deed or by Law.

5.3 Powers of appointment with consent

The Trustee may, if it has the prior approval of a Special Resolution:

- (a) delegate to any person at any time before the ~~Termination Date~~Vesting Date the exercise of all or any of its powers under clause 5.4; and
- (b) at any time in writing release or restrict the future exercise by it of any of its powers under clause 5.4.

5.4 Special power to appoint capital

The Trustee may, subject to clause 5.7, appoint some or all of the Trust Fund and its subsequent Annual Income to any one or more of the Beneficiaries:

- (a) to the exclusion of any one or more of them;
- (b) in any shares or proportions;
- (c) at any age or time.

Any distribution to Active Sponsors under this clause 5.4 must be made:

- (d) ~~as to one half to the Active Unions and, if more than one, in the proportions in which they hold A Shares equally between them~~ as to one half to the Active Unions and, if more than one, in proportion to the number of votes that each Active Union may exercise in relation to the Trustee of the Fund; and
- (e) ~~as to the other half to the Active Employer Organisations and, if more than one, in the proportions in which they hold B Shares equally between them.~~

5.5 In default of exercise of special power to appoint capital

If the Trustee does not exercise the discretion contained in clause 5.4 (or to the extent to which the Trustee does not effectively exercise that discretion), the Trustee, subject to clause 5.7, holds the surplus:

- (a) ~~as to one half to for the Active Unions and, if more than one, in the proportions in which they hold A Shares equally between them~~ as to one half to the Active Unions and, if more than one, in proportion to the number of votes that each Active Union may exercise in relation to the Trustee of the Fund; and
- (b) ~~as to the other half to for the Active Employer Organisations, and if more than one, in the proportions in which they hold B Shares equally between them.~~

5.6 No accounting for advances

A Beneficiary entitled under clause 5.5 to some or all of the Trust Fund need not:

- (a) account for any advance previously received under this deed; or
- (b) bring any advance previously received under this deed into hotchpot.

5.7 Surrender of interest by Beneficiary

A Beneficiary may at any time by written notice to the Trustee signed by the Beneficiary irrevocably surrender the benefit of the Trust, or the benefit of either of both of clauses 5.4 or 5.5 in whole or in part.

5.8 Effect of exclusion or surrender

Where a Beneficiary surrenders the benefit of the Trust under clause 5.7, that person:

- (a) ceases from that time to be a Beneficiary in respect of that part of the Trust Fund excluded or surrendered;
- (b) is from that time excluded from any further benefit under this deed in respect of that part of the Trust Fund excluded or surrendered; and
- (c) remains entitled to any capital or Annual Income of the Trust previously appointed, paid or applied for that person's benefit.

6 Annual Income

6.1 Trust of Annual Income

The Trustee, subject to clauses 4, 6.3, 6.5(a) and 6.7, holds the Annual Income for each Accounting Year on trust:

- (a) for any Beneficiary to whom any or all of the Annual Income has been appointed under clause 6.4; and
- (b) if not all of the Annual Income has been the subject of appointments under clause 6.4, for the Active Sponsors set out in clause 6.5.

6.2 Mode of exercise of powers in relation to Annual Income

The Trustee may:

- (a) exercise its powers under clauses 6.3 and 6.4 in writing or orally, but may only exercise them with the prior approval of a Special Resolution expressed before or after the exercise;
- (b) appoint Annual Income of any Accounting Year to a Beneficiary by crediting the amount to the Beneficiary in the accounting records of the Trust or by drawing a cheque to or for the benefit of the Beneficiary or by paying the amount to the benefit of the Beneficiary;
- (c) determine to exercise its powers under clause 6.3 by making an entry in the accounting records of the Trust;
- (d) only exercise its powers under clauses 6.3(a) and clause 6.4 during the Accounting Year to which the Annual Income relates and no later in that year than 12 noon on the last day of that Accounting Year;
- (e) if it has the prior approval of a Special Resolution, delegate to any person at any time before the Termination Date/Vesting Date of all or any of its powers under clauses 6.3 or 6.4; and
- (f) if it has the prior approval of a Special Resolution, at any time in writing release or restrict the future exercise by it or any of its powers under clause 6.3 or 6.4.

6.3 Power to accumulate

The Trustee may, either or both:

- (a) determine to accumulate some or all of the Annual Income for an Accounting Year (in which case the amount accumulated is added to the Trust Fund); and
- (b) at any time apply as Annual Income of the current Accounting Year any amount previously accumulated (whether accumulated from the Annual Income of the same or an earlier Accounting Year).

6.4 Special power in relation to Annual Income

The Trustee may, subject to clauses 6.3, 6.5(a) and 6.7, appoint if any one or more of the Beneficiaries, to the exclusion of any one or more of them, in any shares or proportions, and at

any age or time, some or all of the Annual Income for an Accounting Year. Any distribution of Annual Income to the Active Sponsors under this clause 6.4 must be made:

- (a) ~~as to one half to the Active Unions and, if more than one, in the proportions in which they hold A Shares equally between them to one half to the Active Unions and, if more than one, in proportion to the number of votes that each Active Union may exercise in relation to the Trustee of the Fund; and~~
- (b) ~~as to the other half to the Active Employer Organisations and, if more than one, in the proportions in which they hold B Shares equally between them;~~

A distribution of Annual Income derived in any particular manner or from a particular source or having a particular character under the Tax Act or otherwise, including, for example:

- (c) capital profits or gains;
- (d) the amount of any dividends, the whole or part of which are taken to have been franked under the Tax Act and any amount deemed by the Tax Act to attach to those dividends;
- (e) the amount of any dividends that are not franked under the Tax Act;
- (f) interest;
- (g) any foreign source income as defined in the Tax Act; or
- (h) any other type or combination of income or gain.

6.5 In default of appointment of Annual Income

If the Trustee does not exercise the discretion contained in clause 6.4 (to the extent to which the Trustee does not exercise or does not effectively exercise that discretion) the Trustee holds the Annual Income for the Accounting Year:

- (a) ~~as to one half to for the Active Unions and, if more than one, in the proportions to which they hold A Shares equally between them to one half to the Active Unions and, if more than one, in proportion to the number of votes that each Active Union may exercise in relation to the Trustee of the Fund; and~~
- (b) ~~as to the other half to for the Active Employer Organisations and, if more than one, in the proportions in which they hold B Shares equally between them.~~

6.6 Exclusion by Trustee of Beneficiary from Annual Income

If it has the prior approval of a Special Resolution, the Trustee may, revocably or irrevocably, exclude any person from benefitting under either or both of clauses 6.4 or 6.5 by instrument in writing or orally.

6.7 Surrender of interest by Beneficiary

A Beneficiary may at any time by written notice to the Trustee signed by the Beneficiary revocably or irrevocably surrender the benefit of clauses 6.4 or 6.5 in whole or part.

6.8 Effect of exclusion or complete surrender

Where a Beneficiary is excluded by the Trustee under clause or surrenders under clause 6.7 the benefit of clauses 6.4 and 6.5 in whole, that person:

- (a) ceases from that time to be a person entitled to be appointed under clause 6.4 in relation to, or entitled under clause 6.5 to, any of the relevant Annual Income, but otherwise remains a Beneficiary; and
- (b) remains entitled to any capital or Annual Income previously appointed, paid or applied for that person's benefit.

6.9 Effect of partial surrender

Where a Beneficiary surrenders under clause 6.7 the benefit of clauses 6.4 and 6.5 in part, that person:

- (a) remains a Beneficiary for all purposes; and
- (b) is excluded from the benefits surrendered.

6.10 Accounting principles

The Annual Income for any Accounting Year is determined from the accounts of the Trust prepared by the Trustee in accordance with clause 14, which, except to the extent that the Trustee decides otherwise, must be prepared in accordance with the following principles:

- (a) the Annual Income for each Accounting Year is to be the same amount as the net income of the Trust for that Accounting Year for the purposes of the Tax Act;
- (b) despite any contrary principle of law usually applied to trust funds, any receipt or expense may be allocated to income or capital in accordance with the principles applied for the purpose of income or capital taxes (if any) payable or potentially payable by the Trustee or by any Beneficiary;
- (c) any rebate or deduction available to the Trustee or to any Beneficiary for the purpose of income or capital taxes may be treated as an amount received or derived or as an expense incurred by the Trust even if under the principles of law usually applied to trust funds, no amount or a different amount would have been received or derived or no, or a different, expense incurred;
- (d) income derived in any particular manner or from any particular source or having a particular character under the Tax Act or otherwise, including, for example and without limitation:
 - (i) capital profits or gains;
 - (ii) the amount of any dividends, the whole or part of which are taken to have been franked under the Tax Act and any amount deemed by the Tax Act to attach to those dividends;
 - (iii) the amount of any dividends that are not franked under the Tax Act;
 - (iv) interest;
 - (v) any foreign source income as defined in the Tax Act; or
 - (vi) any other type or combination of income or gain, derived during the Accounting Year may be classified and accounted for, with or without attributable expenses, separately and may be allocated separately to any Beneficiary to whom Annual Income becomes payable under clauses 6.4 or 6.5 or otherwise.

6.11 Trust of allocated Annual Income

Until payment, the Trustee holds any of the Annual Income for each Accounting Year to which a Beneficiary is entitled on a separate trust for that Beneficiary absolutely, but with the same powers of investment, management and administration as the Trustee has in relation to the Trust Fund.

6.12 Late exercise of discretion

The Trustee may exercise the discretion contained in clause 5.4 after the expiration of the Accounting Year if the Commissioner of Taxation accepts that the Beneficiary in whose favour the Trustee has exercised the discretion is presently entitled to the income in the Accounting Year to which the distribution relates. If not, the purported exercise of the discretion after the expiration of the Accounting Year is ineffective.

7 Payment of taxation

7.1 Tax liability

The manner in which distributions from the Fund are dealt with or the payment of benefits under the Fund may involve a tax liability for the person to whom a payment or benefit is paid or applied and such person accepts that liability.

7.2 Deduction for taxes

The Trustee may deduct Taxation required to be deducted (or which the Trustee considers is required to be deducted) from any payment.

8 Discretions of Trustee in relation to Beneficiaries

8.1 Trusts Act

The discretions of the Trustee in relation to Beneficiaries are in addition to its powers under *Trusts Act 1973* (Qld) and any legislation relating to trusts or trustees.

8.2 Advancement of Annual Income

The Trustee, and even if there might be either another fund applicable for the same purposes or a person bound by law to provide for the maintenance or advancement of the Beneficiary, may either or both apply the whole or any part of any Annual Income for any Accounting Year or any earlier Accounting Year to which a Beneficiary is entitled (or Annual Income to which there is a contingent entitlement) for or towards the maintenance advancement or benefit of that Beneficiary.

8.3 Advancement of capital

If it has the prior approval of a Special Resolution the Trustee, and even if there is another fund applicable for the same purposes, may make out of the Trust Fund (up to the whole of the capital) any payments or transfers of assets the Trustee considers appropriate for the maintenance advancement or benefit of any Beneficiary and where that is done the Trustee need not supervise the manner in which the money paid or assets transferred are applied.

8.4 Advancement to further trustee

If it has the prior approval of a Special Resolution, the Trustee may (but consistently with the rule against remoteness of vesting) pay or apply the Trust Fund (or any of it) to any other trust under which:

- (a) the capital (or any part of it) is held for the benefit of any Beneficiary; and
- (b) a member of the Excluded Class is not a beneficiary.

8.5 Transfers in specie

The Trustee may discharge in whole or in part any obligation to pay capital or Annual Income by transferring in specie any asset of the Trust Fund, and where that is done:

- (a) the Trustee may conclusively determine the value of any property to be transferred and may do so by entering the amount in the accounting records of the Trust; and
- (b) the Trustee may, without obtaining consent or a valuation, make any appropriation of property in its actual condition or state of investment which the law would enable the Trustee to make only either or both with the consent of any person and following a valuation.

8.6 Loans to Beneficiary

The Trustee may, on any terms the Trustee thinks fit, provide financial accommodation (including, by way of loan or advance) to any Beneficiary.

8.7 Remuneration

The Trustee may employ any Beneficiary to perform any service as an employee or contractor and may pay remuneration for those services which are not to be taken into account as a payment to the Beneficiary as Beneficiary under this deed.

8.8 Partnership

The Trustee may enter into and carry out any partnership or joint venture with a Beneficiary.

9 Management and investment powers

9.1 Power as if owner

Subject to clause 2.7, the Trustee has all the powers in relation to the management and investment of the Trust Fund it would have if it were a natural person who owned the Trust Fund absolutely and beneficially.

9.2 Statutory powers

In addition to the powers conferred on the Trustee by clause 9.1, the Trustee may, unless a contrary intention appears in this deed, exercise any power in relation to the Trust Fund conferred by the laws of Queensland (and may do so in or outside Queensland), or by the laws of any jurisdiction in which any asset of the Trust Fund is located, but to the extent that any provision of any law restricts the scope of any power conferred by this deed, that provision is (so far as the law permits) expressly excluded and does not apply to the Trust Fund.

9.3 Schedule 1 powers

In addition to the powers conferred on the Trustee by clauses 9.1 and 9.2, the Trustee has each of the powers set out in schedule 1.

9.4 No limitation

Clause 9.1 does not limit the scope of clause 9.2 (and vice versa), no power set out in schedule limits the scope of a power conferred on the Trustee under either of clauses 9.1 or 9.2 and the scope of a power set out in Schedule 1 is not limited by any other power set out in schedule 1 or by either or both of clauses 9.1 and 9.2.

9.5 No implication

That the Trustee has a power conferred on it by clauses 9.1 or 9.2 or by Schedule 1 does not imply that the Trustee is required to exercise that power.

9.6 No inquiry

No person need inquire as to whether any exercise of any power of the Trustee (including, without limitation, the raising of any financial accommodation or the giving of any Security or any guarantee indemnity contract covenant obligation or other engagement) is needed or as to the purpose for which it is needed or as to the application of any financial accommodation raised.

10 Appointment of managers

10.1 Appointment

The Trustee may appoint any person to act as Investment Manager or Custodian Trustee or both. The appointment must be in writing.

10.2 Delegation

The Trustee may delegate to any Investment Manager or Custodian Trustee the powers it thinks fit.

10.3 No liability of Trustee

The Trustee is not liable or responsible for any act, omission, error of judgment, negligence or breach of trust by the Investment Manager or Custodian Trustee.

10.4 Proceedings

The Trustee is not bound to take proceedings against any Investment Manager or Custodian Trustee arising in the circumstances described in clause 10.3.

10.5 Payments out of the Fund

The Trustee may pay out of the Fund to the Investment Manager or Custodian Trustee remuneration for their services as the Trustee considers proper.

10.6 Removal

The Trustee may remove the Investment Manager or Custodian Trustee or alter the terms of its appointment as it thinks fit.

11 Appointment of Fund Administrator

11.1 Appointment

The Trustee may appoint any person to be Fund Administrator. The appointment must be in writing on terms which the Trustee considers appropriate.

11.2 Delegation

The Trustee may delegate to the Fund Administrator the duties and powers in relation to the administration and management of the Fund it thinks fit including the following:

- (a) the collection of Contributions and the transfer of money and assets to and from any Investment Manager or Custodian Trust;
- (b) the collection, recording and dissemination of Contributions and other information for the purposes of the Fund;
- (c) the establishment and maintenance of records of account and Contributions and other necessary records;
- (d) the calculation of benefits; and
- (e) the provision and maintenance of a computer network and associated enquiry facilities necessary to support the administration of the Trust.

12 Trustee remuneration and benefits

12.1 Indemnity and reimbursement from Trust Fund

The Trustee:

- (a) is fully indemnified out of the assets of the Trust Fund in respect of any debt liability or obligation that the Trustee incurs while acting or purporting to act as Trustee; and
- (b) may reimburse itself from the Trust Fund for all expenses incurred or payments made by it in respect of the Trust including interest on or costs of any financial accommodation raised by it for the Trust.

The Trustee may apply either or both capital and income of the Trust Fund to satisfy its rights under this clause.

12.2 No personal indemnities

Except as provided in clause 12.1, the Trustee has no right of indemnity or exoneration against any liability from the Settlor, an Active Sponsor, any Beneficiary or any person benefiting directly or indirectly from the Trust.

12.3 Commission

The Trustee may (with the prior approval of a Special Resolution) pay to itself in each Accounting Year from the Trust Fund commission for acting as Trustee of the Trust at a value fixed from time to time by the directors of B-E-R-T-BERT Pty Limited.

13 Trustee's duties and interests

13.1 Definition of Extraneous Interest

Extraneous Interest in relation to the Trustee means an interest being or arising out of:

- (a) any office, place of profit or employment held by the Trustee in or in respect of the Trust;
- (b) any office, place of profit or employment held by the Trustee in or in respect of or any membership of, interest in or relationship of creditor or otherwise to, any body corporate, trust, partnership or entity whether or not the Trustee (as such) has any interest in, or dealings or potential dealings with, that body corporate, trust, partnership or entity;
- (c) any Transaction to which the Trustee (otherwise than as Trustee) is a party or is in any other way, whether as principal, agent or otherwise, interested, and to which the Trustee (as such) is a party or in which the Trustee (as such) is in any other way interested; or
- (d) without limitation, any other interest of the Trustee (acting otherwise than as Trustee) or duty of the Trustee (otherwise than as Trustee) to a third party which interest or duty conflicts or may possibly conflict with the Trustee's duties in respect of the Trust.

13.2 Scope of Trustee's duties

The Trustee may, without breach of any duty arising under this deed (including, without limitation, any breach of trust):

- (a) have any Extraneous Interest;
- (b) enter into or carry out a Transaction which is or gives rise to an Extraneous Interest; and
- (c) hold any office, place of profit or employment, or be a member or creditor of or interested in any body corporate or partnership or Trust or entity, that in any case does or could give rise to an Extraneous Interest in the Trustee.

13.3 Transactions of Trust not vitiated

No Transaction in which the Trustee is interested (as such) or to which the Trustee is a party (as Trustee) is vitiated, avoided or voidable merely because a Trustee has an Extraneous Interest in or in relation to that Transaction.

13.4 No liability for Extraneous Interest

The Trustee is not and no other person is, merely because the Trustee has an Extraneous Interest, liable to account for any profit or benefit received by the Trustee or any other person or to hold any property on any trust for the Beneficiaries or to compensate the Trust or the Beneficiaries for any loss suffered.

14 Administration of the Trust

14.1 Accounting Records

The Trustee must keep proper accounting records relating to the Trust:

- (a) setting out fully the assets of the Trust Fund and the income derived from the Trust Fund;
- (b) separately recording investments from Annual Income due, but not yet paid to, any Beneficiary who is a minor or who is under a legal disability;
- (c) correctly recording and explaining its transactions as Trustee and the financial position of the Trust;
- (d) that enable true and fair accounts of the Trust to be prepared from time to time; and
- (e) that enable the accounts of the Trust to be conveniently and properly audited.

14.2 Other accounts- and registers

The Trustee must keep:

- (a) a register of Participating Employers showing names addresses and such information as is relevant to the administration of the Fund; and
- (b) accounts as may be necessary to record the financial transactions by the Trustee and to record the benefits to Beneficiaries.

14.3 Trustee to prepare annual report

After the close of each Accounting Period, the Trustee must prepare a written accounting report (prepared in accordance with generally accepted accounting principles and procedures) for the period consisting of a statement of income and expenditure and a balance sheet and distribute copies to the [Active Sponsors](#).

14.4 Preparation of accounts

The Trustee must promptly after the close of each Accounting Year prepare a balance sheet, a list of assets held, and a statement of income and expenditure, taking account of:

- (a) the principles, if applicable, set out in clause 6.10; and
- (b) applicable accounting standards to the extent they are consistent with the applicable principles set out in clause 6.10.

14.5 Audit of accounts

The Accounts of the Fund must be audited at least once a year by a qualified auditor appointed by the Trustee. The remuneration of the auditor is to be determined by the Trustee and paid out of the Fund.

14.6 Mode of appointment or determination by Trustee

The Trustee:

- (a) may, subject to clauses 5.2 and 6.2, make any appointment or determination for the purposes of this Deed orally or in writing; but
- (b) must, subject to clause 14.8(b), keep proper minutes of its appointments and determination relating to the Trust.

14.7 Evidence

A copy of a minute (signed or unsigned) of a decision of the Trustee certified by the Trustee (or by one Trustee if there is more than one Trustee) to be a true minute of an appointment or determination is conclusive evidence that the appointment or determination was duly made and is conclusive and binding on all Beneficiaries, [Active Sponsors](#) and Employers and on all persons having any dealings with the Trustee.

14.8 Reasons for and records of exercise of Discretion

The Trustee need not:

- (a) give reasons for any decision to exercise or not exercise a discretion; or
- (b) produce any document relating to a decision of the Trustee to exercise or not exercise a discretion.

14.9 Delegation of powers

The Trustee in its absolute discretion, without being responsible for any act or omission of any delegate or for any loss, may delegate the exercise of its powers and discretions wholly or partially or subject to any limitations or restrictions to any person or persons.

14.10 Inquiry of delegate

No delegate of the Trustee need inquire whether the delegation remains in force or whether the Trustee is still alive or in existence.

14.11 Absolute discretion

Every trust, power, authority and discretion of the Trustee:

- (a) is absolute and uncontrolled; and
- (b) subject to clause 2.6 may be exercised in the same way as the Trustee could exercise it if the Trustee were the absolute and beneficial owner of the Trust Fund.

14.12 Receipt discharges trustee

It is an absolute discharge to the Trustee (who need not see how any money or assets are applied) for any money paid or assets transferred to any place in the world to have:

- (a) the receipt of a Beneficiary;
- (b) a bank deposit slip or receipt for any money paid into a bank account;

- (c) a receipt for any money on loan or deposit with or otherwise invested in any body corporate wherever incorporated or with any person wherever carrying on business;
- (d) the receipt of any trustee of any trust or settlement; or
- (e) a discharge by any other lawful means for any money paid by it.

14.13 Questions of doubt

The Trustee may determine any doubt difficulty or question arising under or in relation to the Trust or any power and the determination (express or implied from action) of the Trustee is binding upon all persons interested in the Trust.

15 Trustee issues

15.1 Corporate Trustee

- (a) The Trustee may exercise any power or discretion even if any associate of the Trustee is or may be a Beneficiary or may benefit (either directly or indirectly) as a result of the exercise of any power or discretion.
- (b) No person is disqualified from benefiting under the Trust because the person is an associate of the Trustee.
- (c) Any associate of the Trustee may vote in any meeting of the Trustee in respect of any matter concerning the Trust.

15.2 Mode of appointment or determination by the Trustee

- (a) The Trustee may make any appointment or determination by resolution of its board.
- (b) A copy of a resolution of the board certified by a director or secretary of the Trustee is conclusive evidence and conclusive and binding on any Beneficiary and on all persons having dealings with the Trustee.
- (c) The board may appoint one of the directors to attend any meeting and to do anything which the body corporate can do as Trustee.

15.3 No indemnity

No director, officer or member of the Trustee, or of any related body corporate, is liable personally to indemnify the Trustee for any liability merely because in acting as Trustee the body corporate incurred that liability on the authority, or at the request, of that person or by reason of the relationship of that person with the Trustee.

16 Trustee immunities

16.1 Limited liability

The Trustee is not liable for any loss unless the loss arises from its own fraud (in the common law sense) or knowing and wilful breach of trust, and without limitation, except in those circumstances, the Trustee is not liable for any loss to the Trust Fund or to the Annual Income or to any person:

- (a) from its negligence or want of prudence on its part;
- (b) by reason of any improper investment;
- (c) from the negligence or fraud of any agent or delegate employed by the Trustee or by any prior Trustee even if the employment of that agent or delegate was not strictly necessary or expedient;
- (d) from any mistake or omission made by the Trustee; or
- (e) from any other matter or thing.

16.2 Trustee discretions

The Trustee is not liable for any loss or damage arising from the exercise of or failure to exercise any power or discretion of the Trustee.

16.3 Dealings with the Trustee

Except in the case of fraud (in the common law sense) by the person concerned:

- (a) no person contracting or dealing with the Trustee:
 - (i) need ascertain the terms of the Trust or whether the Trustee has retired or been removed; or
 - (ii) need ascertain whether any contract or dealing by the Trustee is proper or is authorised by this deed or is for the benefit of the Trust Fund or of all or any one or more of the Beneficiaries;
 - (iii) is affected by actual knowledge or by direct or constructive or imputed notice of any impropriety lack of authority or benefit; and
- (b) so far as a person contracting or dealing with the Trustee is concerned, all contracts and dealings are authorised by this Deed.

16.4 No duty to investigate management of companies

The Trustee need not:

- (a) investigate the accounts or management or control of any company corporation governmental or statutory body or bank (a Body) in which any of the assets of the Trust Fund may be invested; or
- (b) attend in person or by proxy or to vote in person or by proxy at any meeting of a Body;
- (c) take any steps or bring any action suit or proceeding or in any other manner seek to:
 - (i) vary alter amend or add to the constitution of a Body; or
 - (ii) interfere with the management government or control of a Body.

16.5 Counsel's opinion

Without limiting the right of the Trustee, any [Active Sponsor](#), or Beneficiary, to apply for advice to a court, the Trustee may act upon the opinion of any solicitor or counsel practising in any

jurisdiction in Australia in relation to the interpretation of this deed or of any document or statute or as to the administration of the Trust without being liable to any [Active Sponsor](#), Employee or Beneficiary for any act done or left undone by the Trustee in accordance with that opinion.

17 Appointment and removal of Trustees

17.1 Eligibility to be Trustee

The Trustee must be a limited liability company in which:

- (a) the [Active Unions](#) have an entitlement to 50% of all voting rights at a general meeting; and
- (b) the [Active Employer Organisations](#) have an entitlement to the remaining 50% of all voting rights at a general meeting.

17.2 Vacation of office

The office of Trustee automatically becomes vacant if:

- (a) it enters into liquidation whether compulsorily or voluntarily (not being a voluntary liquidation for the purposes of amalgamation or reconstruction);
- (b) it has a controller or managing controller appointed in respect of any of its assets;
- (c) it makes or enters into any composition or scheme of arrangement with its creditors;
- (d) it has an administrator appointed or becomes party to a deed of company arrangement; or
- (e) it is removed by Special Resolution.

17.3 Power to appoint new Trustee

By Special Resolution, the [Active Sponsors](#) may:

- (a) appoint a new Trustee;
- (b) replace any Trustee (including the first Trustee);
- (c) ~~remove~~ remove any Trustee (including the first Trustee),

~~but~~ but the [Active Sponsors](#) must not appoint any [Active Sponsor](#) as the Trustee.

17.4 Liability of [Active Sponsors](#)

The [Active Sponsors](#) are not liable to any person for any act or omission under this clause.

17.5 Position of new Trustee

A new Trustee has the same powers authorities and discretions as the Trustee appointed by this deed.

17.6 Position of retiring Trustee

Where a person ceases to be Trustee, the person must do everything and execute all documents necessary and desirable to transfer and vest the assets of the Trust in the new or continuing Trustee or Trustees, but otherwise is discharged from the Trust.

18 Sole Trustee**18.1 Sole Trustee**

A Trustee may be discharged although there will remain or be appointed in its place a sole trustee other than the Public Trustee or a trustee company under the *Trustee Companies Act 1968* or any corresponding legislation in any state or territory of Australia or elsewhere.

18.2 Authorisation

A sole trustee is authorised, even though it is the sole trustee, to receive capital and other money and to give valid and effectual receipts including receipts for money deemed to be capital money for the purpose of any statute.

19 Variation**19.1 Power to vary**

If the Trustee has the prior approval of a Special Resolution, it by written resolution of the Trustee (including a resolution of the board of directors of the Trustee) or by Supplemental Deed may alter, revoke or add to any of the provisions in this Deed in any way at all as it sees fit (including, to confer on the Trustee either generally or in a particular instance any power needed to effect any Transaction which the Trustee considers to be desirable) except:

- (a) to revoke or vary clause 2.7 to do anything which results in any part of the Trust Fund or its income being applied for the benefit of the Settlor or the Settlor's legal personal representative;
- (b) to vary the entitlement of any person to any capital or income previously appointed paid or applied for the benefit of that person; or
- (c) to extend the Termination Date/Vesting Date in a manner inconsistent with the law relating to remoteness of vesting.

19.2 Date of variation

The variations, alterations or additions take effect from the date (if any) specified for that purpose in the resolution or supplemental deed. If no date is stated, then the variations, alterations or additions take effect from the date the resolution or the supplemental deed is made.

19.3 Effect of variation

No revocation, addition or variation may adversely effect the beneficial entitlement to any amount set aside for any Employee or Participating Employer prior to the date of the variation, alteration or addition.

20 Law and jurisdiction

20.1 Governing law

This deed is governed by the law in force in Queensland, but the Trustee may exercise its power to alter, revoke or add to this deed by varying the governing law to the law of some jurisdiction other than Queensland.

20.2 Jurisdiction

The parties (and each Beneficiary, Employee and **Active Sponsor** by taking a benefit under the Trust) each submit to the non-exclusive jurisdiction of the courts of the jurisdiction whose law governs this deed and any courts that may hear appeals from those courts in respect of any proceedings in connection with either or both this deed and the Trust.

21 Fund information

21.1 Participating Employer Information

The Trustee must give to a Participating Employer:

- (a) on request and payment of a reasonable fee determined by the Trustee, a copy of this Deed and any alteration to the Deed; and
- (b) following the end of each month in which a Participating Employer makes a Contribution, a record showing the amount of that Contribution.

21.2 Trust Deed

A copy of this Deed must be kept by the Trustee at its head office and must be open to inspection by the Participating Employers at all reasonable times.

22 Information from Beneficiaries and Employers

22.1 Information

An Employer when requested by the Trustee must furnish any information the Trustee considers necessary for the purposes of the Fund.

22.2 Incorrect or misleading information

- (a) Where an Employer furnishes information affecting the Contribution and the information is incorrect or misleading, or any relevant information is withheld, the Trustee may alter the Contribution to amounts that would have applied had full and accurate information been supplied.
- (b) Where a Beneficiary furnishes information affecting the benefits and the information is incorrect or misleading, or any relevant information is withheld, the Trustee may alter the benefits to amounts that would have applied had full and accurate information been supplied.

23 Confidentiality of Trustee's deliberations

23.1 Confidentiality

In addition to any right of the Trustee under the general law to refuse disclosure of any document or matter, the Trustee is not required to disclose to any person:

- (a) any document disclosing:
 - (i) any deliberations of the Trustee as to the manner in which the Trustee should exercise any power or discretion conferred upon the Trustee;
 - (ii) the reasons for any particular exercise or non-exercise of any power or discretion; or
 - (iii) the material upon which those reasons were or might have been based;
- (b) any other document relating to the exercise or proposed exercise of any power or discretion conferred on the Trustee by this Deed; or
- (c) any reason for any exercise or non-exercise of any power or discretion.

24 Dissolution of Fund

24.1 Date of Dissolution

If approved or directed by a Special Resolution, the Fund must be wound up if:

- (a) there are no Participating Employers and the Trustee resolves to terminate;
- (b) the liabilities (excluding any liability for the future payment of benefits) of the Fund exceed the assets of the Fund; or
- (c) for any other reason the Trustee resolves to terminate the Fund.

24.2 Notice to Employees

If an event referred to in clause 24.1 occurs, the Trustee must give notice in writing to all Participating Employers that the Fund will be wound up on a specified date.

24.3 Position Following Giving of Notice

Following the giving of the notices referred to in clause 24.2, the Trustee must continue to administer the Fund in accordance with the provisions of this Deed except that:

- (a) no further Contributions, other than Contributions due on or before the date specified in the notices referred to in clause 24.2, may be accepted from any Participating Employer; and
- (b) no new Participating Employers may be admitted.

24.4 Surplus

If after providing for expenses and liabilities in accordance with this Deed, a surplus remains, the Trustee may, in its absolute discretion, pay, apply or set aside that surplus to any one or more of the Beneficiaries:

- (a) to the exclusion of any one or more of them;
- (b) in any shares or proportions;
- (c) at any age or time,

any distribution to Active Sponsors must be made:

- (d) as to one half to the Active Unions and, if more than one, in the proportions in which they hold A Shares equally between them; and
- (e) as to the other half to the Active Employer Organisations and, if more than one, in the proportions in which they hold B Shares equally between them.

24.5 Takers In default

If the Trustee does not exercise the discretion contained in clause 24.4 (or to the extent to which the Trustee does not exercise or does not effectively exercise that discretion), the Trustee holds the surplus for the Active Sponsors as at the date the notice is given under clause 24.2, in the same manner as that outlined in clause 5.5 and clause 6.4.

24.6 Final Accounts

Final Accounts of the Fund are to be taken and the Trustee must have those accounts audited.

25 Notices

25.1 Delivery

Any notice or document to be given under this Deed may be delivered or sent by prepaid registered or certified mail (or, if to a party situated in another country, by prepaid registered airmail) or telex or facsimile to the party to be served at that party's address as that party notifies.

25.2 Deeming of service

The notice or document is deemed to be served:

- (a) if delivered, at the time of delivery;
- (b) if posted, at the time it would be received in the normal course of post; or
- (c) if sent by telex or facsimile, on the next business day in the place to which it is addressed.

Schedule 1

Specific management and investment powers (clause 9.3)

1 Receipt of money or property

The Trustee may receive any money, Marketable Securities or property (including proceeds of sale or capital money) whether or not there is only one Trustee and where there is more than one Trustee, even if the money, Marketable Securities or property are delivered to only one, or only some, of the Trustees. Receipt by the Trustee to whom delivery is made is a full discharge and completely excuses the person delivering the money, Marketable Securities or property to the Trustee from any responsibility or liability for loss or misapplication of the money, Marketable Securities or property delivered.

2 Investment generally

The Trustee has power in its absolute discretion as and when it thinks fit

- (a) to apply or invest any money at any time forming part of the Trust Fund in any investment, in any part of the world and in any currency on any terms or conditions, including (without limitation) in subscribing for, taking on allotment, or purchasing any Marketable Securities; and
- (b) to vary any investment.

3 Wasting or contributory investments

- 3.1 The Trustee may retain any asset received by it in the same form without converting it into money or into non-wasting investments.
- 3.2 The Trustee may make an investment even if the investment is not income producing or is of a wasting or speculative nature.
- 3.3 The Trustee may lend money free of interest or with or without Security or adequate Security or on personal credit for any term or at call.
- 3.4 The Trustee may apply any money from the Trust Fund or incur any liability in acquiring any asset or benefit for use or enjoyment by any Beneficiary.
- 3.5 The Trustee may (even if the Trustee obtains a minority interest) join with others (whether acting as trustees or on their own account) in providing any financial accommodation or in making any investment or in exercising any of its powers of management or investment.
- 3.6 The Trustee may provide any financial accommodation, or invest money, from the Trust Fund (even if the money from the Trust Fund is a minority interest) in conjunction with, and may mix that money with, money from another trust or trusts administered by the Trustee.
- 3.7 The Trustee may enter any Transaction in relation to marketable securities for the purpose of hedging or for speculation in any market.

4 Calls and incidental powers

- 4.1 The Trustee may pay any calls or margin calls or other demands in relation to any Marketable Securities.
- 4.2 The Trustee may incur any future liability in relation to any investment or arrangement.
- 4.3 The Trustee may exercise any right or privilege and perform any duty or obligation concerning or incidental to any investment or arrangement.

5 Redemption value and par

The Trustee may apply or invest any money or realise any investment even if:

- (a) the price paid after allowance for accrued interest for any security exceeds its par or redemption value;
- (b) the proceeds received on realisation after allowance for accrued interest are less than the purchase price or par or redemption value;
- (c) the investment is for a fixed period or at call; or
- (d) the purchase price of any investment exceeds, or the disposal price of any investment is less than, any valuation or opinion as to value obtained by the Trustee.

6 Advice

The Trustee may obtain advice from any professional person, or from any person the Trustee considers to be qualified by ability or practical experience of financial matters, to advise concerning any proposed investment or proposed variation of investments and the Trustee is not liable to any Beneficiary or other person for any act done or left undone by the Trustee in accordance with that advice.

7 Lending, valuation and insurance

- 7.1 The Trustee may lend money or provide financial accommodation upon the Security of any real or personal property for any period and upon any terms and conditions.
- 7.2 The Trustee may lend money or provide financial accommodation upon inadequate Security or without Security.
- 7.3 The Trustee may release any Security in whole or in part whether or not the remaining Security is adequate and whether or not the Trustee receives the proceeds of sale of any Security.
- 7.4 The Trustee need not obtain a valuation when acquiring any real or personal property or lending money or providing financial accommodation on any Security or releasing any Security or surrendering any interest as the person benefiting from a Security.
- 7.5 The Trustee may take out any insurance in any manner and in any amount and may make its own estimate of the insurable value or insurable liability.

8 Powers concerning property

The Trustee may:

- (a) **(management)** generally manage the real and personal property of the Trust;
- (b) **(acquisition)** purchase or acquire any real or personal property, or any part, share or interest in any real or personal property (including units in any unit trust wherever in the world it might be located;
- (c) **(sale)** sell exchange partition lease hire mortgage or otherwise turn to account any of the Trust Fund;
- (d) **(dealings and dispositions)** invest in, hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, sub-divide, sell, transfer, convey, assign, discount, factor, surrender, let, lease, (for any term), hire, take on lease new or renewed, exchange, take and grant options or rights to alienate, mortgage, charge, pledge, reconvey, release or discharge or otherwise deal with or dispose of any real or personal property or any interest in it wherever in the world it might be located including (without limitation):
 - (i) any lease or licence;
 - (ii) the benefit of any contract;
 - (iii) any thing in action;
 - (iv) chattels of every description;
 - (v) any Marketable Securities (with or without deferred restricted qualified or special rights attaching to them);
 - (vi) units in any unit trust;
 - (vii) any interest in any trust or partnership;
 - (viii) any interest in any scheme for a retirement village or for time share of accommodation; or
 - (ix) any reversionary interest or deferred property or deferred rights of any description; and
- (d) **(freedom of terms)** exercise any power conferred by paragraphs 8(b), (c) or (d) or any power of acquisition or disposal conferred by any provision of this deed (including, without limitation, paragraph 10 of this schedule) on any terms and conditions, for cash or on terms, for any period, for the whole or part of the price, with or without Security, secured or unsecured or in consideration of an annuity or of Marketable Securities or from money to come to the Trustee in future including any income of the Trust and even if the price exceeds the amount of the Trust Fund.

9 Powers concerning any business

The Trustee may:

- (a) **(business acquisition)** acquire the whole of, or any part or share or interest (including a minority part or share or interest) in any business or any partnership or any goodwill or assets of any business or any units in a unit trust owning an interest in a business;
- (b) **(carrying on business)** carry on either solely or in partnership or by joint venture any trade or business; and
- (c) **(powers incidental to business)** without limitation, for the purpose of any trade or business:
 - (i) borrow and use borrowed money;
 - (ii) purchase capital equipment, plant, fixtures, fittings, goodwill or stock-in-trade;
 - (iii) pay all outgoings or expenses in connection with the running or carrying on of that trade or business;
 - (iv) effect improvements repairs or renovations to property in or on which that trade or business is carried on whether or not that property is part of the Trust Fund;
 - (v) employ contractors, managers, foremen, workmen, assistants or employees;
 - (vi) establish or contribute to any superannuation fund; or
 - (vii) enter any franchise arrangement.

10 Powers concerning Marketable Securities

The Trustee may:

- (a) **(promotion of companies)** promote any limited body corporate and appoint a director or directors of that body corporate;
- (b) **(sale to company)** sell or transfer the whole or any part of the Trust Fund to any body corporate (including a body corporate promoted by the Trustee) at any price and for cash Marketable Securities or any other consideration;
- (c) **(voting)** itself or by proxy exercise the voting powers (or any of them) attached to any Marketable Securities at any time forming part of the Trust Fund;
- (d) **(reduction of capital)** for any consideration (whether cash, Marketable Securities or otherwise) and on any terms and conditions, surrender and deliver up any Marketable Securities forming part of the Trust Fund to any body corporate reducing its capital or buying back its shares; and
- (e) **(reorganisation and schemes)** consent upon any terms to any reorganisation, reconstruction, amalgamation, takeover, scheme, variation of rights, release, compromise, agreement or arrangement of or relating to any Marketable Securities, or to the winding up receivership or administration of any body corporate Marketable Securities of which form part of the Trust Fund.

11 Miscellaneous powers

The Trustee may:

- (a) **(appoint attorney)** appoint any attorney to execute any deed, agreement or document or to perform any act on behalf of the Trustee anywhere in the world;
- (b) **(proxy)** appoint any person as proxy (or, if a sole Trustee is a body corporate, its corporate representative) in relation to any Marketable Securities;
- (c) **(use of nominee)** permit any asset of the Trust Fund to be held or registered in the name of any nominee of the Trustee anywhere in the world;
- (d) **(custodian)** deposit in Queensland or anywhere else in the world some or all of the Trust Fund (including, without limitation, Marketable Securities or documents of title belonging to or related to the Trust Fund) with any bank, lawyer or person who carries on business as a custodian;
- (e) **(agents)** even if the Trustee or one of the Trustees is a person of the same calling, employ as a contractor or as an employee a professional person broker or agent or any other person to transact any business or do any act required to be done in connection with the Trust in or out of Queensland inducing the receipt or payment of money or anything requiring the exercise of discretion;
- (f) **(payment of agents)** pay all proper fees charges commissions or disbursements in connection with or incidental to that employment;
- (g) **(bank)** place money on deposit either on current account or at interest with any bank and either in a separate account, or in a general trust account operated by the Trustee together with money forming part of any other trust fund of which the Trustee is also trustee;
- (h) **(legal proceedings)** institute or defend proceedings at law or in equity in any court or before any arbitrator and proceed to the end or final determination of those proceedings or compromise them;
- (i) **(life insurance)** invest or expend any money forming part of the Trust Fund in any policy of assurance or insurance on the life of any Beneficiary, or on the life of any other person for the benefit of a Beneficiary, whether that Beneficiary has an absolute, contingent or defeasible interest or an expectancy;
- (j) **(acquisition of policies)** acquire any policy of the kind set out in paragraph 11(i) by contract or assignment or otherwise, and maintain any policy by payment of the premiums;
- (k) **(taxes)** pay any duty or any income or other tax or any other impost of any nature payable in respect of either or both this deed or the Trust;
- (l) **(joint action)** exercise all or any of the powers conferred upon it either alone or jointly or in conjunction with any other person or persons;
- (m) **(professional fees)** pay any legal or other professional fees, costs or expenses incurred in the establishment or maintenance of the Trust or in maintaining proper records and accounts relating to the Trust Fund;

Schedule 1 – Specific management and investment powers (clause 9.3)

- (n) **(agreements)** enter into and sign and execute any agreement or deed; and
- (o) **(submissions)** make submissions to any government or to any relevant regulatory body concerning any matter the Trustee considers to be relevant.

12 Borrowing generally

- 12.1 The Trustee may raise and accept any type of financial accommodation (including, without limitation, by borrowing), with or without Security, alone or jointly or jointly and severally with others, in any manner and on any terms and conditions (including, without limitation, where the provider of that financial accommodation is a Beneficiary or a person or entity in which a Beneficiary has any interest).
- 12.2 The Trustee may take Security for any advance to it as Trustee from its own money upon any asset of the Trust Fund, but the Trustee may not pay to itself or claim any interest from the Trust Fund.
- 12.3 The Trustee may request any provider of financial accommodation to exclude personal liability of the Trustee to the provider except to the extent of available assets of the Trust and the Trustee is under no duty to borrow or to incur personal liability for any borrowing.
- 12.4 The Trustee may issue or execute any form of note debenture or document evidencing or acknowledging indebtedness.

13 Security

- 13.1 By any Security over all or any of the present or future assets of the Trust Fund, or in any other manner which the Trustee in its absolute discretion considers appropriate, and with or without giving any other form of Security or acknowledgment, and whether alone or jointly or jointly and severally with others, the Trustee may give Security for:
 - (a) repayment of any financial accommodation provided or to be provided;
 - (b) payment of any interest, fees or charges relating to it;
 - (c) payment of any debt or liability incurred or to be incurred; or
 - (d) performance of any guarantee, indemnity, contract, covenant, obligation or other engagement.
- 13.2 The Trustee may purchase redeem or pay off any Security over any asset of the Trust Fund.

14 Bills and notes

The Trustee may alone or with others make, draw, accept, endorse, discount, deal with or do anything else in relation to any bill of exchange, promissory note, letter of credit, bill of lading or negotiable instrument for any purpose including providing or obtaining financial accommodation.

15 Guarantees

The Trustee may alone or jointly or jointly and severally with others:

- (a) give any guarantee or indemnity for the payment of money or for the performance of any contract or obligation by any person or otherwise to assist any person; and
- (b) secure such guarantees or indemnities or their performance by charge security or mortgage over the Trust Fund (or any of it) or otherwise.

16 Application of proceeds

The Trustee may apply any money raised from any financial accommodation for any of the purposes for which it may apply the Trust Fund or the Annual Income including (without limitation) payment to a Beneficiary, investment in any manner, or acquisition of any property.

Schedule 2

Deed of adherence

Parties

Trustee	B.E.R.T. Pty Limited ACN 010 917 281 of Level 11, 120 Edward Street, Brisbane, Queensland 4000
Participating Employer	The party described in the Schedule

Background

- A Pursuant to a deed dated 22 December 2003 (**Trust Deed**) the Trustee established the Building Employees Welfare Trust.
- B The Participating Employer wishes to assume the obligations as a Participating Employer under the terms of the Trust Deed.

Agreed terms

1 Definitions and interpretation

1.1 Definitions

Unless the context otherwise requires words and expressions defined in the Trust Deed have the same meaning when used in this Deed.

2 Admission of Participating Employer

The Participating Employer:

- (a) is bound by the terms and conditions of the Trust Deed; and
- (b) accepts all the covenants obligations and responsibilities imposed upon a Participating Employer under the terms of the Trust Deed and the Trust Deed.

3 Governing law and jurisdiction

- 3.1 The law of Queensland governs this Deed.
- 3.2 The parties submit to the non-exclusive jurisdiction of the courts of Queensland and the Federal Court of Australia.

4 Notices

- 4.1 A notice or other communication (**Notice**) connected with this Deed has no legal effect unless it is in writing and:
- (a) delivered by hand at the address of the addressee set out in this Deed or subsequently notified;
 - (b) sent by post, postage prepaid, to that address or
 - (c) sent by facsimile to the facsimile number of the addressee.
- 4.2 A Notice is deemed given and received:
- (a) if delivered, upon delivery;
 - (b) if sent by post, on the second Business Day (at the address to which it is posted) after posting; or
 - (c) if sent by facsimile before 4.00pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- 4.3 Despite paragraph 4.2(c) a facsimile is not deemed given or received unless at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages comprised in the Notice have been sent.

Schedule

Name of Participating Employer	[#insert]
ACN (if a company)	[#insert]
Business Name (if any)	[#insert]
Address	[#insert]
Telephone number	[#insert]
Facsimile number	[#insert]
Contact name	[#insert]

Execution

EXECUTED as a deed

Executed
by B.E.R.T. Pty Limited ACN 010 917 281 in
accordance with section 127 of the Corporations
Act by:

A _____ A _____
Director Director/Secretary

A _____ A _____
Full name of Director Full name of Director/Secretary

Signed sealed and delivered
by [#insert name of party] in the presence of:

A _____
Signature of [#insert name of party]

A _____
Signature of witness

A _____
Name of witness (print)

Execution

EXECUTED as a deed

Signed sealed and delivered
by James Kristen Peterson in the presence of:

A. _____
Signature of James Kristen Peterson

A. _____
Signature of witness

A. _____
Name of witness (print)

Signed sealed and delivered
by
B.E.R.T. Pty Limited ACN 010 917 281 by:

A. _____
Director

A. _____
Director/Secretary

A. _____
Full name of Director

A. _____
Full name of Director/Secretary

Deed poll - amendment and restatement of the B.E.R.T. Fund No 2 trust deed

B.E.R.T. Pty Limited ACN 010 917 281

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Deed poll - amendment and restatement of the B.E.R.T. Fund No 2 Trust Deed

Dated 16 July 2015

By

Trustee B.E.R.T. Pty Limited ACN 010 917 281

of Level 5, 35 Astor Terrace, Spring Hill, Queensland 4000

Background

- A Clause 39.1 of the B.E.R.T. Fund No 2 trust deed provides the Trustee with the power to revoke, add to or vary all or any of the trusts, powers, terms and conditions contained in the B.E.R.T. Fund No 2 trust deed by a supplemental deed provided that such revocation, addition or variation has the prior approval of the Sponsors by way of a Special Resolution of the Sponsors.
- B By a Special Resolution of the Sponsors, the Sponsors have approved the variation to the B.E.R.T. Fund No 2 trust deed as set out in this document.
- C The Trustee has notified the Commissioner of Taxation of the proposed variation of the B.E.R.T. Fund No 2 trust deed as set out in this document in accordance with clause 39.4 of the Trust Deed.

Agreed terms

1 Definitions and interpretation

1.1 Definitions

In this document, terms defined in the B.E.R.T. Fund No 2 trust deed have the same meanings when used in this document, and:

Term	Definition
B.E.R.T. Fund No 2 trust deed	means the redundancy fund trust deed for the B.E.R.T. Fund No 2 dated 22 December 2003 made by the Trustee and amended from time to time.
Effective Date	means 29 June 2015.

1.2 Interpretation

Clause 1.3 of the B.E.R.T. Fund No 2 trust deed is incorporated in this document as if it was set out in full in this document.

2 Amendment to B.E.R.T. Fund No 2 trust deed

2.1 Amendment and restatement

With effect from the Effective Date, the B.E.R.T. Fund No 2 trust deed is amended (as identified in redline and strike-out in the document set out in the Annexure to this document) and restated so that it is in the form attached in the Annexure to this document.

2.2 Amendment not to affect validity rights or obligations

The amendment and restatement of the B.E.R.T. Fund No 2 trust deed does not affect the validity or enforceability of the B.E.R.T. Fund No 2 trust deed.

2.3 References

On and from the Effective Date, any reference in any related document (other than this document) to the B.E.R.T. Fund No 2 trust deed is a reference to the B.E.R.T. Fund No 2 trust deed as amended and restated under this document under clause 2.1.

Execution

EXECUTED as a deed poll

Signed sealed and delivered
by B.E.R.T. Pty Ltd ACN 010 917 281 by:

Personal Information

^ Director

GLEN ROSS WALTER DARRINSHAW

^ Full name of Director

Personal Information

^ Director/Secretary

WILLIAM JAMES WALLACE

^ Full name of Director/Secretary

Annexure

Redundancy fund trust deed – B.E.R.T. Fund No 2

Redundancy fund trust deed – B.E.R.T. Fund No.2 – [incorporating 2015 amendments]

B.E.R.T. Pty Limited ACN 010 917 281

Level 11, Central Plaza Two, 66 Eagle Street, Brisbane QLD 4000 | GPO Box 1655, Brisbane QLD 4001 Australia | ABN 42 721 345 951
Telephone +61 7 3233 8888 | Fax +61 7 3229 9949

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Redundancy fund trust deed

Dated 22 December 2003

Parties

Trustee **B.E.R.T. Pty Limited ACN 010 917 281**
of Level 1, 35 Astor Terrace, Spring Hill, Queensland 4004

Recitals

- A Various Industrial Instruments applicable to the Construction Industry provide for the payment of amounts by Employers to Employees upon those Employees becoming Redundant.
- B The Fund has been established to receive Contributions made on or after 1 April 2003, and hold them until the Employees are made Redundant or otherwise become entitled to payment of a Benefit.

Operative Provisions

1 Interpretation

1.1 Statutory Definitions

Any word or expression defined in the *Income Tax Assessment Act* or the *Fringe Benefits Tax Assessment Act* which is used but not defined in this Deed has the meaning given to that word or expression in the *Income Tax Assessment Act* or the *Fringe Benefits Tax Assessment Act* (as the case may be).

1.2 Definitions

Unless the context otherwise requires:

Term	Definition
Accounting Period	means any of: (a) the period from the date of this Deed to 30 June next; (b) each following 12 months ending on 30 June in each year until 30 June immediately preceding the Vesting Date; and (c) the period from 1 July immediately preceding the Vesting Date to the Vesting Date, but the Trustee may alter the Accounting Period to a period of 12 months ending on any other date and if it does so the reference to 30 June and 1 July must be altered appropriately.

33729395v2 | Redundancy fund trust deed

Term	Definition
Active Employer Organisation	means <u>Queensland Master Builders Association Industrial Organisation of Employers and</u> (a) <u>any other employer organisation which, with the written agreement of all Active Sponsors, is accepted as an Active Employer Organisation;</u> (b) <u>any other employer organisation which, by reason of reorganisation or amalgamation of an Active Employer Organisation is the successor in whole or in part of that Active Employer Organisation; and</u> (c) <u>any Federally or Queensland registered counterpart of an Active Employer Organisation provided the Federally registered counterpart is only an Active Employer Organisation if both the Queensland and Federal counterparts confirm this in writing to all other Active Sponsors and then the Federally registered body is an Active Employer Organisation to the exclusion of (and not in addition to) its Queensland registered counterpart.</u>
Active Sponsor	means the Active Employer Organisations and the Active Unions but does not include: (a) <u>any Active Employer Organisations or Active Union which, by notice given by it to the other Active Sponsors, and the Trustee has ceased to be an Active Sponsor; and</u> (b) <u>any Active Employer Organisation or Active Union in respect of which, by agreement of a Special Resolution of the Active Sponsors, is determined no longer to be an Active Sponsor.</u>
Active Union	means each of: (a) <u>the Construction, Forestry, Mining and Energy, Industrial Union of Employees, Queensland;</u> (b) <u>Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Unions of Australia, Plumbing Division, Queensland Branch;</u> (c) <u>any other union of employees which, with the written consent of all Active Sponsors, is accepted as an Active Union;</u> (d) <u>any other union of employees which, by reason of reorganisation or amalgamation of an Active Union, is the successor of the whole or part of that Active Union; and</u> (e) <u>any Federally or Queensland registered counterpart of a Union provided that the Federally registered counterpart is only a union if both the Queensland and Federal counterparts confirm this in writing to the Active Sponsors (which they are deemed to have done in relation to any Federally registered body described in this clause) and then the Federally registered body is an Active Union to</u>

Term	Definition
	the exclusion of (and not in addition to) its Queensland registered counterpart.
Apprentice	means a person who is registered as an apprentice or trainee with an apprenticeship directorate or any other equivalent body approved by the Trustee.
Approved Institution	means a charitable or public educational institution or fund established for public charitable purposes: (a) approved by the Trustee on the basis that the relevant institution or fund has objects likely to benefit Members or participants in the Construction Industry; and (b) the institution or fund has been endorsed as exempt from income tax by the Commissioner under subdivision 50-B <i>Income Tax Assessment Act 1997</i>.
Approved Superannuation Fund¹	means, as the context requires, the superannuation fund that has been named in an industrial instrument.
Auditor	means the auditor appointed by the Trustee.
Award²	means the Construction Worker Level 3/Engineering Construction Worker Level 3 (Engineering Construction Tradesperson Level 1) (CW/ECW 3) in the Building and Construction General On-site Award 2010.
Benefit	means any amount payable by the Trustee out of the Fund to or in respect of a Member.
B.E.R.T. Fund	(+) means the fund established by the B.E.R.T. Fund Deed, and of which the Trustee B.E.R.T. Pty Ltd is the trustee.
B.E.R.T. Fund Deed	means the deed for the creation of the B.E.R.T. Fund executed by the Trustee on 16 May 1996.
<u>B.E.R.T. Pty Ltd</u>	<u>means B.E.R.T. Pty Limited ACN 010 917 281.</u>
Carpenter's Rate³	means the contribution rate, expressed on a weekly basis, which may be made to an approved worker entitlement fund set out in the Award (as amended or re-enacted from time to time) or any industrial instrument which replaces the Award for the purposes of ensuring that the obligation under the Award to make payments when an employee ceases employment is met.
Children	includes an adopted child, step-child and ex-nuptial child.
Commencement Date	means 1 April 2004.
Construction Industry	means those sectors of commerce or industry commonly known and characterised as being associated or connected with or incidental to: (a) industrial, commercial or residential construction; (b) civil engineering construction; and

¹ Definition inserted by a supplemental deed (document reference 8759019).

² Definition inserted by a supplemental deed (document reference 13416673).

³ Definition inserted by a supplemental deed (document reference 13416673).

Term	Definition
	(c) mechanical engineering construction, and includes all services and maintenance associated or connected with or incidental to any of those forms of construction and also includes each and every one of those sectors or any of those sectors or allied industries whether work is performed on site or off site.
Contribution⁴	means a payment to the Fund made in accordance with this document.
Death Benefit	for a Member, means a Benefit payable following the death of the Member.
Death Benefit dependant	has the meaning given to that term section 302-195 in the <i>Income Tax Assessment Act 1997</i> ⁵
Deed	means this document, including any Schedule or Annexure to it.
Deed of Adherence	means a deed substantially in terms of the deed set out in Schedule 1.
Employee	means a person employed principally on production work within the Scope of the Deed by a Participating Employer and includes Apprentices.
Employer	means a person required to pay Contributions in respect of its Employees.
Employer Organisation	means Queensland Major Contractors Association and: (a) any other employer organisation which, with the written agreement of all other Active Sponsors is accepted as an Employer Organisation; (b) any other employer organisation which by reason of the reorganisation or amalgamation of an Employer Organisation is the successor in whole or in part of that Employer Organisation; and (c) any federally or Queensland registered counterpart of an Employer Organisation provided the federally registered counterpart is only an Employer Organisation if both the Queensland and federal counterparts confirm this in writing to all other Active Sponsors and then the federally registered body is an Employer Organisation to the exclusion of (and not in addition to) its Queensland registered counterpart.
Equalisation Account	means the account described in clause 10.4.
FBT Requirements	means the requirements of which the Commissioner of Taxation must be satisfied under the <i>Fringe Benefits Tax Assessment Act 1986</i> in order for a fund to be prescribed as an 'approved worker entitlement fund'.
Fund	means the redundancy fund established by this Deed.

⁴ Definition amended by a supplemental deed (document reference 13416673).

⁵ Definition inserted by deed of amendment and restatement (document reference 30799151v1)

Term	Definition
Fund Administrator	means a person appointed in accordance with clause 15.1.
Income Account	means the account described in clause 10.2.
Member	means an Employee who has been accepted by the Trustee as a Member who has not ceased to be a Member pursuant to clause 4.5.
Member Account	means one of the accounts described in clause 10.1.
Minimum Contribution⁶	means, for each Week of Service: (a) in respect of a Member other than an Apprentice the greater of: (i) the amount set by a Special Resolution of the Active Sponsors and until otherwise set is \$75.00; or (ii) the contribution rate specified in an industrial instrument, expressed on a weekly basis, which applies to the Member provided that contribution rate is no less than an amount set by the formula: $A \times 1.75$ Where: $A = \text{the Carpenter's Rate.}$ (b) in respect of an Apprentice under a 4 year apprenticeship, an amount equal to the following percentages of the Minimum Contributions for a Member: (i) for a first year Apprentice - 40%; (ii) for a second year Apprentice - 55%; (iii) for a third year Apprentice - 75%; (iv) for a fourth year Apprentice - 90%; and (c) in respect of any other Apprentice, an amount equal to the proportion of the Minimum Contribution for a Member which their annual salary bears to the average salary payable to those who have completed their apprenticeship in that field of endeavour.
Net Income	means the amount calculated as the Net Income of the Fund for an Accounting Period in accordance with section 95(1) of the <i>Income Tax Assessment Act</i> unless the Trustee determines in respect of any Accounting Period that the Net Income for that Accounting Period means the income of the Fund calculated in accordance with established accounting principles and trust law.
Nominated Dependant	means, in respect of a Member: (a) the Death Benefit dependant of that Member nominated by the Member as the person that the Member would prefer to receive the amount

⁶ Definition amended by a supplemental deed (document reference 1102610) and subsequently by a supplemental deed (document reference 13416673).

Term	Definition
	standing to his or her Member Account if the Member dies or otherwise ceases to be entitled to his or her Benefit; or
	(b) if no person is so nominated or that nominated person has not survived the Member, then the first person identified in section 302-195 of the <i>Income Tax Assessment Act 1997</i> in relation to that Member in the order set out in that section who has survived the Member and if more than one person who so qualifies, all those persons equally. ⁷
Participating Employer	means any Employer admitted under clause 3.1 who has not ceased to be a Participating Employer pursuant to clause 37.
Redundancy	means that termination of employment of a Member in circumstances where the work the Member has been performing is no longer required to be done by anyone and 'Redundant' has a corresponding meaning.
Reserve Account	means the account maintained in accordance with clause 10.3.
Scope of the Deed	means: (a) all work in industrial, commercial or multi-residential building construction; (b) any other work within the Construction Industry as set out in an agreement between Active Sponsors; (c) any other work within the Construction Industry as agreed between an Employer and an Active Union; (d) any other work within the Construction Industry where the Employer makes a Contribution on behalf of an Employee; and (e) any work where the Employer makes a Contribution on behalf of an Employee.
Small Amount	means an amount determined by the Trustee and until otherwise determined is an amount equal to twice the Minimum Contribution.
Special Resolution of the Active Sponsors	means a resolution: (a) signed by not less than 75% of the Active Sponsors; (b) signed by more than 50% of the Active Sponsors who are Active Employer Organisations; and (c) signed by more than 50% of the Active Sponsors who are Active Unions.
Sponsors	means the Employer Organisations and the Unions but does not include: (a) any Employer Organisation or Union which by notice given by it to the other-Active Sponsors and the Trustee has ceased to be a Sponsor; or (b) any Employer Organisation or Union in respect of

⁷ Definition amended by deed of amendment and restatement (document reference 30799151v1)

Term	Definition
	which by agreement of a Special Resolution of the Active Sponsors is determined no longer to be a Sponsor.
Spouse	means, in relation to a Member, the husband or wife of that Member, or another person who, in the opinion of the Trustee, although not legally married to the Member lives (or in the case of a deceased Member was at the date of death of the Member living) with the Member on a bona fide domestic basis as the husband or wife of the Member.
Total and Permanent Disablement	in relation to a Member means his or her incapacity to the extent that in the reasonable opinion of the Trustee (after considering such medical and other evidence or advice as it may require) the Member is unable ever again to undertake any form of remunerative work in the Construction Industry for which he or she is reasonably equipped by educational training or experience.
Trustee	means the trustee for the time being of the Fund.
Unions	means each of: (a) Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland; (b) Australian Building Construction Employees and Builders Labourers Federation Union of Employees (Queensland Branch); and (c) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, Plumbing Division, Queensland Branch. and: (d) any other union of employees which, with the written consent of all other-Active Sponsors, is accepted as a Union; (e) any other union of employees which by reason of the reorganisation or amalgamation of a Union is the successor of the whole or part of that Union; and (f) any federally or Queensland registered counterpart of a Union provided the federally registered counterpart is only a Union if both the Queensland and federal counterparts confirm this in writing to all other-Active Sponsors (which they are deemed to have done in relation of any federally registered body described in this clause) and then the federally registered body is a Union to the exclusion of (and not in addition to) its Queensland registered counterpart.
Vesting Date	means the first of the following to occur: (a) 80 years from the date of this Deed; and (b) an earlier date nominated by the Trustee as the Vesting Date with the prior approval of a Special

Term	Definition
	Resolution of the Active Sponsors .
Week of Service	means a week where on any day of the week: (a) the Member is employed by the Participating Employer; or (b) for which the Member is entitled to receive workers compensation in respect of any injury or other event occurring whilst in the employ of the Participating Employer up to a maximum of 26 weeks, whether compensation payments are made in one continuous period or not; or (c) where the Member is on annual leave, long service or other paid leave, and a week falls in a month where Friday falls in that month.

1.3 Interpretation

- (a) Reference to:
 - (i) one gender includes the other gender;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a person includes a body corporate and includes a person (in this extended sense) in the capacity of a trustee;
 - (iv) a party includes the party's executors, administrators, successors and permitted assignors; and
 - (v) a statute, regulation or provision of a statute or regulation (**Statutory Provision**) includes:
 - (A) that Statutory Provision as amended or re-enacted from time to time; and
 - (B) a statute, regulation or provision enacted in replacement of that Statutory Provision.
- (b) If a party consists of more than one person, this Deed binds them jointly and each of them severally.
- (c) The schedules form part of this Deed.
- (d) Headings are for convenience only and do not affect the interpretation, or form part, of this Deed.
- (e) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (f) Any references to clauses and schedules are construed as references to clauses of and schedules to this Deed.

1.4 Severance

If any provision or part of a provision of this Deed is or becomes void, invalid or unenforceable for any reason, it must be severed from this Deed but the remainder of this Deed continues in full force and effect and is unaffected by the severance.

1.5 Perpetuity Period

All powers and dispositions made by or under this Deed which, but for this provision, would or might be exercisable vest or take effect after the Vesting Date are exercisable only until the Vesting Date or vest or take effect on the Vesting Date.

2 Constitution of Fund

2.1 Establishment of Fund

The Trustee accepts its appointment as trustee of the Fund.

2.2 Name of Trust

The name of the Fund is the B.E.R.T. Fund No. 2.

2.3 Declaration of Trust

The Trustee holds the Fund and its income upon the trusts and subject to the provisions contained in this Deed.

2A Compliance with Fringe Benefits Tax Assessment Act to ensure status as an approved worker entitlement fund

2A.1 The Trustee will have regard to the FBT Requirements in administering the Fund.

2A.2 The Trustee need not comply with an FBT Requirement if it is not mandatory to do so in order for the Fund to be an *approved worker entitlement fund*.

3 Participation

3.1 Trustee May Admit Participating Employers

The Trustee may admit an Employer as a Participating Employer if:

- (a) the Trustee receives payment from that Employer on behalf of its Employees for the purposes of being credited against a Member Account established or to be established for those Employees, even though that Employer has not at that stage executed a Deed of Adherence;
- (b) the Employer lodges with the Trustee a completed Deed of Adherence; or
- (c) the Employer is a Participating Employer under the B.E.R.T. Fund as at the day immediately prior to the Commencement Date.

3.2 Participating Employers Bound by Deed

Each Participating Employer is bound by the terms of this Deed.

3.3 Admission - Participating Employers

The Trustee must notify an Employer in writing of its admission as a Participating Employer.

3.4 Commencement of Participation

An Employer becomes (or is deemed to become) a Participating Employer:

- (a) if admitted under clause 3.1(a), on the date of receipt of payment by the Trustee of amounts required under the industrial instrument;
- (b) if admitted under clause 3.1(b), on the date specified in the Deed of Adherence, or if no date is specified, then on the date of receipt of the Deed of Adherence; and
- (c) if admitted under clause 3.1(c), on the Commencement Date.

3.5 Member Identification

The Participating Employer must provide to the Trustee the information it requires to identify each Member in respect of whom Contributions are to be made by the Participating Employer.

4 Membership of Fund

4.1 Eligibility for Membership

Any Employee of a Participating Employer may become a Member. Each eligible Employee of a Participating Employer admitted under clause 3.1(c) who is a member of the B.E.R.T. Fund is deemed to be a member as and from the Commencement Date.

4.2 Trustee May Reject or Accept

On the receipt of an application for membership, the Trustee may admit or reject the applicant.

4.3 Commencement of Membership

The Member is deemed to have joined on the date determined by the Trustee.

4.4 Conditions of Membership

The Trustee may impose conditions on:

- (a) a Member's admission;
- (b) his or her rights and duties as a Member; and
- (c) Benefits for that Member.

The Trustee may remove or vary any of these conditions.

4.5 Membership Ceases

A person ceases to be a Member when the Trustee so resolves once all that Member's entitlements have been:

- (a) paid or forfeited; or
- (b) transferred to another fund in accordance with this Deed.

5 Fund Information

5.1 Information to Prospective Participating Employer

The Trustee must give to an Employer who is a prospective Participating Employer a written statement containing details of:

- (a) the kinds of Benefits;
- (b) the conditions relating to Benefits; and
- (c) the method of determining entitlements.

5.2 Member Information

The Trustee must give to a Member:

- (a) on request and payment of a reasonable fee determined by the Trustee, a copy of this Deed and any alteration to the Deed;
- (b) within 6 months after the end of each Accounting Period, a statement showing the balance standing to the Member Account for that Member at the end of the Accounting Period; and
- (c) on payment of an amount standing to the credit of a Member Account, a written statement setting out details of the payment made.

5.3 Participating Employer Information

The Trustee must give to a Participating Employer:

- (a) on request and payment of a reasonable fee determined by the Trustee, a copy of this Deed and any alteration to the Deed; and
- (b) following the end of each month in which a Participating Employer makes a Contribution, a record showing the amount of that Contribution; and
- (c) within 3 months after the end of each Accounting Period, an annual statement of Contributions made during the Accounting Period.

5.4 Trust Deed

A copy of this Deed must be kept by the Trustee at its head office and must be open to inspection by the Participating Employers and Members at all reasonable times.

6 Contributions

6.1 Redundancy Contributions

Subject to the terms of an industrial instrument which applies to a Member, unless:

- (a) that industrial instrument requires the Minimum Contribution be paid to the Approved Superannuation Fund; and
- (b) the Member has in aggregate in his or her Member Account and his or her member account in the B.E.R.T. Fund more than the minimum set by the industrial instrument; and
- (c) the Member elects by notice in writing to the Trustee to have the Minimum Contribution paid to the Approved Superannuation Fund on his or her behalf,

a Participating Employer must pay to the Trustee, or as directed by it, within 30 days⁸ after the end of each month an amount equal to the Minimum Contribution for each Member for each Week of Service in respect of which Contributions are payable. If the provisions of clauses 6.1(a), 6.1(b) and 6.1(c) are not collectively fulfilled and the moneys actually paid to the Approved Superannuation Fund, then the Minimum Contribution remains payable to the Trustee.⁹

6.2 Productivity and Other Payments

A Participating Employer may pay to the Fund on behalf of its Employees who are Members any additional amount:

- (a) agreed with its Employees; or
- (b) as it determines.

6.3 Particulars

The Participating Employer must inform the Trustee or if directed by the Trustee, the Fund Administrator, on which Member's behalf the Contributions are paid.

6.4 Interest

If a Participating Employer defaults in the payment of Contributions due in accordance with clause 6.1 it must pay interest from the date the Contributions became due until the date on which they are paid at a rate determined by the Trustee to be equal to 2% over the overdraft rate as advised by the Commonwealth Bank of Australia.

6.5 Recovery of Expenses

A Participating Employer must reimburse the Trustee in respect of all reasonable expenses (including collection fees) incurred by the Trustee (or on behalf of the Trustee by the Fund's Administrator or otherwise) in obtaining payment by any Participating Employer of any outstanding Contribution.

7 Information from Members

7.1 A Member when requested by the Trustee must:

- (a) furnish any information the Trustee considers necessary for the purposes of the Fund; and

⁸ Clause 6.1 was amended by a supplemental deed (document reference 19152777).
⁹ Clause 6.1 was amended by a supplemental deed (document reference 8759019).

- (b) submit to medical examinations as required by the Trustee by a registered medical practitioner or therapist nominated by the Trustee.
- 7.2** If a Member fails to comply with the provisions of clause 7.1, the Trustee may withhold any Benefit in respect of that Member until the Member complies.
- 7.3** Where a Member furnishes information affecting the Benefit payable to the Member and the information is incorrect or misleading, or any relevant information is withheld, the Trustee may alter the Benefit to amounts that would have applied had full and accurate information been supplied.

8 Transfer from Another Redundancy Fund

The Trustee may accept into the Fund in respect of a Member an amount transferred from another similar fund in which the Member or an Employer of that Member has participated. A Member's Account must be opened for each Member whose account is transferred and the benefits credited to that account. Amounts transferred into the Fund are to be administered according to the terms of this Deed and not on the terms of the deed which applied in respect of the similar fund.

9 Transfer of Benefit to New Fund

9.1 Transfer Requested by Member

On the written request of the Member, an amount equal to the positive balance of a Member Account may be paid or transferred to the trustee of another approved worker entitlement fund.

9.2 Transfer of Benefit by Trustee

The Trustee may transfer to another approved worker entitlement fund an amount no less than the positive balance of a Member's Member Account provided the Trustee is satisfied that the Member's rights and interests in respect of his or her entitlements under the Fund will not be adversely affected by the transfer.

9.3 Receipt of Trustee

The receipt of the trustee of another approved worker entitlement fund to which the transfer is made is a complete discharge to the Trustee in respect of any money or asset paid or transferred.

10 Accounts

10.1 Member Accounts

A Member Account must be established for each Member showing:

- (a) any amount paid or transferred into the Fund in respect of a Member under clause 8;
- (b) Contributions made in respect of that Member; and
- (c) sums added to or deducted from the account under the provisions of this Deed.

10.2 Income Account

An Income Account must be established. All income and profits of the Fund must be credited to the Income Account. The following must be debited against the Income Account:

- (a) any loss sustained on the disposal of any investment of the Fund;
- (b) any Fund expenses which are not debited to a Member Account;
- (c) any amount of Taxation which is not debited to a Member Account;
- (d) the allocation of income in accordance with clause 27.1;
- (e) any amount credited to the Reserve Account; and
- (f) any amount credited to the Equalisation Account.

10.3 Reserve Account

A Reserve Account must be established showing:

- (a) any amount of income accumulated by the Trustee in accordance with clause 27.1 to be applied to the Reserve Account; and
- (b) any forfeited Benefits under clause 34.4.
- (c) sums added to or deducted from the Reserve Account (including costs and expenses of the Fund) under the provisions of this Deed; and
- (d) any amounts paid, applied or set aside from the Reserve Account under clause 27A.2.

The Trustee must maintain records to separately identify any amounts credited to the Reserve Account which represent Contributions (for example Contributions that are transferred to the Reserve Account due to being forfeited Benefits under clause 34.4).¹⁰

10.4 Equalisation Account

An Equalisation Account must be established. The Equalisation Account must be credited with any amount of income accumulated by the Trustee in accordance with clause 27.1 to be applied to the Equalisation Account. The Equalisation Account must be debited with any amounts paid, applied or set aside from the Equalisation Account under clause 27A.3.

10.5 Other Accounts and Registers

The Trustee must keep:

- (a) a register of Participating Employers and Members showing names addresses and such information as is relevant to the administration of the Fund; and
- (b) accounts as may be necessary to record the financial transactions by the Trustee and to record the Benefits for Members.

¹⁰ Clause 10.3 was amended by deed of amendment and restatement (document reference 30799151v1)

11 Accounting Report

Trustee to Prepare Annual Report

After the close of each Accounting Period, the Trustee must prepare a written accounting report (prepared in accordance with generally accepted accounting principles and procedures) for the period, consisting of a statement of income and expenditure and a balance sheet, and distribute copies to the [Active](#) Sponsors.

12 Audit of Accounts

- 12.1 The accounts of the Fund must be audited at least once a year by a qualified auditor appointed by the Trustee.
- 12.2 The remuneration for the auditor is to be determined by the Trustee and paid out of the Fund.

13 Qualification of Trustee

13.1 Eligibility to be Trustee

The Trustee must be a limited liability company in which:

- (a) the [Active](#) Unions hold shares carrying an entitlement to 50% of all voting rights at a general meeting; and
- (b) the [Active](#) Employer Organisations hold shares carrying an entitlement to the remaining 50% of all voting rights at a general meeting.

14 Powers of Trustee

14.1 General Power

- (a) Subject to clauses 14.1(b), the Trustee has all the powers over and in respect of the Fund and the assets of the Fund and using the assets and credit of the Fund and doing anything else on behalf of the Fund which it could exercise and do if it was the absolute and beneficial owner of the Fund and the assets of the Fund.
- (b) The Trustee must exercise its powers in a manner consistent with or permitted by the FBT requirements.

14.2 Particular Powers

Subject to clause 14.1(b) but without limiting the general power contained in clause 14.1, the Trustee has the particular powers referred to in Schedule 3.

14.3 Discretion in Exercise of Powers

Subject to clause 14.1(b), the Trustee may exercise the powers referred to in Schedule 3 as the Trustee thinks fit and may enter into any transaction in exercise of those powers on such terms and conditions as the Trustee thinks fit.

14.4 Statutory Powers

- (a) The Trustee has the powers conferred by the *Trusts Act 1973* or otherwise by law except where they are inconsistent with the powers conferred by this Deed.
- (b) Where a power is conferred by this Deed which is similar to, but larger than, a power conferred by the *Trusts Act 1973*, it operates and is exercisable without any limitation or restriction imposed by the *Trusts Act 1973* on that statutory power.

15 Appointment of Managers

- 15.1** The Trustee may appoint any person to act as Investment Manager or Custodian Trustee or both. The appointment must be in writing.
- 15.2** The Trustee may delegate to any Investment Manager or Custodian Trustee the powers it thinks fit.
- 15.3** The Trustee is not liable or responsible for any act, omission, error of judgment, negligence or breach of trust by the Investment Manager or Custodian Trustee.
- 15.4** The Trustee is not bound to take proceedings against any Investment Manager or Custodian Trustee arising in the circumstances described in clause 15.3.
- 15.5** The Trustee may pay out of the Fund to the Investment Manager or Custodian Trustee remuneration for their services as the Trustee considers proper.
- 15.6** The Trustee may remove the Investment Manager or Custodian Trustee or alter the terms of its appointment as the Trustee thinks fit.

16 Appointment of Fund Administrator

- 16.1** The Trustee may appoint any person to be Fund Administrator. The appointment must be in writing on terms which the Trustee considers appropriate.
- 16.2** The Trustee may delegate to the Fund Administrator the duties and powers in relation to the administration and management of the Fund it thinks fit including the following:
 - (a) the collection of Contributions and the transfer of money and assets to and from any Investment Manager or Custodian Trust,
 - (b) the collection, recording and dissemination of Contributions and other information for the purposes of the Fund;
 - (c) the establishment and maintenance of records of account and Contributions and other necessary records including details of Member Accounts,
 - (d) the calculation of Benefits; and
 - (e) the provision and maintenance of a computer network and associated enquiry facilities necessary to support the administration of the Trust.

17 Confidentiality of Trustee's Deliberations

In addition to any right of the Trustee under the general law to refuse disclosure of any document or matter, the Trustee is not required to disclose to any person:

- (a) any document disclosing:
 - (i) any deliberations of the Trustee as to the manner in which the Trustee should exercise any power or discretion conferred upon the Trustee;
 - (ii) the reasons for any particular exercise or non-exercise of any power or discretion; or
 - (iii) the material upon which those reasons were or might have been based;
- (b) any other document relating to the exercise or proposed exercise of any power or discretion conferred on the Trustee by this Deed; or
- (c) any reason for any exercise or non-exercise of any power or discretion.

18 Remuneration of Trustee

So long as the payment of a Trustee's commission is not inconsistent with the FBT Requirements, the Trustee may with the prior approval of a Special Resolution of the **Active** Sponsors charge and retain out of the Fund a trustee's commission.

19 Liability of Trustee

- 19.1** No Trustee, and no officer of the Trustee, is liable for any loss or damage occasioned to the Fund or to any person by:
- (a) the exercise of any discretion or power by the Trustee, conferred by this Deed or by law, or any failure to exercise any of those discretions or powers;
 - (b) any breach of duty or trust, unless it is proved to have been committed, made or omitted in personal, conscious and fraudulent bad faith by the Trustee or the officer respectively; or
 - (c) any disclosure by the Trustee or the officer of any document, matter or thing relating to the Fund or any Beneficiary.
- 19.2** All persons claiming any interest in the income or the capital of the Fund are deemed to take it with and subject to notice of the protection conferred by this clause 19.
- 19.3** The Trustee is not bound to take any proceeding against a co-trustee for any breach or alleged breach of trust committed by the co-trustee.
- 19.4** Where the Trustee acts in reliance upon the advice of any expert or professional obtained in relation to the interpretation of the provisions of this Deed or any document or statute or any matter concerning the administration of the Fund, the Trustee is not liable to any Member, Participating Employer or Beneficiary in respect of any act done or omitted to be done by the Trustee in accordance with the advice.

20 Indemnity for Trustee

- 20.1** The Trustee is entitled to be indemnified out of the Fund against liabilities incurred by the Trustee by virtue of being the trustee of the Fund.

- 20.2** The Trustee is entitled to be reimbursed from the Fund for all money expended and debts incurred in or about the administration of the Fund.
- 20.3** The Trustee may apply the Fund to satisfy the rights of reimbursement or indemnity to which the Trustee is entitled.

21 Appointment and Removal of Trustee

- 21.1** The Trustee must vacate office as trustee of the Fund and cease to act as such if:
- (a) it is removed as provided by law;
 - (b) it fails to satisfy the requirements of clause 13.1;
 - (c) an application for its winding up is made or it passes a resolution for its voluntary winding up (except bona fide for the purpose of amalgamation or reconstruction) or if a receiver is appointed to its undertakings or any part of its undertakings; and
 - (d) by Special Resolution of the **Active** Sponsors, the **Active** Sponsors resolve that the Trustee be removed.
- 21.2** The Trustee may resign its office by giving 1 month's notice in writing to the **Active** Sponsors of its desire so to do.

22 Appointment of New Trustee

- 22.1** If the Trustee is removed from office or retires pursuant to clauses 21.1 and 21.2 the **Active** Sponsors may by Special Resolution of the **Active** Sponsors appoint a person to replace the Trustee provided that a Trustee must not cease to be a trustee pursuant to either clause 21.1 and 21.2 unless and until the **Active** Sponsors have determined to appoint a replacement Trustee and that replacement has agreed to assume the office of Trustee.
- 22.2** The new Trustee so appointed must execute a deed accepting the office of Trustee and must undertake to perform and observe all the obligations of the Trustee under this Deed.

23 Sole Trustee

- 23.1** A Trustee may be discharged although there will remain or be appointed in its place a sole trustee other than the Public Trustee or a trustee company under the *Trustee Companies Act 1968* or any corresponding legislation in any state or territory of Australia or elsewhere.
- 23.2** A sole trustee is authorised, even though it is the sole trustee, to receive capital and other money and to give valid and effectual receipts including receipts for money deemed to be capital money for the purpose of any statute.

24 Exercise of Discretions and Powers

- 24.1** So long as its exercise is not inconsistent with the FBT Requirements:
- (a) every discretion vested in the Trustee is absolute and uncontrolled;

- (b) every power vested in the Trustee is exercisable at the absolute and uncontrolled discretion of the Trustee.

24.2 So long as to do so is not inconsistent with the FBT Requirements, the Trustee may by instrument in writing, revocable or irrevocable, wholly or partially release, abandon or restrict any power conferred on the Trustee by this Deed.

25 Interest of Directors of Trustee Corporation

So long as to do so is not inconsistent with the FBT Requirements, any person being a director or shareholder of the Trustee may be directly or indirectly interested in the mode or result of exercising the powers and discretions of this Deed without affecting the validity of the exercise of the powers and discretions.

26 Interest of Trustee

The Trustee may exercise or concur in exercising all powers and discretions contained in this Deed or otherwise by law conferred even though:

- (a) the Trustee or any person being a director or shareholder of the Trustee may:
- (i) have a direct or personal interest (whether as trustee of any other settlement or in a personal capacity or as a director or shareholder of any corporation or otherwise) in the mode or result of exercising the power or discretion; or
 - (ii) benefit either directly or indirectly as a result of the exercise of the power or discretion; and
- (b) the Trustee is the sole trustee.

27 Distribution of Net Income

27.1 Trustee's Discretion

All income of the Fund for an Accounting Period must be paid, applied or set aside by the Trustee to or for any one or more of the purposes mentioned in section 58PB(4)(d) of the *Fringe Benefits Tax Assessment Act 1986* but in the proportions the Trustee thinks appropriate. Any part of the income accumulated within the Fund under this clause 27.1 (for example, for the purpose of making investments to generate income from the assets of the Fund) must be paid into either the Reserve Account or the Equalisation Account (as specified by the Trustee) but in the proportions the Trustee thinks appropriate.

27.2 Late Exercise of Discretion

The Trustee may exercise the discretion contained in clause 27.1 after the expiration of the Accounting Period if the Commissioner of Taxation accepts that the entity in whose favour the Trustee has exercised the discretion is presently entitled to the income in the Accounting Period to which the distribution relates. If not, the purported exercise of the discretion after the expiration of the Accounting Period is ineffective.

27.3 Takers In Default

If the Trustee does not exercise the discretion contained in clause 27.1 (or to the extent to which the Trustee does not exercise or does not effectively exercise that discretion), the Trustee must accumulate the income for the Accounting Period by applying it to the credit of the Reserve Account for the purposes mentioned in paragraphs (c)(ii) and (c)(vii) of section 58PB(4) of the *Fringe Benefits Tax Assessment Act 1986*.

27.4 Recoupment of Losses

Where the Trustee suffers a loss for taxation purposes in any Accounting Period it is not required to recoup that loss out of the corpus of the Fund. Losses which relate to previous Accounting Periods so far as possible must be recouped out of profits and not corpus. If losses are at any time to be recouped out of corpus they must first be recouped from the Equalisation Account and then from the Reserve Account if the Equalisation Account has been exhausted.

27A Payments from the Fund

27A.1 Payments from Contributions

Payments from Contributions must be made only for the purposes specified in section 58PB(4)(c) of the *Fringe Benefits Tax Assessment Act*.

27A.2 Distributions from Reserve Account

The Trustee may (at any time) in respect of all or any part of any positive balance in the Reserve Account, pay, apply or set it aside as follows:

- (a) if it is income of the Fund – in the manner provided for in clause 27.1;
- (b) if it is from Contributions, including any Contribution that has been transferred to the Reserve Account due to the forfeiture of Benefits under clause 34.4¹¹ – in the manner provided for in clause 27A.1;
- (c) if it is not otherwise covered by paragraphs (a) or (b) of this clause 27A.2 (for example, it is an amount which results from an accumulation of income paid to the Reserve Account under clause 27.1) – for any one or more of:
 - (i) the Sponsors;
 - (ii) the Members;
 - (iii) the Participating Employers;
 - (iv) the legal personal representative or the Death Benefit dependants of a Member;
 - (v) any Approved Institution,

so long as to do so is not inconsistent with the FBT Requirements.

27A.3 Distributions from Equalisation Account

The Trustee may (at any time) in respect of all or any part of any positive balance in the Equalisation Account pay, apply or set it aside as follows:

¹¹ inserted by deed of amendment and restatement (document reference 30799151v1)

- (a) if it is income of the Fund - in the manner provided for in clause 27.1;
- (b) if it is from Contributions - in the manner provided for in clause 27A.1;
- (c) if it is not otherwise covered by paragraphs (a) or (b) of this clause 27A.3 (for example, it is an amount which results from an accumulation of income paid to the Equalisation Account under clause 27.1) - for any one or more of:
 - (i) the Sponsors;
 - (ii) the Members;
 - (iii) the Participating Employers;
 - (iv) the legal personal representatives or the Death Benefit dependants of a Member;
 - (v) any Approved Institution,

so long as to do so is not inconsistent with the FBT Requirements.

27A.4 Trustee to consider the legal personal representatives or Death Benefit dependants once the Member or former Member has died

Subject to the FBT requirements and the specific limitations of clauses 27A.1 to 27A.3, the Trustee must ensure that all amounts held in the Reserve Account which are attributable to Contributions made in respect of a Member or former Member (including any Contribution that has been transferred to the Reserve Account due to the forfeiture of Benefits under clause 34.4 for that Member or former Member), to the extent those Contributions have not otherwise been paid, applied or set aside for any other of the purposes set out in section 58PB(4)(c) of the *Fringe Benefits Tax Assessment Act* or will not be so paid, applied or set aside, are paid either:

- (a) to the legal personal representatives of that Member or former Member (as the case requires); or
- (b) to one or more Death Benefit dependants of that Member or former Member (as the case requires),

if that Member or former Member has died or has otherwise ceased to be entitled to his or her Benefit as at the date that payment is made.¹²

28 Amount of Benefit for Members

- 28.1** Subject to clause 28.2, a Member's Benefit is equal to the positive balance in his or her Member Account on the date the Benefit becomes payable.
- 28.2** The amount of any Benefit must not exceed that which is in the opinion of the Trustee the maximum the assets of the Fund can provide in respect of the Member.

¹² clause 27A.4 was inserted by deed of amendment and restatement (document reference 30799151v1)

29 Payment of Benefits to Members¹³

So long as to do so is not inconsistent with the FBT Requirements, a Benefit is payable upon a claim being made by the Member if the Member has otherwise satisfied the requirements (if any) of the industrial instrument having application to the Member in respect of his or her entitlement to claim that Benefit and:

- (a) retires from the work force on or after attaining the age of 55 years;
- (b) suffers financial hardship and provides to the Trustee documentary evidence satisfactory to it;¹⁴
- (c) dies;
- (d) becomes Totally and Permanently Disabled;
- (e) is made Redundant;¹⁵
- (f) permanently leaves the Construction Industry; or
- (g) permanently leaves Australia.

30 Preconditions to Entitlement

- 30.1** A Member has no entitlement to a Benefit until he or she has lodged a properly completed claim form with the Trustee and satisfied the Trustee's requirements, enquiries and information regarding his or her entitlement to that Benefit.
- 30.2** The Trustee has no obligation to pay a Benefit until it receives satisfactory evidence of the Member's entitlement. The Trustee may also require the payee to execute documents and do other acts and things as may be appropriate for the Trustee to obtain a good release before paying any claim.
- 30.3** A Member will be considered to have permanently left the Construction Industry for the purposes of clause 29(f) if he or she has not been employed in the Construction Industry for 12 months preceding the date of the application.¹⁶

31 Death Benefit

- 31.1** The Trustee must pay the Death Benefit to any one or more of the Death Benefit dependants or legal personal representatives of the deceased Member as the Trustee considers appropriate.
- 31.2** If no claim for a Death Benefit is made by the legal personal representatives or any Death Benefit Dependents of a deceased Member within 12 months following the death of the Member, the Trustee may forfeit the Benefit and apply it in accordance with clause 34.4.¹⁷

¹³ Clause 29 was amended by a supplemental deed dated 10 November 2004.

¹⁴ clause 29(b) was amended by deed of amendment and restatement (document reference 30799151v1)

¹⁵ clause 29(e) was amended by deed of amendment and restatement (document reference 30799151v1)

¹⁶ Clause 30.3 was inserted by a supplemental deed dated 10 November 2004.

¹⁷ clause 31 was amended by deed of amendment and restatement (document reference 30799151v1)

32 Procedure for Payment of Benefits

- 32.1** The Trustee may forward the Benefits to the postal address or bank account last notified or to any other place the Trustee determines.
- 32.2** Every Member must (except where no further Benefit is payable) notify the Trustee in writing at the time the Benefit becomes payable and immediately after the Member changes address of:
- (a) the Member's place of residence and full postal address; and
 - (b) the bank account (if any) to which the Member requests that the Benefit be paid.
- 32.3** Any person to whom a Benefit is payable must, if requested, furnish the Trustee with a receipt and release in the form required by the Trustee.

33 Payment of Taxation

- 33.1** The manner in which distributions from the Fund are dealt with or the payment of benefits under the Fund may involve a tax liability for the person to whom a payment or benefit is paid or applied and such person accepts that liability.
- 33.2** The Trustee may deduct Taxation required to be deducted (or which the Trustee considers is required to be deducted) from a Benefit.
- 33.3** The Trustee may deduct Taxation payable in relation to a Contribution from the Member Account.

34 Forfeiture of Benefits

34.1 Loss of Benefits

Any Member:

- (a) who before a Benefit becomes payable, becomes bankrupt; or
- (b) whose Benefits whether by the person's own act, operation of law, an order of any court or otherwise become payable to or vested in any person, company, government or other public authority; or
- (c) who is suffering from any physical or mental disability which in the opinion of the Trustee renders the Member unable to manage his or her own affairs; or
- (d) who assigns or charges or attempts to assign or charge his or her Benefit,

forfeits entitlement to all Benefits other than those Benefits to which he or she has at that time become absolutely and indefeasibly entitled under the terms of this Deed.

34.2 Death Benefit dependants to be Considered

Benefits forfeited by reason of clause 34.1 must be held for the Member or former Member and his or her Death Benefit dependants as a class until the Benefit becomes payable. On the Benefit becoming payable the Trustee must pay the Benefit to the Member or former Member (as the case requires) if he or she has survived that date or if he or she has not survived that date then to any one or more of the Member's or former Member's (as the case requires) Death Benefit

dependants in the proportions between them as the Trustee determines. The payment or application of any moneys pursuant to this clause is a complete discharge to the Trustee for those moneys. Any Benefit not able to be so dealt with is forfeited and must be applied in accordance with clause 34.4.¹⁸

34.3 Lost Members and Small Amounts

The amounts standing to a Member's Account may be forfeited where:

- (a) the amount standing to the account is a Small Amount and there have been no Contributions credited to that account for 12 months; or
- (b) in relation to that Member:
 - (i) a statement sent by the Trustee under clause 5.2(b) to the last known address of the Member has been returned unclaimed;
 - (ii) a continuous period of greater than 12 months has elapsed since the return of that statement and the Member's whereabouts has not become known to the Trustee during that period; and
 - (iii) no contribution has been made to the Redundancy Fund in relation to that Member for that period.

Nothing in this clause 34.3 imposes an obligation on the Trustee to ascertain or establish the whereabouts of a Member.

34.4 Allocation for Forfeited Benefits

Every Benefit forfeited or to which a Member has lost his or her entitlement under any of the provisions of this Deed and not otherwise dealt with must be transferred to the Reserve Account.

35 Relationship Between Employer and Employee

35.1 Dealings between the Employer and Employee are not affected by this Deed.

35.2 The rights of a Member or that Member's legal personal representative to claim damages or compensation under:

- (a) common law;
- (b) any workers' compensation legislation; or
- (c) any other statute in force governing compensation to a Member injured or killed by an accident arising out of or in the course of that Member's employment with the Employer,

are not affected by this Deed.

36 Liability and Interest in the Fund

36.1 Interest

¹⁸ clause 34.2 was amended by deed of amendment and restatement (document reference 30799151v1)

- (a) A Member's interest in the Fund is personal to the Member.
- (b) Except as provided in this Deed, a Participating Employer or a Member has no right to or interest in any money or other assets of the Fund.

36.2 Liability of Participating Employers and Members

The Trustee has no power or authority to enter into any contract that binds, affects or renders liable Participating Employers or Members personally or calls upon them for any payment whatsoever that is in addition to the obligations contained in this Deed or the Deed of Adherence.

37 Change in Employer

37.1 New Employer

If:

- (a) a Participating Employer is dissolved or being a company is wound up or any similar event occurs and another person agrees to undertake the obligation of that Participating Employer in respect of the Fund; or
- (b) another person acquires all or part of the undertaking and assets of a Participating Employer and agrees to undertake the obligations of that Participating Employer or otherwise becomes bound to perform the obligations of the Participating Employer in respect of the Fund,

then that Participating Employer upon the happening of either event is released from all obligations in respect of the Fund and the Deed of Adherence thereafter has effect as if such other person had been a party to the Deed of Adherence instead of the then Participating Employer.

37.2 Withdrawal of Employer

The participation of a Participating Employer may be terminated if:

- (a) the Trustee gives 1 month's notice in writing to the Participating Employer;
- (b) where, subject to clause 37.1, a Participating Employer is or includes a body corporate, a resolution is passed or an order is made for its winding up or a scheme of arrangement providing for its dissolution is approved by a Court;
- (c) where a Participating Employer is or includes a partnership, the partnership is dissolved;
- (d) where, subject to clause 37.1, a Participating Employer is or includes a natural person or persons not in partnership, the person or any of those persons dies or becomes bankrupt;
- (e) a Participating Employer ceases to carry on business; or
- (f) a Participating Employer gives 3 months' notice in writing to the Trustee of its intention to cease participation in the Fund provided that if the Participating Employer is not in arrears in respect of its Contributions it may terminate by giving the Trustee 1 month's notice in writing.

The Participating Employer (**Retiring Employer**) ceases its participation in the Fund as and from the date (**Cessation Date**) that the relevant event occurs or expiration of the relevant notice period, as the case may be.

37.3 Effect of Termination of Participation

On the termination of a Participating Employer's participation in the Fund in accordance with clause 37.2:

- (a) no further Employees of that Retiring Employer will be admitted as Members;
- (b) no further Contributions may be made by the Retiring Employer except Contributions that were due on or before the Cessation Date;

and after obtaining such advice (if any) as it considers necessary, the Trustee must determine the amounts held in the Fund that are attributable to the Members who are Employees of the Retiring Employer. Those amounts must be held in terms of this Deed.

37.4 Procedure on Termination

On termination of participation:

- (a) the Trustee must specify a date (**Retirement Date**) upon which the Participating Employer (**Retiring Employer**) must retire;
- (b) the Retiring Employer must immediately pay all arrears, if any, of Contributions up to the Retirement Date;
- (c) the Benefits of each Member employed by the Retiring Employer must be held and applied at the discretion of the Trustee in one or more of the following ways or partly in one way and partly in another:
 - (i) for the Members until they are entitled to payment of the Benefits; or
 - (ii) transferred in accordance with clauses 9.1 or 9.2.

37.5 Discharge of Trustee

The receipt of the trustee of the fund to which an amount is transferred is a complete discharge to the Trustee in respect of all liabilities to the Member employed by the Retiring Employer and persons claiming in or in respect of his or her interest under the Fund.

37.6 Notice to Members

The Retiring Employer must notify the Members employed by it of its ceasing to be a Participating Employer before the Retirement Date.

38 Dissolution of the Fund

38.1 Date of Dissolution

Provided the **Active Sponsors** have given their prior approval to the winding up of the Fund by a Special Resolution of the **Active Sponsors**, the Fund must be wound up if:

- (a) there are no Members or Participating Employers and the Trustee resolves to terminate the Fund;
- (b) the liabilities (excluding any liability for the future payment of Benefits) of the Fund exceed the assets of the Fund; or
- (c) for any other reason the Trustee resolves to terminate the Fund.

38.2 Notice to Members

If an event referred to in clause 38.1 occurs, the Trustee must give notice in writing to Members (if any) and all Participating Employers that the Fund will be wound up on a specified date.

38.3 Position Following Giving of Notice

Following the giving of the notices referred to in clause 38.2, the Trustee must continue to administer the Fund in accordance with the provisions of this Deed except that:

- (a) no further Contributions, other than Contributions due on or before the date specified in the notices referred to in clause 38.2, may be accepted in respect of any Member; and
- (b) no new Members or new Participating Employers may be admitted.

38.4 Provision for Liabilities and Benefits

As soon as practicable after the date specified in the notices referred to in clause 38.2 the Trustee must make provision after meeting expenses and liabilities for the following:

- (a) payment of Benefits which on or before giving the notices referred to in clause 38.2 had become payable to a Member; and
- (b) payment of an amount equal to the credit balance of each Member's Member Account in accordance with clause 37.4(c).

38.5 Surplus

If after providing for expenses, liabilities and Benefits in accordance with clause 38.4, a surplus remains, the Trustee may pay, apply or set aside any part of that surplus in the following manner:

- (a) if it is from the income of the Fund - in the manner provided for in clause 27.1;
- (b) if it is from Contributions, including any Contribution that has been transferred to the Reserve Account due to the forfeiture of Benefits under clause 34.4 - in the manner provided for in clause 27A.1;
- (c) if it is not otherwise covered by paragraph (a) or (b) of this clause 38.5 - to any one or more of the following:
 - (i) the Sponsors;
 - (ii) the Members;
 - (iii) the Participating Employers;
 - (iv) the legal personal representatives or the Death Benefit dependants of a Member,

so long as to do so is not inconsistent with the FBT Requirements.¹⁹

38.6 Takers In default

If the Trustee does not exercise the discretion contained in clause 38.5 (or to the extent to which the Trustee does not exercise or does not effectively exercise that discretion), the Trustee holds the surplus equally for the Participating Employers and Members as at the date the notice is given under clause 38.2.

38.7 After Payment of Benefits the Fund is Dissolved

When all Benefits have been paid, transferred or applied in accordance with the provisions of this Deed, and any amount remaining in the Fund has been paid or applied in accordance with clause 38.4 the Fund is deemed to be dissolved.

38.8 Final Accounts

Final accounts of the Fund are to be taken and the Trustee must have those accounts audited.

39 Variation of Trust

39.1 The Trustee may by written resolution of the Trustee (including a resolution of the board of directors of the Trustee) or by supplemental deed revoke, add to or vary all or any of the trusts, powers, terms and conditions contained in this Deed (or trusts, powers, terms and conditions contained in any variation, alteration or addition made to this Deed) provided that such revocation, addition or variation has the prior approval of the **Active** Sponsors by way of Special Resolution of the **Active** Sponsors.

39.2 The variations, alterations or additions take effect from the date (if any) specified for that purpose in the resolution or supplemental deed. If no date is stated, then the variations, alterations or additions take effect from the date the resolution or the supplemental deed is made.

39.3 No revocation, addition or variation may adversely affect the beneficial entitlement to any amount set aside for any Member or Participating Employer prior to the date of the variation, alteration or addition.

39.4 The Trustee will notify the Commissioner of Taxation in writing before giving effect to any resolution or deed revoking, adding or varying this Deed.

40 Notices²⁰

40.1 Any notice or document to be given under this Deed may be delivered or sent by prepaid registered or certified mail (or, if to a party situated in another country, by prepaid registered airmail) or telex or facsimile or email to the party to be served at that party's address as that party notifies.

40.2 The notice or document is deemed to be served:

- (a) If delivered, at the time of delivery;

¹⁹ clause 38.5 was amended by deed of amendment and restatement (document reference 30799151v1)

²⁰ Clause amended by a supplemental deed (document reference 19152777).

- (b) if posted, at the time it would be received in the normal course of post;
- (c) if sent by telex or facsimile, on the next business day in the place to which it is addressed; or
- (d) if sent by email (and the sender receives confirmation from that person or that person's email system that the email has been received), that day, if delivered by 4 p.m. on a business day, or the next business day, in any other case.

41 Law of Trust

41.1 This Deed is governed by the law of Queensland.

42 Partial Payment of Benefit

42.1 Request for deferral

If a Benefit is payable, the Member may apply to the Trustee in writing to defer its payment.

42.2 Drawdown requests

Where the Trustee has agreed to defer payment of a Benefit, the Member may at any time make a Drawdown Request to the Trustee.

42.3 Pay drawdowns

The Trustee must:

- (a) pay the Drawdown to the Member on a day not less than 30 days from receipt of the Drawdown Request; and
- (b) debit the amount of the Drawdown to the Member's Member Account.

42.4 Income on Undrawn balances

A Member has no entitlement to any income or profit in respect of the undrawn balances of the Benefit to which the Member has otherwise become entitled under the terms of this Deed but in respect of which the Member has applied under clause 42.1 to have the payment deferred.

42.5 Definitions

In this clause 42:

- (a) **Drawdown** means the amount payable under a Drawdown Request unless the Trustee specifies any different amount; and
- (b) **Drawdown Request** means the request by a person to drawdown a part or all of that person's entitlement in the Fund.

Schedule 1

Deed of Adherence

DEED made

PARTIES **B.E.R.T. Pty Limited ACN 010 917 281**

of Level 1, 35 Astor Terrace, Spring Hill, Queensland 4004 (**Trustee**)

AND The party described in the Schedule

of

(**Participating Employer**)

INTRODUCTION

- A. Pursuant to a deed dated 22 December 2003 (**Trust Deed**) the Trustee established the B.E.R.T. Fund No. 2.
- B. The Participating Employer wishes to assume the obligations as a Participating Employer under the terms of the Trust Deed in respect of those of its employees who are Members.

IT IS AGREED

1 **Definitions and Interpretation**

1-21.1 Definitions

Unless the context otherwise requires words and expressions defined in the Trust Deed have the same meaning when used in this Deed.

2 **Admission of Participating Employer**

2.1 The Participating Employer:

- (a) is bound by the terms and conditions of the Trust Deed; and
- (b) accepts all the covenants obligations and responsibilities imposed upon a Participating Employer under the terms of the Trust Deed.

3 **Governing Law and Jurisdiction**

- 3.1 The law of Queensland governs this Deed.
- 3.2 The parties submit to the non-exclusive jurisdiction of the courts of Queensland and the Federal Court of Australia.

4 **Notices²¹**

- 4.1 A notice or other communication (**Notice**) connected with this Deed has no legal effect unless it is in writing and:
 - (a) delivered by hand at the address of the addressee set out in this Deed or subsequently notified;

²¹ Clause and schedule amended by a supplemental deed (document reference 19152777).

- (b) sent by post, postage prepaid, to that address;
 - (c) sent by facsimile to the facsimile number of the addressee; or
 - (d) sent by email to the email address of the addressee.
- 4.2 A Notice is deemed given and received:
- (a) if delivered, upon delivery;
 - (b) if sent by post, on the 2nd Business Day (at the address to which it is posted) after posting; or
 - (c) if sent by facsimile or email before 4 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- 4.3 Despite clause 4.2(c) a facsimile or email is not deemed given or received unless, in the case of a facsimile, at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages comprised in the Notice have been sent or, in the case of email, the sender receives confirmation from that person or that person's email system that the email has been received.

THE SCHEDULE

Name of Participating Employer :

ACN (if a company) :

Business Name (if any) :

Address :

Telephone number :

Facsimile number :

Email address :

Contact name :

EXECUTED as a deed

EXECUTED by)
 in accordance with section 127 of the)
Corporations Act)

Director/Secretary

Director

Name of Director/Secretary (BLOCK LETTERS)

Name of Director (BLOCK LETTERS)

SIGNED SEALED AND DELIVERED by)
 in the presence of:)

Signature of Witness (a J.P. or Solicitor)

Name of Witness (BLOCK LETTERS)

Address of Witness

Schedule 2

Application for membership

CONFIDENTIAL

To: The Trustee
B.E.R.T. Fund No. 2

I, the undersigned person, being eligible, apply for admission to membership of the Fund.

Dated 20 ..

Name

Address

Occupation

Date of Birth

Signature.....

Nominated Dependants

I nominate the following as my Nominated Dependants:

			% of Total
Surname(s)	Given Name(s)	Relationship	Benefit

Schedule 3

Trustee's particular powers

2 Invest

To invest money which forms part of the Fund in any investments, whether involving liabilities or not, with or without security even though those investments are:

- (1) not income producing;
- (2) of a wasting or speculative nature; or
- (3) not by law authorised for the investment of trust money.

3 Purchase and Pay for Investments

To make any investments for cash or in consideration of any annuity or otherwise and:

- (1) to make any investment for a sum greater than the amount of the Fund for the time being; and
- (2) to agree to pay for the investment wholly or in part from any future money which may come into its hands including dividends, profits, interest or other income paid or payable in respect of the investment.

4 Vary Investments

To vary or transpose any investments into or for any others of any nature and to vary the terms of or property comprised in any security.

5 Lend

To advance and lend money to any person with or without security.

6 Borrow and Obtain Credit

- (1) To raise or borrow money, either alone or jointly with others, from any person.
- (2) To enter into any agreement or arrangement for obtaining credit.
- (3) To secure the repayment of any money or other indebtedness or obligation of the Trustee by mortgage, charge or other security or encumbrance over the whole or any part of the property and future property of the Fund.
- (4) No lender is concerned to enquire:
 - (a) as to whether the necessity for any borrowing has arisen;
 - (b) as to the purpose for which it is required;
 - (c) as to the application of the money borrowed; or
 - (d) that no more than is wanted is raised.

- (5) The obligation of the Trustee for the repayment of the money extends only to the assets for the time being forming the Fund and the Trustee does not incur any obligation in its personal capacity for the borrowings.

7 Limit Liability

To enter into any agreement to limit the present or future liability of the Fund including, but not limited to, any agreement relating to interest rate caps, collars, floors or swaps, any \$A forward rate agreement and any other financial risk management agreement and whether varying the terms of any existing financial arrangement or loan or for the purpose of setting up a new financial arrangement or otherwise managing the risk of existing or future financial arrangements.

8 Give Guarantees

- (1) To give any guarantee or indemnity (alone, jointly or jointly and severally) for the payment of money or the performance of any contract, obligation or undertaking by any person.
- (2) To give any form of security (alone, jointly or jointly and severally) over all or any of the assets of the Fund for the purposes of securing its obligations in respect of the guarantee or indemnity.
- (3) No lender is concerned to enquire as to:
 - (a) the necessity for or propriety of any guarantee or indemnity;
 - (b) the purpose for which it is given; or
 - (c) the application of any money borrowed.

9 Joint or Third Party Borrowing

To join with any other person or corporation in executing any mortgage or other document for the purpose of securing the payment of money to:

- (1) the Trustee jointly with any other person; or
- (2) any other person.

10 Deal with Property

To hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, sell, assign, transfer, convey, surrender, let, lease, take on lease, exchange, take and grant licences options or rights in, alienate, mortgage, charge, pledge, reconvey, release or discharge or otherwise deal with any property or any right, estate or interest in it, whether forming part of the Fund or not.

11 Acquire Policies of Insurance

- (1) To effect or acquire any reversionary or deferred property or rights of any description or any life or life endowment or sinking fund or term or other policy of insurance of any nature and at or subject to any premium, whether single or payable periodically, and with or subject to any options, rights, benefits, conditions or provisions.

- (2) To pay out of the income or capital of the Fund all sums payable for premiums or otherwise for the effecting or maintenance of any policy of insurance (whether owned by the Trustee or otherwise) or for the exercise or enjoyment of any option, right or benefit under it and any surrender of any policy is deemed to be a sale of that policy.

12 Pay Outgoings

To pay out the Fund all costs, charges and expenses incidental to:

- (1) the management of the Fund;
- (2) the exercise of any power, authority or discretion contained in this Deed; or
- (3) carrying out or performing the Trusts created by this Deed;

which the Trustee may incur including all income tax or other taxes payable in respect of the Fund, costs in any way connected with preparation and execution of this Deed and all money which the Trustee may be required to pay as settlement, gift, stamp or revenue duties in respect of the Fund or this Deed.

13 Take Up Shares, Units or Securities

To take up by allotment or purchase any stock, shares, debentures, bonds, notes, units, subunits or other securities (including a minority share interest) with or without deferred, restricted, qualified or special rights issued by:

- (1) any corporation incorporated in any of the states or territories of Australia or elsewhere;
- (2) any government, semi-governmental municipal authority or corporation in any of the states or territories of Australia or elsewhere;
- (3) any fixed, flexible or unit trust established in any of the states or territories of Australia or elsewhere; and
- (4) any limited partnership established in any of the states or territories of Australia or elsewhere.

14 Corporate Securities

With respect to any corporation or unit trust in which the Trustee holds shares, stock, debentures, options, convertible notes, units, subunits (**Securities**) or is otherwise interested or concerned:

- (1) to pay calls on Securities or per Securities to be forfeited and sold;
- (2) to purchase Securities and take Securities of a new issue;
- (3) to lend money to the corporation or unit trust whether secured by debentures or in any other way or not secured;
- (4) to attend at meetings personally or by proxy, attorney or representative and vote at the discretion of the Trustee;
- (5) to sell Securities;

- (6) to assent to or join in any arrangement relating to the sale, transfer or exchange of any Securities or modifying any rights, privileges or interests in relation to the Securities;
- (7) to agree to any scheme or arrangement for the increase or reduction of the value amount of any Securities or the capital of any corporation or unit trust of which the Securities form the whole or any part or by which the Securities are substituted or given in exchange either wholly or partly for other Securities, whether in the same corporation or unit trust or not and for this purpose to deposit, surrender or exchange any script or documents of title relating to the Securities;
- (8) to pay out of the capital of the Fund or the income derived from the Fund any contribution or incur any expense in connection with the scheme or arrangement and generally to manage and deal with the Securities as if the Trustee owned them beneficially;
- (9) to agree, in respect of a winding up, with the liquidator of the corporation or unit trust or any member of the corporation or unit trust or any other person on the division or partition, in kind or specie, of the assets or property of any nature of the corporation or unit trust; and
- (10) to accept any assets and property in payment or satisfaction of any interest of the Trustee in the corporation or unit trust, with power to pay any money by way of equality of division or partition.

15 Futures Contracts and Options

- (1) To engage brokers and commission agents, to vary and determine the terms of any engagement and, either directly or through any broker or agent in any market in any part of the world, to:
 - (a) buy, sell, open, close out or otherwise deal in futures contracts of any kind;
 - (b) enter into, vary, exercise, abandon or sell any put or call option or rights;
 - (c) place bids or make offers; or
 - (d) hedge and effect orders including buying, selling, straddle-switch and stop-loss orders.
- (2) To tender and take delivery of commodities and currencies which are the subject of any futures contracts or options and otherwise to do and perform all things so as to operate on, utilise or deal with the facilities of any stock or futures exchange.

16 Partition

To partition or subdivide any land or other property which may form part of the Fund and pay any money by way of equality or partition.

17 Determine Capital or Income

To determine:

- (1) whether:
 - (a) any property;

- (b) any increase or decrease in the amount, number or value of any property holdings of property; or
 - (c) any receipt or payment from, for or in connection with any property;
- is treated as and credited or debited to capital or to income and out of what part of the Fund; and
- (2) whether any expense or outgoing is borne by capital or income.

18 Open Bank Accounts

To open in the name of:

- (1) the Trustee;
- (2) a person as nominee of the Trustee; or
- (3) the Trustee and another jointly;

any cheque, savings or other account with any bank or financial institution, wherever situated, with full power for the person in whose name the account is opened to operate on the account including power to sign, draw and endorse cheques and other negotiable or transferable instruments on the account and to close the account.

19 Grant Options

To grant options in respect of any part of the Fund or any assets held subject to this Deed to any person.

20 Become or Appoint Directors

- (1) To become a director of any corporation in which money forming a part of the Fund is invested.
- (2) To appoint any other person to act as director of the corporation.
- (3) To receive or permit any person appointed by the Trustee as director (including any director or shareholder of the Trustee) to receive the remuneration attached to the office without accounting to the Fund for that remuneration.
- (4) Any person appointed as a director may become qualified to act as a director by the holding in his or her name of shares forming part of the Fund, provided that the Trustee or person in whose name shares are so held executes all proper declarations of trust for any shares held by that person on behalf of the Fund and accounts to the Fund for all dividends and bonuses.

21 Do All Things Incidental

To take action for the protection of any part of the Fund and to do all other things which may be incidental to the exercise of the powers and authorities conferred on the Trustee by this Deed.

22 Act Upon Advice

- (1) To obtain and act upon the opinion or advice, of any financial adviser, lawyer, valuer, surveyor, broker, auctioneer or other expert or professional.

- (2) Nothing in paragraph 24(1) prohibits or impedes the Trustee from applying to a court.

23 Take Opinion of Counsel

- (1) Without derogating from the generality of paragraph 22, to take and act upon the opinion (given in writing) of counsel, of not less than 5 years' standing practising in a country where the Fund or any part of the Fund is invested, in relation to the interpretation or effect of this Deed or any other document or statute or as to the administration of the Fund without being liable to any of the Members or Employers in respect of any act done by the Trustee in accordance with the opinion.
- (2) Nothing in paragraph 23(1) prohibits or impedes the Trustee from applying to a court.

24 Permit Nominee to Hold Assets

- (1) To permit any assets of the Trust to be held or registered in the name of any nominee of the Trustee.
- (2) To deposit securities and any deeds and other documents belonging to or related to the Fund with any bank, solicitor or other custodian.

25 Take on Lease

To take on lease or hire purchase any property including plant, machinery, goods, equipment, articles and chattels of every kind or description.

26 Draw Bills of Exchange

- (1) To draw, make, accept, endorse, discount, sell, purchase, issue and otherwise deal with promissory notes, bills of lading, bills of exchange and other negotiable transferable instruments and in particular commercial bills.
- (2) To secure any liability of the Trustee in respect of any matter referred to in paragraph 26(1) by way of mortgage charge, lien or otherwise over the whole or any part of the Fund.

27 Deal with Distributions from Other Trusts

To treat as income or as capital any amounts or property which the Trustee in its capacity as trustee receives as a beneficiary under any other trust whether the amounts or property constituted capital or income under the other trust or was distributed to the Trustee by the trustee of the other trust as capital or income.

28 Blend Funds

- (1) To blend, for the purposes of investment, any money which the Trustee holds upon the Trust with other money (whether or not the money is subject to any other settlement or trust).
- (2) To join with any other person in making common investments.

29 Employ Agents

- (1) To employ any managers, agents advisers, solicitors, accountants or other persons to transact any business or to do any act required to be done in connection with the administration of the Trust including the receipt and payment of money.

- (2) To determine the remuneration to be paid to them.

30 Attorney

To appoint any person as representative or attorney of the Trustee for the purpose of executing any document which the Trustee is permitted or authorised to execute by this Deed or by law and to revoke the appointment.

31 Delegate

To delegate in writing the exercise of all or any of the powers or discretionary authorities conferred by this Deed on the Trustee and to execute any power of attorney or other instrument necessary to effectuate that delegation.

32 Manage

To manage any property that forms part of the Fund.

33 Compromise

To compromise and settle all matters arising in relation to the Trust or the Fund and compromises and settlements are binding on Beneficiaries.

34 Pay for Assistance

To employ and pay for such professional or other assistance as the trustee may deem requisite to the discharge of the duties of the Trust including assistance from any person who is an employee of the Trustee or (where the Trustee is a corporation) a director and/or a shareholder of the Trustee.

35 Institute and Defend Proceedings

- (1) To institute, join in and defend any legal arbitration or mediation proceeding.
- (2) To proceed to the final determination of the proceeding.
- (3) To discontinue the proceeding and any other claim or demand.

36 Apply for Grant

To apply for, acquire and exercise any charter, licence, legislative enactment, power, authority, franchise, concession, right or privilege from any government or authority or any corporation or other public body.

37 Construct

- (1) To build, demolish, alter, repair, extend, rebuild, improve, reconstruct and develop any property included in the Fund.
- (2) To construct, improve, maintain, develop, work, manage, carry out or control any buildings, works, factories, mills, roadways, tramways, railways, branches or sidings, bridges, reservoirs, water courses, waterways, warehouses, electric workshop stores or other works and conveniences.
- (3) To contribute to or assist in the construction, improvement, maintenance, development, working, management or carrying out the control of the works or conveniences.

38 Procure Recognition

To procure the Trustee (should the Trustee be a corporation) to be registered or recognised in a country or place.

Deed Poll - amendment and restatement of the Building Welfare Trust Deed

BEWT Fund Limited ACN 607 107 595

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Title **Deed Poll**

Date 11/10/22

Parties **BEWT Fund Limited** (ACN 607 107 595) of Level 1, 35 Astor Terrace, Spring Hill, Queensland 4000

Recitals

- A Clause 19.1 of the Building Employees Welfare Trust trust deed provides the Trustee with the power to alter, revoke or add to any of the provisions in the Building Employees Welfare Trust trust deed by a supplemental deed provided that alteration, revocation or addition has the prior approval of a Special Resolution.
- B By a Special Resolution, the Sponsors have approved the alteration, revocation or addition to the Building Employees Welfare Trust trust deed as set out in this document.

Operative provisions

1. Definitions and interpretation

Definitions

- 1.1 In this document, terms defined in the Building Employees Welfare Trust trust deed have the same meanings when used in this document.

Building Employees Welfare Trust trust deed means the trust deed for the Building Employees Welfare Trust dated 22 December 2003 made by BERT Pty Limited (as the initial trustee) and James Kristen Peterson (as settlor) and amended from time to time including by way of a deed of amendment and restatement made by B.E.W.T. Pty Ltd (as the then trustee) on 16 July 2015 and the deed of retirement and appointment of trustee also made on the 16 July 2015 pursuant to which BEWT Funded Limited was appointed as trustee in place of B.E.W.T. Pty Ltd.

Effective Date means 1ST FEBRUARY 2023

Interpretation

- 1.2 Clause 1.2 of the Building Employees Welfare Trust trust deed is incorporated in this document as if it was set out in full in this document.

2. Amendment to Building Employees Welfare Trust trust deed

Amendment and restatement

- 2.1 With effect from the Effective Date, the Building Employees Welfare Trust trust deed is amended (as identified in redline and strike-out in the document set out in the Annexure to this document) and restated so that it is in the form attached in the Annexure to this document.

Amendment not to affect validity rights or obligations

- 2.2 The amendment and restatement of the Building Employees Welfare Trust trust deed does not affect the validity or enforceability of the Building Employees Welfare Trust trust deed.

References

- 2.3 On and from the Effective Date, any reference in any related document (other than this document) to the Building Employees Welfare Trust trust deed is a reference to the Building Employees Welfare Trust trust deed as amended and restated under this document under clause 2.1.

Execution**Executed** as an agreement.Signed sealed and delivered by
BEWT Fund Ltd ACN 607 107 595 by:**Personal Information**

Signature of director

JOAN CRYSTAL
Name of director (please print)**Personal Information**Signature of director/~~secretary~~ (please strike
out as applicable)ROD McDONALD
Name of director/~~secretary~~ (please print)

Annexure

Trust deed Building Employees Welfare Trust



Trust Deed - Building Employees Welfare Trust

James Kristen Peterson

[BEWT Fund Limited ACN 607 107 595](#)

Deleted: B.E.R.T. Pty Limited

Baker & McKenzie
ABN 32 266 778 912
Tower One - International Towers Sydney
Level 46, 100 Barangaroo Avenue
Barangaroo NSW 2000
Australia
www.bakermckenzie.com

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Title **Deed Poll**

Date 22 December 2003

Parties **James Kristen Peterson** of [insert address] (Settlor)

BEWT Fund Limited (ACN 607 107 595) of Level 1, 35 Astor Terrace, Spring Hill, Queensland 4004, with effect from 10:00am on 29 June 2015 (Trustee)

Deleted: B.E.W.T. Pty Limited (ACN 108 313 622)

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Recitals

- A The Settlor wishes to establish a trust to provide benefits for the Construction Industry and to confer certain powers on the Trustee
- B The Trustee has agreed to act as trustee of the Trust and accept those powers.

Operative provisions

1. Definitions and interpretation

Definitions

- 1.1 The following definitions apply in this document:

Accounting Year means each of:

- (a) the period from the date of this deed to the next 30 June;
- (b) the period from 1 July in any year to 30 June in the next year; and
- (c) the period from the 1 July preceding the Vesting Date to the Vesting Date.

Active Employer Organisation means Queensland Master Builders Association Industrial Organisation of Employers and

- (a) any other employer organisation which, with the written agreement of all Active Sponsors is accepted as an Active Employer Organisation;
- (b) any other employer organisation which by reason of reorganisation or acclamation of an Active Employer Organisation is the successor in whole or in part of that Active Employer Organisation; and
- (c) any Federally or Queensland registered counterpart of an Active Employer Organisation provided the Federally registered counterpart is only an Active Employer Organisation if both the Queensland and Federal counterparts confirm this in writing to all other Active Sponsors and
- (d) then the Federally registered body is an Active Employer Organisation to the exclusion of (and not in addition to) its Queensland registered counterpart.

Active Sponsor means the Active Employer Organisation and the Active Unions but does not include:

- (a) any Active Employer Organisations or Active Union which, by notice given by it to the other Active Sponsors, and the Trustee has ceased to be an Active Sponsor; and
- (b) any Active Employer Organisation or Active Union in respect of which, by agreement of a Special Resolution of the Active Sponsors, is determined no longer to be an Active Sponsor.

Active Union means each of:

- (a) the Construction, Forestry, Mining and Energy Industrial Union of Employees Queensland;
- (b) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Unions of Australia, Plumbing Division, Queensland Branch;
- (c) any other union of employees which, with the written consent of all Active Sponsors, is accepted as an Active Union;
- (d) any other union of employees which, by reason of reorganisation or amalgamation of an Active Union, is the successor of the whole or part of that Active Union; and
- (e) any Federally or Queensland registered counterpart of a Union provided that the Federally registered counterpart is only a union if both the Queensland and Federal counterparts confirm this in writing to the Active Sponsors (which they are deemed to have done in relation to any Federally registered body described in this clause) and then the Federally registered body is an Active Union to the exclusion of (and not in addition to) its Queensland registered counterpart.

Annual Income means in respect of each Accounting Year, the amount determined under clause **Error! Reference source not found.** for that Accounting Year.

Approved Institution means a charitable or public educational Institution or fund established for public charitable purposes:

- (a) approved by the Trustee on the basis that the relevant institution or fund has objects likely to benefit the Construction Industry; and
- (b) endorsed by the Commissioner of Taxation as a deductible gift recipient and an income tax exempt charity under divisions 30 and 50 respectively of the Income Tax Assessment Act 1997(Cth).

Beneficiary means:

- (a) the Active Sponsors; and
- (b) any Approved Institution.

BERT Fund No. 2 means the fund established pursuant to the B.E.R.T. Fund No. 2 Trust Deed dated on or about 22 December 2003 by BERT Pty Limited, as the initial trustee, but in relation to which BERT Pty Limited retired as trustee and BEWT Pty Limited was appointed as trustee in its place and in relation to which BEWT Pty Limited then retired as trustee and BEWT Fund Limited was appointed as trustee in its place.

BERT Pty Limited means B.E.R.T. Pty Limited ACN 010 917 281.

BEWT Pty Limited means B.E.W.T. Pty Limited ACN 108 313 628.

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Contribution means a payment to the Fund by a Participating Employer in accordance with the provisions of this Deed, any Industrial Instrument or Deed of Adherence.

Construction Industry means those sectors of commerce or industry commonly known and characterised as being associated or connected with or incidental to:

- (a) industrial, commercial or residential construction;
- (b) civil engineering construction; and
- (c) mechanical engineering construction,

and includes all services, maintenance associated or connected with or incidental to any of those forms of construction and also includes each and every one of those sectors or any of those sectors or allied industries whether work is performed on site or offsite.

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

Deed means this document, including any Schedule or Annexure to it.

Deed of Adherence means a deed subsequently the same in terms of the deed set out in Schedule 2.

Employer means a person required to pay Contributions under the terms of this Deed, any Industrial Instrument or Deed of Adherence.

Excluded Class means:

- (a) the Settlor and any person claiming under or in right of the Settlor;
- (b) the Trustee other than in its capacity as trustee of another trust (but not any director, other officer or shareholder of the Trustee);
- (c) any current or past employee of or person engaged under a contract for services by, a Participating Employer; and
- (d) any person whom the Trustee determines to exclude from being a Beneficiary even though the person otherwise is or may become a Beneficiary and, as from the date of the determination, the Beneficiaries are reduced accordingly, the Trustee may make the determination either revocable or irrevocable, but if this is not stated the determination is revocable.

Fund means the trust fund established by this Deed.

Fund Administrator means a person appointed in accordance with clause 11.

Industrial Instrument has the same meaning as provided for that term in section 136(1) of the *Fringe Benefits Tax Assessment Act*.

Marketable Securities means:

- (a) debentures, stocks, shares, rights, options or bonds of or deposits with or loans to at call or for a term or prescribed interests (as that term is defined in the Corporations Act) made available by, any government, any local government authority, any body corporate (wherever incorporated), any association, any society, any partnership, any joint venture, any trust or any person;
- (b) any right or option in respect of any items specified in paragraph (a);

- (c) any bills of exchange or promissory notes;
- (d) any loan to or deposit with for a term or at call, or any certificate of deposit issued by, any bank or financial institution in Australia or elsewhere;
- (e) any exchange traded option;
- (f) any futures contract or option to enter any futures contract;
- (g) an interest rate swap or a currency swap;
- (h) a forward exchange rate contract or a forward interest rate contract;
- (i) any other contract traded upon any exchange or screen trading system; and
- (j) any financial instrument of any kind,

wherever in the world they might be located and even if of a kind becoming available only after the date of this deed.

Participating Employer means an Employer who makes contributions to the Trust Fund.

Security means:

- (a) a mortgage, pledge, lien, charge, assignment by way of security, hypothecation, secured interest; title retention arrangement, preferential right; trust arrangement or other arrangement (including, without limitation, any set-off or "flawed-asset" arrangement) having the same or equivalent commercial effect as a grant of security; or
- (b) an agreement to create or give any arrangement referred to in paragraph of this definition.

Special Resolution means a resolution signed:

- (a) by not less than 75% of the Active Sponsors;
- (b) by more than 50% of the Active Sponsors who are Active Employer Organisations; and
- (c) by more than 50% of the Active Sponsor who are Active Unions.

Tax Act means the *Income Tax Assessment Act 1977* (Cth).

Transactions includes any contract, agreement, arrangement or dealing (whether formal or informal, whether in writing or oral and whether or not enforceable).

Trust means the trust established by this deed under the name set out in clause 2.5.

Trust Fund means the sum paid to the Trustee by the Settlor recorded in clause 2.1 and all further money or property paid to or received by the Trustee as trustee of the Trust (including, but subject to clause 6.3(b), amounts accumulated under clause 6.3) and the assets and investments of the Trust from time to time.

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

Vesting Date means:

- (a) 80 years from the date of this Deed; and

- (b) an earlier date nominated by the Trustee as the Vesting Date with the prior approval of a Special Resolution of the Active Sponsors.

Rule for interpreting this document

- 1.2 Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.
- (a) A reference to:
 - (i) legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
 - (b) A singular word includes the plural and vice versa.
 - (c) A word which suggests one gender includes the other genders.
 - (d) If a word is defined, another part of speech has a corresponding meaning.
 - (e) If an example is given of anything (including a right; obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (f) A reference to an affiliate, in relation to a body corporate, is to each of that body's related bodies corporate, directors and substantial shareholders (as that term is defined in section 708(4) of the Corporations Act assuming the body to be a 'company' as defined in section 707(1) of the Corporations Act).
 - (g) A reference to a charity is to an unincorporated association or body corporate or trustee of a trust, in each case with purposes that are charitable in the legal meaning.
 - (h) A reference to dollars or \$ is to Australian currency.
 - (i) A reference to an officer of a body corporate, partnership or entity is to a director, secretary, office-bearer or employee of that body corporate, partnership or entity.
 - (j) A reference to a professional person is to a barrister, solicitor, accountant; investment adviser, valuer, architect, engineer, insurance broker or person carrying on any other business of supplying services.
 - (k) A reference to an entity which may be or become a Beneficiary is any person or entity who from time to time until the Vesting Date is a Beneficiary even if that person or entity is not yet in existence or does not yet qualify as a Beneficiary.

2. Establishment of Trust

Settlement

2.1 The Settlor has paid to the Trustee the sum of \$10.

No liability of Settlor

2.2 The Settlor has no liability whatever:

- (a) in relation to the Trust, the Trust Fund or any Beneficiary;
- (b) to make any contribution to the Trust Fund; or
- (c) to indemnify, or make any payment to, or on behalf of, the Trustee, any creditor of the Trustee, any person claiming through the Trustee or any Beneficiary.

Original Trustee

2.3 BERT Pty Limited is the first Trustee of the Trust.

Declaration of Trust

2.4 The Trustee holds, and must continue to hold, the Trust Fund and the income from the Trust Fund on the trusts set out in this Deed.

Name of Trust

2.5 The Trust's name is the Building Employees Welfare Trust.

Duration of Trust

2.6 The Trust commences on the execution of this deed and expires on the Vesting Date.

Excluded benefits

- 2.7 The Excluded Class and every member of the Excluded Class are excluded from any benefit from the Trust and its income (apart from in the case of the Trustee, indemnity or remuneration permitted by this Deed).
- 2.8 No part of the capital or income of the Trust may be paid or lent to or applied for the benefit of the Excluded Class or any member of the Excluded Class in any manner.
- 2.9 No power conferred upon the Trustee by this Deed or by law or by anything done under this Deed is capable of being exercised in such a manner that the Excluded I Class or any member of the Excluded Class becomes entitled to any benefit under this Deed in any manner or in any circumstance.
- 2.10 The provisions of clause 2.7 inclusive override any inconsistent provisions of this Deed.
- 2.11 The provisions of clauses 2.7 to 2.10 and this clause do not prevent the Trustee from revoking a revocable deed which the Trustee declared a person to be a member of the Excluded Class.

No resulting trust

2.12 There is no resulting trust of the Trust Fund (or any of it) in favour of the Settlor.

Incomplete trust

- 2.13 If the Trust Fund (or any of it) has not been effectively or validly disposed of by a trust declared by this deed (as amended from time to time), the Trustee holds that part of the Trust Fund affected on trust for any Beneficiary:
- (a) that the Trustee may select in writing on or before the Vesting Date; and
 - (b) if the Trustee does not make a selection in accordance with paragraph (a), the Supreme court of Queensland decides.

3. Contributions

Contributions

- 3.1 Every Employer must pay to the Trustee, or as directed by it, ~~the Contribution calculated in accordance with clause 3.2 within 15 days after the end of each month unless the terms of any Industrial Instrument applying to the Contributions payable by the Employer to the BERT Fund No 2 (and by reference to which its Contribution to this Trust is calculated under clause 3.2) stipulates another time period for that the payment of those Contributions for that month, then (in those circumstances) the Contribution must be paid by the Employer within the time period set out in that Industrial Instrument for that payment).~~

Deleted: within 14 days after the end of each month

Amount of Contributions

- 3.2 The Contribution payable by a Participating Employer for a month is the amount stipulated by an Industrial Instrument to which the Participating Employer is bound (or if there is no such amount stipulated, 1/11 of the Contribution paid by that Participating Employer to the BERT Fund No. 2), for that same month.

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Interest

- 3.3 If a Participating Employer defaults in the payment of Contributions due in accordance with clause 3.1 it must pay interest from the date the Contributions became due until the date on which they are paid at a rate determined by the Trustee to be equal to 2% over the overdraft rate as advised by the Commonwealth Bank of Australia.

Recovery of Expenses

- 3.4 A Participating Employer must reimburse the Trustee in respect of all reasonable expenses (including collection fees) incurred by the Trustee (or on behalf of the Trustee by the Fund's Administrator or otherwise) in obtaining payment by any Participating Employer of any outstanding Contribution.

4. Application of Trust Fund for the benefit of the construction industry

- 4.1 Despite clauses 5 and 6, the Trustee may pay, apply or expend in each Accounting Year all or any part of the Contributions received in that Accounting Year to or on an entity the Trustee determines should benefit the welfare or otherwise provide assistance to the Construction Industry (whether or not the recipient is an Approved Institution so long as the recipient is not a member of the Excluded Class)). By way of example, the Trustee may determine to apply, set aside or expend monies, received from Contributions during the Accounting Year to or on an entity which will use those funds:
- (a) to promote, assist or advance education and training in the Construction Industry;

- (b) to promote, assist or benefit the provision of chaplaincy, counselling and welfare services for participants in the Construction Industry;
- (c) to promote, assist or benefit persons or institutions undertaking investigations or enquiries into issues which have affect for the Construction Industry (such as the incidents of suicide by workers in the Construction Industry and steps which might usefully be taken to reduce such incidents).

5. Capital

Trust of capital

5.1 The Trustee, subject to clauses 4 and 5.8, holds the Trust Fund on trust:

- (a) for any Beneficiary to which any or all of the Trust Fund is appointed under clauses 5.4 and 5.5; but
- (b) if not all of the Trust Fund has been the subject of appointment under clause 5.4 on or before the Termination Date Vesting Date, for Active Sponsors in the proportions set out in clause 5.6.

Mode of exercise of special power to appoint capital

5.2 The Trustee may only exercise its powers under clauses 5.4 and 5.5:

- (a) on or before the Vesting Date (but may do so any number of times);
- (b) if it has the prior approval of a resolution;
- (c) by instrument in writing;
- (d) irrevocably, unless when exercising the power the Trustee states that the appointment is revocable;
- (e) consistently with the law relating to remoteness of vesting; and
- (f) so that it does not invalidate any previous payment or application of some or all of the Trust Fund or its Annual income made under any other power conferred by this deed or by law.

Power of appointment with consent

5.3 The Trustee may, if it has the prior approval of a Special Resolution:

- (a) delegate to any person at any time before the Vesting Date the exercise of all or any of its powers under clauses 5.4 and 5.5; and
- (b) at any time in writing release or restrict the future exercise by it of any of its powers under clauses 5.4 and 5.5.

Special power to appoint capital

5.4 The Trustee may, subject to clause 5.8, appoint some or all of the Trust Fund and its subsequent Annual Income to any one or more of the Beneficiaries:

- (a) to the exclusion of any one or more of them;
- (b) in any share or proportions;

- (c) at any age or time.

5.5 Any distribution to Active Sponsors under clause 5.4 and this clause must be made:

- (a) to one half to the Active Unions and, if more than one, in proportion to the number of votes that each Active Union may exercise in relation to the Trustee of the Fund; and
- (b) as to the other half to the Active Employer Organisations and, if more than one, equally between them.

In default of exercise of special power to appoint capital

5.6 If the Trustee does not exercise the discretion contained in clauses 5.4 and 5.5 (or to the extent to which the Trustee does not effectively exercise that discretion), the Trustee, subject to clause 5.8, holds the surplus:

- (a) as to one half to the Active Unions and, if more than one, in proportion to the number of votes that each Active Union may exercise in relation to the Trustee of the Fund; and
- (b) as to the other half for the Active Employer Organisations, and if more than one, equally between them.

No accounting for advances

5.7 A Beneficiary entitled under clause 5.6 to some or all of the Trust Fund need not:

- (a) account for any advance previously received under this deed; or
- (b) bring any advance previously received under this deed into hotchpot.

Surrender of interest by Beneficiary

5.8 A Beneficiary may at any time by written notice to the Trustee signed by the Beneficiary irrevocably surrender the benefit of the Trust or the benefit of either of both of clauses 5.4, 5.5 or 5.6 in whole or in part.

Effect of exclusion or surrender

5.9 Where a Beneficiary surrenders the benefit of the Trust under clause 5.8, that person:

- (a) ceases from that time to be a Beneficiary in respect of that part of the Trust Fund excluded or surrendered;
- (b) is from that time excluded from any further benefit under this deed in respect of that part of the Trust Fund excluded or surrendered; and
- (c) remains entitled to any capital or Annual Income of the Trust previously appointed, paid or applied for that person's benefit.

6. Annual Income

Trust of Annual Income

6.1 The Trustee, subject to clauses 4, 6.3, 6.6(a) and 6.8, holds the Annual Income for each Accounting Year on trust:

- (a) for any Beneficiary to whom any or all of the Annual Income has been appointed under clauses 6.4 and 6.5; and
- (b) if not all of the Annual Income has been the subject of appointments under clauses 6.4 and 6.5, for the Active Sponsors set out in clause 6.6.

Mode of exercise of powers in relation to Annual Income

6.2 The Trustee may:

- (a) exercise its powers under clauses 6.3, 6.4 and 6.5 in writing or orally, but may only exercise them with the prior approval of a Special Resolution expressed before or after the exercise;
- (b) appoint Annual Income of any Accounting Year to a Beneficiary by crediting the amount to the Beneficiary in the accounting records of the Trust or by drawing a cheque to or for the benefit of the Beneficiary or by paying the amount to the benefit of the Beneficiary;
- (c) determine to exercise its powers under clause 6.3 by making an entry in the accounting records of the Trust;
- (d) only exercise its powers under clauses 6.3(a), 6.4 and 6.5 during the Accounting Year to which the Annual Income relates and no later in that year than 12 noon on the last day of that Accounting Year;
- (e) if it has the prior approval of a Special Resolution, delegate to any person at any time before the Vesting Date all or any of its powers under clauses 6.3, 6.4 or 6.5; and
- (f) if it has the prior approval of a Special Resolution, at any time in writing release or restrict the future exercise by it or any of its powers under clauses 6.3, 6.4 or 6.5.

Power to accumulate

6.3 The Trustee may, either or both:

- (a) determine to accumulate some or all of the Annual Income for an Accounting Year (in which case the amount accumulated is added to the Trust Fund); and
- (b) at any time apply as Annual Income of the current Accounting Year any amount previously accumulated (whether accumulated from the Annual Income of the same or an earlier Accounting Year).

Special power in relation to Annual Income

6.4 The Trustee may, subject to clauses 6.3, 6.6(a) and 6.8, appoint if any one or more of the Beneficiaries, to the exclusion of any one or more of them, in any shares or proportions, and at any age or time, some or all of the Annual Income for an Accounting Year. Any distribution of Annual Income to the Active Sponsors under this clause and clause 6.5 must be made:

- (a) to one half to the Active Unions and, if more than one, in proportion to the number of votes that each Active Union may exercise in relation to the Trustee of the Fund; and
- (b) as to the other half to the Active Employer Organisations and, if more than one, equally between them.

- 6.5 A distribution of Annual Income derived in any particular manner or from a particular source or having a particular character under the Tax Act or otherwise, including, for example:
- (a) capital profits or gains;
 - (b) the amount of any dividends, the whole or part of which are taken to have been franked under the Tax Act and any amount deemed by the Tax Act to attach to those dividends;
 - (c) the amount of any dividends that are not franked under the Tax Act;
 - (d) interest;
 - (e) any foreign source income as defined in the Tax Act; or
 - (f) any other type or combination of income or gain.

In default of appointment of Annual Income

- 6.6 If the Trustee does not exercise the discretion contained in clauses 6.4 and 6.5 (to the extent to which the Trustee does not exercise or does not effectively exercise that discretion) the Trustee holds the Annual Income for the Accounting Year:
- (a) to one half to the Active Unions and, if more than one, in proportion to the number of votes that each Active Union may exercise in relation to the Trustee of the Fund; and
 - (b) as to the other half for the Active Employer Organisations and, if more than one, equally between them.

Exclusion by Trustee of Beneficiary from Annual Income

- 6.7 If it has the prior approval of a Special Resolution, the Trustee may, revocably or irrevocably, exclude any person from benefitting under either or both of clauses 6.4, 6.5 or 6.6 by instrument in writing or orally.

Surrender of interest by Beneficiary

- 6.8 A Beneficiary may at any time by written notice to the Trustee signed by the Beneficiary revocably or irrevocably surrender the benefit of clauses 6.4, 6.5 or 6.6 in whole or part

Effect of exclusion or complete surrender

- 6.9 Where a Beneficiary is excluded by the Trustee under clause or surrenders under clause 6.8 the benefit of clauses 6.4, 6.5 and 6.6 in whole, that person:
- (a) ceases from that time to be a person entitled to be appointed under clauses 6.4 and 6.5 in relation to, or entitled under clause 6.6 to, any of the relevant Annual Income, but otherwise remains a Beneficiary; and
 - (b) remains entitled to any capital or Annual Income previously appointed, paid or applied for that person's benefit.

Effect of partial surrender

- 6.10 Where a Beneficiary surrenders under clause 6.8 the benefit of clauses 6.4, 6.5 and 6.6 in part, that person:
- (a) remains a Beneficiary for all purposes; and

- (b) is excluded from the benefits surrendered.

Accounting principles

- 6.11 The Annual Income for any Accounting Year is determined from the accounts of the Trust prepared by the Trustee in accordance with clause 14, which, except to the extent that the Trustee decides otherwise, must be prepared in accordance with the following principles:
- (a) the Annual Income for each Accounting Year is to be the same amount as the net income of the Trust for that Accounting Year for the purposes of the Tax Act;
 - (b) despite any contrary principle of law usually applied to trust funds, any receipt or expense may be allocated to income or capital in accordance with the principles applied for the purpose of income or capital taxes (if any) payable or potentially payable by the Trustee or by any Beneficiary;
 - (c) any rebate or deduction available to the Trustee or to any Beneficiary for the purpose of income or capital taxes may be treated as an amount received or derived or as an expense incurred by the Trust even if under the principles of law usually applied to trust funds, no amount or a different amount would have been received or derived or, no, or a different, expense incurred;
 - (d) income derived in any particular manner or from any particular source or having a particular character under the Tax Act or otherwise, including, for example and without limitation:
 - (i) capital profits or gains;
 - (ii) the amount of any dividends, the whole or part of which are taken to have been franked under the Tax Act and any amount deemed by the Tax Act to attach to those dividends;
 - (iii) the amount of any dividends that are not franked under the Tax Act;
 - (iv) interest;
 - (v) any foreign source income as defined in the Tax Act; or
 - (vi) any other type or combination of income or gain, derived during the Accounting Year may be classified and accounted for, with or without attributable expenses, separately and may be- allocated separately to any Beneficiary to whom Annual Income becomes payable under clauses 6.4, 6.5 or 6.6 or otherwise.

Trust of allocated Annual Income

- 6.12 Until payment, the Trustee holds any of the Annual Income for each Accounting Year to which a Beneficiary is entitled on a separate trust for that Beneficiary absolutely, but with the same powers of investment, management and administration as the Trustee has in relation to the Trust Fund.

Late exercise of discretion

- 6.13 The Trustee may exercise the discretion contained in clauses 5.4 and 5.5 after the expiration of the Accounting Year if the Commissioner of Taxation accepts that the Beneficiary in whose favour the Trustee has exercised the discretion is presently entitled to the income in the

Accounting Year to which the distribution relates. If not, the purported exercise of the discretion after the expiration of the Accounting Year is ineffective.

7. Payment of taxation

Tax liability

- 7.1 The manner in which distributions from the Fund are dealt with or the payment of benefits under the Fund may involve a tax liability for the person to whom a payment or benefit is paid or applied and such person accepts that liability.

Deduction for taxes

- 7.2 The Trustee may deduct Taxation required to be deducted (or which the Trustee considers is required to be deducted) from any payment.

8. Discretions of Trustee in relation to Beneficiaries

Trusts Act

- 8.1 The discretions of the Trustee in relation to Beneficiaries are in addition to its powers under *Trusts Act 1973* (Qld) and any legislation relating to trusts or trustees.

Advancement of Annual Income

- 8.2 The Trustee, and even if there might be either another fund applicable for the same purposes or a person bound by law to provide for the maintenance or advancement of the Beneficiary, may either or both apply the whole or any part of any Annual Income for any Accounting Year or any earlier Accounting Year to which a Beneficiary is entitled (or Annual Income to which there is a contingent entitlement) for or towards the maintenance advancement or benefit of that Beneficiary.

Advancement of capital

- 8.3 If it has the prior approval of a Special Resolution the Trustee, and even if there is another fund applicable for the same purposes, may make out of the Trust Fund (up to the whole of the capital) any payments or transfers of assets the Trustee considers appropriate for the maintenance advancement or benefit of any Beneficiary and where that is done the Trustee need not supervise the manner in which the money paid or assets transferred are applied.

Advancement to further trustee

- 8.4 If it has the prior approval of a Special Resolution, the Trustee may (but consistently with the rule against remoteness of vesting) pay or apply the Trust Fund (or any of it) to any other trust under which:
- (a) the capital (or any part of it) is held for the benefit of any Beneficiary; and
 - (b) a member of the Excluded Class is not a beneficiary.

Transfers in specie

- 8.5 The Trustee may discharge in whole or in part any obligation to pay capital or Annual Income by transferring in specie any asset of the Trust Fund, and where that is done:

- (a) the Trustee may conclusively determine the value of any property to be transferred and may do so by entering the amount in the accounting records of the Trust; and
- (b) the Trustee may, without obtaining consent or a valuation, make any appropriation of property in its actual condition or state of investment which the law would enable the Trustee to make only either or both with the consent of any person and following a valuation.

Loans to Beneficiary

- 8.6 The Trustee may, on any terms the Trustee thinks fit, provide financial accommodation (including, by way of loan or advance) to any Beneficiary.

Remuneration

- 8.7 The Trustee may employ any Beneficiary to perform any service as an employee or contractor and may pay remuneration for those services which are not to be taken into account as a payment to the Beneficiary as Beneficiary under this deed.

Partnership

- 8.8 The Trustee may enter into and carry out any partnership or joint venture with a Beneficiary.

9. Management and investment powers

Power as if owner

- 9.1 Subject to clauses 2.7 to 2.11, the Trustee has all the powers in relation to the management and investment of the Trust Fund it would have if it were a natural person who owned the Trust Fund absolutely and beneficially.

Statutory powers

- 9.2 In addition to the powers conferred on the Trustee by clause 9.1, the Trustee may, unless a contrary intention appears in this deed, exercise any power in relation to the Trust Fund conferred by the laws of Queensland (and may do so in or outside Queensland), or by the laws of any jurisdiction in which any asset of the Trust Fund is located, but to the extent that any provision of any law restricts the scope of any power conferred by this deed, that provision is (so far as the law permits) expressly excluded and does not apply to the Trust Fund.

Schedule 1 powers

- 9.3 In addition to the powers conferred on the Trustee by clauses 9.1 and 9.2, the Trustee has each of the powers set out in Schedule 1.

No limitation

- 9.4 Clause 9.1 does not limit the scope of clause 9.2 (and vice versa), no power set out in Schedule 1 limits the scope of a power conferred on the Trustee under either of clauses 9.1 or 9.2 and the scope of a power set out in Schedule 1 is not limited by any other power set out in Schedule 1 or by either or both of clauses 9.1 and 9.2.

No implication

- 9.5 That the Trustee has a power conferred on it by clauses 9.1 or 9.2 or by Schedule 1 does not imply that the Trustee is required to exercise that power,

No inquiry

- 9.6 No person need inquire as to whether any exercise of any power of the Trustee (including, without limitation, the raising of any financial accommodation or the giving of any Security or any guarantee, indemnity, contract, covenant, obligation or other engagement) is needed or as to the purpose for which it is needed or as to the application of any financial accommodation raised.

10. Appointment of managers**Appointment**

- 10.1 The Trustee may appoint any person to act as Investment Manager or Custodian Trustee or both.

The appointment must be in writing.**Delegation**

- 10.2 The Trustee may delegate to any Investment Manager or Custodian Trustee the powers it thinks fit.

No liability of Trustee

- 10.3 The Trustee is not liable or responsible for any act, omission, error of judgment, negligence or breach of trust by the Investment Manager or Custodian Trustee.

Proceedings

- 10.4 The Trustee is not bound to take proceedings against any Investment Manager or Custodian Trustee arising in the circumstances described in clause 10.3.

Payments out of the Fund

- 10.5 The Trustee may pay out of the Fund to the Investment Manager or Custodian Trustee remuneration for their services as the Trustee considers proper.

Removal

- 10.6 The Trustee may remove the Investment Manager or Custodian Trustee or alter the terms of its appointment as it thinks fit.

11. Appointment of Fund Administrator**Appointment**

- 11.1 The Trustee may appoint any person to be Fund Administrator. The appointment must be in writing on terms which the Trustee considers appropriate.

Delegation

- 11.2 The Trustee may delegate to the Fund Administrator the duties and powers in relation to the administration and management of the Fund it thinks fit including the following:
- (a) the collection of Contributions and the transfer of money and assets to and from any Investment Manager or Custodian Trust;

- (b) the collection, recording and dissemination of Contributions and other information for the purposes of the Fund;
- (c) the establishment and maintenance of records of account and Contributions and other necessary records;
- (d) the calculation of benefits; and
- (e) the provision and maintenance of a computer network and associated enquiry facilities necessary to support the administration of the Trust.

12. Trustee remuneration and benefits

Indemnity and reimbursement from Trust Fund

12.1 The Trustee:

- (a) is fully indemnified out of the assets of the Trust Fund in respect of any debt liability or obligation that the Trustee incurs while acting or purporting to act as Trustee; and
- (b) may reimburse itself from the Trust Fund for all expenses incurred or payments made by it in respect of the Trust including interest on or costs of any financial accommodation raised by it for the Trust.

12.2 The Trustee may apply either or both capital and income of the Trust Fund to satisfy its rights under this clause.

No personal indemnities

- 12.3 Except as provided in clauses 12.1 and 12.2, the Trustee has no right of indemnity or exoneration against any liability from the Settlor, an Active Sponsor, any Beneficiary or any person benefiting directly or indirectly from the Trust.

Commission

- 12.4 The Trustee may (with the prior approval of a Special Resolution) pay to itself in each Accounting Year from the Trust Fund commission for acting as Trustee of the Trust at a value fixed from time to time by the directors of BERT Pty Limited.

13. Trustee's duties and interests

Definition of Extraneous Interest

13.1 Extraneous Interest in relation to the Trustee means an interest being or arising out of:

- (a) any office, place of profit or employment held by the Trustee in or in respect of the Trust;
- (b) any office, place of profit or employment held by the Trustee in or in respect of or any membership of, interest in or relationship of creditor or otherwise to, any body corporate, trust, partnership or entity whether or not the Trustee (as such) has any interest in, or dealings or potential dealings with, that body corporate, trust, partnership or entity;
- (c) any Transaction to which the Trustee (otherwise than as Trustee) is a party or is in any other way, whether as principal, agent or otherwise, interested, and to which the

Trustee (as such) is a party or in which the Trustee(as such) is in any other way interested; or

- (d) without limitation, any other interest of the Trustee (acting otherwise than as Trustee) or duty of the Trustee (otherwise than as Trustee) to a third party which interest or duty conflicts or may possibly conflict with the Trustee's duties in respect of the Trust.

Scope of Trustee's duties

- 13.2 The Trustee may, without breach of any duty arising under this deed (including, without limitation, any breach of trust):
- (a) have any Extraneous Interest;
 - (b) enter into or carry out a Transaction which is or gives rise to an Extraneous Interest; and
 - (c) hold any office, place of profit or employment, or be a member or creditor of or interested in any body corporate or partnership or Trust or entity, that in any case does or could give rise to an Extraneous Interest in the Trustee.

Transactions of Trust not vitiated

- 13.3 No transaction in which the Trustee is interested (as such) or to which the Trustee is a party (as Trustee) is vitiated, avoided or voidable merely because a Trustee has an Extraneous Interest in or in relation to that Transaction.

No liability for Extraneous Interest

- 13.4 The Trustee is not, and no other person is, merely because the Trustee has an Extraneous Interest, liable to account for any profit or benefit received by the Trustee or any other person or to hold any property on any trust for the Beneficiaries or to compensate the Trust or the Beneficiaries for any loss suffered.

14. Administration of the Trust

Accounting Records

- 14.1 The Trustee must keep proper accounting records relating to the Trust:
- (a) setting out fully the assets of the Trust Fund and the income derived from the Trust Fund;
 - (b) separately recording investments from Annual Income due, but not yet paid to, any Beneficiary who is a minor or who is under a legal disability;
 - (c) correctly recording and explaining its transactions as Trustee and the financial position of the Trust;
 - (d) that enable true and fair accounts of the Trust to be prepared from time to time; and
 - (e) that enable the accounts of the Trust to be conveniently and properly audited.

Other accounts and registers

- 14.2 The Trustee must keep:

- (a) a register of Participating Employers showing names addresses and such information as is relevant to the administration of the Fund; and
- (b) accounts as may be necessary to record the financial transactions by the Trustee and to record the benefits to Beneficiaries.

Trustee to prepare annual report

- 14.3 After the close of each Accounting Period, the Trustee must prepare a written accounting report (prepared in accordance with generally accepted accounting principles and procedures) for the period consisting of a statement of income and expenditure and a balance sheet and distribute copies to the Active Sponsors.

Preparation of accounts

- 14.4 The Trustee must promptly after the close of each Accounting Year prepare a balance sheet, a list of assets held, and a statement of income and expenditure, taking account of:
- (a) the principles, if applicable, set out in clause 6.11; and
 - (b) applicable accounting standards to the extent they are consistent with the applicable principles set out in clause 6.11.

Audit of accounts

- 14.5 The Accounts of the Fund must be audited at least once a year by a qualified auditor appointed by the Trustee. The remuneration of the auditor is to be determined by the Trustee and paid out of the Fund.

Mode of appointment or determination by Trustee

- 14.6 The Trustee:
- (a) may, subject to clauses 5.2 and 6.2, make any appointment or determination for the purposes of this Deed orally or in writing; but
 - (b) must, subject to clause 14.8(b), keep proper minutes of its appointments and determination relating to the Trust

Evidence

- 14.7 A copy of a minute (signed or unsigned) of a decision of the Trustee certified by the Trustee (or by one Trustee if there is more than one Trustee) to be a true minute of an appointment or determination is conclusive evidence that the appointment or determination was duly made and is conclusive and binding on all Beneficiaries, Active Sponsors and Employers and on all persons having any dealings with the Trustee.

Reasons for and records of exercise of Discretion

- 14.8 The Trustee need not:
- (a) give reasons for any decision to exercise or not exercise a discretion; or
 - (b) produce any document relating to a decision of the Trustee to exercise or not exercise a discretion.

Delegation of powers

- 14.9 The Trustee in its absolute discretion, without being responsible for any act or omission of any delegate or for any loss, may delegate the exercise of its powers and discretions wholly or partially or subject to any limitations or restrictions to any person or persons.

Inquiry of delegate

- 14.10 No delegate of the Trustee need inquire whether the delegation remains in force or whether the Trustee is still alive or in existence.

Absolute discretion

- 14.11 Every trust, power, authority and discretion of the Trustee:
- (a) is absolute and uncontrolled; and
 - (b) subject to clause 2.6 may be exercised in the same way as the Trustee could exercise it if the Trustee were the absolute and beneficial owner of the Trust Fund.

Receipt discharges trustee

- 14.12 It is an absolute discharge to the Trustee (who need not see how any money or assets are applied) for any money paid or assets transferred to any place in the world to have:
- (a) the receipt of a Beneficiary;
 - (b) a bank deposit slip or receipt for any money paid into a bank account;
 - (c) a receipt for any money on loan or deposit with or otherwise invested in any body corporate wherever incorporated or with any person wherever carrying on business;
 - (d) the receipt of any trustee of any trust or settlement; or
 - (e) a discharge by any other lawful means for any money paid by it.

Questions of doubt

- 14.13 The Trustee may determine any doubt difficulty or question arising under or in relation to the Trust or any power and the determination (express or implied from action) of the Trustee is binding upon all persons interested in the Trust.

15. Trustee issues**Corporate Trustee**

- 15.1 The Trustee may exercise any power or discretion even if any associate of the Trustee is or may be a Beneficiary or may benefit (either directly or indirectly) as a result of the exercise of any power or discretion.
- 15.2 No person is disqualified from benefiting under the Trust because the person is an associate of the Trustee.
- 15.3 Any associate of the Trustee may vote in any meeting of the Trustee in respect of any matter concerning the Trust.

Mode of appointment or determination by the Trustee

- 15.4 The Trustee may make any appointment or determination by resolution of its board.
- 15.5 A copy of a resolution of the board certified by a director or secretary of the Trustee is conclusive evidence and conclusive and binding on any Beneficiary and on all persons having dealings with the Trustee.
- 15.6 The board may appoint one of the directors to attend any meeting and to do anything which the body corporate can do as Trustee.

No indemnity

- 15.7 No director, officer or member of the Trustee, or of any related body corporate, is liable personally to indemnify the Trustee for any liability merely because in acting as Trustee the body corporate incurred that liability on the authority, or at the request, of that person or by reason of the relationship of that person with the Trustee.

16. Trustee immunities**Limited liability**

- 16.1 The Trustee is not liable for any loss unless the loss arises from its own fraud (in the common law sense) or knowing and wilful breach of trust, and without limitation, except in those circumstances, the Trustee is not liable for any loss to the Trust Fund or to the Annual Income or to any person:
 - (a) from its negligent or want of prudence on its part;
 - (b) by reason of any improper investment;
 - (c) from the negligence or fraud of any agent or delegate employed by the Trustee or by any prior Trustee even if the employment of that agent or delegate was not strictly necessary or expedient;
 - (d) from any mistake or omission made by the Trustee; or
 - (e) from any other matter or thing.

Trustee discretions

- 16.2 The Trustee is not liable for any loss or damage arising from the exercise of or failure to exercise any power or discretion of the Trustee.

Dealings with the Trustee

- 16.3 Except in the case of fraud (in the common law sense) by the person concerned:
 - (a) no person contracting or dealing with the Trustee;
 - (i) need ascertain the terms of the Trust or whether the Trustee has retired or been removed; or
 - (ii) need ascertain whether any contract or dealing by the Trustee is proper or is authorised by this deed or is for the benefit of the Trust Fund or of all or any one or more of the Beneficiaries;

- (iii) is affected by actual knowledge or by direct or constructive or imputed notice of any impropriety lack of authority or benefit; and
- (b) so far as a person contracting or dealing with the Trustee is concerned, all contracts and dealings are authorised by this Deed.

No duty to investigate management of companies

16.4 The Trustee need not:

- (a) investigate the accounts or management or control of any company corporation governmental or statutory body or bank (a Body) in which any of the assets of the Trust Fund may be invested; or
- (b) attend in person or by proxy or to vote in person or by proxy at any meeting of a Body;
- (c) take any steps or bring any action suit or proceeding or in any other manner seek to:
 - (i) vary, alter, amend or add to the constitution of a Body; or
 - (ii) interfere with the management, government or control of a Body.

Counsel's opinion

- 16.5 Without limiting the right of the Trustee, any Active Sponsor, or Beneficiary, to apply for advice to a court, the Trustee may act upon the opinion of any solicitor or counsel practising in any jurisdiction in Australia in relation to the interpretation of this deed or of any document or statute or as to the administration of the Trust without being liable to any Active Sponsor, Employee or Beneficiary for any act done or left undone by the Trustee in accordance with that opinion.

17. Appointment and removal of Trustees

Eligibility to be Trustee

17.1 The Trustee must be a limited liability company in which:

- (a) the Active Unions have an entitlement to 50% of all voting rights at a general meeting; and
- (b) Active Employer Organisations have an entitlement to the remaining 50% of all voting rights at a general meeting.

Vacation of office

17.2 The office of Trustee automatically becomes vacant if:

- (a) it enters into liquidation whether compulsorily or voluntarily (not being a voluntary liquidation for the purposes of amalgamation or reconstruction);
- (b) it has a controller or managing controller appointed in respect of any of its assets;
- (c) it makes or enters into any composition or scheme of arrangement with its creditors;
- (d) it has an administrator appointed or becomes party to a deed of company arrangement; or

- (c) it is removed by Special Resolution.

Power to appoint new Trustee

17.3 By Special Resolution, the Active Sponsors may:

- (a) appoint a new Trustee;
- (b) replace any Trustee (including the first Trustee);
- (c) remove any Trustee (including the first Trustee),

but the Active Sponsors must not appoint any Active Sponsor as the Trustee.

Liability of Active Sponsors

17.4 The Active Sponsors are not liable to any person for any act or omission under this clause.

Position of new Trustee

17.5 A new Trustee has the same powers authorities and discretions as the Trustee appointed by this deed.

Position of retiring Trustee

17.6 Where a person ceases to be Trustee, the person must do everything and execute all documents necessary and desirable to transfer and vest the assets of the Trust in the new or continuing Trustee or Trustees, but otherwise is discharged from the Trust.

18. Sole Trustee

Sole Trustee

18.1 A Trustee may be discharged although there will remain or be appointed in its place a sole trustee other than the Public Trustee or a trustee company under the *Trustee Companies Act 1968* or any corresponding legislation in any state or territory of Australia or elsewhere.

Authorisation

18.2 A sole trustee is authorised, even though it is the sole trustee, to receive capital and other money and to give valid and effectual receipts including receipts for money deemed to be capital money for the purpose of any statute.

19. Variation

Power to vary

19.1 If the Trustee has the prior approval of a Special Resolution, it by written resolution of the Trustee (including a resolution of the board of directors of the Trustee) or by Supplemental Deed may alter revoke or add to any of the provisions in this Deed in any way at all as it sees fit (including, to confer on the Trustee either generally or in a particular instance any power needed to effect any Transaction which the Trustee considers to be desirable) except:

- (a) to revoke or vary clauses 2.7 to 2.11 to do anything which results in any part of the Trust Fund or its income being applied for the benefit of the Settlor or the Settlor's legal personal representative;

- (b) to vary the entitlement of any person to any capital or income previously appointed paid or applied for the benefit of that person; or
- (c) to extend the Vesting Date in a manner inconsistent with the law relating to remoteness of vesting.

Date of variation

- 19.2 The variations, alterations or additions take effect from the date (if any) specified for that purpose in the resolution or supplemental deed. If no date is stated, then the variations, alterations or additions take effect from the date the resolution or the supplemental deed is made.

Effect of variation

- 19.3 No revocation, addition or variation may adversely affect the beneficial entitlement to any amount set aside for any Employee or Participating Employer prior to the date of the variation, alteration or addition.

20. Law and jurisdiction

Governing law

- 20.1 This deed is governed by the law in force in Queensland, but the Trustee may exercise its power to alter, revoke or add to this deed by varying the governing law to the law of some jurisdiction other than Queensland.

Jurisdiction

- 20.2 The parties (and each Beneficiary, Employee and Active Sponsor by taking a benefit under the Trust) each submit to the non-exclusive jurisdiction of the courts of the jurisdiction whose law governs this deed and any courts that may hear appeals from those courts in respect of any proceedings in connection with either or both this deed and the Trust.

21. Fund information

Participating Employer Information

- 21.1 The Trustee must give to a Participating Employer:
- (a) on request and payment of a reasonable fee determined by the Trustee, a copy of this Deed and any alteration to the Deed; and
 - (b) following the end of each month in which a Participating Employer makes a Contribution, a record showing the amount of that Contribution.

Trust Deed

- 21.2 A copy of this Deed must be kept by the Trustee at its head office and must be open to inspection by the Participating Employers at all reasonable times.

22. Information from Beneficiaries and Employers

Information

- 22.1 An Employer when requested by the Trustee must furnish any information the Trustee considers necessary for the purposes of the Fund.

Incorrect or misleading information

- 22.2 Where an Employer furnishes information affecting the Contribution and the information is incorrect or misleading, or any relevant information is withheld, the Trustee may alter the Contribution to amounts that would have applied had full and accurate information been supplied.
- 22.3 Where a Beneficiary furnishes information affecting the benefits and the information is incorrect or misleading, or any relevant information is withheld, the Trustee may alter the benefits to amounts that would have applied had full and accurate information been supplied.
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23. Confidentiality of Trustee's deliberations

Confidentiality

- 23.1 In addition to any right of the Trustee under the general law to refuse disclosure of any document or matter, the Trustee is not required to disclose to any person:
- (a) any document disclosing:
 - (i) any deliberations of the Trustee as to the manner in which the Trustee should exercise any power or discretion conferred upon the Trustee;
 - (ii) the reasons for any particular exercise or non-exercise of any power or discretion; or
 - (iii) the material upon which those reasons were or might have been based;
 - (b) any other document relating to the exercise or proposed exercise of any power or discretion conferred on the Trustee by this Deed; or
 - (c) any reason for any exercise or non-exercise of any power or discretion.
-

24. Dissolution of Fund

Date of Dissolution

- 24.1 If approved or directed by a Special Resolution, the Fund must be wound up if:
- (a) there are no Participating Employers and the Trustee resolves to terminate;
 - (b) the liabilities (excluding any liability for the future payment of benefits) of the Fund exceed the assets of the Fund; or
 - (c) for any other reason the Trustee resolves to terminate the Fund,

Notice to Employees

- 24.2 If an event referred to in clause 24.1 occurs, the Trustee must give notice in writing to all Participating Employers that the Fund will be wound up on a specified date.

Position Following Giving of Notice

- 24.3 Following the giving of the notices referred to in clause 24.2, the Trustee must continue to administer the Fund in accordance with the provisions of this Deed except that:
- (a) no further Contributions, other than Contributions due on or before the date specified in the notices referred to in clause 24.2, may be accepted from any Participating Employer; and
 - (b) no new Participating Employers may be admitted.

Surplus

- 24.4 If after providing for expenses and liabilities in accordance with this Deed, a surplus remains, the Trustee may, in its absolute discretion, pay, apply or set aside that surplus to any one or more of the Beneficiaries:
- (a) to the exclusion of any one or more of them;
 - (b) in any shares or proportions;
 - (c) at any age or time,
- any distribution to Active Sponsors must be made:
- (d) as to one half to the Active Unions and, if more than one, equally between them; and
 - (e) as to the other half to the Active Employer Organisations and, if more than one, equally between them.

Takers in default

- 24.5 If the Trustee does not exercise the discretion contained in clause 24.4 (or to the extent to which the Trustee does not exercise or does not effectively exercise that discretion), the Trustee holds the surplus for the Active Sponsors as at the date the notice is given under clause 24.2, in the same manner as that outlined in clauses 5.6, 6.4 and 6.5.

Final Accounts

- 24.6 Final accounts of the Fund are to be taken and the Trustee must have those accounts audited.

25. Notices

Delivery

- 25.1 Any notice or document to be given under this Deed may be delivered or sent by prepaid registered or certified mail (or, if to a party situated in another country, by prepaid registered airmail) or telex or facsimile to the party to be served at that party's address as that party notifies.

Deeming of service

- 25.2 The notice or document is deemed to be served:

- (a) if delivered, at the time of delivery;
- (b) if posted, at the time it would be received in the normal course of post; or
- (c) if sent by telex or facsimile, on the next business day in the place to which it is addressed.

Schedule 1**Specific management and investment powers (clause 9.3)**

1. Receipt of money or property

- 1.1 The Trustee may receive any money, Marketable Securities or property (including proceeds of sale or capital money) whether or not there is only one Trustee and where there is more than one Trustee, even if the money, Marketable Securities or property are delivered to only one, or only some, of the Trustees. Receipt by the Trustee to whom delivery is made is a full discharge and completely excuses the person delivering the money, Marketable Securities or property to the Trustee from any responsibility or liability for loss or misapplication of the money, Marketable Securities or property delivered.

2. Investment generally

- 2.1 The Trustee has power in its absolute discretion as and when it thinks fit:
- (a) to apply or invest any money at any time forming part of the Trust Fund in any investment in any part of the world and in any currency on any terms or conditions, including (without limitation) in subscribing for, taking on allotment or purchasing any Marketable Securities; and
 - (b) to vary any investment.

3. Wasting or contributory investments

- 3.1 The Trustee may retain any asset received by it in the same form without converting it into money or into non-wasting investments.
- 3.2 The Trustee may make an investment even if the investment is not income producing or is of a wasting or speculative nature.
- 3.3 The Trustee may lend money free of interest or with or without Security or adequate Security or on personal credit for any term or at call.
- 3.4 The Trustee may apply any money from the Trust Fund or incur any liability in acquiring any asset or benefit for use or enjoyment by any Beneficiary.
- 3.5 The Trustee may (even if the Trustee obtains a minority interest) join with others (whether acting as trustees or on their own account) in providing any financial accommodation or in making any investment or in exercising any of its powers of management or investment.
- 3.6 The Trustee may provide any financial accommodation, or invest money, from the Trust Fund (even if the money from the Trust Fund is a minority interest) in conjunction with, and may mix that money with, money from another trust or trusts administered by the Trustee.
- 3.7 The Trustee may enter any Transaction in relation to marketable securities for the purpose of hedging or for speculation in any market

4. Calls and incidental powers

- 4.1 The Trustee may pay any calls or margin calls or other demands in relation to any Marketable Securities.

- 4.2 The Trustee may incur any future liability in relation to any investment or arrangement.
- 4.3 The Trustee may exercise any right or privilege and perform any duty or obligation concerning or incidental to any investment or arrangement.

5. Redemption value and par

- 5.1 The Trustee may apply or invest any money or realise any investment even if:
 - (a) the price paid after allowance for accrued interest for any security exceeds its par or redemption value;
 - (b) the proceeds received on realisation after allowance for accrued interest are less than the purchase price or par or redemption value;
 - (c) the investment is for a fixed period or at call; or
 - (d) the purchase price of any investment exceeds, or the disposal price of any investment is less than, any valuation or opinion as to value obtained by the Trustee.

6. Advice

- 6.1 The Trustee may obtain advice from any professional person, or from any person the Trustee considers to be qualified by ability or practical experience of financial matters, to advise concerning any proposed investment or proposed variation of investments and the Trustee is not liable to any Beneficiary or other person for any act done or left undone by the Trustee in accordance with that advice.

7. Lending, valuation and insurance

- 7.1 The Trustee may lend money or provide financial accommodation upon the Security of any real or personal property for any period and upon any terms and conditions.
- 7.2 The Trustee may lend money or provide financial accommodation upon inadequate Security or without Security.
- 7.3 The Trustee may release any Security in whole or in part whether or not the remaining Security is adequate and whether or not the Trustee receives the proceeds of sale of any Security.
- 7.4 The Trustee need not obtain a valuation when acquiring any real or personal property or lending money or providing financial accommodation on any Security or releasing any Security or surrendering any interest as the person benefiting from a Security.
- 7.5 The Trustee may take out any insurance in any manner and in any amount and may make its own estimate of the insurable value or insurable liability.

8. Powers concerning property

- 8.1 The Trustee may:
 - (a) **management:** generally manage the real and personal property of the Trust;
 - (b) **acquisition:** purchase or acquire any real or personal property, or any part, share or interest in any real or personal property (including units in any unit trust wherever in the world it might be located);

- (c) **sale:** sell exchange partition lease hire mortgage or otherwise turn to account any of the Trust Fund;
- (d) **dealings and dispositions:** invest in, hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, sub-divide, sell, transfer, convey, assign, discount, factor, surrender, let, lease, (for any term), hire, take on lease new or renewed, exchange, take and grant options or rights to alienate, mortgage, charge, pledge, reconvey, release or discharge or otherwise deal with or dispose of any real or personal property or any interest in it wherever in the world it might be located including (without limitation);
 - (i) any lease or licence;
 - (ii) the benefit of any contract;
 - (iii) any thing in action;
 - (iv) chattels of every description;
 - (v) any Marketable Securities (with or without deferred restricted qualified or special rights attaching to them);
 - (vi) units in any unit trust;
 - (vii) any interest in any trust or partnership;
 - (viii) any interest in any scheme for a retirement village or for time share of accommodation; or
 - (ix) any reversionary interest or deferred property or deferred rights of any description; and
- (e) **freedom of terms:** exercise any power conferred by paragraphs 8.1(b), (c) or (d) or any power of acquisition or disposal conferred by any provision of this deed (including, without limitation, paragraph 10 of this schedule) on any terms and conditions, for cash or on terms, for any period, for the whole or part of the price, with or without Security, secured or unsecured or in consideration of an annuity or of Marketable Securities or from money to come to the Trustee in future including any income of the Trust and even if the price exceeds the amount of the Trust Fund.

9. Powers concerning any business

9.1 The Trustee may:

- (a) **business acquisition:** acquire the whole of, or any part or share or interest (including a minority part or share or interest) in any business or any partnership or any goodwill or assets of any business or any units in a unit trust owning an interest in a business;
- (b) **carrying on business:** carry on either solely or in partnership or by joint venture any trade or business; and
- (c) **power incidental to business:** without limitation, for the purpose of any trade or business:
 - (i) borrow and use borrowed money;
 - (ii) purchase capital equipment, plant, fixtures, fittings, goodwill or stock-in-trade;

- (iii) pay all outgoings or expenses in connection with the running or carrying on of that trade or business;
- (iv) effect improvements repairs or renovations to property in or on which that trade or business is carried on whether or not that property is part of the Trust Fund;
- (v) employ contractors, managers, foremen, workmen, assistants or employees;
- (vi) establish or contribute to any superannuation fund; or
- (vii) enter any franchise arrangement

10. Powers concerning Marketable Securities

10.1 The Trustee may:

- (a) **promotion of companies:** promote any limited body corporate and appoint a director or directors of that body corporate;
- (b) **sale to company:** sell or transfer the whole or any part of the Trust Fund to any body corporate (including a body corporate promoted by the Trustee) at any price and for cash Marketable Securities or any other consideration;
- (c) **voting:** itself or by proxy exercise the voting powers (or any of them) attached to any Marketable Securities at any time forming part of the Trust Fund;
- (d) **reduction of capital:** for any consideration (whether cash, Marketable Securities or otherwise) and on any terms and conditions, surrender and deliver up any Marketable Securities forming part of the Trust Fund to any body corporate reducing its capital or buying back its shares; and
- (e) **reorganisation and schemes:** consent upon any terms to any reorganisation, reconstruction, amalgamation, takeover, scheme, variation of rights, release, compromise, agreement or arrangement of or relating to any Marketable Securities, or to the winding up receivership or administration of any body corporate Marketable Securities of which form part of the Trust Fund.

11. Miscellaneous powers

11.1 The Trustee may:

- (a) **appoint attorney:** appoint any attorney to execute any deed, agreement or document or to perform any act on behalf of the Trustee anywhere in the world;
- (b) **proxy:** appoint any person as proxy (or, if a sole Trustee is a body corporate, its corporate representative) in relation to any Marketable Securities;
- (c) **use of nominee:** permit any asset of the Trust Fund to be held or registered in the name of any nominee of the Trustee anywhere in the world;
- (d) **custodian:** deposit in Queensland or anywhere else in the world some or all of the Trust Fund (including, without limitation, Marketable Securities or documents of title belonging to or related to the Trust Fund) with any bank, lawyer or person who carries on business as a custodian;

- (c) **agents:** even if the Trustee or one of the Trustees is a person of the same calling, employ as a contractor or as an employee a professional person broker or agent or any other person to transact any business or do any act required to be done in connection with the Trust in or out of Queensland inducing the receipt or payment of money or anything requiring the exercise of discretion;
- (f) **payment of agents:** pay all proper fees charges commissions or disbursements in connection with or incidental to that employment;
- (g) **bank:** place money on deposit either on current account or at interest with any bank and either in a separate account, or in a general trust account operated by the Trustee together with money forming part of any other trust fund of which the Trustee is also trustee;
- (h) **legal proceedings:** institute or defend proceedings at law or in equity in any court or before any arbitrator and proceed to the end or final determination of those proceedings or compromise them;
- (i) **life insurance:** invest or expend any money forming part of the Trust Fund in any policy of assurance or insurance on the life of any Beneficiary, or on the life of any other person for the benefit of a Beneficiary, whether that Beneficiary has an absolute, contingent or defeasible interest or an expectancy;
- (j) **acquisition of policies:** acquire any policy of the kind set out in paragraph 11.1(i) by contract or assignment or otherwise, and maintain any policy by payment of the premiums,
- (k) **taxes:** pay any duty or any income or other tax or any other impost of any nature payable in respect of either or both this deed or the Trust;
- (l) **joint action:** exercise all or any of the powers conferred upon it either alone or jointly or in conjunction with any other person or persons;
- (m) **professional fees:** pay any legal or other professional fees, costs or expenses incurred in the establishment or maintenance of the Trust or in maintaining proper records and accounts relating to the Trust Fund;
- (n) **agreements:** enter into and sign and execute any agreement or deed; and
- (o) **submissions:** make submissions to any government or to any relevant regulatory body concerning any matter the Trustee considers to be relevant.

12. Borrowing generally

- 12.1 The Trustee may raise and accept any type of financial accommodation (including, without limitation, by borrowing), with or without Security, alone or jointly or jointly and severally with others, in any manner and on any terms and conditions (including, without limitation, where the provider of that financial accommodation is a Beneficiary or a person or entity in which a Beneficiary has any interest).
- 12.2 The Trustee may take Security for any advance to it as Trustee from its own money upon any asset of the Trust Fund, but the Trustee may not pay to itself or claim any interest from the Trust Fund.

12.3 The Trustee may request any provider of financial accommodation to exclude personal liability of the Trustee to the provider except to the extent of available assets of the Trust and the Trustee is under no duty to borrow or to incur personal liability for any borrowing.

12.4 The Trustee may issue or execute any form of note debenture or document evidencing or acknowledging indebtedness.

13. Security

13.1 By any Security over all or any of the present or future assets of the Trust Fund, or in any other manner which the Trustee in its absolute discretion considers appropriate, and with or without giving any other form of Security or acknowledgment, and whether alone or jointly or jointly and severally with others, the Trustee may give Security for:

- (a) repayment of any financial accommodation provided or to be provided;
- (b) payment of any interest, fees or charges relating to it;
- (c) payment of any debt or liability incurred or to be incurred; or
- (d) performance of any guarantee, indemnity, contract, covenant, obligation or other engagement.

13.2 The Trustee may purchase redeem or pay off any Security over any asset of the Trust Fund.

14. Bills and notes

14.1 The Trustee may alone or with others make, draw, accept, endorse, discount, deal with or do anything else in relation to any bill of exchange, promissory note, letter of credit, bill of lading or negotiable instrument for any purpose including providing or obtaining financial accommodation.

15. Guarantee

15.1 The Trustee may alone or jointly or jointly and severally with others:

- (a) give any guarantee or indemnity for the payment of money or for the performance of any contract or obligation by any person or otherwise to assist any person; and
- (b) secure such guarantees or indemnities or their performance by charge security or mortgage over the Trust Fund (or any of it) or otherwise.

16. Application of proceeds

16.1 The Trustee may apply any money raised from any financial accommodation for any of the purposes for which it may apply the Trust Fund or the Annual Income including (without limitation) payment to a Beneficiary, investment in any manner, or acquisition of any property.

Schedule 2

Deed of adherence

Parties BEWT Fund Limited (ACN 607 107 595) of Level 1, 35 at store Terrace, Spring Hill, Queensland 4004 (Trustee)
The party described in the Schedule (Participating Employer)

Deleted: B.E.R.T. Pty Limited

Deleted: 010 917 281

Deleted: 11, 120 Edward Street, Brisbane, Queensland 4000

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Background

- A Pursuant to a deed dated 22 December 2003 (**Trust Deed**) BERT Pty Ltd (as the original Trustee) established the Building Employees Welfare Trust.
- B The Participating Employer wishes to assume the obligations as a Participating Employer under the terms of the Trust Deed.

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Agreed terms

1. Definitions and interpretation

Definitions

- 1.1 Unless the context otherwise requires words and expressions defined in the Trust Deed have the same meaning when used in this Deed.

2. Admission of Participating Employer

- 2.1 The Participating Employer:
- (a) is bound by the terms and conditions of the Trust Deed; and
 - (b) accepts all the covenants obligations and responsibilities imposed upon a Participating Employer under the terms of the Trust Deed and the Trust Deed.

3. Governing law and jurisdiction

- 3.1 The law of Queensland governs this Deed.
- 3.2 The parties submit to the non-exclusive jurisdiction of the courts of Queensland and the Federal Court of Australia.

4. Notices

- 4.1 A notice or other communication (Notice) connected with this Deed has no legal effect unless it is in writing and:
- (a) delivered by hand at the address of the addressee set out in this Deed or subsequently notified;
 - (b) sent by post, postage prepaid, to that address or

(c) sent by facsimile to the facsimile number of the addressee.

4.2 A Notice is deemed given and received:

- (a) if delivered, upon delivery;
- (b) if sent by post, on the second Business Day (at the address to which it is posted) after posting; or
- (c) if sent by facsimile before 4.00pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.

4.3 Despite clause 4.2(c) a facsimile is not deemed given or received unless at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages comprised in the Notice have been sent.

Schedule

Name of Participating Employer	[#insert]
ACN (if a company)	[#insert]
Business Name (if any)	[#insert]
Address	[#insert]
Telephone number	[#insert]
Facsimile number	[#insert]
Contact name	[#insert]

Execution

Executed as a deed.

Executed by
BEWT Fund Limited ACN 607 107 595, in
 accordance with section 127 of the
 Corporations Act by:

Deleted: B.E.R.T Pty Limited

Deleted: 010 917 281

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 Signature of director

 Signature of director/secretary (please strike
 out as applicable)

 Name of director (please print)

 Name of director/secretary (please print)

Signed sealed and delivered
 by [#insert name of party] in the presence of:

 Signature of [#insert name of party]

 Signature of witness

 Name of witness (please print)

Execution

Executed as a deed.

Signed sealed and delivered
by **James Kristen Peterson** in the
presence of:

Signature of **James Kristen Peterson**

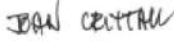
Signature of witness

Name of witness (please print)

Signed sealed and delivered
by **BEWT Fund Limited ACN 607 107 595**,
by:



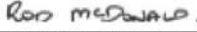
Signature of director



Name of director (please print)



Signature of director/secretary (please strike
out as applicable)



Name of director/secretary (please print)

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**Deed poll - amendment and
restatement of the B.E.R.T.
Fund No. 2 Trust Deed**

BERT Fund Limited ACN 607 106 650

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Title Deed poll - amendment and restatement of the B.E.R.T. Fund No. 2 Trust Deed

Date 11/10/22

Parties BERT Fund Limited (ACN 607 106 650) of Level 1, 35 Astor Terrace, Spring Hill, Queensland 4000

Recitals

- A Clause 39.1 of the B.E.R.T. Fund No 2 trust deed provides the Trustee with the power to revoke, add to or vary all or any of the trusts, powers, terms and conditions contained in the B.E.R.T. Fund No 2 trust deed by a supplemental deed provided that such revocation, addition or variation has the prior approval of the Sponsors by way of a Special Resolution of the Sponsors.
- B By a Special Resolution of the Sponsors, the Sponsors have approved the variation to the B.E.R.T. Fund No 2 trust deed as set out in this document.
- C The Trustee has notified the Commissioner of Taxation of the proposed variation of the B.E.R.T. Fund No 2 trust deed as set out in this document in accordance with clause 39.4 of the Trust Deed.

Operative provisions

1. Definitions and interpretation

Definitions

- 1.1 In this document, terms defined in the B.E.R.T. Fund No 2 trust deed have the same meanings when used in this document, and

B.E.R.T. Fund No 2 trust deed means the redundancy fund trust deed for the B.E.R.T. Fund No 2 dated 22 December 2003 made by BERT Pty Limited and amended from time to time including the deed of amendment and restatement made by BERT Pty Limited dated 16 July 2015 and the deed of retirement and appointment of trustee also dated 16 July 2015 pursuant to which BERT Fund Limited was appointed trustee in place of BERT Pty Limited with effect from 10am on 29 June 2015.

Effective Date means 18th FEBRUARY 2023

Interpretation

- 1.2 Clause 1.3 of the B.E.R.T. Fund No 2 trust deed is incorporated in this document as if it was set out in full in this document.

2. Amendment to B.E.R.T. Fund No 2 trust deed

Amendment and restatement

- 2.1 With effect from the Effective Date, the B.E.R.T. Fund No 2 trust deed is amended (as identified in redline and strike-out in the document set out in the Annexure to this document) and restated so that it is in the form attached in the Annexure to this document.

Amendment not to affect validity rights or obligations

- 2.2 The amendment and restatement of the B.E.R.T. Fund No 2 trust deed does not affect the validity or enforceability of the B.E.R.T. Fund No 2 trust deed.

References

- 2.3 On and from the Effective Date, any reference in any related document (other than this document) to the B.E.R.T. Fund No 2 trust deed is a reference to the B.E.R.T. Fund No 2 trust deed as amended and restated under this document under clause 2.1.

Execution

Executed as a deed poll.

Signed sealed and delivered by
BERT Fund Limited ACN 607 106 650
 by

Personal Information

Signature of director

JOHN CRITCHEL

Name of director (please print)

Personal Information

Signature of director/~~secretary~~ (please
 strike out as applicable)

ROD McDONALD

Name of director/~~secretary~~ (please print)

Annexure 1

Redundancy fund trust deed - B.E.R.T. Fund No. 2



**Redundancy fund trust deed
- B.E.R.T. Fund No. 2 -
[incorporating 2022
amendments]**

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BERT Fund Limited ACN 607 106 650

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281...

Baker & McKenzie
ABN 32 266 778 912
Level 8
175 Eagle Street
Brisbane QLD 4000
Australia
www.bakermckenzie.com

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Title **Redundancy fund trust deed**

Date 22 December 2003

Parties **BERT Fund Limited** (ACN 607 106 650) of Level 1, 35 Astor Terrace, Spring Hill, Queensland 4004 with effect from 10.00am on 29 June 2015 (Trustee)

Deleted: B.E.R.T. Pty Limited (ACN 010 917 281)

Recitals

- A Various Industrial Instruments applicable to the Construction Industry provide for the payment of amounts by Employers to Employees upon those Employees becoming Redundant.
- B The Fund has been established to receive Contributions made on or after 1 April 2003, and hold them until the Employees are made Redundant or otherwise become entitled to payment of a Benefit

Operative provisions

1. Interpretation

Statutory Definitions

- 1.1 Any word or expression defined in the *Income Tax Assessment Act* or the *Fringe Benefits Tax Assessment Act* which is used but not defined in this Deed has the meaning given to that word or expression in the *Income Tax Assessment Act* or the *Fringe Benefits Tax Assessment Act* (as the case may be).

Definitions

- 1.2 Unless the context otherwise requires:

Accounting Period means any of:

- (a) the period from the date of this Deed to 30 June next;
 - (b) each following 12 months ending on 30 June in each year until 30 June immediately preceding the Vesting Date; and
 - (c) the period from 1 July immediately preceding the Vesting Date to the Vesting Date,
- but the Trustee may alter the Accounting Period to a period of 12 months ending on any other date and if it does so the reference to 30 June and 1 July must be altered appropriately.

Active Employer Organisation means Queensland Master Builders Association Industrial Organisation of Employers and

- (a) any other employer organisation which, with the written agreement of all Active Sponsors, is accepted as an Active Employer Organisation;

- (b) any other employer organisation which, by reason of reorganisation or amalgamation of an Active Employer Organisation is the successor in whole or in part of that Active Employer Organisation; and
- (c) any Federally or Queensland registered counterpart of an Active Employer Organisation provided the Federally registered counterpart is only an Active Employer Organisation if both the Queensland and Federal counterparts confirm this in writing to all other Active Sponsors and then the Federally registered body is an Active Employer Organisation to the exclusion of (and not in addition to) its Queensland registered counterpart.

Active Sponsor means the Active Employer Organisation and the Active Unions but does not include:

- (a) any Active Employer Organisations or Active Union which, by notice given by it to the other Active Sponsors, and the Trustee has ceased to be an Active Sponsor; and
- (b) any Active Employer Organisation or Active Union in respect of which, by agreement of a Special Resolution of the Active Sponsors, is determined no longer to be an Active Sponsor.

Active Union means each of:

- (a) the Construction, Forestry, Mining and Energy, Industrial Union of Employees, Queensland;
- (b) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, Plumbing Division, Queensland Branch;
- (c) any other union of employees which, with the written consent of all Active Sponsors, is accepted as an Active Union;
- (d) any other union of employees which, by reason of reorganisation or amalgamation of an Active Union, is the successor of the whole or part of that Active Union; and
- (e) any Federally or Queensland registered counterpart of a Union provided that the Federally registered counterpart is only a Union if both the Queensland and Federal counterparts confirm this in writing to the Active Sponsors (which they are deemed to have done in relation to any Federally registered body described in this clause) and then the Federally registered body is an Active Union to the exclusion of (and not in addition to) its Queensland registered counterpart.

Apprentice means a person who is registered as an apprentice or trainee with an apprenticeship directorate or any other equivalent body approved by the Trustee.

Approved Institution means a charitable or public educational institution or fund established for public charitable purposes:

- (a) approved by the Trustee on the basis that the relevant institution or fund has objects likely to benefit Members or participants in the Construction Industry; and
- (b) the institution or fund has been endorsed as exempt from income tax by the Commissioner under subdivision 50-B *Income Tax Assessment Act 1997*.

Approved Superannuation Fund¹ means, as the context requires, the superannuation fund that has been named in an industrial instrument.

Auditor means the auditor appointed by the Trustee.

Award² means the Construction Worker Level 3/Engineering Construction Worker Level 3 (Engineering Construction Tradesperson Level 1) (CW/ECW 3) in the Building and Construction General On-site Award 2010.

Benefit means any amount payable by the Trustee out of the Fund to or in respect of a Member.

B.E.R.T. Fund means the fund established by the B.E.R.T. Fund Deed, and of which the B.E.R.T. Pty Ltd is the trustee.

B.E.R.T. Fund Deed means the deed for the creation of the B.E.R.T. Fund executed by the Trustee on 16 May 1996.

B.E.R.T Pty Ltd means B.E.R.T. Pty Limited ACN 010 917 281.

Carpenter's Rate³ means the contribution rate, expressed on a weekly basis, which may be made to an approved worker entitlement fund set out in the Award (as amended or re-enacted from time to time) or any industrial instrument which replaces the Award for the purposes of ensuring that the obligation under the Award to make payments when an employee ceases employment is met.

Children includes an adopted child, step-child and ex-nuptial child.

Commencement Date means 1 April 2004.

Construction Industry means those sectors of commerce or industry commonly known and characterised as being associated or connected with or incidental to:

- (a) industrial, commercial or residential construction;
- (b) civil engineering construction; and
- (c) mechanical engineering construction,

and includes all services and maintenance associated or connected with or incidental to any of those forms of construction and also includes each and every one of those sectors or any of those sectors or allied industries whether work is performed on site or off site.

Contribution⁴ means a payment to the Fund made in accordance with this document.

Death Benefit for a Member, means a Benefit payable following the death of the Member.

Death Benefit dependant has the meaning given to that term section 302-195 in the *Income Tax Assessment Act 1997*.

Deed means this document, including any Schedule or Annexure to it.

Deed of Adherence means a deed substantially in terms of the deed set out in Schedule 1.

¹ Definition inserted by a supplemental deed (document reference 8759019).

² Definition inserted by a supplemental deed (document reference 13416673).

³ Definition inserted by a supplemental deed (document reference 13416673).

⁴ Definition inserted by a supplemental deed (document reference 13416673).

⁵ Definition inserted by deed of amendment and restatement (document reference 30799151v1)

Employee means a person employed principally on production work within the Scope of the Deed by a Participating Employer and includes Apprentices.

Employer means a person required to pay Contributions in respect of its Employees.

Employer Organisation means Queensland Major Contractors Association and:

- (a) any other employer organisation which, with the written agreement of all Active Sponsors is accepted as an Employer Organisation;
- (b) any other employer organisation which by reason of the reorganisation or amalgamation of an Employer Organisation is the successor in whole or in part of that Employer Organisation; and
- (c) any federally or Queensland registered counterpart of an Employer Organisation provided the federally registered counterpart is only an Employer Organisation if both the Queensland and federal counterparts confirm this in writing to all Active Sponsors and then the federally registered body is an Employers' Organisation to the exclusion of (and not in addition to) its Queensland registered counterpart.

Equalisation Account means the account described in clause 10.4.

FBT Requirements means the requirements of which the Commissioner of Taxation must be satisfied under the *Fringe Benefits Tax Assessment Act 1986* in order for a fund to be prescribed as an 'approved worker entitlement fund'.

Fund means the redundancy fund established by this Deed.

Fund Administrator means a person appointed in accordance with clause 16.1.

Income Account means the account described in clause 10.2.

Member means an Employee who has been accepted by the Trustee as a Member who has not ceased to be a Member pursuant to clause 4.5.

Member Account means one of the accounts described in clause 10.1.

Minimum Contribution⁶ means, for each Week of Service:

- (a) in respect of a Member other than an Apprentice the greater of:
 - (i) the amount set by a Special Resolution of the Active Sponsors and until otherwise set is \$75.00; or
 - (ii) the contribution rate specified in an industrial instrument, expressed on a weekly basis, which applies to the Member provided that contribution rate is no less than an amount set by the formula:

$$A \times 1.75$$

Where:

A = the Carpenter's Rate,

⁶ Definition amended by a supplemental deed (document reference 1102610) and subsequently by a supplemental deed (document reference 13416673).

- (b) in respect of an Apprentice under a 4 year apprenticeship, an amount equal to the following percentages of the Minimum Contributions for a Member:
 - (i) for a first year Apprentice - 40%;
 - (ii) for a second year Apprentice - 55%;
 - (iii) for a third year Apprentice- 75%;
 - (iv) for a fourth year Apprentice - 90%; and
- (c) in respect of any other Apprentice, an amount equal to the proportion of the Minimum Contribution for a Member which their annual salary bears to the average salary payable to those who have completed their apprenticeship in that field of endeavour.

Net Income means the amount calculated as the Net Income of the Fund for an Accounting Period in accordance with section 95(1) of the *Income Tax Assessment Act* unless the Trustee determines in respect of any Accounting Period that the Net Income for that Accounting Period means the income of the Fund calculated in accordance with established accounting principles and trust law.

Nominated Dependant means, in respect of a Member:

- (a) the Death Benefit dependant of that Member nominated by the Member as the person that the Member would prefer to receive the amount standing to his or her Member Account if the Member dies or otherwise ceases to be entitled to his or her Benefit: or
- (b) if no person is so nominated or that nominated person has not survived the Member, then the first person identified in section 302-195 of the *Income Tax Assessment Act 1997* is relation to that Member in the order set out in that section who has survived the Member and if more than one person who so qualifies, all those persons equally.⁷

Participating Employer means any Employer admitted under clause 3.1 who has not ceased to be a Participating Employer pursuant to clause 37.

Redundancy means that termination of employment of a Member in circumstance where the work the Member has been performing is no longer required to be done by anyone and 'Redundant' has a corresponding meaning.

Reserve Account means the account maintained in accordance with clause 10.3.

Scope of the Deed means:

- (a) all work in industrial, commercial or multi-residential building construction;
- (b) any other work within the Construction Industry as set out an agreement between Active Sponsors;
- (c) any other work within the Construction Industry as agreed between an Employer and an Active Union;
- (d) any other work within the Construction Industry where the Employer makes a Contribution on behalf of an Employee; and
- (e) any work where the Employer makes a Contribution on behalf of an Employee.

⁷ Definition amended by deed of amendment and restatement (document reference 30799151v1)

Small Amount means an amount determined by the Trustee and until otherwise determined is an amount equal to twice the Minimum Contribution.

Special Resolution of fee Active Sponsors means a resolution:

- (a) signed by not less than 75% of the Active Sponsors;
- (b) signed by more than 50% of the Active Sponsors who are Active Employer Organisations; and
- (c) signed by more than 50% of the Active Sponsors who are Active Unions

Sponsors means the Employer Organisations and the Unions but does not include

- (a) any Employer Organisation or Union which by notice given by it to the Active Sponsors and the Trustee has ceased to be a Sponsor; or
- (b) any Employer Organisation or Union in respect of which by agreement of a Special Resolution of the Active Sponsors is determined no longer to be a Sponsor,

Spouse means, in relation to a Member, the husband or wife of that Member, or another person who, in the opinion of the Trustee, although not legally married to the Member lives (or in the case of a deceased Member was at the date of death of the Member living) with the Member on a bona fide domestic basis as the husband or wife of the Member.

Total and Permanent Disablement in relation to a Member means his or her incapacity to the extent that in the reasonable opinion of the Trustee (after considering such medical and other evidence or advice as it may require) the Member is unable ever again to undertake any form of remunerative work in the Construction Industry for which he or she is reasonably equipped by educational training or experience.

Trustee means the trustee for the time being of the Fund.

Unions means each of:

- (a) Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland;
 - (b) Australian Building Construction Employees and Builders Labourers Federation Union of Employees (Queensland Branch); and
 - (c) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, Plumbing Division, Queensland Branch
- and
- (d) any other union of employees which, with the written consent of all Active Sponsors, is accepted as a Union;
 - (e) any other union of employees which by reason of the reorganisation or amalgamation of a Union is the successor of the whole or part of that Union; and
 - (f) any federally or Queensland registered counterpart of a Union provided the federally registered counterpart is only a Union if both the Queensland and federal counterparts confirm this in writing to all Active Sponsors (which federally they are deemed to have done in relation of any federally registered body described in this clause) and then the federally registered body is a Union to the exclusion of (and not in addition to) its Queensland registered counterpart.

Vesting Date means the first of the following to occur:

- (a) 80 years from the date of this Deed; and
- (b) an earlier date nominated by the Trustee as the Vesting Date with the prior approval of a Special Resolution of the Active Sponsors.

Week of Service means a week where on any day of the week:

- (a) the Member is employed by the Participating Employer; or
 - (b) for which the Member is entitled to receive workers compensation in respect of any injury or other event occurring whilst in the employ of the Participating Employer up to a maximum of 26 weeks, whether compensation payments are made in one continuous period or not; or
 - (c) where the Member is on annual leave, long service or other paid leave,
- and a week falls in a month where Friday falls in that month.

Interpretation

1.3 Reference to:

- (a) one gender includes the other gender;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a person includes a body corporate and includes a person (in this extended sense) in the capacity of a trustee;
- (d) a party includes the party's executors, administrators, successors and permitted assignors; and
- (e) a statute, regulation or provision of a statute or regulation (Statutory Provision) includes:
 - (i) that Statutory Provision as amended or re-enacted from time to time; and
 - (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision.

1.4 If a party consists of more than one person, this Deed binds them jointly and each of them severally.

1.5 The schedules form part of this Deed.

1.6 Headings are for convenience only and do not affect the interpretation, or form part, of this Deed.

1.7 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

1.8 Any references to clauses and schedules are construed as references to clauses of and schedules to this Deed.

Severance

- 1.9 If any provision or part of a provision of this Deed is or becomes void, invalid or unenforceable for any reason, it must be severed from this Deed but the remainder of this Deed continues in full force and effect and is unaffected by the severance.

Perpetuity Period

- 1.10 All powers and dispositions made by or under this Deed which, but for this provision, would or might be exercisable vest or take effect after the Vesting Date are exercisable only until the Vesting Date or vest or take effect on the Vesting Date.

2. Constitution of Fund**Establishment of Fund**

- 2.1 The Trustee accepts its appointment as trustee of the Fund.

Name of Trust

- 2.2 The name of the Fund is the B.E.R.T. Fund No. 2.

Declaration of Trust

- 2.3 The Trustee holds the Fund and its income upon the trusts and subject to the provisions contained in this Deed.

2A Compliance with Fringe Benefits Tax Assessment Act to ensure status as an approved worker entitlement fund

- 2A.1 The Trustee will have regard to the FBT Requirements in administering the Fund.
- 2A.2 The Trustee need not comply with an FBT Requirement if it is not mandatory to do so in order for the Fund to be an *approved worker entitlement fund*.

3. Participation**Trustee May Admit Participating Employers**

- 3.1 The Trustee may admit an Employer as a Participating Employer if:
- (a) the Trustee receives payment from that Employer on behalf of its Employees for the purposes of being credited against a Member Account established or to be established for those Employees, even though that Employer has not at that stage executed a Deed of Adherence;
 - (b) the Employer lodges with the Trustee a completed Deed of Adherence; or
 - (c) the Employer is a Participating Employer under the B.E.R.T. Fund as at the day immediately prior to the Commencement Date.

Participating Employers Bound by Deed

- 3.2 Each Participating Employer is bound by the terms of this Deed.

Admission - Participating Employers

- 3.3 The Trustee must notify an Employer in writing of its admission as a Participating Employer.

Commencement of Participation

- 3.4 An Employer becomes (or is deemed to become) a Participating Employer:
- (a) if admitted under clause 3.1(a), on the date of receipt of payment by the Trustee of amounts required under the industrial instrument;
 - (b) if admitted under clause 3.1(b), on the date specified in the Deed of Adherence, or if no date is specified, then on the date of receipt of the Deed of Adherence; and
 - (c) if admitted under clause 3.1(c), on the Commencement Date.

Member Identification

- 3.5 The Participating Employer must provide to the Trustee the information it requires to identify each Member in respect of whom Contributions are to be made by the Participating Employer.

4. Membership of Fund**Eligibility for Membership**

- 4.1 Any Employee of a Participating Employer may become a Member. Each eligible Employee of a Participating Employer admitted under clause 3.1(c) who is a member of the B.E.R.T. Fund is deemed to be a member as and from the Commencement Date.

Trustee May Reject or Accept

- 4.2 On the receipt of an application for membership, the Trustee may admit or reject the applicant.

Commencement of Membership

- 4.3 The Member is deemed to have joined on the date determined by the Trustee.

Conditions of Membership

- 4.4 The Trustee may impose conditions on:
- (a) a Member's admission;
 - (b) his or her rights and duties as a Member; and
 - (c) Benefits for that Member.
- 4.5 The Trustee may remove or vary any of these conditions.

Membership Ceases

- 4.6 A person ceases to be a Member when the Trustee so resolves once all that Member's entitlements have been:
- (a) paid or forfeited; or
 - (b) transferred to another fund in accordance with this Deed.

5. Fund Information

Information to Prospective Participating Employer

- 5.1 The Trustee must give to an Employer who is a prospective Participating Employer a written statement containing details of:
- (a) the kinds of Benefits;
 - (b) the conditions relating to Benefits; and
 - (c) the method of determining entitlements.

Member Information

- 5.2 The Trustee must give to a Member:
- (a) on request and payment of a reasonable fee determined by the Trustee, a copy of this Deed and any alteration to the Deed;
 - (b) within 6 months after the end of each Accounting Period, a statement showing the balance standing to the Member Account for that Member at the end of the Accounting Period; and
 - (c) on payment of an amount standing to the credit of a Member Account, a written statement setting out details of the payment made.

Participating Employer Information

- 5.3 The Trustee must give to a Participating Employer;
- (a) on request and payment of a reasonable fee determined by the Trustee, a copy of this Deed and any alteration to the Deed; and
 - (b) following the end of each month in which a Participating Employer makes a Contribution, a record showing the amount of that Contribution; and
 - (c) within 3 months after the end of each Accounting Period, an annual statement of Contributions made during the Accounting Period.

Trust Deed

- 5.4 A copy of this Deed must be kept by the Trustee at its head office and must be open to inspection by the Participating Employers and Members at all reasonable times
-

6. Contributions

Redundancy Contributions

- 6.1 Subject to the terms of an industrial instrument which applies to a Member, unless;
- (a) that industrial instrument requires the Minimum Contribution be paid to the Approved Superannuation Fund; and
 - (b) the Member has in aggregate in his or her Member Account and his or her member account in the B.E.R.T. Fund more than the minimum set by the industrial instrument; and

- (c) the Member elects by notice in writing to the Trustee to have the Minimum Contribution paid to the Approved Superannuation Fund on his or her behalf,

a Participating Employer must pay to the Trustee, or by it, within 15 days after the end of each month an amount equal to the Minimum Contribution for each Member for each Week of Service in respect of which Contributions are payable. If the provisions of clauses 6.1(a), 6.1(b) and 6.1(c) are not collectively fulfilled and the moneys actually paid to the Approved Superannuation Fund, then the Minimum Contribution remains payable to the Trustee.⁹

Deleted: 30 days⁸

Productivity and Other Payments

- 6.2 A Participating Employer may pay to the Fund on behalf of its Employees who are Members any additional amount:
- (a) agreed with its Employees; or
 - (b) as it determines.

Particulars

- 6.3 The Participating Employer must inform the Trustee or if directed by the Trustee, the Fund Administrator, on which Member's behalf the Contributions are paid

Interest

- 6.4 If a Participating Employer defaults in the payment of Contributions due in accordance with clause 6.1 it must pay interest from the date the Contributions became due until the date on which they are paid at a rate determined by the Trustee to be equal to 2% over the overdraft rate as advised by the Commonwealth Bank of Australia.

Recovery of Expenses

- 6.5 A Participating Employer must reimburse the Trustee in respect of all reasonable expenses (including collection fees) incurred by the Trustee (or on behalf of the Trustee by the Fund's Administrator or otherwise) in obtaining payment by any Participating Employer of any outstanding Contribution.

7. Information from Members

- 7.1 A Member when requested by the Trustee must:
- (a) furnish any information the Trustee considers necessary for the purposes of the Fund; and
 - (b) submit to medical examinations as required by the Trustee by a registered medical practitioner or therapist nominated by the Trustee.
- 7.2 If a Member fails to comply with the provisions of clause 7.1, the Trustee may withhold any Benefit in respect of that Member until the Member complies.
- 7.3 Where a Member furnishes information affecting the Benefit payable to the Member and the information is incorrect or misleading, or any relevant information is withheld, the Trustee may alter the Benefit to amounts that would have applied had full and accurate information been supplied.

⁹ Clause 6.1 was amended by a supplemental deed (document reference 8759019).

8. Transfer from Another Redundancy Fund

- 8.1 The Trustee may accept into the Fund in respect of a Member an amount transferred from another similar fund in which the Member or an Employer of that Member has participated. A Member's Account must be opened for each Member whose account is transferred and the benefits credited to that account. Amounts transferred into the Fund are to be administered according to the terms of this Deed and not on the terms of the deed which applied in respect of the similar fund

9. Transfer of Benefit to New Fund

Transfer Requested by Member

- 9.1 On the written request of the Member, an amount equal to the positive balance of a Member Account may be paid or transferred to the trustee of another approved worker entitlement fund.

Transfer of Benefit by Trustee

- 9.2 The Trustee may transfer to another approved worker entitlement fund an amount no less than the positive balance of a Member's Member Account provided the Trustee is satisfied that the Member's rights and interests in respect of his or her entitlements under the Fund will not be adversely affected by the transfer.

Receipt of Trustee

- 9.3 The receipt of the trustee of another approved worker entitlement fund to which the transfer is made is a complete discharge to the Trustee in respect of any money or asset paid or transferred.

10. Accounts

Member Accounts

- 10.1 A Member Account must be established for each Member showing:
- (a) any amount paid or transferred into the Fund in respect of a Member under clause 8;
 - (b) Contributions made in respect of that Member; and
 - (c) sums added to or deducted from the account under the provisions of this Deed.

Income Account

- 10.2 An Income Account must be established All income and profits of the Fund must be credited to the Income Account. The following must be debited against the Income Account:
- (a) any loss sustained on the disposal of any investment of the Fund;
 - (b) any Fund expenses which are not debited to a Member Account;
 - (c) any amount of Taxation which is not debited to a Member Account;
 - (d) the allocation of income in accordance with clause 27.1;
 - (e) any amount credited to the Reserve Account; and

- (f) any amount credited to the Equalisation Account.

Reserve Account

- 10.3 A Reserve Account must be established showing:
- (a) any amount of income accumulated by the Trustee in accordance with clause 27.1 to be applied to the Reserve Account; and
 - (b) any forfeited Benefits under clause 34.4;
 - (c) sums added to or deducted from the Reserve Account (including costs and expenses of the Fund) under the provisions of this Deed; and
 - (d) any amounts paid, applied or set aside from the Reserve Account under clause 27A.2.
- 10.4 The Trustee must maintain records to separately identify any amounts credited to the Reserve Account which represent Contributions (for example Contributions that are transferred to the Reserve Account due to being forfeited Benefits under clause 34.4).¹⁰

Equalisation Account

- 10.5 An Equalisation Account must be established. The Equalisation Account must be credited with any amount of income accumulated by the Trustee in accordance with clause 27.1 to be applied to the Equalisation Account. The Equalisation Account must be debited with any amounts paid, applied or set aside from the Equalisation Account under clause 27A.3.

Other Accounts and Registers

- 10.6 The Trustee must keep:
- (a) a register of Participating Employers and Members showing names addresses and such information as is relevant to the administration of the Fund; and
 - (b) accounts as may be necessary to record the financial transactions by the Trustee and to record the Benefits for Members.

11. Accounting Report

- 11.1 After the close of each Accounting Period, the Trustee must prepare a written accounting report (prepared in accordance with generally accepted accounting principles and procedures) for the period, consisting of a statement of income and expenditure and a balance sheet, and distribute copies to the Active Sponsors.

12. Audit of Accounts

- 12.1 The accounts of the Fund must be audited at least once a year by a qualified auditor appointed by the Trustee.
- 12.2 The remuneration for the auditor is to be determined by the Trustee and paid out of the Fund.

¹⁰ Clause 10.3 was amended by deed of amendment and restatement (document reference 30799151v1)

13. Qualification of Trustee

Eligibility to be Trustee

- 13.1 The Trustee must be a limited liability company in which:
- (a) the Active Unions hold shares carrying an entitlement to 50% of all voting rights at a general meeting; and
 - (b) the Active Employer Organisations hold shares carrying an entitlement to the remaining 50% of all voting rights at a general meeting.

14. Powers of Trustee

General Power

- 14.1 Subject to clauses 14.2, the Trustee has all the powers over and in respect of the Fund and the assets of the Fund and using the assets and credit of the Fund and doing anything else on behalf of the Fund which it could exercise and do if it was the absolute and beneficial owner of the Fund and the assets of the Fund.
- 14.2 The Trustee must exercise its powers in a manner consistent with or permitted by the FBT requirements.

Particular Powers

- 14.3 Subject to clause 14.2 but without limiting the general power contained in clause 14.1, the Trustee has the particular powers referred to in Schedule 3.

Discretion in Exercise of Powers

- 14.4 Subject to clause 14.2, the Trustee may exercise the powers referred to in Schedule 3 as the Trustee thinks fit and may enter into any transaction in exercise of those powers on such terms and conditions as the Trustee thinks fit.

Statutory Powers

- 14.5 The Trustee has the powers conferred by the *Trusts Act 1973* or otherwise by law except where they are inconsistent with the powers conferred by this Deed.
- 14.6 Where a power is conferred by this Deed which is similar to, but larger than, a power conferred by the *Trusts Act 1973*, it operates and is exercisable without any limitation or restriction imposed by the *Trusts Act 1973* on that statutory power.

15. Appointment of Managers

- 15.1 The Trustee may appoint any person to act as Investment Manager or Custodian Trustee or both. The appointment must be in writing.
- 15.2 The Trustee may delegate to any Investment Manager or Custodian Trustee the powers it thinks fit.
- 15.3 The Trustee is not liable or responsible for any act, omission, error of judgment, negligence or breach of trust by the Investment Manager or Custodian Trustee.

- 15.4 The Trustee is not bound to take proceedings against any Investment Manager or Custodian Trustee arising in the circumstances described in clause 15.3.
- 15.5 The Trustee may pay out of the Fund to the Investment Manager or Custodian Trustee remuneration for their services as the Trustee considers proper.
- 15.6 The Trustee may remove the Investment Manager or Custodian Trustee or alter the terms of its appointment as the Trustee thinks fit.

16. Appointment of Fund Administrator

- 16.1 The Trustee may appoint any person to be Fund Administrator. The appointment must be in writing on terms which the Trustee considers appropriate.
- 16.2 The Trustee may delegate to the Fund Administrator the duties and powers in relation to the administration and management of the Fund it thinks fit including the following:
 - (a) the collection of Contributions and the transfer of money and assets to and from any Investment Manager or Custodian Trust,
 - (b) the collection, recording and dissemination of Contributions and other information for the purposes of the Fund;
 - (c) the establishment and maintenance of records of account and Contributions and other necessary records including details of Member Accounts,
 - (d) the calculation of Benefits; and
 - (e) the provision and maintenance of a computer network and associated enquiry facilities necessary to support the administration of the Trust.

17. Confidentiality of Trustee's Deliberations

- 17.1 In addition to any right of the Trustee under the general law to refuse disclosure of any document or matter, the Trustee is not required to disclose to any person:
 - (a) any document disclosing:
 - (i) any deliberations of the Trustee as to the manner in which the Trustee should exercise any power or discretion conferred upon the Trustee;
 - (ii) the reasons for any particular exercise or non-exercise of any power or discretion; or
 - (iii) the material upon which those reasons were or might have been based;
 - (b) any other document relating to the exercise or proposed exercise of any power or discretion conferred on the Trustee by this Deed; or
 - (c) any reason for any exercise or non-exercise of any power or discretion.

18. Remuneration of Trustee

- 18.1 So long as the payment of a Trustee's commission is not inconsistent with the FBT Requirements, the Trustee may with the prior approval of a Special Resolution of the Active Sponsors charge and retain out of the Fund a trustee's commission.

19. Liability of Trustee

- 19.1 No Trustee, and no officer of the Trustee, is liable for any loss or damage occasioned to the Fund or to any person by:
- (a) the exercise of any discretion or power by the Trustee, conferred by this Deed or by law, or any failure to exercise any of those discretions or powers;
 - (b) any breach of duty or trust, unless it is proved to have been committed, made or omitted in personal, conscious and fraudulent bad faith by the Trustee or the officer respectively; or
 - (c) any disclosure by the Trustee or the officer of any document, matter or thing relating to the Fund or any Beneficiary.
- 19.2 All persons claiming any interest in the income or the capital of the Fund are deemed to take it with and subject to notice of the protection conferred by this clause 19.
- 19.3 The Trustee is not bound to take any proceeding against a co-trustee for any breach or alleged breach of trust committed by the co-trustee.
- 19.4 Where the Trustee acts in reliance upon the advice of any expert or professional obtained in relation to the interpretation of the provisions of this Deed or any document or statute or any matter concerning the administration of the Fund, the Trustee is not liable to any Member, Participating Employer or Beneficiary in respect of any act done or omitted to be done by the Trustee in accordance with the advice.

20. Indemnity for Trustee

- 20.1 The Trustee is entitled to be indemnified out of the Fund against liabilities incurred by the Trustee by virtue of being the trustee of the Fund.
- 20.2 The Trustee is entitled to be reimbursed from the Fund for all money expended and debts incurred in or about the administration of the Fund.
- 20.3 The Trustee may apply the Fund to satisfy the rights of reimbursement or indemnity to which the Trustee is entitled.

21. Appointment and Removal of Trustee

- 21.1 The Trustee must vacate office as trustee of the Fund and cease to act as such if:
- (a) it is removed as provided by law;
 - (b) it fails to satisfy the requirements of clause 13.1;

- (c) an application for its winding up is made or it passes a resolution for its voluntary winding up (except bona fide for the purpose of amalgamation or reconstruction) or if a receiver is appointed to its undertakings or any part of its undertakings; and
- (d) by Special Resolution of the Active Sponsors, the Active Sponsors resolve that the Trustee be removed.

21.2 The Trustee may resign its office by giving 1 month's notice in writing to the Active Sponsors of its desire so to do.

22. Appointment of New Trustee

- 22.1 If the Trustee is removed from office or retires pursuant to clauses 21.1 and 21.2 the Active Sponsors may by Special Resolution of the Active Sponsors appoint a person to replace the Trustee provided that a Trustee must not cease to be a trustee pursuant to either clause 21.1 and 21.2 unless and until the Active Sponsors have determined to appoint a replacement Trustee and that replacement has agreed to assume the office of Trustee.
- 22.2 The new Trustee so appointed must execute a deed accepting the office of Trustee and must undertake to perform and observe all the obligations of the Trustee under this Deed.

23. Sole Trustee

- 23.1 A Trustee may be discharged although there will remain or be appointed in its place a sole trustee other than the Public Trustee or a trustee company under the *Trustee Companies Act 1968* or any corresponding legislation in any state or territory of Australia or elsewhere.
- 23.2 A sole trustee is authorised, even though it is the sole trustee, to receive capital and other money and to give valid and effectual receipts including receipts for money deemed to be capital money for the purpose of any statute.

24. Exercise of Discretions and Powers

- 24.1 So long as its exercise is not inconsistent with the FBT Requirements:
- (a) every discretion vested in the Trustee is absolute and uncontrolled;
 - (b) every power vested in the Trustee is exercisable at the absolute and uncontrolled discretion of the Trustee.
- 24.2 So long as to do so is not inconsistent with the FBT Requirements, the Trustee may by instrument in writing, revocable or irrevocable, wholly or partially release, abandon or restrict any power conferred on the Trustee by this Deed.

25. Interest of Directors of Trustee Corporation

- 25.1 So long as to do so is not inconsistent with the FBT Requirements, any person being a director or shareholder of the Trustee may be directly or indirectly interested in the mode or result of exercising the powers and discretions of this Deed without affecting the validity of the exercise of the powers and discretions.

26. Interest of Trustee

- 26.1 The Trustee may exercise or concur in exercising all powers and discretions contained in this Deed or otherwise by law conferred even though:
- (a) the Trustee or any person being a director or shareholder of the Trustee may:
 - (i) have a direct or personal interest (whether as trustee of any other settlement or in a personal capacity or as a director or shareholder of any corporation or otherwise) in the mode or result of exercising the power or discretion; or
 - (ii) benefit either directly or indirectly as a result of the exercise of the power or discretion; and
 - (b) the Trustee is the sole trustee.

27. Distribution of Net Income

Trustee's Discretion

- 27.1 All income of the Fund for an Accounting Period must be paid, applied or set aside by the Trustee to or for any one or more of the purposes mentioned in section 58PB(4)(d) of the *Fringe Benefits Tax Assessment Act 1986* but in the proportions the Trustee thinks appropriate. Any part of the income accumulated within the Fund under this clause 27.1 (for example, for the purpose of making investments to generate income from the assets of the Fund) must be paid into either the Reserve Account or the Equalisation Account (as specified by the Trustee) but in the proportions the Trustee thinks appropriate.

Late Exercise of Discretion

- 27.2 The Trustee may exercise the discretion contained in clause 27.1 after the expiration of the Accounting Period if the Commissioner of Taxation accepts that the entity in whose favour the Trustee has exercised the discretion is presently entitled to the income in the Accounting Period to which the distribution relates. If not, the purported exercise of the discretion after the expiration of the Accounting Period is ineffective.

Takers in Default

- 27.3 If the Trustee does not exercise the discretion contained in clause 27.1 (or to the extent to which the Trustee does not exercise or does not effectively exercise that discretion), the Trustee must accumulate the income for the Accounting Period by applying it to the credit of the Reserve Account for the purposes mentioned in paragraphs (c)(ii) and (c)(vii) of section 58PB(4) of the *Fringe Benefits Tax Assessment Act 1986*.

Recoupment of Losses

- 27.4 Where the Trustee suffers a loss for taxation purposes in any Accounting Period it is not required to recoup that loss out of the corpus of the Fund. Losses which relate to previous Accounting Periods so far as possible must be recouped out of profits and not corpus. If losses are at any time to be recouped out of corpus they must first be recouped from the Equalisation Account and then from the Reserve Account if the Equalisation Account has been exhausted.

27A Payments from the Fund

Payments from Contributions

27A.1 Payments from Contributions must be made only for the purposes specified in section 58PB(4) of the *Fringe Benefits Tax Assessment Act*.

Distributions from Reserve Account

27A.2 The Trustee may (at any time) in respect of all or any part of any positive balance in the Reserve Account, pay, apply or set it aside as follows:

- (a) if it is income of the Fund - in the manner provided for in clause 27.1;
- (b) if it is from Contributions, including any Contribution that has been transferred to the Reserve Account due to the forfeiture of Benefits under clause 34.4¹¹ - in the manner for in clause 27A.1;
- (c) if it is not otherwise covered by paragraphs (a) or (b) of this clause 27A.2 (for example, it is an amount which results from an accumulation of income paid to the Reserve Account under clause 27.1) - for any one or more of:
 - (i) the Sponsors;
 - (ii) the Members;
 - (iii) the Participating Employers;
 - (iv) the legal personal representative or the Death Benefit dependants of a Member;
 - (v) any Approved Institution,

so long as to do so is not inconsistent with the FBT Requirements.

Distributions from Equalisation Account

27A.3 The Trustee may (at any time) in respect of all or any part of any positive balance in the Equalisation Account pay, apply or set it aside as follows:

- (a) if it is income of the Fund - in the manner provided for in clause 27.1;
- (b) if it is from Contributions - in the manner provided for in clause 27A.1;
- (c) if it is not otherwise covered by paragraphs (a) or (b) of this clause 27A.3 (for example, it is an amount which results from an accumulation of income paid to the Equalisation Account under clause 27.1) - for any one or more of:
 - (i) the Sponsors;
 - (ii) the Members;
 - (iii) the Participating Employers;
 - (iv) the legal personal representatives or the Death Benefit dependants of a Member,

¹¹ Inserted by deed of amendment and restatement (document reference 30799151v1)

- (v) any Approved Institution,

so long as to do so is not inconsistent with the FBT Requirements.

Trustee to consider the legal personal representatives or Death Benefit dependants once the Member or former Member has died

27A.4 Subject to the FBT requirements and the specific limitations of clauses 27A.1 to 27A.3, the Trustee must ensure that all amounts held in the Reserve Account which are attributable to Contributions made in respect of a Member or former Member (including any Contribution that has been transferred to the Reserve Account due to the forfeiture of Benefits under clause 34.4 for that Member or former Member), to the extent those Contributions have not otherwise been paid, applied or set aside for any other of the purposes set out in section 58PB(4)(c) of the *Fringe Benefits Tax Assessment Act* or will not be so paid, applied or set aside, are paid either:

- (a) to the legal personal representatives of that Member or former Member (as the case requires); or
- (b) to one or more Death Benefit dependants of that Member or former Member (as the case requires),

if that Member or former Member has died or has otherwise ceased to be entitled to his or her Benefit as at the date that payment is made.¹²

28. Amount of Benefit for Members

- 28.1 Subject to clause 28.2, a Member's Benefit is equal to the positive balance in his or her Member Account on the date the Benefit becomes payable.
- 28.2 The amount of any Benefit must not exceed that which is in the opinion of the Trustee the maximum the assets of the Fund can provide in respect of the Member.

29. Payment of Benefits to Members¹³

- 29.1 So long as to do so is not inconsistent with the FBT Requirements, a Benefit is payable upon a claim being made by the Member if the Member has otherwise satisfied the requirements (if any) of the industrial instrument having application to the Member in respect of his or her entitlement to claim that Benefit and:
 - (a) retires from the work force on or after attaining the age of 55 years;
 - (b) suffers financial hardship and provides to the Trustee documentary evidence satisfactory to it;¹⁴
 - (c) dies;
 - (d) becomes Totally and Permanently Disabled;
 - (e) is made Redundant;¹⁵

¹² clause 27A.4 was Inserted by deed of amendment and restatement (document reference 30799151v1)

¹³ clause 29 was amended by a supplemental deed dated 10 November 2004.

¹⁴ clause 29.1(b) was amended by deed of amendment and restatement (document reference 30799151v1)

¹⁵ clause 29.1(e) was amended by deed of amendment and restatement (document reference 30799151v1)

- (f) permanently leaves the Construction Industry; or
- (g) permanently leaves Australia.

30. Preconditions to Entitlement

- 30.1 A Member has no entitlement to a Benefit until he or she has lodged a properly completed claim form with the Trustee and satisfied the Trustee's requirements, enquiries and information regarding his or her entitlement to that Benefit.
- 30.2 The Trustee has no obligation to pay a Benefit until it receives satisfactory evidence of the Member's entitlement. The Trustee may also require the payee to execute documents and do other acts and things as may be appropriate for the Trustee to obtain a good release before paying any claim.
- 30.3 A Member will be considered to have permanently left the Construction Industry for the purposes of clause 29.1(f) if he or she has not been employed in the Construction Industry for 12 months preceding the date of the application.¹⁶

31. Death Benefit

- 31.1 The Trustee must pay the Death Benefit to any one or more of the Death Benefit dependants or legal personal representatives of the deceased Member as the Trustee considers appropriate.
- 31.2 If no claim for a Death Benefit is made by the legal personal representatives or any Death Benefit Dependents of a deceased Member within 12 months following the death of the Member, the Trustee may forfeit the Benefit and apply it in accordance with clause 34.4.¹⁷

32. Procedure for Payment of Benefits

- 32.1 The Trustee may forward the Benefits to the postal address or bank account last notified or to any other place the Trustee determines.
- 32.2 Every Member must (except where no further Benefit is payable) notify the Trustee in writing at the time the Benefit becomes payable and immediately after the Member changes address of:
 - (a) the Member's place of residence and full postal address; and
 - (b) the bank account (if any) to which the Member requests that the Benefit be paid.
- 32.3 Any person to whom a Benefit is payable must, if requested, furnish the Trustee with a receipt and release in the form required by the Trustee.

¹⁶ Clause 30.3 was inserted by a supplemental deed dated 10 November 2004.

¹⁷ Clause 31 was amended by deed of amendment and restatement (document reference 30799151v1)

33. Payment of Taxation

- 33.1 The manner in which distributions from the Fund are dealt with or the payment of benefits under the Fund may involve a tax liability for the person to whom a payment or benefit is paid or applied and such person accepts that liability.
- 33.2 The Trustee may deduct Taxation required to be deducted (or which the Trustee considers is required to be deducted) from a Benefit.
- 33.3 The Trustee may deduct Taxation payable in relation to a Contribution from the Member Account.
-

34. Forfeiture of Benefits

Loss of Benefits

- 34.1 Any Member:
- (a) who before a Benefit becomes payable, becomes bankrupt; or
 - (b) whose Benefits whether by the persons own act operation of law, an order of any court or otherwise become payable to or vested in any person, company, government or other public authority; or
 - (c) who is suffering from any physical or mental disability which in the opinion of the Trustee renders the Member unable to manage his or her own affairs; or
 - (d) who assigns or charges or attempts to assign or charge his or her Benefit,
- forfeits entitlement to all Benefits other than those Benefits to which he or she has at that time become absolutely and indefeasibly entitled under the terms of this Deed.

Death Benefit dependants to be Considered

- 34.2 Benefits forfeited by reason of clause 34.1 must be held for the Member or former Member and his or her Death Benefit dependants as a class until the Benefit becomes payable. On the Benefit becoming payable the Trustee must pay the Benefit to the Member or former Member (as the case requires) if her or she has survived that date or if he or she has not survived that date then to any one or more of the Member's or former Member's (as the case requires) Death Benefit dependants in the proportions between them as the Trustee determines. The payment or application of any moneys pursuant to this clause is a complete discharge to the Trustee for those moneys Any Benefit not able to be so dealt with is forfeited and must be applied in accordance with clause 34.4.¹⁸

Lost Members and Small Amounts

- 34.3 The amounts standing to a Member's Account may be forfeited where:
- (a) the amount standing to the account is a Small Amount and there have been no Contributions credited to that account for 12 months; or
 - (b) in relation to that Member:

¹⁸ clause 34.2 was amended by deed of amendment and restatement (document reference 30799151v1)

- (i) a statement sent by the Trustee under clause 5.2(b) to the last known address of the Member has been returned unclaimed;
- (ii) a continuous period of greater than 12 months has elapsed since the return of that statement and the Member's whereabouts has not become known to the Trustee during that period; and
- (iii) no contribution has been made to the Redundancy Fund in relation to that Member for that period.

Nothing in this clause 34.3 imposes an obligation on the Trustee to ascertain or establish the whereabouts of a Member.

Allocation for Forfeited Benefits

- 34.4 Every Benefit forfeited or to which a Member has lost his or her entitlement under any of the provisions of this Deed and not otherwise dealt with must be transferred to the Reserve Account.

35. Relationship Between Employer and Employee

- 35.1 Dealings between the Employer and Employee are not affected by this Deed.
- 35.2 The rights of a Member or that Member's legal personal representative to claim damages or compensation under:
- (a) common law;
 - (b) any workers' compensation legislation; or
 - (c) any other statute in force governing compensation to a Member injured or killed by an accident arising out of or in the course of that Member's employment with the Employer,
- are not affected by this Deed.

36. Liability and Interest in the Fund

Interest

- 36.1 A Member's interest in the Fund is personal to the Member.
- 36.2 Except as provided in this Deed, a Participating Employer or a Member has no right to or interest in any money or other assets of the Fund.

Liability of Participating Employers and Members

- 36.3 The Trustee has no power or authority to enter into any contract that binds, affects or renders liable Participating Employers or Members personally or calls upon them for any payment whatsoever that is in addition to the obligations contained in this Deed or the Deed of Adherence.

37. Change in Employer

New Employer

37.1 If:

- (a) a Participating Employer is dissolved or being a company is wound up or any similar event occurs and another person agrees to undertake the obligation of that Participating Employer in respect of the Fund; or
- (b) another person acquires all or part of the undertaking and assets of a Participating Employer and agrees to undertake the obligations of that Participating Employer or otherwise becomes bound to perform the obligations of the Participating Employer in respect of the Fund,

then that Participating Employer upon the happening of either event is released from all obligations in respect of the Fund and the Deed of Adherence thereafter has effect as if such other person had been a party to the Deed of Adherence instead of the then Participating Employer

Withdrawal of Employer

37.2 The participation of a Participating Employer may be terminated if:

- (a) the Trustee gives 1 month's notice in writing to the Participating Employer;
- (b) where, subject to clause 37.1, a Participating Employer is or includes a body corporate, a resolution is passed or an order is made for its winding up or a scheme of arrangement providing for its dissolution is approved by a Court;
- (c) where a Participating Employer is or includes a partnership, the partnership is dissolved;
- (d) where, subject to clause 37.1, a Participating Employer is or includes a natural person or persons not in partnership, the person or any of those persons dies or becomes bankrupt;
- (e) a Participating Employer ceases to carry on business; or
- (f) a Participating Employer gives 3 months' notice in writing to the Trustee of its intention to cease participation in the Fund provided that if the Participating Employer is not in arrears in respect of its Contributions it may terminate by giving the Trustee 1 month's notice in writing.

The Participating Employer (**Retiring Employer**) ceases its participation in the Fund as and from the date (**Cessation Date**) that the relevant event occurs or expiration of the relevant notice period, as the case may be.

Effect of Termination of Participation

37.3 On the termination of a Participating Employer's participation in the Fund in accordance with clause 37.2:

- (a) no further Employees of that Retiring Employer will be admitted as Members;
- (b) no further Contributions may be made by the Retiring Employer except Contributions that were due on or before the Cessation Date;

and after obtaining such advice (if any) as it considers necessary, the Trustee must determine the amounts held in the Fund that are attributable to the Members who are Employees of the Retiring Employer. Those amounts must be held in terms of this Deed.

Procedure on Termination

37.4 On termination of participation:

- (a) the Trustee must specify a date (**Retirement Date**) upon which the Participating Employer (**Retiring Employer**) must retire;
- (b) the Retiring Employer must immediately pay all arrears, if any, of Contributions up to the Retirement Date;
- (c) the Benefits of each Member employed by the Retiring Employer must be held and applied at the discretion of the Trustee in one or more of the following ways or partly in one way and partly in another:
 - (i) for the Members until they are entitled to payment of the Benefits; or
 - (ii) transferred in accordance with clauses 9.1 or 9.2.

Discharge of Trustee

37.5 The receipt of the trustee of the fund to which an amount is transferred is a complete discharge to the Trustee in respect of all liabilities to the Member employed by the Retiring Employer and persons claiming in or in respect of his or her interest under the Fund,

Notice to Members

37.6 The Retiring Employer must notify the Members employed by it of its ceasing to be a Participating Employer before the Retirement Date.

38. Dissolution of the Fund

Date of Dissolution

38.1 Provided the Active Sponsors have given their prior approval to the winding up of the Fund by a Special Resolution of the Active Sponsors, the Fund must be wound up if:

- (a) there are no Members or Participating Employers and the Trustee resolves to terminate the Fund;
- (b) the liabilities (excluding any liability for the future payment of Benefits) of the Fund exceed the assets of the Fund; or
- (c) for any other reason the Trustee resolves to terminate the Fund.

Notice to Members

38.2 If an event referred to in clause 38.1 occurs, the Trustee must give notice in writing to Members (if any) and all Participating Employers that the Fund will be wound up on a specified date.

Position Following Giving of Notice

38.3 Following the giving of the notices referred to in clause 38.2, the Trustee must continue to administer the Fund in accordance with the provisions of this Deed except that:

- (a) no further Contributions, other than Contributions due on or before the date specified in the notices referred to in clause 38.2, may be accepted in respect of any Member; and
- (b) no new Members or new Participating Employers may be admitted.

Provision for Liabilities and Benefits

38.4 As soon as practicable after the date specified in the notices referred to in clause 38.2 the Trustee must make provision after meeting expenses and liabilities for the following:

- (a) payment of Benefits which on or before giving the notices referred to in clause 38.2 had become payable to a Member; and
- (b) payment of an amount equal to the credit balance of each Member's Member Account in accordance with clause 37.4(c).

Surplus

38.5 If after providing for expenses, liabilities and Benefits in accordance with clause 38.4, a surplus remains, the Trustee may pay, apply or set aside any part of that surplus in the following manner:

- (a) if it is from the income of the Fund - in the manner provided for in clause 27.1;
- (b) if it is from Contributions, including any Contribution that has been transferred to the Reserve Account due to the forfeiture of Benefits under clause 34.4 - in the manner provided for in clause 27A.1;
- (c) if it is not otherwise covered by paragraph (a) or (b) of this clause 38.5 - to any one or more of the following:
 - (i) the Sponsors;
 - (ii) the Members;
 - (iii) the Participating Employers;
 - (iv) the legal personal representatives or the Death Benefit dependants of a Member,

so long as to do so is not inconsistent with the FBT Requirements.¹⁹

Takers in default

38.6 If the Trustee does not exercise the discretion contained in clause 38.5 (or to the extent to which the Trustee does not exercise or does not effectively exercise that discretion), the Trustee holds the surplus equally for the Participating Employers and Members as at the date the notice is given under clause 38.2.

After Payment of Benefits the Fund is Dissolved

38.7 When all Benefits have been paid, transferred or applied in accordance with the provisions of this Deed, and any amount remaining in the Fund has been paid or applied in accordance with clause 38.4 the Fund is deemed to be dissolved.

¹⁹ clause 38.5 was amended by deed of amendment and restatement (document reference 30799151v1)

Final Accounts

- 38.8 Final accounts of the Fund are to be taken and the Trustee must have those accounts audited.

39. Variation of Trust

- 39.1 The Trustee may by written resolution of the Trustee (including a resolution of the board of directors of the Trustee) or by supplemental deed revoke, add to or vary all or any of the trusts, powers, terms and conditions contained in this Deed (or trusts, powers, terms and conditions contained in any variation, alteration or addition made to this Deed) provided that such revocation, addition or variation has the prior approval of the Active Sponsors by way of Special Resolution of the Active Sponsors.
- 39.2 The variations, alterations or additions take effect from the date (if any) specified for that purpose in the resolution or supplemental deed. If no date is stated, then the variations, alterations or additions take effect from the date the resolution or the supplemental deed is made.
- 39.3 No revocation, addition or variation may adversely affect the beneficial entitlement to any amount set aside for any Member or Participating Employer prior to the date of the variation, alteration or addition.
- 39.4 The Trustee will notify the Commissioner of Taxation in writing before giving effect to any resolution or deed revoking, adding or varying this Deed.

40. Notices²⁰

- 40.1 Any notice or document to be given under this Deed may be delivered or sent by prepaid registered or certified mail (or, if to a party situated in another country, by prepaid registered airmail) or telex or facsimile or email to the party to be served at that party's address as that party notifies.
- 40.2 The notice or document is deemed to be served:
- (a) if delivered, at the time of delivery;
 - (b) if posted, at the time it would be received in the normal course of post;
 - (c) if sent by telex or facsimile, on the next business day in the place to which it is addressed; or
 - (d) if sent by email (and the sender receives confirmation from that person or that person's email system that the email has been received), that day if delivered by 4.00 pm on a business day, or the next business day, in any other case.

41. Law of Trust

- 41.1 This Deed is governed by the law of Queensland.

²⁰ Clause amended by a supplemental deed (document reference 19152777)

42. Partial Payment of Benefit

Request for deferral

42.1 If a Benefit is payable, the Member may apply to the Trustee in writing to defer its payment.

Drawdown requests

42.2 Where the Trustee has agreed to defer payment of a Benefit the Member may at any time make a Drawdown Request to the Trustee.

Pay drawdowns

42.3 The Trustee must:

- (a) pay the Drawdown to the Member on a day not less than 30 days from receipt of the Drawdown Request; and
- (b) debit the amount of the Drawdown to the Member's Member Account.

Income on Undrawn balances

42.4 A Member has no entitlement to any income or profit in respect of the undrawn balances of the Benefit to which the Member has otherwise become entitled under the terms of this Deed but in respect of which the Member has applied under clause 42.1 to have the payment deferred.

Definitions

42.5 In this clause 42:

- (a) **Drawdown** means the amount payable under a Drawdown Request unless the Trustee specifies any different amount; and
- (b) **Drawdown Request** means the request by a person to drawdown a part or all of that person's entitlement in the Fund.

Schedule 1**Deed of Adherence**

Title **Deed of Adherence**

Date

Parties **BERT Fund Limited (ACN 607 106 650)** of Level 1, 35 Astor Terrace, Spring Hill, Queensland 4000 (**Trustee**)

Deleted: B.E.R.T. Pty Limited (ACN 010 917 281)

The party described in the Schedule

Of (**Participating Employer**)

Recitals

- A Pursuant to a deed dated 22 December 2003 (**Trust Deed**) **BERT Pty Limited (as the initial Trustee)** established the B.E.R.T. Fund No. 2.
- B The Participating Employer wishes to assume the obligations as a Participating Employer under the terms of the Trust Deed in respect of those of its employees who are Members.

IT IS AGREED**1. Definitions and Interpretation****Definitions**

- 1.1 Unless the context otherwise requires words and expressions defined in the Trust Deed have the same meaning when used in this Deed.

2. Admission of Participating Employer

- 2.1 The Participating Employer:
- (a) is bound by the terms and conditions of the Trust Deed; and
 - (b) accepts all the covenants obligations and responsibilities imposed upon a Participating Employer under the terms of the Trust Deed.

3. Governing law and jurisdiction

- 3.1 The law of Queensland governs this Deed.
- 3.2 The parties submit to the non-exclusive jurisdiction of the courts of Queensland and the Federal Court of Australia.

4. Notices²¹

- 4.1 A notice or other communication (**Notice**) connected with this Deed has no legal effect unless it is in writing and:
- (a) delivered by hand at the address of the addressee set out in this Deed or subsequently notified;
 - (b) sent by post, postage prepaid, to that address;
 - (c) sent by facsimile to the facsimile number of the addressee; or
 - (d) sent by email to the email address of the addressee.
- 4.2 A Notice is deemed given and received:
- (a) if delivered, upon delivery;
 - (b) if sent by post on the 2nd Business Day (at the address to which it is posted) after posting; or
 - (c) if sent by facsimile or email before 4 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- 4.3 Despite clause 4.2(c) a facsimile or email is not deemed given or received unless, in the case of a facsimile, at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages comprised in the Notice have been sent or, in the case of email, the sender receives confirmation from that person or that person's email system that the email has been received.

THE SCHEDULE

Name of Participating Employer	:
ACN (if a company) Business Name (if any) Address	:
Telephone number	:
Facsimile number	:
Email address	:
Contact name	:

²¹ Clause and schedule amended by a supplemental deed (document reference 19152777).

Execution**Executed** as a deed.**Signed sealed and delivered** by

in accordance with section 127 of the
Corporations Act 2001 (Cth) by a director
 and secretary/director:

Signature of director_____
Signature of director/secretary (please strike
out as applicable)_____
Name of director (please print)_____
Name of director/secretary (please print)**Signed sealed and delivered** by

in the presence of:

Signature of witness (a JP or Solicitor)_____
Name of director (please print)_____
Address of Witness

Schedule 2**Application for membership****CONFIDENTIAL**

To: The Trustee
B.E.R.T. Fund No, 2

I, the undersigned person, being eligible, apply for admission to membership of the Fund.

Dated 20 .

Name

Address

Occupation

Date of Birth

Signature

Nominated Dependants

I nominate the following as my Nominated Dependants:

			%of Total
Surname(s)	Given Name(s)	Relationship	Benefit

Schedule 3

Trustee's particular powers

1. Invest

1.1 To invest money which forms part of the Fund in any investments, whether involving liabilities or not, with or without security even though those investments are:

- (a) not income producing;
- (b) of a wasting or speculative nature; or
- (c) not by law authorised for the investment of trust money

2. Purchase and pay for investments

2.1 To make any investments for cash or in consideration of any annuity or otherwise and:

- (a) to make any investment for a sum greater than the amount of the Fund for the time being; and
- (b) to agree to pay for the investment wholly or in part from any future money which may come into its hands including dividends, profits, interest or other income paid or payable in respect of the investment.

3. Vary investments

3.1 To vary or transpose any investments into or for any others of any nature and to vary the terms of or property comprised in any security.

4. Lend

4.1 To advance and lend money to any person with or without security.

5. Borrow and obtain credit

5.1 To raise or borrow money, either alone or jointly with others, from any person.

5.2 To enter into any agreement or arrangement for obtaining credit.

5.3 To secure the repayment of any money or other indebtedness or obligation of the Trustee by mortgage, charge or other security or encumbrance over the whole or any part of the property and future property of the Fund.

5.4 No lender is concerned to enquire:

- (a) as to whether the necessity for any borrowing has arisen;
- (b) as to the purpose for which it is required;
- (c) as to the application of the money borrowed; or

(d) that no more than is wanted is raised.

- 5.5 The obligation of the Trustee for the repayment of the money extends only to the assets for the time being forming the Fund and the Trustee does not incur any obligation in its personal capacity for the borrowings.

6. Limit liability

- 6.1 To enter into any agreement to limit the present or future liability of the Fund including, but not limited to, any agreement relating to interest rate caps, collars, floors or swaps, any \$A forward rate agreement and any other financial risk management agreement and whether varying the terms of any existing financial arrangement or loan or for the purpose of setting up a new financial arrangement or otherwise managing the risk of existing or future financial arrangements.

7. Give guarantees

- 7.1 To give any guarantee or indemnity (alone, jointly or jointly and severally) for the payment of money or the performance of any contract, obligation or undertaking by any person
- 7.2 To give any form of security (alone, jointly or jointly and severally) over all or any of the assets of the Fund for the purposes of securing its obligations in respect of the guarantee or indemnity.
- 7.3 No lender is concerned to enquire as to:
- (a) the necessity for or propriety of any guarantee or indemnity;
 - (b) the purpose for which it is given; or
 - (c) the application of any money borrowed.

8. Joint or third party borrowing

- 8.1 To join with any other person or corporation in executing any mortgage or other document for the purpose of securing the payment of money to;
- (a) the Trustee jointly with any other person; or
 - (b) any other person.

9. Deal with property

- 9.1 To hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, sell, assign, transfer, convey, surrender, let, lease, take on lease, exchange, take and grant licences options or rights in, alienate, mortgage, charge, pledge, reconvey, release or discharge or otherwise deal with any property or any right, estate or interest in it, whether forming part of the Fund or not.

10. Acquire policies of insurance

- 10.1 To effect or acquire any reversionary or deferred property or rights of any description or any life or life endowment or sinking fund or term or other policy of insurance of any nature and at or subject to any premium, whether single or payable periodically, and with or subject to any options, rights, benefits, conditions or provisions.
- 10.2 To pay out of the income or capital of the Fund all sums payable for premiums or otherwise for the effecting or maintenance of any policy of insurance (whether owned by the Trustee or otherwise) or for the exercise or enjoyment of any option, right or benefit under it and any surrender of any policy is deemed to be a sale of that policy.
-

11. Pay outgoings

- 11.1 To pay out the Fund all costs, charges and expenses incidental to:
- (a) the management of the Fund;
 - (b) the exercise of any power, authority or discretion contained in this Deed; or
 - (c) carrying out or performing the Trusts created by this Deed;
- which the Trustee may incur including all income tax or other taxes payable in respect of the Fund, costs in any way connected with preparation and execution of this Deed and all money which the Trustee may be required to pay as settlement, gift, stamp or revenue duties in respect of the Fund or this Deed.
-

12. Take up shares, units or securities

- 12.1 To take up by allotment or purchase any stock, shares, debentures, bonds, notes, units, subunits or other securities (including a minority share interest) with or without deferred, restricted, qualified or special rights issued by:
- (a) any corporation incorporated in any of the states or territories of Australia or elsewhere;
 - (b) any government, semi-governmental municipal authority or corporation in any of the states or territories of Australia or elsewhere;
 - (c) any fixed, flexible or unit trust established in any of the states or territories of Australia or elsewhere; and
 - (d) any limited partnership established in any of the states or territories of Australia or elsewhere.
-

13. Corporate securities

- 13.1 With respect to any corporation or unit trust in which the Trustee holds shares, stock, debentures options, convertible notes, units, subunits (**Securities**) or is otherwise interested or concerned:
- (a) to pay calls on Securities or per Securities to be forfeited and sold;

- (b) to purchase Securities and take Securities of a new issue;
- (c) to lend money to the corporation or unit trust whether secured by debentures or in any
- (d) other way or not secured;
- (e) to attend at meetings personally or by proxy, attorney or representative and vote at the
- (f) discretion of the Trustee;
- (g) to sell Securities;
- (h) to assent to or join in any arrangement relating to the sale, transfer or exchange of any Securities or modifying any rights, privileges or interests in relation to the Securities;
- (i) to agree to any scheme or arrangement for the increase or reduction of the value amount of any Securities or the capital of any corporation or unit trust of which the Securities form the whole or any part or by which the Securities are substituted or given in exchange either wholly or partly for other Securities whether in the same corporation or unit trust or not and for this purpose to deposit, surrender or exchange any script or documents of title relating to the Securities;
- (j) to pay out of the capital of the Fund or the income derived from the Fund any contribution or incur any expense in connection with the scheme or arrangement and generally to manage and deal with the Securities as if the Trustee owned them beneficially;
- (k) to agree, in respect of a winding up, with the liquidator of the corporation or unit trust or any member of the corporation or unit trust or any other person on the division or partition, in kind or specie, of the assets or property of any nature of the corporation or unit trust; and
- (l) to accept any assets and property in payment or satisfaction of any interest of the Trustee in the corporation or unit trust, with power to pay any money by way of equality of division or partition.

14. Futures contracts and options

- 14.1 To engage brokers and commission agents, to vary and determine the terms of any engagement and, either directly or through any broker or agent in any market in any part of the world, to:
- (a) buy, sell, open, close out or otherwise deal in futures contracts of any kind;
 - (b) enter into, vary, exercise, abandon or sell any put or call option or rights;
 - (c) place bids or make offers; or
 - (d) hedge and effect orders including buying, selling, straddle-switch and stop-loss orders.
- 14.2 To tender and take delivery of commodities and currencies which are the subject of any futures contracts or options and otherwise to do and perform all things so as to operate on, utilise or deal with the facilities of any stock or futures exchange.

15. Partition

- 15.1 To partition or subdivide any land or other property which may form part of the Fund and pay any money by way of equality or partition.
-

16. Determine capital or income

- 16.1 To determine:

(a) whether:

- (i) any property;
 - (ii) any increase or decrease in the amount, number or value of any property holdings of property; or
 - (iii) any receipt or payment from, for or in connection with any property;
- is treated as and credited or debited to capital or to income and out of what part of the Fund; and

- (b) whether any expense or outgoing is borne by capital or income.
-

17. Open bank accounts

- 17.1 To open in the name of:

- (a) the Trustee;
- (b) a person as nominee of the Trustee; or
- (c) the Trustee and another jointly;

any cheque, savings or other account with any bank or financial institution, wherever situated, with full power for the person in whose name the account is opened to operate on the account including power to sign, draw and endorse cheques and other negotiable or transferable instruments on the account and to close the account.

18. Grant options

- 18.1 To grant options in respect of any part of the Fund or any assets held subject to this Deed to any person.
-

19. Become or appoint directors

- 19.1 To become a director of any corporation in which money forming a part of the Fund is invested.
- 19.2 To appoint any other person to act as director of the corporation.
- 19.3 To receive or permit any person appointed by the Trustee as director (including any director or shareholder of the Trustee) to receive the remuneration attached to the office without accounting to the Fund for that remuneration.

- 19.4 Any person appointed as a director may become qualified to act as a director by the holding in his or her name of shares forming part of the Fund, provided that the Trustee or person in whose name shares are so held executes all proper declarations of trust for any shares held by that person on behalf of the Fund and accounts to the Fund for all dividends and bonuses.

20. Do all things incidental

- 20.1 To take action for the protection of any part of the Fund and to do all other things which may be incidental to the exercise of the powers and authorities conferred on the Trustee by this Deed.

21. Act upon advice

- 21.1 To obtain and act upon the opinion or advice, of any financial adviser, lawyer, valuer, surveyor, broker, auctioneer or other expert or professional.
- 21.2 Nothing in paragraph 21.1 prohibits or impedes the Trustee from applying to a court.

22. Take opinion of Counsel

- 22.1 Without derogating from the generality of paragraph 21, to take and act upon the opinion (given in writing) of counsel, of not less than 5 years' standing practising in a country where the Fund or any part of the Fund is invested, in relation to the interpretation or effect of this Deed or any other document or statute or as to the administration of the Fund without being liable to any of the Members or Employers in respect of any act done by the Trustee in accordance with the opinion.
- 22.2 Nothing in paragraph 22.1 prohibits or impedes the Trustee from applying to a court.

23. Permit nominee to hold assets

- 23.1 To permit any assets of the Trust to be held or registered in the name of any nominee of the Trustee.
- 23.2 To deposit securities and any deeds and other documents belonging to or related to the Fund with any bank, solicitor or other custodian.

24. Take on lease

- 24.1 To take on lease or hire purchase any property including plant, machinery, goods, equipment, articles and chattels of every kind or description.

25. Draw bills of exchange

- 25.1 To draw, make, accept, endorse, discount, sell, purchase, issue and otherwise deal with promissory notes, bills of lading, bills of exchange and other negotiable transferable instruments and in particular commercial bills.
- 25.2 To secure any liability of the Trustee in respect of any matter referred to in paragraph 25.1 by way of mortgage charge, lien or otherwise over the whole or any part of the Fund.

26. Deal with distributions from other trusts

- 26.1 To treat as income or as capital any amounts or property which the Trustee in its capacity as trustee receives as a beneficiary under any other trust whether the amounts or property constituted capital or income under the other trust or was distributed to the Trustee by the trustee of the other trust as capital or income.

27. Blend funds

- 27.1 To blend, for the purposes of investment, any money which the Trustee holds upon the Trust with other money (whether or not the money is subject to any other settlement or trust).
- 27.2 To join with any other person in making common investments.

28. Employ agents

- 28.1 To employ any managers, agents, advisers, solicitors, accountants or other persons to transact any business or to do any act required to be done in connection with the administration of the Trust including the receipt and payment of money
- 28.2 To determine the remuneration to be paid to them.

29. Attorney

- 29.1 To appoint any person as representative or attorney of the Trustee for the purpose of executing any document which the Trustee is permitted or authorised to execute by this Deed or by law and to revoke the appointment.

30. Delegate

- 30.1 To delegate in writing the exercise of all or any of the powers or discretionary authorities conferred by this Deed on the Trustee and to execute any power of attorney or other instrument necessary to effectuate that delegation.

31. Manage

- 31.1 To manage any property that forms part of the Fund.

32. Compromise

- 32.1 To compromise and settle all matters arising in relation to the Trust or the Fund and compromises and settlements are binding on Beneficiaries.

33. Pay for assistance

- 33.1 To employ and pay for such professional or other assistance as the trustee may deem requisite to the discharge of the duties of the Trust including assistance from any person who is an

employee of the Trustee or (where the Trustee is a corporation) a director and/or a shareholder of the Trustee.

34. Institute and defend proceedings

- 34.1 To institute, join in and defend any legal arbitration or mediation proceeding.
- 34.2 To proceed to the final determination of the proceeding.
- 34.3 To discontinue the proceeding and any other claim or demand.

35. Apply for grant

- 35.1 To apply for, acquire and exercise any charter, licence, legislative enactment; power, authority, franchise, concession, right or privilege from any government or authority or any corporation or other public body.

36. Construct

- 36.1 To build, demolish, alter, repair, extend, rebuild, improve, reconstruct and develop any property included in the Fund.
- 36.2 To construct, improve, maintain, develop, work, manage, carry out or control any buildings, works, factories, mills, roadways, tramways, railways, branches or sidings, bridges, reservoirs, water courses, waterways, warehouses, electric workshop stores or other works and conveniences.
- 36.3 To contribute to or assist in the construction, improvement, maintenance, development, working, management, or carrying out the control of the works or conveniences.

37. Procure recognition

- 37.1 To procure the Trustee (should the Trustee be a corporation) to be registered or recognised in a country or place.



**Deed poll - amendment and
restatement of the B.E.R.T.
Fund No. 2 Trust Deed**

BERT Fund Limited ACN 607 106 650

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Title Deed poll - amendment and restatement of the B.E.R.T. Fund No. 2 Trust Deed

Date 10/10/23

Parties BERT Fund Limited (ACN 607 106 650) of Level 1, 35 Astor Terrace, Spring Hill, Queensland 4000

Recitals

- A Clause 39.1 of the B.E.R.T. Fund No 2 trust deed provides the Trustee with the power to revoke, add to or vary all or any of the trusts, powers, terms and conditions contained in the B.E.R.T. Fund No 2 trust deed by a supplemental deed provided that such revocation, addition or variation has the prior approval of the Sponsors by way of a Special Resolution of the Sponsors.
- B By a Special Resolution of the Sponsors, the Sponsors have approved the variation to the B.E.R.T. Fund No 2 trust deed as set out in this document.
- C The Trustee has notified the Commissioner of Taxation of the proposed variation of the B.E.R.T. Fund No 2 trust deed as set out in this document in accordance with clause 39.4 of the Trust Deed.

Operative provisions

1. Definitions and interpretation

Definitions

- 1.1 In this document, terms defined in the B.E.R.T. Fund No 2 trust deed have the same meanings when used in this document, and

B.E.R.T. Fund No 2 trust deed means the redundancy fund trust deed for the B.E.R.T. Fund No 2 dated 22 December 2003 made by BERT Pty Limited and amended from time to time including the deed of amendment and restatement made by BERT Pty Limited dated 16 July 2015 and the deed of retirement and appointment of trustee also dated 16 July 2015 pursuant to which BERT Fund Limited was appointed trustee in place of BERT Pty Limited with effect from 10am on 29 June 2015.

Effective Date means [●].

10 October 2023

Interpretation

- 1.2 Clause 1.3 of the B.E.R.T. Fund No 2 trust deed is incorporated in this document as if it was set out in full in this document.

2. Amendment to B.E.R.T. Fund No 2 trust deed

Amendment and restatement

- 2.1 With effect from the Effective Date, the B.E.R.T. Fund No 2 trust deed is amended (as identified in redline and strike-out in the document set out in the Annexure to this document) and restated so that it is in the form attached in the Annexure to this document.

Amendment not to affect validity rights or obligations

- 2.2 The amendment and restatement of the B.E.R.T. Fund No 2 trust deed does not affect the validity or enforceability of the B.E.R.T. Fund No 2 trust deed.

References

- 2.3 On and from the Effective Date, any reference in any related document (other than this document) to the B.E.R.T. Fund No 2 trust deed is a reference to the B.E.R.T. Fund No 2 trust deed as amended and restated under this document under clause 2.1.

Execution

Executed as a deed poll.

Signed sealed and delivered by
BERT Fund Limited ACN 607 106 650
 by

Personal Information

Signature of director

JOHN CRUTAN

Name of director (please print)

Personal Information

Signature of director/secretary (please
 strike out as applicable)

ROD McDONALD

Name of director/secretary (please print)

Annexure 1

Redundancy fund trust deed - B.E.R.T. Fund No. 2

**Redundancy fund trust deed
- B.E.R.T. Fund No. 2 -
[incorporating 20223
amendments]**

BERT Fund Limited ACN 607 106 650

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Title **Redundancy fund trust deed**

Date 22 December 2003

Parties **BERT Fund Limited** (ACN 607 106 650) of Level 1, 35 Astor Terrace, Spring Hill, Queensland 4004 with effect from 10.00am on 29 June 2015 (**Trustee**)¹

Recitals

- A Various Industrial Instruments applicable to the Construction Industry provide for the payment of amounts by Employers to Employees upon those Employees becoming Redundant.
- B The Fund has been established to receive Contributions made on or after 1 April 2003, and hold them until the Employees are made Redundant or otherwise become entitled to payment of a Benefit

Operative provisions

1. Interpretation

Statutory Definitions

- 1.1 Any word or expression defined in the *Income Tax Assessment Act* or the *Fringe Benefits Tax Assessment Act* which is used but not defined in this Deed has the meaning given to that word or expression in the *Income Tax Assessment Act* or the *Fringe Benefits Tax Assessment Act* (as the case may be).

Definitions

- 1.2 Unless the context otherwise requires:

Accounting Period means any of:

- (a) the period from the date of this Deed to 30 June next;
- (b) each following 12 months ending on 30 June in each year until 30 June immediately preceding the Vesting Date; and
- (c) the period from 1 July immediately preceding the Vesting Date to the Vesting Date, but the Trustee may alter the Accounting Period to a period of 12 months ending on any other date and if it does so the reference to 30 June and 1 July must be altered appropriately.

Active Employer Organisation means Queensland Master Builders Association Industrial Organisation of Employers and

- (a) any other employer organisation which, with the written agreement of all Active Sponsors, is accepted as an Active Employer Organisation;

¹ [Description of the trustee was amended by deed of amendment and restatement \(document reference 416258768 – v2\)](#)

- (b) any other employer organisation which, by reason of reorganisation or amalgamation of an Active Employer Organisation is the successor in whole or in part of that Active Employer Organisation; and
- (c) any Federally or Queensland registered counterpart of an Active Employer Organisation provided the Federally registered counterpart is only an Active Employer Organisation if both the Queensland and Federal counterparts confirm this in writing to all other Active Sponsors and then the Federally registered body is an Active Employer Organisation to the exclusion of (and not in addition to) its Queensland registered counterpart.

Active Sponsor means the Active Employer Organisation and the Active Unions but does not include:

- (a) any Active Employer Organisations or Active Union which, by notice given by it to the other Active Sponsors, and the Trustee has ceased to be an Active Sponsor; and
- (b) any Active Employer Organisation or Active Union in respect of which, by agreement of a Special Resolution of the Active Sponsors, is determined no longer to be an Active Sponsor.

Active Union means each of:

- (a) the Construction, Forestry, Mining and Energy, Industrial Union of Employees, Queensland;
- (b) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, Plumbing Division, Queensland Branch;
- (c) any other union of employees which, with the written consent of all Active Sponsors, is accepted as an Active Union;
- (d) any other union of employees which, by reason of reorganisation or amalgamation of an Active Union, is the successor of the whole or part of that Active Union; and
- (e) any Federally or Queensland registered counterpart of a Union provided that the Federally registered counterpart is only a Union if both the Queensland and Federal counterparts confirm this in writing to the Active Sponsors (which they are deemed to have done in relation to any Federally registered body described in this clause) and then the Federally registered body is an Active Union to the exclusion of (and not in addition to) its Queensland registered counterpart.

Apprentice means a person who is registered as an apprentice or trainee with an apprenticeship directorate or any other equivalent body approved by the Trustee.

Approved Institution means a charitable or public educational institution or fund established for public charitable purposes:

- (a) approved by the Trustee on the basis that the relevant institution or fund has objects likely to benefit Members or participants in the Construction Industry; and
- (b) the institution or fund has been endorsed as exempt from income tax by the Commissioner under subdivision 50-B *Income Tax Assessment Act 1997*.

Approved Superannuation Fund² means, as the context requires, the superannuation fund that has been named in an industrial instrument.

Auditor means the auditor appointed by the Trustee.

Award³ means the Construction Worker Level 3/Engineering Construction Worker Level 3 (Engineering Construction Tradesperson Level 1) (CW/ECW 3) in the Building and Construction General On-site Award 2010.

Benefit means any amount payable by the Trustee out of the Fund to or in respect of a Member.

B.E.R.T. Fund means the fund established by the B.E.R.T. Fund Deed, and of which the B.E.R.T. Pty Ltd is the trustee.

B.E.R.T. Fund Deed means the deed for the creation of the B.E.R.T. Fund executed by the Trustee on 16 May 1996.

B.E.R.T Pty Ltd means B.E.R.T. Pty Limited ACN 010 917 281.

Carpenter's Rate⁴ means the contribution rate, expressed on a weekly basis, which may be made to an approved worker entitlement fund set out in the Award (as amended or re-enacted from time to time) or any industrial instrument which replaces the Award for the purposes of ensuring that the obligation under the Award to make payments when an employee ceases employment is met.

Children includes an adopted child, step-child and ex-nuptial child.

Commencement Date means 1 April 2004.

Construction Industry means those sectors of commerce or industry commonly known and characterised as being associated or connected with or incidental to:

- (a) industrial, commercial or residential construction;
- (b) civil engineering construction; and
- (c) mechanical engineering construction,

and includes all services and maintenance associated or connected with or incidental to any of those forms of construction and also includes each and every one of those sectors or any of those sectors or allied industries whether work is performed on site or off site.

Contribution⁵ means a payment to the Fund made in accordance with this document.

Death Benefit for a Member, means a Benefit payable following the death of the Member.

Death Benefit dependant has the meaning given to that term section 302-195 in the *Income Tax Assessment Act 1997*⁶.

Deed means this document, including any Schedule or Annexure to it.

Deed of Adherence means a deed substantially in terms of the deed set out in Schedule 1.

² Definition inserted by a supplemental deed (document reference 8759019).

³ Definition inserted by a supplemental deed (document reference 13416673).

⁴ Definition inserted by a supplemental deed (document reference 13416673).

⁵ Definition inserted by a supplemental deed (document reference 13416673).

⁶ Definition inserted by deed of amendment and restatement (document reference 30799151v1)

Employee means a person employed principally on production work within the Scope of the Deed by a Participating Employer and includes Apprentices.

Employer means a person required to pay Contributions in respect of its Employees.

Employer Organisation means Queensland Major Contractors Association and:

- (a) any other employer organisation which, with the written agreement of all Active Sponsors is accepted as an Employer Organisation;
- (b) any other employer organisation which by reason of the reorganisation or amalgamation of an Employer Organisation is the successor in whole or in part of that Employer Organisation; and
- (c) any federally or Queensland registered counterpart of an Employer Organisation provided the federally registered counterpart is only an Employer Organisation if both the Queensland and federal counterparts confirm this in writing to all Active Sponsors and then the federally registered body is an Employers' Organisation to the exclusion of (and not in addition to) its Queensland registered counterpart.

Equalisation Account means the account described in clause 10.4.

FBT Requirements means the requirements of which the Commissioner of Taxation must be satisfied under the *Fringe Benefits Tax Assessment Act 1986* in order for a fund to be prescribed as an 'approved worker entitlement fund'.

Fund means the redundancy fund established by this Deed.

Fund Administrator means a person appointed in accordance with clause 16.1.

Income Account means the account described in clause 10.2.

Job-share Basis means:

- (a) in respect of a Member whose employment is covered by an industrial instrument and the concept of job sharing is contemplated by, and dealt with in, that industrial instrument, then as that term, or its equivalent, is defined, or described, in that industrial instrument; and
- (b) in respect of a Member whose employment is either:
 - (i) not covered by an industrial instrument; or
 - (ii) covered by an industrial instrument but that industrial instrument does not contemplate or deal with the concept of job sharing,

an employment arrangement whereby more than one Employee is engaged on a permanent basis by the same Employer to share one full-time position in a Week of Service, but excludes, for the avoidance of doubt any Employee who is engaged on a casual basis.

Job-share Member means a Member who is employed with an Employer on a Job-share Basis which falls within either:

- (a) paragraph (a) of the definition of that term in this clause 1.2; or
- (b) paragraph (b) of the definition of that term in clause 1.2 and that employment arrangement has been approved by the Trustee (via a resolution of its board of

directors in accordance with its constitution) and that approval has not subsequently been revoked or withdrawn.

Job-share proportion means, in relation to a Job-share Member, in a Week of Service, the fraction calculated as follows:

A/B

Where:

A = the number of hours that Job-share Member is engaged to be employed by their Employer in that Week of Service.

B = the number of hours set by the Trustee (via resolution of its board of directors in accordance with its constitution), from time to time, as being the equivalent of the minimum number of ordinary hours to be worked by a full-time equivalent Employee performing the work undertaken by that Job-share Member, and until otherwise set is 36.

Member means an Employee who has been accepted by the Trustee as a Member who has not ceased to be a Member pursuant to clause 4.5.

Member Account means one of the accounts described in clause 10.1.

Minimum Contribution⁷ means, for each Week of Service:

- (a) in respect of a Member, other than a Job-share Member or an Apprentice, the greater of:
 - (i) the amount set by the Trustee (via a resolution of its board of directors in accordance with its constitution) from time to time; or
 - (ii) the contribution rate specified in an industrial instrument, expressed on a weekly basis, which applies to that Member;
- (b) in respect of a Job-share Member, an amount calculated in accordance with the following formula:

A x B

Where:

A = the amount of the Minimum Contribution for that Week of Service which would have applied to that Job-share Member if they were employed, rather than on a Job-share Basis, as the sole Employee to perform the relevant full-time position, in accordance with paragraph (a) of this definition.

B = the Job-share proportion applicable to that Job share Member for that Week of Service.

- (a) in respect of a Member other than an Apprentice the greater of:
 - (i) the amount set by a Special Resolution of the Active Sponsors and until otherwise set is \$75.00; or

⁷ Definition amended by a supplemental deed (document reference 1102610) and subsequently by a supplemental deed (document reference 13416673).

- (ii) ~~the contribution rate specified in an industrial instrument, expressed on a weekly basis, which applies to the Member provided that contribution rate is no less than an amount set by the formula:~~

$$A \times 1.75$$

~~Where:~~

~~A = the Carpenter's Rate;~~

~~(b)(c)~~ in respect of an Apprentice under a 4 year apprenticeship, an amount equal to the following percentages of the Minimum Contributions for a Member:

- (i) for a first year Apprentice - 40%;
- (ii) for a second year Apprentice - 55%;
- (iii) for a third year Apprentice - 75%;
- (iv) for a fourth year Apprentice - 90%; and

~~(e)(d)~~ in respect of any other Apprentice, an amount equal to the proportion of the Minimum Contribution for a Member which their annual salary bears to the average salary payable to those who have completed their apprenticeship in that field of endeavour.

Net Income means the amount calculated as the Net Income of the Fund for an Accounting Period in accordance with section 95(1) of the *Income Tax Assessment Act* unless the Trustee determines in respect of any Accounting Period that the Net Income for that Accounting Period means the income of the Fund calculated in accordance with established accounting principles and trust law.

Nominated Dependant means, in respect of a Member:

- (a) the Death Benefit dependant of that Member nominated by the Member as the person that the Member would prefer to receive the amount standing to his or her Member Account if the Member dies or otherwise ceases to be entitled to his or her Benefit; or
- (b) if no person is so nominated or that nominated person has not survived the Member, then the first person identified in section 302-195 of the *Income Tax Assessment Act 1997* is relation to that Member in the order set out in that section who has survived the Member and if more than one person who so qualifies, all those persons equally.⁸

Participating Employer means any Employer admitted under clause 3.1 who has not ceased to be a Participating Employer pursuant to clause 37.

Redundancy means that termination of employment of a Member in circumstance where the work the Member has been performing is no longer required to be done by anyone and 'Redundant' has a corresponding meaning.

Reserve Account means the account maintained in accordance with clause 10.3.

Scope of the Deed means:

- (a) all work in industrial, commercial or multi-residential building construction;

⁸ Definition amended by deed of amendment and restatement (document reference 30799151v1)

- (b) any other work within the Construction Industry as set out an agreement between Active Sponsors;
- (c) any other work within the Construction Industry as agreed between an Employer and an Active Union;
- (d) any other work within the Construction Industry where the Employer makes a Contribution on behalf of an Employee; and
- (e) any work where the Employer makes a Contribution on behalf of an Employee.

Small Amount means an amount determined by the Trustee and until otherwise determined is an amount equal to twice the Minimum Contribution.

Special Resolution of fee Active Sponsors means a resolution:

- (a) signed by not less than 75% of the Active Sponsors;
- (b) signed by more than 50% of the Active Sponsors who are Active Employer Organisations; and
- (c) signed by more than 50% of the Active Sponsors who are Active Unions

Sponsors means the Employer Organisations and the Unions but does not include

- (a) any Employer Organisation or Union which by notice given by it to the Active Sponsors and the Trustee has ceased to be a Sponsor; or
- (b) any Employer Organisation or Union in respect of which by agreement of a Special Resolution of the Active Sponsors is determined no longer to be a Sponsor,

Spouse means, in relation to a Member, the husband or wife of that Member, or another person who, in the opinion of the Trustee, although not legally married to the Member lives (or in the case of a deceased Member was at the date of death of the Member living) with the Member on a bona fide domestic basis as the husband or wife of the Member.

Total and Permanent Disablement in relation to a Member means his or her incapacity to the extent that in the reasonable opinion of the Trustee (after considering such medical and other evidence or advice as it may require) the Member is unable ever again to undertake any form of remunerative work in the Construction Industry for which he or she is reasonably equipped by educational training or experience.

Trustee means the trustee for the time being of the Fund.

Unions means each of:

- (a) Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland;
- (b) Australian Building Construction Employees and Builders Labourers Federation Union of Employees (Queensland Branch); and
- (c) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, Plumbing Division, Queensland Branch

and

- (d) any other union of employees which, with the written consent of all Active Sponsors, is accepted as a Union;

- (e) any other union of employees which by reason of the reorganisation or amalgamation of a Union is the successor of the whole or part of that Union; and
- (f) any federally or Queensland registered counterpart of a Union provided the federally registered counterpart is only a Union if both the Queensland and federal counterparts confirm this in writing to all Active Sponsors (which federally they are deemed to have done in relation of any federally registered body described in this clause) and then the federally registered body is a Union to the exclusion of (and not in addition to) its Queensland registered counterpart.

Vesting Date means the first of the following to occur:

- (a) 80 years from the date of this Deed; and
- (b) an earlier date nominated by the Trustee as the Vesting Date with the prior approval of a Special Resolution of the Active Sponsors.

Week of Service means a week where on any day of the week:

- (a) the Member is employed by the Participating Employer; or
- (b) for which the Member is entitled to receive workers compensation in respect of any injury or other event occurring whilst in the employ of the Participating Employer up to a maximum of 26 weeks, whether compensation payments are made in one continuous period or not; or
- (c) where the Member is on annual leave, long service or other paid leave, and a week falls in a month where Friday falls in that month.

Interpretation

1.3 Reference to:

- (a) one gender includes the other gender;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a person includes a body corporate and includes a person (in this extended sense) in the capacity of a trustee;
- (d) a party includes the party's executors, administrators, successors and permitted assignors; and
- (e) a statute, regulation or provision of a statute or regulation (Statutory Provision) includes:
 - (i) that Statutory Provision as amended or re-enacted from time to time; and
 - (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision.

1.4 If a party consists of more than one person, this Deed binds them jointly and each of them severally.

1.5 The schedules form part of this Deed.

1.6 Headings are for convenience only and do not affect the interpretation, or form part, of this Deed.

- 1.7 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- 1.8 Any references to clauses and schedules are construed as references to clauses of and schedules to this Deed.

Severance

- 1.9 If any provision or part of a provision of this Deed is or becomes void, invalid or unenforceable for any reason, it must be severed from this Deed but the remainder of this Deed continues in full force and effect and is unaffected by the severance.

Perpetuity Period

- 1.10 All powers and dispositions made by or under this Deed which, but for this provision, would or might be exercisable vest or take effect after the Vesting Date are exercisable only until the Vesting Date or vest or take effect on the Vesting Date.

2. Constitution of Fund

Establishment of Fund

- 2.1 The Trustee accepts its appointment as trustee of the Fund.

Name of Trust

- 2.2 The name of the Fund is the B.E.R.T. Fund No. 2.

Declaration of Trust

- 2.3 The Trustee holds the Fund and its income upon the trusts and subject to the provisions contained in this Deed.

2A Compliance with Fringe Benefits Tax Assessment Act to ensure status as an approved worker entitlement fund

- 2A.1 The Trustee will have regard to the FBT Requirements in administering the Fund.
- 2A.2 The Trustee need not comply with an FBT Requirement if it is not mandatory to do so in order for the Fund to be an *approved worker entitlement fund*.

3. Participation

Trustee May Admit Participating Employers

- 3.1 The Trustee may admit an Employer as a Participating Employer if:
- (a) the Trustee receives payment from that Employer on behalf of its Employees for the purposes of being credited against a Member Account established or to be established for those Employees, even though that Employer has not at that stage executed a Deed of Adherence;
 - (b) the Employer lodges with the Trustee a completed Deed of Adherence; or

- (c) the Employer is a Participating Employer under the B.E.R.T. Fund as at the day immediately prior to the Commencement Date.

Participating Employers Bound by Deed

- 3.2 Each Participating Employer is bound by the terms of this Deed.

Admission - Participating Employers

- 3.3 The Trustee must notify an Employer in writing of its admission as a Participating Employer.

Commencement of Participation

- 3.4 An Employer becomes (or is deemed to become) a Participating Employer:
 - (a) if admitted under clause 3.1(a), on the date of receipt of payment by the Trustee of amounts required under the industrial instrument;
 - (b) if admitted under clause 3.1(b), on the date specified in the Deed of Adherence, or if no date is specified, then on the date of receipt of the Deed of Adherence; and
 - (c) if admitted under clause 3.1(c), on the Commencement Date.

Member Identification

- 3.5 The Participating Employer must provide to the Trustee the information it requires to identify each Member in respect of whom Contributions are to be made by the Participating Employer.

4. Membership of Fund

Eligibility for Membership

- 4.1 Any Employee of a Participating Employer may become a Member. Each eligible Employee of a Participating Employer admitted under clause 3.1(c) who is a member of the B.E.R.T. Fund is deemed to be a member as and from the Commencement Date.

Trustee May Reject or Accept

- 4.2 On the receipt of an application for membership, the Trustee may admit or reject the applicant.

Commencement of Membership

- 4.3 The Member is deemed to have joined on the date determined by the Trustee.

Conditions of Membership

- 4.4 The Trustee may impose conditions on:
 - (a) a Member's admission;
 - (b) his or her rights and duties as a Member; and
 - (c) Benefits for that Member.
- 4.5 The Trustee may remove or vary any of these conditions.

Membership Ceases

- 4.6 A person ceases to be a Member when the Trustee so resolves once all that Member's entitlements have been:
- (a) paid or forfeited; or
 - (b) transferred to another fund in accordance with this Deed.

5. Fund Information

Information to Prospective Participating Employer

- 5.1 The Trustee must give to an Employer who is a prospective Participating Employer a written statement containing details of:
- (a) the kinds of Benefits;
 - (b) the conditions relating to Benefits; and
 - (c) the method of determining entitlements.

Member Information

- 5.2 The Trustee must give to a Member:
- (a) on request and payment of a reasonable fee determined by the Trustee, a copy of this Deed and any alteration to the Deed;
 - (b) within 6 months after the end of each Accounting Period, a statement showing the balance standing to the Member Account for that Member at the end of the Accounting Period; and
 - (c) on payment of an amount standing to the credit of a Member Account, a written statement setting out details of the payment made.

Participating Employer Information

- 5.3 The Trustee must give to a Participating Employer;
- (a) on request and payment of a reasonable fee determined by the Trustee, a copy of this Deed and any alteration to the Deed; and
 - (b) following the end of each month in which a Participating Employer makes a Contribution, a record showing the amount of that Contribution; and
 - (c) within 3 months after the end of each Accounting Period, an annual statement of Contributions made during the Accounting Period.

Trust Deed

- 5.4 A copy of this Deed must be kept by the Trustee at its head office and must be open to inspection by the Participating Employers and Members at all reasonable times

6. Contributions

Redundancy Contributions

- 6.1 Subject to the terms of an industrial instrument which applies to a Member, unless;
- (a) that industrial instrument requires the Minimum Contribution be paid to the Approved Superannuation Fund; and
 - (b) the Member has in aggregate in his or her Member Account and his or her member account in the B.E.R.T. Fund more than the minimum set by the industrial instrument; and
 - (c) the Member elects by notice in writing to the Trustee to have the Minimum Contribution paid to the Approved Superannuation Fund on his or her behalf,

a Participating Employer must pay to the Trustee, or by it, within 15 days⁹ after the end of each month an amount equal to the Minimum Contribution for each Member for each Week of Service in respect of which Contributions are payable. If the provisions of clauses 6.1(a), 6.1(b) and 6.1(c) are not collectively fulfilled and the moneys actually paid to the Approved Superannuation Fund, then the Minimum Contribution remains payable to the Trustee.¹⁰

Productivity and Other Payments

- 6.2 A Participating Employer may pay to the Fund on behalf of its Employees who are Members any additional amount:
- (a) agreed with its Employees; or
 - (b) as it determines.

Particulars

- 6.3 The Participating Employer must inform the Trustee or if directed by the Trustee, the Fund Administrator, on which Member's behalf the Contributions are paid

Interest

- 6.4 If a Participating Employer defaults in the payment of Contributions due in accordance with clause 6.1 it must pay interest from the date the Contributions became due until the date on which they are paid at a rate determined by the Trustee to be equal to 2% over the overdraft rate as advised by the Commonwealth Bank of Australia.

Recovery of Expenses

- 6.5 A Participating Employer must reimburse the Trustee in respect of all reasonable expenses (including collection fees) incurred by the Trustee (or on behalf of the Trustee by the Fund's Administrator or otherwise) in obtaining payment by any Participating Employer of any outstanding Contribution.

7. Information from Members

- 7.1 A Member when requested by the Trustee must:

⁹ Clause 6.1 was amended by a deed of amendment and restatement (document reference 416258768 -v2)

¹⁰ Clause 6.1 was amended by a supplemental deed (document reference 8759019).

- (a) furnish any information the Trustee considers necessary for the purposes of the Fund; and
 - (b) submit to medical examinations as required by the Trustee by a registered medical practitioner or therapist nominated by the Trustee.
- 7.2 If a Member fails to comply with the provisions of clause 7.1, the Trustee may withhold any Benefit in respect of that Member until the Member complies.
- 7.3 Where a Member furnishes information affecting the Benefit payable to the Member and the information is incorrect or misleading, or any relevant information is withheld, the Trustee may alter the Benefit to amounts that would have applied had full and accurate information been supplied.

8. Transfer from Another Redundancy Fund

- 8.1 The Trustee may accept into the Fund in respect of a Member an amount transferred from another similar fund in which the Member or an Employer of that Member has participated. A Member's Account must be opened for each Member whose account is transferred and the benefits credited to that account. Amounts transferred into the Fund are to be administered according to the terms of this Deed and not on the terms of the deed which applied in respect of the similar fund

9. Transfer of Benefit to New Fund

Transfer Requested by Member

- 9.1 On the written request of the Member, an amount equal to the positive balance of a Member Account may be paid or transferred to the trustee of another approved worker entitlement fund.

Transfer of Benefit by Trustee

- 9.2 The Trustee may transfer to another approved worker entitlement fund an amount no less than the positive balance of a Member's Member Account provided the Trustee is satisfied that the Member's rights and interests in respect of his or her entitlements under the Fund will not be adversely affected by the transfer.

Receipt of Trustee

- 9.3 The receipt of the trustee of another approved worker entitlement fund to which the transfer is made is a complete discharge to the Trustee in respect of any money or asset paid or transferred.

10. Accounts

Member Accounts

- 10.1 A Member Account must be established for each Member showing:
- (a) any amount paid or transferred into the Fund in respect of a Member under clause 8;
 - (b) Contributions made in respect of that Member; and

- (c) sums added to or deducted from the account under the provisions of this Deed.

Income Account

- 10.2 An Income Account must be established All income and profits of the Fund must be credited to the Income Account. The following must be debited against the Income Account:
- (a) any loss sustained on the disposal of any investment of the Fund;
 - (b) any Fund expenses which are not debited to a Member Account;
 - (c) any amount of Taxation which is not debited to a Member Account;
 - (d) the allocation of income in accordance with clause 27.1;
 - (e) any amount credited to the Reserve Account; and
 - (f) any amount credited to the Equalisation Account.

Reserve Account

- 10.3 A Reserve Account must be established showing:
- (a) any amount of income accumulated by the Trustee in accordance with clause 27.1 to be applied to the Reserve Account; and
 - (b) any forfeited Benefits under clause 34.4;
 - (c) sums added to or deducted from the Reserve Account (including costs and expenses of the Fund) under the provisions of this Deed; and
 - (d) any amounts paid, applied or set aside from the Reserve Account under clause 27A.2.
- 10.4 The Trustee must maintain records to separately identify any amounts credited to the Reserve Account which represent Contributions (for example Contributions that are transferred to the Reserve Account due to being forfeited Benefits under clause 34.4).¹¹

Equalisation Account

- 10.5 An Equalisation Account must be established. The Equalisation Account must be credited with any amount of income accumulated by the Trustee in accordance with clause 27.1 to be applied to the Equalisation Account The Equalisation Account must be debited with any amounts paid, applied or set aside from the Equalisation Account under clause 27A.3.

Other Accounts and Registers

- 10.6 The Trustee must keep:
- (a) a register of Participating Employers and Members showing names addresses and such information as is relevant to the administration of the Fund; and
 - (b) accounts as may be necessary to record the financial transactions by the Trustee and to record the Benefits for Members.

¹¹ Clause 10.3 was amended by deed of amendment and restatement (document reference 30799151v1)

11. Accounting Report

- 11.1 After the close of each Accounting Period, the Trustee must prepare a written accounting report (prepared in accordance with generally accepted accounting principles and procedures) for the period, consisting of a statement of income and expenditure and a balance sheet, and distribute copies to the Active Sponsors.

12. Audit of Accounts

- 12.1 The accounts of the Fund must be audited at least once a year by a qualified auditor appointed by the Trustee.
- 12.2 The remuneration for the auditor is to be determined by the Trustee and paid out of the Fund.

13. Qualification of Trustee

Eligibility to be Trustee

- 13.1 The Trustee must be a limited liability company in which:
- (a) the Active Unions hold shares carrying an entitlement to 50% of all voting rights at a general meeting; and
 - (b) the Active Employer Organisations hold shares carrying an entitlement to the remaining 50% of all voting rights at a general meeting.

14. Powers of Trustee

General Power

- 14.1 Subject to clauses 14.2, the Trustee has all the powers over and in respect of the Fund and the assets of the Fund and using the assets and credit of the Fund and doing anything else on behalf of the Fund which it could exercise and do if it was the absolute and beneficial owner of the Fund and the assets of the Fund.
- 14.2 The Trustee must exercise its powers in a manner consistent with or permitted by the FBT requirements.

Particular Powers

- 14.3 Subject to clause 14.2 but without limiting the general power contained in clause 14.1, the Trustee has the particular powers referred to in Schedule 3.

Discretion in Exercise of Powers

- 14.4 Subject to clause 14.2, the Trustee may exercise the powers referred to in Schedule 3 as the Trustee thinks fit and may enter into any transaction in exercise of those powers on such terms and conditions as the Trustee thinks fit.

Statutory Powers

- 14.5 The Trustee has the powers conferred by the *Trusts Act 1973* or otherwise by law except where they are inconsistent with the powers conferred by this Deed.

- 14.6 Where a power is conferred by this Deed which is similar to, but larger than, a power conferred by the *Trusts Act 1973*, it operates and is exercisable without any limitation or restriction imposed by the *Trusts Act 1973* on that statutory power.

15. Appointment of Managers

- 15.1 The Trustee may appoint any person to act as Investment Manager or Custodian Trustee or both. The appointment must be in writing.
- 15.2 The Trustee may delegate to any Investment Manager or Custodian Trustee the powers it thinks fit.
- 15.3 The Trustee is not liable or responsible for any act, omission, error of judgment, negligence or breach of trust by the Investment Manager or Custodian Trustee.
- 15.4 The Trustee is not bound to take proceedings against any Investment Manager or Custodian Trustee arising in the circumstances described in clause 15.3.
- 15.5 The Trustee may pay out of the Fund to the Investment Manager or Custodian Trustee remuneration for their services as the Trustee considers proper.
- 15.6 The Trustee may remove the Investment Manager or Custodian Trustee or alter the terms of its appointment as the Trustee thinks fit.

16. Appointment of Fund Administrator

- 16.1 The Trustee may appoint any person to be Fund Administrator. The appointment must be in writing on terms which the Trustee considers appropriate.
- 16.2 The Trustee may delegate to the Fund Administrator the duties and powers in relation to the administration and management of the Fund it thinks fit including the following:
- (a) the collection of Contributions and the transfer of money and assets to and from any Investment Manager or Custodian Trust,
 - (b) the collection, recording and dissemination of Contributions and other information for the purposes of the Fund;
 - (c) the establishment and maintenance of records of account and Contributions and other necessary records including details of Member Accounts,
 - (d) the calculation of Benefits; and
 - (e) the provision and maintenance of a computer network and associated enquiry facilities necessary to support the administration of the Trust.

17. Confidentiality of Trustee's Deliberations

- 17.1 In addition to any right of the Trustee under the general law to refuse disclosure of any document or matter, the Trustee is not required to disclose to any person:
- (a) any document disclosing:
 - (i) any deliberations of the Trustee as to the manner in which the Trustee should exercise any power or discretion conferred upon the Trustee;

- (ii) the reasons for any particular exercise or non-exercise of any power or discretion; or
- (iii) the material upon which those reasons were or might have been based;
- (b) any other document relating to the exercise or proposed exercise of any power or discretion conferred on the Trustee by this Deed; or
- (c) any reason for any exercise or non-exercise of any power or discretion.

18. Remuneration of Trustee

- 18.1 So long as the payment of a Trustee's commission is not inconsistent with the FBT Requirements, the Trustee may with the prior approval of a Special Resolution of the Active Sponsors charge and retain out of the Fund a trustee's commission.

19. Liability of Trustee

- 19.1 No Trustee, and no officer of the Trustee, is liable for any loss or damage occasioned to the Fund or to any person by:
- (a) the exercise of any discretion or power by the Trustee, conferred by this Deed or by law, or any failure to exercise any of those discretions or powers;
 - (b) any breach of duty or trust, unless it is proved to have been committed, made or omitted in personal, conscious and fraudulent bad faith by the Trustee or the officer respectively; or
 - (c) any disclosure by the Trustee or the officer of any document, matter or thing relating to the Fund or any Beneficiary.
- 19.2 All persons claiming any interest in the income or the capital of the Fund are deemed to take it with and subject to notice of the protection conferred by this clause 19.
- 19.3 The Trustee is not bound to take any proceeding against a co-trustee for any breach or alleged breach of trust committed by the co-trustee.
- 19.4 Where the Trustee acts in reliance upon the advice of any expert or professional obtained in relation to the interpretation of the provisions of this Deed or any document or statute or any matter concerning the administration of the Fund, the Trustee is not liable to any Member, Participating Employer or Beneficiary in respect of any act done or omitted to be done by the Trustee in accordance with the advice.

20. Indemnity for Trustee

- 20.1 The Trustee is entitled to be indemnified out of the Fund against liabilities incurred by the Trustee by virtue of being the trustee of the Fund.
- 20.2 The Trustee is entitled to be reimbursed from the Fund for all money expended and debts incurred in or about the administration of the Fund.
- 20.3 The Trustee may apply the Fund to satisfy the rights of reimbursement or indemnity to which the Trustee is entitled.

21. Appointment and Removal of Trustee

- 21.1 The Trustee must vacate office as trustee of the Fund and cease to act as such if:
- (a) it is removed as provided by law;
 - (b) it fails to satisfy the requirements of clause 13.1;
 - (c) an application for its winding up is made or it passes a resolution for its voluntary winding up (except bona fide for the purpose of amalgamation or reconstruction) or if a receiver is appointed to its undertakings or any part of its undertakings; and
 - (d) by Special Resolution of the Active Sponsors, the Active Sponsors resolve that the Trustee be removed.
- 21.2 The Trustee may resign its office by giving 1 month's notice in writing to the Active Sponsors of its desire so to do.
-

22. Appointment of New Trustee

- 22.1 If the Trustee is removed from office or retires pursuant to clauses 21.1 and 21.2 the Active Sponsors may by Special Resolution of the Active Sponsors appoint a person to replace the Trustee provided that a Trustee must not cease to be a trustee pursuant to either clause 21.1 and 21.2 unless and until the Active Sponsors have determined to appoint a replacement Trustee and that replacement has agreed to assume the office of Trustee.
- 22.2 The new Trustee so appointed must execute a deed accepting the office of Trustee and must undertake to perform and observe all the obligations of the Trustee under this Deed.
-

23. Sole Trustee

- 23.1 A Trustee may be discharged although there will remain or be appointed in its place a sole trustee other than the Public Trustee or a trustee company under the *Trustee Companies Act 1968* or any corresponding legislation in any state or territory of Australia or elsewhere.
- 23.2 A sole trustee is authorised, even though it is the sole trustee, to receive capital and other money and to give valid and effectual receipts including receipts for money deemed to be capital money for the purpose of any statute.
-

24. Exercise of Discretions and Powers

- 24.1 So long as its exercise is not inconsistent with the FBT Requirements:
- (a) every discretion vested in the Trustee is absolute and uncontrolled;
 - (b) every power vested in the Trustee is exercisable at the absolute and uncontrolled discretion of the Trustee.
- 24.2 So long as to do so is not inconsistent with the FBT Requirements, the Trustee may by instrument in writing, revocable or irrevocable, wholly or partially release, abandon or restrict any power conferred on the Trustee by this Deed.

25. Interest of Directors of Trustee Corporation

- 25.1 So long as to do so is not inconsistent with the FBT Requirements, any person being a director or shareholder of the Trustee may be directly or indirectly interested in the mode or result of exercising the powers and discretions of this Deed without affecting the validity of the exercise of the powers and discretions.

26. Interest of Trustee

- 26.1 The Trustee may exercise or concur in exercising all powers and discretions contained in this Deed or otherwise by law conferred even though:
- (a) the Trustee or any person being a director or shareholder of the Trustee may:
 - (i) have a direct or personal interest (whether as trustee of any other settlement or in a personal capacity or as a director or shareholder of any corporation or otherwise) in the mode or result of exercising the power or discretion; or
 - (ii) benefit either directly or indirectly as a result of the exercise of the power or discretion; and
 - (b) the Trustee is the sole trustee.

27. Distribution of Net Income

Trustee's Discretion

- 27.1 All income of the Fund for an Accounting Period must be paid, applied or set aside by the Trustee to or for any one or more of the purposes mentioned in section 58PB(4)(d) of the *Fringe Benefits Tax Assessment Act 1986* but in the proportions the Trustee thinks appropriate. Any part of the income accumulated within the Fund under this clause 27.1 (for example, for the purpose of making investments to generate income from the assets of the Fund) must be paid into either the Reserve Account or the Equalisation Account (as specified by the Trustee) but in the proportions the Trustee thinks appropriate.

Late Exercise of Discretion

- 27.2 The Trustee may exercise the discretion contained in clause 27.1 after the expiration of the Accounting Period if the Commissioner of Taxation accepts that the entity in whose favour the Trustee has exercised the discretion is presently entitled to the income in the Accounting Period to which the distribution relates. If not, the purported exercise of the discretion after the expiration of the Accounting Period is ineffective.

Takers in Default

- 27.3 If the Trustee does not exercise the discretion contained in clause 27.1 (or to the extent to which the Trustee does not exercise or does not effectively exercise that discretion), the Trustee must accumulate the income for the Accounting Period by applying it to the credit of the Reserve Account for the purposes mentioned in paragraphs (c)(ii) and (c)(vii) of section 58PB(4) of the *Fringe Benefits Tax Assessment Act 1986*.

Recoupment of Losses

- 27.4 Where the Trustee suffers a loss for taxation purposes in any Accounting Period it is not required to recoup that loss out of the corpus of the Fund. Losses which relate to previous Accounting Periods so far as possible must be recouped out of profits and not corpus. If losses are at any time to be recouped out of corpus they must first be recouped from the Equalisation Account and then from the Reserve Account if the Equalisation Account has been exhausted.

27A Payments from the Fund

Payments from Contributions

- 27A.1 Payments from Contributions must be made only for the purposes specified in section 58PB(4) of the *Fringe Benefits Tax Assessment Act*.

Distributions from Reserve Account

- 27A.2 The Trustee may (at any time) in respect of all or any part of any positive balance in the Reserve Account, pay, apply or set it aside as follows:
- (a) if it is income of the Fund - in the manner provided for in clause 27.1;
 - (b) if it is from Contributions, including any Contribution that has been transferred to the Reserve Account due to the forfeiture of Benefits under clause 34.4¹² -in the manner for in clause 27A.1;
 - (c) if it is not otherwise covered by paragraphs (a) or (b) of this clause 27A.2 (for example, it is an amount which results from an accumulation of income paid to the Reserve Account under clause 27.1) - for any one or more of:
 - (i) the Sponsors;
 - (ii) the Members;
 - (iii) the Participating Employers;
 - (iv) the legal personal representative or the Death Benefit dependants of a Member;
 - (v) any Approved Institution,
 so long as to do so is not inconsistent with the FBT Requirements.

Distributions from Equalisation Account

- 27A.3 The Trustee may (at any time) in respect of all or any part of any positive balance in the Equalisation Account pay, apply or set it aside as follows:
- (a) if it is income of the Fund - in the manner provided for in clause 27.1;
 - (b) if it is from Contributions - in the manner provided for in clause 27A.1;
 - (c) if it is not otherwise covered by paragraphs (a) or (b) of this clause 27A.3 (for example, it is an amount which results from an accumulation of income paid to the Equalisation Account under clause 27.1) - for any one or more of:

¹² Inserted by deed of amendment and restatement (document reference 30799151v1)

- (i) the Sponsors;
- (ii) the Members;
- (iii) the Participating Employers;
- (iv) the legal personal representatives or the Death Benefit dependants of a Member,
- (v) any Approved Institution,

so long as to do so is not inconsistent with the FBT Requirements.

Trustee to consider the legal personal representatives or Death Benefit dependants once the Member or former Member has died

27A.4 Subject to the FBT requirements and the specific limitations of clauses 27A.1 to 27A.3, the Trustee must ensure that all amounts held in the Reserve Account which are attributable to Contributions made in respect of a Member or former Member (including any Contribution that has been transferred to the Reserve Account due to the forfeiture of Benefits under clause 34.4 for that Member or former Member), to the extent those Contributions have not otherwise been paid, applied or set aside for any other of the purposes set out in section 58PB(4)(c) of the *Fringe Benefits Tax Assessment Act* or will not be so paid, applied or set aside, are paid either:

- (a) to the legal personal representatives of that Member or former Member (as the case requires); or
- (b) to one or more Death Benefit dependants of that Member or former Member (as the case requires),

if that Member or former Member has died or has otherwise ceased to be entitled to his or her Benefit as at the date that payment is made.¹³

28. Amount of Benefit for Members

- 28.1 Subject to clause 28.2, a Member's Benefit is equal to the positive balance in his or her Member Account on the date the Benefit becomes payable.
- 28.2 The amount of any Benefit must not exceed that which is in the opinion of the Trustee the maximum the assets of the Fund can provide in respect of the Member.

29. Payment of Benefits to Members¹⁴

29.1 So long as to do so is not inconsistent with the FBT Requirements, a Benefit is payable upon a claim being made by the Member if the Member has otherwise satisfied the requirements (if any) of the industrial instrument having application to the Member in respect of his or her entitlement to claim that Benefit and:

- (a) retires from the work force on or after attaining the age of 55 years;

¹³ clause 27A.4 was Inserted by deed of amendment and restatement (document reference 30799151v1)

¹⁴ clause 29 was amended by a supplemental deed dated 10 November 2004.

- (b) suffers financial hardship and provides to the Trustee documentary evidence satisfactory to it;¹⁵
- (c) dies;
- (d) becomes Totally and Permanently Disabled;
- (e) is made Redundant;¹⁶
- (f) permanently leaves the Construction Industry; or
- (g) permanently leaves Australia.

30. Preconditions to Entitlement

- 30.1 A Member has no entitlement to a Benefit until he or she has lodged a properly completed claim form with the Trustee and satisfied the Trustee's requirements, enquiries and information regarding his or her entitlement to that Benefit.
- 30.2 The Trustee has no obligation to pay a Benefit until it receives satisfactory evidence of the Member's entitlement. The Trustee may also require the payee to execute documents and do other acts and things as may be appropriate for the Trustee to obtain a good release before paying any claim.
- 30.3 A Member will be considered to have permanently left the Construction Industry for the purposes of clause 29.1(f) if he or she has not been employed in the Construction Industry for 12 months preceding the date of the application.¹⁷

31. Death Benefit

- 31.1 The Trustee must pay the Death Benefit to any one or more of the Death Benefit dependants or legal personal representatives of the deceased Member as the Trustee considers appropriate.
- 31.2 If no claim for a Death Benefit is made by the legal personal representatives or any Death Benefit Dependants of a deceased Member within 12 months following the death of the Member, the Trustee may forfeit the Benefit and apply it in accordance with clause 34.4.¹⁸

32. Procedure for Payment of Benefits

- 32.1 The Trustee may forward the Benefits to the postal address or bank account last notified or to any other place the Trustee determines.
- 32.2 Every Member must (except where no further Benefit is payable) notify the Trustee in writing at the time the Benefit becomes payable and immediately after the Member changes address of:
 - (a) the Member's place of residence and full postal address; and

¹⁵ clause 29.1(b) was amended by deed of amendment and restatement (document reference 30799151v1)

¹⁶ clause 29.1(e) was amended by deed of amendment and restatement (document reference 30799151v1)

¹⁷ Clause 30.3 was inserted by a supplemental deed dated 10 November 2004.

¹⁸ Clause 31 was amended by deed of amendment and restatement (document reference 30799151v1)

- (b) the bank account (if any) to which the Member requests that the Benefit be paid.
- 32.3 Any person to whom a Benefit is payable must, if requested, furnish the Trustee with a receipt and release in the form required by the Trustee.

33. Payment of Taxation

- 33.1 The manner in which distributions from the Fund are dealt with or the payment of benefits under the Fund may involve a tax liability for the person to whom a payment or benefit is paid or applied and such person accepts that liability.
- 33.2 The Trustee may deduct Taxation required to be deducted (or which the Trustee considers is required to be deducted) from a Benefit.
- 33.3 The Trustee may deduct Taxation payable in relation to a Contribution from the Member Account.

34. Forfeiture of Benefits

Loss of Benefits

- 34.1 Any Member:
- (a) who before a Benefit becomes payable, becomes bankrupt; or
 - (b) whose Benefits whether by the persons own act operation of law, an order of any court or otherwise become payable to or vested in any person, company, government or other public authority; or
 - (c) who is suffering from any physical or mental disability which in the opinion of the Trustee renders the Member unable to manage his or her own affairs; or
 - (d) who assigns or charges or attempts to assign or charge his or her Benefit,
- forfeits entitlement to all Benefits other than those Benefits to which he or she has at that time become absolutely and indefeasibly entitled under the terms of this Deed.

Death Benefit dependants to be Considered

- 34.2 Benefits forfeited by reason of clause 34.1 must be held for the Member or former Member and his or her Death Benefit dependants as a class until the Benefit becomes payable. On the Benefit becoming payable the Trustee must pay the Benefit to the Member or former Member (as the case requires) if her or she has survived that date or if he or she has not survived that date then to any one or more of the Member's or former Member's (as the case requires) Death Benefit dependants in the proportions between them as the Trustee determines. The payment or application of any moneys pursuant to this clause is a complete discharge to the Trustee for those moneys Any Benefit not able to be so dealt with is forfeited and must be applied in accordance with clause 34.4.¹⁹

Lost Members and Small Amounts

- 34.3 The amounts standing to a Member's Account may be forfeited where:

¹⁹ clause 34.2 was amended by deed of amendment and restatement (document reference 30799151v1)

- (a) the amount standing to the account is a Small Amount and there have been no Contributions credited to that account for 12 months; or
- (b) in relation to that Member:
 - (i) a statement sent by the Trustee under clause 5.2(b) to the last known address of the Member has been returned unclaimed;
 - (ii) a continuous period of greater than 12 months has elapsed since the return of that statement and the Member's whereabouts has not become known to the Trustee during that period; and
 - (iii) no contribution has been made to the Redundancy Fund in relation to that Member for that period.

Nothing in this clause 34.3 imposes an obligation on the Trustee to ascertain or establish the whereabouts of a Member.

Allocation for Forfeited Benefits

- 34.4 Every Benefit forfeited or to which a Member has lost his or her entitlement under any of the provisions of this Deed and not otherwise dealt with must be transferred to the Reserve Account.

35. Relationship Between Employer and Employee

- 35.1 Dealings between the Employer and Employee are not affected by this Deed.
- 35.2 The rights of a Member or that Member's legal personal representative to claim damages or compensation under:
- (a) common law;
 - (b) any workers' compensation legislation; or
 - (c) any other statute in force governing compensation to a Member injured or killed by an accident arising out of or in the course of that Member's employment with the Employer,
- are not affected by this Deed.

36. Liability and Interest in the Fund

Interest

- 36.1 A Member's interest in the Fund is personal to the Member.
- 36.2 Except as provided in this Deed, a Participating Employer or a Member has no right to or interest in any money or other assets of the Fund.

Liability of Participating Employers and Members

- 36.3 The Trustee has no power or authority to enter into any contract that binds, affects or renders liable Participating Employers or Members personally or calls upon them for any payment whatsoever that is in addition to the obligations contained in this Deed or the Deed of Adherence.

37. Change in Employer

New Employer

37.1 If:

- (a) a Participating Employer is dissolved or being a company is wound up or any similar event occurs and another person agrees to undertake the obligation of that Participating Employer in respect of the Fund; or
- (b) another person acquires all or part of the undertaking and assets of a Participating Employer and agrees to undertake the obligations of that Participating Employer or otherwise becomes bound to perform the obligations of the Participating Employer in respect of the Fund,

then that Participating Employer upon the happening of either event is released from all obligations in respect of the Fund and the Deed of Adherence thereafter has effect as if such other person had been a party to the Deed of Adherence instead of the then Participating Employer

Withdrawal of Employer

37.2 The participation of a Participating Employer may be terminated if:

- (a) the Trustee gives 1 month's notice in writing to the Participating Employer;
- (b) where, subject to clause 37.1, a Participating Employer is or includes a body corporate, a resolution is passed or an order is made for its winding up or a scheme of arrangement providing for its dissolution is approved by a Court;
- (c) where a Participating Employer is or includes a partnership, the partnership is dissolved;
- (d) where, subject to clause 37.1, a Participating Employer is or includes a natural person or persons not in partnership, the person or any of those persons dies or becomes bankrupt;
- (e) a Participating Employer ceases to carry on business; or
- (f) a Participating Employer gives 3 months' notice in writing to the Trustee of its intention to cease participation in the Fund provided that if the Participating Employer is not in arrears in respect of its Contributions it may terminate by giving the Trustee 1 month's notice in writing.

The Participating Employer (**Retiring Employer**) ceases its participation in the Fund as and from the date (**Cessation Date**) that the relevant event occurs or expiration of the relevant notice period, as the case may be.

Effect of Termination of Participation

37.3 On the termination of a Participating Employer's participation in the Fund in accordance with clause 37.2:

- (a) no further Employees of that Retiring Employer will be admitted as Members;
- (b) no further Contributions may be made by the Retiring Employer except Contributions that were due on or before the Cessation Date;

and after obtaining such advice (if any) as it considers necessary, the Trustee must determine the amounts held in the Fund that are attributable to the Members who are Employees of the Retiring Employer. Those amounts must be held in terms of this Deed.

Procedure on Termination

37.4 On termination of participation:

- (a) the Trustee must specify a date (**Retirement Date**) upon which the Participating Employer (**Retiring Employer**) must retire;
- (b) the Retiring Employer must immediately pay all arrears, if any, of Contributions up to the Retirement Date;
- (c) the Benefits of each Member employed by the Retiring Employer must be held and applied at the discretion of the Trustee in one or more of the following ways or partly in one way and partly in another:
 - (i) for the Members until they are entitled to payment of the Benefits; or
 - (ii) transferred in accordance with clauses 9.1 or 9.2.

Discharge of Trustee

37.5 The receipt of the trustee of the fund to which an amount is transferred is a complete discharge to the Trustee in respect of all liabilities to the Member employed by the Retiring Employer and persons claiming in or in respect of his or her interest under the Fund,

Notice to Members

37.6 The Retiring Employer must notify the Members employed by it of its ceasing to be a Participating Employer before the Retirement Date.

38. Dissolution of the Fund

Date of Dissolution

- 38.1 Provided the Active Sponsors have given their prior approval to the winding up of the Fund by a Special Resolution of the Active Sponsors, the Fund must be wound up if:
- (a) there are no Members or Participating Employers and the Trustee resolves to terminate the Fund;
 - (b) the liabilities (excluding any liability for the future payment of Benefits) of the Fund exceed the assets of the Fund; or
 - (c) for any other reason the Trustee resolves to terminate the Fund.

Notice to Members

38.2 If an event referred to in clause 38.1 occurs, the Trustee must give notice in writing to Members (if any) and all Participating Employers that the Fund will be wound up on a specified date.

Position Following Giving of Notice

38.3 Following the giving of the notices referred to in clause 38.2, the Trustee must continue to administer the Fund in accordance with the provisions of this Deed except that:

- (a) no further Contributions, other than Contributions due on or before the date specified in the notices referred to in clause 38.2, may be accepted in respect of any Member; and
- (b) no new Members or new Participating Employers may be admitted.

Provision for Liabilities and Benefits

- 38.4 As soon as practicable after the date specified in the notices referred to in clause 38.2 the Trustee must make provision after meeting expenses and liabilities for the following:
- (a) payment of Benefits which on or before giving the notices referred to in clause 38.2 had become payable to a Member; and
 - (b) payment of an amount equal to the credit balance of each Member's Member Account in accordance with clause 37.4(c).

Surplus

- 38.5 If after providing for expenses, liabilities and Benefits in accordance with clause 38.4, a surplus remains, the Trustee may pay, apply or set aside any part of that surplus in the following manner:
- (a) if it is from the income of the Fund - in the manner provided for in clause 27.1;
 - (b) if it is from Contributions, including any Contribution that has been transferred to the Reserve Account due to the forfeiture of Benefits under clause 34.4 - in the manner provided for in clause 27A.1;
 - (c) if it is not otherwise covered by paragraph (a) or (b) of this clause 38.5 - to any one or more of the following:
 - (i) the Sponsors;
 - (ii) the Members;
 - (iii) the Participating Employers;
 - (iv) the legal personal representatives or the Death Benefit dependants of a Member,

so long as to do so is not inconsistent with the FBT Requirements.²⁰

Takers in default

- 38.6 If the Trustee does not exercise the discretion contained in clause 38.5 (or to the extent to which the Trustee does not exercise or does not effectively exercise that discretion), the Trustee holds the surplus equally for the Participating Employers and Members as at the date the notice is given under clause 38.2.

After Payment of Benefits the Fund is Dissolved

- 38.7 When all Benefits have been paid, transferred or applied in accordance with the provisions of this Deed, and any amount remaining in the Fund has been paid or applied in accordance with clause 38.4 the Fund is deemed to be dissolved.

²⁰ clause 38.5 was amended by deed of amendment and restatement (document reference 30799151v1)

Final Accounts

- 38.8 Final accounts of the Fund are to be taken and the Trustee must have those accounts audited.

39. Variation of Trust

- 39.1 The Trustee may by written resolution of the Trustee (including a resolution of the board of directors of the Trustee) or by supplemental deed revoke, add to or vary all or any of the trusts, powers, terms and conditions contained in this Deed (or trusts, powers, terms and conditions contained in any variation, alteration or addition made to this Deed) provided that such revocation, addition or variation has the prior approval of the Active Sponsors by way of Special Resolution of the Active Sponsors.
- 39.2 The variations, alterations or additions take effect from the date (if any) specified for that purpose in the resolution or supplemental deed. If no date is stated, then the variations, alterations or additions take effect from the date the resolution or the supplemental deed is made.
- 39.3 No revocation, addition or variation may adversely affect the beneficial entitlement to any amount set aside for any Member or Participating Employer prior to the date of the variation, alteration or addition.
- 39.4 The Trustee will notify the Commissioner of Taxation in writing before giving effect to any resolution or deed revoking, adding or varying this Deed.

40. Notices²¹

- 40.1 Any notice or document to be given under this Deed may be delivered or sent by prepaid registered or certified mail (or, if to a party situated in another country, by prepaid registered airmail) or telex or facsimile or email to the party to be served at that party's address as that party notifies.
- 40.2 The notice or document is deemed to be served:
- (a) if delivered, at the time of delivery;
 - (b) if posted, at the time it would be received in the normal course of post;
 - (c) if sent by telex or facsimile, on the next business day in the place to which it is addressed; or
 - (d) if sent by email (and the sender receives confirmation from that person or that person's email system that the email has been received), that day if delivered by 4.00 pm on a business day, or the next business day, in any other case.

41. Law of Trust

- 41.1 This Deed is governed by the law of Queensland.

²¹ Clause amended by a supplemental deed (document reference 19152777)

42. Partial Payment of Benefit

Request for deferral

42.1 If a Benefit is payable, the Member may apply to the Trustee in writing to defer its payment.

Drawdown requests

42.2 Where the Trustee has agreed to defer payment of a Benefit the Member may at any time make a Drawdown Request to the Trustee.

Pay drawdowns

42.3 The Trustee must:

- (a) pay the Drawdown to the Member on a day not less than 30 days from receipt of the Drawdown Request; and
- (b) debit the amount of the Drawdown to the Member's Member Account.

Income on Undrawn balances

42.4 A Member has no entitlement to any income or profit in respect of the undrawn balances of the Benefit to which the Member has otherwise become entitled under the terms of this Deed but in respect of which the Member has applied under clause 42.1 to have the payment deferred.

Definitions

42.5 In this clause 42:

- (a) **Drawdown** means the amount payable under a Drawdown Request unless the Trustee specifies any different amount; and
- (b) **Drawdown Request** means the request by a person to drawdown a part or all of that person's entitlement in the Fund.

Schedule 1

Deed of Adherence

Title	Deed of Adherence
Date	
Parties	BERT Fund Limited (ACN 607 106 650) of Level 1, 35 Astor Terrace, Spring Hill, Queensland 4000 (Trustee)
	The party described in the Schedule
	Of (Participating Employer)

Recitals

- A Pursuant to a deed dated 22 December 2003 (**Trust Deed**) BERT Pty Limited (as the initial Trustee) established the B.E.R.T. Fund No. 2.
- B The Participating Employer wishes to assume the obligations as a Participating Employer under the terms of the Trust Deed in respect of those of its employees who are Members.

IT IS AGREED

1. Definitions and Interpretation

Definitions

- 1.1 Unless the context otherwise requires words and expressions defined in the Trust Deed have the same meaning when used in this Deed.

2. Admission of Participating Employer

- 2.1 The Participating Employer:
- (a) is bound by the terms and conditions of the Trust Deed; and
 - (b) accepts all the covenants obligations and responsibilities imposed upon a Participating Employer under the terms of the Trust Deed.

3. Governing law and jurisdiction

- 3.1 The law of Queensland governs this Deed.
- 3.2 The parties submit to the non-exclusive jurisdiction of the courts of Queensland and the Federal Court of Australia.

4. Notices²²

- 4.1 A notice or other communication (**Notice**) connected with this Deed has no legal effect unless it is in writing and:
- (a) delivered by hand at the address of the addressee set out in this Deed or subsequently notified;
 - (b) sent by post, postage prepaid, to that address;
 - (c) sent by facsimile to the facsimile number of the addressee; or
 - (d) sent by email to the email address of the addressee.
- 4.2 A Notice is deemed given and received:
- (a) if delivered, upon delivery;
 - (b) if sent by post on the 2nd Business Day (at the address to which it is posted) after posting; or
 - (c) if sent by facsimile or email before 4 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- 4.3 Despite clause 4.2(c) a facsimile or email is not deemed given or received unless, in the case of a facsimile, at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages comprised in the Notice have been sent or, in the case of email, the sender receives confirmation from that person or that person's email system that the email has been received.

THE SCHEDULE

Name of Participating Employer	:
ACN (if a company) Business Name (if any) Address	:
Telephone number	:
Facsimile number	:
Email address	:
Contact name	:

²² Clause and schedule amended by a supplemental deed (document reference 19152777).

Execution

Executed as a deed.

Signed sealed and delivered by

in accordance with section 127 of the
Corporations Act 2001 (Cth) by a director
and secretary/director:

Signature of director

Signature of director/secretary (please strike
out as applicable)

Name of director (please print)

Name of director/secretary (please print)

Signed sealed and delivered by

in the presence of:

Signature of witness (a JP or Solicitor)

Name of director (please print)

Address of Witness

Schedule 2**Application for membership**

CONFIDENTIAL

To: The Trustee
B.E.R.T. Fund No, 2

I, the undersigned person, being eligible, apply for admission to membership of the Fund.

Dated20 .

Name.....

Address

Occupation

Date of Birth

Signature

Nominated Dependants

I nominate the following as my Nominated Dependants:

			%of Total
Surname(s)	Given Name(s)	Relationship	Benefit

Schedule 3

Trustee's particular powers

1. Invest

- 1.1 To invest money which forms part of the Fund in any investments, whether involving liabilities or not, with or without security even though those investments are:
- (a) not income producing;
 - (b) of a wasting or speculative nature; or
 - (c) not by law authorised for the investment of trust money
-

2. Purchase and pay for investments

- 2.1 To make any investments for cash or in consideration of any annuity or otherwise and:
- (a) to make any investment for a sum greater than the amount of the Fund for the time being; and
 - (b) to agree to pay for the investment wholly or in part from any future money which may come into its hands including dividends, profits, interest or other income paid or payable in respect of the investment.
-

3. Vary investments

- 3.1 To vary or transpose any investments into or for any others of any nature and to vary the terms of or property comprised in any security.
-

4. Lend

- 4.1 To advance and lend money to any person with or without security.
-

5. Borrow and obtain credit

- 5.1 To raise or borrow money, either alone or jointly with others, from any person.
- 5.2 To enter into any agreement or arrangement for obtaining credit.
- 5.3 To secure the repayment of any money or other indebtedness or obligation of the Trustee by mortgage, charge or other security or encumbrance over the whole or any part of the property and future property of the Fund.
- 5.4 No lender is concerned to enquire:
- (a) as to whether the necessity for any borrowing has arisen;
 - (b) as to the purpose for which it is required;
 - (c) as to the application of the money borrowed; or

- (d) that no more than is wanted is raised.
- 5.5 The obligation of the Trustee for the repayment of the money extends only to the assets for the time being forming the Fund and the Trustee does not incur any obligation in its personal capacity for the borrowings.

6. Limit liability

- 6.1 To enter into any agreement to limit the present or future liability of the Fund including, but not limited to, any agreement relating to interest rate caps, collars, floors or swaps, any \$A forward rate agreement and any other financial risk management agreement and whether varying the terms of any existing financial arrangement or loan or for the purpose of setting up a new financial arrangement or otherwise managing the risk of existing or future financial arrangements.

7. Give guarantees

- 7.1 To give any guarantee or indemnity (alone, jointly or jointly and severally) for the payment of money or the performance of any contract, obligation or undertaking by any person
- 7.2 To give any form of security (alone, jointly or jointly and severally) over all or any of the assets of the Fund for the purposes of securing its obligations in respect of the guarantee or indemnity.
- 7.3 No lender is concerned to enquire as to:
- (a) the necessity for or propriety of any guarantee or indemnity;
 - (b) the purpose for which it is given; or
 - (c) the application of any money borrowed.

8. Joint or third party borrowing

- 8.1 To join with any other person or corporation in executing any mortgage or other document for the purpose of securing the payment of money to;
- (a) the Trustee jointly with any other person; or
 - (b) any other person.

9. Deal with property

- 9.1 To hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, sell, assign, transfer, convey, surrender, let, lease, take on lease, exchange, take and grant licences options or rights in, alienate, mortgage, charge, pledge, reconvey, release or discharge or otherwise deal with any property or any right, estate or interest in it, whether forming part of the Fund or not.

10. Acquire policies of insurance

- 10.1 To effect or acquire any reversionary or deferred property or rights of any description or any life or life endowment or sinking fund or term or other policy of insurance of any nature and at or subject to any premium, whether single or payable periodically, and with or subject to any options, rights, benefits, conditions or provisions.
- 10.2 To pay out of the income or capital of the Fund all sums payable for premiums or otherwise for the effecting or maintenance of any policy of insurance (whether owned by the Trustee or otherwise) or for the exercise or enjoyment of any option, right or benefit under it and any surrender of any policy is deemed to be a sale of that policy.
-

11. Pay outgoings

- 11.1 To pay out the Fund all costs, charges and expenses incidental to:

- (a) the management of the Fund;
- (b) the exercise of any power, authority or discretion contained in this Deed; or
- (c) carrying out or performing the Trusts created by this Deed;

which the Trustee may incur including all income tax or other taxes payable in respect of the Fund, costs in any way connected with preparation and execution of this Deed and all money which the Trustee may be required to pay as settlement, gift, stamp or revenue duties in respect of the Fund or this Deed.

12. Take up shares, units or securities

- 12.1 To take up by allotment or purchase any stock, shares, debentures, bonds, notes, units, subunits or other securities (including a minority share interest) with or without deferred, restricted, qualified or special rights issued by:
- (a) any corporation incorporated in any of the states or territories of Australia or elsewhere;
 - (b) any government, semi-governmental municipal authority or corporation in any of the states or territories of Australia or elsewhere;
 - (c) any fixed, flexible or unit trust established in any of the states or territories of Australia or elsewhere; and
 - (d) any limited partnership established in any of the states or territories of Australia or elsewhere.
-

13. Corporate securities

- 13.1 With respect to any corporation or unit trust in which the Trustee holds shares, stock, debentures options, convertible notes, units, subunits (**Securities**) or is otherwise interested or concerned:
- (a) to pay calls on Securities or per Securities to be forfeited and sold;

- (b) to purchase Securities and take Securities of a new issue;
- (c) to lend money to the corporation or unit trust whether secured by debentures or in any
- (d) other way or not secured;
- (e) to attend at meetings personally or by proxy, attorney or representative and vote at the
- (f) discretion of the Trustee;
- (g) to sell Securities;
- (h) to assent to or join in any arrangement relating to the sale, transfer or exchange of any Securities or modifying any rights, privileges or interests in relation to the Securities;
- (i) to agree to any scheme or arrangement for the increase or reduction of the value amount of any Securities or the capital of any corporation or unit trust of which the Securities form the whole or any part or by which the Securities are substituted or given in exchange either wholly or partly for other Securities whether in the same corporation or unit trust or not and for this purpose to deposit, surrender or exchange any script or documents of title relating to the Securities;
- (j) to pay out of the capital of the Fund or the income derived from the Fund any contribution or incur any expense in connection with the scheme or arrangement and generally to manage and deal with the Securities as if the Trustee owned them beneficially;
- (k) to agree, in respect of a winding up, with the liquidator of the corporation or unit trust or any member of the corporation or unit trust or any other person on the division or partition, in kind or specie, of the assets or property of any nature of the corporation or unit trust; and
- (l) to accept any assets and property in payment or satisfaction of any interest of the Trustee in the corporation or unit trust, with power to pay any money by way of equality of division or partition.

14. Futures contracts and options

- 14.1 To engage brokers and commission agents, to vary and determine the terms of any engagement and, either directly or through any broker or agent in any market in any part of the world, to:
- (a) buy, sell, open, close out or otherwise deal in futures contracts of any kind;
 - (b) enter into, vary, exercise, abandon or sell any put or call option or rights;
 - (c) place bids or make offers; or
 - (d) hedge and effect orders including buying, selling, straddle-switch and stop-loss orders.
- 14.2 To tender and take delivery of commodities and currencies which are the subject of any futures contracts or options and otherwise to do and perform all things so as to operate on, utilise or deal with the facilities of any stock or futures exchange.

15. Partition

- 15.1 To partition or subdivide any land or other property which may form part of the Fund and pay any money by way of equality or partition.
-

16. Determine capital or income

- 16.1 To determine:
- (a) whether:
 - (i) any property;
 - (ii) any increase or decrease in the amount, number or value of any property holdings of property; or
 - (iii) any receipt or payment from, for or in connection with any property;
 is treated as and credited or debited to capital or to income and out of what part of the Fund; and
 - (b) whether any expense or outgoing is borne by capital or income.
-

17. Open bank accounts

- 17.1 To open in the name of:
- (a) the Trustee;
 - (b) a person as nominee of the Trustee; or
 - (c) the Trustee and another jointly;
- any cheque, savings or other account with any bank or financial institution, wherever situated, with full power for the person in whose name the account is opened to operate on the account including power to sign, draw and endorse cheques and other negotiable or transferable instruments on the account and to close the account.
-

18. Grant options

- 18.1 To grant options in respect of any part of the Fund or any assets held subject to this Deed to any person.
-

19. Become or appoint directors

- 19.1 To become a director of any corporation in which money forming a part of the Fund is invested.
- 19.2 To appoint any other person to act as director of the corporation.
- 19.3 To receive or permit any person appointed by the Trustee as director (including any director or shareholder of the Trustee) to receive the remuneration attached to the office without accounting to the Fund for that remuneration.

- 19.4 Any person appointed as a director may become qualified to act as a director by the holding in his or her name of shares forming part of the Fund, provided that the Trustee or person in whose name shares are so held executes all proper declarations of trust for any shares held by that person on behalf of the Fund and accounts to the Fund for all dividends and bonuses.

20. Do all things incidental

- 20.1 To take action for the protection of any part of the Fund and to do all other things which may be incidental to the exercise of the powers and authorities conferred on the Trustee by this Deed.

21. Act upon advice

- 21.1 To obtain and act upon the opinion or advice, of any financial adviser, lawyer, valuer, surveyor, broker, auctioneer or other expert or professional.
- 21.2 Nothing in paragraph 21.1 prohibits or impedes the Trustee from applying to a court.

22. Take opinion of Counsel

- 22.1 Without derogating from the generality of paragraph 21, to take and act upon the opinion (given in writing) of counsel, of not less than 5 years' standing practising in a country where the Fund or any part of the Fund is invested, in relation to the interpretation or effect of this Deed or any other document or statute or as to the administration of the Fund without being liable to any of the Members or Employers in respect of any act done by the Trustee in accordance with the opinion.
- 22.2 Nothing in paragraph 22.1 prohibits or impedes the Trustee from applying to a court.

23. Permit nominee to hold assets

- 23.1 To permit any assets of the Trust to be held or registered in the name of any nominee of the Trustee.
- 23.2 To deposit securities and any deeds and other documents belonging to or related to the Fund with any bank, solicitor or other custodian.

24. Take on lease

- 24.1 To take on lease or hire purchase any property including plant, machinery, goods, equipment, articles and chattels of every kind or description.

25. Draw bills of exchange

- 25.1 To draw, make, accept, endorse, discount, sell, purchase, issue and otherwise deal with promissory notes, bills of lading, bills of exchange and other negotiable transferable instruments and in particular commercial bills.
- 25.2 To secure any liability of the Trustee in respect of any matter referred to in paragraph 25.1 by way of mortgage charge, lien or otherwise over the whole or any part of the Fund.

26. Deal with distributions from other trusts

- 26.1 To treat as income or as capital any amounts or property which the Trustee in its capacity as trustee receives as a beneficiary under any other trust whether the amounts or property constituted capital or income under the other trust or was distributed to the Trustee by the trustee of the other trust as capital or income.

27. Blend funds

- 27.1 To blend, for the purposes of investment, any money which the Trustee holds upon the Trust with other money (whether or not the money is subject to any other settlement or trust).
- 27.2 To join with any other person in making common investments.

28. Employ agents

- 28.1 To employ any managers, agents, advisers, solicitors, accountants or other persons to transact any business or to do any act required to be done in connection with the administration of the Trust including the receipt and payment of money
- 28.2 To determine the remuneration to be paid to them.

29. Attorney

- 29.1 To appoint any person as representative or attorney of the Trustee for the purpose of executing any document which the Trustee is permitted or authorised to execute by this Deed or by law and to revoke the appointment.

30. Delegate

- 30.1 To delegate in writing the exercise of all or any of the powers or discretionary authorities conferred by this Deed on the Trustee and to execute any power of attorney or other instrument necessary to effectuate that delegation.

31. Manage

- 31.1 To manage any property that forms part of the Fund.

32. Compromise

- 32.1 To compromise and settle all matters arising in relation to the Trust or the Fund and compromises and settlements are binding on Beneficiaries.

33. Pay for assistance

- 33.1 To employ and pay for such professional or other assistance as the trustee may deem requisite to the discharge of the duties of the Trust including assistance from any person who is an

employee of the Trustee or (where the Trustee is a corporation) a director and/or a shareholder of the Trustee.

34. Institute and defend proceedings

- 34.1 To institute, join in and defend any legal arbitration or mediation proceeding.
- 34.2 To proceed to the final determination of the proceeding.
- 34.3 To discontinue the proceeding and any other claim or demand.

35. Apply for grant

- 35.1 To apply for, acquire and exercise any charter, licence, legislative enactment; power, authority, franchise, concession, right or privilege from any government or authority or any corporation or other public body.

36. Construct

- 36.1 To build, demolish, alter, repair, extend, rebuild, improve, reconstruct and develop any property included in the Fund.
- 36.2 To construct, improve, maintain, develop, work, manage, carry out or control any buildings, works, factories, mills, roadways, tramways, railways, branches or sidings, bridges, reservoirs, water courses, waterways, warehouses, electric workshop stores or other works and conveniences.
- 36.3 To contribute to or assist in the construction, improvement, maintenance, development, working, management, or carrying out the control of the works or conveniences.

37. Procure recognition

- 37.1 To procure the Trustee (should the Trustee be a corporation) to be registered or recognised in a country or place.

Execution

Executed as a deed poll.

Signed sealed and delivered by
BERT Fund Limited ACN 607 106 650
 by



 Signature of director

JOHN CENTRAL

 Name of director (please print)



 Signature of director/~~secretary~~ (please
 strike out as applicable)

ROD McDONALD

 Name of director/secretary (please print)

**Deed poll - amendment and
restatement of the B.E.R.T.
Fund No. 2 Trust Deed**

BERT Fund Limited ACN 607 106 650

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Title Deed poll - amendment and restatement of the B.E.R.T. Fund No. 2 Trust Deed

Date 1st JULY 2024

Parties BERT Fund Limited (ACN 607 106 650) of Level 1, 35 Astor Terrace, Spring Hill, Queensland 4000

Recitals

- A Clause 39.1 of the B.E.R.T. Fund No 2 trust deed provides the Trustee with the power to revoke, add to or vary all or any of the trusts, powers, terms and conditions contained in the B.E.R.T. Fund No 2 trust deed by a supplemental deed provided that such revocation, addition or variation has the prior approval of the Sponsors by way of a Special Resolution of the Sponsors.
- B By a Special Resolution of the Sponsors, the Sponsors have approved the variation to the B.E.R.T. Fund No 2 trust deed as set out in this document.
- C The Trustee has notified the Commissioner of Taxation of the proposed variation of the B.E.R.T. Fund No 2 trust deed as set out in this document in accordance with clause 39.4 of the Trust Deed.

Operative provisions

1. Definitions and interpretation

Definitions

- 1.1 In this document, terms defined in the B.E.R.T. Fund No 2 trust deed have the same meanings when used in this document, and

B.E.R.T. Fund No 2 trust deed means the redundancy fund trust deed for the B.E.R.T. Fund No 2 dated 22 December 2003 made by BERT Pty Limited and amended from time to time including the deed of amendment and restatement made by BERT Pty Limited dated 16 July 2015 and the deed of retirement and appointment of trustee also dated 16 July 2015 pursuant to which BERT Fund Limited was appointed trustee in place of BERT Pty Limited with effect from 10am on 29 June 2015 [and the deed of amendment and restatement made by BERT Fund Limited dated 10 October 2023](#).

Effective Date means [•]. 1st JULY 2024

Interpretation

- 1.2 Clause 1.3 of the B.E.R.T. Fund No 2 trust deed is incorporated in this document as if it was set out in full in this document.

2. Amendment to B.E.R.T. Fund No 2 trust deed

Amendment and restatement

- 2.1 With effect from the Effective Date, the B.E.R.T. Fund No 2 trust deed is amended (as identified in redline and strike-out in the document set out in the Annexure to this document) and restated so that it is in the form attached in the Annexure to this document.

Amendment not to affect validity rights or obligations

- 2.2 The amendment and restatement of the B.E.R.T. Fund No 2 trust deed does not affect the validity or enforceability of the B.E.R.T. Fund No 2 trust deed.

References

- 2.3 On and from the Effective Date, any reference in any related document (other than this document) to the B.E.R.T. Fund No 2 trust deed is a reference to the B.E.R.T. Fund No 2 trust deed as amended and restated under this document under clause 2.1.

Execution

Executed as a deed poll.

Signed sealed and delivered by
BERT Fund Limited ACN 607 106 650
by

Personal Information

Signature of director

JOHN CRUTAN
Name of director (please print)

Personal Information

Signature of director/secretary (please
strike out as applicable)

Steven Hack
Name of director/secretary (please print)

Annexure 1

Redundancy fund trust deed - B.E.R.T. Fund No. 2

**Redundancy fund trust deed
- B.E.R.T. Fund No. 2 -
[incorporating 202⁴³
amendments]**

BERT Fund Limited ACN 607 106 650

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Title **Redundancy fund trust deed**

Date 22 December 2003

Parties **BERT Fund Limited** (ACN 607 106 650) of Level 1, 35 Astor Terrace, Spring Hill, Queensland 4004 with effect from 10.00am on 29 June 2015 (**Trustee**)¹

Recitals

- A Various Industrial Instruments applicable to the Construction Industry provide for the payment of amounts by Employers to Employees upon those Employees becoming Redundant.
- B The Fund has been established to receive Contributions made on or after 1 April 2003, and hold them until the Employees are made Redundant or otherwise become entitled to payment of a Benefit

Operative provisions

1. Interpretation

Statutory Definitions

- 1.1 Any word or expression defined in the *Income Tax Assessment Act* or the *Fringe Benefits Tax Assessment Act* which is used but not defined in this Deed has the meaning given to that word or expression in the *Income Tax Assessment Act* or the *Fringe Benefits Tax Assessment Act* (as the case may be).

Definitions

- 1.2 Unless the context otherwise requires:

Accounting Period means any of:

- (a) the period from the date of this Deed to 30 June next;
- (b) each following 12 months ending on 30 June in each year until 30 June immediately preceding the Vesting Date; and
- (c) the period from 1 July immediately preceding the Vesting Date to the Vesting Date,

but the Trustee may alter the Accounting Period to a period of 12 months ending on any other date and if it does so the reference to 30 June and 1 July must be altered appropriately.

Active Employer Organisation means Queensland Master Builders Association Industrial Organisation of Employers and

- (a) any other employer organisation which, with the written agreement of all Active Sponsors, is accepted as an Active Employer Organisation;

¹ Description of the trustee was amended by deed of amendment and restatement (document reference 416258768 – v2)

- (b) any other employer organisation which, by reason of reorganisation or amalgamation of an Active Employer Organisation is the successor in whole or in part of that Active Employer Organisation; and
- (c) any Federally or Queensland registered counterpart of an Active Employer Organisation provided the Federally registered counterpart is only an Active Employer Organisation if both the Queensland and Federal counterparts confirm this in writing to all other Active Sponsors and then the Federally registered body is an Active Employer Organisation to the exclusion of (and not in addition to) its Queensland registered counterpart.

Active Sponsor means the Active Employer Organisation and the Active Unions but does not include:

- (a) any Active Employer Organisations or Active Union which, by notice given by it to the other Active Sponsors, and the Trustee has ceased to be an Active Sponsor; and
- (b) any Active Employer Organisation or Active Union in respect of which, by agreement of a Special Resolution of the Active Sponsors, is determined no longer to be an Active Sponsor.

Active Union means each of:

- (a) the Construction, Forestry, Mining and Energy, Industrial Union of Employees, Queensland;
- (b) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, Plumbing Division, Queensland Branch;
- (c) any other union of employees which, with the written consent of all Active Sponsors, is accepted as an Active Union;
- (d) any other union of employees which, by reason of reorganisation or amalgamation of an Active Union, is the successor of the whole or part of that Active Union; and
- (e) any Federally or Queensland registered counterpart of a Union provided that the Federally registered counterpart is only a Union if both the Queensland and Federal counterparts confirm this in writing to the Active Sponsors (which they are deemed to have done in relation to any Federally registered body described in this clause) and then the Federally registered body is an Active Union to the exclusion of (and not in addition to) its Queensland registered counterpart.

Apprentice means a person who is registered as an apprentice or trainee with an apprenticeship directorate or any other equivalent body approved by the Trustee.

Approved Institution means a charitable or public educational institution or fund established for public charitable purposes:

- (a) approved by the Trustee on the basis that the relevant institution or fund has objects likely to benefit Members or participants in the Construction Industry; and
- (b) the institution or fund has been endorsed as exempt from income tax by the Commissioner under subdivision 50-B *Income Tax Assessment Act 1997*.

Approved Superannuation Fund² means, as the context requires, the superannuation fund that has been named in an industrial instrument.

Auditor means the auditor appointed by the Trustee.

Award³ means the Construction Worker Level 3/Engineering Construction Worker Level 3 (Engineering Construction Tradesperson Level 1) (CW/ECW 3) in the Building and Construction General On-site Award 2010.

Benefit means any amount payable by the Trustee out of the Fund to or in respect of a Member.

B.E.R.T. Fund means the fund established by the B.E.R.T. Fund Deed, and of which the B.E.R.T. Pty Ltd is the trustee.

B.E.R.T. Fund Deed means the deed for the creation of the B.E.R.T. Fund executed by the Trustee on 16 May 1996.

B.E.R.T Pty Ltd means B.E.R.T. Pty Limited ACN 010 917 281.

Carpenter's Rate⁴ means the contribution rate, expressed on a weekly basis, which may be made to an approved worker entitlement fund set out in the Award (as amended or re-enacted from time to time) or any industrial instrument which replaces the Award for the purposes of ensuring that the obligation under the Award to make payments when an employee ceases employment is met.

Children includes an adopted child, step-child and ex-nuptial child.

Commencement Date means 1 April 2004.

Construction Industry means those sectors of commerce or industry commonly known and characterised as being associated or connected with or incidental to:

- (a) industrial, commercial or residential construction;
- (b) civil engineering construction; and
- (c) mechanical engineering construction,

and includes all services and maintenance associated or connected with or incidental to any of those forms of construction and also includes each and every one of those sectors or any of those sectors or allied industries whether work is performed on site or off site.

Contribution⁵ means a payment to the Fund made in accordance with this document.

Death Benefit for a Member, means a Benefit payable following the death of the Member.

Death Benefit dependant has the meaning given to that term section 302-195 in the *Income Tax Assessment Act 1997*⁶.

Deed means this document, including any Schedule or Annexure to it.

Deed of Adherence means a deed substantially in terms of the deed set out in Schedule 1.

² Definition inserted by a supplemental deed (document reference 8759019).

³ Definition inserted by a supplemental deed (document reference 13416673).

⁴ Definition inserted by a supplemental deed (document reference 13416673).

⁵ Definition inserted by a supplemental deed (document reference 13416673).

⁶ Definition inserted by deed of amendment and restatement (document reference 30799151v1)

Employee means a person employed principally on production work within the Scope of the Deed by a Participating Employer and includes Apprentices.

Employer means a person required to pay Contributions in respect of its Employees.

Employer Organisation means Queensland Major Contractors Association and:

- (a) any other employer organisation which, with the written agreement of all Active Sponsors is accepted as an Employer Organisation;
- (b) any other employer organisation which by reason of the reorganisation or amalgamation of an Employer Organisation is the successor in whole or in part of that Employer Organisation; and
- (c) any federally or Queensland registered counterpart of an Employer Organisation provided the federally registered counterpart is only an Employer Organisation if both the Queensland and federal counterparts confirm this in writing to all Active Sponsors and then the federally registered body is an Employers' Organisation to the exclusion of (and not in addition to) its Queensland registered counterpart.

Equalisation Account means the account described in clause 10.4.

FBT Requirements means the requirements of which the Commissioner of Taxation must be satisfied under the *Fringe Benefits Tax Assessment Act 1986* in order for a fund to be prescribed as an 'approved worker entitlement fund'.

Fund means the redundancy fund established by this Deed.

Fund Administrator means a person appointed in accordance with clause 16.1.

Income Account means the account described in clause 10.2.

Job-share Basis⁷ means:

- (a) in respect of a Member whose employment is covered by an industrial instrument and the concept of job sharing is contemplated by, and dealt with in, that industrial instrument, then as that term, or its equivalent, is defined, or described, in that industrial instrument; and
- (b) in respect of a Member whose employment is either:
 - (i) not covered by an industrial instrument; or
 - (ii) covered by an industrial instrument but that industrial instrument does not contemplate or deal with the concept of job sharing,

an employment arrangement whereby more than one Employee is engaged on a permanent basis by the same Employer to share one full-time position in a Week of Service, but excludes, for the avoidance of doubt any Employee who is engaged on a casual basis.

Job-share Member⁸ means a Member who is employed with an Employer on a Job-share Basis which falls within either:

- (a) paragraph (a) of the definition of that term in this clause 1.2; or

⁷ Definition inserted by deed of amendment and restatement dated 10 October 2023 (document reference 437299289-v1)

⁸ Definition inserted by deed of amendment and restatement dated 10 October 2023 (document reference 437299289-v1)

- (b) paragraph (b) of the definition of that term in clause 1.2 and that employment arrangement has been approved by the Trustee (via a resolution of its board of directors in accordance with its constitution) and that approval has not subsequently been revoked or withdrawn.

Job-share proportion⁹ means, in relation to a Job-share Member, in a Week of Service, the fraction calculated as follows:

A/B

Where:

A = the number of hours that Job-share Member is engaged to be employed by their Employer in that Week of Service.

B = the number of hours set by the Trustee (via resolution of its board of directors in accordance with its constitution), from time to time, as being the equivalent of the minimum number of ordinary hours to be worked by a full-time equivalent Employee performing the work undertaken by that Job-share Member, and until otherwise set is 36.

Member means an Employee who has been accepted by the Trustee as a Member who has not ceased to be a Member pursuant to clause 4.5.

Member Account means one of the accounts described in clause 10.1.

Minimum Contribution¹⁰ means, for each Week of Service:

- (a) in respect of a Member, other than a Job-share Member or an Apprentice, the greater of:
- (i) the amount set by the Trustee (via a resolution of its board of directors in accordance with its constitution) from time to time; or
 - (ii) the contribution rate specified in an industrial instrument, expressed on a weekly basis, which applies to that Member;
- (b) in respect of a Job-share Member, an amount calculated in accordance with the following formula:

$A \times B$

Where:

A = the amount of the Minimum Contribution for that Week of Service which would have applied to that Job-share Member if they were employed, rather than on a Job-share Basis, as the sole Employee to perform the relevant full-time position, in accordance with paragraph (a) of this definition.

B = the Job-share proportion applicable to that Job share Member for that Week of Service.

⁹ Definition inserted by deed of amendment and restatement dated 10 October 2023 (document reference 437299289-v1)

¹⁰ Definition amended by a supplemental deed (document reference 1102610) and subsequently by a supplemental deed (document reference 13416673) and by a deed of amendment and restatement dated 10 October 2023 (document reference 437299289-v1).

- (c) in respect of an Apprentice under a 4 year apprenticeship, an amount equal to the following percentages of the Minimum Contributions for a Member:
 - (i) for a first year Apprentice - 40%;
 - (ii) for a second year Apprentice - 55%;
 - (iii) for a third year Apprentice- 75%;
 - (iv) for a fourth year Apprentice - 90%; and
- (d) in respect of any other Apprentice, an amount equal to the proportion of the Minimum Contribution for a Member which their annual salary bears to the average salary payable to those who have completed their apprenticeship in that field of endeavour.

Net Income means the amount calculated as the Net Income of the Fund for an Accounting Period in accordance with section 95(1) of the *Income Tax Assessment Act* unless the Trustee determines in respect of any Accounting Period that the Net Income for that Accounting Period means the income of the Fund calculated in accordance with established accounting principles and trust law.

Nominated Dependant means, in respect of a Member:

- (a) the Death Benefit dependant of that Member nominated by the Member as the person that the Member would prefer to receive the amount standing to his or her Member Account if the Member dies or otherwise ceases to be entitled to his or her Benefit: or
- (b) if no person is so nominated or that nominated person has not survived the Member, then the first person identified in section 302-195 of the *Income Tax Assessment Act 1997* in relation to that Member in the order set out in that section who has survived the Member and if more than one person who so qualifies, all those persons equally.¹¹

Participating Employer means any Employer admitted under clause 3.1 who has not ceased to be a Participating Employer pursuant to clause 37.

Pension Age has the meaning given to that term in section 23 of the *Social Security Act 1991*.

Redundancy means that termination of employment of a Member in circumstance where the work the Member has been performing is no longer required to be done by anyone and 'Redundant' has a corresponding meaning.

Reserve Account means the account maintained in accordance with clause 10.3.

Scope of the Deed means:

- (a) all work in industrial, commercial or multi-residential building construction;
- (b) any other work within the Construction Industry as set out an agreement between Active Sponsors;
- (c) any other work within the Construction Industry as agreed between an Employer and an Active Union;
- (d) any other work within the Construction Industry where the Employer makes a Contribution on behalf of an Employee; and

¹¹ Definition amended by deed of amendment and restatement (document reference 30799151v1)

- (e) any work where the Employer makes a Contribution on behalf of an Employee.

Small Amount means an amount determined by the Trustee and until otherwise determined is an amount equal to twice the Minimum Contribution.

Special Resolution of fee Active Sponsors means a resolution:

- (a) signed by not less than 75% of the Active Sponsors;
- (b) signed by more than 50% of the Active Sponsors who are Active Employer Organisations; and
- (c) signed by more than 50% of the Active Sponsors who are Active Unions

Sponsors means the Employer Organisations and the Unions but does not include

- (a) any Employer Organisation or Union which by notice given by it to the Active Sponsors and the Trustee has ceased to be a Sponsor; or
- (b) any Employer Organisation or Union in respect of which by agreement of a Special Resolution of the Active Sponsors is determined no longer to be a Sponsor,

Spouse means, in relation to a Member, the husband or wife of that Member, or another person who, in the opinion of the Trustee, although not legally married to the Member lives (or in the case of a deceased Member was at the date of death of the Member living) with the Member on a bona fide domestic basis as the husband or wife of the Member.

Total and Permanent Disablement in relation to a Member means his or her incapacity to the extent that in the reasonable opinion of the Trustee (after considering such medical and other evidence or advice as it may require) the Member is unable ever again to undertake any form of remunerative work in the Construction Industry for which he or she is reasonably equipped by educational training or experience.

Trustee means the trustee for the time being of the Fund.

Unions means each of:

- (a) Construction, Forestry, Mining & Energy, Industrial Union of Employees, Queensland;
 - (b) Australian Building Construction Employees and Builders Labourers Federation Union of Employees (Queensland Branch); and
 - (c) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Union of Australia, Plumbing Division, Queensland Branch
- and
- (d) any other union of employees which, with the written consent of all Active Sponsors, is accepted as a Union;
 - (e) any other union of employees which by reason of the reorganisation or amalgamation of a Union is the successor of the whole or part of that Union; and
 - (f) any federally or Queensland registered counterpart of a Union provided the federally registered counterpart is only a Union if both the Queensland and federal counterparts confirm this in writing to all Active Sponsors (which federally they are deemed to have done in relation of any federally registered body described in this clause) and

then the federally registered body is a Union to the exclusion of (and not in addition to) its Queensland registered counterpart.

Vesting Date means the first of the following to occur:

- (a) 80 years from the date of this Deed; and
- (b) an earlier date nominated by the Trustee as the Vesting Date with the prior approval of a Special Resolution of the Active Sponsors.

Week of Service means a week where on any day of the week:

- (a) the Member is employed by the Participating Employer; or
- (b) for which the Member is entitled to receive workers compensation in respect of any injury or other event occurring whilst in the employ of the Participating Employer up to a maximum of 26 weeks, whether compensation payments are made in one continuous period or not; or
- (c) where the Member is on annual leave, long service or other paid leave, and a week falls in a month where Friday falls in that month.

Interpretation

1.3 Reference to:

- (a) one gender includes the other gender;
- (b) the singular includes the plural and the plural includes the singular;
- (c) a person includes a body corporate and includes a person (in this extended sense) in the capacity of a trustee;
- (d) a party includes the party's executors, administrators, successors and permitted assignors; and
- (e) a statute, regulation or provision of a statute or regulation (Statutory Provision) includes:
 - (i) that Statutory Provision as amended or re-enacted from time to time; and
 - (ii) a statute, regulation or provision enacted in replacement of that Statutory Provision.

1.4 If a party consists of more than one person, this Deed binds them jointly and each of them severally.

1.5 The schedules form part of this Deed.

1.6 Headings are for convenience only and do not affect the interpretation, or form part, of this Deed.

1.7 Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

1.8 Any references to clauses and schedules are construed as references to clauses of and schedules to this Deed.

Severance

- 1.9 If any provision or part of a provision of this Deed is or becomes void, invalid or unenforceable for any reason, it must be severed from this Deed but the remainder of this Deed continues in full force and effect and is unaffected by the severance.

Perpetuity Period

- 1.10 All powers and dispositions made by or under this Deed which, but for this provision, would or might be exercisable vest or take effect after the Vesting Date are exercisable only until the Vesting Date or vest or take effect on the Vesting Date.

2. Constitution of Fund

Establishment of Fund

- 2.1 The Trustee accepts its appointment as trustee of the Fund.

Name of Trust

- 2.2 The name of the Fund is the B.E.R.T. Fund No. 2.

Declaration of Trust

- 2.3 The Trustee holds the Fund and its income upon the trusts and subject to the provisions contained in this Deed.

2A Compliance with Fringe Benefits Tax Assessment Act to ensure status as an approved worker entitlement fund

- 2A.1 The Trustee will have regard to the FBT Requirements in administering the Fund.
- 2A.2 The Trustee need not comply with an FBT Requirement if it is not mandatory to do so in order for the Fund to be an *approved worker entitlement fund*.

3. Participation

Trustee May Admit Participating Employers

- 3.1 The Trustee may admit an Employer as a Participating Employer if:
- (a) the Trustee receives payment from that Employer on behalf of its Employees for the purposes of being credited against a Member Account established or to be established for those Employees, even though that Employer has not at that stage executed a Deed of Adherence;
 - (b) the Employer lodges with the Trustee a completed Deed of Adherence; or
 - (c) the Employer is a Participating Employer under the B.E.R.T. Fund as at the day immediately prior to the Commencement Date.

Participating Employers Bound by Deed

- 3.2 Each Participating Employer is bound by the terms of this Deed.

Admission - Participating Employers

3.3 The Trustee must notify an Employer in writing of its admission as a Participating Employer.

Commencement of Participation

3.4 An Employer becomes (or is deemed to become) a Participating Employer:

- (a) if admitted under clause 3.1(a), on the date of receipt of payment by the Trustee of amounts required under the industrial instrument;
- (b) if admitted under clause 3.1(b), on the date specified in the Deed of Adherence, or if no date is specified, then on the date of receipt of the Deed of Adherence; and
- (c) if admitted under clause 3.1(c), on the Commencement Date.

Member Identification

3.5 The Participating Employer must provide to the Trustee the information it requires to identify each Member in respect of whom Contributions are to be made by the Participating Employer.

4. Membership of Fund

Eligibility for Membership

4.1 Any Employee of a Participating Employer may become a Member. Each eligible Employee of a Participating Employer admitted under clause 3.1(c) who is a member of the B.E.R.T. Fund is deemed to be a member as and from the Commencement Date.

Trustee May Reject or Accept

4.2 On the receipt of an application for membership, the Trustee may admit or reject the applicant.

Commencement of Membership

4.3 The Member is deemed to have joined on the date determined by the Trustee.

Conditions of Membership

4.4 The Trustee may impose conditions on:

- (a) a Member's admission;
- (b) his or her rights and duties as a Member; and
- (c) Benefits for that Member.

4.5 The Trustee may remove or vary any of these conditions.

Membership Ceases

4.6 A person ceases to be a Member when the Trustee so resolves once all that Member's entitlements have been:

- (a) paid or forfeited; or
- (b) transferred to another fund in accordance with this Deed.

5. Fund Information

Information to Prospective Participating Employer

- 5.1 The Trustee must give to an Employer who is a prospective Participating Employer a written statement containing details of:
- (a) the kinds of Benefits;
 - (b) the conditions relating to Benefits; and
 - (c) the method of determining entitlements.

Member Information

- 5.2 The Trustee must give to a Member:
- (a) on request and payment of a reasonable fee determined by the Trustee, a copy of this Deed and any alteration to the Deed;
 - (b) within 6 months after the end of each Accounting Period, a statement showing the balance standing to the Member Account for that Member at the end of the Accounting Period; and
 - (c) on payment of an amount standing to the credit of a Member Account, a written statement setting out details of the payment made.

Participating Employer Information

- 5.3 The Trustee must give to a Participating Employer;
- (a) on request and payment of a reasonable fee determined by the Trustee, a copy of this Deed and any alteration to the Deed; and
 - (b) following the end of each month in which a Participating Employer makes a Contribution, a record showing the amount of that Contribution; and
 - (c) within 3 months after the end of each Accounting Period, an annual statement of Contributions made during the Accounting Period.

Trust Deed

- 5.4 A copy of this Deed must be kept by the Trustee at its head office and must be open to inspection by the Participating Employers and Members at all reasonable times
-

6. Contributions

Redundancy Contributions

- 6.1 Subject to the terms of an industrial instrument which applies to a Member, unless;
- (a) that industrial instrument requires the Minimum Contribution be paid to the Approved Superannuation Fund; and
 - (b) the Member has in aggregate in his or her Member Account and his or her member account in the B.E.R.T. Fund more than the minimum set by the industrial instrument; and

- (c) the Member elects by notice in writing to the Trustee to have the Minimum Contribution paid to the Approved Superannuation Fund on his or her behalf,

a Participating Employer must pay to the Trustee, or by it, within 15 days¹² after the end of each month an amount equal to the Minimum Contribution for each Member for each Week of Service in respect of which Contributions are payable. If the provisions of clauses 6.1(a), 6.1(b) and 6.1(c) are not collectively fulfilled and the moneys actually paid to the Approved Superannuation Fund, then the Minimum Contribution remains payable to the Trustee.¹³

Productivity and Other Payments

- 6.2 A Participating Employer may pay to the Fund on behalf of its Employees who are Members any additional amount:
 - (a) agreed with its Employees; or
 - (b) as it determines.

Particulars

- 6.3 The Participating Employer must inform the Trustee or if directed by the Trustee, the Fund Administrator, on which Member's behalf the Contributions are paid

Interest

- 6.4 If a Participating Employer defaults in the payment of Contributions due in accordance with clause 6.1 it must pay interest from the date the Contributions became due until the date on which they are paid at a rate determined by the Trustee to be equal to 2% over the overdraft rate as advised by the Commonwealth Bank of Australia.

Recovery of Expenses

- 6.5 A Participating Employer must reimburse the Trustee in respect of all reasonable expenses (including collection fees) incurred by the Trustee (or on behalf of the Trustee by the Fund's Administrator or otherwise) in obtaining payment by any Participating Employer of any outstanding Contribution.

7. Information from Members

- 7.1 A Member when requested by the Trustee must:
 - (a) furnish any information the Trustee considers necessary for the purposes of the Fund; and
 - (b) submit to medical examinations as required by the Trustee by a registered medical practitioner or therapist nominated by the Trustee.
- 7.2 If a Member fails to comply with the provisions of clause 7.1, the Trustee may withhold any Benefit in respect of that Member until the Member complies.
- 7.3 Where a Member furnishes information affecting the Benefit payable to the Member and the information is incorrect or misleading, or any relevant information is withheld, the Trustee

¹² Clause 6.1 was amended by a deed of amendment and restatement (document reference 416258768 -v2)

¹³ Clause 6.1 was amended by a supplemental deed (document reference 8759019).

may alter the Benefit to amounts that would have applied had full and accurate information been supplied.

8. Transfer from Another Redundancy Fund

- 8.1 The Trustee may accept into the Fund in respect of a Member an amount transferred from another similar fund in which the Member or an Employer of that Member has participated. A Member's Account must be opened for each Member whose account is transferred and the benefits credited to that account. Amounts transferred into the Fund are to be administered according to the terms of this Deed and not on the terms of the deed which applied in respect of the similar fund

9. Transfer of Benefit to New Fund

Transfer Requested by Member

- 9.1 On the written request of the Member, an amount equal to the positive balance of a Member Account may be paid or transferred to the trustee of another approved worker entitlement fund.

Transfer of Benefit by Trustee

- 9.2 The Trustee may transfer to another approved worker entitlement fund an amount no less than the positive balance of a Member's Member Account provided the Trustee is satisfied that the Member's rights and interests in respect of his or her entitlements under the Fund will not be adversely affected by the transfer.

Receipt of Trustee

- 9.3 The receipt of the trustee of another approved worker entitlement fund to which the transfer is made is a complete discharge to the Trustee in respect of any money or asset paid or transferred.

10. Accounts

Member Accounts

- 10.1 A Member Account must be established for each Member showing:
- (a) any amount paid or transferred into the Fund in respect of a Member under clause 8;
 - (b) Contributions made in respect of that Member; and
 - (c) sums added to or deducted from the account under the provisions of this Deed.

Income Account

- 10.2 An Income Account must be established All income and profits of the Fund must be credited to the Income Account. The following must be debited against the Income Account:
- (a) any loss sustained on the disposal of any investment of the Fund;
 - (b) any Fund expenses which are not debited to a Member Account;
 - (c) any amount of Taxation which is not debited to a Member Account;

- (d) the allocation of income in accordance with clause 27.1;
- (e) any amount credited to the Reserve Account; and
- (f) any amount credited to the Equalisation Account.

Reserve Account

10.3 A Reserve Account must be established showing:

- (a) any amount of income accumulated by the Trustee in accordance with clause 27.1 to be applied to the Reserve Account; and
- (b) any forfeited Benefits under clause 34.4;
- (c) sums added to or deducted from the Reserve Account (including costs and expenses of the Fund) under the provisions of this Deed; and
- (d) any amounts paid, applied or set aside from the Reserve Account under clause 27A.2.

10.4 The Trustee must maintain records to separately identify any amounts credited to the Reserve Account which represent Contributions (for example Contributions that are transferred to the Reserve Account due to being forfeited Benefits under clause 34.4).¹⁴

Equalisation Account

10.5 An Equalisation Account must be established. The Equalisation Account must be credited with any amount of income accumulated by the Trustee in accordance with clause 27.1 to be applied to the Equalisation Account. The Equalisation Account must be debited with any amounts paid, applied or set aside from the Equalisation Account under clause 27A.3.

Other Accounts and Registers

10.6 The Trustee must keep:

- (a) a register of Participating Employers and Members showing names addresses and such information as is relevant to the administration of the Fund; and
- (b) accounts as may be necessary to record the financial transactions by the Trustee and to record the Benefits for Members.

11. Accounting Report

11.1 After the close of each Accounting Period, the Trustee must prepare a written accounting report (prepared in accordance with generally accepted accounting principles and procedures) for the period, consisting of a statement of income and expenditure and a balance sheet, and distribute copies to the Active Sponsors.

12. Audit of Accounts

12.1 The accounts of the Fund must be audited at least once a year by a qualified auditor appointed by the Trustee.

12.2 The remuneration for the auditor is to be determined by the Trustee and paid out of the Fund.

¹⁴ Clause 10.3 was amended by deed of amendment and restatement (document reference 30799151v1)

13. Qualification of Trustee

Eligibility to be Trustee

- 13.1 The Trustee must be a limited liability company in which:
- (a) the Active Unions hold shares carrying an entitlement to 50% of all voting rights at a general meeting; and
 - (b) the Active Employer Organisations hold shares carrying an entitlement to the remaining 50% of all voting rights at a general meeting.
-

14. Powers of Trustee

General Power

- 14.1 Subject to clauses 14.2, the Trustee has all the powers over and in respect of the Fund and the assets of the Fund and using the assets and credit of the Fund and doing anything else on behalf of the Fund which it could exercise and do if it was the absolute and beneficial owner of the Fund and the assets of the Fund.
- 14.2 The Trustee must exercise its powers in a manner consistent with or permitted by the FBT requirements.

Particular Powers

- 14.3 Subject to clause 14.2 but without limiting the general power contained in clause 14.1, the Trustee has the particular powers referred to in Schedule 3.

Discretion in Exercise of Powers

- 14.4 Subject to clause 14.2, the Trustee may exercise the powers referred to in Schedule 3 as the Trustee thinks fit and may enter into any transaction in exercise of those powers on such terms and conditions as the Trustee thinks fit.

Statutory Powers

- 14.5 The Trustee has the powers conferred by the *Trusts Act 1973* or otherwise by law except where they are inconsistent with the powers conferred by this Deed.
- 14.6 Where a power is conferred by this Deed which is similar to, but larger than, a power conferred by the *Trusts Act 1973*, it operates and is exercisable without any limitation or restriction imposed by the *Trusts Act 1973* on that statutory power.
-

15. Appointment of Managers

- 15.1 The Trustee may appoint any person to act as Investment Manager or Custodian Trustee or both. The appointment must be in writing.
- 15.2 The Trustee may delegate to any Investment Manager or Custodian Trustee the powers it thinks fit.
- 15.3 The Trustee is not liable or responsible for any act, omission, error of judgment, negligence or breach of trust by the Investment Manager or Custodian Trustee.

- 15.4 The Trustee is not bound to take proceedings against any Investment Manager or Custodian Trustee arising in the circumstances described in clause 15.3.
- 15.5 The Trustee may pay out of the Fund to the Investment Manager or Custodian Trustee remuneration for their services as the Trustee considers proper.
- 15.6 The Trustee may remove the Investment Manager or Custodian Trustee or alter the terms of its appointment as the Trustee thinks fit.

16. Appointment of Fund Administrator

- 16.1 The Trustee may appoint any person to be Fund Administrator. The appointment must be in writing on terms which the Trustee considers appropriate.
- 16.2 The Trustee may delegate to the Fund Administrator the duties and powers in relation to the administration and management of the Fund it thinks fit including the following:
 - (a) the collection of Contributions and the transfer of money and assets to and from any Investment Manager or Custodian Trust,
 - (b) the collection, recording and dissemination of Contributions and other information for the purposes of the Fund;
 - (c) the establishment and maintenance of records of account and Contributions and other necessary records including details of Member Accounts,
 - (d) the calculation of Benefits; and
 - (e) the provision and maintenance of a computer network and associated enquiry facilities necessary to support the administration of the Trust.

17. Confidentiality of Trustee's Deliberations

- 17.1 In addition to any right of the Trustee under the general law to refuse disclosure of any document or matter, the Trustee is not required to disclose to any person:
 - (a) any document disclosing:
 - (i) any deliberations of the Trustee as to the manner in which the Trustee should exercise any power or discretion conferred upon the Trustee;
 - (ii) the reasons for any particular exercise or non-exercise of any power or discretion; or
 - (iii) the material upon which those reasons were or might have been based;
 - (b) any other document relating to the exercise or proposed exercise of any power or discretion conferred on the Trustee by this Deed; or
 - (c) any reason for any exercise or non-exercise of any power or discretion.

18. Remuneration of Trustee

- 18.1 So long as the payment of a Trustee's commission is not inconsistent with the FBT Requirements, the Trustee may with the prior approval of a Special Resolution of the Active Sponsors charge and retain out of the Fund a trustee's commission.
-

19. Liability of Trustee

- 19.1 No Trustee, and no officer of the Trustee, is liable for any loss or damage occasioned to the Fund or to any person by:
- (a) the exercise of any discretion or power by the Trustee, conferred by this Deed or by law, or any failure to exercise any of those discretions or powers;
 - (b) any breach of duty or trust, unless it is proved to have been committed, made or omitted in personal, conscious and fraudulent bad faith by the Trustee or the officer respectively; or
 - (c) any disclosure by the Trustee or the officer of any document, matter or thing relating to the Fund or any Beneficiary.
- 19.2 All persons claiming any interest in the income or the capital of the Fund are deemed to take it with and subject to notice of the protection conferred by this clause 19.
- 19.3 The Trustee is not bound to take any proceeding against a co-trustee for any breach or alleged breach of trust committed by the co-trustee.
- 19.4 Where the Trustee acts in reliance upon the advice of any expert or professional obtained in relation to the interpretation of the provisions of this Deed or any document or statute or any matter concerning the administration of the Fund, the Trustee is not liable to any Member, Participating Employer or Beneficiary in respect of any act done or omitted to be done by the Trustee in accordance with the advice.
-

20. Indemnity for Trustee

- 20.1 The Trustee is entitled to be indemnified out of the Fund against liabilities incurred by the Trustee by virtue of being the trustee of the Fund.
- 20.2 The Trustee is entitled to be reimbursed from the Fund for all money expended and debts incurred in or about the administration of the Fund.
- 20.3 The Trustee may apply the Fund to satisfy the rights of reimbursement or indemnity to which the Trustee is entitled.
-

21. Appointment and Removal of Trustee

- 21.1 The Trustee must vacate office as trustee of the Fund and cease to act as such if:
- (a) it is removed as provided by law;
 - (b) it fails to satisfy the requirements of clause 13.1;

- (c) an application for its winding up is made or it passes a resolution for its voluntary winding up (except bona fide for the purpose of amalgamation or reconstruction) or if a receiver is appointed to its undertakings or any part of its undertakings; and
 - (d) by Special Resolution of the Active Sponsors, the Active Sponsors resolve that the Trustee be removed.
- 21.2 The Trustee may resign its office by giving 1 month's notice in writing to the Active Sponsors of its desire so to do.

22. Appointment of New Trustee

- 22.1 If the Trustee is removed from office or retires pursuant to clauses 21.1 and 21.2 the Active Sponsors may by Special Resolution of the Active Sponsors appoint a person to replace the Trustee provided that a Trustee must not cease to be a trustee pursuant to either clause 21.1 and 21.2 unless and until the Active Sponsors have determined to appoint a replacement Trustee and that replacement has agreed to assume the office of Trustee.
- 22.2 The new Trustee so appointed must execute a deed accepting the office of Trustee and must undertake to perform and observe all the obligations of the Trustee under this Deed.

23. Sole Trustee

- 23.1 A Trustee may be discharged although there will remain or be appointed in its place a sole trustee other than the Public Trustee or a trustee company under the *Trustee Companies Act 1968* or any corresponding legislation in any state or territory of Australia or elsewhere.
- 23.2 A sole trustee is authorised, even though it is the sole trustee, to receive capital and other money and to give valid and effectual receipts including receipts for money deemed to be capital money for the purpose of any statute.

24. Exercise of Discretions and Powers

- 24.1 So long as its exercise is not inconsistent with the FBT Requirements:
- (a) every discretion vested in the Trustee is absolute and uncontrolled;
 - (b) every power vested in the Trustee is exercisable at the absolute and uncontrolled discretion of the Trustee.
- 24.2 So long as to do so is not inconsistent with the FBT Requirements, the Trustee may by instrument in writing, revocable or irrevocable, wholly or partially release, abandon or restrict any power conferred on the Trustee by this Deed.

25. Interest of Directors of Trustee Corporation

- 25.1 So long as to do so is not inconsistent with the FBT Requirements, any person being a director or shareholder of the Trustee may be directly or indirectly interested in the mode or result of exercising the powers and discretions of this Deed without affecting the validity of the exercise of the powers and discretions.

26. Interest of Trustee

- 26.1 The Trustee may exercise or concur in exercising all powers and discretions contained in this Deed or otherwise by law conferred even though:
- (a) the Trustee or any person being a director or shareholder of the Trustee may:
 - (i) have a direct or personal interest (whether as trustee of any other settlement or in a personal capacity or as a director or shareholder of any corporation or otherwise) in the mode or result of exercising the power or discretion; or
 - (ii) benefit either directly or indirectly as a result of the exercise of the power or discretion; and
 - (b) the Trustee is the sole trustee.
-

27. Distribution of Net Income

Trustee's Discretion

- 27.1 All income of the Fund for an Accounting Period must be paid, applied or set aside by the Trustee to or for any one or more of the purposes mentioned in section 58PB(4)(d) of the *Fringe Benefits Tax Assessment Act 1986* but in the proportions the Trustee thinks appropriate. Any part of the income accumulated within the Fund under this clause 27.1 (for example, for the purpose of making investments to generate income from the assets of the Fund) must be paid into either the Reserve Account or the Equalisation Account (as specified by the Trustee) but in the proportions the Trustee thinks appropriate.

Late Exercise of Discretion

- 27.2 The Trustee may exercise the discretion contained in clause 27.1 after the expiration of the Accounting Period if the Commissioner of Taxation accepts that the entity in whose favour the Trustee has exercised the discretion is presently entitled to the income in the Accounting Period to which the distribution relates. If not, the purported exercise of the discretion after the expiration of the Accounting Period is ineffective.

Takers in Default

- 27.3 If the Trustee does not exercise the discretion contained in clause 27.1 (or to the extent to which the Trustee does not exercise or does not effectively exercise that discretion), the Trustee must accumulate the income for the Accounting Period by applying it to the credit of the Reserve Account for the purposes mentioned in paragraphs (c)(ii) and (c)(vii) of section 58PB(4) of the *Fringe Benefits Tax Assessment Act 1986*.

Recoupment of Losses

- 27.4 Where the Trustee suffers a loss for taxation purposes in any Accounting Period it is not required to recoup that loss out of the corpus of the Fund. Losses which relate to previous Accounting Periods so far as possible must be recouped out of profits and not corpus. If losses are at any time to be recouped out of corpus they must first be recouped from the Equalisation Account and then from the Reserve Account if the Equalisation Account has been exhausted.

27A Payments from the Fund

Payments from Contributions

27A.1 Payments from Contributions must be made only for the purposes specified in section 58PB(4) of the *Fringe Benefits Tax Assessment Act*.

Distributions from Reserve Account

27A.2 The Trustee may (at any time) in respect of all or any part of any positive balance in the Reserve Account, pay, apply or set it aside as follows:

- (a) if it is income of the Fund - in the manner provided for in clause 27.1;
- (b) if it is from Contributions, including any Contribution that has been transferred to the Reserve Account due to the forfeiture of Benefits under clause 34.4¹⁵ - in the manner for in clause 27A.1;
- (c) if it is not otherwise covered by paragraphs (a) or (b) of this clause 27A.2 (for example, it is an amount which results from an accumulation of income paid to the Reserve Account under clause 27.1) - for any one or more of:
 - (i) the Sponsors;
 - (ii) the Members;
 - (iii) the Participating Employers;
 - (iv) the legal personal representative or the Death Benefit dependants of a Member;
 - (v) any Approved Institution,

so long as to do so is not inconsistent with the FBT Requirements.

Distributions from Equalisation Account

27A.3 The Trustee may (at any time) in respect of all or any part of any positive balance in the Equalisation Account pay, apply or set it aside as follows:

- (a) if it is income of the Fund - in the manner provided for in clause 27.1;
- (b) if it is from Contributions - in the manner provided for in clause 27A.1;
- (c) if it is not otherwise covered by paragraphs (a) or (b) of this clause 27A.3 (for example, it is an amount which results from an accumulation of income paid to the Equalisation Account under clause 27.1) - for any one or more of:
 - (i) the Sponsors;
 - (ii) the Members;
 - (iii) the Participating Employers;
 - (iv) the legal personal representatives or the Death Benefit dependants of a Member,

¹⁵ Inserted by deed of amendment and restatement (document reference 30799151v1)

(v) any Approved Institution,

so long as to do so is not inconsistent with the FBT Requirements.

Trustee to consider the legal personal representatives or Death Benefit dependants once the Member or former Member has died

27A.4 Subject to the FBT requirements and the specific limitations of clauses 27A.1 to 27A.3, the Trustee must ensure that all amounts held in the Reserve Account which are attributable to Contributions made in respect of a Member or former Member (including any Contribution that has been transferred to the Reserve Account due to the forfeiture of Benefits under clause 34.4 for that Member or former Member), to the extent those Contributions have not otherwise been paid, applied or set aside for any other of the purposes set out in section 58PB(4)(c) of the *Fringe Benefits Tax Assessment Act* or will not be so paid, applied or set aside, are paid either:

- (a) to the legal personal representatives of that Member or former Member (as the case requires); or
- (b) to one or more Death Benefit dependants of that Member or former Member (as the case requires),

if that Member or former Member has died or has otherwise ceased to be entitled to his or her Benefit as at the date that payment is made.¹⁶

28. Amount of Benefit for Members

- 28.1 Subject to clause 28.2, a Member's Benefit is equal to the positive balance in his or her Member Account on the date the Benefit becomes payable.
- 28.2 The amount of any Benefit must not exceed that which is in the opinion of the Trustee the maximum the assets of the Fund can provide in respect of the Member.

29. Payment of Benefits to Members¹⁷

29.1 So long as to do so is not inconsistent with the FBT Requirements, a Benefit is payable upon a claim being made by the Member if the Member has otherwise satisfied the requirements (if any) of the industrial instrument having application to the Member in respect of his or her entitlement to claim that Benefit and:

- (a) retires from the work force on or after attaining the [Pension Age](#) ~~age of 55 years~~;
- (b) suffers financial hardship and provides to the Trustee documentary evidence satisfactory to it;¹⁸
- (c) dies;
- (d) becomes Totally and Permanently Disabled;
- (e) is made Redundant;¹⁹

¹⁶ clause 27A.4 was Inserted by deed of amendment and restatement (document reference 30799151v1)

¹⁷ clause 29 was amended by a supplemental deed dated 10 November 2004.

¹⁸ clause 29.1(b) was amended by deed of amendment and restatement (document reference 30799151v1)

¹⁹ clause 29.1(e) was amended by deed of amendment and restatement (document reference 30799151v1)

- (f) permanently leaves the Construction Industry; or
- (g) permanently leaves Australia.

30. Preconditions to Entitlement

- 30.1 A Member has no entitlement to a Benefit until he or she has lodged a properly completed claim form with the Trustee and satisfied the Trustee's requirements, enquiries and information regarding his or her entitlement to that Benefit.
- 30.2 The Trustee has no obligation to pay a Benefit until it receives satisfactory evidence of the Member's entitlement. The Trustee may also require the payee to execute documents and do other acts and things as may be appropriate for the Trustee to obtain a good release before paying any claim.
- 30.3 A Member will be considered to have permanently left the Construction Industry for the purposes of clause 29.1(f) if he or she has not been employed in the Construction Industry for 12 months preceding the date of the application.²⁰

31. Death Benefit

- 31.1 The Trustee must pay the Death Benefit to any one or more of the Death Benefit dependants or legal personal representatives of the deceased Member as the Trustee considers appropriate.
- 31.2 If no claim for a Death Benefit is made by the legal personal representatives or any Death Benefit Dependents of a deceased Member within 12 months following the death of the Member, the Trustee may forfeit the Benefit and apply it in accordance with clause 34.4.²¹

32. Procedure for Payment of Benefits

- 32.1 The Trustee may forward the Benefits to the postal address or bank account last notified or to any other place the Trustee determines.
- 32.2 Every Member must (except where no further Benefit is payable) notify the Trustee in writing at the time the Benefit becomes payable and immediately after the Member changes address of:
 - (a) the Member's place of residence and full postal address; and
 - (b) the bank account (if any) to which the Member requests that the Benefit be paid.
- 32.3 Any person to whom a Benefit is payable must, if requested, furnish the Trustee with a receipt and release in the form required by the Trustee.

²⁰ Clause 30.3 was inserted by a supplemental deed dated 10 November 2004.

²¹ Clause 31 was amended by deed of amendment and restatement (document reference 30799151v1)

33. Payment of Taxation

- 33.1 The manner in which distributions from the Fund are dealt with or the payment of benefits under the Fund may involve a tax liability for the person to whom a payment or benefit is paid or applied and such person accepts that liability.
- 33.2 The Trustee may deduct Taxation required to be deducted (or which the Trustee considers is required to be deducted) from a Benefit.
- 33.3 The Trustee may deduct Taxation payable in relation to a Contribution from the Member Account.
-

34. Forfeiture of Benefits

Loss of Benefits

- 34.1 Any Member:
- (a) who before a Benefit becomes payable, becomes bankrupt; or
 - (b) whose Benefits whether by the persons own act operation of law, an order of any court or otherwise become payable to or vested in any person, company, government or other public authority; or
 - (c) who is suffering from any physical or mental disability which in the opinion of the Trustee renders the Member unable to manage his or her own affairs; or
 - (d) who assigns or charges or attempts to assign or charge his or her Benefit,
- forfeits entitlement to all Benefits other than those Benefits to which he or she has at that time become absolutely and indefeasibly entitled under the terms of this Deed.

Death Benefit dependants to be Considered

- 34.2 Benefits forfeited by reason of clause 34.1 must be held for the Member or former Member and his or her Death Benefit dependants as a class until the Benefit becomes payable. On the Benefit becoming payable the Trustee must pay the Benefit to the Member or former Member (as the case requires) if her or she has survived that date or if he or she has not survived that date then to any one or more of the Member's or former Member's (as the case requires) Death Benefit dependants in the proportions between them as the Trustee determines. The payment or application of any moneys pursuant to this clause is a complete discharge to the Trustee for those moneys Any Benefit not able to be so dealt with is forfeited and must be applied in accordance with clause 34.4.²²

Lost Members and Small Amounts

- 34.3 The amounts standing to a Member's Account may be forfeited where:
- (a) the amount standing to the account is a Small Amount and there have been no Contributions credited to that account for 12 months; or
 - (b) in relation to that Member:

²² clause 34.2 was amended by deed of amendment and restatement (document reference 30799151v1)

- (i) a statement sent by the Trustee under clause 5.2(b) to the last known address of the Member has been returned unclaimed;
- (ii) a continuous period of greater than 12 months has elapsed since the return of that statement and the Member's whereabouts has not become known to the Trustee during that period; and
- (iii) no contribution has been made to the Redundancy Fund in relation to that Member for that period.

Nothing in this clause 34.3 imposes an obligation on the Trustee to ascertain or establish the whereabouts of a Member.

Allocation for Forfeited Benefits

- 34.4 Every Benefit forfeited or to which a Member has lost his or her entitlement under any of the provisions of this Deed and not otherwise dealt with must be transferred to the Reserve Account.

35. Relationship Between Employer and Employee

- 35.1 Dealings between the Employer and Employee are not affected by this Deed.
- 35.2 The rights of a Member or that Member's legal personal representative to claim damages or compensation under:
- (a) common law;
 - (b) any workers' compensation legislation; or
 - (c) any other statute in force governing compensation to a Member injured or killed by an accident arising out of or in the course of that Member's employment with the Employer,
- are not affected by this Deed.

36. Liability and Interest in the Fund

Interest

- 36.1 A Member's interest in the Fund is personal to the Member.
- 36.2 Except as provided in this Deed, a Participating Employer or a Member has no right to or interest in any money or other assets of the Fund.

Liability of Participating Employers and Members

- 36.3 The Trustee has no power or authority to enter into any contract that binds, affects or renders liable Participating Employers or Members personally or calls upon them for any payment whatsoever that is in addition to the obligations contained in this Deed or the Deed of Adherence.

37. Change in Employer

New Employer

37.1 If:

- (a) a Participating Employer is dissolved or being a company is wound up or any similar event occurs and another person agrees to undertake the obligation of that Participating Employer in respect of the Fund; or
- (b) another person acquires all or part of the undertaking and assets of a Participating Employer and agrees to undertake the obligations of that Participating Employer or otherwise becomes bound to perform the obligations of the Participating Employer in respect of the Fund,

then that Participating Employer upon the happening of either event is released from all obligations in respect of the Fund and the Deed of Adherence thereafter has effect as if such other person had been a party to the Deed of Adherence instead of the then Participating Employer

Withdrawal of Employer

37.2 The participation of a Participating Employer may be terminated if:

- (a) the Trustee gives 1 month's notice in writing to the Participating Employer;
- (b) where, subject to clause 37.1, a Participating Employer is or includes a body corporate, a resolution is passed or an order is made for its winding up or a scheme of arrangement providing for its dissolution is approved by a Court;
- (c) where a Participating Employer is or includes a partnership, the partnership is dissolved;
- (d) where, subject to clause 37.1, a Participating Employer is or includes a natural person or persons not in partnership, the person or any of those persons dies or becomes bankrupt;
- (e) a Participating Employer ceases to carry on business; or
- (f) a Participating Employer gives 3 months' notice in writing to the Trustee of its intention to cease participation in the Fund provided that if the Participating Employer is not in arrears in respect of its Contributions it may terminate by giving the Trustee 1 month's notice in writing.

The Participating Employer (**Retiring Employer**) ceases its participation in the Fund as and from the date (**Cessation Date**) that the relevant event occurs or expiration of the relevant notice period, as the case may be.

Effect of Termination of Participation

37.3 On the termination of a Participating Employer's participation in the Fund in accordance with clause 37.2:

- (a) no further Employees of that Retiring Employer will be admitted as Members;
- (b) no further Contributions may be made by the Retiring Employer except Contributions that were due on or before the Cessation Date;

and after obtaining such advice (if any) as it considers necessary, the Trustee must determine the amounts held in the Fund that are attributable to the Members who are Employees of the Retiring Employer. Those amounts must be held in terms of this Deed.

Procedure on Termination

37.4 On termination of participation:

- (a) the Trustee must specify a date (**Retirement Date**) upon which the Participating Employer (**Retiring Employer**) must retire;
- (b) the Retiring Employer must immediately pay all arrears, if any, of Contributions up to the Retirement Date;
- (c) the Benefits of each Member employed by the Retiring Employer must be held and applied at the discretion of the Trustee in one or more of the following ways or partly in one way and partly in another:
 - (i) for the Members until they are entitled to payment of the Benefits; or
 - (ii) transferred in accordance with clauses 9.1 or 9.2.

Discharge of Trustee

37.5 The receipt of the trustee of the fund to which an amount is transferred is a complete discharge to the Trustee in respect of all liabilities to the Member employed by the Retiring Employer and persons claiming in or in respect of his or her interest under the Fund,

Notice to Members

37.6 The Retiring Employer must notify the Members employed by it of its ceasing to be a Participating Employer before the Retirement Date.

38. Dissolution of the Fund

Date of Dissolution

- 38.1 Provided the Active Sponsors have given their prior approval to the winding up of the Fund by a Special Resolution of the Active Sponsors, the Fund must be wound up if:
- (a) there are no Members or Participating Employers and the Trustee resolves to terminate the Fund;
 - (b) the liabilities (excluding any liability for the future payment of Benefits) of the Fund exceed the assets of the Fund; or
 - (c) for any other reason the Trustee resolves to terminate the Fund.

Notice to Members

38.2 If an event referred to in clause 38.1 occurs, the Trustee must give notice in writing to Members (if any) and all Participating Employers that the Fund will be wound up on a specified date.

Position Following Giving of Notice

38.3 Following the giving of the notices referred to in clause 38.2, the Trustee must continue to administer the Fund in accordance with the provisions of this Deed except that:

- (a) no further Contributions, other than Contributions due on or before the date specified in the notices referred to in clause 38.2, may be accepted in respect of any Member; and
- (b) no new Members or new Participating Employers may be admitted.

Provision for Liabilities and Benefits

- 38.4 As soon as practicable after the date specified in the notices referred to in clause 38.2 the Trustee must make provision after meeting expenses and liabilities for the following:
- (a) payment of Benefits which on or before giving the notices referred to in clause 38.2 had become payable to a Member; and
 - (b) payment of an amount equal to the credit balance of each Member's Member Account in accordance with clause 37.4(c).

Surplus

- 38.5 If after providing for expenses, liabilities and Benefits in accordance with clause 38.4, a surplus remains, the Trustee may pay, apply or set aside any part of that surplus in the following manner:
- (a) if it is from the income of the Fund - in the manner provided for in clause 27.1;
 - (b) if it is from Contributions, including any Contribution that has been transferred to the Reserve Account due to the forfeiture of Benefits under clause 34.4 - in the manner provided for in clause 27A.1;
 - (c) if it is not otherwise covered by paragraph (a) or (b) of this clause 38.5 - to any one or more of the following:
 - (i) the Sponsors;
 - (ii) the Members;
 - (iii) the Participating Employers;
 - (iv) the legal personal representatives or the Death Benefit dependants of a Member,
- so long as to do so is not inconsistent with the FBT Requirements.²³

Takers in default

- 38.6 If the Trustee does not exercise the discretion contained in clause 38.5 (or to the extent to which the Trustee does not exercise or does not effectively exercise that discretion), the Trustee holds the surplus equally for the Participating Employers and Members as at the date the notice is given under clause 38.2.

After Payment of Benefits the Fund is Dissolved

- 38.7 When all Benefits have been paid, transferred or applied in accordance with the provisions of this Deed, and any amount remaining in the Fund has been paid or applied in accordance with clause 38.4 the Fund is deemed to be dissolved.

²³ clause 38.5 was amended by deed of amendment and restatement (document reference 30799151v1)

Final Accounts

- 38.8 Final accounts of the Fund are to be taken and the Trustee must have those accounts audited.

39. Variation of Trust

- 39.1 The Trustee may by written resolution of the Trustee (including a resolution of the board of directors of the Trustee) or by supplemental deed revoke, add to or vary all or any of the trusts, powers, terms and conditions contained in this Deed (or trusts, powers, terms and conditions contained in any variation, alteration or addition made to this Deed) provided that such revocation, addition or variation has the prior approval of the Active Sponsors by way of Special Resolution of the Active Sponsors.
- 39.2 The variations, alterations or additions take effect from the date (if any) specified for that purpose in the resolution or supplemental deed. If no date is stated, then the variations, alterations or additions take effect from the date the resolution or the supplemental deed is made.
- 39.3 No revocation, addition or variation may adversely affect the beneficial entitlement to any amount set aside for any Member or Participating Employer prior to the date of the variation, alteration or addition.
- 39.4 The Trustee will notify the Commissioner of Taxation in writing before giving effect to any resolution or deed revoking, adding or varying this Deed.

40. Notices²⁴

- 40.1 Any notice or document to be given under this Deed may be delivered or sent by prepaid registered or certified mail (or, if to a party situated in another country, by prepaid registered airmail) or telex or facsimile or email to the party to be served at that party's address as that party notifies.
- 40.2 The notice or document is deemed to be served:
- (a) if delivered, at the time of delivery;
 - (b) if posted, at the time it would be received in the normal course of post;
 - (c) if sent by telex or facsimile, on the next business day in the place to which it is addressed; or
 - (d) if sent by email (and the sender receives confirmation from that person or that person's email system that the email has been received), that day if delivered by 4.00 pm on a business day, or the next business day, in any other case.

41. Law of Trust

- 41.1 This Deed is governed by the law of Queensland.

²⁴ Clause amended by a supplemental deed (document reference 19152777)

42. Partial Payment of Benefit

Request for deferral

42.1 If a Benefit is payable, the Member may apply to the Trustee in writing to defer its payment.

Drawdown requests

42.2 Where the Trustee has agreed to defer payment of a Benefit the Member may at any time make a Drawdown Request to the Trustee.

Pay drawdowns

42.3 The Trustee must:

- (a) pay the Drawdown to the Member on a day not less than 30 days from receipt of the Drawdown Request; and
- (b) debit the amount of the Drawdown to the Member's Member Account.

Income on Undrawn balances

42.4 A Member has no entitlement to any income or profit in respect of the undrawn balances of the Benefit to which the Member has otherwise become entitled under the terms of this Deed but in respect of which the Member has applied under clause 42.1 to have the payment deferred.

Definitions

42.5 In this clause 42:

- (a) **Drawdown** means the amount payable under a Drawdown Request unless the Trustee specifies any different amount; and
- (b) **Drawdown Request** means the request by a person to drawdown a part or all of that person's entitlement in the Fund.

Schedule 1

Deed of Adherence

Title	Deed of Adherence
Date	
Parties	BERT Fund Limited (ACN 607 106 650) of Level 1, 35 Astor Terrace, Spring Hill, Queensland 4000 (Trustee) The party described in the Schedule Of (Participating Employer)

Recitals

- A Pursuant to a deed dated 22 December 2003 (**Trust Deed**) BERT Pty Limited (as the initial Trustee) established the B.E.R.T. Fund No. 2.
- B The Participating Employer wishes to assume the obligations as a Participating Employer under the terms of the Trust Deed in respect of those of its employees who are Members.

IT IS AGREED

1. Definitions and Interpretation

Definitions

- 1.1 Unless the context otherwise requires words and expressions defined in the Trust Deed have the same meaning when used in this Deed.

2. Admission of Participating Employer

- 2.1 The Participating Employer:
- (a) is bound by the terms and conditions of the Trust Deed; and
 - (b) accepts all the covenants obligations and responsibilities imposed upon a Participating Employer under the terms of the Trust Deed.

3. Governing law and jurisdiction

- 3.1 The law of Queensland governs this Deed.
- 3.2 The parties submit to the non-exclusive jurisdiction of the courts of Queensland and the Federal Court of Australia.

4. Notices²⁵

- 4.1 A notice or other communication (**Notice**) connected with this Deed has no legal effect unless it is in writing and:
- (a) delivered by hand at the address of the addressee set out in this Deed or subsequently notified;
 - (b) sent by post, postage prepaid, to that address;
 - (c) sent by facsimile to the facsimile number of the addressee; or
 - (d) sent by email to the email address of the addressee.
- 4.2 A Notice is deemed given and received:
- (a) if delivered, upon delivery;
 - (b) if sent by post on the 2nd Business Day (at the address to which it is posted) after posting; or
 - (c) if sent by facsimile or email before 4 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- 4.3 Despite clause 4.2(c) a facsimile or email is not deemed given or received unless, in the case of a facsimile, at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages comprised in the Notice have been sent or, in the case of email, the sender receives confirmation from that person or that person's email system that the email has been received.

THE SCHEDULE

Name of Participating Employer	:
ACN (if a company) Business Name (if any) Address	:
Telephone number	:
Facsimile number	:
Email address	:
Contact name	:

²⁵ Clause and schedule amended by a supplemental deed (document reference 19152777).

Execution

Executed as a deed.

Signed sealed and delivered by

in accordance with section 127 of the
Corporations Act 2001 (Cth) by a director
and secretary/director:

Signature of director

Signature of director/secretary (please strike
out as applicable)

Name of director (please print)

Name of director/secretary (please print)

Signed sealed and delivered by

in the presence of:

Signature of witness (a JP or Solicitor)

Name of director (please print)

Address of Witness

Schedule 2**Application for membership**

CONFIDENTIAL

To: The Trustee
B.E.R.T. Fund No, 2

I, the undersigned person, being eligible, apply for admission to membership of the Fund.

Dated20 .

Name.....

Address

Occupation

Date of Birth

Signature

Nominated Dependants

I nominate the following as my Nominated Dependants:

			%of Total
Surname(s)	Given Name(s)	Relationship	Benefit

Schedule 3

Trustee's particular powers

1. Invest

1.1 To invest money which forms part of the Fund in any investments, whether involving liabilities or not, with or without security even though those investments are:

- (a) not income producing;
 - (b) of a wasting or speculative nature; or
 - (c) not by law authorised for the investment of trust money
-

2. Purchase and pay for investments

2.1 To make any investments for cash or in consideration of any annuity or otherwise and:

- (a) to make any investment for a sum greater than the amount of the Fund for the time being; and
 - (b) to agree to pay for the investment wholly or in part from any future money which may come into its hands including dividends, profits, interest or other income paid or payable in respect of the investment.
-

3. Vary investments

3.1 To vary or transpose any investments into or for any others of any nature and to vary the terms of or property comprised in any security.

4. Lend

4.1 To advance and lend money to any person with or without security.

5. Borrow and obtain credit

5.1 To raise or borrow money, either alone or jointly with others, from any person.

5.2 To enter into any agreement or arrangement for obtaining credit.

5.3 To secure the repayment of any money or other indebtedness or obligation of the Trustee by mortgage, charge or other security or encumbrance over the whole or any part of the property and future property of the Fund.

5.4 No lender is concerned to enquire:

- (a) as to whether the necessity for any borrowing has arisen;
- (b) as to the purpose for which it is required;
- (c) as to the application of the money borrowed; or

- (d) that no more than is wanted is raised.
- 5.5 The obligation of the Trustee for the repayment of the money extends only to the assets for the time being forming the Fund and the Trustee does not incur any obligation in its personal capacity for the borrowings.
-

6. Limit liability

- 6.1 To enter into any agreement to limit the present or future liability of the Fund including, but not limited to, any agreement relating to interest rate caps, collars, floors or swaps, any \$A forward rate agreement and any other financial risk management agreement and whether varying the terms of any existing financial arrangement or loan or for the purpose of setting up a new financial arrangement or otherwise managing the risk of existing or future financial arrangements.
-

7. Give guarantees

- 7.1 To give any guarantee or indemnity (alone, jointly or jointly and severally) for the payment of money or the performance of any contract, obligation or undertaking by any person
- 7.2 To give any form of security (alone, jointly or jointly and severally) over all or any of the assets of the Fund for the purposes of securing its obligations in respect of the guarantee or indemnity.
- 7.3 No lender is concerned to enquire as to:
- (a) the necessity for or propriety of any guarantee or indemnity;
 - (b) the purpose for which it is given; or
 - (c) the application of any money borrowed.
-

8. Joint or third party borrowing

- 8.1 To join with any other person or corporation in executing any mortgage or other document for the purpose of securing the payment of money to;
- (a) the Trustee jointly with any other person; or
 - (b) any other person.
-

9. Deal with property

- 9.1 To hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, sell, assign, transfer, convey, surrender, let, lease, take on lease, exchange, take and grant licences options or rights in, alienate, mortgage, charge, pledge, reconvey, release or discharge or otherwise deal with any property or any right, estate or interest in it, whether forming part of the Fund or not.

10. Acquire policies of insurance

- 10.1 To effect or acquire any reversionary or deferred property or rights of any description or any life or life endowment or sinking fund or term or other policy of insurance of any nature and at or subject to any premium, whether single or payable periodically, and with or subject to any options, rights, benefits, conditions or provisions.
- 10.2 To pay out of the income or capital of the Fund all sums payable for premiums or otherwise for the effecting or maintenance of any policy of insurance (whether owned by the Trustee or otherwise) or for the exercise or enjoyment of any option, right or benefit under it and any surrender of any policy is deemed to be a sale of that policy.
-

11. Pay outgoings

- 11.1 To pay out the Fund all costs, charges and expenses incidental to:
- (a) the management of the Fund;
 - (b) the exercise of any power, authority or discretion contained in this Deed; or
 - (c) carrying out or performing the Trusts created by this Deed;
- which the Trustee may incur including all income tax or other taxes payable in respect of the Fund, costs in any way connected with preparation and execution of this Deed and all money which the Trustee may be required to pay as settlement, gift, stamp or revenue duties in respect of the Fund or this Deed.
-

12. Take up shares, units or securities

- 12.1 To take up by allotment or purchase any stock, shares, debentures, bonds, notes, units, subunits or other securities (including a minority share interest) with or without deferred, restricted, qualified or special rights issued by:
- (a) any corporation incorporated in any of the states or territories of Australia or elsewhere;
 - (b) any government, semi-governmental municipal authority or corporation in any of the states or territories of Australia or elsewhere;
 - (c) any fixed, flexible or unit trust established in any of the states or territories of Australia or elsewhere; and
 - (d) any limited partnership established in any of the states or territories of Australia or elsewhere.
-

13. Corporate securities

- 13.1 With respect to any corporation or unit trust in which the Trustee holds shares, stock, debentures options, convertible notes, units, subunits (**Securities**) or is otherwise interested or concerned:
- (a) to pay calls on Securities or per Securities to be forfeited and sold;

- (b) to purchase Securities and take Securities of a new issue;
- (c) to lend money to the corporation or unit trust whether secured by debentures or in any
- (d) other way or not secured;
- (e) to attend at meetings personally or by proxy, attorney or representative and vote at the
- (f) discretion of the Trustee;
- (g) to sell Securities;
- (h) to assent to or join in any arrangement relating to the sale, transfer or exchange of any Securities or modifying any rights, privileges or interests in relation to the Securities;
- (i) to agree to any scheme or arrangement for the increase or reduction of the value amount of any Securities or the capital of any corporation or unit trust of which the Securities form the whole or any part or by which the Securities are substituted or given in exchange either wholly or partly for other Securities whether in the same corporation or unit trust or not and for this purpose to deposit, surrender or exchange any script or documents of title relating to the Securities;
- (j) to pay out of the capital of the Fund or the income derived from the Fund any contribution or incur any expense in connection with the scheme or arrangement and generally to manage and deal with the Securities as if the Trustee owned them beneficially;
- (k) to agree, in respect of a winding up, with the liquidator of the corporation or unit trust or any member of the corporation or unit trust or any other person on the division or partition, in kind or specie, of the assets or property of any nature of the corporation or unit trust; and
- (l) to accept any assets and property in payment or satisfaction of any interest of the Trustee in the corporation or unit trust, with power to pay any money by way of equality of division or partition.

14. Futures contracts and options

- 14.1 To engage brokers and commission agents, to vary and determine the terms of any engagement and, either directly or through any broker or agent in any market in any part of the world, to:
 - (a) buy, sell, open, close out or otherwise deal in futures contracts of any kind;
 - (b) enter into, vary, exercise, abandon or sell any put or call option or rights;
 - (c) place bids or make offers; or
 - (d) hedge and effect orders including buying, selling, straddle-switch and stop-loss orders.
- 14.2 To tender and take delivery of commodities and currencies which are the subject of any futures contracts or options and otherwise to do and perform all things so as to operate on, utilise or deal with the facilities of any stock or futures exchange.

15. Partition

- 15.1 To partition or subdivide any land or other property which may form part of the Fund and pay any money by way of equality or partition.
-

16. Determine capital or income

- 16.1 To determine:
- (a) whether:
 - (i) any property;
 - (ii) any increase or decrease in the amount, number or value of any property holdings of property; or
 - (iii) any receipt or payment from, for or in connection with any property;
 is treated as and credited or debited to capital or to income and out of what part of the Fund; and
 - (b) whether any expense or outgoing is borne by capital or income.
-

17. Open bank accounts

- 17.1 To open in the name of:
- (a) the Trustee;
 - (b) a person as nominee of the Trustee; or
 - (c) the Trustee and another jointly;
- any cheque, savings or other account with any bank or financial institution, wherever situated, with full power for the person in whose name the account is opened to operate on the account including power to sign, draw and endorse cheques and other negotiable or transferable instruments on the account and to close the account.
-

18. Grant options

- 18.1 To grant options in respect of any part of the Fund or any assets held subject to this Deed to any person.
-

19. Become or appoint directors

- 19.1 To become a director of any corporation in which money forming a part of the Fund is invested.
- 19.2 To appoint any other person to act as director of the corporation.
- 19.3 To receive or permit any person appointed by the Trustee as director (including any director or shareholder of the Trustee) to receive the remuneration attached to the office without accounting to the Fund for that remuneration.

- 19.4 Any person appointed as a director may become qualified to act as a director by the holding in his or her name of shares forming part of the Fund, provided that the Trustee or person in whose name shares are so held executes all proper declarations of trust for any shares held by that person on behalf of the Fund and accounts to the Fund for all dividends and bonuses.

20. Do all things incidental

- 20.1 To take action for the protection of any part of the Fund and to do all other things which may be incidental to the exercise of the powers and authorities conferred on the Trustee by this Deed.

21. Act upon advice

- 21.1 To obtain and act upon the opinion or advice, of any financial adviser, lawyer, valuer, surveyor, broker, auctioneer or other expert or professional.
- 21.2 Nothing in paragraph 21.1 prohibits or impedes the Trustee from applying to a court.

22. Take opinion of Counsel

- 22.1 Without derogating from the generality of paragraph 21, to take and act upon the opinion (given in writing) of counsel, of not less than 5 years' standing practising in a country where the Fund or any part of the Fund is invested, in relation to the interpretation or effect of this Deed or any other document or statute or as to the administration of the Fund without being liable to any of the Members or Employers in respect of any act done by the Trustee in accordance with the opinion.
- 22.2 Nothing in paragraph 22.1 prohibits or impedes the Trustee from applying to a court.

23. Permit nominee to hold assets

- 23.1 To permit any assets of the Trust to be held or registered in the name of any nominee of the Trustee.
- 23.2 To deposit securities and any deeds and other documents belonging to or related to the Fund with any bank, solicitor or other custodian.

24. Take on lease

- 24.1 To take on lease or hire purchase any property including plant, machinery, goods, equipment, articles and chattels of every kind or description.

25. Draw bills of exchange

- 25.1 To draw, make, accept, endorse, discount, sell, purchase, issue and otherwise deal with promissory notes, bills of lading, bills of exchange and other negotiable transferable instruments and in particular commercial bills.
- 25.2 To secure any liability of the Trustee in respect of any matter referred to in paragraph 25.1 by way of mortgage charge, lien or otherwise over the whole or any part of the Fund.

26. Deal with distributions from other trusts

- 26.1 To treat as income or as capital any amounts or property which the Trustee in its capacity as trustee receives as a beneficiary under any other trust whether the amounts or property constituted capital or income under the other trust or was distributed to the Trustee by the trustee of the other trust as capital or income.

27. Blend funds

- 27.1 To blend, for the purposes of investment, any money which the Trustee holds upon the Trust with other money (whether or not the money is subject to any other settlement or trust).
- 27.2 To join with any other person in making common investments.

28. Employ agents

- 28.1 To employ any managers, agents, advisers, solicitors, accountants or other persons to transact any business or to do any act required to be done in connection with the administration of the Trust including the receipt and payment of money
- 28.2 To determine the remuneration to be paid to them.

29. Attorney

- 29.1 To appoint any person as representative or attorney of the Trustee for the purpose of executing any document which the Trustee is permitted or authorised to execute by this Deed or by law and to revoke the appointment.

30. Delegate

- 30.1 To delegate in writing the exercise of all or any of the powers or discretionary authorities conferred by this Deed on the Trustee and to execute any power of attorney or other instrument necessary to effectuate that delegation.

31. Manage

- 31.1 To manage any property that forms part of the Fund.

32. Compromise

- 32.1 To compromise and settle all matters arising in relation to the Trust or the Fund and compromises and settlements are binding on Beneficiaries.

33. Pay for assistance

- 33.1 To employ and pay for such professional or other assistance as the trustee may deem requisite to the discharge of the duties of the Trust including assistance from any person who is an

employee of the Trustee or (where the Trustee is a corporation) a director and/or a shareholder of the Trustee.

34. Institute and defend proceedings

- 34.1 To institute, join in and defend any legal arbitration or mediation proceeding.
- 34.2 To proceed to the final determination of the proceeding.
- 34.3 To discontinue the proceeding and any other claim or demand.

35. Apply for grant

- 35.1 To apply for, acquire and exercise any charter, licence, legislative enactment; power, authority, franchise, concession, right or privilege from any government or authority or any corporation or other public body.

36. Construct

- 36.1 To build, demolish, alter, repair, extend, rebuild, improve, reconstruct and develop any property included in the Fund.
- 36.2 To construct, improve, maintain, develop, work, manage, carry out or control any buildings, works, factories, mills, roadways, tramways, railways, branches or sidings, bridges, reservoirs, water courses, waterways, warehouses, electric workshop stores or other works and conveniences.
- 36.3 To contribute to or assist in the construction, improvement, maintenance, development, working, management, or carrying out the control of the works or conveniences.

37. Procure recognition

- 37.1 To procure the Trustee (should the Trustee be a corporation) to be registered or recognised in a country or place.

Deed poll - amendment and restatement of the B.E.R.T. Fund Trust Deed

BERT Fund Limited ACN 607 106 650

2024 amendments

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Title Deed poll - amendment and restatement of the B.E.R.T. Fund Trust Deed

Date 1st JULY 2024

By BERT Fund Limited (ACN 607 106 650) of Level 1, 35 Astor Terrace, Spring Hill, Queensland 4000 (Trustee)

Recitals

- A Clause 42.1 of the B.E.R.T. Fund trust deed provides the Trustee with the power to revoke, add to or vary all or any of the trusts, powers, terms and conditions contained in the B.E.R.T. Fund trust deed by a supplemental deed provided that such revocation, addition or variation has the prior approval of the Active Sponsors by way of a Special Resolution of the Active Sponsors.
- B By a Special Resolution of the Active Sponsors, the Active Sponsors have approved the variation to the B.E.R.T. Fund trust deed as set out in this document.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

In this document, terms defined in the B.E.R.T. Fund trust deed have the same meanings when used in this document, and:

B.E.R.T. Fund trust deed means the redundancy fund trust deed for the B.E.R.T. Fund dated 16 May 1996 made by the Trustee and amended from time to time including by a supplemental deed dated 20 February 1997, a supplemental deed dated 5 March 2004, a supplement deed dated 10 November 2004, a supplemental deed dated 9 August 2006 and the deed of amendment and restatement dated 16 July 2015.

Effective Date means 1st JULY 2024.

1.2 Interpretation

Clause 1.2 of the B.E.R.T. Fund trust deed is incorporated in this document as if it was set out in full in this document.

2. Amendment to B.E.R.T. Fund trust deed

2.1 Amendment and restatement

With effect from the Effective Date, the B.E.R.T. Fund trust deed is amended (as identified in redline and strike-out in the document set out in the Annexure to this document) and restated so that it is in the form attached in the Annexure to this document.

2.2 Amendment not to affect validity rights or obligations

The amendment and restatement of the B.E.R.T. Fund trust deed does not affect the validity or enforceability of the B.E.R.T. Fund trust deed.

2.3 References

On and from the Effective Date, any reference in any related document (other than this document) to the B.E.R.T. Fund trust deed is a reference to the B.E.R.T. Fund trust deed as amended and restated under this document under 2.1.

Execution

Executed as a deed.

Signed sealed and delivered by
**BERT Fund Limited (ACN 607 106
650)** by:

Personal Information

Signature of director

JOHN CRUTAN
Name of director (please print)

Personal Information

Signature of director/secretary (please
strike out as applicable)

Steven Hack
Name of director/secretary (please print)

Annexure

Redundancy fund trust deed - B.E.R.T. Fund

**Redundancy fund trust deed
- B.E.R.T. Fund
(incorporating ~~2015~~²⁰²⁴
amendments)**

BERT Fund Limited ACN 607 106 650¹

¹ [BERT Fund Limited was appointed as trustee in place of BERT Pty Limited on 29 June 2015.](#)

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Title **Redundancy trust fund deed**

Date 16 May 1996

By [BERT Fund Limited \(ACN 607 106 650\)](#)~~B.E.R.T. Pty Limited (ACN 010 917 281)~~ of Level 15, 35 Astor Terrace, Spring Hill, Queensland 4004 (**Trustee**)²

Recitals

- A Various Awards and Industrial Agreements applicable to the Construction Industry provide for the payment of amounts by Employers to Employees upon those Employees becoming Redundant.
- B The Fund has been established to receive:
- (a) a rollover or transfer of the whole of the assets and funds comprised in the Building Employee Redundancy Trust; and
 - (b) Contributions and hold them until the Employees are made Redundant or otherwise become entitled to payment of a Benefit.

Operative provisions

1. Definitions and interpretation

1.1 Definitions

Unless the context otherwise requires:

Accounting Period means any of:

- (a) the period from the date of this Deed to 30 June next;
- (b) each following 12 months ending on 30 June in each year until 30 June immediately preceding the Vesting Date; and
- (c) the period from 1 July immediately preceding the Vesting Date to the Vesting Date,

but the Trustee may alter the Accounting Period to a period of 12 months ending on any other date and if it does so the reference to 30 June and 1 July must be altered appropriately.

Active Employer Organisation³ means Queensland Master Builders Association Industrial Organisation of Employers and

- (a) any other employer organisation which, with the written agreement of all Active Sponsors, is accepted as an Active Employer Organisation;

² [BERT Fund Limited was appointed trustee in place of BERT Pty Limited on 29 June 2015 pursuant to a deed of retirement and appointment of trustee dated 16 July 2015 \(document reference 33796111v2\).](#)

³ [Definition inserted by deed of amendment and restatement dated 16 July 2015 \(document reference 33799553v2\).](#)

- (b) any other employer organisation which, by reason of reorganisation or amalgamation of an Active Employer Organisation is the successor in whole or in part of that Active Employer Organisation; and
- (c) any Federally or Queensland registered counterpart of an Active Employer Organisation provided the Federally registered counterpart is only an Active Employer Organisation if both the Queensland and Federal counterparts confirm this in writing to all other Active Sponsors and then the Federally registered body is an Active Employer Organisation to the exclusion of (and not in addition to) its Queensland registered counterpart.

Active Sponsor⁴ means the Active Employer Organisations and the Active Unions but does not include:

- (a) any Active Employer Organisations or Active Union which, by notice given by it to the other Active Sponsors, and the Trustee has ceased to be an Active Sponsor; and
- (b) any Active Employer Organisation or Active Union in respect of which, by agreement of a Special Resolution of the Active Sponsors, is determined no longer to be an Active Sponsor.

Active Union⁵ means each of:

- (a) the Construction, Forestry, Mining and Energy, Industrial Union of Employees, Queensland;
- (b) Communications, Electrical, Electronic, Energy, Information, Postal, Plumbing and Allied Services Unions of Australia, Plumbing Division, Queensland Branch;
- (c) any other union of employees which, with the written consent of all Active Sponsors, is accepted as an Active Union;
- (d) any other union of employees which, by reason of reorganisation or amalgamation of an Active Union, is the successor of the whole or part of that Active Union; and
- (e) any Federally or Queensland registered counterpart of a Union provided that the Federally registered counterpart is only a union if both the Queensland and Federal counterparts confirm this in writing to the Active Sponsors (which they are deemed to have done in relation to any Federally registered body described in this clause) and then the Federally registered body is an Active Union to the exclusion of (and not in addition to) its Queensland registered counterpart registered body is an Active Union to the exclusion of (and not in addition to) its Queensland registered counterpart.

Apprentice means a person who is registered as an apprentice or trainee with an apprenticeship directorate or any other equivalent body approved by the Trustee.

Approved Institution means a charitable or public educational institution or fund established for public charitable purposes:

- (a) approved by the Trustee on the basis that the relevant institution or fund has objects likely to benefit Members or participants in the Construction Industry; and

⁴ Definition inserted by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

⁵ Definition inserted by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

- (b) approved by the Deputy Commissioner of Taxation as falling within section 23(c) or 23(j)(ii) or other provision providing an exemption from income tax of the *Income Tax Assessment Act 1936*.

Auditor means the auditor appointed by the Trustee.

Award means an award made by an Industrial Authority.

Beneficiary means a person entitled, or who may be entitled, to a Benefit but does not include a person who is a Member.

Benefit means any amount payable by the Trustee out of the Fund to or in respect of a Member.

BERT⁶ means B.E.R.T. Pty Limited ACN 010 917 281.

Building Employees Redundancy Trust⁷ means the fund established pursuant to a deed dated 12 December 1989 of which BERT was the original trustee.

Children includes an adopted child, step-child and ex-nuptial child.

Construction Industry means those sectors of commerce or industry commonly known and characterised as being associated or connected with or incidental to:

- (a) industrial, commercial or residential construction;
- (b) civil engineering construction; and
- (c) mechanical engineering construction,

and includes all services and maintenance associated or connected with or incidental to any of those forms of construction and also includes each and every one of those sectors or any of those sectors or allied industries whether work is performed on site or offsite.

Contribution means a payment to the Fund by a Participating Employer in accordance with the provisions of this Deed.

Death Benefit for a Member, means a Benefit payable following the death of the Member.

Deed means this document, including any Schedule or Annexure to it.

Deed of Adherence means a deed substantially in terms of the deed set out in Schedule 1.

Dependant means:

- (a) the Spouse of a Member, the widow or widower of a deceased Member;
- (b) the Children of a Member or deceased Member;
- (c) any other person who, in the opinion of the Trustee, is dependent or in the case of a deceased Member was wholly or partially dependent on the Member at the time of the Member's death;
- (d) the Nominated Dependant; and
- (e) any other person determined by the Trustee.

⁶ Definition inserted by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

⁷ Definition amended by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

Discretionary Beneficiaries⁸ means:

- (a) the Active Sponsors;
- (b) the Members;
- (c) the legal personal representative of the Dependants of Members; and
- (d) any Approved institution.

Employee means a person employed principally on production work within the Scope of the Deed by a Participating Employer and includes Apprentices.

Employer means a person required to pay Contributions in respect of its Employees.

Enterprise Agreement means an agreement between an Employer and a union of employees which has been certified or approved by an Industrial Authority.

Fund means the redundancy fund established by this Deed.

Fund Administrator means a person appointed in accordance with clause 17.1.

Income Beneficiaries⁹ means:

- (a) the Active Sponsors;
- (b) the legal personal representative or the Dependants of any deceased Member; and
- (c) any Approved Institution.

Industrial Agreement means an agreement:

- (a) between an Employer or an employer association and a union of employees; or
- (b) between an Employer and its Employees,

whether or not it has been certified by, approved by or registered with an Industrial Authority.

Industrial Authority means a court or tribunal or other body or person, constituted under a law of the Commonwealth, a State or a Territory with power of conciliation or arbitration in relation to industrial disputes.

Member means:

- (a) a person who becomes a Member pursuant to the provisions of clause 3.2(c); and
 - (b) an Employee who has been accepted by the Trustee as a Member,
- and has not ceased to be a Member pursuant to clause 5.6.

Member Account means one of the accounts described in clause 11.1

Minimum Contribution¹⁰ means for each Week of Service:

- (a) in respect of a Member other than an Apprentice the greater of:

⁸ Definition amended by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

⁹ Definition amended by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

¹⁰ Definition amended by a supplemental deed dated 9 August 2006 and subsequently by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

- (i) the Contribution rate determined by a Special Resolution of the Active Sponsors and until otherwise determined is \$59.95; or
 - (ii) the Contribution rate specified in an Industrial Agreement or Enterprise Agreement which applies in respect of the Member;
- (b) in respect of an Apprentice under a 4 year apprenticeship, an amount equal to the following percentages of the Minimum Contributions for a Member:
 - (i) for a first year Apprentice – 40%;
 - (ii) for a second year Apprentice – 55%;
 - (iii) for a third year Apprentice – 75%;
 - (iv) for a fourth year Apprentice – 90%; and
- (c) in respect of any other Apprentice, an amount equal to the proportion of the Minimum Contribution for a Member, which their annual salary bears to the average salary payable to those who have completed their apprenticeship in that field of endeavour.

Net Income means the amount calculated as the Net Income of the Fund for an Accounting Period in accordance with section 95(1) *Income Tax Assessment Act 1936* unless the Trustee determines in respect of any Accounting Period that the Net Income for that Accounting Period means the income of the Fund calculated in accordance with established accounting principles and trust law.

Nominated Dependant means the person nominated by a Member as the person that the Member would prefer to receive the amount standing to his or her Member Account if the Member dies or otherwise ceases to be entitled to his or her Benefit.

Participating Employer means:

- (a) a party who becomes a Participating Employer pursuant to clause 3.2(e); and
- (b) any Employer admitted under clause 4.1,

and who has not ceased to be a Participating Employer pursuant to clause 39.

Pension Age has the meaning given to that term in section 23 of the *Social Security Act 1991* (Cth).

Redundancy means that termination of employment of a Member in circumstances where the work the Member has been performing is no longer required to be done by anyone and **Redundant** has a corresponding meaning.

Reserve Account means the account maintained in accordance with clause 11.2.

Rollover Date means the date specified by the Trustee pursuant to clause 3.2(a).

Scope of the Deed¹¹ means:

- (a) all work in industrial, commercial or multi-residential building construction;
- (b) any other work within the Construction Industry as set out in an agreement between Active Sponsors;

¹¹ Definition amended by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

- (c) any other work within the Construction industry as agreed between an Employer and a Union;
- (d) any other work within the Construction Industry where the Employer makes a Contribution on behalf of an Employee; and
- (e) any work where the Employer makes a Contribution on behalf of an Employee.

Small Amount means an amount determined by the Trustee and until otherwise determined is an amount equal to twice the Minimum Contribution ~~calculated in accordance with clause 1.1(31)(a)(i).~~

Special Resolution of the Active Sponsors¹² means a resolution:

- (a) signed by not less than 75% of the Active Sponsors;
- (b) signed by more than 50% of the Active Sponsors who are Active Employer Organisations; and
- (c) signed by more than 50% of the Active Sponsors who are Active Unions.

Spouse means, in relation to a Member, the husband or wife of that Member, or another person who, in the opinion of the Trustee, although not legally married to the Member lives (or in the case of a deceased Member was at the date of death of the Member living) with the Member on a bona fide domestic basis as the husband or wife of the Member.

Total and Permanent Disablement in relation to a Member means his or her incapacity to the extent:

- (a) of the loss of two limbs (where limbs include the whole of one hand or the whole of one foot) or the sight of both eyes or the loss of one limb and the sight of one eye; or
- (b) that in the reasonable opinion of the Trustee (after considering such medical and other evidence or advice as it may require) is unable ever again to undertake any form of remunerative work in the construction industry for which he or she is reasonably equipped by educational training or experience;

provided that the illness or injury was not occasioned by intentional self injury and **Total and Permanently Disabled** has a corresponding meaning.

Trustee means the trustee for the time being of the Fund.

Vesting Date¹³ means the first of the following to occur:

- (a) 80 years from the date of this Deed; and
- (b) an earlier date nominated by the Trustee as the Vesting Date with the prior approval of a Special Resolution of the Active Sponsors.

Week of Service means a week where on any day of the week:

- (a) the Member is employed by the Participating Employer; or
- (b) for which the Member is entitled to receive workers compensation in respect of an injury or other event occurring whilst in the employ of the Participating Employer up

¹² Definition amended by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

¹³ Definition amended by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

to a maximum of 26 weeks, whether compensation payments are made in one continuous period or not; or

- (c) where the Member is on annual leave, long service or other paid leave, and a week falls in a month where Friday falls in that month.

1.2 Interpretation

- (a) Reference to:
 - (i) one gender includes the other gender;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a person includes a body corporate and includes a person (in this extended sense) in the capacity of a trustee;
 - (iv) a party includes the party's executors, administrators, successors and permitted assigns; and
 - (v) a statute, regulation or provision of a statute or regulation (**Statutory Provision**) includes:
 - (A) that Statutory Provision as amended or re-enacted from time to time; and
 - (B) a statute, regulation or provision enacted in replacement of that Statutory Provision.
- (b) If a party consists of more than one person, this Deed binds them jointly and each of them severally.
- (c) The schedules form part of this Deed.
- (d) Headings are for convenience only and do not affect the interpretation, or form part, of this Deed.
- (e) Where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
- (f) Any references to clauses and schedules are construed as references to clauses of and schedules to this Deed.

1.3 Severance

If any provision or part of a provision of this Deed is or becomes void, invalid or unenforceable for any reason, it must be severed from this Deed but the remainder of this Deed continues in full force and effect and is unaffected by the severance.

1.4 Perpetuity Period

All powers and dispositions made by or under this Deed which, but for this provision, would or might be exercisable vest or take effect after the Vesting Date are exercisable only until the Vesting Date or vest or take effect on the Vesting Date.

2. Constitution of Fund

2.1 Establishment of Fund

The Trustee accepts its appointment as trustee of the Fund.

2.2 Name of Trust

The name of the Fund is the B.E.R.T. Fund.

2.3 Declaration of Trust

The Trustee holds the Fund and its income upon the trusts and subject to the provisions contained in this Deed.

3. Rollover of the Building Employees Redundancy Trust

3.1 The Trustee may accept the transfer or rollover of the whole of the assets and funds comprised in the Building Employees Redundancy Trust into the Fund.

3.2 If the Trustee receives a transfer or rollover of the whole of the assets and funds comprised in the Building Employees Redundancy Trust into the Fund it must:

- (a) nominate a date upon which the funds comprised in the Building Employees Redundancy Trust are to be transferred or rolled over into the Fund;
- (b) establish a Member Account for each person who was a Worker in the Building Employees Redundancy Trust immediately prior to the Rollover Date;
- (c) admit each person who was a Worker in the Building Employees Redundancy Trust immediately prior to the Rollover Date as a Member without the need for that person to complete an application form in accordance with clause 5.2 or at all;
- (d) immediately after the Rollover Date, credit each Member Account established pursuant to clause 3.2(b) with an amount equal to the positive balance in the Worker Account for that same person immediately prior to the Rollover Date; and
- (e) admit each person who was a Member of the Building Employees Redundancy Trust immediately prior to the Rollover Date as a Participating Employer without the need for that person to complete a Deed of Adherence.

3.3 Regardless of any other provision in this Deed, the Trustee must administer the Fund on the basis that a Benefit, equal to the positive balance of the Member Account immediately after the Rollover Date established for the Member pursuant to clause 3.2(b), must be paid to that Member (or the Member's legal personal representative in the event of the Member's death) no later than a Benefit would have been paid under the terms of the Building Employees Redundancy Trust.

3.4 Except to the extent to which the context or subject matter otherwise requires, words and phrases defined in the deed for the establishment of the Building Employees Redundancy Trust have the same meaning when used in this clause 3.

4. Participation

4.1 Trustee May Admit Participating Employers

The Trustee may admit an Employer as a Participating Employer if:

- (a) the Trustee receives payment from that Employer on behalf of its Employees for the purposes of being credited against a Member Account established or to be established for those Employees, even though that Employer has not at that stage executed a Deed of Adherence; or
- (b) the Employer lodges with the Trustee a completed Deed of Adherence.

4.2 Participating Employers Bound by Deed

Each Participating Employer is bound by the terms of this Deed.

4.3 Admission - Participating Employers

The Trustee must notify an Employer in writing of its admission as a Participating Employer.

4.4 Commencement of Participation

An Employer becomes a Participating Employer:

- (a) if admitted pursuant to clause 3.2(e), on the Rollover Date;
- (b) if admitted pursuant to clause 4.1(a), on the date of receipt of payment by the Trustee of amounts required under the Industrial Agreement or Enterprise Agreement; and
- (c) if admitted pursuant to clause 4.1(b), on the date specified in the Deed of Adherence, or if no date is specified, then on the date of receipt of the Deed of Adherence.

4.5 Member Identification

The Participating Employer must provide to the Trustee the information it requires to identify each Member in respect of whom Contributions are to be made by the Participating Employer.

5. Membership of Fund

5.1 Eligibility for Membership

Any Employee of a Participating Employer may become a Member.

5.2 Application for Membership

An eligible Employee who wishes to become a Member must apply to the Trustee in writing in the form specified in Schedule 2 or in such other form as the Trustee determines.

5.3 Trustee May Reject or Accept

On the receipt of an application for membership, the Trustee may admit or reject the applicant.

5.4 Commencement of Membership

The Member is deemed to have joined on:

- (a) in respect of Members admitted pursuant to clause 3.2(c), the Rollover Date; and
- (b) in any other case, the date determined by the Trustee.

5.5 Conditions of Membership

The Trustee may impose conditions on:

- (a) a Member's admission;
- (b) his or her rights and duties as a Member; and
- (c) Benefits for that Member.

The Trustee may remove or vary any of these conditions.

5.6 Membership Ceases

A person ceases to be a Member when:

- (a) the Trustee so resolves once all that Member's entitlements have been:
 - (i) paid or forfeited; or
 - (ii) transferred to another fund in accordance with this Deed; or
- (b) the Member dies.

6. Fund Information

6.1 Information to Prospective Participating Employer

The Trustee must give to an Employer who is a prospective Participating Employer a written statement containing details of:

- (a) the kinds of Benefits;
- (b) the conditions relating to Benefits; and
- (c) the method of determining entitlements.

6.2 Member Information

The Trustee must give to a Member:

- (a) on request and payment of a reasonable fee determined by the Trustee, a copy of this Deed and any alteration to the Deed;
- (b) within 6 months after the end of each Accounting Period, a statement showing the balance standing to the Member Account for that Member at the end of the Accounting Period; and
- (c) on payment of an amount standing to the credit of a Member Account, a written statement setting out details of the payment made.

6.3 Participating Employer Information

The Trustee must give to a Participating Employer:

- (a) on request and payment of a reasonable fee determined by the Trustee, a copy of this Deed and any alteration to the Deed; and
- (b) following the end of each month in which a Participating Employer makes a Contribution, a record showing the amount of that Contribution; and
- (c) within 3 months after the end of each Accounting Period, an annual statement of Contributions made during the Accounting Period.

6.4 Trust Deed

A copy of this Deed must be kept by the Trustee at its head office and must be open to inspection by the Participating Employers and Members at all reasonable times.

7. Contributions

7.1 Redundancy Contributions

Unless:

- (a) the provisions of an Enterprise Agreement or Industrial Agreement which has application to the Member require that the Minimum Contribution be paid to the Building Unions Superannuation Scheme (Queensland) (**BUSS(Q)**); and
- (b) the Member has more than the minimum set by the Enterprise Agreement or Industrial Agreement in his or her Member's Account; and
- (c) the Member elects by notice in writing to the Trustee to have the Minimum Contribution paid to BUSS(Q) on his or her behalf;

a Participating Employer must pay to the Trustee, or as directed by It, within 30 days¹⁴ after the end of each month an amount equal to the Minimum Contribution for each Member for each Week of Service in respect of which Contributions are payable. If the provisions of clauses, 7.1(a), 7.1(b) and 7.1(c) are not collectively fulfilled and the moneys actually paid to BUSS(Q), then the Minimum Contribution remains payable to the Trustee.¹⁵

7.2 Productivity and Other Payments

A Participating Employer may pay to the Fund on behalf of its Employees who are Members any additional amount:

- (a) agreed with its Employees; or
- (b) as it determines.

7.3 Particulars

The Participating Employer must inform the Trustee or if directed by the Trustee, the Fund Administrator, on which Member's behalf the Contributions are paid.

7.4 Interest

If a Participating Employer defaults in the payment of Contributions due in accordance with clause 7.1 it must pay interest from the date the Contributions became due until the date on

¹⁴ Clause 7.1 was amended by a supplemental deed (document reference 19152853).

¹⁵ Clause 7.1 was amended by a supplemental deed (document reference 15710327).

which they are paid at a rate determined by the Trustee to be equal to 2% over the overdraft rate as advised by the Commonwealth Bank of Australia.

7.5 Recovery of Expenses

A Participating Employer must reimburse the Trustee in respect of all reasonable expenses (including collection fees) incurred by the Trustee (or on behalf of the Trustee by the Fund's Administrator or otherwise) In obtaining payment by any Participating Employer of any outstanding Contribution.

8. Information from Members and Beneficiaries

8.1 A Member when requested by the Trustee must:

- (a) furnish any information the Trustee considers necessary for the purposes of the Fund; and
- (b) submit to medical examinations as required by the Trustee by a registered medical practitioner or therapist nominated by the Trustee.

8.2 If a Member fails to comply with the provisions of clause 8.1, the Trustee may withhold any Benefit in respect of that Member until the Member complies.

8.3 Where a Member or Beneficiary furnishes information affecting the Benefit payable to the Member or Beneficiary and the information is incorrect or misleading, or any relevant information is withheld, the Trustee may alter the Benefit to amounts that would have applied had full and accurate information been supplied.

9. Transfer from another Redundancy Fund

9.1 The Trustee may accept into the Fund in respect of a Member an amount transferred from another similar fund in which the Member or an Employer of that Member has participated. A Member's Account must be opened for each Member whose account is transferred and the benefits credited to that account. Amounts transferred into the Fund are to be administered according to the terms of this Deed and not on the terms of the deed which applied in respect of the similar fund.

10. Transfer of Benefit to New Fund

10.1 Transfer Requested by Member

On the written request of the Member, an amount equal to the positive balance of a Member Account may be paid or transferred to the trustee of another similar fund which makes provision for payment of benefits on Redundancy.

10.2 Transfer of Benefit by Trustee

The Trustee may transfer to another similar fund which makes provision for payment of benefits on Redundancy an amount no less than the positive balance of his or her Member Account provided the Trustee is satisfied that the Member's rights and interests in respect of his or her entitlements under the Fund will not be adversely affected by the transfer.

10.3 Receipt of Trustee

The receipt of the trustee of the fund or scheme to which the transfer is made is a complete discharge to the Trustee in respect of any money or asset paid or transferred.

11. Accounts

11.1 Member Accounts

A Member Account must be established for each Member showing:

- (a) any amount paid or transferred into the Fund in respect of a Member pursuant to clauses 3.2 or 9;
- (b) Contributions made in respect of that Member; and
- (c) sums added to or deducted from the account pursuant to the provisions of this Deed.

11.2 Reserve Account

A Reserve Account must be established showing:

- (a) any amounts of Net Income accumulated by the Trustee in accordance with clause 29.1; and
- (b) any forfeited Benefits pursuant to clause 36.4.
- (c) sums added to or deducted from the Reserve Account (including costs and expenses of the Fund) pursuant to the provisions of this Deed; and
- (d) any amounts paid, applied or set aside from the Reserve Account pursuant to clause 11.3.

11.3 Trustee's Distributions from Reserve Account

The Trustee may pay, apply or set aside all or any part of any positive balance in the Reserve Account to or for any one or more of the Discretionary Beneficiaries to the exclusion of the others of them and in the proportions the Trustee thinks fit provided that any distribution from the Reserve Account under this clause 11.3 to the Active Sponsors must be made:

- (a) to one half to the Active Unions and, if more than one, in proportion to the number of votes that each Active Union may exercise in relation to the Trustee of the Fund; and
- (b) as to the other half to the Active Employer Organisations and, if more than one, usually between them.¹⁶

11.4 Other Accounts and Registers

The Trustee must keep:

- (a) a register of Participating Employers and Members showing names addresses and such information as is relevant to the administration of the Fund; and
- (b) accounts as may be necessary to record the financial transactions by the Trustee and to record the Benefits for Members.

¹⁶ Clause 11.3 was amended by a supplemental deed (document reference 15710327) [and subsequently by deed of amendment and restatement dated 16 July 2015 \(document reference 33799553v2\).](#)

12. Accounting Report

12.1 Trustee to Prepare Annual Report

After the close of each Accounting Period, the Trustee must prepare a written accounting report (prepared in accordance with generally accepted accounting principles and procedures) for the period, consisting of a statement of income and expenditure and a balance sheet, and distribute copies to the Active Sponsors.¹⁷

13. Audit of Accounts

13.1 The accounts of the Fund must be audited at least once a year by a qualified auditor appointed by the Trustee.

13.2 The remuneration for the auditor is to be determined by the Trustee and paid out of the Fund.

14. Qualification of Trustee

14.1 Eligibility to be Trustee

The Trustee must be a limited liability company in which:

- (a) the Active Unions hold shares carrying an entitlement to 50% of all voting rights at a general meeting; and
 - (b) the Active Employer Organisations hold shares carrying an entitlement to the remaining 50% of all voting rights at a general meeting.¹⁸
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15. Powers of Trustee

15.1 General Power

The Trustee has all the powers over and in respect of the Fund and the assets of the Fund and using the assets and credit of the Fund and doing anything else on behalf of the Fund which it could exercise and do if it was the absolute and beneficial owner of the Fund and the assets of the Fund.

15.2 Particular Powers

Without limiting the general power contained in clause 15.1, the Trustee has the particular powers referred to in Schedule 3.

15.3 Discretion in Exercise of Powers

The Trustee may exercise the powers referred to in Schedule 3 as the Trustee thinks fit and may enter into any transaction in exercise of those powers on such terms and conditions as the Trustee thinks fit.

15.4 Statutory Powers

¹⁷ Clause 12.1 was amended by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

¹⁸ Clause 14.1 was amended by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

- (a) The Trustee has the powers conferred by the *Trusts Act 1973* or otherwise by law except where they are inconsistent with the powers conferred by this Deed.
- (b) Where a power is conferred by this Deed which is similar to, but larger than, a power conferred by the *Trusts Act 1973*, it operates and is exercisable without any limitation or restriction imposed by the *Trusts Act 1973* on that statutory power.

16. Appointment of Managers

- 16.1 The Trustee may appoint any person to act as Investment Manager or Custodian Trustee or both. The appointment must be in writing.
- 16.2 The Trustee may delegate to any Investment Manager or Custodian Trustee the powers it thinks fit.
- 16.3 The Trustee is not liable or responsible for any act, omission, error of judgment, negligence or breach of trust by the Investment Manager or Custodian Trustee.
- 16.4 The Trustee is not bound to take proceedings against any Investment Manager or Custodian Trustee arising in the circumstances described in clause 16.3.
- 16.5 The Trustee may pay out of the Fund to the Investment Manager or Custodian Trustee remuneration for their services as the Trustee considers proper.
- 16.6 The Trustee may remove the Investment Manager or Custodian Trustee or alter the terms of its appointment as the Trustee thinks fit.

17. Appointment of Fund Administrator

- 17.1 The Trustee may appoint any person to be Fund Administrator. The appointment must be in writing on terms which the Trustee considers appropriate.
- 17.2 The Trustee may delegate to the Fund Administrator the duties and powers in relation to the administration and management of the Fund it thinks fit including the following:
 - (a) the collection of Contributions and the transfer of money and assets to and from any Investment Manager or Custodian Trust;
 - (b) the collection, recording and dissemination of Contributions and other information for the purposes of the Fund;
 - (c) the establishment and maintenance of records of account and Contributions and other necessary records including details of Member Accounts;
 - (d) the calculation of Benefits; and
 - (e) the provision and maintenance of a computer network and associated enquiry facilities necessary to support the administration of the Trust.

18. Confidentiality of Trustee's Deliberations

- 18.1 In addition to any right of the Trustee under the general law to refuse disclosure of any document or matter, the Trustee is not required to disclose to any person:
 - (a) any document disclosing:

- (i) any deliberations of the Trustee as to the manner in which the Trustee should
- (ii) exercise any power or discretion conferred upon the Trustee;
- (iii) the reasons for any particular exercise or non-exercise of any power or discretion; or
- (iv) the material upon which those reasons were or might have been based;
- (b) any other document relating to the exercise or proposed exercise of any power or discretion conferred on the Trustee by this Deed; or
- (c) any reason for any exercise or non-exercise of any power or discretion.

19. Remuneration of Trustee

The Trustee may with the prior approval of a Special Resolution of the Active Sponsors charge and retain out of the Fund a trustee's commission.¹⁹

20. Liability of Trustee

- 20.1 No Trustee, and no officer of the Trustee, is liable for any loss or damage occasioned to the Fund or to any person by:
- (a) the exercise of any discretion or power by the Trustee, conferred by this Deed or by law, or any failure to exercise any of those discretions or powers;
 - (b) any breach of duty or trust, unless it is proved to have been committed, made or omitted in personal, conscious and fraudulent bad faith by the Trustee or the officer respectively; or
 - (c) any disclosure by the Trustee or the officer of any document, matter or thing relating to the Fund or any Beneficiary.
- 20.2 All persons claiming any interest in the income or the capital of the Fund are deemed to take it with and subject to notice of the protection conferred by this clause 20.
- 20.3 The Trustee is not bound to take any proceeding against a co-trustee for any breach or alleged breach of trust committed by the co-trustee.
- 20.4 Where the Trustee acts in reliance upon the advice of any expert or professional obtained in relation to the interpretation of the provisions of this Deed or any document or statute or any matter concerning the administration of the Fund, the Trustee is not liable to any Member, Participating Employer or Beneficiary in respect of any act done or omitted to be done by the Trustee in accordance with the advice.
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21. Indemnity for Trustee

- 21.1 The Trustee is entitled to be Indemnified out of the Fund against liabilities Incurred by the Trustee by virtue of being the trustee of the Fund.

¹⁹ Clause 19 was amended by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

- 21.2 The Trustee is entitled to be reimbursed from the Fund for all money expended and debts incurred in or about the administration of the Fund.
- 21.3 The Trustee may apply the Fund to satisfy the rights of reimbursement or indemnity to which the Trustee is entitled.

22. Appointment and Removal of Trustee

- 22.1 The Trustee must vacate office as trustee of the Fund and cease to act as such if:
- (a) it is removed as provided by law;
 - (b) it fails to satisfy the requirements of clause 14.1;
 - (c) an application for its winding up is made or it passes a resolution for its voluntary winding up (except bona fide for the purpose of amalgamation or reconstruction) or if a receiver is appointed to its undertakings or any part of its undertakings; and
 - (d) by Special Resolution of the Active Sponsor, the Active Sponsors resolve that the Trustee be removed.²⁰
- 22.2 The Trustee may resign its office by giving 1 month's notice in writing to the Active Sponsors of its desire so to do.²¹

23. Appointment of New Trustee

- 23.1 If the Trustee is removed from office or retires pursuant to clauses 22.1 and 22.2 the Active Sponsors may by Special Resolution of the Active Sponsors appoint a person to replace the Trustee provided that a Trustee must not cease to be a trustee pursuant to either clause 22.1 or 22.2 unless and until the Active Sponsors have determined to appoint a replacement Trustee and that replacement has agreed to assume the office of Trustee.²²
- 23.2 The new Trustee so appointed must execute a deed accepting the office of Trustee and must undertake to perform and observe all the obligations of the Trustee under this Deed.

24. Sole Trustee

- 24.1 A Trustee may be discharged although there will remain or be appointed in its place a sole trustee other than the Public Trustee or a trustee company under the *Trustee Companies Act 1968* any corresponding legislation in any state or territory of Australia or elsewhere.
- 24.2 A sole trustee is authorised, even though it is the sole trustee, to receive capital and other money and to give valid and effectual receipts including receipts for money deemed to be capital money for the purpose of any statute.

25. Exercise of Discretions and Powers

- 25.1 Every discretion vested in the Trustee is absolute and uncontrolled.

²⁰ Clause 22.1(d) was amended by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

²¹ Clause 22.2 was amended by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

²² Clause 23.1 was amended by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

- 25.2 Every power vested in the Trustee is exercisable at the absolute and uncontrolled discretion of the Trustee.
- 25.3 The Trustee may by instrument in writing, revocable or irrevocable, wholly or partially release, abandon or restrict any power conferred on the Trustee by this Deed.

26. Interest of Directors of Trustee Corporation

- 26.1 Any person being a director or shareholder of the Trustee may be directly or indirectly interested in the mode or result of exercising the powers and discretions of this Deed without affecting the validity of the exercise of the powers and discretions.

27. Interest of Trustee

- 27.1 The Trustee may exercise or concur in exercising all powers and discretions contained in this Deed or otherwise by law conferred even though:
- (a) the Trustee or any person being a director or shareholder of the Trustee may:
 - (i) have a direct or personal interest (whether as trustee of any other settlement or in a personal capacity or as a director or shareholder of any corporation or otherwise) in the mode or result of exercising the power or discretion; or
 - (ii) benefit, either directly or indirectly as a result of the exercise of the power or discretion; and
 - (b) the Trustee is the sole trustee.

28. Exercise of Discretion in Favour of Trustee

- 28.1 Where a power or discretion is exercisable by the Trustee in favour of a class that includes a trustee, an exercise of that power or discretion in favour of a trustee (whether or not to the exclusion in whole or in part of the other members of the class) is not invalidated and may not be objected to because it is in favour of a trustee.
- 28.2 The words 'a trustee' in clause 28.1 include a director or a shareholder of a company which is a trustee.

29. Distribution of Net Income

29.1 Trustee's Discretion

The Trustee may in respect of all or any part of the Net Income for an Accounting Period:

- (a) pay, apply or set it aside to or for any one or more of the Income Beneficiaries to the exclusion of the others and in the proportions as the Trustee thinks fit; or
 - (b) accumulate it by paying it into the Reserve Account;
- provided that any distribution of Net Income pursuant to this clause 29.1:
- (c) to the Active Sponsors, must be made:

- (i) to one half to the Active Unions and, if more than one, in proportion to the number of votes that each Active Union may exercise in relation to the Trustee of the fund; and
- (ii) as to the other half for the Active Employer Organisations and, if more than one; and
- (d) to the legal personal representatives or Dependents of a deceased Member, must be limited to the payment of a funeral benefit where the Trustee is satisfied that there is financial hardship. No distribution is to be made if in the opinion of the Trustee, it would affect the taxation treatment of the Fund or its Participating Employers.²³

29.2 Late Exercise of Discretion

The Trustee may exercise the discretion contained in clause 29.1 after the expiration of the Accounting Period if the Commissioner of Taxation accepts that the Income Beneficiary in whose favour the Trustee has exercised the discretion is presently entitled to the income in the Accounting Period to which the distribution relates. If not, the purported exercise of the discretion after the expiration of the Accounting Period is ineffective.

29.3 Takers in Default

If the Trustee does not exercise the discretion contained in clause 29.1 (or to the extent to which the Trustee does not exercise or does not effectively exercise that discretion), the Trustee holds the Net income for the Accounting Period:

- (a) to one half to the Active Unions and, if more than one, in proportion to the number of votes that each Active Union may exercise in relation to the Trustee of the Fund; and
- (b) as to the remaining one-half for the Active Employer Organisations and, if more than one, equally between them.²⁴

29.4 Recoupment of Losses

Where the Trustee suffers a loss for taxation purposes in any Accounting Period it is not required to recoup that loss out of the corpus of the Fund. Losses which relate to previous Accounting Periods so far as possible must be recouped out of profits and not corpus. If losses are at any time to be recouped out of corpus they must first be recouped from the Reserve Account.

30. Amount of Benefit

- 30.1 Subject to clause 30.2, a Member's Benefit is equal to the positive balance in his or her Member Account on the date the Benefit becomes payable.
- 30.2 The amount of any Benefit must not exceed that which is in the opinion of the Trustee the maximum the assets of the Fund can provide in respect of the Member or Beneficiary.

²³ Clause 29.1 was amended by a supplemental deed (document 1S710327) [and subsequently by deed of amendment and restatement dated 16 July 2015 \(document reference 33799553v2\).](#)

²⁴ Clause 29.3 was amended by a supplemental deed (document reference 1S710327) [and subsequently by deed of amendment and restatement dated 16 July 2015 \(document reference 33799553v2\).](#)

31. Payment of Benefits

- 31.1 A Benefit is payable upon a claim being made by the Member or a Beneficiary if the Member:
- (a) retires from the work force on or after attaining the [Pension Ageage of 55 years](#);
 - (b) permanently leaves the Construction Industry;
 - (c) suffers financial hardship and provides to the Trustee documentary evidence satisfactory to it;²⁵
 - (d) dies;
 - (e) becomes Totally and Permanently Disabled;
 - (f) is made Redundant;²⁶ or
 - (g) permanently leaves Australia.²⁷
- 31.2 A Member will be considered to have permanently left the Construction Industry for the purposes of clause 31.1(b) if he or she has not been employed in the Construction Industry for 12 months preceding the date of the application.²⁸
-

32. Preconditions to Entitlement

- 32.1 A Member or Beneficiary has no entitlement to a Benefit until he or she has lodged a properly completed claim form with the Trustee and satisfied the Trustee's requirements, enquiries and information regarding his or her entitlement to that Benefit.
- 32.2 The Trustee has no obligation to pay a Benefit until it receives satisfactory evidence of the Member's or Beneficiary's entitlement. The Trustee may also require the payee to execute documents and do other acts and things as may be appropriate for the Trustee to obtain a good release before paying any claim.
-

33. Death Benefit

- 33.1 The Trustee must pay the Death Benefit to any one or more of the Dependants and legal personal representatives of the deceased Member as the Trustee considers appropriate.
- 33.2 If no claim for a Death Benefit is made by the legal personal representatives or any Dependants of a deceased Member within 12 months following the death of the Member, the Trustee may forfeit the Benefit and apply it in accordance with clause 36.4.
-

34. Procedure for Payment of Benefits

- 34.1 The Trustee may forward the Benefits to the postal address or bank account last notified or to any other place the Trustee determines.

²⁵ Clause 31.1(c) was amended by a supplemental deed (document reference 20778453).

²⁶ Clause 31.1(f) was amended by a supplemental deed (document reference 20778453).

²⁷ Clause 31.1(g) was Inserted by a supplemental deed dated 10 November 2004.

²⁸ Clauses 31.1(b) and 31.2 were deleted by a supplemental deed dated 5 March 2004. Clauses 31.1(b) and 31.2 were reinstated [in](#) an amended [form](#) by a supplemental deed dated 10 November 2004.

- 34.2 Every Member and Beneficiary must (except where no further Benefit is payable) notify the Trustee in writing at the time the Benefit becomes payable and immediately after the Member or Beneficiary changes address of:
- (a) the Member's or Beneficiary's place of residence and full postal address; and
 - (b) the bank account (if any) to which the Member or Beneficiary requests that the Benefit be paid.
- 34.3 Any person to whom a Benefit is payable must, if requested, furnish the Trustee with a receipt and release in the form required by the Trustee.

35. Payment of Taxation

- 35.1 The manner in which distributions from the Fund are dealt with or the payment of benefits under the Fund may involve a tax liability for the person to whom a payment or benefit is paid or applied and such person accepts that liability.
- 35.2 The Trustee may deduct Taxation required to be deducted (or which the Trustee considers is required to be deducted) from a Benefit.
- 35.3 The Trustee may deduct Taxation payable in relation to a Contribution from the Member Account.

36. Forfeiture of Benefits

36.1 Loss of Benefits

Any Member or Beneficiary:

- (a) who before a Benefit becomes payable, becomes bankrupt; or
- (b) whose Benefits whether by the persons own act, operation of law, an order of any court or otherwise become payable to or vested in any person, company, government or other public authority; or
- (c) who is suffering from any physical or mental disability which in the opinion of the Trustee renders the Member or Beneficiary unable to manage his or her own affairs; or
- (d) who assigns or charges or attempts to assign or charge his or her Benefit;

forfeits entitlement to all Benefits other than those Benefits to which he or she has at that time become absolutely and indefeasibly entitled under the terms of this Deed.

36.2 Dependants to be Considered

Benefits forfeited by reason of clause 36.1 must be held for the Member or Beneficiary (as the case requires) and his or her Dependants as a class until the Benefit becomes payable. On the Benefit becoming payable the Trustee must pay the Benefit to any one or more of them in the proportions between them as the Trustee determines. The payment or application of any moneys pursuant to this clause is a complete discharge to the Trustee for those moneys. Any Benefit not able to be so dealt with is forfeited and must be applied in accordance with clause 36.4.

36.3 Lost Members and Small Amounts

The amounts standing to a Member's Account may be forfeited where:

- (a) the amount standing to the account is a Small Amount and there have been no Contributions credited to that account for 12 months; or
- (b) in relation to that Member:
 - (i) a statement sent by the Trustee under clause 6.2(b) to the last known address of the Member (or to the last known address of a Worker prior to the Rollover Date under the equivalent provision in the Building Employees Redundancy Trust) has been returned unclaimed;
 - (ii) a continuous period of greater than 12 months has elapsed since the return of that statement and the Member's whereabouts has not become known to the Trustee during that period; and
 - (iii) no contribution has been made to the Redundancy Fund in relation to that Member for that period.

For the purposes of this clause 36.3:

- (i) **Redundancy Fund** means both the Fund and Building Employees Redundancy Trust;
- (ii) **Member** means both a Member, and in respect of the period prior to the Rollover Date, the Worker who became a Member by virtue of clause 3.2(c);
- (iii) **Member's Account** means both the Member Account for the Member and the Worker's Account for that person under the Building Employees Redundancy Trust for the period prior to the Rollover Date.

Nothing in this clause 36.3 imposes an obligation on the Trustee to ascertain or establish the whereabouts of a Member.²⁹

36.4 Allocation for Forfeited Benefits

Every Benefit forfeited or to which a Member or Beneficiary has lost his or her entitlement under any of the provisions of this Deed and not otherwise dealt with must be transferred to the Reserve Account.

37. Relationship between Employer and Employee

37.1 Dealings between the Employer and Employee are not affected by this Deed.

37.2 The rights of a Member or that Member's legal personal representative to claim damages or compensation under:

- (a) common law;
- (b) any workers' compensation legislation; or
- (c) any other statute in force governing compensation to a Member injured or killed by an accident arising out of or in the course of that Member's employment with the Employer,

²⁹ Clause 36.3 was amended by a supplemental deed dated 20 February 1997.

are not affected by this Deed.

38. Liability and interest in Fund

38.1 Interest

- (a) A Member's interest in the Fund is personal to the Member.
- (b) Except as provided in this Deed, a Participating Employer, a Member or a Beneficiary has no right to or interest in any money or other assets of the Fund.

38.2 Liability of Participating Employers and Members

The Trustee has no power or authority to enter into any contract that binds, affects or renders liable Participating Employers or Members personally or calls upon them for any payment whatsoever that is in addition to the obligations contained in this Deed or the Deed of Adherence.

39. Change in Employer

39.1 New Employer

If:

- (a) a Participating Employer is dissolved or being a company is wound up or any similar event occurs and another person agrees to undertake the obligation of that Participating Employer in respect of the Fund; or
- (b) another person acquires all or part of the undertaking and assets of a Participating Employer and agrees to undertake the obligations of that Participating Employer or otherwise becomes bound to perform the obligations of the Participating Employer in respect of the Fund;

then that Participating Employer upon the happening of either event is released from all obligations in respect of the Fund and the Deed of Adherence thereafter has effect as if such other person had been a party to the Deed of Adherence instead of the then Participating Employer.

39.2 Withdrawal of Employer

The participation of a Participating Employer may be terminated if:

- (a) the Trustee gives 1 month's notice in writing to the Participating Employer;
- (b) where, subject to clause 39.1, a Participating Employer is or includes a body corporate, a resolution is passed or an order is made for its winding up or a scheme of arrangement providing for its dissolution is approved by a Court;
- (c) where a Participating Employer is or includes a partnership, the partnership is dissolved;
- (d) where, subject to clause 39.1, a Participating Employer is or includes a natural person or persons not in partnership, the person or any of those persons dies or becomes bankrupt;
- (e) a Participating Employer ceases to carry on business; or

- (f) a Participating Employer gives 3 months' notice in writing to the Trustee of its intention to cease participation in the Fund provided that if the Participating Employer is not in arrears in respect of its Contributions it may terminate by giving the Trustee 1 month's notice in writing.

The Participating Employer (**Retiring Employer**) ceases its participation in the Fund as and from the date (**Cessation Date**) that the relevant event occurs or expiration of the relevant period, as the case may be.

39.3 Effect of Termination of Participation

On the termination of a Participating Employer's participation in the Fund in accordance with clause 39.2:

- (a) no further Employees of that Retiring Employer will be admitted as Members;
- (b) no further Contributions may be made by the Retiring Employer except Contributions that were due on or before the Cessation Date;

and after obtaining such advice (if any) as it considers necessary, the Trustee must determine the amounts held in the Fund that are attributable to the Members who are Employees of the Retiring Employer. Those amounts must be held in terms of this Deed.

39.4 Procedure on Termination

On termination of participation:

- (a) the Trustee must specify a date (**Retirement Date**) upon which the Participating Employer (**Retiring Employer**) must retire;
- (b) the Retiring Employer must immediately pay all arrears, if any, of Contributions up to the Retirement Date;
- (c) the Benefits of each Member employed by the Retiring Employer must be held and applied at the discretion of the Trustee in one or more of the following ways or partly in one way and partly in another:
 - (i) for the Members until they are entitled to payment of the Benefits; or
 - (ii) transferred in accordance with clauses 10.1 or 10.2.

39.5 Discharge of Trustee

The receipt of the trustee of the fund to which an amount is transferred is a complete discharge to the Trustee in respect of all liabilities to the Member employed by the Retiring Employer and persons claiming in or in respect of his or her interest under the Fund.

39.6 Notice to Members

The Retiring Employer must notify the Members employed by it of its ceasing to be a Participating Employer before the Retirement Date.

40. Dissolution of the Fund

40.1 Date of Dissolution

Provided the Active Sponsors have given their prior approval to the winding up of the Fund by a Special Resolution of the Active Sponsors, the Fund must be wound up if:³⁰

- (a) there are no Members or Beneficiaries and the Trustee resolves to terminate;
- (b) the liabilities (excluding any liability for the future payment of Benefits) of the Fund exceed the assets of the Fund; or
- (c) for any other reason the Trustee resolves to terminate the Fund.³¹

40.2 Notice to Members

If an event referred to in clause 40.1 occurs, the Trustee must give notice in writing to Members (if any) and all Participating Employers that the Fund will be wound up on a specified date.

40.3 Position Following Giving of Notice

Following the giving of the notices referred to in clause 40.2, the Trustee must continue to administer the Fund in accordance with the provisions of this Deed except that:

- (a) no further Contributions, other than Contributions due on or before the date specified in the notices referred to in clause 40.2, may be accepted in respect of any Member; and
- (b) no new Members or new Participating Employers may be admitted.

40.4 Provision for Liabilities and Benefits

As soon as practicable after the date specified in the notices referred to in clause 40.2 the Trustee must make provision after meeting expenses and liabilities for the following:

- (a) payment of Benefits which on or before giving the notices referred to in clause 40.2 had become payable to a Member or Beneficiary; and
- (b) payment of an amount equal to the credit balance of each Member's Member Account in accordance with clause 39.4(c).

40.5 Surplus

If after providing for expenses, liabilities and benefits in accordance with clause 40.4, a surplus remains, the Trustee may pay, apply or set aside that surplus to or for anyone or more of the Discretionary Beneficiaries to the exclusion of the others of them and in the proportions as the Trustee thinks fit provided that any distribution pursuant to this clause 40.5 to the Active Sponsors, must be made:

- (a) to one half to the Active Unions and, if more than one, in proportion to the number of votes that each Active Union may exercise in relation to the Trustee of the Fund; and
- (b) as to the other half for the Active Employer Organisation and, if more than one, equally between them.³¹

40.6 Takers In default

³⁰ Clause 40.1 was amended by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

³¹ Clause 40.5 was amended by a supplemental deed (document reference 15710327) and subsequently by deed of amendment and restatement dated 16 July 2015 (document reference 33799553v2).

If the Trustee does not exercise the discretion contained in clause 40.5 (or to the extent to which the Trustee does not exercise or does not effectively exercise that discretion), the Trustee holds the surplus:

- (a) to one half to the Active Unions and, if more than one, in proportion to the number of votes that each Active Union may exercise in relation to the Trustee of the Fund; and
- (b) as to the other half for the Active Employer Organisation and, if more than one, equally between them.³²

40.7 After payment of benefits the Fund is dissolved

When all Benefits have been paid, transferred or applied in accordance with the provisions of this Deed, and any amount remaining in the Fund has been paid or applied in accordance with clause 40.4 the Fund is deemed to be dissolved.

40.8 Final accounts

Final accounts of the Fund are to be taken and the Trustee must have those accounts audited.

41. Payment to Others on Behalf of Beneficiaries

41.1 If:

- (a) a Beneficiary is under the age of 18; or
- (b) in the opinion of the Trustee it would be in the best interests of the Beneficiary;

the Trustee may pay all or part of any Benefit to any other person for application on behalf of the Beneficiary.

41.2 If the Trustee believes that a person who is entitled to a Benefit is unable to manage his or her financial affairs, the Trustee may pay the Benefit to another person to be used for the advantage of the person entitled to it.

41.3 The receipt of the person to whom the Benefit is paid pursuant to clauses 41.1 or 41.2 is a complete discharge to the Trustee for the payment.

41.4 The Trustee is not responsible for the application of the Benefit by the person to whom it is paid.

42. Variation of Trust

42.1 The Trustee may by written resolution of Trustee (including a resolution of the board of directors of the Trustee) or by supplemental deed revoke, add to or vary all or any of the trusts, powers, terms and conditions contained in this Deed (or trusts, powers, terms and conditions contained in any variation, alteration or addition made to this Deed) provided that such revocation, addition or variation has the prior approval of the Active Sponsors by way of Special Resolution of the Active Sponsors.³³

42.2 The variations, alterations or additions take effect from the date (if any) specified for that purpose in the resolution or supplemental deed. If no date is stated, then the variations,

³² Clause 40.6 was amended by a supplemental deed (document reference 157103Z7) [and subsequently by deed of amendment and restatement dated 16 July 2015 \(document reference 33799553v2\)](#).

³³ [Clause 42.1 was amended by deed of amendment and restatement dated 16 July 2015 \(document reference 33799553v2\)](#)

alterations or additions take effect from the date the resolution or the supplemental deed is made.

- 42.3 No revocation, addition or variation may adversely effect the beneficial entitlement to any amount set aside for any Member or Beneficiary prior to the date of the variation, alteration or addition.

43. Notices³⁴

- 43.1 Any notice or document to be given under this Deed may be delivered or sent by prepaid registered or certified mail (or, if to a party situated in another country, by prepaid registered airmail) or telex or facsimile or email to the party to be served at that party's address as that party notifies.
- 43.2 The notice or document is deemed to be served:
- (a) if delivered, at the time of delivery;
 - (b) if posted, at the time it would be received in the normal course of post;
 - (c) if sent by telex or facsimile, on the next business day in the place to which its addressed or
 - (d) if sent by email (and the sender receives confirmation from that person or that person's email system that the email has been received), that day, if delivered by 5.00 pm on a business day, or the next business day, in any other case.

44. Law of Trust

- 44.1 This Deed is governed by the law of Queensland.

45. Partial Payment of Benefit

45.1 Request for Deferral

If a Benefit is payable, the Member may apply to the Trustee in writing to defer its payment.

45.2 Drawdown Requests

Where the Trustee has agreed to defer payment of a Benefit, the Member may at any time make a Drawdown Request to the Trustee.

45.3 Pay Drawdowns

The Trustee must:

- (a) pay the Drawdown to the Member on a day not less than 30 days from receipt of the Drawdown Request; and
- (b) debit the amount of the Drawdown to the Member's Member Account.

45.4 Income on Undrawn Balances

³⁴ Clause amended by a supplemental deed (document reference 19152883).

A Member has no entitlement to any income or profit in respect of the undrawn balances of the Benefit to which the Member has otherwise become entitled under the terms of this Deed but in respect of which the Member has applied under clause 45.1 to have the payment deferred.

45.5 Definitions

In this clause 45:

- (a) **Drawdown** means the amount payable under a Drawdown Request unless the Trustee specifies any different amount;
- (b) **Drawdown Request** means the request by a person to drawdown a part or all of that person's entitlement in the Fund.³⁵

³⁵ Clause 45 was Inserted by a supplemental deed (document reference 15710327).

Schedule 1

Deed of Adherence

Deed made

Parties ~~B.E.R.T. Pty Limited ACN 010 917 281~~ BERT Fund Limited ACN 607 106 650³⁶

of Level 1, 35 Astor Terrace, Spring Hill, Queensland 4004 (**Trustee**)

And The party described in the Schedule

of (**Participating Employer**)

Introduction

A Pursuant to a deed dated 16 May 1996 (**Trust Deed**) the Trustee established the BERT Fund.

B The Participating Employer wishes to assume the obligations as a Participating Employer under the terms of the Trust Deed in respect of those of its employees who are Members.

It is agreed

1. Definitions and interpretation

1.1 Definitions

Unless the context otherwise requires words and expressions defined in the Trust Deed have the same meaning when used in this Deed.

2. Admission of Participating Employer

2.1 The Participating Employer:

- (a) is bound by the terms and conditions of the Trust Deed; and
- (b) accepts all the covenants obligations and responsibilities imposed upon a Participating Employer under the terms of the Trust Deed.

3. Governing Law and Jurisdiction

3.1 The law of Queensland governs this Deed.

3.2 The parties submit to the non-exclusive jurisdiction of the courts of Queensland and the Federal Court of Australia.

4. Notices³⁷

4.1 A notice or other communication (Notice) connected with this Deed has no legal effect unless it is in writing and:

³⁶ BERT Fund Limited was appointed trustee in place of BERT Pty Limited on 29 June 2015 pursuant to a deed of retirement and appointment of trustee dated 16 July 2015 (document reference 33796111v2).

³⁷ Clause and schedule amended by a supplemental deed (document reference 19152853)

- (a) delivered by hand at the address of the addressee set out in this Deed or subsequently notified;
 - (b) sent by post, postage prepaid, to that address;
 - (c) sent by facsimile to the facsimile number of the addressee; or
 - (d) sent by email to the email address of the addressee.
- 4.2 A Notice is deemed given and received:
- (a) if delivered, upon delivery;
 - (b) if sent by post on the 2nd Business Day (at the address to which it is posted) after posting; or
 - (c) if sent by facsimile or email before 4 p.m. on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- 4.3 Despite clause 4.2(c) a facsimile or email is not deemed given or received unless, in the case of a facsimile, at the conclusion of the transmission the sender's facsimile machine issues a transmission report which indicates that the relevant number of pages comprised in the Notice have been sent or, in the case of email, the sender receives confirmation from that person or that person's email system that the email has been received.

THE SCHEDULE

Name of Participating Employer :

ACN (if a company) :

Business Name (if any) :

Address :

Telephone number :

Facsimile number :

Email address :

Contact name :

EXECUTED as a deed

THE COMMON SEAL of)
 was affixed in accordance with its articles)
 of association in the presence of:)

 Director/Secretary

 Director

Name of Director/Secretary (BLOCK
LETTERS)

Name of Director (BLOCK LETTERS)

Signed sealed and delivered by)
in the presence of:) _____

Signature of Witness (a J.P. or Solicitor)

Name of Witness (BLOCK LETTERS)

Address of Witness

Schedule 2**Application for Membership (clause 5.2)***CONFIDENTIAL*

To: The Trustee
BERT Fund

I, the undersigned person, being eligible, apply for admission to membership of the Fund.

Dated: [●] 20[●]

.....
Signature

Name :
 Address :
 Occupation :
 Date of Birth :

Nominated Dependant(s)

I nominate the following as my Nominated Dependants

Surname(s)	Given Name(s)	Relationship	% of Total Benefit
.....			
.....			
.....			
.....			

Schedule 3

Trustee's particular powers (clause 15.2)

1. Invest

To invest money which forms part of the Fund in any investments, whether involving liabilities or not, with or without security even though those investments are:

- (a) not income producing;
- (b) of a wasting or speculative nature; or
- (c) not by law authorised for the investment of trust money.

2. Purchase and Pay for Investments

To make any investments for cash or in consideration of any annuity or otherwise and:

- (a) to make any investment for a sum greater than the amount of the Fund for the time being; and
- (b) to agree to pay for the investment wholly or in part from any future money which may come into its hands including dividends, profits, interest or other income paid or payable in respect of the investment.

3. Vary Investments

To vary or transpose any investments into or for any others of any nature and to vary the terms of or property comprised in any security.

4. Lend

To advance and lend money to any person with or without security.

5. Borrow and Obtain Credit

- (a) To raise or borrow money, either alone or jointly with others, from any person.
- (b) To enter into any agreement or arrangement for obtaining credit
- (c) To secure the repayment of any money or other indebtedness or obligation of the Trustee by mortgage, charge or other security or encumbrance over the whole or any part of the property and future property of the Fund.
- (d) No lender is concerned to enquire:
 - (i) as to whether the necessity for a borrowing has arisen;
 - (ii) as to the purpose for which it is required;
 - (iii) as to the application of the money borrowed; or
 - (iv) that no more than is wanted is raised.
- (e) The obligation of the Trustee for the repayment of the money extends only to the assets for the time being forming the Fund and the Trustee does not incur any obligation in its personal capacity for the borrowings.

6. Limit Liability

To enter into any agreement to limit the present or future liability of the Fund including, but not limited to, any agreement relating to interest rate caps, collars, floors or swaps, any \$A forward rate agreement and any other financial risk management agreement and whether varying the terms of any existing financial arrangement or loan or for the purpose of setting up a new financial arrangement or otherwise managing the risk of existing or future financial arrangements.

7. Give Guarantees

- (a) To give any guarantee or indemnity (alone, jointly or jointly and severally) for the payment of money or the performance of any contract, obligation or undertaking by any person.
- (b) To give any form of security (alone, jointly or jointly and severally) over all or any of the assets of the Fund for the purposes of securing its obligations in respect of the guarantee or indemnity.
- (c) No lender is concerned to enquire as to:
 - (i) the necessity for or propriety of any guarantee or indemnity;
 - (ii) the purpose for which it is given; or
 - (iii) the application of any money borrowed,

8. Joint or Third Party Borrowing

To join with any other person or corporation in executing any mortgage or other document for the purpose of securing the payment of money to:

- (a) the Trustee jointly with any other person; or
- (b) any other person.

9. Deal with Property

To hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct develop, improve, sell, assign, transfer, convey, surrender, let, lease, take on lease, exchange, take and grant licences options or rights in, alienate, mortgage, charge, pledge, reconvey, release or discharge or otherwise deal with any property or any right, estate or interest in it, whether forming part of the Fund or not.

10. Acquire Policies of Insurance

- (a) To effect or acquire any reversionary or deferred property or rights of any description or any life or life endowment or sinking fund or term or other policy of insurance of any nature and at or subject to any premium, whether single or payable periodically, and with or subject to any options, rights, benefits, conditions or provisions.
- (b) To pay out of the income or capital of the Fund all sums payable for premiums or otherwise for the effecting or maintenance of any policy of insurance (whether owned by the Trustee or otherwise) or for the exercise or enjoyment of any option, right or benefit under it and any surrender of any policy is deemed to be a sale of that policy.

11. Pay Outgoings

To pay out the Fund all costs, charges and expenses incidental to:

- (a) the management of the Fund;
- (b) the exercise of any power, authority or discretion contained in this Deed; or
- (c) carrying out or performing the Trusts created by this Deed;

which the Trustee may incur including all income tax or other taxes payable in respect of the Fund, costs in any way connected with preparation and execution of this Deed and all money which the Trustee may be required to pay as settlement, gift, stamp or revenue duties in respect of the Fund or this Deed.

12. Take Up Shares, Units or Securities

To take up by allotment or purchase any stock, shares, debentures, bonds, notes, units, subunits or other securities (including a minority share interest) with or without deferred, restricted, qualified or special rights issued by:

- (a) any corporation incorporated in any of the states or territories of Australia or elsewhere;
- (b) any government semi-governmental municipal authority or corporation in any of the states or territories of Australia or elsewhere;
- (c) any fixed, flexible or unit trust established in any of the states or territories of Australia or elsewhere; and
- (d) any limited partnership established in any of the states or territories of Australia or elsewhere.

13. Corporate Securities

With respect to any corporation or unit trust in which the Trustee holds shares, stocks, debentures, options, convertible notes, units, subunits (Securities) or is otherwise interested or concerned:

- (a) to pay calls on Securities or permit Securities to be forfeited and sold;
- (b) to purchase Securities and take up Securities of a new issue;
- (c) to lend money to the corporation or unit trust whether secured by debentures or in any other way or not secured;
- (d) to attend at meetings personally or by proxy, attorney or representative and vote at the discretion of the Trustee;
- (e) to sell Securities;
- (f) to assent to or join in any arrangements relating to the sale, transfer or exchange of any Securities or modifying any right, privileges or interests in relation to the Securities;
- (g) to agree to any scheme or arrangement for the increase or reduction of the value amount of any Securities or the capital of any corporation or unit trust of which the Securities form the whole or any part or by which the Securities are substituted or given in exchange either wholly or partly for other Securities, whether in the same

corporation or unit trust or not and for this purpose to deposit, surrender or exchange any script or documents of title relating to the Securities;

- (h) to pay out of the capital of the Fund or the income derived from the Fund any contribution or incur any expense in connection with the scheme or arrangement and generally to manage and deal with the Securities as if the Trustee owned them beneficially;
- (i) to agree, in respect of a winding up, with the liquidator of the corporation or unit trust or any member of the corporation or unit trust or any other person on the division or partition, in kind or specie, of the assets or property of any nature of the corporation or unit trust; and
- (j) to accept any assets and property in payment or satisfaction of any interest of the Trustee in the corporation or unit trust with power to pay any money by way of equality of division or partition.

14. Futures Contracts and Options

- (a) To engage brokers and commission agents, to vary and determine the terms of any engagement and, either directly or through any broker or agent in any market in any part of the world, to:
 - (i) buy, sell, open, close out or otherwise deal in futures contracts of any kind;
 - (ii) enter into, vary, exercise, abandon or sell any put or call option or rights;
 - (iii) place bids or make offers; or
 - (iv) hedge and effect orders including buying, selling, straddle-switch and stop-loss orders.
- (b) To tender and take delivery of commodities and currencies which are the subject of any futures contracts or options and otherwise to do and perform all things so as to operate on, utilise or deal with the facilities of any stock or futures exchange.

15. Support Employee Associations etc.

To establish and support association institutions, funds (including staff superannuation funds), trusts and conveniences calculated to benefit employees, past-employees, dependants of employees or past-employees of any business carried on by the Trustee under this Deed.

16. Establish and Maintain Superannuation

- (a) To establish and maintain or procure the establishment and maintenance of any non-contributory or contributory pension provident or superannuation funds for the welfare and/or benefit of, and to give or procure the giving of donations, gratuities, pensions, allowances or emoluments to, a person (including a director) who is or was at any time in the employment by the Trustee.
- (b) To establish and aid any institutions, associations, clubs or funds calculated to be for the benefit of or to advance the interest and well-being of any of the Members and Beneficiaries.
- (c) To effect or acquire life and endowment policies of assurance and to pay or contribute to the payment of premiums on those policies for the benefit of employees and their

spouses and/or the spouse widows, widowers, families and dependents of employees and their spouses.

17. Partition

To partition or subdivide any land or other property which may form part of the Fund and pay any money by way of equality or partition.

18. Determine Capital or Income

To determine:

- (a) whether:
 - (i) any property;
 - (ii) any increase or decrease in the amount, number or value of any property or holdings of property; or
 - (iii) any receipt or payment from, for or in connection with any property;
 is treated as and credited or debited to capital or to income and out of what part of the Fund; and
- (b) whether any expense or outgoing is borne by capital or income.

19. Open Bank Accounts

To open in the name of:

- (a) the Trustee;
- (b) a person as nominee of the Trustee; or
- (c) the Trustee and another jointly,

any cheque, savings or other account with any bank or financial institution, wherever situated, with full power for the person in whose name the account is opened to operate the account including power to sign, draw and endorse cheques and other negotiable or transferable instruments on the account and to close the account.

20. Grant Options

To grant options in respect of any part of the Fund or any assets held subject to this Deed to any person.

21. Become or Appoint Directors

- (a) To become a director of any corporation in which money forming a part of the Fund is invested.
- (b) To appoint any other person to act as director of the corporation.
- (c) To receive or permit any person appointed by the Trustee as director (including any director or shareholder of the Trustee) to receive the remuneration attached to the office without accounting to the Fund for that remuneration.
- (d) Any person appointed as a director may become qualified to act as a director by the holding in his or her name of shares forming part of the Fund, provided that the Trustee or person in whose name shares are so held executes all proper declarations of

trust for any shares held by that person on behalf of the Fund and accounts to the Fund for all dividends and bonuses.

22. Do All Things Incidental

To take action for the protection of any part of the Fund and to do all other things which may be incidental to the exercise of the powers and authorities conferred on the Trustee by this Deed.

23. Act Upon Advice

- (a) To obtain and act upon the opinion or advice of any financial adviser, lawyer, valuer, surveyor, broker, auctioneer or other expert or professional.
- (b) Nothing in paragraph 23(a) prohibits or impedes the Trustee from applying to a court or prohibits any of the Discretionary Beneficiaries from doing so.

24. Take Opinion of Counsel

- (a) Without derogating from the generality of paragraph 23, to take and act upon the opinion (given in writing) of counsel, of not less than 5 years' standing practising in a country where the Fund or any part of the Fund is invested, in relation to the interpretation or effect of this Deed or any other document or statute or as to the administration of the Fund without being liable to any of the Discretionary Beneficiaries in respect of any act done by the Trustee in accordance with the opinion.
- (b) Nothing in paragraph 24(a) prohibits or impedes the Trustee from applying to a court

25. Permit Nominee to Hold Assets

- (a) To permit any assets of the Trust to be held or registered in the name of any nominee of the Trustee.
- (b) To deposit securities and any deeds and other documents belonging to or related to the Fund with any bank, solicitor or other custodian.

26. Take on Lease

To take on lease or hire purchase any property including plant machinery, goods, equipment articles and chattels of every kind or description.

27. Draw Bills of Exchange

- (a) To draw, make, accept, endorse, discount; sell, purchase, issue and otherwise deal with promissory notes, bills of lading, bills exchange and other negotiable transferable instruments and in particular commercial bills.
- (b) To secure any liability of the Trustee in respect of any matter referred to paragraph 27(a) by way of mortgage charge, lien or otherwise over the whole or any part of the Fund.

28. Deal with Distributions from Other Trusts

To treat as income or as capital any amounts or property which the Trustee in its capacity as trustee receives as a beneficiary under any other trust whether the amounts or property constituted capital or income under the other trust or was distributed to the Trustee by the trustee of the other trust as capital or income.

29. Blend Funds

- (a) To blend, for the purposes of investment, any money which the Trustee holds upon the Trust with other money (whether or not the money is subject to any other settlement or trust).
- (b) To join with any other person in making common investments.

30. Employ Agents

- (a) To employ any managers, agents, advisers, solicitors, accountants or other persons to transact any business or to do any act required to be done in connection with the administration of the Trust including the receipt and payment of money.
- (b) To determine the remuneration to be paid to them.

31. Attorney

To appoint any person as representative or attorney of the Trustee for the purpose of executing any document which the Trustee is permitted or authorised to execute by this Deed or by law and to revoke the appointment.

32. Delegate

To delegate in writing the exercise of all or any of the powers or discretionary authorities conferred by this Deed on the Trustee and to execute any power of attorney or other instrument necessary to effectuate that delegation.

33. Manage

To manage any property that forms part of the Fund.

34. Compromise

To compromise and settle all matters arising in relation to the Trust or the Fund and compromises and settlements are binding on Beneficiaries.

35. Pay for Assistance

To employ and pay for such professional or other assistance as the Trustee may deem requisite to the discharge of the duties of the Trust including assistance from any person who is an employee of the Trustee or (where the Trustee is a corporation) a director and/or a shareholder of the Trustee.

36. Institute and Defend Proceedings

- (a) To institute, join in and defend any legal arbitration or mediation proceeding.
- (b) To proceed to the final determination of the proceedings.
- (c) To discontinue the proceeding and any other claim or demand.

37. Apply for Grant

To apply for, acquire and exercise any chart, licence, legislative enactment, power, authority franchise, concession, right or privilege from any government or authority or any corporation or other public body.

38. Construct

- (a) To build, demolish, alter, repair, extend, rebuild, improve, reconstruct and develop any property included in the Fund.
- (b) To construct, improve, maintain, develop, work, manage, carry out or control any buildings, works, factories, mills, roadways, tramways, railways, branches or sidings, bridges, reservoirs, water courses, waterways, warehouses, electric workshop stores or other works and conveniences.
- (c) To contribute to or assist in the construction improvement, maintenance, development working, management or carrying out control of the works or conveniences.

39. Procure Recognition

To procure the Trustee (should the Trustee be a corporation) to be registered or recognised in a country or place.



BERT Financial Services
Income Statement
For the Twelve Months Ending Monday, 30 June 2025

	2025			Full Year	2024	
	YTD				YTD	
	Actuals	Budget	Variance	Budget	Actuals	Notes
BERT Welfare Revenue	994,560	994,560		994,560	960,000	
Total Revenue	994,560	994,560		994,560	960,000	
Other Revenue						
Profit on Disposal	12,165		12,165			
Total Other Revenue	12,165		12,165			
Total Revenue	1,006,725	994,560	12,165	994,560	960,000	
Expenses						
Domestic Travel Expense	14,708	25,500	10,792	25,500	12,609	
Taxis	1,397	960	(437)	960	912	
Director Fees	54,158	53,886	(272)	53,886	51,334	
Audit Fees	5,819	7,740	1,921	7,740	7,148	
Tax Consulting Fees	6,740	2,760	(3,980)	2,760	3,929	1.
Licensing/Paraplanning	148,846	157,500	8,654	157,500	141,999	
Advice Seminars		2,760	2,760	2,760		
Advertising & Promotions	6,815	12,900	6,085	12,900	12,335	
Conferences & Seminars	2,224	1,500	(724)	1,500	647	
IT Expenses	261	2,700	2,439	2,700		
Bank Charges	1,081	1,075	(6)	1,075	1,253	
Depreciation - Computer Equipment	3,955	2,654	(1,301)	2,654	2,130	
Depreciation - Fixtures & Fittings	163	168	5	168	217	
Car Parking	1,293	720	(573)	720	662	
Motor Vehicle Costs	62,110	71,708	9,598	71,708	50,837	
Loss on Disposal	698		(698)		230	
BERT Fund No 2 Management Fees	38,616	38,616		38,616	37,271	
Membership & Subscriptions	2,555	2,640	85	2,640	1,808	
Stationery	564	240	(324)	240	589	
ASIC Fees	321	320	(1)	320	310	
Printing	98	1,200	1,102	1,200	900	
Postage		180	180	180	93	
Telephone Mobile	4,353	4,080	(273)	4,080	2,950	
Direct Staff Costs	670,428	569,687	(100,741)	569,687	494,006	2.
Entertainment	781	1,200	419	1,200	905	
Staff Training	3,107	10,200	7,093	10,200	925	
Staff Amenities	450	600	150	600	492	
Staff Uniforms	894	1,200	306	1,200	584	
Legal Fees		2,400	2,400	2,400		
Workcover	1,160	1,220	60	1,220	1,108	
Total Expenses	1,033,593	978,314	(55,279)	978,314	828,183	
Net Profit before Income Tax	(26,868)	16,246	(43,114)	16,246	131,817	
Income Tax - Current Year	(8,061)	4,872	12,933	4,872		
Net Profit after Income Tax	(18,807)	11,374	(30,181)	11,374	131,817	



BERT WELFARE LTD
Income Statement
For the Twelve Months Ending Monday, 30 June 2025

	2025			Full Year	2024	
	YTD				YTD	
	Actuals	Budget	Variance	Budget	Actuals	Notes
INCOME STATEMENT						
Distribution Revenue						
BERT2 -Trust Profit Distribution		5,434,346	(5,434,346)	5,434,346	7,776,692	
Total Distribution Revenue		5,434,346	5,434,346	5,434,346	7,776,692	
Revenue						
Consulting Revenue	768,972	768,972		768,972	742,247	
Total Revenue	768,972	768,972		768,972	742,247	
Other Revenue						
Investment Trust Distribution	763,672	160,000	603,672	160,000	755,331	
Interest Income - Term Deposit	205,340	190,392	14,948	190,392	200,651	
Interest Income - Cash at Bank	63,629	19,272	44,357	19,272	65,934	
Interest Income - Long Term Loan	196,813	240,000	(43,188)	240,000	(85,067)	
Interest on Investments					92,173	
Unrealised Change In Net Market Value	1,997,646	360,000	1,637,646	360,000	439,165	
Realised Change In Net Market Value	1,016		1,016			
Sundry Income	29,245		29,245		834	1.
Total Other Revenue	3,257,361	969,664	2,287,697	969,664	1,469,020	
Total Revenue	4,026,333	7,172,982	(3,146,650)	7,172,982	9,987,959	
Expenses						
Travel Airfare - Domestic	373	6,300	5,927	6,300	524	
Travel Accommodation and Meals- D...	3,204	2,400	(804)	2,400	200	
Director Fees	77,944	77,813	(131)	77,813	74,917	
Audit Fees	21,879	14,400	(7,479)	14,400	12,148	2.
Tax Consulting Fees	2,760	2,760		2,760	909	
Bank Charges	269	1,320	1,051	1,320	268	
Legal Fees		36,000	36,000	36,000		
Membership and Subscriptions	1,341		(1,341)			
BERT Fund No 2 Management Fees	41,052	41,052		41,052	39,629	
ASIC Fees	439	540	101	540	1,451	
Printing & Stationery		1,080	1,080	1,080	116	
Direct Staff Costs	825,055	601,986	(223,069)	601,986	507,555	3.
Workcover	2,622	1,890	(732)	1,890	1,760	
Sundry Expenses		240	240	240	31,604	
Total Expenses	976,938	787,781	(189,157)	787,781	671,082	
Net Profit before Income Tax	3,049,394	6,385,201	(3,335,806)	6,385,201	9,316,877	
Income Tax - Current Year	914,818	1,915,860	1,001,042	1,915,860	525,337	
Income Tax- Prior Year	(183,107)		183,107		280,028	
Net Profit after Income Tax	2,317,683	4,469,341	(2,151,658)	4,469,341	8,511,513	
Welfare Fund Outlays						
Financial Planning	994,560	994,560		994,560	960,000	
Member Funeral Benefits	705,000	900,000	195,000	900,000	771,000	
Child Care Benefits	442	9,000	8,558	9,000	3,964	
HSO Funding	624,885	624,885	0	624,885	603,181	
Members Travel Insurance	574,750	675,000	100,250	675,000	680,258	
Rehabilitation Costs	1,200,000	1,200,000		1,200,000	1,200,000	
Counselling Services	191,563	200,000	8,437	200,000	144,000	
Dental Claims	134,949	165,000	30,051	165,000	143,533	
Ambulance	5,786	15,000	9,214	15,000	4,044	
NT Sponsorship	100,992	100,992		100,992	97,484	
Impairment Officer	237,037	237,037		237,037	228,800	
Natural Disaster Benefit	508,211	300,000	(208,211)	300,000		
Total Welfare Fund Outlays	5,278,175	5,421,474	143,299	5,421,474	4,836,263	
Financial Planning - Inhouse						



BERT WELFARE LTD
Income Statement
For the Twelve Months Ending 30 June 2025
Notes to Accounts

Notes

1. Interest refunded for amended Income tax years 2019
2. Additional Audit fees due to restatements of financial statements
3. Direct staff costs include underpaid payroll tax \$177K and Interest \$39.7K from FY 2022 to December 2024



**BERT Training Fund
Income Statement
For the Twelve Months Ending Monday, 30 June 2025**

INCOME STATEMENT

Revenue

	2025				2024	
	YTD			Full Year	YTD	
	Actuals	No. of Grants	Budget	Budget	Actuals	Notes
Investment Income	1,015					
Interest Received	394,810		294,288	(100,522)	380,557	
Distribution from BEWT	12,086,193		10,761,770	(1,324,423)	8,906,450	
CSQ Funding	1,435,664		717,832	(717,832)	1,335,664	
Profit on sale of Asset	10,417			(10,417)		
Total Revenue	13,928,099		11,773,890	(2,154,209)	11,773,890	10,622,671

Expenses

BERT Fund No 2 Book Keeping Fees	39,720		39,720		39,720	38,340
BERT Fund No 2 Management Fee	52,980		52,980		52,980	51,146
Audit Fees	7,140		7,200	60	7,200	7,148
Advert, Promotions & Sponsorship	28,704		35,800	7,096	35,800	30,343
Domestic Travel Expenses	16,338		19,650	3,312	19,650	11,358
Bank Charges	818		960	142	960	536
Taxis	133		480	347	480	113
Car Parking	2,963		2,100	(863)	2,100	2,133
Conferences & Seminars			600	600	600	
Rent - Darwin	3,497		3,497		3,497	3,299
Depreciation - Computer Equipment	1,478		1,506	28	1,506	1,244
Directors' Fees & Expenses	55,381		55,386	5	55,386	52,343
Operations & Training Committee	38,912		51,810	12,898	51,810	33,342
Entertainment	8,569		9,000	431	9,000	2,417
Donations			1,000	1,000	1,000	50
Legal Fees			20,100	20,100	20,100	
Loss on Disposal	771			(771)		48
Membership and Subscriptions	723		1,200	477	1,200	1,023
Stationery	57		1,200	1,143	1,200	
Printing	781		1,625	844	1,625	209
Postage	836		1,200	364	1,200	1,099
Motor Vehicles Costs	72,121		63,785	(8,336)	63,785	24,323
Telephone & Internet	3,379		2,890	(489)	2,890	1,701
Direct Staff Costs	546,108		420,860	(125,248)	420,860	276,484
WorkCover Premium	1,428		1,071	(357)	1,071	1,008
Staff Uniforms	886		600	(286)	600	525
CTQ Legacy Award	5,000		10,000	5,000	10,000	15,000
Sundry	115			(115)		
ASIC Fees	343		660	317	660	435
Total Expenses	889,181		806,880	(82,301)	806,880	555,667

Net Profit (Loss) before Income Tax	13,038,918		10,967,010	(2,071,908)	10,967,010	10,067,004
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Grants

CFMEU Apprentice S'ship - A	3,338,874		3,338,876	2	3,338,876	3,056,626
CFMEU/QMCA Civil Scholarship - C	1,128,700		1,128,700		1,128,700	1,088,650
CFMEU Labourers Scholarship- F	921,798		921,798		921,798	816,450
CFMEU NT Indigenous Program	1,109,605		1,109,605		1,109,605	1,057,465
CFMEU Demolition Scholarship (DM)	471,759		628,500	156,741	628,500	647,475
Plumbers Apprentice Prog	2,528,926		2,429,224	(99,702)	2,429,224	2,210,576
Queensland Master Builders	122,102		210,000	87,898	210,000	250,000
Managed Training (QLD)	878,869	2,154	780,000	(98,869)	780,000	715,333
Managed Training (NT)			36,000	36,000	36,000	
Managed Training AA	13,250	265	24,000	10,750	24,000	7,191
Worker Grants	253,413	421	270,000	16,587	270,000	187,426
Total Grants	10,767,296	2,840	10,876,703	109,407	10,876,703	10,037,192



ANNUAL FINANCIAL REPORT

OF

BUILDING EMPLOYEES WELFARE TRUST

ABN 91 064 281 353

FOR THE YEAR ENDED 30 JUNE 2025

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BUILDING EMPLOYEES WELFARE TRUST
STATEMENT OF PROFIT OR LOSS AND OTHER COMPREHENSIVE INCOME
FOR THE YEAR ENDED 30 JUNE 2025

	Note	30-Jun-25 \$	30-Jun-24 \$
REVENUE			
Employer Contributions		11,948,459	8,878,765
Interest	3	247,996	158,667
Other Revenue		1,914	4,300
TOTAL REVENUE		<u>12,198,369</u>	<u>9,041,732</u>
EXPENDITURE			
Accounting and Audit Fees	4	13,379	8,862
Administrative Expenses	5	98,798	126,420
TOTAL EXPENDITURE		<u>112,177</u>	<u>135,282</u>
SURPLUS BEFORE INCOME TAX EXPENSE		<u>12,086,193</u>	<u>8,906,450</u>
Income Tax Expense	1	-	-
SURPLUS AFTER INCOME TAX EXPENSE FOR THE YEAR		<u>12,086,193</u>	<u>8,906,450</u>
Other comprehensive income , net of tax		-	-
TOTAL COMPREHENSIVE INCOME FOR THE YEAR		<u>12,086,193</u>	<u>8,906,450</u>

The accompanying notes form part of these financial statements.

BUILDING EMPLOYEES WELFARE TRUST
STATEMENT OF FINANCIAL POSITION
AS AT 30 JUNE 2025

	Note	30-Jun-25 \$	30-Jun-24 \$
CURRENT ASSETS			
Cash and Cash Equivalents	6	6,258,526	2,750,917
Trade and Other Receivables	7	156,755	114,900
Financial Assets	8	-	1,999,845
TOTAL CURRENT ASSETS		<u>6,415,281</u>	<u>4,865,662</u>
NON-CURRENT ASSETS		-	-
TOTAL NON-CURRENT ASSETS		<u>-</u>	<u>-</u>
TOTAL ASSETS		<u>6,415,281</u>	<u>4,865,662</u>
CURRENT LIABILITIES			
Trade and Other Payables	9	28,656	17,137
BERT Training Fund Distribution Payable		6,386,616	4,848,515
TOTAL CURRENT LIABILITIES		<u>6,415,272</u>	<u>4,865,652</u>
NON-CURRENT LIABILITIES		-	-
TOTAL NON-CURRENT LIABILITIES		<u>-</u>	<u>-</u>
TOTAL LIABILITIES		<u>6,415,272</u>	<u>4,865,652</u>
NET ASSETS		<u>10</u>	<u>10</u>
EQUITY			
Settled Sum		10	10
Retained Surplus	11	-	-
TOTAL EQUITY		<u>10</u>	<u>10</u>

The accompanying notes form part of these financial statements.