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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**                    5 August 2025

**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

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### 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, the deed of amendment and restatement made by BERT Fund Limited dated 10 October 2023 and the deed of amendment and restatement made by BERT Fund Limited dated 1 July 2024.

**Effective Date** means . 5 August 2025

#### 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.

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## **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.

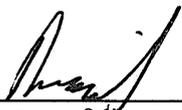
### **References**

- 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



\_\_\_\_\_  
Signature of director

ROSS DAVIDSON  
Name of director (please print)



\_\_\_\_\_  
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**

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**Redundancy fund trust deed  
- B.E.R.T. Fund No. 2 -  
[incorporating 2025  
amendments]**

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**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**)<sup>1</sup>

## 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

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### 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;

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<sup>1</sup> 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 Fund**<sup>2</sup> means, as the context requires, the superannuation fund that has been named in an industrial instrument.

**Auditor** means the auditor appointed by the Trustee.

**Award**<sup>3</sup> 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 Rate**<sup>4</sup> 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.

**Contribution**<sup>5</sup> 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*<sup>6</sup>.

**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.

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<sup>2</sup> Definition inserted by a supplemental deed (document reference 8759019).

<sup>3</sup> Definition inserted by a supplemental deed (document reference 13416673).

<sup>4</sup> Definition inserted by a supplemental deed (document reference 13416673).

<sup>5</sup> Definition inserted by a supplemental deed (document reference 13416673).

<sup>6</sup> 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**<sup>7</sup> 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**<sup>8</sup> 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

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<sup>7</sup> Definition inserted by deed of amendment and restatement dated 10 October 2023 (document reference 437299289-v1).

<sup>8</sup> 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 proportion**<sup>9</sup> 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 Contribution**<sup>10</sup> 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.

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<sup>9</sup> Definition inserted by deed of amendment and restatement dated 10 October 2023 (document reference 437299289-v1).

<sup>10</sup> 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.<sup>11</sup>

**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*.<sup>12</sup>

**Reciprocating Fund** has the meaning given in clause 9.4.

**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;

<sup>11</sup> Definition amended by deed of amendment and restatement (document reference 30799151v1).

<sup>12</sup> Definition inserted by deed of amendment and restatement dated 1 July 2024.

- (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.

**Transferee Fund** has the meaning given in clause 9.1.

**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.

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## **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.

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## **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*.

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## **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.

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## **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<sup>13</sup> 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.<sup>14</sup>

## **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.

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## **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.

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<sup>13</sup> Clause 6.1 was amended by a deed of amendment and restatement (document reference 416258768 -v2).

<sup>14</sup> Clause 6.1 was amended by a supplemental deed (document reference 8759019).

- 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.

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## 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

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## 9. Transfer of Benefit to New Fund

### Transfer Requested by Member

- 9.1 On the written request of a Member (**Requesting Member**), an amount equal to the positive balance of his or her Member Account may, subject to clause 9.2, be paid or transferred to the trustee of another approved worker entitlement fund (**Transferee Fund**).

### Transfer of Benefit by Trustee

- 9.2 The Trustee may transfer to a Transferee Fund an amount no less than the positive balance of the Requesting Member's Member Account provided the Trustee is satisfied, in its discretion, that:
- (a) the Requesting Member's entitlements, and the Requesting Member's rights and interests in respect of those entitlements, under the Fund will not be adversely affected by the transfer;
  - (b) the Transferee Fund to which the transfer is proposed to be made is, in the Trustee's opinion, a Reciprocating Fund; and
  - (c) the transfer, if approved and made:
    - (i) is consistent, and complies with, the FBT Requirements; and
    - (ii) will not, or is unlikely to, in the Trustee's opinion, adversely affect, or diminish (qualitatively or quantitatively):
      - (A) the current, future, prospective or contingent rights, interests and entitlements of any of those persons mentioned in clause 9.4(b)(ii) (directly or indirectly) under, or in connection with, the Fund; or
      - (B) the ability of any of those persons mentioned in clause 9.4(b)(ii) to fund, support, sponsor or promote a project, scheme, or arrangement, which is:
        - (1) in place at that time, or proposed to be funded, supported, sponsored or promoted by any of them in the future; and

- (2) anticipated, in the Trustee's opinion, to benefit, or will be or benefit (in the future) to, participants in the Construction Industry (directly or indirectly).

### Receipt of Trustee

9.3 The receipt of the trustee of the Transferee Fund to which the transfer is made is a complete discharge to the Trustee in respect of any money or asset paid or transferred.

### Reciprocating Fund

9.4 To qualify as a Reciprocating Fund for the purposes of this clause 9, the Transferee Fund must satisfy, and comply with, such criteria as the Trustee may, in its discretion, prescribed from time to time for that purpose, including, but not limited to:

- (a) that the Transferee Fund's objects or purposes include the making of Redundancy, severance or other termination payments or benefits to persons employed in the Construction Industry;
- (b) in the Trustee's opinion:
  - (i) the Transferee Fund is comparable to the Fund; and
  - (ii) the current, future, prospective and contingent rights, interests and entitlements under, or in connection with, the Transferee Fund, should the transfer contemplated by clause 9.1 be approved and made by the Trustee, for each of:
    - (A) the Requesting Member;
    - (B) the Sponsors;
    - (C) the Requesting Member's Participating Employer;
    - (D) the legal representative, or the Death Benefit dependants, of the Requesting Member; and
    - (E) any Approved Institution,are substantially similar to their current, future, prospective and contingent rights, interests and entitlements under the Fund.

For the purposes of the assessments contemplated by this clause 9.4(b), the Trustee may, in its discretion:

- (iii) have regard to the overall nature, quality and value of the benefits provided to members, and to each of those persons otherwise mentioned in clause 9.4(b)(ii), by both the Transferee Fund and the Fund respectively;
- (iv) have regard to the benefits, and anticipated benefits, (qualitative and quantitative) which, in the opinion of the Trustee, are derived, or are likely to be derived, by participants in the Construction Industry (directly or indirectly) from any project, scheme or arrangement which is funded, supported, sponsored or promoted by any of those persons mentioned in clause 9.4(b)(ii), or any project, scheme of arrangement which The Trustee anticipates will be funded, supported, sponsored or promoted by any of them in the future, and the impact that a transfer, if approved and made, would likely have on those benefits, and future benefits; and

- (v) apply a weighting, importance or priority, to each of the various features of both the Transferee Fund and the Fund as the Trustee considers appropriate in the circumstance of the relevant request by the Requesting Member (and these weightings, importance and priorities may vary from request to request by the same Requesting Member or by different Members).

and the Trustee, in undertaking this assessment, is not limited to the quantitative measures alone, but may also have regard to, and may, in its discretion, place a greater emphasis, weighting or importance upon, its view of the qualitative benefits and outcomes.

If the Trustee considers that any of the persons mentioned in clause 9.4(b)(ii) may not receive equivalent advantages, in its view, by the Requesting Member participating in the Transferee Fund to those advantages, in its view, any of them may receive from a continuing participation in the Fund by the Requesting Member, the Trustee may determine that, with respect to that Requesting Member, and in relation a particular request received under clause 9.1 from that Requesting Member, the Transferee Fund proposed in that request is not a Reciprocating Fund;

- (c) evidence is given to the Trustee sufficient to satisfy it (in its absolute discretion) that:
  - (i) the trustee of the Transferee Fund is not precluded (under the Transferee Fund's trust deed or constituent document or by law) from transferring any part of its funds or assets to, or from accepting transfers of funds from, the Fund; and
  - (ii) the Transferee Fund:
    - (A) is an approved worker entitlement fund under, and for the purposes of, the Fringe Benefits Tax Assessment Act, and
    - (B) is at the time of the request for transfer contemplated under clause 9.1 is made to the Trustee fully and currently complying with the FBT Requirements insofar as they relate to the administration of the Transferee Fund.

For the avoidance of doubt, an assessment made by the Trustee that a Transferee Fund qualifies, or does not qualify, as applicable, as a Reciprocating Fund under this clause 9 for the purposes of a request made by one Member in relation to his or her Member Account does not in any way fetter, interfere with, or limit, the Trustee's discretion in making its assessment with respect to:

- (d) the same Transferee Fund for the purposes of any request made by another Member; or
- (e) a separate request made by the same Member at a subsequent time.

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## 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).<sup>15</sup>

### **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.

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<sup>15</sup> Clause 10.3 was amended by deed of amendment and restatement (document reference 30799151v1).

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## **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.

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## **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.

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## **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.

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## **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.
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## **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.
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## **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.
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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## 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 34.4<sup>16</sup> -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:

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<sup>16</sup> 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.<sup>17</sup>

**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 Members<sup>18</sup>**

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;<sup>19</sup>

<sup>17</sup> Clause 27A.4 was Inserted by deed of amendment and restatement (document reference 30799151v1).

<sup>18</sup> Clause 29 was amended by a supplemental deed dated 10 November 2004.

<sup>19</sup> Clause 29.1(a) was amended by deed of amendment and restatement dated 1 July 2024.

- (b) suffers financial hardship and provides to the Trustee documentary evidence satisfactory to it;<sup>20</sup>
  - (c) dies;
  - (d) becomes Totally and Permanently Disabled;
  - (e) is made Redundant;<sup>21</sup>
  - (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.<sup>22</sup>
- 

### **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.<sup>23</sup>
- 

### **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

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<sup>20</sup> Clause 29.1(b) was amended by deed of amendment and restatement (document reference 30799151v1).

<sup>21</sup> Clause 29.1(e) was amended by deed of amendment and restatement (document reference 30799151v1).

<sup>22</sup> Clause 30.3 was inserted by a supplemental deed dated 10 November 2004.

<sup>23</sup> 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.
- 33.3 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.<sup>24</sup>

#### **Lost Members and Small Amounts**

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

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<sup>24</sup> 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.

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## **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.<sup>25</sup>

### **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.

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<sup>25</sup> 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.

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## 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. Notices<sup>26</sup>

- 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.

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<sup>26</sup> Clause amended by a supplemental deed (document reference 19152777).

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## **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.



---

#### **4. Notices<sup>27</sup>**

- 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**

<b>Name of Participating Employer</b>	:
<b>ACN (if a company) Business Name (if any) Address</b>	:
<b>Telephone number</b>	:
<b>Facsimile number</b>	:
<b>Email address</b>	:
<b>Contact name</b>	:

---

<sup>27</sup> 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

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#### 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:

			<b>%of Total</b>
<b>Surname(s)</b>	<b>Given Name(s)</b>	<b>Relationship</b>	<b>Benefit</b>

## Schedule 3

### Trustee's particular powers

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#### 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.

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## **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.

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## 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.

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## 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.

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## 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.

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## 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.

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## 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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.
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## **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.
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## **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.
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## **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.
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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **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.

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## **31. Manage**

- 31.1 To manage any property that forms part of the Fund.

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## **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.

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## **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.

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#### **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.
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#### **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.
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#### **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.
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#### **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.