

1997

**AND CoINVEST LIMITED ACN 078 004 985** of 478 Albert Street, East Melbourne, Victoria, 3002 (**'Trustee'**)

## RECITALS

- A. The Settlor wishes to establish a trust for the purpose of providing long service leave benefits to certain persons working in the construction industry.
- B. The Trustee has consented to act as trustee of the Fund on the trusts and subject to the powers and provisions contained in this deed.
- C. On the commencement of the Act, the property of the Fund will include property vested in the Trustee pursuant to the Act.
- D. Prior to the commencement of the Act, the Minister has certain powers in relation to the Fund and this deed, as set out below.

## AGREEMENT

## 1 DEFINITIONS

The following terms have these meanings unless the context otherwise requires:

**‘Act’** means the *Construction Industry Long Service Leave Act 1997*;

**‘Annual Meeting’** means the annual meeting of Beneficiaries, Potential Beneficiaries and Contributors, to be held in accordance with *clause 11 (General Meeting)*;

**‘Auditor’** means the auditor of the Fund, appointed under *clause 10 (Accounts)*;

**‘Beneficiary’** means a person who, under the Rules, is entitled to a payment out of the Fund;

**‘Board’** means the Directors of the Trustee;

**‘Commencement Date’** means the date of execution of this deed;

**‘Contributor’** means a person who is required under the Act and the Rules to contribute to the Fund and, as the Trustee may from time to time determine under the Rules that no contributions are required, includes a person who would be required to contribute to the Fund if the Trustee determined in accordance with Rule 11 that the Prescribed Percentage (as defined in Rule 11.2) was greater than zero;

**‘Corporation’** includes a body corporate, wherever incorporated, and any other entity which by the law under which it is formed has a separate legal personality;

<sup>1</sup>**‘Effective Date’** means the date that section 20 of the Act comes into operation;

1 Amended by a Deed Poll sealed by the Trustee on 13 May 1998

**‘Financial Accommodation’** includes, without limitation, the provision or extension of loans, credit or accommodation, documentary letter of credit or standby or performance letter of credit arrangements or facilities, bill facilities, bankers’ acceptance facilities, the discount or purchase of, or provision of loans secured on accounts, leases, mortgages, bills of sale or any other security arrangements, negotiable or other securities, scrip, documents of title and any other property, real or personal, and the entering into of commodity contracts or exchange contracts (including hedge contracts, futures contracts and options);

**‘Financial Year’** means a year ending on 30 June in each year and includes the period:

- (a) which commences on the Commencement Date and ends on the following 30 June;
- (b) which commences on 1 July immediately prior to the Termination Date and ends on the Termination Date; and
- (c) specified by the Trustee in its absolute discretion to be a Financial Year;

**‘Fund’** means:

- (a) the Initial Sum; and
- (b) all the cash, investments and other property for the time being held by the Trustee on the trusts of this deed, including without limitation property or assets acquired:
  - (i) by the transfer of property as an addition to the Fund;
  - (ii) by purchase or by the exercise of the Trustee’s powers of investment, including its power to borrow money for the purposes of the Fund;
  - (iii) by the accumulation of the Income of the Fund; or
  - (iv) under the Act.

**‘Income’** in respect of any Financial Year means the net income of the Fund for that Financial Year determined according to generally accepted accounting principles and approved accounting standards and without regard to any loss, whether on income or capital account, incurred in any preceding Financial Year;

**‘Initial Sum’** means the sum of \$100 paid to the Trustee by the Settlor on or before the Commencement Date;

**‘Minister’** means:

- (a) at any time prior to the Effective Date, the Minister of the Victorian Government who is allocated responsibility for the *Construction Industry Long Service Leave Act 1983*; and
- (b) as from and including the Effective Date, the Minister of the Victorian Government who is allocated responsibility for the Act;

**‘Potential Beneficiary’** means at any time a person who is at that time registered with the Trustee under Part 4 of the Rules;

**‘Rules’** means the rules of the Fund set out in Schedule 2;

**‘Securities’** includes stocks, bonds, shares and debentures of a Corporation and any options, rights or other entitlement issued in respect of them, and an interest in any trust fund;

**‘Special Resolution’** means in relation to the Directors, a resolution approved (in writing on a show of hands or by a poll) by not less than:

- (a) 7 out of 8 of the A Class Directors and B Class Directors; and
- (b) 2 out of 3 of the C Class Directors;

**‘Tax Act’** means the *Income Tax Assessment Act 1936* (Cth) as amended from time to time and any replacement or additional legislation and any rulings or regulations or guidelines made or issued under it;

**‘Termination Date’** means:

- (a) prior to the commencement of the Act, the earlier to occur of the Vesting Date and any date determined by the Trustee or the Minister (or both) under *clause 2.5 (Termination)*; and
- (b) as from the commencement of the Act, the date (if any) specified in the Act as the date on which the Trust is to vest, provided that if the Act provides that the Trust is to continue in operation in perpetuity, ‘Termination Date’ will cease to have any meaning for the purposes of this deed;

**‘Trust’** means the trust established under this deed.

**‘Trustee’** means CoINVEST Limited and any replacement, new or additional trustee;

**‘Trustee Act’** means the *Trustee Act 1958* (Vic) as amended from time to time and any replacement or additional legislation;

**‘Vesting Date’** means:

- (a) prior to the commencement of the Act, the day immediately preceding the 80th anniversary of the Commencement Date; and
- (b) as from the commencement of the Act, the day (if any) specified in the Act as the day on which the Trust is to vest, provided that if the Act provides that the Trust is to continue to operate in perpetuity, ‘Vesting Date’ will cease to have any meaning for the purposes of this deed.

## 2 FUND

### 2.1 Establishment

This deed has effect on and from the Commencement Date and it is directed by the Settlor and declared by the parties that the Trustee has held and will continue to hold the Fund on the trusts of this deed.

### 2.2 Name of Trust

This Trust and the trusts created under this deed will be called the Construction Industry Long Service Leave Fund.

### 2.3 Beneficiaries’ entitlement

Notwithstanding anything in this deed:

- (a) the Beneficiaries as a whole do not have any right, title or interest of any nature to or in the Fund or any part of the Fund or any Income; and

- (b) an individual Beneficiary does not have any right, title or interest to or in the Fund or any Income unless and until the Trustee declares that the Beneficiary is presently entitled to it under **clause 3.3 (Application)**.

## 2.4 Limitation of beneficiaries' liability

The Trustee will have no claim by way of indemnity against any Beneficiary or Potential Beneficiary except as provided in **clause 8.5 (Unsuccessful suit for breach of trust)** of this deed, nor will any Beneficiary or Potential Beneficiary have any liability of any nature for or in respect of any liabilities incurred by the Trustee in the execution of or attempted execution of or as a consequence of the failure to exercise any of the Trustee's duties, authorities, powers and discretions under this deed.

## 2.5 Termination

Subject to the provisions of this deed:

- (a) prior to the Effective Date the Trust will continue in operation until the Vesting Date or such earlier date as may be determined:
  - (i) by the Minister; or
  - (ii) by the Trustee with the prior written approval of the Minister; and
- (b) as from the Effective Date, the Trust will continue in operation in perpetuity.

# 3 INCOME

## 3.1 Allocation

The Trustee may in each Financial Year determine in accordance with the Rules the amount, proportion or percentage, if any, of the Income or, where **clause 3.4 (Classes of Income)** applies, any class of Income for that Financial Year which is to be:

- (a) applied to Beneficiaries ('**Applicable Income**');
- (b) transferred to a distribution reserve ('**Accumulated Income**'); and
- (c) appropriated under **clause 3.8 (Appropriation)**.

## 3.2 Income unknown

If at the time when a determination is made by the Trustee under **clause 3.1 (Allocation)**, the amount of Income is not known, the Trustee must ascertain the amount of Income as soon as practicable after such determination.

## 3.3 Payment of Applicable Income

The Trustee must pay Applicable Income to such one or more of the Beneficiaries (exclusive of the others) as the Trustee determines in accordance with the Rules.

## 3.4 Full discharge

In the exercise of the Trustee's power under **clause 3.3 (Payment of Applied Income)**, any payment of Applied Income by the Trustee, with or without the execution of a receipt, will constitute a full and final discharge to the Trustee in relation to the trusts of this deed.

### 3.5 Power exercisable at any time

The Trustee may exercise the power conferred by *clause 3.1* in accordance with the Rules at any time and from time to time during the Financial Year.

### 3.6 Accumulated Income

Accumulated Income is in all respects to be treated as an addition to the Fund but the Trustee may at any time resort to and deal with Accumulated Income as if it is Income.

### 3.7 Present entitlement

It is a condition of entitlement of each Beneficiary to whom Applicable Income has been applied that the Beneficiary include in his or her assessable income the proportion of the net income of the Fund for that Financial Year (as defined in section 95 of the Tax Act) that the Beneficiary's share of Applied Income bears to the total Income.

### 3.8 Appropriation

The Trustee may appropriate an amount of the Income or Accumulated Income of the Fund in any year for the purpose of discharging the liability of the Trustee to pay any income tax, governmental imposts, duties, levies or similar liabilities incurred by or in respect of the Income whether the liability arose out of the application of Applicable Income or the accumulation of Income in that or any other year.

### 3.9 Absence of Trustee's determination

If the Trustee does not make a determination under *clause 3.1 (Allocation)* in respect of all or any of the Income, then so much of the Income which:

- (a) is neither Applicable Income nor Accumulated Income;
- (b) being Applicable Income, is not applied to a Beneficiary; or
- (c) is not appropriated for the purposes of *clause 3.8 (Appropriation)*,

must be treated as Accumulated Income.

## 4 CAPITAL

The Trustee may at any time in accordance with the Rules, pay any part of the capital of the Fund to a Beneficiary on such terms and subject to such conditions as the Trustee in accordance with the Rules may determine, provided that the Trustee must not distribute the whole of the Fund.

## 5 RULES

### 5.1 Trustee may make Rules

The Trustee may from time to time, subject to the Act, this deed and the Rules set out in **Schedule 2**, make Rules relating to the Fund, including (without limitation):

- (a) the determination and payment of entitlements of Beneficiaries under this deed;
- (b) the obligations of persons to make contributions to the Fund; and
- (c) the general administration of the Fund.

### 5.2 Trustee may modify Rules

The Trustee may from time to time, subject to the Act, this deed and the Rules set out in **Schedule 2**, revoke, amend, modify, vary, substitute or replace the whole or any part of the Rules.

### 5.3 Status of Rules

The Rules must be construed as part of this deed, provided that the provisions of this deed prevail over the Rules to the extent of any inconsistency.

## 6 TRUSTEE'S POWERS

### 6.1 General powers

The Trustee may invest and manage the Fund in such manner as it determines and in particular has the powers conferred on trustees by the proper law of this deed from time to time in force. In addition to and in expansion of those powers, authorities and discretions the Trustee has all of the powers over and in respect of the Fund as if the Trustee were the absolute and beneficial owner including without limitation all of the powers, authorities and discretions set out in **Schedule 1**.

### 6.2 Restriction of Trustee's powers

- 6.2.1 Notwithstanding any other provision in this deed, prior to the Effective Date the Trustee may not exercise any power under this deed without the prior written approval of the Minister.
- 6.2.2 As from the Effective Date, the Trustee may exercise its powers under this deed in accordance with the Act.

### 6.3 Exclusion of legislation

The following provisions of the Trustee Act do not apply to the Trustee and the Trust:

- (a) subsection 17(3) does not apply to the terms of sale of any land by the Trustee; and
- (b) subsection 27(4) does not apply to the costs of any audit of the accounts of the Trustee or the Fund.

## 7 APPOINTMENT AND REMOVAL OF TRUSTEE

### 7.1 Appointment of Trustee

The Trustee may by instrument in writing appoint any new Trustee as sole Trustee on such terms and subject to such conditions as the Trustee thinks fit.

### 7.2 Appointment by a liquidator

If the Trustee goes into receivership, liquidation (whether voluntary or involuntary) or external administration the power of appointment conferred on the Trustee by **clause 7.1 (Appointment of Trustee)** may be exercised by the receiver, liquidator or administrator.

### 7.3 Resignation

Any Trustee may at any time resign as Trustee on giving not less than 30 days written notice to the Minister, provided the Trustee must not resign until a new Trustee has been appointed under **clause 7.1 (Appointment of Trustee)**.

### 7.4 Vacation of office

Subject to **clause 7.2 (Appointment by a liquidator)**, the office of a Trustee must be terminated and vacated if the Trustee is a Corporation, it enters into administration, receivership or liquidation (whether compulsorily or voluntarily, not being merely a voluntary liquidation for the purposes of amalgamation or reconstruction).

### 7.5 Change in Trustee

In relation to any change in Trustee:

- (a) acts and deeds done or executed for the proper vesting of the Fund in a replacement Trustee are to be done and executed by the retiring Trustee at the expense of the Fund, except that an outgoing Trustee (other than one referred to in **clause 7.4 (Vacation of office)**) who is or may be liable as a Trustee for taxes will not be bound to transfer the Fund unless the ongoing Trustee indemnifies from the Fund the outgoing Trustee against any present or future liability incurred by the outgoing Trustee as a direct or indirect consequence of the outgoing Trustee acting as trustee of the Trust; and
- (b) stating the name of the Trustee for the time being and must be signed by the Trustee so named and:
  - (i) any person dealing with the Trust will be entitled to rely on the memorandum as sufficient evidence that the named Trustee is the duly constituted Trustee for the time being; and
  - (ii) all Trustees so named will be taken to have consented to act as Trustee of the Trust subject to the terms of this deed.

## 8 LIABILITY AND REMUNERATION OF TRUSTEE

### 8.1 Remuneration

The Trustee may charge such remuneration as the Trustee in its absolute discretion thinks fair, reasonable and sufficient to enable the Trustee to pay all expenditure incurred or

suffered by the Trustee on its own account, including (without limitation) all administrative and general expenses of the Trustee including auditing fees, directors' fees (as approved by the Board) and all costs of statutory compliance and may be paid out in respect of those charges out of the Fund or the Income or both.

## 8.2 Administration expenses

The Trustee may pay all costs, charges and expenses of administering the Trust out of the Fund.

## 8.3 Indemnity for expenses

- (a) The Trustee is entitled to be indemnified out of, and to the extent of, the Fund against all liabilities incurred by the Trustee under this deed or in the execution or attempted execution of or as a consequence of the failure to exercise any of the Trustee's duties, authorities, powers and discretions under this deed.
- (b) The Trustee is entitled to a lien on, and may use, the Fund for the indemnity granted under **clause 8.3(a)** and generally for the payment of all proper legal and other costs and expenses of administering or winding up the Trust and otherwise performing the Trustee's duties under this deed.

## 8.4 Exclusion of liability

The Trustee is not responsible for:

- (a) any loss or damage occasioned to the Fund or that may be suffered or incurred by any person as a result of the Trustee acting as trustee of the Trust;
- (b) any breach of duty or trust whatever; or
- (c) (any failure, whether because of neglect or any other reason, to exercise any power, authority or discretion conferred on the Trustee by this deed or by the proper law of this deed from time to time in force,

unless any act or omission leading to such loss, damage, breach or failure is proved to have been committed, made or omitted knowingly and in fraudulent bad faith by the Trustee.

## 8.5 Unsuccessful suit for breach of trust

If any Beneficiary or Potential Beneficiary brings any proceedings against a Trustee as trustee of the Trust or as a result of something done or not done by him as trustee of the Trust and a final judgment, verdict or finding is made in favour of the Trustee, the Trustee is entitled to be indemnified out of the Fund for such costs, expenses, outgoings and disbursements as it may have incurred as a result of such proceedings to the extent that such costs, expenses, outgoings and expenses cannot be recovered from that Beneficiary or Potential Beneficiary.

## 8.6 Trustee not to benefit

Except as provided for in this **clause 8 (Liability and remuneration of Trustee)**, neither the whole nor any part of the Fund nor the Income nor any of the powers, authorities and discretions conferred by this deed or by the proper law of this deed from time to time in force are to be used in favour of or in such a way as to confer a benefit on the Trustee.



## 8.7 Beneficiary or Potential Beneficiary as director or shareholder

- (a) A Corporation may act as Trustee notwithstanding that any director or member of the Corporation is or may be a Beneficiary or a Potential Beneficiary or may otherwise receive a benefit under this deed (whether directly or indirectly).
- (b) No Beneficiary or Potential Beneficiary is disqualified from benefiting under this deed by reason of being a director or shareholder of the Trustee, and, subject to the memorandum and articles of association of that Corporation, may vote in respect of any matter concerning this deed.

## 8.8 Professional Fees

Any Trustee or any director of a corporate Trustee being an accountant, solicitor or other person engaged in any profession will, in addition to any entitlement under this deed, be entitled to charge for any acts done by the Trustee in connection with the Trust, including any acts which the Trustee could have done personally if it was not engaged in any profession.

# 9 ADMINISTRATION

## 9.1 Sole Trustee may act

It is the intention of the Settlor that a sole Trustee may execute the powers and trusts reposed in the Trustee by this deed and that this **clause 9.1** will be sufficient authority to satisfy the requirements of section 94(1) of the *Settled Land Act 1958* (Vic).

## 9.2 Power to employ

The Trustee may employ any persons it considers necessary for the administration of the Trust and the carrying on of business on behalf of the Trust on such terms as it thinks fit and may make arrangements for the provision of superannuation or other benefits ordinarily associated with employment.

## 9.3 Appointment of attorney

The Trustee may appoint any person to be its attorney to exercise all or any of the powers or discretions given to the Trustee by this deed on such conditions and subject to such terms as the Trustee thinks fit, and the Trustee is not responsible for any action (whether wrongful or otherwise) on the part of that attorney.

## 9.4 Books of account

- (a) The Trustee must cause proper accounting and other records to be kept for the Fund, and must promptly after the end of each Financial Year prepare or cause to be prepared a written accounting report, including a profit and loss report for that year and balance sheet as at the end of that year prepared in accordance with generally accepted accounting principles and approved accounting standards. Specific financial information must be recorded in the accounts.
- (b) Without limiting the generality of **clause 9.4(a)**, the Trustee must maintain records of:
  - (i) all sums of money received and expended by or on behalf of the Fund and the matters in respect of which receipts and expenditure take place;

- (ii) all sales and purchases of investments and of assets and liabilities of the Fund; and
- (iii) the business for the time being carried on by the Trustee under this deed,

which sufficiently explain the transactions and financial position of the business and enable true and fair profit and loss accounts and balance sheets and other accounts from time to time required to be prepared in respect of the business.

## 9.5 Valuation of Fund

The Trustee may, for the purpose of giving effect to the Trust, ascertain and fix the value of any asset or property forming part of the Fund in accordance with the Rules and any valuation will be binding on all Beneficiaries and Potential Beneficiaries.

## 9.6 Appropriation of Fund

The Trustee may, in its absolute discretion and without obtaining the consent of any Beneficiary or Potential Beneficiary, appropriate any part (but not the whole) of the Fund in its actual condition or state of investment in or towards satisfaction of any share or interest of any Beneficiary in the Fund or in the Income, and for the purpose of an appropriation under this clause, the Trustee:

- (a) must ascertain and fix the value of the respective parts of the Fund and the liabilities to which they are subject as it thinks fit; and
- (b) may for that purpose employ any person, whether qualified or not, for the purpose of making any such valuation,

and every appropriation or valuation made under this *clause 9.6* will bind all Beneficiaries and Potential Beneficiaries.

## 9.7 Payment of duties, fees or taxes

In the event of any probate, succession, estate or other duties, fees, taxes or similar amounts becoming payable in any part of the world in respect of the Fund on the death of the Settlor, any Beneficiary, any Potential Beneficiary or any other person, the Trustee in its absolute discretion may pay all or any part of such duties, fees, taxes or similar amounts out of the Fund notwithstanding that such duties, fees, taxes or similar amounts may not be recoverable from the Trustee or from the Fund.

## 9.8 Trustee may be a director

- (a) Any Trustee or director of a corporate Trustee may become a director or employee of any Corporation in which the Trustee may from time to time hold Securities as part of the Fund and that Trustee may receive the remuneration attached to that office without being liable to account for that remuneration to the Beneficiaries, the Potential Beneficiaries or the Fund.
- (b) The Trustee may become qualified as a director by the holding in its own name of Securities belonging to the Fund on the condition that the Trustee executes all proper declarations of trust for any Securities held by it on behalf of the Fund and accounts to the Fund for all dividends, bonuses and rights or other entitlements received as a consequence of holding those Securities.

### 9.9 No amalgamation with other funds

The Trustee must keep the Fund the subject of this deed entirely separate and distinct from any other fund or trust fund and nothing in this deed requires or causes the Trustee to join the Fund with any other fund or trust fund (whether created by the Settlor or any other person).

### 9.10 When Trustee is a Corporation

If the Trustee is a Corporation, its powers may be exercised by the directors for the time being acting as a board in the same manner as they might act, subject to the articles of association of the Trustee and the provisions of the *Corporations Law*, in any other matter concerning the Trustee.

### 9.11 Timing of exercise of powers and discretions

Any power or discretion exercised by the Trustee is taken to have been exercised when the resolution of the Trustee exercising that discretion was made.

## 10 ACCOUNTS

### 10.1 Accounts

Without limiting *clause 9.4 (Books of Account)*, the Trustee must keep accounts of the business of the Fund in accordance with the same requirements of the *Corporations Law* which apply to the keeping of accounts of the business of the Trustee.

### 10.2 Audit

The Trustee must cause the accounts of the Fund to be audited in accordance with the same requirements as apply under the *Corporations Law* to the audit of the accounts of the business of the Trustee. The Trustee must appoint the Auditor of the Fund as the auditor of the Trustee's accounts. The Auditor must conduct the audit of the Fund in conjunction with the audit of the Company.

### 10.3 Auditor to certify certain matters

The Auditor must, in conjunction with the audit of the Fund and the audit of the Trustee provide to the Trustee a certificate stating whether or not in the opinion of the Auditor, having regard to the nature and objects of the Fund:

- (a) the remuneration appropriated out of the Fund by the Trustee;
- (b) the remuneration paid by the Trustee to each member of the Board; and
- (c) the expenses reimbursed by the Trustee to each member of the Board,

during the Financial Year covered by the accounts of the Fund and the Trustee were fair and reasonable.

### 10.4 Publication of summary of accounts

The Trustee must, in each Financial Year, not less than 21 days prior to the Annual Meeting, issue to all Contributors, Beneficiaries and Potential Beneficiaries, a summary of the audited accounts of the Fund, a copy of Auditor's certificate under *clause 10.3*

(*Auditor to certify certain matters*), and a summary of the activities of the Fund for the Financial Year the subject of the audited accounts.

### 10.5 Trustee may rely on Registers

For the purposes of *clause 10.4 (Publication of summary accounts)*, the Trustee may rely on the information held by the Trustee in the Registers kept by the Trustee under *Rules 8, 9 and 10*, for the purpose of identifying persons who are Contributors, Beneficiaries or Potential Beneficiaries.

## 11 ANNUAL MEETING

### 11.1 Annual Meeting

The Trustee shall hold an Annual Meeting of Contributors, Beneficiaries and Potential Beneficiaries. No Annual Meeting need be held for the Financial Year ending 30 June 1997 but an Annual Meeting must be held in respect of every subsequent Financial Year. The Annual Meeting must be held in conjunction with the annual general meeting of the Trustee.

### 11.2 <sup>2</sup>Business of the Annual Meeting

The purpose of the Annual Meeting is for the Trustee to table the annual audited accounts of the Fund, and the Auditor's certificate under *clause 10.3* of this deed. The Trustee must provide not less than 21 days notice of the Annual Meeting to all persons eligible to attend, and the form of the Notice must indicate to each such person that they are eligible to attend the Annual Meeting. If the Notice of Annual Meeting requests persons proposing to attend the meeting to advise the Trustee of their intention, a Contributor, Beneficiary or Potential Beneficiary who has not done so may be denied entry to the Annual Meeting by the Trustee.

### 11.2A <sup>3</sup>Questions at the Annual Meeting

At the Annual Meeting, the Chairperson (or, in the Chairperson's absence another member of the Board nominated by the Chairperson), and at least three other members of the Board, and the Chief Executive Officer of the Trustee must be present to answer questions relating to the Fund which are raised at the meeting. The Chairperson (or, in the Chairperson's absence, the member of the Board nominated by the Chairperson in his or her place) must chair the Annual Meeting.

### 11.3 Annual Meeting - offensive material

A person may be refused admission to, or required to leave and not return to, an Annual Meeting if the person:

- (a) refuses to permit examination of any article in the person's possession; or
- (b) is in possession of any:
  - (i) electronic or recording device;
  - (ii) placard or banner; or

<sup>2</sup> Amended by a Deed Poll sealed by the Trustee on 14 July 1998

<sup>3</sup> Inserted by a Deed Poll sealed by the Trustee on 14 July 1998

(iii) other article,

which the Chairperson considers to be dangerous, offensive or liable to cause disruption.

## 11.4 Proceedings at Annual Meetings

The Chairperson may determine any dispute about the procedure for the conduct of an Annual Meeting and the Chairperson's determination, if made in good faith, will be final and conclusive.

## 11.5 Trustee may rely on Registers

For the purposes of this *clause 11*, the Trustee may rely upon the information held by the Trustee in the Registers kept by the Trustee under *Rules 8, 9 and 10*, for the purpose of identifying persons who are Contributors, Beneficiaries or Potential Beneficiaries.

# 12 NOTICES

## 12.1 Notice to Beneficiaries, Potential Beneficiaries and Contributors

Any notice required under this deed to be given to a Beneficiary, Potential Beneficiary ~~or~~, Contributor ~~or to the Trustee~~ must be given either:

(a) personally;

~~(a)(b)~~ by sending it by post to the last known address of that person as supplied to or ascertained by the Trustee or to the alternative address (if any) nominated by the member;

~~(b)(c)~~ by sending it to the fax number or electronic address (if any) of that person as supplied to or ascertained by the Trustee; or

personally, by hand -or by sending it by post ~~-or hand-~~ to :

~~(a)~~ in the case of the Trustee, the address of the Trustee or to the alternative address, (if any,) nominated by the Trustee supplied by service of a notice; and.

~~(b) in the case of a Beneficiary, Potential Beneficiary or Contributor, the last known address of that person as supplied to or ascertained by the Trustee, and~~

## 12.2 When Notice is given

Any notice given under this clause **Error! Reference source not found.** will be deemed to have been ~~effected~~ given:

~~(e)(a)~~ where sent by post and properly addressed, postage prepaid, three days after the date of its posting; ~~or~~

~~(d)(b)~~ ~~(e)~~ where sent by fax, or other electronic means, on the business day after it is sent; or

~~(e)(c)~~ ~~(d)~~ where delivered personally or by hand, at the time of delivery.

4 Amended by a Deed Poll sealed by the Trustee on 1 July 2014

## 13 VARIATION

### 13.1 Restriction of benefit

Without limiting *clauses 8.1, 8.2 and 8.3*, nothing in this deed is to be so interpreted as empowering the Trustee to appoint any part of the Fund or the Income to any of the following persons or classes of person:

- (a) the Settlor;
- (b) the Trustee in office at that time for its own benefit;
- (c) any Corporation in which the Trustee or the Settlor has a pecuniary interest; and
- (d) any directors of a corporate Trustee.

### 13.2 Restriction of amendment of deed

Any addition, variation, deletion or revocation to this deed must not:

- (a) derogate from any vested interest in the Fund or income;
- (b) except in accordance with the Rules, enlarge the class of persons capable of falling within the definition of 'Beneficiaries' set out in *clause 1 (Definitions)*; or
- (c) extend the Vesting Date (if any).

### 13.3 Amendment prior to Effective Date

Prior to the Effective Date, this deed cannot be added to, revoked, amended, modified, varied, substituted, or replaced, in whole or in part except, and subject to *clause 13.1 (Restriction of Benefit)* and *clause 13.2 (Restriction of amendment of deed)*:

- (a) by the Minister, by notice in writing to the Trustee; or
- (b) by the Trustee by a deed poll authorised by Special Resolution of the Board and made with the prior written approval of the Minister.

### 13.4 <sup>5</sup>Amendment as from Effective Date

- (a) As from the Effective Date, the provisions of this deed may, subject to the Act (including without limitation section 7 of the Act) and to *clause 13.1 (Restriction of Benefit)* and *clause 13.2 (Restriction of amendment of deed)*, be added to, revoked, amended, modified, varied, substituted or replaced in whole or in part either directly or indirectly by a deed poll authorised by a Special Resolution of the Board provided that any deed poll purporting to add to, revoke, amend, modify, vary, substitute or replace;
  - (i) this clause 13.4 (Amendment as from Effective Date); or
  - (ii) the meanings given to any or all terms defined in clause 1 (Definitions) of this deed (including by reference to any other provisions of this deed (including the Rules)) to the extent that they are used in this clause 13.4 (Amendment as from Effective Date),

<sup>5</sup> Amended by a Deed Poll sealed by the Trustee on 13 May 1997 and amended by a Deed Poll sealed by the Trustee on 11 November 1997

will be void and of no effect unless prior to its execution it was approved pursuant to a referendum of Construction Industry (as defined in the Rules) Workers (as defined in the Rules), Employers (as defined in the Rules) and Working Sub-Contractors (as defined in the Rules) other than Non-Voting Persons (as defined in the Rules);

- (b) each referendum under this *clause 13.4 (Amendment as from Effective Date)* must be conducted by the Trustee under the supervision of and in accordance with guidelines approved by either the Victorian State Electoral Office or the Australian Electoral Commission;
- (c) a Special Resolution will be approved pursuant to a referendum for the purposes of this *clause 13.4 (Amendment as from Effective Date)* only if more than:
  - (i) 50% of all Workers;
  - (ii) 50% of all Employers; and
  - (iii) 50% of all Working Sub-Contractors,
  - (iv) other than Non-Voting Persons who:
  - (v) were registered with the Trustee in accordance with the Rules as at the date nominated by the Trustee for the purposes of determining entitlements to vote at that referendum (being a date not more than 6 months or less than one month before the date for the referendum); and
  - (vi) voted at that referendum,
 voted in favour of the Special Resolution;
- (d) for the avoidance of doubt, nothing in this *clause 13.4 (Amendment as from Effective Date)* requires a Special Resolution to be approved in accordance with the referendum procedure prescribed in this *clause 13.4 (Amendment as from Effective Date)* if the Special Resolution relates to the exercise by the Trustee of any power, authority or discretion given to the Trustee under the Trust Deed, the exercise of which:
  - (i) would have the effect of enlarging the class of persons capable of being paid benefits out of the Fund; and
  - (ii) has been approved by the Governor-in-Council pursuant to section 7 of the Act.

## 14 SETTLOR NOT TO BENEFIT

Except for reasonable fees for acting as a director of any Trustee or of any Corporation owned or controlled by any Trustee or for the provision of other services to or for any Trustee, the Settlor may not receive any benefit or property of any kind from the Fund or the Income nor from or under any of the powers, authorities and discretions conferred by this deed or by the proper law of this deed from time to time in force. The Settlor renounces any and all right, title or interest of any kind to or in the whole or any part of the Fund or any of the Income and any power to determine or control by any means whatever the beneficial enjoyment of the whole or any part of the Fund or Income.

## 15 PROPER LAW AND RESIDENCE

This deed is governed by the laws of the State of Victoria.

## 16 SEVERANCE OF INVALID PROVISIONS

If any provision or part of any provision of this deed is void or invalid for any reason whatever then that provision or part may be severed from this deed and is not to affect the validity or operation of any other provision of this deed.

## 17 INTERPRETATION

17.1 In this deed unless the context otherwise requires:

- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) a reference to any legislation or statutory instrument is construed in accordance with the relevant State or Federal Acts Interpretation Act applicable to the legislation or statutory instrument;
- (c) a reference to a person includes a Corporation, firm or body of persons;
- (d) other grammatical forms of defined words or phrases have corresponding meanings;
- (e) a reference to a clause, schedule or annexure is a reference to a clause of or schedule or annexure to this deed and a reference to this deed includes any schedules and annexures;
- (f) terms defined in the *Corporations Law* as at the date of this deed have the meanings given to them in the *Corporations Law* at that date;
- (g) a reference to a document or agreement, including this deed, includes a reference to that document or agreement as novated, altered or replaced from time to time;
- (h) a reference to writing includes typewriting, printing, lithography, photography and any other mode of representing or reproducing words, figures or symbols in a permanent and visible form; and
- (i) headings (other than 'AGREEMENT' immediately before *clause 1*) are used for reference only and do not affect the construction of this deed.



## SCHEDULE 1

### TRUSTEE'S POWERS

#### 1 General powers

Without limitation the Trustee has the following powers, authorities and discretions:

- (a) to accept any property given or transferred to the Trustee as trustee of the Trust;
- (b) to commence, acquire and carry on any business, scheme or undertaking in any country (including any business, scheme or undertaking of a speculative nature) whether solely or jointly with any other person and whether or not by way of partnership which the Trustee may decide can be conveniently carried on or which the Trustee considers should be commenced, acquired or carried on in the interests of the Fund or the Potential Beneficiaries or Beneficiaries;
- (c) to borrow or raise money or obtain Financial Accommodation or secure the payment of money in any currency for any purpose in such manner as the Trustee may think fit and to secure the same or the repayment or performance of any debt, liability, contract, guarantee or other engagement incurred or to be entered into by the Trustee in any way and in particular by the issue or execution of debentures, guarantees, bills of sale, mortgages or such other security as the Trustee may agree charged on all or any of the Trustee's property (both present and future), including the Fund, its capital and Income (including any future Income) and to purchase, redeem or pay off any Securities, and any such borrowings or Financial Accommodation may exceed the net value of the Fund at or after the time of borrowing and no person, bank, society, association or other body lending or advancing money to the Trustee (as Trustee of the Trust) need be concerned to see that such money or other Financial Accommodation is needed or that no more than is needed is borrowed or obtained or to see to the application of the money borrowed or proceeds to the Financial Accommodation;
- (d) to procure the incorporation of any Corporation or establishment of any partnership or firm;
- (e) to lend or advance money or give credit to any person, company or trust, to guarantee and give guarantees or indemnities for the payment of money or the performance of contracts or obligations by any person, company or trust to secure or undertake in any way the repayment of moneys lent or advanced to or the liabilities incurred by any person, company or trust and otherwise assist any person, company or trust;
- (f) to carry on any business on any property which may be acquired by the Trustee and to divide, subdivide, build, repair, wreck, improve, develop, exploit and manage such property as the Trustee may think fit;
- (g) to let any such property in such parts at such rentals on such terms and conditions (including without limiting the generality of the foregoing the grant or reservation of any necessary easements or rights) and to such tenants as the Trustee considers to be in the best interests of the Fund;
- (h) to institute and prosecute legal proceedings of any kind and in any court including to enforce any contract entered into or to recover damages for breach of any such contract;

- (i) to pay out of the Fund payments of all kinds necessary or desirable for carrying on the management, development or purchase of any property or business;
- (j) to do any other act or thing which in the opinion of the Trustee is necessary for the proper and efficient management and development of any property or business comprised in the Fund;
- (k) to apply and invest all moneys at any time forming part of the Fund in any investments whether involving liabilities or not or on personal credit with or without security and on such terms and conditions as the Trustee in its absolute discretion thinks fit and to the intent that the Trustee has the same powers in all respects as if it was the absolute owner beneficially entitled;
- (l) to raise or concur in raising with or without security any money which the Trustee thinks expedient for any purpose in relation to the execution of the trusts or powers conferred on the Trustee by mortgaging or charging with or without a power of sale all or any part of the Fund;
- (m) to lend all or part of the Fund on such terms and conditions with or without interest and with or without security as the Trustee thinks fit to any company or person other than the Trustee or a director of a corporate Trustee;
- (n) to apply the whole or any part of the capital or Income of the Fund in or towards payment of any liability undertaken by the Trustee in relation to the acquisition of property intended to form part of the Fund;
- (o) to take and act on the opinion of any legal counsel locally or where appropriate or necessary elsewhere whether in relation to the interpretation of this deed or any other document or statute or as to the administration of the trusts under this deed without being liable to any one in respect of any act done by it in accordance with such opinion provided that the Trustee is not obliged to act in accordance with any such opinion and that nothing prohibits the Trustee from applying to any court if it thinks fit;
- (p) to apply for, purchase or otherwise acquire any patents, patent rights, copyright, trade marks, formulae, licences, concessions and the like conferring any exclusive or non-exclusive or limited right to use or any secret or other information as to any invention which may seem capable of being used for any of the purposes of the Trust or the acquisition of which may seem calculated directly or indirectly to benefit the Trust and to use, exercise, develop or grant licences in respect of or otherwise turn to account the property rights or information so acquired;
- (q) to take on bailment, lease, licence or on exchange or on hire and otherwise purchase and acquire any real or personal property including any chattels, machinery, plant, stock-in-trade, patents, trade marks, registered designs or copyright;
- (r) to exercise or concur in exercising all the powers and discretions contained in this deed or otherwise by law conferred notwithstanding the Trustee or any person being a director or shareholder of the Trustee has or may have a direct or personal interest (whether as a Trustee of any other trust or in his or her personal capacity as a director or shareholder of any company or otherwise) in the mode or result of exercising such power or discretion or may benefit either directly or indirectly as a result of the exercise of any such power or discretion and notwithstanding that the Trustee for the time being is the sole Trustee; and

- (s) to deal with, enter into contracts or otherwise effect transactions with itself in its capacity on the one hand as Trustee and on the other in its own right.

## **2 Property acquisition and use**

The Trustee may purchase property in any part of the world and may permit the use of that property on such terms and conditions as it thinks fit and is not required to obtain any valuations or other reports in relation to such purchase or use.

## **3 Matters affecting Securities**

Where the Fund includes Securities, the Trustee may exercise in its absolute discretion all rights pertaining to the Securities including without limitation rights to vote, to take up additional or bonus shares and to concur in any scheme or arrangement.

## **4 Bank accounts**

The Trustee has power:

- (a) to open and operate accounts of all descriptions and in any currency with any bank; and
- (b) to retain the whole or any part of the Fund in the form of cash for such period and in such currency as the Trustee may in its absolute discretion think fit notwithstanding that the cash retained may be earning no interest at all.

## **5 Income**

The Trustee has power to treat as Income:

- (a) any profit made by the Trustee from any profit making scheme carried on by the Trustee or from the sale of property whether acquired by the Trustee for resale at a profit or not;
- (b) any receipt by the Trustee of money, shares or other Securities or any other property (whether movable or immovable) which is or the value of which is treated by any applicable law as income for income tax purposes or the purposes of any tax of a like nature or which any person or authority acting under such law is entitled to treat as income for the purposes of any such tax notwithstanding that apart from this clause it should be treated by them as capital.

**SCHEDULE 2**  
**RULES**

**RULES OF THE CONSTRUCTION INDUSTRY**  
**LONG SERVICE LEAVE FUND**

Consolidation Copy for Reference Purposes.

**BARRY CHARLES AMOND**  
(‘Settlor’)

**CoINVEST LIMITED**  
**ACN 078 004 985**  
(‘Trustee’)

**TRUST DEED**

Consolidation Copy for Reference Purposes.

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## Table of contents

<i>Clause</i>	<i>Page</i>
<b>1 DEFINITIONS</b>	<b>1</b>
<b>2 FUND</b>	<b>3</b>
<b>3 INCOME</b>	<b>4</b>
<b>4 CAPITAL</b>	<b>5</b>
<b>5 RULES</b>	<b>6</b>
<b>6 TRUSTEE'S POWERS</b>	<b>6</b>
<b>7 APPOINTMENT AND REMOVAL OF TRUSTEE</b>	<b>7</b>
<b>8 LIABILITY AND REMUNERATION OF TRUSTEE</b>	<b>7</b>
<b>9 ADMINISTRATION</b>	<b>9</b>
<b>10 ACCOUNTS</b>	<b>11</b>
<b>11 ANNUAL MEETING</b>	<b>12</b>
<b>12 NOTICES</b>	<b>13</b>
<b>13 VARIATION</b>	<b>14</b>
<b>14 SETTLOR NOT TO BENEFIT</b>	<b>15</b>
<b>15 PROPER LAW AND RESIDENCE</b>	<b>16</b>
<b>16 SEVERANCE OF INVALID PROVISIONS</b>	<b>16</b>
<b>17 INTERPRETATION</b>	<b>16</b>