

# *ReddiFund*

ReddiFund Limited

## **DEED AND REGULATIONS**

(Composite Deed and Regulations - incorporating amendments from Amending Deeds  
No.1, No.2, No.3, No.4, No.5 and No.6)

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THIS DEED OF SETTLEMENT\* was initially made the 9th of March 2004  
BY:

*[As amended by Deed of Amendment No.5]*

**ReddiFund Limited** (ACN 009 404 273) the registered office of which is situate at Unit 2, 1st Floor, 44 Parliament Place, West Perth (herein called "the Trustee") of the first part FOR THE BENEFIT AND IN FAVOUR OF:

**The PARTICIPATING EMPLOYEES** (as hereinafter defined as "Participating Employees") of the second part

AND

**THE PARTICIPATING EMPLOYERS** (as hereinafter defined as "Participating Employers") of the third part.

AND

**THOSE INDUSTRIAL ASSOCIATIONS OR ORGANISATIONS** described in Schedule D of this Deed (as hereinafter defined as "Participating Organisations") that are parties to this Deed and other industrial associations or organisations that become parties to this Deed, pursuant to sub-clause 2.2 of this Deed.

WHEREAS:

A. *[As amended by Deed of Amendment No.4, No.5 and No.6]*

The Trustee proposes to establish an "approved worker entitlement fund redundancy payment scheme, under which Participating Employers are to contribute to the scheme a specific amount per worker per week or, if provision is made in a registered industrial agreement for payment of daily rates then, an amount per worker per day (day rate) to the scheme, to provide benefits upon cessation of employment of workers, who are engaged in works in the building and construction industry , to be known as the ReddiFund.

B. Participating Employers propose to make contributions to the Fund from time to time in accordance with the provisions of this Deed (and regulations made hereunder). The Trustee has agreed to accept contributions from Participating Employers and to hold the Fund upon the trusts and subject to the terms and conditions hereinafter contained.

C. *[As amended by Deed of Amendment No.5]*

The Trustee has agreed to establish the ReddiFund by entering into this Deed.

## INTERPRETATION

1. The headings to clauses in this instrument shall not affect its construction. Except to the extent that such interpretation shall be excluded by or be repugnant to the context, in this instrument:

1.1 "Application for Employee Participation" means an agreement between the Trustee and a Participating Employee substantially in the form set out in Schedule E1 of the Fund Regulations or such other form of agreement as the Trustee from time to time resolves will be accepted as an Application for Employee Participation.

1.2 [No current clause]

1.3 [*As amended by Deed of Amendment No. 6*]

"Building Project" means any commercial/industrial/residential sector building project or civil/engineering sector project:

(a) within the State on which a Participating Employee will provide his/her labour; or

(b) within any other part of the Commonwealth and on which a Particular Participating Employee provides or is reasonably anticipated to provide his/her labour for not more than 3 successive months;

but does not include any mine site from the time the civil/engineering sector project thereon is commissioned for operation.

1.4 [No current clause]

1.5 [No current clause]

1.6 The expression "the Commonwealth" means the Commonwealth of Australia.

1.7 "Contribution Agreement" means an agreement between the Trustee and a Participating Employer:

(a) substantially in the form set out in Schedule E2 of the Fund Regulations; or

(b) otherwise from time to time resolved by the Trustee to be accepted as a Contribution Agreement,

and includes any variation to that agreement notified by the relevant Participating Employer in a Contribution Return or other written variation.

1.7A "Contribution Return" means a statement of account by a Participating Employer Member, provided for in regulation 2.1(c)(i) of the Fund Regulations, showing

**\*This composite document incorporates <sup>2</sup>subsequent amendments to the original Deed and Regulations up to 12 July 2016**

Participating Employees for whom a Redundancy Pay Contribution is to be made to the Fund.

- 1.7B “Contribution Statement” means a statement of account by the Trustee, as provided for in regulation 2.1(b) of the Fund Regulations, showing Participating Employees for whom a Redundancy Pay Contribution is to be made to the Fund.
- 1.8 The expression "Day of Distribution" means a date 80 years from the date of this Deed or such earlier date that the Fund is determined in accordance with subclause 13.2 of this Deed.
- 1.9 The expression "Distributable Capitalised Amount" means the aggregate (if any) of Income of the Fund (excluding all Redundancy Pay Contributions or other sums paid to or previously appropriated by the Trustee to supplement Redundancy Pay Contributions or to allow the Trustee to pay Redundancy Payments), capitalised pursuant to sub-clause 5.1(b) of this Deed
- 1.9A The expression "Distributable Forfeited Amount" means the aggregate (if any) of Redundancy Pay Contributions resolved to be forfeited, as part of the capital of the Fund, pursuant to sub-clause 4.5 or sub-clause 4.8 of this Deed.
- 1.10 *[As amended by Deed of Amendment No.2]*

The expression "Financial Year" means any period of twelve (12) months which commences on the 1st day of July in any year and ends on the next succeeding 30th day of June and includes unless the context otherwise requires the period commencing upon the date of this Deed and ending on the 30th day of June 2004 and the period commencing on the 1st day of July immediately preceding the Day of Distribution and ending on that day or such other twelve (12) month accounting period as applies to the Fund for taxation purposes under an offer approved by the Commissioner of Taxation under the provisions of the Income Tax Assessment Act.

- 1.11 *[As amended by Deed of Amendment No.5]*

The expression "the Fund" and "ReddiFund" mean and comprise:

- (a) Redundancy Pay Contributions paid to and accepted by the Trustee or transferred from the General Fund or the Limited Fund;
- (b) any sums deposited with the Trustee by any person from time to time upon the trusts of this Deed to supplement Redundancy Pay Contributions;
- (c) all investments into which the sum and cash referred to in paragraphs 1.11(a) and 1.11(b) may from time to time be invested;
- (d) the proceeds of the sale, redemption or repayment of any such investments;
- (e) all investments representing the re-investment in accordance with the provisions hereinafter contained in any property forming part of the Fund;



- (f) the proceeds of any borrowing in pursuance of Clause 6;
- (g) any Distributable Capitalised Amount which has not been applied or distributed by the Trustee;
- (h) any Distributable Forfeited Amount which has not been applied or distributed by the Trustee; and
- (i) all investments and property into which the above may be converted or which by the exercise of any of the powers herein contained may accrue to or otherwise become subject to the trusts hereof.

1.12 The expression "Fund Regulations" means, as the context requires, the regulations governing the Fund set out in Schedule E hereof or other regulations adopted by the Trustee (by amendment of existing regulations or otherwise) from time to time in accordance with this Deed.

1.13 *[As amended by Deed of Amendment No.1]*

The expression "Income of the Fund" means that amount (excluding Redundancy Pay Contributions) determined to be net income for the purposes of and defined in Division 6 of the Income Tax Assessment Act 1936 (including any accretion to the Fund that would otherwise be regarded as capital) or, if the Trustee resolves for a particular Financial Year, then the expression shall mean the net income of the Fund determined in accordance with normal accounting principles applicable to the income of a trust.

1.13A *[As amended by Deed of Amendment No.4]*

The expression "industrial award/agreement" means any industrial award or agreement (registered under any Federal or Western Australian statute governing industrial relations) providing in specific or general terms for Redundancy Pay Contributions (or like contributions) to be paid into the Fund (or any other like fund) to provide for payment of benefits to a worker in circumstances contemplated by this Deed.

1.13D The expression "Maintenance Site" means a site upon which maintenance or refurbishment is being undertaken subsequent to the practical completion of a Building Project.

1.14 [No current clause]

1.15 The word "Member" means a person admitted as a member of the Fund pursuant to subclause 2.1 or 2.3 of this Deed.

1.16 The expression "Notice of Agreement to be Bound" means an agreement between the Trustee and a Participating Organisation substantially in the form set out in Schedule C of this Deed.

1.16A *[As amended by Deed of Amendment No.3 and No.4]*

**\*This composite document incorporates subsequent amendments to the original Deed and Regulations up to 12 July 2016**

The expression "Paid Leave" means any period or periods of leave during which the Participating Employee is entitled (or would be entitled but for being on leave) to be paid his/her salary or wages, as a Participating Employee of the Participating Employer Member who most recently nominated that Participating Employee for Redundancy Pay Contributions (including any period a Participating Employee would otherwise have been engaged in work or activity on a nominated Building Project, Maintenance Site or other site or under a nominated industrial award/agreement but for:

- (a) being on holiday leave;
- (b) long service leave;
- (c) sick leave;
- (d) bereavement leave;
- (e) family and parental leave; or
- (f) leave on workers' compensation or absence from work for which the Participating Employee is or is subsequently paid under any policy of insurance or paid damages in replacement or compensation for lost salary or wages excepting any continuous period of such leave or absence from work exceeding 52 weeks.

1.17 [As amended by Deed of Amendment No. 6]

The expression "Participating Employee" means, in relation to a Participating Employer, any natural person who, pursuant to a contract, agreement or arrangement, provides his/her labour for that Participating Employer:

- (a) in work or activity which is within the coverage of any Commonwealth or State Building Trades Award:
  - (i) on a Building Project;
  - (ii) on a Maintenance Site;
  - (iii) on any other site upon which work directly related to a Building Project or a Maintenance Site is being undertaken; or
  - (iv) under an industrial award/agreement;in whatever capacity (including as a sub-contractor, manager, administrator, supervisor or trainee); or
- (b) in work or activity which is within the coverage of any industrial award/agreement (that is specifically nominated, from time to time, by a Participating Employer Member in a Contribution Agreement) and associated with the building and construction industry, in whatever capacity

(including as a sub-contractor, manager, administrator, supervisor, apprentice if provided for in the industrial award/agreement, or trainee); or

- (c) as an employee of a Participating Organisation.
- 1.18 The expression "Participating Employer" means a person for whom a Participating Employee provides his/her labour.
- 1.19 The expression "Participating Organisation" means the Unions and Employer Associations described in Schedule D and referred to in page 1 of this Deed); and any other industrial association, organization or union, representing Participating Employees or Participating Employers, which seek participation in the Redundancy Pay Scheme and become parties to this Deed pursuant to sub-clause 2.2.
- 1.20 The words " party " and " parties " mean, respectively, a person named as a party in this Deed or a person who subsequently becomes bound, as if a signatory to this instrument, in accordance with sub-clauses 2.1, 2.1A, 2.2 or 2.3.
- 1.21 The word " person " includes a corporation.
- 1.22 "Redundancy Pay Contribution" means a contribution to be made to the Fund by a Participating Employer Member;
- 1.23 "Redundancy Pay Scheme" means the redundancy pay scheme provided for in this Deed and the Fund Regulations.
- 1.24 "Redundancy Payment" means the payment to be made to a Participating Employee Member by the Trustee, pursuant to the Fund Regulations.
- 1.25 The expression "the State" means the State of Western Australia.
- 1.26 The expression "the Trustee" means the corporation herein so described and that corporation's successors and assigns or a new trustee appointed pursuant to clause 16 of this Deed.
- 1.26A The expression "WA Construction Industry Redundancy Fund" means a fund, of which the Trustee is also trustee and which provides for contributions and redundancy payments in like circumstances to those provided under this Deed, established by a Deed dated 30 June 1989 (as amended from time to time).
- 1.27 A word importing the singular number or plural number includes the plural and singular respectively.
- 1.28 A word importing any gender includes every other gender.
- 1.29 A reference to this instrument includes a reference to any schedule hereto.
- 1.30 A reference to an Act or Code, Regulation or By-law or to any section, sub-section or paragraph thereof includes any amendment or re-enactment thereof for the time being in force.

- 1.31A Where under this instrument the day or last day for doing an act or for the payment of any money or on which any entitlement is due to arise or a notice is deemed served is a Saturday, Sunday or gazetted public holiday, the day or last day for doing that act or payment of that money or on which that entitlement arises or notice is deemed served shall be deemed to be the next day which is not a Saturday, Sunday or gazetted public holiday.
- 1.31 Where under this instrument any requirement, calculation or payment of money might otherwise fall to be performed or paid on the 29th, 30th or 31st day of a month which does not contain such a date, then references thereto shall be construed as references to the last day of that month.
- 1.32 Where any word or expression is used in this Deed or the Fund Regulations, which is not defined in this Deed but is defined in the Fringe Benefits Tax Assessment Act, then that word or expression has the meaning provided for in that Act.

## **2. MEMBERSHIP OF THE FUND**

2.1 A Participating Employer becomes a member of the Fund by:

- (a) lodging a duly signed Contribution Agreement with the Trustee; and
- (b) providing to the Trustee all of the information referred to in the Contribution Agreement or other information (of like nature) requested by the Trustee;

and shall, as a Participating Employer Member, be bound by and comply with the terms and conditions of this Deed and the Fund Regulations as if that Participating Employer was a signatory to this Deed.

2.1A If the Trustee has not received a Contribution Agreement but receives a document in the form of a Contribution Return from a Participating Employer, who is a Participating Employer Member of the WA Construction Industry Redundancy Fund:

- (a) that Participating Employer shall be deemed to have authorised the Trustee to have delivered to that Participating Employer any document in the form of a Contribution Statement previously delivered by the Trustee to that Participating Employer, for contributions to be made under this Deed from 1 April 2004; and
- (b) that Participating Employer shall be deemed to have complied with the provisions of clause 2.1 and shall be bound by and shall comply with the terms and conditions of this Deed and the Fund Regulations as if the signature on that Participating Employer's Contribution Agreement, for the WA Construction Industry Redundancy Fund, had been affixed to a Contribution Agreement under this Deed and as if that Participating Employer was a signatory party to this Deed.

2.1B [No current clause]

**\*This composite document incorporates <sup>7</sup>subsequent amendments to the original Deed and Regulations up to 12 July 2016**

2.1C *[As amended by Deed of Amendment No.2 and No.4]*

A Participating Employer Member may resign from membership of the Fund by serving upon the Trustee a notice of resignation and the Participating Employer Member shall, upon acceptance of that resignation by the Trustee, be deemed to have ceased to be a Participating Employer Member of the Fund at the later of:

- (a) the expiration of the week of service (relevant to the Participating Employer Member) in which that notice is served upon the Trustee; or
- (b) the expiration of any period for which Redundancy Pay Contributions are payable by reference to a period for contribution previously nominated by the Participating Employer;

and subsequent to that expiration date the Participating Employer will no longer be bound by or obliged to comply with the terms of the Fund Regulations and this Deed but shall nevertheless remain bound to comply therewith and to make Redundancy Pay Contributions up to that expiration date (including:

- (c) Redundancy Pay Contributions for each relevant Participating Employee at any permitted day rate duly nominated for days up to and including the expiration of a resignation notice; or
- (d) if paragraph (c) does not apply then, Redundancy Pay Contributions for each relevant Participating Employee for the full week in which a resignation notice expires);

together with interest thereon until the date of payment and legal costs of recovery provided for in the Fund Regulations (which shall continue to apply notwithstanding resignation from membership of the Fund).

2.2 An industrial association, organization or union representing Participating Employees or Participating Employers, not being a party at the date of this Deed, shall become a party to this Deed, with prior approval of a resolution of the Trustee, by:

- (a) lodging a duly signed Notice of Agreement to be Bound with the Trustee; and
- (b) providing to the Trustee all of the information referred to in the Notice of Agreement to be Bound or other information (of like nature) requested by the Trustee;

and shall be bound by the terms and conditions of this Deed and the Fund Regulations (as they are amended from time to time) as if a signatory to this Deed and thereafter be relevantly included within the meaning of the expression Participating Organisation in addition to or as a successor (if so nominated) to any other Participating Organisation which was party to this Deed.

**\*This composite document incorporates subsequent amendments to the original Deed and Regulations up to 12 July 2016**

2.3 A Participating Employee or former Participating Employee becomes a member of the Fund by:

- (a) lodging a duly signed Application for Employee Participation with the Trustee; and
- (b) providing to the Trustee all of the information referred to in the Application for Employee Participation or other information (of like nature) requested by the Trustee;

and shall, as a Participating Employee Member, be bound by the terms and conditions of this Deed and the Fund Regulations (as they are amended from time to time) as if that person was a signatory to this Deed.

2.4 A Participating Employer Member shall:

- (a) make Redundancy Pay Contributions to the Trustee in compliance with the nominations made by the Participating Employer under the Fund Regulations;
- (b) comply with all of the terms and conditions of this Deed for the observance and performance of a Participating Employer Member;

and the Participating Employer Member's obligations under this Deed and the Fund Regulations shall apply in priority over and notwithstanding any contrary or inconsistent agreement or arrangements made by a Participating Employer with or negotiated by any Participating Employee or Participating Organisation.

2.5 All Redundancy Pay Contributions made by a Participating Employer Member shall be accretions to the capital of the Fund.

2.5A If a Participating Employee has an entitlement to any payment for redundancy:

- (a) direct from a present or past Participating Employer; or
- (b) from any other fund to which a present or past Participating Employer contributed;

the Trustee may accept into the Fund payment from that Participating Employer or the trustee/administrator of that other fund an amount representing the entire sum of that entitlement, in accordance with any arrangement which the Trustee may enter into with that Participating Employer or trustee/administrator for the transfer into the Fund of the entire sum of that entitlement.

The amount so accepted by the Trustee into the Fund shall be an accretion to the capital of the Fund to be held upon trust and to be maintained, notwithstanding subclause 4.5, as if a Redundancy Pay Contribution referable to the Participating Employee subject to the provisions of this Deed.

**\*This composite document incorporates subsequent amendments to the original Deed and Regulations up to 12 July 2016**

### 3. DECLARATION OF TRUST

- 3.1 The parties to this Deed HEREBY JOINTLY AND SEVERALLY DECLARE that the Trustee shall and the Trustee HEREBY DECLARES that it will henceforth stand possessed of the Fund and the Income of the Fund upon the trusts and subject to terms and conditions of this Deed.

### 4. APPLICATION OF THE TRUST FUND

- 4.1 Subject to the provisions of this Deed and the Fund Regulations, the Fund is established and shall be maintained exclusively for the making of Redundancy Payments to Participating Employee Members in accordance with this Deed and the Fund Regulations.

- 4.1A Notwithstanding any other provision of this Deed or the Fund Regulations, the Trustee may, at the request of a Participating Employee, transfer an amount out of the capital of the Fund, equal to the sum standing to the credit of an account of a Participating Employee with the Fund, to a trustee or other administrator of another fund, which provides for payments to the Participating Employee in similar circumstances as provided for payment of a Redundancy Payment pursuant to this Deed and which is an approved worker entitlement fund (as defined in the Fringe Benefits Tax Assessment Act). The payment of that amount to that trustee/administrator shall be a complete discharge to the Trustee in respect of any liability that the Trustee would otherwise have to that Participating Employee under the provisions of this Deed or the Fund Regulations.

- 4.2 The Trustee shall establish separate accounts in its books of account in respect of each Participating Employee named in a Contribution Agreement or Contribution Return and, subject to any other provision of this Deed or the Fund Regulations, each such account shall be credited with Redundancy Pay Contributions referable to the Participating Employee.

- 4.3 Subject to the provisions of this Deed and the Fund Regulations upon a Participating Employee Member establishing to the satisfaction of the Trustee that the Participating Employee Member is entitled to a Redundancy Payment, pursuant to the provisions of the Fund Regulations, the Trustee shall apply the amount standing to the credit of that Participating Employee Member's account in payment of any amount payable to the Commissioner of Taxation (referable to that Redundancy Payment) and the balance in payment to the Participating Employee Member.

- 4.4 *[As amended by Deeds of Amendment No.1, No.3, No.4 and No.5)*

Subject to any prior payments due to a Participating Employee for a prior entitlement under clause 4.3 (which shall remain payable, in priority, to the Participating Employee or the legal personal representative of the Participating Employee), upon the Trustee being satisfied that a Participating Employee has died leaving a credit balance in the account maintained by the Trustee for that Participating Employee, the Trustee shall apply that credit balance (or remainder after application under clause 4.3) in a payment , at the sole discretion of the

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Trustee, to the spouse (within the meaning of the Income Tax Assessment Act 1997) of the deceased Participating Employee or to the former spouse of the deceased Participating Employee or to the child (within the meaning of the Income Tax Assessment Act 1997), aged less than 18, of the deceased Participating Employee or to the legal personal representative of the Participating Employee (within the meaning of the Income Tax Assessment Act 1997) and the receipt of that person or, in the case of a child, the legal guardian of that person (following provision of proof of identity) for such payment shall constitute a full and complete discharge to the Trustee as to the application of that credit balance in accordance with this Deed and the Fund Regulations as against any claim made by anyone else in relation to that credit balance.

Application by a person for a payment on death, under clause 4.4 of the Trust Deed and regulation 4.1, shall be deemed a binding agreement on the part of the person receiving a payment on death to be bound by and comply with the provisions of regulation 4.5B (dealing with obligations to repay amounts wrongly claimed).

4.5 *[As amended by Deed of Amendment No.1]*

The Redundancy Payment or clause 4.4 payment on death payable by the Trustee to a Participating Employee Member under this Deed shall be reduced by an amount equal to that paid to the Participating Employee Member for redundancy or clause 4.4 payment on death (in like circumstances to payment of the Redundancy Payment or clause 4.4 payment on death under this Deed):

- (a) direct from a present or past Participating Employer; or
- (b) from any other fund to which a present or past Participating Employer contributed;

and, subject to sub-clause 2.5A, that reduction amount shall be held in trust to be paid out of the Fund by the Trustee (or applied as directed in writing) respectively to those Participating Employer(s), then in existence, in an amount(s) equal to the sum they have so paid or contributed to that other fund, absolutely or if such a Participating Employer is not then in existence the amount otherwise payable to that Participating Employer shall be forfeited and become an accretion to the capital of the Fund as a Distributed Forfeited Benefit.

4.6 *[As amended by Deed of Amendment No.1]*

Each Participating Employer Member, Participating Organisation and Participating Employee Member agrees that any payments made by the Trustee to a Participating Employee Member or clause 4.4 payment on death pursuant to this Deed shall be in satisfaction of or partial satisfaction of an equal amount required to be paid by a Participating Employer to the Participating Employee or other person on death under the provisions of any industrial award or industrial agreement that requires a payment to be made to that Participating Employee or other person for redundancy.

4.7 *[As amended by Deed of Amendment No.1]*

**\*This composite document incorporates subsequent amendments to the original Deed and Regulations up to 12 July 2016**



The Trustee's liability to make the payments referred to in 4.3 or clause 4.4 payment on death shall at all times be limited to the amount standing to the credit of the particular Participating Employee Member's account at the time the liability falls due for payment to the particular Participating Employee Member or under clause 4.4 on death AND if, subsequent to payment of a Redundancy Payment, the Trustee recovers arrears of Redundancy Pay Contributions from any relevant Participating Employer Member, the amount so recovered shall be paid to that Participating Employer Member or under clause 4.4 on death, as an addition to the initial Redundancy Payment or clause 4.4 payment on death, but the Trustee may, in its discretion, withhold payment of the balance of that Participating Employee Member's accrued Redundancy Payment entitlement or clause 4.4 payment on death until the Trustee has recovered all the arrears from relevant Participating Employer Members.

4.8 [As amended by Deeds of Amendment No.1 and No.3]

- (a) Following the death of a Participating Employee; or
- (b) following the Trustee having taken all reasonable and necessary steps to locate a particular Participating Employee (including posting to the last known address of the worker a notice that the worker has entitlements to a Redundancy Payment from the Fund) and the Trustee still being unable to locate the Participating Employee by the expiration of four (4) years from the date upon which a Participating Employer Member last made a Redundancy Pay Contribution in respect of that Participating Employee; the Trustee may, subject to clause 4.4, thereafter by resolution(s), at any time (subject to the specific provisions of this Deed and the Fund Regulations and otherwise in the absolute and unfettered discretion of the Trustee):
- (c) forfeit all amounts standing in credit in that Participating Employee's account with the Fund and the amount so forfeited shall thereafter be accumulated and form part of unallocated "Distributable Forfeited Amount" capital of the Fund; and

- (d) appropriate and apply any part of that Distributable Forfeited Amount, as capital of the Fund, pursuant to any one or more of paragraphs (i) to (viii) of this sub-clause:
- (i) in or towards payment of worker entitlements (within the meaning of the Fringe Benefits Tax Assessment Act) to Participating Employees in respect to whom Redundancy Pay Contributions are made to the Fund; and/or
  - (ii) in or towards the making of investments, in accordance with the Trustee's powers under this Trust Deed, to generate Income of the Fund; and/or
  - (iii) in or towards reimbursing a Participating Employers pursuant to and in accordance with sub-clause 4.5 of this Deed; and/or
  - (iv) in or towards returning to a Participating Employer amounts paid into the Fund as a Redundancy Pay Contributions; and/or
  - (v) in or towards transferring an amount to another approved worker entitlement fund (within the meaning of the Fringe Benefits Tax Assessment Act) pursuant to sub-clause 4.1A of this Deed; and/or
  - (vi) in or towards payment of the Trustee's reasonable administrative expenses of the Fund (including payment of any tax payable by the Trustee referable to the administration of the Fund or to the Income of the Fund); and/or
  - (vii) in payment to a Participating Employer's external administrator of any amount that would otherwise be payable as mentioned in paragraphs (iii) or (iv) of this sub-clause 4.8; and/or
  - (viii) in or towards payment of interest on, or repayment, of money lent to the Fund; and/or
  - (ix) in or towards any other payment from time to time referred to in section 58PB(4)(c) of the Fringe Benefits Tax Assessment Act;

in such amounts and to meet one or more such payments to the exclusion of others, as the Trustee (subject to the specific provisions of this Deed and the Fund Regulations) in its absolute and unfettered discretion determines.

## 5. APPLICATION OF INCOME OF THE TRUST FUND

5.1 (a) Subject to sub-clause 5.1(c) the Trustee may by resolution(s), at any time and in the absolute and unfettered discretion of the Trustee, apply or distribute the Income of the Fund pursuant to any one or more of paragraphs (i) to (ix) of this sub-clause:

- (i) in or towards the making of investments, in accordance with the Trustee's powers under this Trust Deed, to generate Income of the Fund; and/or
- (ii) in or towards reimbursing a Participating Employers pursuant to and in accordance with sub-clause 4.5 of this Deed; and/or
- (iii) in or towards returning to a Participating Employer amounts paid into the Fund as a Redundancy Pay Contributions; and/or
- (iv) in or towards transferring an amount to another approved worker entitlement fund (within the meaning of the Fringe Benefits Tax Assessment Act) pursuant to sub-clause 4.1A of this Deed; and/or
- (v) in or towards payment of the Trustee's reasonable administrative expenses of the Fund (including payment of any tax payable by the Trustee referable to the administration of the Fund or to the Income of the Fund); and/or
- (vi) in payment to a Participating Employer's external administrator of any amount that would otherwise be payable as mentioned in paragraphs (ii) or (iii) of this sub-clause 5.1(a); and/or
- (vii) in or towards payment of interest on, or repayment, of money lent to the Fund;
- (viii) in payment of amounts to Participating Employer's who have made Redundancy Pay Contributions into the Fund; and/or
- (ix) in payment of an amount to any person for whom a Redundancy Pay Contribution has been made to the Fund that is either a worker entitlement (within the meaning of the Fringe Benefits Tax Assessment Act), the contribution for which would be an exempt benefit under that Act if the Fund were an approved worker entitlement fund, or is payment of an amount of some other kind than a worker entitlement (within the meaning of that Act); and/or
- (x) *[As amended by Deed of Amendment No.3]*  
in or towards any other payment from time to time referred to in section 58PB(4)(d) of the Fringe Benefits Tax Assessment Act;

in such amounts and to meet one or more such payments to the exclusion of others, as the Trustee in its absolute and unfettered discretion determines.

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- (b) As to any Income of the Fund of a Financial Year to which no person has a present entitlement, pursuant to sub-clause 5.1(a), the Trustee may by resolution(s), at any time and in the absolute and unfettered discretion of the Trustee, accumulate and capitalise that Income of the Fund, which shall thereafter form part of unallocated “Distributable Capitalised Amount” of the capital of the Fund and the Trustee may by resolution(s), made at any time and in the absolute and unfettered discretion of the Trustee, appropriate and apply any part of that Distributable Capitalised Amount, as capital of the Fund, pursuant to paragraphs (i) to (xi) of this sub-clause:
- (i) in or towards payment of worker entitlements (within the meaning of the Fringe Benefits Tax Assessment Act) to Participating Employees in respect to whom Redundancy Pay Contributions are made to the Fund; and/or
  - (ii) in or towards the making of investments, in accordance with the Trustee’s powers under this Trust Deed, to generate Income of the Fund; and/or
  - (iii) in or towards reimbursing a Participating Employers pursuant to and in accordance with sub-clause 4.5 of this Deed; and/or
  - (iv) in or towards returning to a Participating Employer amounts paid into the Fund as a Redundancy Pay Contributions; and/or
  - (v) in or towards transferring an amount to another approved worker entitlement fund (within the meaning of the Fringe Benefits Tax Assessment Act) pursuant to sub-clause 4.1A of this Deed; and/or
  - (vi) in or towards payment of the Trustee’s reasonable administrative expenses of the Fund (including payment of any tax payable by the Trustee referable to the administration as the Fund or to the Income of the Fund); and/or
  - (vii) in payment to a Participating Employer’s external administrator of any amount that would otherwise be payable as mentioned in paragraphs (iii) or (iv) of this sub-clause 5.1(b); and/or
  - (viii) in or towards payment of interest on, or repayment, of money lent to the Fund; and/or
  - (ix) in payment of amounts to Participating Employer’s who have made Redundancy Pay Contributions into the Fund; and/or
  - (x) in payment of an amount to any person for whom a Redundancy Pay Contribution has been made to the Fund, of an amount that is either a worker entitlement (within the meaning of the Fringe Benefits Tax Assessment Act), the contribution for which would be an exempt benefit under that Act if the Fund were an approved worker

- entitlement fund, or is payment of an amount of some other kind than a worker entitlement (within the meaning of that Act); and/or
- (xi) in payment of any amount to any Participating Organisations; and/or
  - (xii) in payment of amounts to any Participating Employer; and/or
  - (xiii) in payment of amounts to any Participating Employee; and/or
  - (xiv) in payment of amounts to any charitable or public educational institution or fund established for public charitable purposes that is approved by the Trustee, on the basis that the relevant institutional fund has objects likely to benefit Participating Employees and has been endorsed as exempt from income tax by the Commissioner of Taxation under subdivision 50-B of the Income Tax Assessment Act 1997; and/or
  - (xv) *[As amended by Deeds of Amendment No. 3]* in or towards any other payment from time to time referred to in section 58PB(4)(d) of the Fringe Benefits Tax Assessment Act;

in such amounts and to meet one or more such payments to the exclusion of others, as the Trustee in its absolute and unfettered discretion determines.

- (c) Any resolution made subsequent to the end of that Financial Year, in exercise by the Trustee of its discretion to apply or distribute any part of the Income of Fund for a Financial Year, shall only apply and be operable if the Commissioner of Taxation accepts that the person in whose favour the Trustee has exercised the discretion is, by that resolution, presently entitled to that part of the Income of the Fund or if the Commissioner of Taxation does not so accept, then the purported application or distribution of that part of the Income of the Fund under that resolution shall be ineffective and sub-clause 5.1(b) shall then apply to that part of the Income of the Fund.

5.2 [No current clause]

5.3 [No current clause]

## **6. INVESTMENT AND OTHER POWERS OF THE TRUSTEE**

6.1 The Trustee shall have the following absolute powers and discretions which it may exercise itself and jointly with any other person or persons:

- (aa) subject to clause 7A but otherwise without limitation, the Trustee may invest, vary or realise any part of the Fund in accordance with the provision of section 17 of the Trustees Act;
- (bb) the Trustee, without limitation and without limiting the generality of the investment powers referred to in sub-clause 6.1(aa), may do any of the things specified in Schedule F;

- (a) the Trustee may, from time to time, make rules (herein referred to as the "Fund Regulations") for the due administration and management of the Fund covering all matters included within the Fund Regulations set out in Schedule E hereof and like matters AND shall have power to determine any further matters to be dealt with in the Fund Regulations and the further power to amend the Fund Regulations, from time to time, as it deems fit (so long as the Fund Regulations are not inconsistent with the terms of this Deed);
- (b) the Trustee may delegate to any competent and reputable investment manager, on such terms and conditions as the Trustee thinks fit, the execution or exercise, at arm's length from contributors to the Fund, of any of the trusts powers authorities and discretions in relation to the investment of the Fund conferred upon the Trustee by this Deed;
- (c) the Trustee shall have power to meet and pay from the Fund's income all reasonable outgoings, expenses, losses and damages incurred or suffered in the administration and conduct of the Fund or in any way related thereto by the Trustee including costs in any way connected with the preparation and execution or stamp duty on or of this Deed or any money or investment paid or transferred to the Trustee and of any tax payable by the Trustee referable to the Administration of the Fund or the Income of the Fund; and
- (d) the Trustee may take and act upon the opinion of any solicitor or counsel admitted for not less than 10 years to practise in the Supreme Court of any State or Territory of Australia whether in relation to the interpretation of this Deed or any other document or statute or as to the administration of the trusts hereof without being liable to any one in respect of any act done by them in accordance with such opinion PROVIDED that nothing herein shall oblige the Trustee to act in accordance with any such opinion AND PROVIDED FURTHER that nothing herein contained shall prohibit the Trustee from applying to any such Court if it shall think fit.

## 7. EXERCISE OF TRUSTEE'S POWERS

Subject to any express provision to the contrary herein contained, every power or discretion vested in the Trustee shall be absolute and uncontrolled and may be exercised without the Trustee assigning any reason, and every power vested in it shall be exercisable in its absolute discretion and the Trustee shall have the like discretion in deciding whether or not to exercise any such power PROVIDED HOWEVER that the Trustee shall not exercise any such power or discretion if it will result in more than 5% of the total assets of the Fund being invested in an entity controlled by a Participating Employer Member or an associate of a Participating Employer Member (as defined in the Fringe Benefits Tax Assessment Act) or the assets of the Fund being used to provide or facilitate any form of financial assistance (including a loan) to a Participating Employer Member or an associate (as defined in the Fringe Benefits Tax Assessment Act) of a Participating Employer Member or to a Participating Employee for whom Redundancy Pay

Contributions are made to the Fund or an associate (as defined in the Fringe Benefits Tax Assessment Act) of such a Participating Employee.

## **7A. MANNER OF EXERCISE OF TRUSTEE'S POWERS OF INVESTMENT**

- 7A.1 Notwithstanding clause 7 the Trustee's powers of investment referred to in sub-clause 6.1(b) and paragraphs 1, 11, 18 of Schedule F shall only be exercised in accordance with a resolution of the Trustee passed in conformity with the provisions of this clause 7A.
- 7A.2 If the Trustee comprises individuals, then any exercise of the powers of the Trustee referred to in sub-clause 7A.1 shall be submitted to a duly convened meeting of all the Trustees and must be passed by a resolution of not less than 75 per centum (75%) of all the Trustees.
- 7A.3 If the Trustee is a corporation, then any exercise of the powers of the Trustee referred to in sub-clause 7A.1 shall, notwithstanding any article of association of the corporation to the contrary in relation to quorum, be submitted to a meeting of all the Directors (or alternate Directors) of the Trustee and any resolution must be passed by a resolution of not less than 75 per centum (75%) of all the Directors (or alternate Directors) of the Trustee.
- 7A.4 A resolution in writing signed by all the Trustees, if the Trustee comprises individuals, or signed by all the Directors of the Trustee for the time being entitled to receive notice of a meeting of Directors (other than alternate Directors), if the Trustee is a corporation, shall be as valid and effectual, as a resolution for exercise of the powers of the Trustee referred to in sub-clause 7A.1 as if it had been passed at a meeting of all the Trustees, if the Trustee comprises individuals, or meeting of all the Directors, if the Trustee is a corporation, duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more of the Trustees, if the Trustee comprises individuals, or Directors of the Trustee, if the Trustee is a corporation. If the Trustee is a corporation the provisions of this clause shall apply notwithstanding any provision in the Articles of Association of the Trustee in relation to resolutions in writing signed by Directors.

8. [No current clause].

## **9. PARTIES BOUND**

- 9.1 All parties to this Deed (including Participating Employer Members, Participating Employee Members and Participating Organisations who become parties or members subsequent to the date of this Deed) shall be bound by the terms and conditions of this Deed and the Fund Regulations (as they are amended from time to time at the sole discretion of the Trustee in accordance with the provisions of this Deed) and referred to in the Contribution Agreement(s), Application(s) for Employee Participation or Notice of Agreement to be Bound lodged by the Participating Employer, Participating Employee or Participating Organisation), as if the relevant person was a signatory to this Deed and the respective Contribution Agreement (of Participating Employer Members), Application for Employee

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Participation (of Participating Employee Members) and Notice of Agreement to be Bound (of Participating Organisations) shall be read and construed as if forming part of this Deed.

## **10. RESPONSIBILITY OF TRUSTEE AND BENEFICIARIES**

- 10.1 While purporting to act in the execution of the trusts and powers hereof the Trustee shall not be liable for any loss or damage unless attributable to its own wilful dishonesty it being the intention that the Trustee shall have the widest possible powers and discretions in the investment and management of the Fund.
- 10.2 The Trustee acting in good faith shall be entitled to be indemnified out of the Fund in respect of all liabilities incurred by it relating to the execution of any powers duties authorities or discretions vested in it under the provisions of this Deed and in respect of all actions proceedings costs claims and demands in relation to any matter or thing done or omitted to be done concerning the Fund PROVIDED ALWAYS that the right of the Trustee to be indemnified in respect of any liability incurred by the Trustee or arising in or about the investment and administration of the Fund in the conduct and management of any business forming part of the Fund in the acquisition of any authorised investment under any contract entered into by the Trustee as trustee of the Fund or by reason of the execution of any power duty authority or discretion vested in the Trustee shall, subject to subclause 5.3, be limited always to the assets of the Fund and shall not extend to enable the Trustee to recover any loss or obtain reimbursement for such liability from any party to this Deed, Member or any person on behalf of whom the Trustee holds the Fund or any part thereof in trust absolutely or otherwise.

## **11. DEALINGS WITH TRUSTEE**

- 11.1 Notwithstanding anything herein contained or implied to the contrary a person or company dealing with the Trustee without any actual knowledge of a breach of trust:-
- (a) shall not be under any obligation to enquire as to the regularity of the administration by the Trustee of any of the trusts hereby created;
  - (b) shall, if the Trustee is a corporation, be entitled to treat the Trustee as duly bound by the dealing if and to the extent to which the Trustee would as a corporation and not as a trustee be so bound, and
  - (c) shall by virtue of this instrument and in consideration of dealing with the Trustee without enquiry as described in paragraph (a) be indemnified and held harmless by the Trustee in his capacity as such and in his personal capacity against any irregularity in the Trustee's administration of the trusts hereby created, or in the due performance and observance by the Trustee of any duty in relation to the administration of trusts imposed on the Trustee by law or in equity.



## **12. FUND ACCOUNTS**

- 12.1 The Trustee shall open and maintain an account or accounts at such bank or banks as the Trustee may from time to time determine and the Trustee shall pay into such account or accounts all moneys that come into its hands. The Trustee shall determine who shall be entitled to operate on such account or accounts.
- 12.2 As soon as practicable after the end of each Financial Year during the continuance of the Fund, a special-purpose account shall be taken of income, assets, credits, property, effects, debts and liabilities of the Fund and of all transactions matters and things usually comprehended in a general account of a like nature. Every such special-purpose account shall be balanced agreed to and signed by the Trustee (or those persons authorised to do so by a resolution of the Trustee). When such special-purpose accounts are finalised in writing by the Trustee an audited copy of such special-purpose accounts shall be provided to each of the parties (other than to a Participating Employer Member or Participating Employee Member unless specifically requested from the Trustee in writing) and they shall be binding on the parties and members except that if any manifest error therein be detected and pointed out by a party or member to the Trustee within twelve (12) months of the signing thereof then such error shall be rectified forthwith. The Trustee may from time to time publish to Participating Employer Members and Participating Employee Members information from such special-purpose accounts and as to the general administration and investments of the Fund as the Trustee in its absolute discretion determines.
- 12.3 The special-purpose accounts shall be audited by such registered company auditor (as defined in section 9 of the Corporations Act 2001) as may be appointed by the Trustee from time to time who shall provide their audit report to the Trustee within four (4) months of the close of the Financial Year.

## **13. DETERMINATION OF THE FUND**

- 13.1 Subject to the provisions of this Deed the Fund shall continue indefinitely.
- 13.2 (a) Notwithstanding Clause 13.1 the Masters Builders Association of Western Australia or the Building Trades Association of Unions of Western Australia (in this clause referred to as "the proposer") may at any time by notice in writing to the other and the Trustee request the determination of the Fund;
- (b) The other party shall have six (6) months from the date of service of the notice in which to consider the request and notify the proposer and the Trustee of its decision;
- (c) If a party fails to notify the proposer and the Trustee of its decision then it shall be deemed to have agreed to the proposed determination of the Fund;
- (d) If the other party by notice to the proposer and Trustee agrees or is deemed to agree then the Trustee shall consider the application of the surplus of the

Fund (and need for amendment of the Deed) and thereafter shall resolve to determine the Fund which shall be determined upon the expiration of a further six (6) months.

- 13.3 (a) Immediately prior to Day of Distribution a full and special-purpose account and valuation shall be taken of all income, assets, credits, property, effects, debts and liabilities and of all transactions, matters and things usually comprehended in a general account of like nature. Such account and valuation shall be balanced agreed to and signed by the Trustee. Immediately thereafter all the debts, assets and effects then belonging to or due to the Fund shall be satisfied realised or sold to best advantage and the moneys arising from such sale and all other moneys of the Fund shall be applied in the following manner:-
- (i) Firstly - in payment of the costs and expenses of the winding up of the Fund and realising its assets;
  - (ii) Secondly - in the payment of the debts and liabilities of the Trustee including any debts owing by the Trustee to any of the parties or members (including any Redundancy Payment);
  - (iii) *[As amended by Deed of Amendment No. 6]*  
  
Thirdly -the surplus shall be transferred to one or more other redundancy pay schemes operating solely in Western Australia, at the time of the determination of the Fund, for the benefit of workers in the Western Australian building and construction industry and which is an approved worker entitlement fund (as defined in the Fringe Benefits Tax Assessment Act) and the Trustee shall, upon the request of a member or former member, take all reasonable steps on behalf of each member or former member to transfer that member's or former member's membership of the Fund and any part of the surplus represented to such one or more other such redundancy pay schemes.
- (b) If at the time of determination of the Fund there is no other such redundancy pay scheme in existence then the surplus of the said moneys shall be transferred to an independent trustee to hold the same upon trust absolutely for payment of Redundancy Payments to former Participating Employees upon an entitlement to such a Redundancy Payment or forfeiture arising in accordance with the provision of the Fund Regulations (as if those Fund Regulations and the Deed had continued in force) with the independent trustee acting in place of the Trustee as to those amounts as an approved worker entitlement fund (as defined in the Fringe Benefits Tax Assessment Act).

- 13.4 The special-purpose account and valuation referred to in sub-clause 13.3 shall be audited by such registered company auditor (as defined in section 9 of the Corporations Act 2001) as may be appointed by the Trustee from time to time who

shall provide their audit report to the Trustee within four (4) months of the Day of Distribution.

- 13.5 Upon the determination of the Fund each party and each member shall execute such release or releases to the parties or other parties from all claims on account of the Fund as is usual in such cases.

#### **14. ARBITRATION**

- 14.1 If any dispute or difference arises between the parties a party and/or any member as to the construction of this instrument or otherwise concerning anything contained in or arising out of this instrument or as to the rights, obligations, duties or liabilities of a party or member which cannot be resolved by agreement, a party or member may serve notice (in this Clause called an "Arbitration Notice") on the party, other party or member requiring such dispute or difference to be referred to arbitration in accordance with the provisions of this Clause, specifying with detailed particulars the matter at issue. Upon service of the Arbitration Notice, the dispute or difference shall be determined by arbitration. Unless the parties and member to the dispute agree upon an arbitrator, the party or member may request the Chairman of the State Chapter of the Institute of Arbitrators Australia to nominate a single arbitrator. Subject to the provisions of this Clause, an arbitration shall be conducted generally in accordance with the provisions of the Commercial Arbitration Act 1985 of the State.

- 14.2 In any arbitration proceedings hereunder which are conducted in accordance with the Commercial Arbitration Act 1985:

- (a) The proceedings shall be conducted on the basis of an exchange of formal pleadings, mutual discovery of documents and formal hearing by the arbitrator at which hearing a party or member shall be entitled to call witnesses and produce documents in accordance, mutatis mutandis, with the rules of evidence and the practice and procedure applicable to actions commenced in the Supreme Court of the State.
- (b) In conducting proceedings, the arbitrator shall be bound by the rules of evidence.
- (c) A party or member shall be entitled to be represented by a duly qualified legal practitioner or other representative.
- (d) The arbitrator shall have no power to order any of the parties or a member to take any steps to achieve a settlement of the dispute or difference the subject of an Arbitration Notice.
- (e) Each party and member irrevocably consents to another party or member bringing an appeal to the Supreme Court of the State on any question of law arising out of an award made in the arbitration.

- (f) Each party and member irrevocably consents to any application by another party or member to the Supreme Court of the State to determine any question of law arising in the course of the arbitration.
- (g) The arbitration proceedings shall be conducted in Perth.
- (h) The arbitrator may award whatever interest the arbitrator considers reasonable.
- (i) If one party or member has overpaid another, whether under a mistake of law or fact, the arbitrator may order repayment together with interest.
- (j) The arbitrator may, if he considers it appropriate, rectify any of the terms of this instrument (but not this Clause) so as to conform to the true intention of the parties, in accordance with the principles of the general law applicable to the rectification of contracts

14.3 An arbitrator shall not be a present or former shareholder, member, officer, employee or agent of a Participating Organisation, the Trustee or a Member.

## **15. AMENDMENTS TO THIS DEED AND ADMISSION OF PARTICIPATING ORGANISATIONS**

15.1 The Trustee may at any time and from time to time by deed add to, vary or revoke all or any of the terms of this Deed or the terms of this Deed as previously added to, varied or revoked from time to time and without limiting the generality of this power may by the same or any deed or deeds declare any new or other powers or discretions for the administration and operation of the Fund PROVIDED HOWEVER that any addition, variation or revocation shall not affect any vested entitlement of members and PROVIDED FURTHER that no amendment will be operable or take effect prior to the Trustee notifying the Commissioner of Taxation, in writing of the amendment.

15.1A If the Trustee comprises individuals, then any addition, variation or revocation of this Deed or Fund Regulations or application for admission of a Participating Organisation as a party to this Deed (under clause 2.2) shall be submitted to a duly convened meeting of all the Trustees and must be passed by a resolution of not less than 75 per centum (75%) of all the Trustees.

15.1B If the Trustee is a corporation, then any addition, variation or revocation of this Deed or Fund Regulations or application for admission of a Participating Organisation as a party to this Deed (under clause 2.2) shall, notwithstanding any article of association of the corporation to the contrary in relation to quorum, be submitted to a meeting of all the Directors (or alternate Directors) of the Trustee and any resolution must be passed by a resolution of not less than 75 per centum (75%) of all the Directors (or alternate Directors) of the Trustee.

15.1C A resolution in writing signed by all the Trustees, if the Trustee comprises individuals, or signed by all the Directors of the Trustee for the time being entitled to receive notice of a meeting of Directors (other than alternate Directors), if the

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Trustee is a corporation, shall be as valid and effectual, as a resolution for addition, variation or revocation as if it had been passed at a meeting of all the Trustees, if the Trustee comprises individuals, or meeting of all the Directors, if the Trustee is a corporation, duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more of the Trustees, if the Trustee comprises individuals, or Directors of the Trustee, if the Trustee is a corporation. If the Trustee is a corporation the provisions of this clause shall apply notwithstanding any provision in the Articles of Association of the Trustee in relation to resolutions in writing signed by Directors.

- 15.2 Where this Deed is so altered the Trustee shall give to each Participating Employer Member and Participating Organisation as soon as practicable thereafter a statement in writing explaining the nature and purpose of the alteration.
- 15.3 A member shall be entitled to inspect the Trust Deed and Fund Regulations (as amended from time to time) at the registered office of the Trustee.
- 15.4 Unless otherwise provided in a deed effecting an amendment to this Deed or the Fund Regulations, any addition, variation or revocation to this Deed or the Fund Regulations shall be effective and apply as if that addition, variation or revocation had been originally included in the provisions of this Deed or the Fund Regulations and shall apply accordingly to all parties and all Members whether admitted as a party or Member before, on or after the date on which the relevant amending deed is executed by the Trustee (and if so otherwise provided then that addition, variation or revocation shall apply accordingly to all parties and all Members from the date so provided in the relevant amending deed).

## **16. REMOVAL OR RETIREMENT OF TRUSTEE**

- 16.1 The Trustee may retire upon giving notice to Masters Builders Association of Western Australia or the Building Trades Association of Unions of Western Australia of its desire so to do and Masters Builders Association of Western Australia or the Building Trades Association of Unions of Western Australia may by deed jointly appoint a new Trustee in its stead to carry on the management of the Fund at arm's length from contributors to the Fund.
- 16.2 If the Trustee goes into liquidation or receiver or official manager of its undertaking is appointed or the MBA and BTA by joint notice remove the Trustee then the Trustee shall immediately cease to be Trustee under this Deed and MBA and BTA may by deed jointly appoint a new Trustee in its stead to carry on the management of the Fund at arm's length from contributors to the Fund.

## 16A CONFIDENTIAL INFORMATION

16A.1 The terms of this Deed and the Fund Regulations are confidential to the parties and no party may disclose anything about this Deed or Fund Regulations or any of its concepts except:

- (a) where expressly directed or permitted to do so by this Deed or the Fund Regulations;
- (b) with prior approval of a resolution of the Trustee;
- (c) if so required by any law; or
- (d) to comply with any accounting, taxation, legal or other regulatory requirement.

16A.2 Save as specifically provided in this Deed or the Fund Regulations the Trustee shall not disclose membership of the Fund by a Participating Employer or Participating Employee nor any information from a Contribution Statement or Contribution Return nor disclose Redundancy Pay Contributions or Redundancy Payments except:

- (a) to the Participating Employer and/or Participating Employee to whom they relate, the Trustee (if an individual or individuals), the Directors of the Trustee (if a corporation) and those employees of the Trustee or a Participating Organisation requiring the information to fulfil their duties in their employment with the Trustee or a Participating Organisation;
- (b) where expressly directed or permitted to do so by this Deed or the Fund Regulations;
- (c) with the prior approval of a resolution of the Trustee;
- (d) if so required by any law; or
- (e) to comply with any accounting, taxation, legal or other regulatory requirement.

16A.3 Upon application by a party (in a form, from time to time determined by the Trustee, in which the applicant expressly acknowledges the duty of confidentiality provided for herein) and upon payment of a fee per page (from time to time determined by the Trustee) the applicant shall be provided by the Trustee with a reproduction of the then current provisions of the Trust Deed, Fund Regulations and/or any deed or resolution amending the same.

## 17. NOTICES

17.1 A notice or other communication required or permitted to be given by a party to another shall be in writing duly signed and:

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- (a) delivered personally; or
- (b) sent by post, postage prepaid; or
- (c) sent by facsimile transmission,

to that party's address set out in this Deed or as notified to each party from time to time.

17.2 A notice or other communication is deemed given if:-

- (a) personally delivered, upon delivery;
- (b) mailed, on the expiration of two business days after posting;
- (c) sent by facsimile transmission, upon receipt by the dispatching party of a confirmed transmission report.

## **18. GOVERNING LAW AND JURISDICTION**

18.1 This instrument shall be governed by, take effect and be construed in accordance with the laws in force in the State and all the parties hereby submit to the jurisdiction of the Courts of the State.

## **19. COMPLIANCE WITH LAWS**

19.1 The parties shall, in the performance of their obligations under this instrument, comply with all applicable laws, rules, regulations and by-laws of the Commonwealth and the State and with all lawful orders and directions of any competent governmental body or authority of the Commonwealth or the State or of any local authority in the State which relate directly or indirectly to the performance of such obligations.

## **20. COSTS**

20.1 The costs and disbursements of and incidental to the negotiation, preparation, execution, stamping and registration of this Deed, and all other documents and matters referred to in this Deed, are payable by the Trustee.

**IN WITNESS WHEREOF** the Trustee has executed this Deed the day and year first hereinbefore written.

THE COMMON SEAL of )  
**WA CONSTRUCTION INDUSTRY** )  
**REDUNDANCY FUND LTD (now** )  
**ReddiFund Limited)** )  
was hereunto affixed in accordance )  
with the Memorandum and Articles )  
of Association in the presence of: )

.....Director

.....Secretary

**\*This composite document incorporates subsequent amendments to the original Deed and Regulations up to 12 July 2016**



SCHEDULE A OF DEED

[No current schedule]

SCHEDULE B OF DEED

[No current schedule]

SCHEDULE BB OF DEED

[No Current schedule]

SCHEDULE C OF DEED

*[As amended by Deed of Amendment No.2 and No.5]*

(Clauses 1.16 and 2.2)

**ReddiFund**

ReddiFund Limited

as trustee for WA Construction Industry Redundancy (No.2) Fund

ABN .. ... ..

1st Floor, 44 Parliament Place, West Perth, 6005

P.O. Box 432, WEST PERTH, WA, 6872

Telephone: 9481 0259 Facsimile 9321 1441

**NOTICE OF AGREEMENT TO BE BOUND**

We.....

of.....

hereby request that our members participate in the Redundancy Pay Scheme established by the ReddiFund Trust Deed dated 9th March 2004. We hereby apply to become a Participating Organisation party to the Deed and agree to be bound by the trusts, terms and conditions of the Trust Deed and Fund Regulations governing the Fund (as they are amended from time to time at the sole discretion of the Trustee in accordance with the Trust Deed) and confirm that a copy of the present Trust Deed and Fund Regulations governing the Fund have been made available for inspection at the registered office of the Fund or that we have at our request, in return for a copy fee, been provided with a reproduction of the present provisions of the Trust Deed and Fund Regulations.

Date:

Signed on behalf of \_\_\_\_\_ )

\_\_\_\_\_ )

(name of organisation) \_\_\_\_\_ )

by its authorised officer \_\_\_\_\_ )

\_\_\_\_\_ )

(full name and position of authorised officer) \_\_\_\_\_ )

in the presence of: \_\_\_\_\_ )

\_\_\_\_\_ )

(signature of witness)

**\*This composite document incorporates subsequent amendments to the original Deed and Regulations up to 12 July 2016**

SCHEDULE D OF DEED

(Sub-clause 2.2)

**ADDITIONAL PARTICIPATING ORGANISATIONS**

List of industrial associations or organisations that are parties to this Deed or have become parties pursuant to sub-clause 2.2:

Employer Associations:

1. **Master Builders Association of Western Australia** (properly known as **Master Builders Association of Western Australia (Union of Employers) Perth**) of 35 Havelock Street, West Perth.
2. **Construction Contractors Association of Western Australia** now of c/o Multiplex, level 2, "The Old Swan Brewery", 173 Mounts Bay Road, Perth (formerly of 11 Airlie Street, Claremont);
3. **Master Plumbers and Gasfitters Association of Western Australia (Union of Employers)** of 106 Caledonian Avenue, Maylands.

Participating Unions:

*[As amended by Deed of Amendment No.2]*

1. The **Construction, Forestry, Mining and Energy Workers Union of Workers Western Australia** of 82 Royal Street, East Perth (which succeeded the Western Australian Builders', Labourers, Painters and Plasterers Union of Workers).
2. The Construction and General Division of the Construction, Forestry, Mining and Energy Workers Union of Australia (properly known as the **Construction, Forestry, Mining and Energy Workers Union of Australia, Construction and General Division, Western Australian Branch** of 82 Royal Street, East Perth.
3. *[Deleted by Deed of Amendment No.1]*

SCHEDULE E OF DEED  
FUND REGULATIONS

Admission of Members

- 1.1 (a) A Participating Employee or former Participating Employee:
- (i) is eligible to apply to become a Member of the Fund; and
  - (ii) may become a Participating Employee Member of the Fund by lodging with the Trustee a signed Application for Employee Participation substantially in the form set out in Schedule E1 of these regulations.
- (b) Upon the Trustee receiving from a Participating Employer Member any written notification that Redundancy Pay Contributions will be made for a Participating Employee the Trustee shall:
- (i) register the Participating Employee as a person eligible to apply for membership of the Fund;
  - (ii) allocate to that Participating Employee a distinctive membership number in the Fund;
  - (iii) issue to that Participating Employee a personalised card identifying that worker as a Participating Employee registered with the Fund; and
  - (iv) open an account in the Fund in the name and with the membership number of the Participating Employee;
  - (v) notify the Participating Employee of their right to apply for membership of the Fund and rights of a Member to Redundancy payments from the Fund;
- but until the Participating Employee has applied for and become a member of the Fund that Participating Employee cannot apply for a Redundancy Payment under regulation 4.1.
- (c) Upon receipt by the Trustee of an Application for Employee Participation from a Participating Employee the Trustee shall register the applicant as a Participating Employee Member of the Fund and there shall be constituted an agreement between the Trustee and the Participating Employee for the applicant to be a Participating Employee Member of the Fund.
- (d) The Trustee shall, by writing, notify a person on their becoming a Participating Employee Member of the Fund.

- 1.2 (a) A Participating Employer:
- (i) is eligible to apply to become a Member of the Fund; and
  - (ii) may become a Participating Employer Member of the Fund by lodging with the Trustee a signed Contribution Agreement substantially in the form set out in Schedule E2 of these regulations.
- (b) Upon receipt from a Participating Employer of a Contribution Agreement the Trustee shall register the applicant as a Participating Employer Member of the Fund and there shall be constituted between the Trustee and the Participating Employer an agreement for the applicant to be a Participating Employer Member of the Fund.
- (c) The Trustee shall, by writing, notify a person on their becoming a Participating Employer Member of the Fund.

1.2A If the Trustee has not received a Contribution Agreement but receives a document in the form of a Contribution Return from a Participating Employer, who is a Participating Employer Member of the WA Construction Industry Redundancy Fund:

- (a) that Participating Employer shall be deemed to have authorised the Trustee to have delivered to that Participating Employer any document in the form of a Contribution Statement previously delivered by the Trustee to that Participating Employer, for contributions to be made under this Deed from 1 April 2004; and
- (b) that Participating Employer shall be deemed to have complied with the provisions of regulation 1.2 and shall be bound by and shall comply with the terms and conditions of this Deed and the Fund Regulations as if the signature on that Participating Employer's Contribution Agreement, for the WA Construction Industry Redundancy Fund, had been affixed to a Contribution Agreement under this Deed and as if that Participating Employer was a signatory party to this Deed.

1.3 *[As amended by Deed of Amendment No.5]*

Each person on becoming a Member of the Fund shall subject to sub-clause (2.1C) of the Deed be bound by the terms and conditions of the ReddiFund Trust Deed and the Fund Regulations (as they are amended from time to time).

1.4 A Participating Employer shall, when applying for membership of the Fund and thereafter from time to time, notify the Trustee (generally or specifically), in writing, of:

- (a) the particulars of each Participating Employee of that Participating Employer for whom that Participating Employer Member agrees to contribute Redundancy Pay Contributions to the Fund;

- (b) of nominated Building Projects or Maintenance Sites or industrial awards/agreements in respect of which that Participating Employer Member will contribute Redundancy Pay Contributions for the respective nominated Participating Employees;
- (c) the period or periods during which that Participating Employer Member agrees to contribute Redundancy Pay Contributions for the respective nominated Participating Employees PROVIDED ALWAYS that the nominated period or periods will always be deemed to include any period when the Participating Employee will be on Paid Leave (whether or not contiguous with an expressly nominated period); and
- (d) *[As amended by Deeds of Amendment No.1, No.3 and No.4]*

the rate (if any), being either:

- (i) *\$40.00 per week (or part week) or that rate plus increments of \$5.00;*
- (ii) *if provision is made in a registered industrial agreement for payment of daily rates then, a minimum of \$8.00 per day or that rate plus increments of \$1.00 or a greater rate per day provided for in the registered industrial agreement;*
- (iii) *the rate specified in a nominated industrial award/agreement; or*
- (iv) *in relation to an apprentice such amount or percentage of wage as is specified as applying to an apprentice in a nominated industrial award/agreement;*

at which the Participating Employer Member will contribute Redundancy Pay Contributions for the respective nominated Participating Employees.

1.5 [No current regulation]

1.6 [No current regulation]

1.7 *[As amended by Deed of Amendment No.3]*

Upon a Participating Employer Member:

- (a) resigning from the Fund (pursuant to clause 2.1C of the Deed); or
- (b) notifying the Trustee that a Participating Employee is no longer a Participating Employee of that Participating Employer Member or that Redundancy Pay Contributions will be made for a Participating Employee for a lesser period than previously notified (which lesser period cannot exclude any period or periods of Paid Leave);

the Trustee shall amend its records and shall in the next Contribution Statement notify the relevant Participating Employer accordingly and thereafter notify each relevant

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Participating Employee in his next half-yearly statement in writing:-

- (i) that he/she ceased or will cease to be a Participating Employee for whom Redundancy Pay Contributions will be made to the Fund and whether he/she has, by nomination of a Participating Employer Member, been reinstated as a Participating Employee for whom Redundancy Pay Contributions will be made to the Fund;
- (ii) that his/her account with the Fund has been frozen pending his/her becoming eligible for a Redundancy Payment or a Participating Employee in respect of whom a Participating Employer Member is required to make Redundancy Pay Contributions; and
- (iii) the aggregate balance standing to the credit of that former Participating Employee's account in the Fund.

#### Contributions by Participating Employer Members

2.1 (a) *[As amended by Deeds of Amendment No.4]*

Subject to the following provisions of these regulations, every Participating Employer Member in the Fund shall be liable to contribute to the Fund a nominated amount per week/part week or, if provision is made in a registered industrial agreement for payment of daily rates then, a nominated amount per day (day rate) for each nominated Participating Employee during each nominated period (or deemed nominated period for Paid Leave referred to in sub-regulation 1.4(c)).

- (ab) Each nomination shall be made in writing by the Participating Employer Member in that Participating Employer's Contribution Agreement, Contribution Return or other written notification. Each amending nomination received from a Participating Employer Member shall be binding upon the Participating Employer Member for the nominated period unless, within fourteen (14) days of the Contribution Statement effecting the nominated amendment, the Participating Employer Member advises the Trustee in writing and thereafter satisfies the Trustee that the amendment to the nomination was an error.

(ac) *[As amended by Deeds of Amendment No.1, No.3 and No.4]*

The Contribution Agreement and each amending nomination or Contribution Return shall nominate as the rate of Redundancy Pay Contribution for each nominated Participating Employee a dollar amount per week/part week or if provision is made in a registered industrial agreement for payment of daily rates then, a dollar amount per day (day rate) calculated by reference to:

- (i) a minimum base contribution rate of \$40.00 per week (or part week) or that rate plus increments of \$5.00;

- (ii) if provision is made in a registered industrial agreement for payment of daily rates then, \$8.00 per day or that rate plus increments of \$1.00 or a greater rate per day provided for in the registered industrial agreement;
- (iii) a redundancy payment rate provided for in a specified in a nominated building construction industry industrial award or industrial agreement covering the Participating Employee; or
- (iv) in relation to an apprentice such amount or percentage of wage as is specified as applying to an apprentice in a nominated industrial award/agreement;

PROVIDED HOWEVER that no variation may be made which decreases a previously nominated rate for a continuing Participating Employee unless referable to the Participating Employee ceasing (other than when on Paid Leave) to continue to provide his/her labour, on a nominated Building Project, Maintenance Site or other site or under a nominated industrial award/agreement.

- (ad) The nominations made by a Participating Employer Member in the Contribution Agreement shall apply until amended with any nominated amendment applying only prospectively from the date of receipt by the Trustee of the appropriate amending nomination or Contribution Return. A Participating Employer Member shall notwithstanding a nominated amendment remain bound to make:
  - (i) all Redundancy Pay Contributions that have accrued, in accordance with a prior nomination, up to the date of receipt by the Trustee of the amending nomination or Contribution Return; and
  - (ii) all Redundancy Pay Contributions that have accrued (or subsequently accrue) for any deemed nominated period for Paid Leave (referred to in sub-regulation 1.4(c)).
- (b) The Trustee shall, by the last Friday of each calendar month, advise each Participating Employer Member of the Participating Employees registered with the Fund who have been nominated by that Participating Employer Member as a Participating Employee for whom Redundancy Pay Contributions will be made and the aggregate contributions required from that Participating Employer Member (herein referred to as the "Contribution Statement") for the month covered by that Contribution Statement.
- (c) (i) A Participating Employer Member shall, within 14 days of the close of the calendar month in which registered as a Participating Employer Member and thereafter within fourteen (14) days of the close of each calendar month, lodge a return (herein referred to as the "Contribution Return") with the Trustee nominating the



Participating Employees for whom that Participating Employer Member is or is deemed, by reference to sub-regulation 1.4(c), required to make Redundancy Pay Contributions and also nominating any prospective amendment and shall with that return pay Redundancy Pay Contributions in accordance with that Contribution Return and the Fund Regulations.

- (ii) If the amount to be paid by a Participating Employer Member is less than the amount claimed in the Contribution Statement the Participating Employer Member shall in the next Contribution Return or in writing, immediately notify the Trustee of the particulars of those Participating Employees for whom it is maintained there is no or a lesser Redundancy Pay Contribution payable in accordance with these regulations.
- (iii) The Participating Employer Member's Contribution Return may be a copy of the Contribution Statement, with appropriate amendments to show Participating Employees who have become or ceased to be Participating Employees for whom that participating Employer Member is required to make Redundancy Pay Contributions in accordance with these regulations.
- (iv) *[As amended by Deeds of Amendment No.1, No.3 and No.4]*

The Redundancy Pay Contribution payable by a Participating Employer Member, shall subject to this regulation, be paid:

- (1) if provision is made in a registered industrial agreement for payment of daily rates and the Participating Employer Member has duly nominated a Redundancy Pay Contribution to be paid at a permitted day rate, for each day falling within the nominated period; or
- (2) if sub-regulation 2.1(iv)(1) does not apply then for each week/part week (comprising any period of one or more days in any period of seven (7) consecutive days) falling within the nominated period;

during which the Participating Employee is:

- A. engaged in work or activity on a nominated Building Project, Maintenance Site or other site or under a nominated industrial award/agreement; or
- B. on Paid Leave referred to in sub-regulation 1.4(c);

PROVIDED ALWAYS that a Participating Employer Member, who becomes a Member on or after 1 January 2007, shall not:

- C. from 1 January 2007 and thereafter, be required to pay Redundancy Pay Contributions in respect to that Participating Employee once that Participating Employer's aggregate Redundancy Pay Contributions for that Participating Employee, for any continuous period of employment (including periods of Paid Leave) of a Participating Employee by that Participating Employer, reaches an aggregate amount of \$16,000.00 or greater aggregate amount required to be paid to or contributed for the Participating Employee under a registered industrial award/agreement;
- D. if paragraph C does not apply, then from 1 July 2009 and thereafter, be required to pay Redundancy Pay Contributions in respect to that Participating Employee once that Participating Employer's aggregate Redundancy Pay Contributions for that Participating Employee, for any continuous period of employment (including periods of Paid Leave) of a Participating Employee by that Participating Employer, reaches an aggregate amount of \$18,300.00 or greater aggregate amount required to be paid to or contributed for the Participating Employee under a registered industrial award/agreement; and
- E. if paragraph C and D do not apply then, from 1 July 2010 and thereafter, be required to pay Redundancy Pay Contributions in respect to that Participating Employee once that Participating Employer's aggregate Redundancy Pay Contributions for that Participating Employee, for any continuous period of employment (including periods of Paid Leave) of a Participating Employee by that Participating Employer, reaches an aggregate amount of \$18,300.00 increased by the same proportion as the increase in the CPI from that current as at 1 July 2009 and that current as at 1 July 2010 or greater aggregate amount required to be paid to or contributed for that Participating Employee under a registered industrial award/agreement; and

- F. if paragraph C, D and E do not apply then, from 1 July 2011 and thereafter, , be required to pay Redundancy Pay Contributions in respect to that Participating Employee once that Participating Employer's aggregate Redundancy Pay Contributions for that Participating Employee, for any continuous period of employment (including periods of Paid Leave) of a Participating Employee by that Participating Employer, reaches an aggregate amount calculated in accordance with the following formula:

\$18,300.00 multiplied by CPI(1) and divided by CPI(2)

or greater aggregate amount required to be paid to or contributed for a Participating Employee under a registered industrial award/agreement;

with: "CPI(1)" meaning the Consumer Price index current as at 1 July of the financial year in which this formula is being applied for the purpose of determining whether the Participating Employer has or has not an obligation at the time of that application to continue to make Redundancy Pay Contributions under this subclause 2.1; and

"CPI(2)" meaning the Consumer Price Index current as at 1 July 2009;

"Consumer Price Index" means the Index published quarterly by the Australian Bureau of Statistics being the Consumer Price Index Weighted Average Eight Capital Cities. If the Australian Bureau of Statistics updates the base year of the Consumer Price Index due conversion shall be made to preserve the intended continuity of calculation by using the appropriate arithmetical factor determined by the Australian Bureau of Statistics.

2.2 [No current regulation]

2.3 [No current regulation]

- 2.3A In the event that a Participating Employer Member fails to satisfy a liability to pay to the Trustee a Redundancy Pay Contribution or other moneys then the Participating Employer Member shall pay to the Trustee interest on the outstanding amount at a rate equal to the overdraft interest rate, from time to time charged by the Trustee's banker to customers on overdrafts of not more than \$100,000.00, which interest shall be paid to the Trustee by the Participating Employer Member on demand and shall accrue from the day the principal amount was payable until that principal amount is paid in full to the Trustee.

- 2.3B Notwithstanding any principle or presumption of law to the contrary or any direction given by any person at any time to the Trustee, the Trustee shall have an absolute discretion to apply any payment or credit of a Participating Employer Member towards or in satisfaction of that Member's liability to the Trustee for any Redundancy Pay Contribution or other moneys AND pending such election, as aforesaid, but without prejudice to the Trustee's entitlement to later make such election all payments and credits received by the Trustee as aforesaid shall be appropriated firstly, in or towards payment of the Trustee's reasonable administrative expenses (including any legal costs or disbursements) in relation to any arrears, or as to the collection of any arrears, of any Redundancy Pay Contribution or other moneys payable by that Participating Employer Member to the Trustee; secondly, in or towards payment of any arrears of Redundancy Pay Contributions for any Participating Employee of that Participating Employer Member in respect of whom any Redundancy Pay Contribution has been previously made to the Fund; and thirdly, in or towards payment of Redundancy Pay Contributions shown on a Contribution Return accompanying the payment in such order as the Secretary of the Trustee shall determine.
- 2.3C A Participating Employer Member shall pay to the Trustee, upon demand, an amount equal to all legal costs and disbursements reasonably incurred by the Trustee in recovering or seeking to recover from the Participating Employer Member any Redundancy Pay Contribution, interest or other monies payable by the Participating Employer Member hereunder (calculated by reference to the actual legal costs incurred by the Trustee on a Solicitor/Client basis).
- 2.3D Notwithstanding any provision of these Fund Regulations to the contrary the obligation of a Participating Employer Member to make contributions is limited to the period during which a Participating Employee is:
- (a) engaged in work or activity on a nominated Building Project, Maintenance Site or other site or under a nominated industrial award/agreement; or
  - (b) on Paid Leave.
- 2.4 [No current regulation]
- 2.5 Subject to the powers of the Trustee to appropriate in accordance with the provisions of sub-regulation 2.3B Redundancy Pay Contributions shall be credited to the respective accounts of relevant Participating Employees in accordance with the Contribution Return of a Participating Employer Member and shall be held in trust to be applied by the Trustee in satisfaction of the Trustee's obligation to the relevant Participating Employee for Redundancy Payment PROVIDED HOWEVER that upon a Participating Employer Member:
- (a) applying, within a period of twelve (12) months from the crediting of a contribution, for a refund of the contribution; and
  - (b) proving to the satisfaction of the Trustee (by Statutory Declaration or otherwise) that the contribution was made in respect of a period when a

person was not a Participating Employee of that Participating Employer Member;

then (but not otherwise and subject always to the Trustee's right to appropriate any amount refundable to the Participating Employer Member in exercise of its powers under sub-regulation 2.3B) the Trustee shall, so long as there is a credit balance in that Participating Employee's account at the time when the Trustee receives the Participating Employer's application, refund the relevant contribution (so long as it has not previously been applied in meeting a Redundancy Payment) by repayment to that Participating Employer Member out of that credit balance.

### Field Officers

- 3.1 The expression "Field Officer" shall, if the Trustee is a corporation include each of the secretary of the Trustee and any employee appointed as a Field Officer by the Trustee and if the Trustee comprises individuals shall be each of any two employees appointed as a Field Officer by the Trustee.
- 3.2 Upon a party notifying the Trustee that it is not satisfied that a Participating Employer Member is paying contributions for all Participating Employees, duly nominated as persons for whom Redundancy Contributions will be made, the Field Officer shall conduct an investigation of the position and for that purpose the Participating Employer Member shall make all its relevant documents and records available for his inspection.
- 3.3 Upon a party notifying the Trustee that it queries whether all Participating Employees of a Participating Employer Member, have registered as Member Participating Employees of the Fund, the Field Officer shall investigate the position and for that purpose, the Participating Employer Member shall make all its relevant documents and records available for his inspection.
- 3.4 The Field Officer, upon completion of an investigation, shall, unless the matter under investigation is resolved to the satisfaction of the Participating Employee, lodge a written report with the Trustee and the Trustee shall provide a copy to the party requesting the investigation.
- 3.5 Following an investigation the Trustee shall, if any sum is, by the report, shown to be due by the Participating Employer Member to the Fund, include that sum in the next Contribution Statement for that Participating Employer Member.
- 3.6 If a party or Member does not agree with any part of a Field Officer's report, then that party or Member and the Trustee shall be taken to be in dispute and any such party, Member or the Trustee may seek arbitration of the dispute in accordance with the provisions of the Trust Deed.

## Redundancy Payments

### 4.1 *[As amended by Deeds of Amendment No.1, No.3, No.4 and No.5]*

Upon a Participating Employee Member having satisfied the Trustee he/she is redundant (in the sense that he/she has ceased to provide his/her labour, as a Participating Employee (as defined in sub-clause 1.17), without being offered re-employment or offered other rights to provide his/her labour, as a Participating Employee:

- (a) by another Participating Employer; or
- (b) by his/her last Participating Employer (on terms and conditions materially no less favourable than those previously applying between the Participating Employee and his/her last Participating Employer);

and that he/she is not on Paid Leave, the Trustee shall pay to the Participating Employee Member the balance in the Participating Employee Member's account with the Fund

OR

subject to the provisions of the Trust Deed, upon the Trustee being satisfied that a Participating Employee has died leaving a credit balance in the account maintained by the Trustee for that Participating Employee, the Trustee shall apply that credit balance (or remainder after prior application under this regulation 4.1) in a payment, at the sole discretion of the Trustee, to the spouse (within the meaning of the Income Tax Assessment Act 1997) of the deceased Participating Employee or former spouse of the deceased Participating Employee or to the child (within the meaning of the Income Tax Assessment Act 1997), aged less than 18, of the deceased Participating Employee or to the legal personal representative of the Participating Employee (within the meaning of the Income Tax Assessment Act 1997) and the receipt of that person or, in the case of a child, the legal guardian of that person (following provision of proof of identity) for such payment shall constitute a full and complete discharge to the Trustee as to the application of that credit balance in accordance with this Deed and the Fund Regulations as against any claim made by anyone else in relation to that credit balance.

Application by a person for a payment on death, under clause 4.4 of the Trust Deed and this regulation 4.1, shall be deemed to include a binding agreement on the part of the person making that application to be bound by and comply with the provisions of regulation 4.5B (dealing with obligations to repay amounts wrongly claimed).

4.2 *[As amended by Deed of Amendment No.1]*

The Trustee may at its discretion require evidence (including a Statutory Declaration) in relation to the matters referred to in sub regulation 4.1 from the Participating Employee or person claiming a payment on death and his/her current Participating Employer Member which must be provided by the Participating Employee Member, his/her Participating Employer Member or person claiming a payment on death prior to payment of a Redundancy Payment or payment on death from the Fund.

4.3 Upon a Participating Employee Member having satisfied the Trustee that:

- (a) Redundancy Pay Contributions have been properly credited to his/her account with the Fund during a period when that Participating Employee Member was a director of a company, a partner in a partnership or a sole contractor; and
- (b) he/she has ceased to be a Participating Employee by reason of his/her Participating Employer being no longer engaged in works on any Building Project, Maintenance Site or other site or under a nominated industrial award/agreement, for more than three (3) months (or such lesser period as the Trustee in its discretion shall in any particular case determine);

the Trustee shall, notwithstanding any provision to the contrary, refund to the Participating Employer the previously undrawn balance of the Redundancy Pay Contributions contributed by that Participating Employer Member, during that period, to the former Participating Employee's account with the Fund.

4.4 Upon a Participating Employee Member having satisfied the Trustee that he/she has for a period of twelve (12) months (or such lesser period as the Trustee in its discretion shall in any particular case determine) provided his/her labour in work or activity on any Building Project solely in work or activity that is clerical, managerial, administrative or supervisory (except substantially in performance of the ordinary duties of a foreman) and that the balance in the Participating Employee's account with the Fund comprises Redundancy Pay Contributions made to the Fund for a period during which he/she provided his/her labour in work or activity on any Building Project in work or activity that was not clerical, managerial, administrative or supervisory, the Trustee shall pay to the Participating Employee Member the balance in the former Participating Employee Member's account with the Fund by reference to the cessation of that Participating Employee Member's non-clerical/ non-managerial/ non-supervisory employment under a building industry industrial award/agreement.

4.5 The Trustee may, at its discretion, require evidence (including a Statutory Declaration) in relation to the matters referred to in sub-regulations 4.3 or 4.4 from the Participating Employee Member and his/her Participating Employer Member which shall be provided by the Participating Employee Member and his Participating Employer Member prior to payment of any amount to the Participating Employee Member or Participating Employer Member from the Fund.

4.5A The Trustee shall only transfer an amount standing to the credit of an account of a Participating Employee with the Fund to the trustee/administrator of another fund, pursuant to sub-clause 4.1A of the Deed, upon first receiving a signed written request, substantially in the form set out in Schedule E3 of the Fund Regulations, from the Participating Employee in respect of whom the credit in that account is otherwise maintained for the making of Redundancy Payments and upon the Trustee being satisfied that that other fund is an approved worker entitlement fund (as defined in the Fringe Benefits Tax Assessment Act).

4.5B *[As amended by Deed of Amendment No.1]*

If following the payment of a Redundancy Payment or payment on death to a Participating Employee Member or other person the Trustee determines that the Participating Employee Member or other person may have had no entitlement to apply for the payment, the Trustee may institute an enquiry and upon request the Participating Employee Member and his/her then current Participating Employer Member or other person receiving a payment on death shall fully cooperate in that enquiry and provide to the Trustee all documents and information or further evidence as may be requested to enable the Trustee to determine whether the Redundancy Payment or payment on death was correctly applied for and paid out of the Fund and in the event that the Trustee determines that the Participating Employer Member or other person has not proven, to the full satisfaction of the Trustee, that the Participating Employee Member or other person had an entitlement to that Redundancy Payment or payment on death then the Participating Employee or that other person who received a payment on death shall immediately repay to the Trustee an amount equal to the Redundancy Payment or payment on death, for crediting to the Participating Employee Member's account with the Fund.

In undertaking the enquiry the Trustee may construe a failure, by the Participating Employee Member or his/her Participating Employer Member or other person who has received a payment on death, to provide further evidence as to the Participating Employee's entitlement to the Redundancy Payment or that other person's entitlement to a payment on death, requested by the Trustee, as giving rise to an inference that the Redundancy Payment or payment on death was incorrectly applied for and paid out of the Fund so long as the Trustee has first warned both the Participating Employee Member and his/her Participating Employer Member or that other person that a failure to provide the further evidence requested by the Trustee will give rise to such an inference.

Application by a person for a payment on death, under clause 4.4 of the Trust Deed and regulation 4.1, shall be deemed to include a binding agreement on the part of the person making that application to be bound by and comply with the provisions of this regulation 4.5B.



4.5C *[As amended by Deed of Amendment No.3]*

In the event that a Participating Employee Member or that other person fails to repay to the Trustee an amount equal to a Redundancy Payment, in breach of an obligation under the preceding clause 4.5B:

- (a) that a Participating Employee Member or that other person shall pay to the Trustee interest on the outstanding amount, from the date the Trustee demanded such repayment, at a rate equal to the overdraft interest rate, from time to time charged by the Trustee's banker to customers on overdrafts of not more than \$100,000.00, which interest shall accrue from the day the principal amount was payable until that principal amount is paid in full to the Trustee; and
- (b) that a Participating Employee Member or that other person shall pay to the Trustee, upon demand, an amount equal to all legal costs and disbursements reasonably incurred by the Trustee in recovering or seeking to recover that amount or interest from the Participating Employer Member or that other person Redundancy Pay Contribution (calculated by reference to the actual legal costs incurred by the Trustee on a Solicitor/Client basis).

4.6 *[As amended by Deed of Amendment No. 6]*

- (a) Upon a Participating Employee Member having satisfied the Trustee that he or she is entitled to a Redundancy Payment in accordance with regulation 4, the Participating Employee Member may apply to the Trustee in writing to defer payment of the balance in the Participating Employee Member's account with the Fund ("**Deferral Request**").
- (b) If the Participating Employee Member makes a Deferral Request in accordance with sub regulation 4.6(a), the Participating Employee Member may request the Trustee in writing to pay:
  - (i) the whole of the balance in the Participating Employee Member's account with the Fund; or
  - (ii) a specified part of the balance in the Participating Employee Member's account with the Fund, provided that a minimum balance of \$1,000 is maintained in the Participating Employee Member's account with the Fund after payment of the specified amount;("Drawdown Request").
- (c) If a Participating Employee Member makes a Drawdown Request in accordance with sub regulation 4.6(b), the Trustee must:

- (i) pay the amount specified in the Drawdown Request on a day not less than 30 business days from receipt of the Drawdown Request; and
  - (ii) debit the amount paid to the Participating Employee Member in accordance with the Drawdown Request from the balance in the Participating Employee Member's account with the Fund.
- (d) A Participating Employee Member has no entitlement to any income or profit in respect of the undrawn balance in the Participating Employee Member's account with the Fund to which the Participating Employee Member has become entitled under regulation 4 but in respect of which the Participating Employee Member has made a Deferral Request under sub regulation 4.6(a).

#### Account Statements and Annual Report

- 5.1 The Trustee shall send to each Participating Employer Member a statement showing all Redundancy Pay Contributions made by that Participating Employer Member during the immediately preceding period 1st July to 30th June.
- 5.2 The Trustee shall at the expiration of each Financial Year or shorter period within each Financial Year (if so resolved by the Trustee) send to each Participating Employee or former Participating Employee a statement showing all Redundancy Pay Contributions credited to that Participating Employee's account or former Participating Employee's account since the date of the last statement provided to that Participating Employee or former Participating Employee together with the aggregate balance standing to the credit of that Participating Employee's account or former Participating Employee's account at the date of each statement.
- 5.3 The Trustee shall send to each Participating Employer Member, each Participating Employee with any credit balance in his/her account with the Fund and each Participating Organisation an annual report as to the Fund and its activities for each Financial Year.

## Amendment of Regulations

- 6.1 The rules contained in the Fund Regulations may be supplemented by additional rules or varied from time to time at the discretion of the Trustee.
- 6.2 If the Trustee comprises individuals, then any addition, variation or revocation shall be submitted to a duly convened meeting of all the Trustees and must be passed by a resolution of not less than 75 per centum (75% each time) of all the Trustees.
- 6.3 If the Trustee is a corporation, then any addition, variation or revocation shall, notwithstanding any article of association of the corporation to the contrary in relation to quorum, be submitted to a meeting of all the Directors (or alternate Directors) of the Trustee and any resolution must be passed by a resolution of not less than 75 per centum of all the Directors (or alternate Directors) of the Trustee.
- 6.4 A resolution in writing signed by all the Trustees, if the Trustee comprises individuals or signed by all the Directors of the Trustee for the time being entitled to receive notice of a meeting of Directors (other than alternate Directors) if the Trustee is a corporation, shall be as valid and effectual, as a resolution for addition, variation or revocation as if it had been passed at a meeting of all the Trustees, if the Trustee comprises individuals, or a meeting of all the Directors if the Trustee is a corporation, duly convened and held. Any such resolution may consist of several documents in like form each signed by one or more of the Trustees, if the Trustee comprises individuals, or Directors of the Trustee, if the Trustee is a corporation. If the Trustee is a corporation the provisions of this sub-regulation shall apply notwithstanding any provision in the Articles of Association of the Trustee in relation to resolutions in writing signed by Directors.
- 6.5 Unless otherwise provided in these Fund Regulations or the deed or resolution effecting an amendment to the Fund Regulations, any deed or addition, variation or revocation to these Fund Regulations shall be effective and apply as if that addition, variation or revocation had been originally included in the provisions of these Fund Regulations and shall apply accordingly to all parties and all Members of the Fund whether admitted as a party or Member before, on or after the date on which the relevant amending deed was executed or resolution was passed by the Trustee (and if so otherwise provided then that addition, variation or revocation shall apply accordingly to all parties and all Members from the date so provided in the relevant amending deed or resolution).

## 7 *[As amended by Deed of Amendment No.5]*

The name or description, format and wording of any document, in any schedule to these regulations, may at the sole discretion of the Trustee be changed from that set out in the schedule and any such changed document may be used and distributed by the Trustee and will for all purposes be taken to satisfy or have satisfied the obligations of the Trustee and be treated as if a document as set out in the relevant Schedule.

SCHEDULE E1 OF THE LIMITED FUND REGULATIONS

*[As amended by Deed of Amendment No.2 and No.5]*

(Sub-regulation 1.1)

**ReddiFund**

ReddiFund Limited

ACN 009 404 273

as trustee for ReddiFund

ABN .80 337 100 395

1st Floor, 44 Parliament Place, West Perth, 6005

P.O. Box 432, WEST PERTH, WA, 6872

Telephone: (08) 9481 0259 Facsimile: (08)9321 1441

E-mail: [info@wacirf.com.au](mailto:info@wacirf.com.au) Web: [www.wacirf.com.au](http://www.wacirf.com.au)

**EMPLOYEE APPLICATION**

I .....  
Name

.....  
(Residential Address – NOTE: DO NOT USE POST OFFICE BOX ADDRESS)

.....  
(Postal Address if different from Business Address)

hereby apply to become a Participating Employee Member registered with the ReddiFund, established by a Deed dated 9th March 2004, and agree to be bound by the trusts, terms and conditions of the Trust Deed and Fund Regulations governing the Fund (as they are amended from time to time at the sole discretion of the Trustee in accordance with the Trust Deed) and confirm that a copy of the present Trust Deed and Fund Regulations governing the Fund have been made available for inspection at the registered office of the Fund or that at my request I have, in return for a copy fee, been provided with a reproduction of the present provisions of the Trust Deed and Fund Regulations.

I expressly authorize the Trustee to disclose to any officer or employee of the Trustee or of a Participating Organisation any information provided by me to the Trustee or that is recorded in the accounts or records of the Fund in relation to me for the purpose of that officer or employee, in the reasonable course of the duties of their office or employment, ensuring that the Trustee, Participating Employers and Participating Employees fulfil their obligations under any relevant industrial award/agreement and/or the Trust Deed and Fund Regulations.

Particulars to be completed:

Name of Participating Employer: .....

.....  
Address of Participating Employer:.....

Participating Employer's telephone number: .....

Participating Employer's facsimile number: .....

Date you became a Participating Employee with your present Participating Employer: .....

Relevant building construction industry Award or industrial agreement (registered under a law of the Commonwealth or the State) specifically providing for Redundancy Pay Contributions to be paid to a central fund:

Your WACIRF membership Number (if previously issued): .....

Your Date of Birth: .....Your telephone number if available: .....

Your nominated beneficiary in the event of death: .....

\* Signature of employee: .....

Signature of Witness: .....

Name of Witness: (Please Print) .....

Date ...../...../.....

**\*NOTE: WE WILL BE UNABLE TO PROCESS THIS FORM UNLESS ALL SECTIONS ARE COMPLETED.**

**PLEASE ENSURE THAT THIS FORM IS SIGNED BY YOU AND YOUR SIGNATURE IS WITNESSED.**

SCHEDULE E2 OF THE LIMITED FUND REGULATIONS

*[As amended by Deed of Amendment No.2 and No.5]*

(Sub-regulation 1.2)

**ReddiFund**

ReddiFund Limited

ACN 009 404 273

as trustee for ReddiFund

ABN .80 337 100 395

1st Floor, 44 Parliament Place, West Perth, 6005

P.O. Box 432, WEST PERTH, WA, 6872

Telephone: (08) 9481 0259 Facsimile: (08)9321 1441

E-mail: [info@wacirf.com.au](mailto:info@wacirf.com.au) Web: [www.wacirf.com.au](http://www.wacirf.com.au)

**CONTRIBUTION AGREEMENT**

I/We .....

Name

of .....

(Business Address)

.....  
(Postal Address if different from Business Address)

Your A.C.N: ..... Your A.B.N.: .....  
Type of Trade/Industry Activity Engaged In:

Membership of Employer Association:  
.....

hereby request that we become a party to the ReddiFund established by Deed dated the 9th March 2004. I/We hereby apply to be a member Participating Employer Member of the Fund and agree to be bound by the trust, terms and conditions of the Trust Deed and Fund Regulations governing the Fund (as they are amended from time to time at the sole discretion of the Trustee in accordance with the Trust Deed) and confirm that a copy of the present Trust Deed and Fund Regulations governing the Fund have been made available for inspection at the registered office of the Fund or that I/we have at my/our request, in return for a copy fee, been provided with a reproduction of the present provisions of the Trust Deed and Fund Regulations.

I/we expressly authorize the Trustee to disclose to any officer or employee of the Trustee or of a Participating Organisation any information provided by me/us to the Trustee or that is recorded in the accounts or records of the Fund in relation to me/us for the purpose of that officer or employee, in the reasonable course of the duties of their office or employment, ensuring that the Trustee, Participating Employers and Participating Employees fulfil their obligations under any relevant industrial award/agreement and/or the Trust Deed and Fund Regulations.

**I/We have voluntarily agreed with the Trustee to make Redundancy Pay Contributions at the contribution rate(s) nominated.**

**Please turn over page to List Nominated Employees and Building Projects**

**\*This composite document incorporates <sup>49</sup>subsequent amendments to the original Deed and Regulations up to 12 July 2016**

Signature of Employer: .....

Note: In the case of a company this agreement is to be executed under the seal of the company

Signature of witness: .....Name of Witness: .....  
(please print)

Director: .....  
(Signature)

AFFIX SEAL HERE

Director/Secretary: .....  
(Signature)

Date: ...../...../.....

Please provide us with your:

Telephone Number: .....

Mobile Number: .....

Facsimile Number: .....

.....  
E-mail:

.....  
Name of contact person:

**PLEASE NOTE: THIS FORM WILL NOT BE PROCESSED UNLESS ALL DETAILS ARE COMPLETED CORRECTLY**

[As amended by Deeds of Amendment No.4]

**List Of Participating Employees**

(To be Registered as Members of the Fund and to whom Redundancy Pay Contributions are to be made)

NOTE: All sections Must be Completed as Per Illustration Below

Name of Participating Employee (Christian name-Surname)	Residential Address (NOT a P.O. Box)	Date of Birth	Non Specified Site	Address of Building Project	Period of Contribution		Rate of Contribution per week or Rate of Contribution per day (day rate)
					From:	To:	
e.g. John Smith	1123 Metal Grove Perth WA 6163	1/06/70	General Base Site	N/A	9/3/04	3/6/07	\$60.00
							\$
							\$

OR

Name of Participating Employee (Christian name-Surname)	Residential Address (NOT a P.O. Box)	Date of Birth	Name of specific site or building project	Address of Building Project	Period of Contribution		Rate of Contribution per week or Rate of Contribution per day (day rate)
					From:	To:	
e.g. John Smith	1123 Metal Grove Perth WA 6163	1/06/70	Swan Building	Mounts Bay Rd, Perth	9/3/04	3/6/07	\$60.00
							\$

(IF THERE IS INSUFFICIENT SPACE AVAILABLE PLEASE ATTACH A SEPARATE LIST OF ADDITIONAL EMPLOYEES)”



SCHEDULE E3 OF THE FUND REGULATIONS  
[As amended by Deed of Amendment No.5]

(Sub-regulation 4.5A)

**ReddiFund**

ReddiFund Limited  
as trustee for ReddiFund

ABN .. . . . .

1st Floor, 44 Parliament Place, West Perth, 6005  
P.O. Box 432, WEST PERTH, WA, 6872  
Telephone: 9481 0259 Facsimile 9321 1441

**REQUEST FOR TRANSFER OF PARTICIPATING EMPLOYEE'S ACCOUNT  
BALANCE TO ANOTHER FUND**

I .....  
(Surname) (Christian Names)  
of .....  
(Address)

a Participating Employee in respect of whom an account is maintained with the ReddiFund  
HEREBY REQUEST the Trustee transfer and pay out of the capital of the Fund, to the  
trustee/administrator of the

.....  
(full name of other Fund)

.....  
(full address),

an amount equal to the entire balance standing to the credit of that account and HEREBY  
AGREE that upon transfer of that sum, representing that credit balance to that  
trustee/administrator the Trustee of the ReddiFund shall be completely discharged in  
respect of any liability to me for any entitlements that I may otherwise have had, in respect  
to the amount transferred, under the provisions of the Trust Deed and Fund Regulations of  
the ReddiFund.

\*Signature of Participating Employee: .....

Signature of Witness: .....

Full name of Witness (please print): .....

Date: \_\_\_\_ / \_\_\_\_ / \_\_\_\_

**\* PLEASE ENSURE THAT YOU SIGN THIS DOCUMENT AND ENSURE IT IS  
WITNESSED AND ALL INFORMATION IS COMPLETED BEFORE  
DELIVERY TO THE TRUSTEE.**

## SCHEDULE F OF DEED

1. To let any property forming part of the Fund in such parts at such rentals upon such terms and conditions (including without limiting the generality thereof the grant or reservation of any necessary easements or rights) and to such tenants as the Trustee shall consider to be in the best interests of the Fund and to collect rents, occupation fees, licence fees and all other income relating to any property or business and to issue receipts therefore.
2. To execute and prosecute legal proceedings of any kind and in any Court to enforce any contract entered into or to recover damages for breach of any such contract.
3. To cancel, terminate or accept surrenders of leases; to institute and prosecute legal proceedings of any kind and in any court to oust tenants and recover possession of any part of any property; and to sue for and recover rent and damages for breach of any lease; to sue or prosecute trespassers or any other persons for damage to any part of any property; and to abandon, settle, compromise and release any such action or suit when expedient.
4. To pay out of the Fund all payments of all kinds necessary or desirable for carrying on management or development or purchase of any property or business.
5. To repair, renovate, decorate and maintain any chattels personal or any land including all fittings, fixtures, furnishings, furniture and equipment therein and the grounds and outhouses thereof.
6. To advertise any property or any part thereof and to display signs and notices thereon.
7. To impose rules and regulations governing the conduct of the occupants of any building or any other property.
8. To employ and superannuate such managers, staff and servants and engage such contracts as may be necessary or desirable and to engage the services of lawyers, engineers, architects, accountants, auditors, agents and any other professional or technical advisers and to pay any person or corporation whose services are engaged out of the Fund to make all such bonus payments to employees and other persons and to establish maintain and contribute to (whether or not the employee shall be obliged to) such one or more superannuation funds established for the benefit of any employee of the Trustee employed for the purposes of this Deed or the Trust as the Trustee shall think fit and to furnish all returns required in connection with the Trust or the income thereof by the law.

**\*This composite document incorporates <sup>53</sup>subsequent amendments to the original Deed and Regulations up to 12 July 2016**

9. 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 forming part of the Fund.
10. To pay out of the Fund all expenses incurred in or about the exercise of any of the foregoing powers.
11. To invest the Fund in any investment authorized by section 17 of the Trustees Act from time to time selected by the Trustee (and if necessary in one particular authorised investment to the exclusion of all others) and to deal with manage transpose or realise such investments entirely as it thinks fit as if it were the absolute owner thereof and the Trustee shall not be accountable for any loss (except in the case of its wilful neglect dishonesty or fraud) arising out of the making of any investment or out of the failure to realise the investment or out of its management.
12. To undertake any liability in connection with the Fund or any part thereof in the acquisition sale or management of any authorised investment whether upon personal credit or with or without security and upon such terms and conditions as the Trustee shall in its absolute discretion think fit including granting as consideration for any authorised investment so acquired any annuity or other interest and upon such terms and conditions as the Trustee shall in its absolute discretion think fit, purchase any such authorised investment for a sum greater than the value of the Fund at the date of acquisition or that the authorised investment is to be paid for wholly or in part from any future moneys which may come into the Trustee's hands, including dividends, profits, interest or other income to be received from such investment.
13. To become or nominate officers of the Trustee directors of any company in which the Trustee may hold shares as part of the Fund AND it is directed that any Trustee or nominated officer of the Trustee may become qualified as a director by the holding in the Trustee's name of shares constituting part of the Fund.
14. To exercise all rights and privileges and perform all duties appertaining to any shares or stock for the time being subject to the trusts thereof with liberty to assent to any arrangements modifying such rights privileges or duties and to agree to any scheme or arrangement for the reconstruction or the increase or reduction of the capital of any company and for any such purpose to deposit surrender or exchange any of the said shares or stock or the title thereto and to pay any calls or contributions or other necessary expenses in connection with any such shares or stock or any such scheme or arrangement as aforesaid.
15. To raise or concur in raising with or without security any money which the Trustee in its absolute discretion thinks expedient or desirable for any purpose by mortgaging charging or otherwise hypothecating all or any part of the Fund.

16. 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.
17. To grant or acquire easements or other rights in respect of any real property and generally to deal with such property or interest or to join in dealing with the same as if beneficially entitled thereto without being responsible for loss.
18. To acquire, carry on or join in carrying on any business in partnership with any other person or persons at the discretion of the Trustee during such period as it shall think proper with power for that purpose to employ therein such part or parts of the capital of the Fund as it thinks fit and employ at such salary as it thinks fit as manager of the said business any person or persons (whether Trustees or a Trustee of or otherwise interested in the Fund or not) or to leave the entire management of such business to any partner therein and to renew partnerships and generally to act in all matters relating to such business or businesses as if it were beneficially entitled thereto and without responsibility for loss.
19. To engage and appoint agents and to employ any manager solicitor accountant agent or other person to transact all or any business of whatever nature required to be done pursuant to this Deed including the receipt or payment of money and the Trustee shall decide the remuneration to be allowed and paid and all charges and expenses so incurred.
20. To draw make accept endorse discount execute and issue promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments and to join with any person or corporation in drawing making accepting endorsing discounting executing and issuing promissory notes, bills of exchange, bills of lading and other negotiable or transferable instruments.
21. To borrow with or without security for any of the purposes of this Deed and to give security for any such borrowing over any of the investments of the Fund or if appropriate give such security which involves a charge over the investments of the Fund and the assets of the Trustee jointly. Any such borrowing may be by way of overdraft accommodation from a Bank or by way of secured or unsecured loan or from any corporation, trust or person or by way of deposit to the Fund or otherwise.



