
Rex Tax Deferred Employee Share Plan Trust Deed

Regional Express Holdings Limited

Rex Investment Holdings Pty Limited

BAKER & MCKENZIE

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Date 2006

Parties **Regional Express Holdings Limited** (ABN 18 099 547 270) of Level 1, 2B
Lord Street, Botany NSW 2019 Australia (*Company*)

Rex Investment Holdings Pty Limited (ABN 63 101 317 677) of Level 1, 2B
Lord Street, Botany NSW 2019 Australia (*Trustee*)

Recitals

- A The Company has established the "Rex Tax Deferred Employee Share Plan" to facilitate the acquisition of shares in the Company by Participants in the Plan.
- B The Company wishes to establish a trust solely for the purpose of acquiring and holding shares in the Company for the benefit of Participants for the purposes of the Plan.
- C The Trustee has agreed to act as trustee of the Trust on the terms and conditions set out in this Deed.
- D The Company has paid the Trustee \$200 to settle the Trust constituted by this Deed.

Operative provisions

1 Definitions and interpretation

- 1.1 The following definitions apply unless the context requires otherwise.

Allocated Shares means Shares allocated to a Participant which continue to be held by the Trustee pursuant to this Deed.

ASX means Australian Stock Exchange Limited.

Board means the board of directors of the Company or any committee of the board appointed by the board to administer the Plan.

Bonus Shares means Shares to which a holder of Shares is entitled in any pro rata issue by the Company to holders of Shares for which no consideration is payable by the holder.

Participants means the employees of the Company and its Related Bodies Corporate who are eligible to participate under the Plan.

Plan means the Rex Tax Deferred Employee Share Plan, a copy of which is annexed to this Deed.

Related Bodies Corporate has the same meaning as set out in the *Corporations Act 2001*.

Rex Employee Option Plan means the employee option plan that has been adopted by the Company and is governed by the "Employee Option Plan Rules".

Rex Employee Option Plan Trust means the trust constituted by the Rex Employee Option Plan Trust Deed between the Company and the Trustee dated on or about the date of this Deed.

Share means a fully paid ordinary share in the capital of the Company.

Trust means the Rex Tax Deferred Employee Share Plan Trust constituted by this Deed.

Trust Property means the property of the Trust described at clause 3.2.

Unallocated Shares means Shares held by the Trustee pursuant to this Deed which are not allocated to a Participant.

1.2 In this Deed:

- (a) unless the context otherwise requires, words and expressions defined in the Plan have the same meaning where used in this Deed
- (b) the *singular* includes the plural and conversely;
- (c) a *gender* includes all genders;
- (d) a reference to the *Deed* or any particular clause of the Deed means the Trust Deed or the relevant clause as amended from time to time;
- (e) the obligations of the Company and the Trustee are several only and not joint; and
- (f) the Trustee acts solely as trustee for the Participants.

2 Rules of Rex Tax Deferred Employee Share Plan

2.1 The rules of the Plan annexed to this Deed, as amended from time to time, are incorporated into and have effect as if set out in the body of this Deed. To the extent of any inconsistency between the terms of this Deed and the Plan, the terms of the Plan prevail.

3 Declaration of trust

Declaration

3.1 The Trustee acknowledges and declares and agrees with the Company that it shall hold the Trust Property on trust and subject to the terms and conditions of this Deed and the Plan.

Trust Property

3.2 The Trust Property the subject of this Deed and the Plan shall consist of:

- (a) Shares acquired by or issued to the Trustee for and on behalf of Participants and for the general purposes of the Plan, subject to the terms and conditions of this Deed;
- (b) the amount referred to in recital D of this Deed; and

- (c) any other moneys or property received by the Trustee for the purposes of the Plan as well as the investments and property from time to time representing such moneys or property and all income, additions or accretions from such investments and property.

Held for benefit of Participants

- 3.3 The Trust Property will be vested in the Trustee on trust to be applied in accordance with the provisions of the Plan for the benefit of the Participants under the Plan.

Trustee not entitled to benefit from the Trust Property

- 3.4 Other than as expressly set out in clauses 7.1(b), 9.5, 11.1(a), 12.1(d) and 20, the Trustee is not entitled to benefit from the Trust Property.

No beneficial interest

- 3.5 At no time shall the Company or the Trustee or any of their Related Bodies Corporate have any beneficial interest in the Trust Property.

Name of Trust

- 3.6 The trust constituted by this Deed shall be called the *Rex Tax Deferred Employee Share Plan Trust*.

4 Trustee

- 4.1 The office of trustee shall become vacant if the Trustee:
 - (a) resigns its office by notice in writing to the Company;
 - (b) becomes bankrupt or insolvent or makes any assignment for the benefit of or any composition or arrangement with its creditors; or
 - (c) is removed from office by the Board.
- 4.2 The Board shall not be obliged to give any reason for the removal of the Trustee.
- 4.3 On the retirement or removal of the Trustee the Board shall have the power of appointing by deed a new trustee or trustees.
- 4.4 On a change of trustee, the retiring Trustee will promptly execute all transfers, deeds or other documents necessary to transfer all money and property held pursuant to this Deed and the Plan into the name of the new trustee.

5 Powers of trustee

- 5.1 The powers conferred on the Trustee by law or under this Deed shall only be exercised for the purposes of the Plan, in accordance with the Company's Employee Securities Trading Policy and at the direction of the Board or any duly appointed delegate of the Board (as the case may be).
- 5.2 Without prejudice to the powers vested in the Trustee by the Plan or otherwise conferred on it by law, but subject to clause 5.1, the Trustee may:

- (a) enter into and execute all contracts, deeds and documents and do all acts, matters or things which it may deem expedient for the purpose of giving effect to and carrying out the trust, authorities, powers and discretions conferred upon the Trustee by this Deed or the Plan;
- (b) subscribe for, purchase or otherwise acquire and to sell or otherwise dispose of property, rights or privileges which the Trustee is authorised by this Deed or the Plan to acquire or dispose of on such terms and conditions as it thinks fit;
- (c) appoint and at its discretion remove or suspend custodian trustees, managers, agents and servants, determine the powers and duties to be delegated to them and pay such remuneration to them as it may think fit;
- (d) institute, conduct, defend, compound, settle or abandon any legal proceedings concerning the affairs of the Plan and also to compound and allow time for payment or satisfaction of any debts due and of any claim or demands by or against the Trustee concerning the Plan;
- (e) open bank account and to retain on current or deposit account at any bank such moneys as it considers proper and to make regulations for the operation of such bank accounts, including the signing and endorsing of cheques in connection with such accounts;
- (f) subscribe for, purchase or otherwise acquire and hold Shares and transfer them to persons entitled in accordance with this Deed and the Plan;
- (g) receive distributions paid on Shares and to apply those amounts in accordance with this Deed and the Plan;
- (h) sell Shares and apply the proceeds of sale in accordance with this Deed and the Plan;
- (i) sell any rights relating to the Shares and apply the proceeds of sale in accordance with this Deed and the Plan;
- (j) take and act upon the advice or opinion of any legal practitioner (whether in relation to the interpretation of this Deed, the Plan or any other document or statute or as to the administration of the Trust) or any other professional person, and whether obtained by the Trustee or not, without being liable in respect of any act done by it in accordance with such advice or opinion;
- (k) make rules or to adopt procedures not inconsistent with the provisions of this Deed and the Plan in relation to the calculation and rounding off of contributions, dividends, interest or other amounts, or to the determination of periods of time;
- (l) transfer Shares to the trustee of the Rex Employee Option Plan Trust to satisfy the terms of the Rex Employee Option Plan; and
- (m) do all acts and things as the Trustee may consider necessary or expedient to give effect to the Plan.

Investments

- 5.3 Any moneys that may be held by the Trustee, but which are not currently required for the purposes of the Plan, may in the absolute discretion of the Trustee be placed on deposit with

any bank, company or financial institution or invested in any one or more of the modes of investment authorised by law from the investment of trust funds or in any manner in which the Trustee, if it were personally entitled to those moneys, could invest.

Delegation

- 5.4 The Trustee may from time to time delegate to any director of the Trustee or other person appointed by the Trustee the right and power on behalf of the Trustee to sign, draw, endorse, or otherwise execute, as the case may be, all or any cheques, drafts and other negotiable or transferable instruments, all or any receipts for money paid to the Trustee and all or any other documents connected with the due administration of the Plan or with this Deed.

6 Transfers and Payments

- 6.1 Any transfer, distribution or payment made in good faith to a person believed by the Trustee to be entitled to receive it is, for the purposes of this Deed and the Plan, deemed to be a transfer, distribution or payment (as the case may be) to the person entitled to receive it and is a valid discharge to the Trustee in respect of the transfer, distribution or payment.
- 6.2 If a Participant or other person who is entitled to any Shares or other property or to payment of any amount under the Plan is under any legal, physical, mental or other disability of any kind, and is, in the opinion of the Trustee, unable to properly and competently manage his or her financial affairs, the Trustee may transfer all or part of the Shares or other property, or make payment of all or part of the amount, as the case may be, to any other person as the Trustee, in its sole discretion, sees fit to be held for the benefit of the Participant or person otherwise entitled. The Trustee will not be liable for or responsible for seeing to the subsequent application of the Shares or other property so transferred or amounts so paid, and the receipt of the recipient, transferee or payee will be a good discharge.

7 Trustee's obligations and powers in respect of Unallocated Shares

- 7.1 Before the allocation to a Participant of Shares held by the Trustee in accordance with this Deed, the Trustee in respect of such Unallocated Shares:
- (a) must not exercise any voting rights in respect of any Unallocated Shares;
 - (b) may apply any capital receipts, dividends or other distributions received in respect of any Unallocated Shares to purchase further Shares to be held on trust for the purposes of the Plan or to meet the operating costs of operating and administering the Plan;
 - (c) must not participate in any rights issue in respect of any Unallocated Shares;
 - (d) must hold any Bonus Shares issued in respect of the Unallocated Shares on trust for the purposes of the Plan; and
 - (e) must keep an account of all Unallocated Shares acquired by the Trustee that are held as Trust Property.

8 Board may direct Trustee to hold Shares post-allocation

- 8.1 The Board may direct the Trustee to allocate Unallocated Shares to a Participant from time to time. Following the allocation to a Participant of Shares held by the Trustee in accordance with this Deed, the Board may direct the Trustee to continue to hold those Shares on the Participant's behalf and on the terms of this Deed.
- 8.2 In addition to being bound by the terms of the Plan, each Participant by virtue of their participation in the Plan is deemed to have agreed to be bound by this Deed.
- 8.3 Clauses 9 to 13 and clause 21 of this Deed shall only apply in respect of Allocated Shares held by the Trustee on a Participant's behalf following a direction by the Board under clause 8.1.

9 Rights Attached to Allocated Shares

Voting rights

- 9.1 Each Participant may direct the Trustee by notice in writing as to how to exercise the voting rights attaching to Allocated Shares standing to the credit of the account of that Participant either generally or in respect of a particular resolution. In the absence of such a direction those voting rights shall not be exercised by the Trustee.

Dividends

- 9.2 A Participant shall have an absolutely vested and indefeasible entitlement to dividends declared and paid by the Company on the Allocated Shares which, at the books closing date for determining entitlement to those dividends, are standing to the account of the Participant.

Sale of shares

- 9.3 Allocated Shares acquired under the Plan may only be sold in accordance with clause 11 and the Plan and shall be subject to any applicable Holding Lock, Performance Conditions and / or Vesting Conditions(each, as defined in the Plan).

Certificates

- 9.4 For so long as the Trustee is the registered owner of the Shares and the Company does not operate an uncertificated system of shareholding, the Trustee shall retain custody of the certificates of title in respect of the Shares.

Capital gains

- 9.5 Where the Trustee sells Allocated Shares and the Participant is entitled to the balance, if any, of the sale proceeds of those Allocated Shares pursuant to clause 11, that Participant shall have an absolutely vested and indefeasible entitlement to any capital gain (within the meaning of the Income Tax Assessment Act) arising in respect of the sale of those Allocated Shares. Where a payment of that balance is made to a Participant under this Deed, the payment shall first be in distribution of that capital gain and the remainder, if any, in distribution of the capital entitlement of the Participant. The capital entitlement, being the interest of the Participant in the capital of the trust fund, shall be equal to the sale proceeds (less transaction costs) less the capital gain.

10 Records and Accounts

Account

- 10.1 The Trustee will cause an account to be opened and maintained in respect of each Participant in which the following are to be recorded:
- (a) Allocated Shares acquired on behalf of the Participant under the Plan;
 - (b) Allocated Shares transferred from the account to the Participant pursuant to the Plan and this Deed;
 - (c) any dividends, Bonus Shares, interest or other earnings or other amounts credited to this account pursuant to clauses 9.2 or clause 13;
 - (d) any proceeds from the sale or disposal of Allocated Shares in accordance with this Deed; and
 - (e) any other credit or debit made to this account for the purposes of this Deed.

Notify Participant

- 10.2 At least once each year, at such time as the Trustee considers appropriate, the Trustee will notify each Participant of the number of Allocated Shares standing to the credit of the account of the Participant and such other information as the Trustee considers appropriate. The Trustee will ensure that each account is available for inspection by the relevant Participant at the office of the Trustee or the Company during normal business hours or such other time as is agreed with the Participant.

11 Sale by Trustee

Sale of Share by Trustee

- 11.1 If the Plan permits, the Trustee as the holder of Allocated Shares acquired in connection with the Plan may, at the direction of the Participant, sell any of the Allocated Shares to which the Participant is entitled. On sale of any Allocated Shares, the Trustee shall apply the proceeds of sale:
- (a) first, in payment of any brokerage and other costs and expenses of the sale incurred by the Trustee (including an amount sufficient to meet the tax liability (if any) resulting from that sale); and
 - (b) second, the balance (if any) in payment to the relevant Participant.

Unclaimed Moneys

- 11.2 If the Trustee cannot locate the Participant at the last residential address of the Participant known to it to pay any balance of proceeds of sale of Allocated Shares in accordance with this clause 11, then the Trustee shall distribute the proceeds as directed by the Board, in discharge of its obligations under this clause 11. Any direction of the Board under this clause 11 must comply with the requirements of the *Unclaimed Money Act 1995* (NSW).

12 Rights Issues

- 12.1 If the Company announces a rights issue:
- (a) the Trustee must notify each Participant in writing of any rights to acquire Shares or other securities to be issued by the Company which accrue to Allocated Shares held by the Trustee on behalf of that Participant;
 - (b) within the time prescribed in the notice referred to in clause 12.1(a), the Participant may provide the Trustee with either:
 - (i) written instructions in the form (if any) prescribed by the Board to sell some or all of its rights to the extent permitted by law; or
 - (ii) written instructions in the form (if any) prescribed by the Board to acquire, to the extent permitted by law, some or all of the Shares or securities in the Company to which the rights relate and payment of an amount equal to the cost of accepting the rights entitlement plus, if the Trustee so requires, such additional amount as the Trustee estimates (and notifies to the Participant) to be the cost of transferring the Shares or securities to the Participant.
 - (c) if the Participant does not give a notice under clause 12.1(b) the Trustee shall be entitled to sell the rights;
 - (d) if the Trustee sells the rights in accordance with clause 12.1(b) or 12.1(c), the Trustee must distribute the proceeds of the sale (after deduction of the costs of sale incurred by the Trustee) to the Participant; and
 - (e) Shares or securities acquired pursuant to this clause 12 for the benefit of a Participant shall be subject to the same restrictions for the purposes of this Deed as the Allocated Shares which gives rise to the rights.

13 Bonus Shares

- 13.1 Any Bonus Shares which are received by the Trustee in respect of Allocated Shares that, at the closing date for determining entitlements to those Bonus Shares stand to the account of any Participant, shall be credited to that Participant, and are to be deemed for the purposes of this Deed to have been credited to that Participant at the same time as the Allocated Shares in respect of which the Bonus Shares were issued were subscribed for or acquired by the Trustee. Participants will not be entitled to fractions of Bonus Shares.
- 13.2 Bonus Shares shall be deemed to be subject to the same restrictions for the purposes of this Deed as the Shares in respect of which the Bonus Shares were issued.
- 13.3 The Trustee will not sell the Bonus Shares or transfer them to the Participant unless the Trustee sells or transfers the Shares which gave rise to the Bonus Shares in accordance with this Deed and the Plan.

14 Remuneration of Trustee

- 14.1 The Trustee is not entitled to receive under the Plan any commission or other remuneration in respect of its office. Other than as expressly set out in clauses 7.1(b), 9.5, 11.1(a), 12.1(d) and

20, the Trustee shall not levy any fees or charges for operating and administrating the Trust, either payable directly by the Participant or out of the Trust Property.

- 14.2 The Board may pay to the Trustee any remuneration it thinks fit from the Company's own resources.

15 Liability and Protection of Trustee

Exclusion of liability

- 15.1 The Trustee is not liable or answerable or accountable:
- (a) for any loss or damage that may be suffered or incurred as a result of its acting as Trustee of this settlement if that loss or damage is not attributable to the dishonesty of the Trustee or the wilful commission by the Trustee of an act known by it to be a breach of trust; or
 - (b) for any failure because of neglect or other reason, to consider whether it should, or the manner in which it should exercise any power, authority or discretion given to the Trustee by this Deed, or by the proper law of this Deed from time to time in force.

Protection of Trustee

- 15.2 Without derogating from the right of indemnity given by law to trustees, the Company covenants with the Trustee that it will indemnify the Trustee in respect of all liabilities, costs and expenses incurred by the Trustee in the execution or purported execution of the trust constituted under this Deed or any of the powers, authorities or discretions vested in the Trustee under this Deed and from and against all actions, proceedings, costs, claims and demands in respect of any matter or thing done or omitted in any way relating to this Deed or the Plan, other than a claim arising out of a wilful default or a wilful breach of trust by the Trustee.
- 15.3 The Trustee shall not be under any liability whatever except for dishonesty, fraud or wilful default or except for a default or breach of trust wilfully committed by it or by any of its employees or agents.

16 Corporate Trustee

- 16.1 Every Trustee which is a corporation may exercise or agree in exercising any discretion or power given to the Trustee by this Deed by:
- (a) a resolution of that corporation or by a resolution of its Directors or Director; or
 - (b) delegating the right and power to exercise or agree in exercising any discretion or power to one or more Directors appointed from time to time for that purpose;

and the Trustee's discretion is deemed exercised when a resolution of the Trustee exercising its discretion or a memorandum of delegation of the exercise by him of a discretion or power on behalf of the Directors or Director has been recorded in the Trustee's Minute Book.

17 Audit of accounts

- 17.1 All accounts and records maintained by the Trustee in connection with the operation of the Plan must be audited annually by the Trustee's auditors.

18 Severance of invalid provisions

- 18.1 If any provision of this Deed is void or invalid for any reason then that provision is severed from this Deed and does not affect the validity or operation of any other provision of this Deed.

19 Variation of Deed

- 19.1 The Trustee and the Company may by deed amend, vary or add to this Deed provided that no such amendment, variation or addition would be likely prejudicially to affect the rights of Participants that are already vested under this Deed and provided that the amendment, variation or addition is approved in accordance with such manner as may be permitted from time to time by the Listing Rules of ASX.

20 Costs and expenses

- 20.1 The Trustee may pay any fees, costs and expenses incurred in the establishment, maintenance or administration of the Trust declared in this Deed out of the Trust Property.
- 20.2 Without limiting clause 20.1, if the Trustee incurs any liability for taxation in relation to any Shares held by the Trustee, or any costs in respect of the Trust, the Trustee shall be entitled to pay such liability and fees out of the Trust Property.

21 Takeover Offer

- 21.1 If a takeover offer is made to acquire the whole or any part of the issued Shares of the Company, a Participant may direct the Trustee to accept the takeover offer in respect of that Participant's Allocated Shares by giving written notice to the Trustee specifying the number of Allocated Shares for the takeover offer is to be accepted. By giving such notice, the Participant irrevocably directs the Trustee to:
- (a) accept the takeover offer in respect of the specified Allocated Shares;
 - (b) receive any cash consideration payable in respect of those Allocated Shares; and
 - (c) receive any non-cash consideration provided in respect of those Allocated Shares and take all necessary steps to convert such non-cash consideration into cash.

22 Stamp duty

- 22.1 The Company will pay all stamp duty on this Deed.

23 Governing Law

- 23.1 This Deed is governed by the laws of New South Wales. Each party submits to the non-exclusive jurisdiction of courts exercising jurisdiction in New South Wales in connection with matters concerning this Deed.

Execution

Executed as a deed.

Signed sealed and delivered

by **Regional Express Holdings Limited**

by a director and secretary/director:

Signature of secretary/director

Signature of director

Name of secretary/director (please print)

Name of director (please print)

Signed sealed and delivered

by **Rex Investment Holdings Pty Limited**

by a director and secretary/director:

Signature of secretary/director

Signature of director

Name of secretary/director (please print)

Name of director (please print)

Annexure
The Plan