

# Schedule 11 – Trust Deed: Wajarri Yamatji Charitable Fund

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See Following

# Trust Deed

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for the Wajarri Yamatji Charitable Fund

**STATE OF WESTERN AUSTRALIA (Settlor)**

**[ insert name of WY TRUSTEE COMPANY] (First Trustee)**

# Trust Deed

## for the Wajarri Yamatji Charitable Fund

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# Details

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## Date

## Parties

Name                                    The **State of Western Australia** represented by the Office of Native Title, Department of the Attorney General of 2<sup>nd</sup> Floor, 197 St Georges Terrace, Perth WA, 6000

Short form name                    **Settlor**

Notice details                        Address: c/- Office of Native Title, Department of the Attorney General, 2<sup>nd</sup> Floor, 197 St Georges Terrace, Perth WA, 6000

Fax No: (08) 9222 9877

Name                                    *[insert name of WY Trustee Company]*

Short form name                    **First Trustee**

Notice details                        Address: *[insert details]*

Fax No: *[insert details]*

## Recitals

- A        In accordance with the terms of the Murchison Radio-astronomy Observatory Indigenous Land Use Agreement (**MRO ILUA**) made on *[insert date]* between the Settlor, the Minister for Lands, the Commonwealth Scientific and Industrial Research Organisation, the Commonwealth of Australia represented by the Department of Innovation, Industry, Science and Research, Yamatji Marlpa Aboriginal Corporation and the registered native title claimant of the WY Claim, the Settlor wishes to establish a fund for certain charitable purposes.
- B        The Settlor has paid the Settled Sum to the First Trustee, to be held by the Trustee on trust subject to the terms of this Deed.

# Operative Part

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## 1. Defined terms and interpretation

### 1.1 Defined terms

In this Deed, unless the context otherwise requires:

**Annual Plan** means a plan for the activities of the Trust during a Year of Income prepared in accordance with clause 11.5

**Annual Report** means the annual report of the Trust prepared in accordance with clause 11.6.

**Appointor** means the State of Western Australia or such other person or persons for the time being having the power to remove or appoint the Trustee under clause 10.

**Approved Auditor** means a person who is:

- (a) registered as a company auditor under the *Corporations Act 2001* (Cth) or an appropriately qualified member of the Institute of Chartered Accountants in Australia or of CPA Australia;
- (b) not a principal, member, shareholder, officer, agent, subcontractor, employee or related entity of the Trustee or of a related body corporate within the meaning of that term in the *Corporations Act 2001* (Cth); and
- (c) not the Trustee's or the Trust's Qualified Accountant.

**Approved Body Corporate** means [*insert name of Approved Body Corporate*] (ABN [*insert ABN*]) of [*insert address*], an Aboriginal and Torres Strait Islander corporation established in accordance with clause 8 of the MRO ILUA.

**Australian Accounting Standards** refers to the standards of that name maintained by the Australian Accounting Standards Board created by section 226 of the *Australian Securities and Investments Commission Act 2001* (Cth).

**Australian Auditing Standards** refers to the standards made by the Auditing and Assurance Standards Board created by section 227A of the *Australian Securities and Investments Commission Act 2001* (Cth).

**Business Day** means a day that is not a Saturday, Sunday, bank holiday or public holiday in Western Australia, Australia.

**Business Hours** means from 9.00 am to 5.00pm on a Business Day.

**Commissioner of Taxation** means a Commissioner of Taxation, Second Commissioner of Taxation or Deputy Commissioner of Taxation as provided for in sections 4 and 7 of the *Taxation Administration Act 1953* (Cth).

**Deed** means this deed as from time to time amended and in force.

**Determine** means determine in writing or at a meeting of which minutes are kept.

**Dispute** means a dispute in relation to the administration and operation of the Trust.

**Distributable Income** means the amount determined by the Trustee to be the Distributable Income of the Trust in relation to a Year of Income and may be at the discretion of the Trustee:

- (a) equal to the income of the Trust as determined by the application of recognised accounting principles;

- (b) equal to the net income of the trust estate for the purposes of section 95 of the Income Tax Assessment Act; or
- (c) an amount falling between the amounts calculated in accordance with (a) and (b) of this definition,

and if the Trustee fails to exercise its discretion shall be the lesser of the amounts calculated in accordance with (a) and (b) of this definition.

**Distribution Policy** has the meaning given in clause 3.5(a).

**Income** includes income of all kinds which may be or become subject to this Trust and which is or is liable to be assessed as income under the Income Tax Assessment Act, notwithstanding that

**Trustee** means the trustee or trustees for the time being of the Trust, whether the First Trustee or any additional or substituted trustee or trustees.

**Trustee Act** means the *Trustee Act 1962* (WA).

**Trustee Budget** has the meaning given in clause 7.3(a).

**Trust Fund** means:

- (d) the Settled Sum;
- (e) any money, investments or other property having the nature of either capital or Income paid, transferred, acquired or accepted by the Trustee as an addition to the Settled Sum;
- (f) any accumulations of Income;
- (g) all accretions to the Trust Fund; and
- (h) the money, investments and property from time to time being representing the above or into which they are converted,

and includes any part of the Trust Fund.

**Trust Purposes** are described in clause 2.3.

**Vesting Day** means the earlier of:

- (a) the day which the Trustee determines by deed to be the Vesting Day; or
- (b) the day preceding the day on which the Trust ceases to be operated for charitable purposes.

**WY Claim** means the native title determination application with NNT file number WC04/10, Federal Court file number WAD 6033/98, and known as the Wajarri Yamatji native title claim.

**WY Claimants** means the applicant and registered native title claimant for the WY Claim. Where there has been a determination of native title made in respect of any part of the WY Claim that includes some or all of the MRO and if a registered native title body corporate (as defined in section 253 of the NTA) is determined to hold the rights and interests from time to time comprising the native title in trust for the WY Claim Group, then **WY Claimants** means that registered native title body corporate.

**WY Claim Group** means all the persons who, according to their traditional laws and customs, hold the common or group rights and interests comprising the native title claimed under the WY Claim and as described in the WY Claim.

**Year of Income** means (until otherwise decided by the Trustee pursuant to item 7.1 of Schedule 1) each period of 12 months ending on 30 June in each year but the period from the date on which this Deed is made until 30 June next occurring shall be deemed to be a Year of Income and the period commencing on 1 July next preceding the Vesting Day until the Vesting Day shall be deemed to be a Year of Income.

## 1.2 Interpretation

In this Deed, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, item or Schedule is to a clause or item of, or Schedule to, this Deed, and a reference to this Deed includes the Schedules;

- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (f) a reference to time is to Western Australia time;
- (g) a reference to a party is to a party to this Deed, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

- (iii) declares that it holds the Settled Sum and will hold the Trust Fund on trust subject to the terms and conditions of this Deed.

### **2.3 Purpose of trust**

The Trust is established solely for, and shall be maintained solely to advance the condition and welfare of Australian Indigenous people with connection to the Murchison, Gasgoyne and Mid-West region of Western Australia by providing assistance to varying degrees for the following purposes:

- (a) healthcare and medical assistance;
- (b) loans;
- (c) provision and development of community and social infrastructure;
- (d) business development;
- (e) development and support of traditional culture, law and art;
- (f) housing assistance;
- (g) education and training, including vocational training and economic and enterprise training
- (h) care for children, the aged or disabled; and
- (i) relief, amelioration, or prevention of poverty or disadvantage.

## **3. Distribution of Trust Fund**

### **3.1 General distribution power**

In each Year of Income the Trustee may pay or apply, if and so far as the Trustee thinks fit, the whole or any part of the Trust Fund, for the Trust Purposes, in such amounts and on such conditions as the Trustee may determine and otherwise in accordance with the terms of this Deed.

### **3.2 Accumulation**

- (a) The Trustee may in each Year of Income:
  - (i) determine that the Distributable Income (or any part of it) arising during that Year of Income will be applied in making good any loss or outgoing incurred in any previous Year of Income; and
  - (ii) pay or apply at any time during the Year of Income the Distributable Income (or any part of it), for the Trust Purposes, in such amounts and on such conditions as the Trustee may determine and otherwise in accordance with the terms of this Deed.
- (b) Subject to clause 3.2(c), the Trustee must accumulate so much of the Distributable Income as the Trustee has not dealt with pursuant to clause 3.2(a) and that accumulation must be dealt with as an accretion to the capital of the Trust Fund and the Trustee may pay or apply the amount accumulated in accordance with the Distribution Policy in subsequent Years of Income.
- (c)

### 3.3 No distribution to Trustee

The Trust is to be carried out without purpose of profit or private gain for the Trustee, directors or members of the Trustee. No part of the Trust Fund or the Income may be paid, transferred or distributed, directly or indirectly, to the Trustee or any of its directors or members, PROVIDED THAT nothing in this clause shall prevent the payment by the Trustee in good faith of:

- (a) remuneration for goods supplied, or services rendered, to the Trust in the ordinary course of business;
- (b) the remuneration of the Trustee, or any of its directors or members, under clause 7; or
- (c) the Trust Fund in accordance with clause 3.1.

### 3.4 No Distribution to Settlor

Despite any other provision of this Deed:

- (a) the Trust Fund must be held and enjoyed to the entire exclusion of the Settlor and of any benefit to the Settlor;
- (b) no part of the Trust Fund may be paid, transferred or distributed, directly or indirectly to or for the benefit of the Settlor; and
- (c) no power conferred upon the Trustee hereby or by law or otherwise is capable of being exercised in any manner directly or indirectly for the benefit of the Settlor.

### 3.5 Distribution Policy

- (a) In consultation with the Approved Body Corporate, the Trustee must make a distribution policy (**Distribution Policy**) that specifically applies to the Trust and the Trust Funds.
- (b) The first Distribution Policy must, following consultation with the Approved Body Corporate, be set out in a form substantially similar to that set out in Schedule 2.
- (c) Subject to clause 3.5(d), the Distribution Policy may at any time be amended by the Trustee, provided the amended Distribution Policy is consistent with the terms and conditions of this Deed and the objects of the Trust.
- (d) The Trustee must consult with the Approved Body Corporate before amending the Distribution Policy.
- (e)

## 4. Trustee's powers and discretions

### 4.1 Powers of Trustee

- (a) In addition to the powers, duties, authorities and discretions vested in the Trustee by law, the Trustee has the powers, duties, authorities and discretions set out in the Schedules.
- (b) For the avoidance of doubt, the powers, duties, authorities and discretions vested in the Trustee under this Deed are to be treated as supplementary or additional to the powers, duties, authorities and discretions vested in the Trustee by law.
- (c) The Trustee has the power to do all other things as may be incidental to the exercise of the powers, duties, authorities and discretions conferred on the Trustee by this Deed.

### 4.2 Trustees Act powers

- (a) Subject to any provision to the contrary in this Deed, the provisions of the Trustees Act apply to the Trust.
- (b) The powers, duties, authorities and discretions in this Deed are in addition to, and do not derogate from, the powers, duties, authorities and discretions contained in the Trustees Act. In the case of any inconsistency between the powers, duties, authorities and discretions contained in the Trustees Act and those contained in this Deed, the powers, duties, authorities and discretions contained in this Deed prevail to the extent of that inconsistency.

### 4.3 Trustee's discretion

Subject to any express provision to the contrary in this Deed every power, duty, authority and discretion vested in the Trustee is absolute and uncontrolled, exercisable anywhere in the world at any time and may remain unexercised at the absolute and uncontrolled discretion of the Trustee. For the avoidance of doubt the Trustee is not bound to implement any opinions, advice, or recommendations expressed by, or any resolutions of any meeting of, the Approved Body Corporate, WY Claimants or the WY Claim Group.

### 4.4 Trustee corporation

The Trustee, where a corporation, may exercise any power, duty, authority or discretion conferred on the Trustee by this Deed:

- (a) by a resolution of its board of directors or governing body; or
- (b) by delegating the power to exercise the discretion or power to one or more of its directors or members of its governing body appointed unanimously by the board of directors or governing body for that purpose.

## 5. Consultation with WY Claim Group

- (a) The Trustee must consult with the WY Claim Group at least once in each Year



- (b) The maximum remuneration chargeable by the Trustee, or any director or member of the Trustee, in respect of any Year of Income must not exceed an amount equal to the maximum remuneration chargeable by the Public Trustee of Western Australia (or any person succeeding to or substantially taking over those functions) as if the Public Trustee of Western Australia were to carry out or perform duties similar to those performed by the Trustee.
- (c) If the Trustee, or any director or member of the Trustee, is a solicitor, accountant or other professional person and is employed to transact any business or act in relation to the Trust, they shall be entitled to be paid all proper fees, costs, charges and expenses for that business or act that they would be entitled to receive if they were not the Trustee, or a director or member of the Trustee.
- (d) For the avoidance of doubt, the Trustee, or any director or member of the Trustee, is not entitled to remuneration both under clause 7.1(a) and to professional fees under clause 7.1(c) in respect of the same act or business.

## 7.2 Payment of remuneration

- (a) Subject to clause 7.2(b), any entitlement of the Trustee, or any director or member of the Trustee, to remuneration under clause 7.1(a) or to professional fees under clause 7.1(c) may be charged and paid out of the Trust Fund.
- (b) Until [*insert date of last payment to Approved Body Corporate*] any entitlement of any First Trustee, or any director or member of the First Trustee, to remuneration under clause 7.1(a) or to professional fees under clause 7.1(c) must be paid out of the payments made to the First Trustee by the Approved Body Corporate pursuant to clause 5 of the Ratification Deed. Only to the extent that these payments are insufficient to meet the remuneration of the First Trustee, or any director or member of the First Trustee, may any remuneration be charged and be paid out of the Trust Fund.

## 7.3 Trustee Budget

- (a) The Trustee must establish internal controls of expenditure and must compile a budget of expenses of the Trust for each quarter of each Year of Income (**Trustee Budget**).
- (b) The Trustee Budget must include the remuneration of the Trustee and any director or member of the Trustee.
- (c) The Trustee must monitor the expenditure of the Trust Fund in each quarter to ensure that the Trust expenses do not exceed the Trustee Budget.
- (d)

- (b) The decision of the Appointor to appoint a new Trustee under clause 8.1(a)(i) or 8.1(a)(ii) or to appoint one or more additional Trustees under clause 8.1(a)(iii) must be approved in writing by the Non-Native Title Parties of the MRO ILUA prior to any such appointment.
- (c) The Appointor must not appoint as a new Trustee:
  - (i) the Settlor;
  - (ii) the Appointor; or
  - (iii) a person who settles money or other property on the Trust to be held as an accretion to the Trust Fund.
- (d) The Appointor may appoint a corporation to be a new or additional Trustee.
- (e) The power of the Appointor to appoint a new or additional Trustee under clause 8.1(a) may be exercised by memorandum under hand or by deed, and where the new or additional Trustee is a corporation must be approved by resolution of its directors.

## **8.2 Retirement of the Trustee and appointment of a new Trustee**

- (a) The Trustee may retire as trustee of the Trust by giving not less than one month's prior notice to the Appointor.
- (b) Prior to the expiration of the notice period specified under clause 8.2(a), the Appointor and the Trustee must mutually agree on a new Trustee to be appointed as Trustee of the Trust.
- (c) The place of a Trustee who retires may be filled by a sole appointment or the appointment of more than one new Trustee.
- (d) If the Appointor and the Trustee cannot mutually agree on a new Trustee under clause 8.2(b) within one month of the Trustee notifying the Appointor of its intention to retire, a new Trustee will be appointed by the Appointor.
- (e) The retiring Trustee shall continue as Trustee under this Deed until appointment of a replacement, from which time the Trust Fund vests in the person without the necessity for any vesting, declaration, transfer, conveyance or other assurance.
- (f) The retiring Trustee shall on retirement:
  - (i) do all things necessary to transfer the legal title in the assets of the Trust Fund to the new Trustee;
  - (ii) deliver to the new Trustee all books, documents, records, evidence of title and any

## 9. Vacation of office

The office of Trustee will be determined and vacated if the Trustee:

- (a) being an individual, is of unsound mind or becomes bankrupt or makes an arrangement or composition with its creditors; or
- (b) being a corporation, enters into liquidation, whether compulsory or voluntarily (not being a voluntary liquidation for the purposes of amalgamation or reconstruction) or has a receiver, receiver and manager or administrator appointed or makes or enters into any

- (b) The Trustee must ensure that the Qualified Accountant is able to certify that the financial statements are a true and proper statement of the affairs of the Trust and the Trust Fund and set out all:
- (i) Income;
  - (ii) capital;
  - (iii) costs, expenses and other outgoings paid or payable out of the Trust Fund and chargeable against Income;
  - (iv) capital expenditure and liabilities chargeable against capital;
  - (v) investments, money and other property comprised in the Trust Fund;
  - (vi) amounts paid out of the Trust Fund for the purposes referred to in clause 2.3; and
  - (vii) the extent to which the Trustee may requi

- (iv) any other information that the Trustee considers relevant.
- (c) At least three (3) months before the end of the Year of Income, the Trustee, for the purpose of reviewing the current Annual Plan and formulating the new Annual Plan:
  - (i) may consult with the Approved Body Corporate;
  - (ii) will consider previous Annual Reports; and
  - (iii) will consider the administration, overheads and operating expenses of the Trust and the Trust Fund
- (d) The Trustee may amend the Annual Plan during the Year of Income to which it relates provided that the Trustee follows a similar procedure to that outlined in clause 11.5(c)
- (e) The Trustee will endeavour to finalise the Annual Plan for each Year of Income prior to the start of the Year of Income to which it relates.
- (f) The Annual Plan, once finalised must be published by the Trustee and made available for viewing by any member of the WY Claim Group on request. Subject to clause 11.8(c), the Trustee must also provide a copy to the Approved Body Corporate, the Settlor, and the Liaison Committee.

### 11.6 Preparation of Annual Reports

- (a) Within three (3) months after the end of a Year of Income, the Trustee must conduct a review of the Trust's activities for that Year of Income and prepare a report (**Annual Report**), which includes:
  - (i) a review of the Annual Plan for that Year of Income, including whether the Annual Plan was carried out in accordance with its terms and this Deed;
  - (ii) a summary of the Trust's activities for that Year of Income;
  - (iii) the financial position of the Trust Fund;
  - (iv) details of the distributions made by the Trustee for that Year of Income from the Trust Fund and the projects to which the distributions were made;
  - (v) how the Trust Purposes were advanced; and
  - (vi) an evaluation of the performance of the Trust according to the aims set out in the Annual Plan and the outcomes actually achieved.
- (b) The Annual Report, once finalised must be published by the Trustee and made available for viewing by any member of the WY Claim Group on request. Subject to clause 11.8(c), the Trustee must also provide a copy to the Approved Body Corporate, the Settlor, and the Liaison Committee.

### 11.7 Deposit of documents and records

The Trustee may deposit any of the records, deeds, securities and other documents relating to this Deed, the Trust Fund or the Trust with any solicitor or bank.

### 11.8 Disclosure of documents and records

- (a) Subject to clause 11.8(b), the Trustee is not bound to disclose any document disclosing, or relating to, the deliberations of the Trustee as to the exercise, or non exercise, of any power, duty, authority or discretion vested in the Trustee or the reasons therefore.
- (b) Where this Deed, the MRO ILUA or the Ratification Deed provides that the Trustee must disclose any document relating to the Trust, the Trust Fund or the decisions of the Trustee

to any person or entity, the Trustee must provide the relevant document to the relevant person or entity in accordance with the provisions of this Deed, the MRO ILUA or the Ratification Deed (as the case may be).

- (c) The obligation of the Trustee to provide any documents to the Settlor or the Liaison Committee pursuant to clauses 11.3(d), 11.4(d), 11.5(f) or 11.6(b), is for a period of six (6) years from the date of the Ratification Deed only.

## **12. Dispute Resolution**

### **12.1 Trust operations to continue**

Despite the existence of a Dispute, the Trust must continue to operate and any person with powers, duties, authorities or discretions under this Deed must, to the extent practicable, continue to fulfil their obligations.

### **12.2 Notification**

A person claiming a Dispute has arisen must give the other parties to the Dispute notice setting out details of the Dispute.

### **12.3 Parties to resolve Dispute informally**

If notice of a Dispute is given under clause 12.2, each party to the Dispute must use its reasonable efforts to resolve the Dispute on an informal basis and in good faith, having regard to the spirit and intent of the Trust and this Deed.

### **12.4 Formal Dispute resolution**

If the Dispute is not resolved in accordance with clause 12.3 within ten (10) Business Days after

- (g) The reasonable costs of the Trustee and the mediator's fees will be paid out of the Trust Fund.
- (h) The parties to the Dispute will engage in the mediation process in good faith and with the aim of reaching a resolution of the Dispute.
- (i) If the parties to the Dispute fail to achieve a resolution of the Dispute by mediation within twenty (20) Business Days of the appointment of a mediator under this clause 12.5, or such further time as is agreed by the parties within the twenty (20) Business Days, the Trustee may take such action as it considers appropriate, including (subject to clause 12.6) referring the matter to arbitration or commencing legal proceedings.

## 12.6 Arbitration

- (a) If the Trustee considers it appropriate and the other parties to the Dispute agree, the Trustee may refer the Dispute to arbitration under the *Commercial Arbitration Act 1984* (WA).
- (b) The arbitration will be held in Perth, Western Australia or any other place agreed by the parties.
- (c) The parties will appoint a person agreed between them to be the arbitrator of the Dispute.
- (d) If the parties fail to agree on a person to be the arbitrator under clause 12.6(c) then the parties must request the President of the Law Society of Western Australia to appoint an arbitrator who has experience in the area of the Dispute and in Indigenous cultural matters.
- (e) Subject to clause 12.6(f) each party to a Dispute must pay its own costs of complying with this clause 12.6.
- (f) The reasonable costs of the Trustee and the arbitrator's fees will be paid out of the Trust Fund.

## 12.7 Legal Proceedings

The Trustee is entitled to commence or maintain legal proceedings relating to any Dispute notwithstanding the processes outlined in this clause 12.

## 13. Variation of Deed

- (a) At any time the Trustee may, subject to the agreement in writing of the Commissioner of Taxation, the Approved Body Corporate, Appointor and the Non-Native Title Parties of the MRO ILUA, by deed:
  - (i) revoke, add to or vary the Trust;
  - (ii) declare any new or other trusts in relation to the Trust;
  - (iii) declare any new or other powers, duties, authorities or discretions concerning the



- (b) A Notice given in accordance with this clause 16 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
- (i) if hand delivered, on delivery;
  - (ii) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
  - (iii) if sent by facsimile when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight (8) Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00 pm on a Business Day in the place that it is received, the Notice is taken to be received at 9.00 am on the next Business Day.

# Schedule 1 - Powers of Trustee

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## 1. Investment of the Trust Fund

### 1.1 **Authorised investments**

- (a) Except as otherwise provided in this Deed a

- (b) Where the Trustee accepts any gifts, donations, settlements or other dispositions the Trustee holds them upon the trusts created in this Deed and may either retain them in their original form without selling or converting them into money, or invest, apply, or deal with them in any way that the Trustee may invest, apply or deal with the Trust Fund under this Deed.

## **2.5 Power of sale**

- (a) The Trustee may sell or otherwise dispose of the Trust Fund by public auction, tender, private treaty or otherwise, upon any terms and conditions as the Trustee thinks fit including, but not limited to, price, manner and terms of payment (including deferred payment with or without interest).
- (b) The Trustee may join with any other co-owner or partner in any sale or disposal referred to in item 2.1(a).
- (c) Where the Trustee sells any real estate for an estate in fee simple the Trustee may contract that the whole, or any part of, the purchase money will be secured by a mortgage of that real estate.

## **2.6 Power to lease**

The Trustee may let, sub-let, lease or sub-lease the whole (or any part) of any real or personal property comprised in the Trust Fund on any terms and conditions the Trustee thinks fit including as to period, rental and whether with or without a bond or other security or an option of renewal or purchase.

## **2.7 Power to take on a lease**

The Trustee may purchase, take on, lease, sub-lease, hire or otherwise acquire any share, estate or interest in any real or personal property (including any licence or permit) subject to any terms or conditions that the Trustee thinks fit including, but not limited to, price, premium, rental charge, payment, fee or other consideration.

## **2.8 Power to trade in shares debentures, unit trusts or other interests**

The Trustee may acquire, purchase, apply for, take up and accept and pay calls in respect of:

- (a) any share, debenture or debenture stock or other interest in any corporation and may acquire any corporation or may promote, or take part in promoting, any corporation and may execute any constitution and other documents to the corporation; or
- (b) any unit or other interest in a unit trust scheme undertaking or enterprise (whether or not listed on a stock exchange) in respect of which there is an approved deed.

## **2.9 Powers regarding corporations**

- (a) The Trustee may exercise all rights and privileges, perform all duties and do all things in relation to any share, stock or debenture comprised in the Trust Fund as the Trustee could do if the Trustee were the beneficial owner, or were personally interested or concerned in, the relevant corporation.
- (b) Without limitation item 2.9(a), the Trustee may:
  - (i) assent to any arrangement modifying the rights, privileges or duties referred to in item 2.9(a);
  - (ii) agree to any scheme or arrangement for the reconstruction of, or the increase or

- (iii) make any agreement in respect of, or in the course of, the winding up of the corporation,

and for that purpose, may deposit, surrender or exchange any share, stock or debenture (or the title thereto) and may pay any calls or contributions or other necessary expenses in connection with any such share, stock debenture or title.

## **2.10 Responsibility regarding corporations**

If the Trustee invests any part of the Trust Fund in the stock or shares of any corporation the Trustee is:

- (a) only responsible for so much of the stock or shares and the dividends and income from them as are actually transferred and paid to the Trustee;
- (b) under no obligation to investigate the accounts, management or control of that corporation and no neglect or omission in this respect is chargeable as a breach of trust; and
- (c) the Trustee is expressly excused from attending general meetings of the corporation and is authorised to appoint a proxy to represent the Trustee at any such general meeting.

## **2.11 Power to grant options**

The Trustee may grant options of all kinds in respect of the Trust Fund for any consideration and on any terms or conditions for any period (not expiring later than the Vesting Day) to any person.

## **2.12 Power to acquire insurance/assurance policies**

- (a) The Trustee may purchase or acquire any:
  - (i) reversionary or deferred property or rights of any description;
  - (ii) superannuation fund; or
  - (iii) policy of insurance or assurance,
 on any terms and conditions as the Trustee thinks fit, including as to premium, term, payment and whether with, or subject to, any options, rights, benefits, conditions or provisions.
- (b) The Trustee may pay out of the Trust Fund all sums payable from time to time for:
  - (i) any premium or payment necessary to effect or maintain any policy or interest referred to in item 2.12(a) (whether owned by the Trustee or otherwise); or
  - (ii) the exercise or enjoyment of any option, right or benefit under any policy or interest referred to in item 2.12(a).
- (c) Any surrender of a policy or interest referred to in item 2.12(a) shall, for all the purposes of this Deed, be deemed to be a sale of it.

## **2.13 Power to partition or subdivide property**

The Trustee may partition, agree to the partition of, subdivide, or agree to the subdivision of, any real or personal property comprised in the Trust Fund and may give or receive any consideration by way of equality of partition.

## **2.14 Power to repair property**

- (a) The Trustee may repair, maintain, upkeep, renovate or develop or make any improvements to any real or personal property comprised in the Trust Fund and without limitation the Trustee may construct, re-construct, alter, add to, renovate, improve, develop or demolish buildings, fences, dams and other structures of any kind.

- (b) In exercising the powers, duties, authorities and discretions referred to in item 2.14(a) the provisions of section 30(1)(c) of the Trustees Act do not apply and it is not necessary for the Trustee to apply for any consent to exceed any such limitation.

## **2.15 Power to provide for debts or liabilities**

### **3.2 Borrowing powers**

The Trustee may:

- (a) borrow or raise any sum of money for any period, with or without any security over the whole of the Trust Fund (or any part of it) or any other property, at any rate of interest and upon any terms or conditions as the Trustee thinks fit;
- (b) in respect of the borrowing or raising of money referred to in item 3.2(a), give and execute first or subsequent mortgages, charges, pledges or other securities or encumbrances over the whole of the Trust Fund (or any part of it) or any other property as the Trustee thinks fit; and
- (c) join with any person in executing any document for securing or evidencing the borrowing or raising of money referred to in item 3.2(a).

### **3.3 Lending powers**

- (a) The Trustee may advance or lend any sum of money, or provide any financial accommodation, facility or security of any kind, to any person (other than the Settlor), for any period, with or without any security, at any rate of interest and on any terms and conditions as the Trustee thinks fit.
- (b) The Trustee may join with any person in advancing or lending and money, or providing any financial accommodation, facility or security, referred to in item 3.3(a)
- (c) The Trustee is not obliged to obtain a valuation of any security given pursuant to item 3.3(a) and section 26 of the Trustees Act shall not apply.

### **3.4 Guarantee and Indemnity**

- (a)

## 4.2 Exercise of powers and discretions with others

The Trustee may exercise, or concur in exercising, any or all of the powers, duties, authorities and discretions vested in the Trustee jointly, as tenant in common, in partnership or otherwise in conjunction with any other person or persons (whether those persons act on their own behalf or as trustee of any other trust).

## 4.3 More than two Trustees

If at any time there are more than two Trustees, the powers, duties, discretions and authorities vested in the Trustee by this Deed may be exercised by a simple majority of them.

## 4.4 Delegation of powers

- (a) To the extent permitted by, and in accordance with the requirements of any applicable law, the Trustee may delegate in writing to any person, for any period, the exercise of any of the powers, duties, authorities or discretions vested in the Trustee.
- (b) The Trustee may execute any power of attorney or other instrument necessary for the delegation pursuant to item 4.3(a).

## 4.5 Custodian trustees or nominees

The Trustee may appoint any person to act as custodian of the Trust Fund or permit the Trust Fund (or any part of it) to be held or registered in the name of any nominee or agent of the Trustee.

## 4.6 Personal Interest of Trustee

- (a) Subject to items 4.6(b) to 4.6(d), notwithstanding any doctrine of law or equity the Trustee, and any director or member of the Trustee may, acting honestly for the purposes of the Trust, exercise or concur in exercising, all powers, duties, authorities and discretions given by this Deed, or by law, even though the Trustee or any director or member of the Trustee:
  - (i) has, or may have a direct or indirect interest or conflict of fiduciary duty in the method or result of exercising the power, duty, authority or discretion; or
  - (ii) may benefit either directly or indirectly from the exercise of any power, duty, authority or discretion,
 and even if the Trustee is a sole Trustee.
- (b) Where the Trustee, or any director or member of the Trustee has, or may have, a material personal interest in a contract or arrangement, or a proposed contract or arrangement, or in a matter being considered or about to be considered by the Trustee, the Trustee, or the director or member of the Trustee, must give notice of that material personal interest.
- (c) The notice required by item 4.6 (b) must:
  - (i) give details of:
    - (I) the nature and extent of the interest; and
    - (II) the relationship of the interest to the affairs of the Trust;
  - (ii) be given at a meeting of the Trustee (or the board of directors of the Trustee where the Trustee is a corporation) as soon as practicable after the Trustee, or director or member of the Trustee, becomes aware of the interest; and
  - (iii) be recorded in the minutes of that meeting.

- (d) The Trustee, or any director or member of the Trustee, who has disclosed an interest under item 4.6 (b) must not be present during any deliberation, or take any part in any decision, about that matter unless the Trustee (or the board of directors of the Trustee where the Trustee is a corporation) has passed a resolution that:
  - (i) identifies the Trustee, or director or member of the Trustee (as the case may be), the nature and extent of their interest in the matter, and its relationship to the affairs of the Trust; and
  - (ii) states that the Trustee (or those directors of the Trustee who do not have an interest in the matter where the Trustee is a corporation) are satisfied that the interest should not disqualify the Trustee, or director or member of the Trustee from being present during any deliberation, or taking any part in any decision, about that matter (as the case may be).

## **5. Determinations by the Trustee**

### **5.1 Determinations of the Trustee**

- (a) The Trustee may Determine, from time to time, generally all matters as to which any doubt, difficulty or question may arise:
  - (i) under, or in relation to the execution of the Trust and the powers, duties, authorities and discretions vested in the Trustee by this Deed or by law; or
  - (ii) in the course of management, administration, realisation, liquidation, partition or winding up of the Trust Fund.
- (b) Every determination of the Trustee in relation to any of the matters referred to in item 5.1(a), whether made upon a question formally or actually raised, or implied in any of the acts or proceedings of the Trustee in relation to the Trust Fund, may not be objected to, or questioned on any ground whatsoever, and is conclusive and binding on persons who in the future acquire any interest under this Deed.

### **5.2 Determination of Income and expenditure**

Without limiting the generality of item 5.1, the Trustee may Determine from time to time:

- (a)

- (d) that the whole, or any part of, any Income of a particular nature or character from one source be distinguished from, and allocated or otherwise dealt with differently from, any Income of the same nature or character from the same or any other source;
- (e) that the whole, or any part of, any expenditure, payment, loss or outgoing of a particular nature or character on any account be distinguished from, or allocated or dealt with differently from, any expenditure, payment, loss or outgoing of the same nature or character on the same or any other account;
- (f) that part of the Trust Fund against which any payment, expenditure, loss or outgoing incurred by or in relation to the Trust Fund is to be paid, set-off, allocated or otherwise dealt with; and
- (g) to set aside out of the Income or capital of the Trust Fund such money as the Trustee considers appropriate to meet any debt or obligation relating to the Trust.

## **6. Professional and other assistance**

### **6.1 Employment of trade persons**

Without limiting item 6.2, the Trustee may employ or contract, on such terms and conditions as the Trustee thinks fit, appropriate tradesmen, workmen and others for the purposes of the repair, maintenance, upkeep, protection, renovation or development of any real or personal property comprised in the Trust Fund.

### **6.2 Employment of persons**

The Trustee may employ or contract, on such terms and conditions as the Trustee thinks fit, any person, professional or other assistance as the Trustee thinks necessary for any purpose, transaction or business authorised by this Deed or to assist the Trustee in the discharge of the duties of the Trustee and the Trustee is not bound to act personally.

### **6.3 Advice from professionals or experts**

- (a) The Trustee may obtain, and act on, any opinion, advice or information provided by any financial adviser, lawyer, accountant, valuer, surveyor, broker, auctioneer or other expert or professional.
- (b) The Trustee is not responsible for any loss, depreciation or damage occasioned by acting or not acting in accordance with that opinion, advice or information.
- (c)

Thereafter “Year of Income” means each succeeding 12 month period commencing on the day following the nominated date until the anniversary of that nominated date immediately preceding the Vesting Day and then the period until the Vesting Day.

## **7.2 Receipts by others**

The receipt of the person purporting to be the treasurer, secretary or other proper officer of any recipient of a payment or application of Income or capital from the Trust Fund under this Deed is a sufficient discharge to the Trustee and the Trustee need not see to the application of the payment or application.



## 4.2 Assessment of Funding Applications

- (a) The Trustee must review every Funding Application submitted to the Trustee and determine:
  - (i) whether the Funding Application relates to an Eligible Project and will be conducted for a Trust Purpose;
  - (ii) whether there are any other public or private funding programs that are, or may be, providing assistance in a manner similar to that contemplated by the project;
  - (iii) the priority of the Funding Application in relation to any other pending Funding Applications; and
  - (iv) the success of the Funding Application (which determination must be conveyed to the applicant).
- (b) The Trustee may, but is not obliged to, receive recommendations from the Approved Body Corporate regarding the assessment of Funding Applications and Eligible Projects. For the avoidance of doubt, any recommendations received from the Approved Body Corporate are recommendations only and do not bind the Trustee in any way.
- (c) The Trustee is to be impartial in the assessment of Funding Applications and the distribution of Trust Funds in accordance with this Distribution Policy and is not to favour any particular persons or section of persons. However it is recognised that some persons may receive some distributions of Trust Funds before others because of the limited financial resources of the Trust Fund in any particular Year of Income. It is also recognised that different persons may enjoy benefits of different kinds

## 5. Financial Accountability

The Trustee may, where the Trustee considers it appropriate, require the recipient of any distribution of Trust Funds pursuant to this Distribution Policy to:

- (a) provide to the Trustee on or before the end of the Year of Income, or such other time as the Trustee determines, a certificate from a Qualified Accountant stating the amount of the distribution spent, or committed to be spent, for the purpose of the distribution;
- (b) keep proper records, books and accounts in relation to the use of the distribution, including so as to enable:
  - (i) all income and expenditure in relation to the distribution to be identified in the recipient's records, books and accounts;
  - (ii) the preparation of financial statements in accordance with Australian Accounting Standards; and
  - (iii) the audit of those records, books and accounts in accordance with Australian Auditing Standards;
- (c) provide all information, records and documents as may be reasonably requested by the Trustee from time to time; and
- (d) report to the Trustee within 12 months of the distribution, or such other time or times as the Trustee determines, detailing the outcome of the Eligible Project and comparing the outcome with the objectives and anticipated outcomes of the Eligible Project as stated in the Funding Application.

# Signing page

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**EXECUTED** as a deed.

**SIGNED** for and on behalf of **THE** )  
**STATE OF WESTERN AUSTRALIA** )  
by the [*insert name*], in the presence of: )  
)

\_\_\_\_\_  
[*insert name*]

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Date

\_\_\_\_\_  
Full name of Witness (print)

\_\_\_\_\_  
Address of Witness

\_\_\_\_\_  
Occupation of Witness

The **Common Seal** of [*insert name of* )  
*First Trustee*], was hereunto affixed with )  
the authority of its Board in the presence )  
of: )  
)

\_\_\_\_\_  
**DIRECTOR / COMPANY SECRETARY**  
(delete as applicable)

\_\_\_\_\_  
**DIRECTOR**

\_\_\_\_\_  
Full name (print)

\_\_\_\_\_  
Full name (print)

\_\_\_\_\_  
Date