

**Schedule 3 – Trust Deed**

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## Yamatji Nation Trust

[insert name]  
(Settlor)

and

[insert name]  
(Yamatji Trustee)

and

[insert name]  
(Licensed Trustee)

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## Table of contents

1.	Definitions and Interpretation .....	2
1.1	Definitions .....	2
1.2	Interpretation of Clauses .....	13
1.3	Status of Schedules .....	13
2.	Trust Purpose .....	14
2.1	Declaration of Trust.....	14
2.2	Trust Purpose.....	14
2.3	Trust Activities.....	14
2.4	Not for Profit.....	15
2.5	Registered Charity .....	15
2.6	No Fixed Interests .....	16
3.	Yamatji Nation .....	17
3.1	Recognition of the Yamatji Nation.....	17
3.2	Good Governance Practice.....	17
3.3	Communications with the Yamatji Nation.....	17
3.4	Consultations and Decision Making with Yamatji Entities.....	18
3.5	Yamatji Nation Capacity Development.....	19
4.	Joint Trustees .....	20
4.1	Initial Joint Trustees .....	20
4.2	Type of trustee .....	20
4.3	Trustees General Eligibility Requirements .....	20
4.4	Joint Trustees Decisions .....	21
4.5	Joint Trustees Delegations.....	22
4.6	Transition to a Sole Yamatji Trustee .....	22
4.7	Review of Joint Governance Principles and Governance Framework.....	23
4.8	Appointors .....	23
4.9	Appointment and Removal of Joint Trustees .....	24
4.10	Joint Trustees ceasing to meet requirements .....	25
5.	Trust Fund .....	27
5.1	Meaning of Trust Fund .....	27
5.2	Trust Sub Funds.....	27
5.3	Role of the State .....	28
6.	Administration Fund.....	29
6.1	General Purpose of the Fund.....	29
6.2	General Rules .....	29
6.3	General Principles.....	29
7.	Future Fund .....	31
7.1	General Purpose of the Future Fund .....	31
7.2	State Contribution .....	31
7.3	Target Capital Base .....	31

---

7.4	Accumulation during State Contribution Period .....	32
7.5	Distributions during the State Contribution Period .....	32
7.6	Distributions after the State Contribution Period .....	32
7.7	Restricted Access to Target Capital Base.....	32
7.8	Investment of Future Fund .....	32
7.9	Management Accounts for Future Fund.....	32
8.	Economic Development Fund.....	33
8.1	General Purpose of the Fund .....	33
8.2	General Rules .....	33
8.3	General Principles.....	33
9.	Land Fund.....	35
9.1	General Purpose of the Land Fund.....	35
9.2	General Rules .....	35
9.3	General Principles.....	36
9.4	Holding Cultural Land in the Land Fund.....	37
9.5	Process for undertaking Development Projects .....	38
10.	General Fund.....	40
10.1	General Purpose of the General Fund .....	40
10.2	General Rules .....	40
10.3	General Principles.....	40
11.	Allocation Budget.....	42
11.1	Allocation Budget .....	42
11.2	Allocation Principles .....	42
12.	Distribution .....	44
12.1	Distribution Principles.....	44
12.2	General Distribution Power .....	44
12.3	Default Accumulation .....	45
12.4	Sustainability of Distributions .....	45
12.5	Indirect Distribution Power .....	45
12.6	Funding Applications for Distributions.....	46
12.7	Payment Conditions .....	46
12.8	Sustainability Commitment.....	47
12.9	Distribution Accounts .....	48
12.10	Non-Forfeiture of Distribution Account .....	48
12.11	Funding Guidelines .....	48
12.12	Suspension of Payments .....	49
12.13	Non-Compliance Issues .....	49
12.14	Special Purpose Yamatji Entity Reporting .....	51
13.	Investment .....	53
13.1	Joint Trustees' Investment Powers .....	53
13.2	Trustees Act .....	53
13.3	Investment Principles .....	53

---

13.4	Investment Policy .....	54
13.5	Review of the Investment Policy .....	55
13.6	Making the Investment Policy Available .....	55
14.	Investment Committee .....	56
14.1	Functions.....	56
14.2	Composition .....	56
14.3	Qualifications.....	57
14.4	Selection Process .....	57
14.5	Investment Committee Decisions.....	58
14.6	Term of appointment.....	58
14.7	Removing Investment Committee members .....	58
15.	Trust Strategic Plan .....	59
15.1	Purpose of Trust Strategic Plan .....	59
15.2	Formulating Trust Strategic Plan.....	59
15.3	Modifying the Trust Strategic Plan .....	60
15.4	Implementation of the Trust Strategic Plan .....	60
15.5	Making Available the Trust Strategic Plan .....	60
16.	Joint Trustees Actions .....	61
16.1	Joint Trustees Discretions and Powers.....	61
16.2	Joint Trustees Decisions and Independence .....	61
16.3	Personal Interest of Joint Trustees .....	61
16.4	Joint Trustees Consultation.....	62
16.5	Liability and Indemnity.....	62
16.6	Limitations .....	62
16.7	Further Advisory Committees.....	62
17.	Joint Trustee's Remuneration .....	64
17.1	Remuneration Principles .....	64
17.2	Licensed Trustee Remuneration .....	64
17.3	Yamatji Trustee Remuneration .....	65
18.	Costs and Expenditure .....	66
18.1	Costs and Expenses .....	66
18.2	Yamatji Business Procurement .....	66
18.3	Joint Trustee's Expense Budget .....	66
19.	Records and Accounts.....	68
19.1	Books of Account and Receipts .....	68
19.2	Audit.....	68
19.3	Trust Fund to be kept distinct.....	68
19.4	Receipts by others .....	68
19.5	Classification of Trust Income .....	68
19.6	Net Income .....	69
20.	Joint Trustee's Annual Report.....	71
21.	Strategic Review of the Trust.....	73

22.	Modifying the Trust Deed.....	75
23.	Dispute resolution .....	76
24.	General Legal Provisions.....	77
24.1	Notices .....	77
24.2	Winding Up.....	77
24.3	Governing Law .....	78
	Schedule 1 – Funding Guidelines .....	80
S1.1	Allocation Budget .....	80
S1.2	Application Procedure .....	80
S1.3	Assessment of Applications .....	81
S1.4	Reporting Requirements .....	81
S1.5	Definitions .....	82
	Schedule 2 – Regional Entity Core Functions .....	84
S2.1	Definitions .....	84
S2.2	Core Functions Principles .....	84
S2.3	Determining the Core Functions .....	85
S2.4	Assessment of Core Functions .....	85
S2.5	Modification of Core Functions.....	86
S2.6	Core Functions Delivery Agreements .....	86
	Schedule 3 – Committee Meeting Rules.....	87
S3.1	Chair and Secretary .....	87
S3.2	Holding Committee Meetings .....	87
S3.3	Attendance at Committee Meetings .....	87
S3.4	Quorum and Voting .....	87
S3.5	Meeting Business.....	88
S3.6	Minutes.....	88
S3.7	Reporting to the Joint Trustees .....	88
S3.8	Use of Technology .....	88
	Schedule 4 – Custodian Trustee.....	89
S4.1	Appointment of Custodian Trustee.....	89
S4.2	Qualifications of Custodian Trustee .....	89
S4.3	Custodian Functions .....	89
S4.4	Advisory Functions.....	90
	Schedule 5 - Default Investment Policy .....	91
S5.1	Objectives .....	91
S5.2	Investing funds .....	91
S5.3	Investing land .....	91
	Schedule 6 – Dispute Resolution Procedure .....	93
S6.1	Dispute .....	93
S6.2	Trust Operations to Continue .....	93
S6.3	Dispute Resolution .....	93
S6.4	Mediation.....	93

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S6.5	Expert Determination .....	93
S6.6	Procedure for Expert Determination.....	94
S6.7	Determination of Expert .....	94
S6.8	Legal Proceedings .....	95

## Yamatji Nation Trust

Date: 2020

### Parties

**[insert name]** **[insert address]**  
(Settlor)

**[insert name]** **[insert address]**  
(Yamatji Trustee)

And

**[insert name]** **[insert address]**  
(Licensed Trustee)

(together the **Joint Trustees**)

### Background

- A. The Yamatji Nation has reached a full and final settlement with the State of Western Australia pursuant to an ILUA, to compensate the Yamatji Nation in relation to:
- (a) any extinguishment by the surrender or otherwise of native title rights and interests in the Agreement Area;
  - (b) any impairment of native title rights and interests in the Agreement Area; and
  - (c) the validation of all Invalid Acts in the Agreement Area.
- B. Pursuant to the ILUA:
- (a) a regional entity has been established for the Yamatji Nation being an entity to represent, assist and support the growth and development of the Yamatji Nation;
  - (b) this Trust is being established to meet the requirements for a trust that will operate in perpetuity to receive, hold and Apply the benefits payable under the ILUA to Yamatji Entities;
  - (c) the State will pay a benefits package to the Yamatji Nation over a 15 year period, into this Trust, consisting of a future fund, administration fund, land fund and economic development fund; and



- (d) the terms of this Deed must at all times be consistent with the Governance Framework and Joint Governance Principles determined under the ILUA.
- C. From the start of the State Contribution Period, the Joint Trustees will work together to build the capacity of the Yamatji Trustee, with the intention that after the 10<sup>th</sup> year of the Trust's operation and before the end of the State Contribution Period the Yamatji Trustee can become the sole trustee of the Trust.

## Deed

### 1. Definitions and Interpretation

#### 1.1 Definitions

In this Deed, unless the context requires otherwise, the following expressions have the following meanings:

**ACNC** means the Australian Charities and Not-for-profits Commission;

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth);

**ACNC Commissioner** means the Commissioner of the ACNC for the purposes of the ACNC Act;

**Accounting Period** means each period of 12 months ending on 30 June each year, provided that the period starting on the date of this deed and ending on 30 June next is an Accounting Period;

**Adjusted Target Capital Base** has the meaning given in clause 7.3(c);

**Administration Fund** means the Sub Fund established under clause 5.2(a)(ii)(A);

**Administration Funding** means funding available for the reasonable operational and administrative expenditure of the Yamatji Entities, to pursue their Core Functions;

**Advisory Committee** has the meaning given in clause 16.7;

**Agreement Area** has the meaning given in the ILUA;

**Allocation Budget** means in each period of three (3) Financial Years, the allocation determined by the Joint Trustees under clause 11.1;

**Allocation Period** means a period of up to three Financial Years covered by an Allocation Budget;

**Allocation Principles** means the principles described as the allocation principles in clause 11.2;

**Annual Net Earnings** means;

- (a) the gross revenue derived by a Distribution recipient from a Development Project or General Project (as applicable) in a Financial Year,

less,

- (b) all direct and indirect costs incurred by the Distribution recipient in that Financial Year in respect of the relevant a Development Project or General Project (as applicable).

**Annual Report** has the meaning given in clause 20(a);

**Apply** includes, but is not limited to, paying, Distributing, accumulating, setting aside, committing or crediting any part of the income or capital of the Trust Fund and the terms “**Application**” or “**Applies**” have a corresponding meaning;

**Appointors** means the persons appointed under clause 4.8;

**Associates** has the meaning given in section 318 of the *Income Tax Assessment Act 1936* (Cth) and the term “**Associate**” shall have a corresponding meaning;

**Attorney General** means the person from time to time holding the Ministerial position of Attorney General of Western Australia;

**Auditor** means a qualified and Independent person registered, or taken to be registered, as an auditor under Part 9.2 of the Corporations Act;

**Australian Financial Services Licence** or **AFS Licence** means an appropriate Australian Financial Services Licence pursuant to Chapter 7 of the Corporations Act or such other licence pursuant to replacement or equivalent legislation;

**Business Day** means a day other than a Saturday, Sunday or public holiday in Western Australia;

**Charities Act** means the *Charities Act 2013* (Cth).

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

**Common Platform** has the meaning given in item S2.1 of Schedule 2;

**Commonwealth** means the Commonwealth of Australia;

**Conclusive Registration Date** has the meaning given in the ILUA;

**Consumer Price Index** means the Consumer Price Index, All Groups Index, number for Perth, Western Australia, published from time to time by the Australian Bureau of Statistics (catalogue number 6401.0). If that index ceases to be published by the Australian Bureau of Statistics then Consumer Price Index shall mean such other index as represents the rise in the cost of living in Perth, Western Australia as the State reasonably determines after consulting with the Joint Trustees;

**Contributor** means any person, organisation, trustee of another trust, the State or the Commonwealth that contributes money, investments, property or other assets to the Trust Fund from time to time;

**Contribution** means money, investments, property or other assets of any kind from a Contributor;

**Core Functions** means the core functions of a Yamatji Entity as set out in the Joint Governance Principles;

**Corporations Act** means the *Corporations Act 2001* (Cth);

**Cultural Authority** means the cultural authority established by the Regional Entity in accordance with the Governance Framework;

**Cultural Land** means any estate, right, interest in land or Management Order (including land where native title has been determined) held by the Yamatji Trustee and vested in the Trust from time to time and identified in the ILUA, or by the Regional Entity in accordance with the ILUA, as being Cultural Land;

**Custodian Trustee** means the Custodian Trustee of the Trust appointed under clause 4.3(b)(ii);

**Decision to Proceed** means a decision in relation to the Land Estate to enter into a binding agreement or arrangement to exploit land by any of the following:

- (a) selling;
- (b) leasing, licensing or otherwise granting a third party a right or interest to occupy or possess;
- (c) mortgaging, charging or otherwise granting any security or preferential interest of any kind; and
- (d) erecting one or more buildings or improvements, or renovating existing buildings or improvements, the aggregate cost of which in a financial year exceeds \$500,000 (indexed annually in accordance with the Consumer Price Index);

**Deed** means this trust deed as amended from time to time;

**Deed of Appointment** means the deed of appointment referred to in clause 4.9(e);

**Default Investment Policy** means the policy in Schedule 5 as Modified from time to time;

**Development Land** means any estate, right or interest in real property held by the Yamatji Trustee and vested in the Trust from time to time as Development Land and includes:

- (a) commercial and industrial land received under clause 15 of the ILUA; and
- (b) the Housing Assets;

**Development Projects** means a project identified and developed by a Yamatji Entity in furtherance of its objects, that has been approved by the Regional Entity, for which a Distribution may be sought from the:

- (a) Economic Development Fund; or
- (b) Land Fund;

**Disposal** means the sale, assignment, transfer, conveyance, exchange or other disposal by a Distribution recipient of its legal or beneficial interest in a Development Project or General Project (as applicable);

**Dispute Notice** has the meaning given in clause 4.4(b);

**Dispute Resolution Procedure** means the procedure for resolving a dispute, as set out in Schedule 6;

**Distribute** means to distribute, pay, commit, credit, or otherwise expend and “**Distribution**” and “**Distributes**” have a corresponding meaning;

**Distribution Account** has the meaning given in clause 12.9(b);

**Distribution Principles** means the principles described as the Distribution Principles in clause 12.1;

**Economic Arm** means the entity nominated as the Economic Arm in accordance with the ILUA;

**Economic Development Fund** means the Sub Fund established under clause 5.2(a)(ii)(C);

**Eligible Beneficiaries** means:

- (a) each Yamatji Entity; and
- (b) any Independent Registered Charity that is approved by the Regional Entity;

**Expert** means a person having independently recognised qualifications and at least 5 years demonstrated experience that is appropriate and relevant to the matter for which the Expert is required;

**Financial Year** means the period from the date of this Deed to 30 June and then each period of 12 months ending on 30 June in each year;

**First Year** means the period from the date of this Deed to the next 30 June;

**Formal Handover Process** means the process set out in clause 4.6(d);

**Funding Application** means an application to the Joint Trustees for a Distribution from the Trust Fund made in accordance with the Funding Guidelines;

**Funding Guidelines** means the funding guidelines established by the Joint Trustees in accordance with clause 12.11;

**Fundraising Contribution** means:

- (a) a contribution of money or property as described in item 7 of the table contained in section 30-15 of the ITAA97 in relation to a fundraising event; or
- (b) a contribution of money as described in item 8 of the table contained in section 30-15 of the ITAA97 in relation to a successful bidder at an auction that was a fundraising event,

held for the Trust Purpose;

**Future Fund** means the Sub Fund established under clause 5.2(a)(ii)(B);

**Future Fund Balance** has the meaning given in clause 7.3;

**General Fund** means the Sub Fund established under clause 10;

**General Projects** has the meaning given in clause 10.1(c);

**General Project Guidelines** has the meaning given in clause 10.1(d)(ii);

**Governance Framework** means the framework described as the “Governance Framework” as determined under the ILUA, the first of which is attached to this Deed at Annexure A;

**Government Partnership Committee** means the committee of that name established under the ILUA;

**Group Code of Conduct** has the meaning given in clause 3.2(c)(ii);

**Group Charter** has the meaning given in clause 3.2(c)(i);

**Group Strategic Plan** means the strategic plan for the Yamatji Entities, developed by the Regional Entity from time to time;

**Holding Costs** means any funds received by the Joint Trustees related to the Land Fund, including:

- (a) 5 percent of the financial component of the State Contribution; and
- (b) the Tourism Funds;

**Housing Assets** has the meaning given in the ILUA;

**ILUA** means the Indigenous Land Use Agreement entered into by the State, the Native Title Claim Group (as defined in the ILUA) and the Regional Entity, which is entered on the Register of Indigenous Land Use Agreements established and maintained under Part 8A of the Native Title Act;

**Impact Investments** means investment opportunities that are focused on generating actively measured social, cultural and environmental impacts, alongside a sustainable financial return, which may include asset based investment projects or social enterprise projects;

**Independent** means:

- (a) in the case of a person, the person:
  - (i) can demonstrate to the reasonable satisfaction of the Nominations Committee that the person is capable of exercising independent judgment when undertaking the requirements of their appointment; and
  - (ii) is not:
    - 1. a Yamatji Nation Person;

- 
2. a lineal descendant of, sibling of, or first cousin of, a Yamatji Nation Person;
  3. married to or in a de facto relationship with a Yamatji Nation Person;
  4. a parent, child or sibling of a person who is married to or in a de facto relationship with a Yamatji Nation Person;
  5. currently, and has not within the period of 12 months prior to their appointment been:
    - a. an employee, director, consultant, advisor, auditor or other service provider of any Yamatji Entity; or
    - b. an employee or director of a company or partner in a partnership, which is a consultant, advisor, auditor or other service provider of any Yamatji Entity;
- (b) in the case of an entity, the entity is not:
- (i) an entity in which a Yamatji Entity has a material interest;
  - (ii) an entity which is controlled by a Yamatji Entity; or
  - (iii) currently, and has not within the period of 3 years prior to its appointment been a consultant, advisor, auditor or other service provider of the Yamatji Entities or of a Licensed Trustee (in relation to this Trust);

**Insolvency Event** means in respect of a company when:

- (a) the company resolves to go into liquidation;
- (b) a liquidator, a provisional liquidator, receiver, receiver and manager, administrator, official manager, judicial manager or similar official is appointed to the company or over the company's assets or undertaking;
- (c) the company resolves to enter into a scheme, a composition or any similar arrangement or procedure with creditors; or
- (d) the company receives a statutory demand under section 459E of the Corporations Act, which the company fails to comply with or apply to set aside, within the period for compliance or have set aside under section 459G of the Corporations Act;

**Invalid Acts** has the meaning given in the ILUA;

**Investment Committee** means the investment committee established under clause 14;

**Investment Manager** means an investment manager that at all times is Independent and:

- 
- (a) in respect of funds management:
- (i) holds a current relevant Australian Financial Services Licence (or is an authorised representative of such a licensee);
  - (ii) holds appropriate authorisations to permit it, in accordance with the Corporations Act, to give advice regarding the Investment Policy and the various categories of investments held by the Trust and to deal with those investments; and
  - (iii) has at least 10 years investment management experience in relation to funds under management of greater than \$500 million (indexed annually in accordance with the Consumer Price Index); or
- (b) in respect of direct property investment:
- (i) has at least 10 years direct property management experience in relation to property assets under management of greater than \$500 million (indexed annually in accordance with the Consumer Price Index);

**Investment Policy** means an investment policy for the Trust prepared in accordance with clause 13.4;

**Investment Principles** means the investment principles set out in clause 13.3;

**ITAA** means the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997* (Cth);

**ITAA97** means the *Income Tax Assessment Act 1997*;

**Joint Governance Principles** means the principles described as the “Joint Governance Principles” as determined under the ILUA, the first of which is attached to this Deed at Annexure B;

**Joint Trustees** means the trustee of the Trust under clause 4.1 or 4.2;

**Joint Trustee’s Expense Budget** has the meaning given in clause 18.3(a);

**Land Estate** means the land allocated under the Yamatji Settlement to the Yamatji Nation pursuant to the ILUA, including:

- (a) Development Land;
- (b) Cultural Land; and
- (c) Unclassified Land;

**Land Fund** means the Sub Fund established under clause 5.2(a)(ii)(D);

**Land Register** means the register to be maintained in accordance with clause 9.2(c);

**Law and Custom** means the body of traditions, laws, customs and beliefs recognised and held in common by Yamatji Nation Persons and includes those traditions, laws, customs and beliefs exercised in relation to a particular area of land and waters;

**Licensed Trustee** means the licensed trustee that is appointed as a Joint Trustee together with the Yamatji Trustee;

**Long Term Lease** means a lease or sub-lease granted in respect of Cultural Land for which the term exceeds 21 years (inclusive of any options to renew);

**Management Order** means an order by which care, control and management of a reserve are placed with a management body under section 46 of the *Land Administration Act 1997* (WA);

**Mediation Guidelines** means the rules or guidelines for mediation as adopted from time to time by the Institute of Arbitrators and Mediators Australia or an equivalent body;

**Mediator** means a person who is a member of, and accredited as a mediator by, the Institute of Arbitrators and Mediators Australia or an equivalent body;

**Modify** means to modify, vary, amend, alter, change or correct and the terms “**Modified**”, “**Modifying**” and “**Modification**” shall have a corresponding meaning;

**Native Title Act** means the *Native Title Act 1993* (Cth);

**Native Title Claim** means the Claimant Applications lodged in the Federal Court and allocated the following numbers:

- (a) in respect of the Southern Yamatji claim, WAD 19 of 2019;
- (b) in respect of the Mullewa Wadjari claim, WAD 21 of 2019;
- (c) in respect of the Hutt River claim, WAD 27 of 2019;
- (d) in respect of the Widi Mob claim, WAD 31 of 2019; and
- (e) in respect of the Yamatji Nation claim, WAD 345 of 2019;

**Net Capital Proceeds** means the total consideration actually received by the Distribution recipient arising from a Disposal, less:

- (a) all fees, costs and expenses incurred by the Distribution recipient in implementing and completing a Disposal; and
- (b) the amount of the relevant Distribution applied by the Distribution recipient to fund the Development Project or General Project (as applicable) the subject of the Disposal,

and, upon receipt, includes any consideration actually received by the Distribution recipient arising from a Disposal after settlement of the Disposal (including any consideration that is paid by instalments, on a deferred basis or conditional upon a subsequent event);

**Net Income** has the meaning given in clause 19.6;

**Nominations Committee** means the nominations committee established by the Regional Entity in accordance with the Governance Framework;

**Notifiable Event** has the meaning given in clause 4.10(a);



**Notifiable Event Notice** has the meaning given in clause 4.10(b);

**Notifiable Event Report** has the meaning given in clause 4.10(c);

**Payment Conditions** has the meaning given in clause 12.6(c);

**Protected Property** has the meaning given in item S4.1;

**Public Company Limited by Guarantee** means a public company limited by guarantee registered under the Corporations Act;

**Reconciliation Action Plan** means a plan that identifies clear actions with realistic targets for the Licensed Trustee, and is developed in consultation with the Yamatji Nation that details the Licensed Trustee's contribution to:

- (a) reconciliation;
- (b) creating respectful relationships between Indigenous persons, particularly the Yamatji Nation, and other Australians; and
- (c) creating opportunities for Indigenous persons, particularly the Yamatji Nation;

**Regional Entity** means:

- (a) Yamatji Southern Regional Corporation Limited (ACN 638 346 684); or
- (b) such other entity appointed as the Regional Entity in accordance with the ILUA;

**Regional Entity Core Functions** means the core functions to be performed by the Regional Entity, including the Common Platform, as determined in accordance with S2.3 and as varied from time to time;

**Registered Charity** means an entity registered by the ACNC Commissioner as a charity in accordance with the ACNC Act;

**Remuneration Principles** has the meaning given in clause 17.1;

**RNTBC** means the Registered Native Title Body Corporate, as that term is defined in the Native Title Act, in respect of the Native Title Claim;

**Settled Sum** means \$10.00;

**Sole Yamatji Trustee** means an entity that meets the Sole Yamatji Trustee Requirements and is appointed as Sole Yamatji Trustee by the Appointors under clause 4.9;

**Sole Yamatji Trustee Requirements** means the requirements in clause 4.3(b);

**Special Purpose Report** means a report of a Yamatji Entity prepared in accordance with clause 12.14(b);

**Special Resolution** means a resolution passed by at least 75 percent of all persons present and entitled to vote on the matter;

**State** means the State of Western Australia;

**State Contribution** has the meaning given in the ILUA;

**State Contribution Period** means the period of time beginning on the Conclusive Registration Date, and expiring on the date that is fifteen (15) years from the Conclusive Registration Date;

**Strategic Review** has the meaning given in clause 21(a);

**Sub Fund** means a sub fund of the Trust Fund established by the Joint Trustees in accordance with clause 5.2;

**Suspended YE** means a Yamatji Entity that is subject to a YE Suspension Event.

**Suspension Amount** has the meaning given in clause 12.12(a);

**Suspension Event** has the meaning given in clause 12.12(b)(i);

**Suspension Period** has the meaning given in clause 12.12(a);

**Suspension Remedy** has the meaning given in clause 12.12(b)(iii);

**Sustainability Amount** has the meaning given in clause 12.8;

**Sustainability Commitment** means a Payment Condition described in clause 12.8.

**Target Capital Base** has the meaning given in clause 7.3;

**Tax Law** means the *Income Tax Assessment Act 1936* (Cth), *Income Tax Assessment Act 1997* (Cth) and the *Taxation Administration Act 1953* (Cth) as amended from time to time;

**Title Protection Criteria** has the meaning given in clause 9.4(e);

**Tourism Funds** means the funds payable by the State to the Trust relating to tourism development, as referred to in the ILUA;

**Traditional Land** means the lands and waters the subject of the ILUA;

**Trust** means the trust created by this Deed;

**Trust Fund** has the meaning described in clause 5.1;

**Trust Purpose** has the meaning described in clause 2.2;

**Trust Strategic Plan** means the strategic plan for the Trust prepared in accordance with clause 15;

**Trustees Act** means the *Trustees Act 1962* (WA);

**Unclassified Land** means the land allocated under the Yamatji Settlement to the Yamatji Nation pursuant to the ILUA that is yet to be classified as:

- (a) Development Land; or
- (b) Cultural Land;

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**Yamatji Appointor** means the person appointed as such by the Regional Entity from time to time in accordance with clause 4.7;

**Yamatji Business** means an organisation that is in the Joint Trustees' reasonable opinion:

- (a) owned and run by or for Yamatji Nation People, including not-for-profit organisations; and
- (b) registered on a suitable directory that provides the Joint Trustees with confidence that the business is owned and run by a majority Aboriginal interest, such as Aboriginal Business Directory Western Australia or Supply Nation's Indigenous Business Direct;

**Yamatji Entities** means the:

- (a) Regional Entity;
- (b) Economic Arm;
- (c) RNTBC; and
- (d) Yamatji Trustee;

**Yamatji Investments** means projects and activities proposed by Yamatji Nation Persons or their businesses, including lending to local business ventures and infrastructure developments where:

- (a) the Joint Trustees are satisfied that at least the capital base of the investment will be preserved; and
- (b) without limiting paragraph (a), the estimated return on the investment is at least equal to the Consumer Price Index;

**Yamatji Nation** has the meaning given in the ILUA;

**Yamatji Nation Person** means a common law holder pursuant to the native title determination, and **Yamatji Nation People** shall have a corresponding meaning in the plural;

**Yamatji Settlement** means the full and final settlement of native title in the Yamatji Nation's Traditional Land as described in the ILUA;

**Yamatji Trustee** means the Yamatji Nation's nominated trustee of the Trust from time to time;

**YE Remedy Action** means the actions that the Yamatji Entity must take:

- (a) to establish that an YE Suspension Event did not occur; or
- (b) that, to the Joint Trustees' reasonable satisfaction, will:
  - (i) remedy the YE Suspension Event; and
  - (ii) prevent the YE Suspension Event, or similar events, from recurring or occurring in the future;

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**YE Suspension Event** means an event specified in clause 12.13(a);

**YE Suspension Event Notice** means a notice referred to in clause 12.13(c); and

**YE Suspension Notice** means a notice referred to in clause 12.13(e).

## 1.2 Interpretation of Clauses

- (a) A word importing the singular number or plural number includes the plural and singular respectively.
- (b) If two or more persons by this Deed undertake an obligation or give any warranty they will be bound jointly and severally unless the context requires otherwise.
- (c) A word importing any gender includes every other gender.
- (d) A reference to a "spouse" includes a de facto spouse and a person who is considered to be a spouse in accordance with Law and Custom.
- (e) The use of headings will not affect the interpretation or construction of this Deed.

## 1.3 Status of Schedules

- (a) A reference to this Deed includes a reference to any schedule to it.
- (b) The schedules form part of this Deed and are binding on the Joint Trustees.
- (c) Unless otherwise specified in this Deed, a Modification to a schedule requires a Modification to this Deed in accordance with clause 22.

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## 2. Trust Purpose

### 2.1 Declaration of Trust

- (a) The Joint Trustees acknowledge that the Settlor has paid the Settled Sum to the Joint Trustees and the Joint Trustees received the Settled Sum as Joint Trustees of the Trust.
- (b) The Settlor and the Joint Trustees declare that the Joint Trustees will hold the Trust Fund and the income of the Trust Fund for the Trust Purpose and otherwise on the trusts, with the powers and subject to the provisions in this Deed.
- (c) The Joint Trustees may from time to time accept as an addition to the Trust Fund any Contribution paid or transferred to or vested in the Joint Trustees and to be held by the Joint Trustees as part of the Trust Fund.
- (d) The Trust name is **Yamatji Nation Trust** or such other name determined by the Joint Trustees from time to time with the Regional Entity's prior written consent.

### 2.2 Trust Purpose

The Joint Trustees must hold, invest, or otherwise Apply the Trust Fund exclusively for the benefit of one or more of the Eligible Beneficiaries to promote and advance current and future generations of the Yamatji Nation, and in a manner that is charitable at law, as the Joint Trustees decide, in accordance with the terms of this Deed (**Trust Purpose**).

### 2.3 Trust Activities

In support of the Trust Purpose, the Joint Trustees must pursue the following activities:

- (a) receive, hold, manage, invest and Apply the **Administration Fund** under clause 6 in a manner that ensures adequate funds for the Core Functions of the Yamatji Entities each year;
- (b) receive, hold, manage, invest and Apply the **Future Fund** under clause 7, in consultation with the Investment Committee, in a manner that ensures that, after the State Contribution Period, the Target Capital Base generates adequate income to fund the Core Functions of the Yamatji Entities each year;
- (c) receive, hold, manage, invest and Apply the **Economic Development Fund** under clause 8, in consultation with the Regional Entity, in a manner that ensures appropriate financial support for the delivery of Development Projects by the Economic Arm;
- (d) receive, hold, manage, invest and Apply the **Land Fund** under clause 9, in consultation with the Regional Entity in a manner that is culturally appropriate and ensures appropriate support for the delivery of Development Projects by the Regional Entity or the Economic Arm;

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- (e) receive, hold, manage, invest, and Apply other monies, land or other benefits received into the Trust in the **General Fund** under clause 10 to advance the Trust Purpose; and
  - (f) manage and maintain other Sub Funds that the Joint Trustees may establish from time to time, in accordance with this Deed.

#### 2.4 Not for Profit

- (a) The Trust is to be carried out without purpose of profit or private gain for the Joint Trustees, or a member, director, employee, agent or officer of the Joint Trustees. No part of the Trust Fund or the income may be transferred or Applied directly or indirectly by way of dividend, bonus or other profit distribution to the Joint Trustees, or a member, director, employee, agent or officer of the Joint Trustees.
- (b) Clause 2.4(a) does not prevent the payment in good faith of any of the following in accordance with the terms of this Deed:
  - (i) the Joint Trustees' remuneration determined in accordance with clause 17;
  - (ii) reasonable costs, charges and expenses incurred in connection with the administration of the Trust;
  - (iii) reimbursement to any person (including the Joint Trustees and any member, director, employee, agent or officer of the Joint Trustees) for any reasonable out of pocket expenses incurred in connection with the administration of the Trust;
  - (iv) reasonable rental for any real or personal property leased to the Joint Trustees as Joint Trustees of the Trust;
  - (v) reasonable remuneration of any other person (including any member, director, employee, agent or officer of the Joint Trustees) for services provided to the Joint Trustees as Joint Trustees of the Trust; or
  - (vi) any distribution for the benefit of, either directly or indirectly, any Yamatji Entity or a Yamatji Nation Person made strictly in accordance with the terms of this Deed.
- (c) Where a member, director, employee, agent or officer of the Joint Trustees considers that it may receive a payment under clause 2.4(b) (other than a distribution in respect of clause 2.4(b)(vi)) they must:
  - (i) disclose that matter to the Joint Trustees as soon as possible;
  - (ii) not take part in any deliberations regarding that matter; and
  - (iii) not vote on that matter.

#### 2.5 Registered Charity

The Trust must at all times be:

- (a) endorsed by the ACNC Commissioner as a Registered Charity; and

- 
- (b) compliant with all other applicable requirements from time to time under any law relating to charitable trusts.

## 2.6 No Fixed Interests

- (a) The Yamatji Entities have a right to be considered for a Distribution from the Trust Fund as conferred by this Deed but do not have any interest in any particular part of the Trust Fund or any investment made by the Joint Trustees.
- (b) A Yamatji Entity or Yamatji Person is not entitled, other than as expressly provided, to:
  - (i) interfere with the exercise or non-exercise by the Joint Trustees of its rights and powers;
  - (ii) exercise any rights, powers or privileges in respect of any assets of the Trust Fund; or
  - (iii) require the transfer of any of the assets of the Trust Fund to a Yamatji Entity or Yamatji Person.

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### 3. Yamatji Nation

#### 3.1 Recognition of the Yamatji Nation

In exercising the Joint Trustees' discretions pursuant to this Deed, and subject to clauses 16.1 and 16.2, the Joint Trustees must have regard to:

- (a) the fundamental connection between the Trust Fund and the Yamatji Nation and that the primary source of the Trust Fund is the full and final settlement between the Yamatji Nation and the State pursuant to the ILUA as compensation of the Yamatji Nation in relation to:
  - (i) any extinguishment by the surrender or otherwise of native title rights and interests in the Agreement Area;
  - (ii) any impairment of native title rights and interests in the Agreement Area; and
  - (iii) the validation of all Invalid Acts in the Agreement Area;
- (b) the connection between the Yamatji Nation and the Agreement Area;
- (c) the role of the Cultural Authority in respect of any matters relating to culture and heritage; and
- (d) the role of the Yamatji Entities who have the primary responsibility of advancing the Trust Purpose.

#### 3.2 Good Governance Practice

The Joint Trustees must:

- (a) support initiatives to improve, enhance and assist the development of the corporate governance practices of the Yamatji Entities;
- (b) ensure that meetings of each committee formed by the Joint Trustees under this Deed are convened (as to timing and number of meetings) and held in an efficient, responsible, cost effective and culturally appropriate manner; and
- (c) work collaboratively with the Regional Entity to establish and update from time to time the following documents to apply to the operations of the Joint Trustees, the Yamatji Entities and each committee that the Joint Trustees are specifically required to form under this Deed:
  - (i) a group charter (**Group Charter**); and
  - (ii) a code of conduct (**Group Code of Conduct**).

#### 3.3 Communications with the Yamatji Nation

- (a) The Joint Trustees must support the Yamatji Entities to develop appropriate mechanisms to facilitate participation, consultation and information dissemination within the Yamatji Nation regarding the Trust. These mechanisms shall have regard to the following non exhaustive principles:



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- (i) support and promote self-determination of Yamatji Nation People coming together as one community;
  - (ii) encourage, facilitate and support capacity building within the Yamatji Nation;
  - (iii) effective participation by the Yamatji Nation in the operation of the Yamatji Entities;
  - (iv) recognition that time, effort and experience are needed to build a Yamatji Nation-wide vision, internal governance and leadership capacity;
  - (v) ensure the operations of the Trust are just, fair and equitable (which does not necessarily require equal Distributions); and
  - (vi) ensure community ownership of assets for the benefit of current and future generations of the Yamatji Nation.
- (b) The Joint Trustees must consult with the Yamatji Nation, through the Regional Entity, at least once in each Financial Year (excluding the first Financial Year) regarding the Trust's activities.
  - (c) All communications, reports, plans and other documentation required to be prepared by the Joint Trustees that are provided to the Yamatji Entities or the Yamatji Nation must be prepared using plain English in a culturally appropriate manner, form and style, including diagrams where appropriate.
  - (d) Except to the extent required by law or by this Deed or reasonably required for the performance of the Joint Trustees' obligations under this Deed, the Joint Trustees must withhold culturally sensitive information from all communications, reports, plans and other documentation.

#### **3.4 Consultations and Decision Making with Yamatji Entities**

- (a) The Joint Trustees must seek to:
  - (i) develop and maintain a process for direct communications with each Yamatji Entity;
  - (ii) consult directly with each Yamatji Entity regarding matters that relate solely to that Yamatji Entity; and
  - (iii) comply with a group communications policy that allows the Joint Trustees to engage with the Yamatji Entities in respect of all matters that require consultation with, or decisions of, each Yamatji Entity or the Yamatji Nation.
- (b) Where the Joint Trustees are required to consult with or obtain decisions from a Yamatji Entity in accordance with the terms of this Deed:
  - (i) if the Joint Trustees have made at least 2 attempts by notice in writing to either obtain the decision of the Yamatji Entity or consult with the Yamatji Entity on the matter; and

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- (ii) the Yamatji Entity has not made a valid decision on the matter or declined to consult with the Joint Trustees (as the case may be),

then the Joint Trustees may act without the Yamatji Entity's consent or may act without consulting with the Yamatji Entity on that matter despite any clause in this Deed to the contrary.

### 3.5 Yamatji Nation Capacity Development

In exercising the Joint Trustees' discretions pursuant to this Deed, the Joint Trustees may take into consideration the Yamatji Nation's aspiration to develop the capacity of Yamatji Persons and Yamatji Nation organisations, including by:

- (a) encouraging, facilitating and supporting capacity building within the Yamatji Nation;
- (b) providing sufficient time and opportunities for Yamatji Nation People to gain experience and acquire skills in respect of internal governance and leadership capacity;
- (c) supporting the Nominations Committee to identify and engage with Yamatji Persons that may be suitable for board or committee positions in relation to the Trust or Yamatji Entities; and
- (d) supporting the Yamatji Entities to develop effective strategies that allow for and encourage capacity building, including training and development within the Yamatji Nation, and good governance and administration of Yamatji Nation organisations.

## 4. Joint Trustees

### 4.1 Initial Joint Trustees

The first Joint Trustees of the Trust are [Name of Licensed Trustee] and [Name of Yamatji Trustee].

### 4.2 Type of trustee

- (a) The trustee of the Trust must be:
  - (i) during the State Contribution Period, a Licensed Trustee and the Yamatji Trustee acting jointly; and
  - (ii) after the State Contribution Period, either:
    - (A) a Licensed Trustee and the Yamatji Trustee acting jointly; or
    - (B) a Sole Yamatji Trustee.
- (b) For ease of reference, the trustee of the Trust is referred to as the Joint Trustees throughout this Deed, including where the trustee is a Sole Yamatji Trustee.

### 4.3 Trustees General Eligibility Requirements

- (a) Where the trustee is a Joint Trustee, at all times:
  - (i) the Yamatji Trustee must satisfy the requirements set out in the Governance Framework and Joint Governance Principles; and
  - (ii) the Licensed Trustee must:
    - (A) be a “trustee company” as that term is defined in section 601RAB of the Corporations Act;
    - (B) hold a current relevant “Australian financial services licence”, as that term is defined in section 761A of the Corporations Act:
      - (1) covering the provision of all or substantially all of the “traditional trustee company services” defined in section 601RAA of the Corporations Act; and
      - (2) with appropriate authorisations as required to permit it to carry out functions under this Deed; and
    - (C) have at least 5 years’ experience in providing services similar to those required for charitable trusts managing native title trusts in Australia;
    - (D) maintain and act in accordance with a Reconciliation Action Plan that includes an Indigenous employment strategy or policy;

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- (E) maintain an office that is operated on a full-time basis by the employees or officers of the Licensed Trustee or the Yamatji Trustee; and
  - (F) provide a senior executive employee or officer dedicated to the Trust on a full-time basis:
    - (1) with appropriate skill and expertise, having regard to the value of the Trust Fund and the responsibilities of the Joint Trustees as provided for in this Deed; and
    - (2) that is otherwise objectively capable of maintaining a senior management position in a comparable organisation.
- (b) Where the trustee is a Sole Yamatji Trustee, the trustee must at all times:
- (i) satisfy the requirements set out in the Governance Framework and Joint Governance Principles;
  - (ii) have appointed a Custodian Trustee in accordance with Schedule 4;
  - (iii) have an appropriately qualified chief executive officer;
  - (iv) be operating in accordance with an appropriate governance structure which includes:
    - (A) a delegations of authority policy;
    - (B) operational policies and procedures; and
    - (C) an organisational chart;
  - (v) have an appropriate accounting system in place;
  - (vi) have engaged an appropriately qualified accountant, auditor and lawyer;
  - (vii) be operating from a functioning office with all necessary infrastructure and equipment in place;
  - (viii) have recruited and retained sufficient administrative staff having regard to the functions and operations of the Sole Yamatji Trustee; and
  - (ix) have appropriate employment contracts in place for all staff
- (Sole Yamatji Trustee Requirements).**

#### 4.4 Joint Trustees Decisions

- (a) Decisions of the Joint Trustees must be unanimous.
- (b) If the Joint Trustees are unable to agree on a decision:
  - (i) if the decision would result in the Joint Trustees not complying with the Trust Deed, the law or the ILUA, then the Licensed Trustee must

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determine the decision in a manner that would ensure the Joint Trustees are compliant;

- (ii) in all other cases, one of the Joint Trustees may give the other Joint Trustee written notice that they wish to invoke the Dispute Resolution Procedure to resolve the decision (**Dispute Notice**); and
- (iii) the Joint Trustees must otherwise continue to administer the Trust whilst the decision is being determined by the Dispute Resolution Procedure.

#### 4.5 Joint Trustees Delegations

- (a) The Joint Trustees may, by agreement, delegate in writing to any one of the Joint Trustees:
  - (i) any of the discretionary or other powers given to the Joint Trustees under this Deed that are capable of delegation at law or under this Deed; and
  - (ii) any business or any act required or permitted to be done under or in connection with the administration and management of the Trust.
- (b) The execution or exercise of any of the trusts or powers of this Deed by one of the Joint Trustees under delegation is valid and effectual and binds all persons interested in the Trust Fund.

#### 4.6 Transition to a Sole Yamatji Trustee

- (a) In every Trust Strategic Plan and annual plan prepared prior to the Formal Handover Process, the Joint Trustees must include steps to facilitate:
  - (i) the Yamatji Trustee's capacity building during the first five year period of the State Contribution Period; and
  - (ii) the gradual transition of Joint Trustee tasks to the Yamatji Trustee, and preparation for the Formal Handover Process, during the second five year period of the State Contribution Period.
- (b) At any time after the tenth year of the State Contribution Period and at the Regional Entity's written request, the Licensed Trustee must assist the Yamatji Trustee to:
  - (i) undertake the Formal Handover Process; and
  - (ii) meet the Sole Yamatji Trustee Requirements.
- (c) The Formal Handover Process must not be completed in less than two years.
- (d) The **Formal Handover Process** for a Sole Yamatji Trustee includes to:
  - (i) develop and implement a handover plan for the Yamatji Trustee to become Sole Yamatji Trustee;
  - (ii) select a Custodian Trustee to be appointed once there is a Sole Yamatji Trustee;

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- (iii) ensure the Yamatji Trustee has staff and a board with appropriate skills, expertise and capacity to become the Sole Yamatji Trustee, including an appropriately qualified chief executive officer;
  - (iv) ensure the Yamatji Trustee has appropriate operational policies and procedures in place;
  - (v) ensure the Yamatji Trustee has appropriate employment contracts for all staff;
  - (vi) ensure the Yamatji Trustee is operating from a functioning office with all necessary infrastructure and equipment in place;
  - (vii) ensure the Yamatji Trustee has engaged an appropriately qualified accountant, auditor and lawyer;
  - (viii) ensure that the tasks, actions and directors provided by the Licensed Trustee are clearly documented in the handover to the Yamatji Trustee; and
  - (ix) during the State Contribution Period, obtain the State's prior written consent to the Yamatji Trustee becoming a Sole Yamatji Trustee.
- (e) The Licensed Trustee must notify the Appointors and the State, in writing, when the Licensed Trustee considers the Yamatji Trustee has successfully completed the Formal Handover Process.
  - (f) Upon receipt of a notice from the Licensed Trustee pursuant to clause 4.6(e), the Appointors must assess, acting reasonably, whether the Yamatji Trustee meets the Sole Yamatji Trustee Requirements and notify the Joint Trustees that the Yamatji Trustee:
    - (i) meets the Sole Yamatji Trustee Requirements; or
    - (ii) does not meet the Sole Yamatji Trustee Requirements and provide written reasons sufficient to enable the Yamatji Trustee to identify and remedy those matters.

#### 4.7 Review of Joint Governance Principles and Governance Framework

- (a) During the Formal Handover Process, the Joint Trustees must participate with the Regional Entity and the State in a review of the Joint Governance Principles, the Governance Framework and this Deed.
- (b) The Joint Trustees must, under clause 22 of this Deed, facilitate any amendments to this Deed required for ongoing compliance of the Trust with the updated Joint Governance Principles and Governance Framework arising from the review under clause 4.7(a).

#### 4.8 Appointors

- (a) The Appointors are the following persons, acting jointly:
  - (i) the Attorney General; and

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- (ii) a person appointed from time to time by special resolution of the Regional Entity's board in accordance with the Regional Entity's constitution (**Yamatji Appointor**) who must:
    - (A) not be a current member of any Yamatji Entity boards or committees; and
    - (B) have standing and respect within the Yamatji Nation.
  - (b) The Regional Entity must appoint a person as the Yamatji Appointor within 3 months of that position becoming vacant, failing which the Joint Trustees may do so.
  - (c) The Joint Trustees and the Attorney General are entitled to rely on a document signed by the chairperson of the Regional Entity as evidence of the appointment of the Yamatji Appointor in accordance with 4.8(a)(ii).

#### 4.9 Appointment and Removal of Joint Trustees

- (a) Subject to this clause 4.9, the Appointors, acting jointly, shall have the power by instrument in writing at any time to:
  - (i) remove the Joint Trustees;
  - (ii) appoint any additional Joint Trustee or Joint Trustees that complies with the qualifications described in clause 4.3;
  - (iii) appoint a new Joint Trustee or Joint Trustees that complies with the qualifications described in clause 4.3 in the place of any Joint Trustee who resigns, whose term has expired or who ceases to be a Joint Trustee by operation of law; and
  - (iv) appoint the Yamatji Trustee as the Sole Yamatji Trustee in accordance with clause 4.6.
- (b) Before exercising the Appointors' powers in clause 4.9(a), the Appointors must consult with the:
  - (i) Regional Entity's board; and
  - (ii) existing Joint Trustees.
- (c) At the request of the Appointors, where a Joint Trustee wishes to resign, or at the end of the Joint Trustee's term, the Joint Trustees must conduct an appropriate selection process for a replacement Joint Trustee in consultation with the Regional Entity.
- (d) If at any time there are no Joint Trustees, the Appointors must conduct the selection process for replacement Joint Trustees in consultation with the Regional Entity.
- (e) Upon exercise of the Appointors' powers above, the Appointors, the incoming and outgoing Joint Trustees must execute an appropriate deed of appointment to give effect to the appointment (**Deed of Appointment**).

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- (f) Where a Joint Trustee resigns, is removed or the Joint Trustee's term has expired:
- (i) in the case of a Licensed Trustee during the State Contribution Period, the Licensed Trustee must continue in office until a replacement Licensed Trustee is appointed;
  - (ii) in the case of a Yamatji Trustee, the Licensed Trustee may act as sole Joint Trustee until a replacement Yamatji Trustee is appointed; and
  - (iii) in the case of a Sole Yamatji Trustee, the Custodian Trustee must undertake the functions of the Sole Yamatji Trustee, until a replacement Sole Yamatji Trustee is appointed.

#### 4.10 Joint Trustees ceasing to meet requirements

- (a) For the purposes of this clause 4.10, a "**Notifiable Event**" occurs if the Joint Trustees:
- (i) cease to satisfy one or more of the eligibility requirements in clause 4.3 for a Licensed Trustee, Yamatji Trustee or Sole Yamatji Trustee (as the case requires);
  - (ii) are in breach of the Trust Deed or the law, and the breach has been unremedied for 90 days; or
  - (iii) suffer an Insolvency Event.
- (b) Any of the following may notify the Appointors in writing if they reasonably believe a Notifiable Event has occurred in relation to the Joint Trustees, together with sufficient written details of the Notifiable Event (**Notifiable Event Notice**):
- (i) the Regional Entity;
  - (ii) the other Joint Trustee;
  - (iii) the State; and
  - (iv) the Auditor.
- (c) Upon receipt of a Notifiable Event Notice, the Appointors must engage an Expert who is Independent to promptly investigate the alleged Notifiable Event and prepare a written report (**Notifiable Event Report**) which must contain:
- (i) a conclusion as to whether a Notifiable Event has occurred;
  - (ii) the specific action required by the Joint Trustees to rectify or remedy the circumstances that gave rise to the Notifiable Event; and
  - (iii) a reasonable deadline by which the Joint Trustees must complete any such action, which must not be less than 14 days or greater than 60 days from the date of the Notifiable Event Report.
- (d) The Appointors must provide a copy of the Notifiable Event Report to the Joint Trustees as soon as possible after it is completed.



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- (e) If the Yamatji Trustee is the subject of the Notifiable Event Report, then the following must give reasonable assistance to the Yamatji Trustee to rectify or remedy the circumstances giving rise to the Notifiable Event:
    - (i) the Licensed Trustee; or
    - (ii) the Custodian Trustee, where the Yamatji Trustee is a Sole Yamatji Trustee.
  - (f) If the Joint Trustees fails to complete the appropriate action by the deadline in accordance with the Notifiable Event Report, the Appointors must meet within 7 days of the due date for that action, to consider removing the Joint Trustees pursuant to clause 4.9.
  - (g) The Joint Trustees must meet the costs of the Expert and provide full cooperation and full disclosure to facilitate the Notifiable Event Report.

## 5. Trust Fund

### 5.1 Meaning of Trust Fund

- (a) Trust Fund means:
- (i) the Settled Sum;
  - (ii) all Contributions, interests in land and Management Orders paid or transferred to and accepted by the Joint Trustees as additions to the Trust Fund;
  - (iii) all accretions to the Trust Fund;
  - (iv) all accumulations of income; and
  - (v) the money, investments, property, interests in land and Management Orders from time to time representing the above or into which they are converted,

and includes any Sub Fund and any part of the Trust Fund.

- (b) With the Joint Trustees' prior written consent, any other Contributions, interests in land and Management Orders may be paid or transferred to, vested in and accepted by the Joint Trustees as an addition to the Trust Fund and are to be held by the Joint Trustees as part of the Trust Fund.
- (c) If a Contributor requests that a Contribution to the Trust Fund will be subject to one or more conditions, the Joint Trustees may accept the Contribution subject to the Contributor's conditions as part of the Trust Fund, and in such case the Joint Trustees' discretions and powers as provided for under this Deed must comply with those conditions.

### 5.2 Trust Sub Funds

- (a) The Joint Trustees must establish as Sub Funds of the Trust:
- (i) the **General Fund**, administered in accordance with clause 10; and
  - (ii) the following Sub Funds to hold that part of the State Contribution identified in the ILUA for contribution to the relevant Sub Fund:
    - (A) **Administration Fund**, administered in accordance with clause 6;
    - (B) **Future Fund**, administered in accordance with clause 7;
    - (C) **Economic Development Fund**, administered in accordance with clause 8; and
    - (D) **Land Fund**, administered in accordance with clause 9.
- (b) In addition to the Sub Funds established under clause 5.2(a), the Joint Trustees may in the Joint Trustees' absolute discretion, establish a Sub Fund

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for any part of the Trust Fund and may determine a name for any Sub Fund for ease of management and identification provided that the Sub Fund:

- (i) is held and Applied by the Joint Trustees at the sole discretion of the Joint Trustees and exclusively for the Trust Purpose in accordance with the provisions of this Deed; and
  - (ii) forms part of the Trust Fund and does not form a separate fund.
- (c) Any Sub Fund vested in or established by the Joint Trustees forms part of the Trust Fund but, for the purposes of identification only, the Joint Trustees may maintain separate management accounts for each Sub Fund, its income, any payments and the application of its income or capital.
- (d) The Joint Trustees must compile separate reports and audited accounts for each of the Sub Funds in a similar manner and at least in the same detail required for the Trust Fund.

### 5.3 Role of the State

- (a) In accordance with the ILUA, the State and the Yamatji Nation have various rights and obligations to each other that relate to the Trust. The Joint Trustees recognise the special role of the State in relation to the Trust and in particular that:
- (i) the Joint Trustees must obtain the State's prior written **consent** in relation to the following matters:
    - (A) Modifying the Target Capital Base under clause 7.3;
    - (B) accessing the Target Capital Base under clause 7.7;
    - (C) during the State Contribution Period, Modifying the Funding Guidelines under clause 12.11(c)(iv);
    - (D) during the State Contribution Period if required under the ILUA;
    - (E) winding up or terminating the Trust under clause 24.2; and
    - (F) applying any assets of the Trust Fund following winding up under clause 24.2; and
  - (ii) the Attorney-General, as one of the Appointors, must act jointly with the Yamatji Appointor to appoint or remove one or both of the Joint Trustees as provided in clause 4.9 of this Deed.
- (b) Where this Deed gives the Government Partnership Committee a role acting on behalf of the State, that role shall be undertaken directly by the State acting through the Premier if the Government Partnership Committee has ceased to exist.

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## **6. Administration Fund**

### **6.1 General Purpose of the Fund**

- (a) In accordance with clause 5.2, the Joint Trustees must establish a Sub Fund of the Trust Fund to be called the Administration Fund to be administered in accordance with this clause 6 and otherwise in accordance with this Deed.
- (b) The Administration Fund is to be held and managed for the purpose of providing funding to the Yamatji Entities to ensure they are adequately resourced to pursue their Core Functions.

### **6.2 General Rules**

- (a) The Administration Fund may only be Distributed by the Joint Trustees for Administration Funding.
- (b) In order to qualify for a Distribution of Administration Funding each Financial Year, the Joint Trustees must be satisfied that the Yamatji Entity is in a position to offer and deliver their Core Functions in accordance with the Governance Framework and the Joint Governance Principles.
- (c) Subject to clause 6.2(b) and having regard to the Allocation Budget, the Joint Trustees must Distribute Administration Funding to a Yamatji Entity each Financial Year that, in the reasonable opinion of the Joint Trustees, is sufficient to enable the Yamatji Entity to deliver their Core Functions during that Financial Year.
- (d) Funding Applications for Distributions for Administration Funding from the Administration Fund are considered by the Joint Trustees in their absolute discretion in accordance with clause 11 and no Yamatji Entity is entitled to any guaranteed minimum annual Distribution.
- (e) Distributions for Administration Funding:
  - (i) must only be made in accordance with the Funding Guidelines;
  - (ii) may cover a funding period of up to three (3) years which must be paid by instalments once every 6 months except in exceptional circumstances; and
  - (iii) must be acquitted annually.

### **6.3 General Principles**

In administering the Administration Fund, the Joint Trustees must have regard to:

- (a) best practice good governance, compliance and administration;
- (b) transparency and accountability;
- (c) collaboration between the Yamatji Entities in a manner that avoids duplication;
- (d) supporting the design and implementation of effective systems;

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- (e) the key financial information relating to the Administration Fund;
  - (f) the needs and aspirations of the Yamatji Entities having regard to the Yamatji Entities' most recent annual plan and strategic plan; and
  - (g) being fair, just and equitable in decision making processes and in the outcomes of those decision making processes, including in relation to the Distribution of Trust Funds.

## 7. Future Fund

### 7.1 General Purpose of the Future Fund

- (a) In accordance with clause 5.2 the Joint Trustees must establish a Sub Fund of the Trust Fund to be called the Future Fund to be administered in accordance with this clause 7 and otherwise in accordance with this Deed.
- (b) The general purpose of the Future Fund is to grow the capital of the Future Fund to achieve and then maintain a sustainable capital value in order that after the State Contribution Period:
  - (i) the Net Income of the Future Fund may be applied towards the Trust Purpose; and
  - (ii) the Joint Trustees are in a position to provide Administration Funding to the Yamatji Entities in perpetuity, recognising that the Trust Fund is intended to benefit both current and future generations of the Yamatji Nation through the successful operations of the Yamatji Entities.

### 7.2 State Contribution

The Joint Trustees acknowledge and agree to take all reasonable steps to ensure that the State Contribution to the Future Fund is an amount, or amounts paid annually during the State Contribution Period, that collectively must equal not less than 60 percent of the financial component of the State Contribution.

### 7.3 Target Capital Base

- (a) The Joint Trustees must at all times ensure that the value of the Future Fund on and from the end of the State Contribution Period (**Future Fund Balance**) exceeds:
  - (i) the Target Capital Base at the end of the Financial Year in which the State Contribution Period ends; and
  - (ii) the Adjusted Target Capital Base at the end of each subsequent Financial Year.
- (b) The target capital base (**Target Capital Base**) is an amount not less than the sum of:
  - (i) \$195 million; and
  - (ii) not less than 50 percent of the Net Income (including any realised capital gains) of the Future Fund during the State Contribution Period.
- (c) At the end of each Financial Year following the Financial Year in which of the State Contribution Period ends, the Target Capital Base must be increased by multiplying the Target Capital Base at the end of the previous Financial Year by the current Consumer Price Index for that Financial Year and dividing it by the Consumer Price Index of the previous Financial Year (**Adjusted Target Capital Base**).

- (d) Having regard to clause 7.1 and the Trust Purpose, the Joint Trustees may, with the prior written consent of the Regional Entity and the State, Modify the Target Capital Base or Adjusted Target Capital Base after the end of the State Contribution Period if the Joint Trustees determine it is in the best interests of the Trust.

#### **7.4 Accumulation during State Contribution Period**

After the third completed Financial Year of the Trust, each Financial Year during the State Contribution Period the Joint Trustees must hold and accumulate in the Future Fund no less than 20 percent of the financial component of the State Contribution received by the Joint Trustees in that Financial Year.

#### **7.5 Distributions during the State Contribution Period**

In respect of each Financial Year during the State Contribution Period, the Joint Trustees may, with the prior written consent of the Regional Entity and the Investment Committee, transfer no more than 50 percent of the Net Income of the Future Fund to the Administration Fund, or any other Sub Fund.

#### **7.6 Distributions after the State Contribution Period**

In respect of each Financial Year following the State Contribution Period, the Joint Trustees may, subject to clause 7.7, transfer so much of the Net Income or capital of the Future Fund that exceeds the Target Capital Base for that Financial Year to the Administration Fund, or any other Sub Fund, for Distribution by the Joint Trustees in accordance with clause 10.

#### **7.7 Restricted Access to Target Capital Base**

Having regard to clause 7.1, and subject to clause 7.3, the Joint Trustees must not Distribute the Target Capital Base unless the Joint Trustees determine that it is in the best interests of the Trust, having regard to the Trust Purpose and with the prior written consent of the:

- (a) Regional Entity;
- (b) Investment Committee; and
- (c) State.

#### **7.8 Investment of Future Fund**

The Joint Trustees may only invest the Future Fund in accordance with the Investment Policy or Default Investment Policy having regard to the general purpose of the Future Fund as set out in clause 7.1.

#### **7.9 Management Accounts for Future Fund**

For the purpose of identification only, the Joint Trustees may maintain separate management accounts within the Future Fund in order to identify State Contributions made in connection with the ILUA from other funds received by the Joint Trustees from time to time.

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## **8. Economic Development Fund**

### **8.1 General Purpose of the Fund**

- (a) In accordance with clause 5.2, the Joint Trustees must establish a Sub Fund of the Trust Fund to be called the Economic Development Fund to be administered in accordance with this clause 8 and otherwise in accordance with this Deed.
- (b) The Economic Development Fund is to be held and managed by the Joint Trustees for the purpose of providing funding for Development Projects.

### **8.2 General Rules**

- (a) The Economic Development Fund may only be Distributed by the Joint Trustees for Development Projects.
- (b) The Joint Trustees must, subject to the terms of this Deed, approve each Funding Application that:
  - (i) is submitted in accordance with the Funding Guidelines;
  - (ii) in the Joint Trustees' reasonable opinion, satisfies the requirements in clauses 8.2 and 8.3;
  - (iii) complies with the requirements set out in Item S1.2 of Schedule 1; and
  - (iv) is assessed as acceptable in accordance with Item S1.3 of Schedule 1.
- (c) The Joint Trustees may place conditions upon the release of Distributions to the Economic Arm, including, but not limited to a requirement that:
  - (i) the Distributions be provided subject to the terms of an alternative funding model, such as a secured or unsecured loan; and
  - (ii) the Distributions are subject to a Sustainability Commitment.

### **8.3 General Principles**

In administering the Economic Development Fund, the Joint Trustees must have regard to the following principles:

- (a) in accordance with the Governance Framework, the Joint Trustees' role is limited to governance, compliance and administrative and not substantive decision making regarding the commercial merits of a Development Project;
- (b) the executive and operative capacity of the Economic Arm to deliver the Development Projects;
- (c) best practice good governance, compliance and administration;
- (d) the needs and aspirations of the Economic Arm having regard to its most recent annual plan and strategic plan;



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- (e) the key financial information relating to the Economic Development Fund;
  - (f) the Economic Arm's previous performance in using, applying and acquitting Distributions, and the success of previous Development Projects;
  - (g) the goal of providing a streamlined and efficient process for the release of funds for Development Projects; and
  - (h) the Joint Trustees must manage risk and exposure of the Economic Development Fund through limiting allocations of funding from the Economic Development Fund to 3 yearly allocations, having regard to the long term capacity of the Trust to pursue the Trust Purpose and support the intergenerational aspirations of the Yamatji Nation.

## 9. Land Fund

### 9.1 General Purpose of the Land Fund

- (a) In accordance with clause 5.2, the Joint Trustees must establish a Sub Fund of the Trust Fund to be called the Land Fund to be administered in accordance with this clause 7 and otherwise in accordance with this Deed.
- (b) The Joint Trustees acknowledge that the Yamatji Nation People remain the spiritual and cultural custodians of the Traditional Land and continue to practice their values, languages, beliefs and knowledge in relation to the Traditional Land.
- (c) The general purpose of the Land Fund is for the Joint Trustees to hold, manage, invest and Apply the:
  - (i) **Development Land** in a manner that aims to achieve a financial return for the Yamatji Nation;
  - (ii) **Cultural Land** in a manner that allows the Yamatji Nation to continue to practice their values, languages, beliefs and knowledge in relation to the Cultural Land;
  - (iii) **Unclassified Land** in a manner that will allow the Regional Entity, in consultation with the Cultural Authority, to classify the Unclassified Land as Development Land or Cultural Land; and
  - (iv) **Holding Costs** in a manner that meets any obligations associated with those funds under the ILUA, and otherwise is sufficient to meet the ongoing holding costs associated with the Land Estate.
- (d) The Land Fund includes the Land Estate and any interest in land accepted by the Joint Trustees.
- (e) At the request of the Regional Entity, or as required under the ILUA, the Joint Trustees may accept any estate, right or interest in land or Management Order and must:
  - (i) hold and manage that land or Management Order in the Land Fund in consultation with the Regional Entity; and
  - (ii) give written notice of the classification of the land or Management Order under clause 9.2(a)(i) to the Regional Entity.

### 9.2 General Rules

- (a) Where the Joint Trustees accept any estate, right or interest in land to be held in the Land Fund, the Joint Trustees must:
  - (i) identify the estate, right or interest in land that is accepted by the Joint Trustees as Development Land, Cultural Land or Unclassified Land; and
  - (ii) ensure that:

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- (A) the Yamatji Trustee is recorded as the registered proprietor or equivalent in respect of each estate, right or interest in land as bare trustee for the Joint Trustees; and
  - (B) a caveat or equivalent is registered in favour of the Licensed Trustee in respect of each estate, right or interest in land, and in such form as the Trustee determines appropriate in the circumstances.
- (b) The Joint Trustees must hold, manage and invest the land exclusively for the benefit of both current and future generations of the Yamatji Nation.
  - (c) The Joint Trustees must establish, maintain and regularly update a register of all interests or Management Orders in land held by the Joint Trustees (**Land Register**), which also identifies the:
    - (i) Yamatji Entity to which an interest or Management Order in land relates; and
    - (ii) costs and statutory obligations of the relevant interest or Management Order.
  - (d) The Joint Trustees must make the Land Register available to the Yamatji Entities.
  - (e) The Joint Trustees must hold, manage and invest the Holding Costs to meet the outgoings and costs of maintaining the Trust's interests in the Land Estate.
  - (f) The Joint Trustees must consult with the Regional Entity prior to:
    - (i) Distributing Development Land or Cultural Land; and
    - (ii) classifying Unclassified Land as Development Land or Cultural Land.
  - (g) The Joint Trustees must not Distribute Unclassified Land.
  - (h) The Joint Trustees may place conditions upon the release of Distributions of Land, including but not limited to a requirement that:
    - (i) the Land be made available otherwise than by way of Distribution, such as by way of a lease or sublease, licence or other form of legal or equitable tenure;
    - (ii) the Distribution is subject to a Sustainability Commitment; and
    - (iii) conditions for cultural protection.

### 9.3 General Principles

In administering the Land Fund, the Joint Trustees must have regard to:

- (a) best practice good governance, compliance and administration;
- (b) transparency and accountability;

- (c) the key financial information relating to the Land Fund;
- (d) minimising costs and limiting exposure to risks;
- (e) the amount of any anticipated financial return to the Land Fund;
- (f) balancing the interests of the Yamatji Nation as a whole and the interests of the Yamatji persons to benefit from the Land; and
- (g) the needs and aspirations of the Yamatji Entities having regard to the application of the Economic Development Fund and the Land Fund towards Development Projects.

#### 9.4 Holding Cultural Land in the Land Fund

- (a) The Joint Trustees may, subject to the Title Protection Criteria and the conditions imposed by the Minister for Lands pursuant to section 46(1) of the *Land Administration Act 1997* (WA):
  - (i) at the request of a Regional Entity and subject to clause 9.4(b), grant a Yamatji Entity an interest over the whole or any part of the Cultural Land:
    - (A) in the form of a lease or sublease, licence or other form of legal or equitable tenure;
    - (B) in compliance with any applicable requirements under the *Land Administration Act 1997* (WA) and any conditions imposed by the Minister for Lands on the grant of the interest; and
    - (C) otherwise on such terms and conditions as the Joint Trustees deem appropriate; and
  - (ii) otherwise hold and manage the Cultural Land:
    - (A) in consultation with the Regional Entity; and
    - (B) by exercising the Joint Trustees' investment powers in accordance with clause 13 and the Investment Policy or Default Investment Policy (as the case requires).
- (b) In exercising its powers under clause 9.4(a)(i), the Joint Trustees must be satisfied that the grantee of an interest in the Land Estate:
  - (i) complies with the Title Protection Criteria;
  - (ii) can meet the outgoings and costs of maintaining the interest in the Land Estate; and
  - (iii) reports to the Joint Trustees in such form and at such times as the Joint Trustees determine in their discretion, but at least once annually.
- (c) Notwithstanding the provisions of this clause 9, the Joint Trustees may only reclassify Cultural Land, other than land the subject of a Management Order, as Development Land:

- (i) at the request of the Regional Entity; and
  - (ii) in consultation with the Cultural Authority.
- (d) Upon reclassification under this clause 9.4, the reclassified Cultural Land shall be treated as Development Land.
- (e) For the purposes of this clause 9.4, the **Title Protection Criteria** are:
- (i) the Cultural Land must be held by the Joint Trustees and managed in consultation with the Regional Entity;
  - (ii) subject to clause 9.5, title to the Cultural Land will be held in perpetuity by the Joint Trustees; and
  - (iii) any interest in the Cultural Land granted under this clause 9.4 must:
    - (A) not be capable of alienation by sale, transfer, assignment, Long Term Lease or other disposal by the grantee of an interest in Cultural Land or be made subject to any encumbrance, mortgage, charge or other security other than by lease or licence in accordance with clause 9.4(b); and
    - (B) in all cases, be granted on the condition that the interest will automatically terminate if an YE Suspension Notice is issued in respect of the Yamatji Entity that holds the interest.

#### 9.5 Process for undertaking Development Projects

- (a) The Joint Trustees acknowledge that Development Land is land that has been identified as appropriate for Development Projects.
- (b) The Joint Trustees must hold, manage, invest and Apply the Development Land as follows:
  - (i) in consultation with the Investment Committee and the Regional Entity;
  - (ii) by exercising the Joint Trustees' investment powers in accordance with clause 13 and the Investment Policy; and
  - (iii) where the Joint Trustees deem it appropriate, by making parcels of Development Land available to the Economic Arm in accordance with clause 9.5.
- (c) The Joint Trustees must, subject to the terms of this Deed, make available, by way of Distribution or otherwise, Development Land that is the subject of a Funding Application for a Development Project and:
  - (i) is submitted in accordance with the Funding Guidelines;
  - (ii) in the Joint Trustees' reasonable opinion, satisfies the requirements in clauses 9.2 and 9.3;
  - (iii) in the Joint Trustees' reasonable opinion will not expose the Trust Fund to any unacceptable risk or liability;

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- (iv) complies with the requirements set out in Item S1.2 of Schedule 1; and
  - (v) is assessed as acceptable in accordance with Item S1.3 of Schedule 1.
- (d) The Joint Trustees may place conditions upon use of Development Land, including, but not limited to a requirement that:
- (i) the Development Land be made available otherwise than by way of Distribution, such as by way of a lease or sublease, licence or other form of legal or equitable tenure;
  - (ii) no security interest be registered against the Development Land without the prior written consent of the Joint Trustees; and
  - (iii) access to the Development Land is subject to a Sustainability Commitment from the Economic Arm.

## 10. General Fund

### 10.1 General Purpose of the General Fund

- (a) In accordance with clause 5.2, the Joint Trustees must establish a Sub Fund of the Trust Fund to be called the General Fund to be administered in accordance with this clause 10 and otherwise in accordance with this Deed.
- (b) The General Fund is to be held and managed for the purpose of providing funding for General Projects that are not eligible for a Distribution from another Sub Fund.
- (c) The primary focus of the General Fund shall be on funding Yamatji Entity activities (in particular the Regional Entity) that are outside of the Yamatji Entity's Core Functions, including programs to support the Yamatji Nation such as an Elders support fund (**General Projects**).
- (d) The Joint Trustees may from time to time:
  - (i) approve specific General Projects to be funded by Distribution to one or more Yamatji Entities from the General Fund; and
  - (ii) develop principles or guidelines that apply to those General Projects (**General Project Guidelines**).

### 10.2 General Rules

- (a) The General Fund may only be distributed by the Joint Trustees for General Projects.
- (b) Distributions from the General Fund may be made at any time to the Yamatji Entities in the Joint Trustees' discretion.
- (c) Where a Yamatji Entity receives a Distribution from the General Fund, the Joint Trustees may require that the Yamatji Entity undertake the General Project in accordance with any relevant Funding Guidelines and the General Project Guidelines.
- (d) Funding Applications for Distributions from the General Fund are considered by the Joint Trustees in their absolute discretion in accordance with clause 11 and no Yamatji Entity is entitled to any guaranteed minimum annual Distribution.
- (e) Distributions from the General Fund must be:
  - (i) paid by instalments once every 6 months except in exceptional circumstances; and
  - (ii) acquitted annually.

### 10.3 General Principles

In administering the General Fund, the Joint Trustees must have regard to:

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- (a) the Yamatji Nation's desire for the Joint Trustees to be able to respond to opportunities, projects and initiatives for the benefit of the Yamatji Nation, and to receive funds from Contributors for specific purposes that benefit the Yamatji Nation;
  - (b) the Yamatji Nation's desire to support the wellbeing of those Yamatji Nation Elders who supported their community towards achieving the outcomes in the ILUA;
  - (c) best practice good governance, compliance and administration;
  - (d) transparency and accountability;
  - (e) collaboration between the Yamatji Entities in a manner that avoids duplication;
  - (f) supporting the design and implementation of effective systems;
  - (g) the key financial information relating to the General Fund; and
  - (h) the funds available in each other Sub Fund and, if the Joint Trustees determine that it is in the best interests of current and future generations of the Yamatji Nation, the reallocation of funds between the Sub Funds.



## 11. Allocation Budget

### 11.1 Allocation Budget

- (a) Having regard to the Allocation Principles, and after consultation with the Investment Committee and Regional Entity, the Joint Trustees must determine in respect of each period of up to three (3) Financial Years the following (**Allocation Budget**):
  - (i) amounts available during that Allocation Period for allocation to the Yamatji Entities for Distribution from each of the Sub Funds; and
  - (ii) Joint Trustee's Expense Budget.
- (b) The Joint Trustees must, within 14 days of determining the Allocation Budget provide a copy to the:
  - (i) Yamatji Entities;
  - (ii) State during the State Contribution Period, via the Government Partnership Committee; and
  - (iii) Investment Committee.

### 11.2 Allocation Principles

When determining the Allocation Budget, the Joint Trustees must have regard to the following Allocation Principles:

- (a) ensure that Distributions do not exceed levels which would reduce the long term capacity of the Trust to pursue the Trust Purpose and support the intergenerational aspirations of the Yamatji Nation and their Yamatji Entities;
- (b) the first priority of the Allocation Budget is, as far as practicable, ensuring there is Administration Funding available to meet the reasonable costs of supporting the core functions of the Yamatji Entities;
- (c) the actual and proposed timing of receipt by the Trust of the State Contributions;
- (d) the total available capital in each Sub Fund;
- (e) the executive and operational capacity of the Yamatji Entities;
- (f) determine a fair, just and equitable (which does not necessarily mean equal) allocation of the Trust Fund that is available for Distribution between the Yamatji Entities having regard to the:
  - (i) Group Strategic Plan;
  - (ii) needs and aspirations of the Yamatji Entity, further to the Yamatji Entity's most recent annual plan and strategic plan;
  - (iii) capacity of the Yamatji Entity to undertake the activities proposed in its most recent annual plan and strategic plan;

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- (iv) current status of each Yamatji Entity, further to the Yamatji Entity's most recent audited annual report and any Special Purpose Report;
- (g) the requirement under the ILUA that, at the end of the State Contribution Period:
- (i) 60 percent of the total financial component of the State Contribution received by the Trust be received by the Future Fund;
  - (ii) 20 percent of the total financial component of the State Contribution received by the Trust be received by the Economic Development Fund;
  - (iii) 15 percent of the total financial component of the State Contribution received by the Trust be received by the Administration Fund; and
  - (iv) 5 percent of the total financial component of the State Contribution received by the Trust be received by the Land Fund for Holding Costs; and
- (h) any other factors that the Joint Trustees consider appropriate to take into account.

## 12. Distribution

### 12.1 Distribution Principles

When making Distributions, the Joint Trustees must have regard to the following Distribution Principles:

- (a) it is a matter for each Yamatji Entity to determine how it will pursue its charitable objects;
- (b) the Regional Entity may make a Funding Application in respect of Development Projects or General Projects for a Distribution from any of the Sub Funds;
- (c) the Joint Trustees' role in relation to the Economic Development Fund and the Land Fund is governance, compliance and risk management having regard to the Trust Purpose, and not substantive decision making about how the Economic Arm should pursue its objectives in furtherance of the Group Strategic Plan;
- (d) the Economic Arm has been established in order to make informed decisions regarding the strategic direction of the Economic Arm and the specific Development Projects to be undertaken;
- (e) the Regional Entity and the Economic Arm need certainty of available funds to successfully develop the potential economic opportunities for Yamatji Nation;
- (f) the Joint Trustees must manage risk and exposure of the Trust Fund through limiting allocations of funding to 3 yearly allocations, having regard to the long-term capacity of the Trust to pursue the Trust Purpose and support the intergenerational aspirations of the Yamatji Nation;
- (g) other than Distributions of Administration Funding, Distributions should include a Sustainability Commitment where the Trustee considers it appropriate;
- (h) Distributions should be made in a way that supports the Yamatji Entities to benefit a broad cross-section of the Yamatji Nation but without limiting the Joint Trustees' discretion as to the manner in which it will make Distributions between Yamatji Entities;
- (i) Funding Applications can be made by any Yamatji Entity;
- (j) Distributions should, in the Joint Trustees' reasonable opinion, be just, fair and equitable as between Yamatji Entities (which does not necessarily require equal Distributions); and
- (k) Distributions must only be applied by Yamatji Entities in furtherance of the Trust Purpose.

### 12.2 General Distribution Power

- (a) Subject to requirements in clause 7 regarding the Future Fund, in each Financial Year the Joint Trustees may Distribute so much of the Net Income and capital of the Trust Fund to the Yamatji Entities for the Trust Purpose in

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such amounts and on such conditions as the Joint Trustees may determine in accordance with this clause 12 and otherwise in accordance with this Deed.

- (b) Notwithstanding clause 12.1(a), but subject to requirements in clause 7 regarding the Future Fund, the Joint Trustees shall not be bound to exercise their discretion to distribute any of the income and capital of the Trust Fund in any Financial Year and the Joint Trustees may accumulate and retain the income as part of the Trust Fund.
- (c) The Joint Trustees will not be in breach of their obligations under this clause 12 by reason that:
  - (i) some Yamatji Entities may receive some benefits before others because of the limited financial resources of the Trust in any Financial Year;
  - (ii) different Yamatji Entities may receive benefits of different kinds or amounts to other Yamatji Entities due to the activities or circumstances of the various Yamatji Entities; or
  - (iii) Distributions are only made from the Administration Fund in any given year.

### 12.3 Default Accumulation

The Joint Trustees shall hold so much of the Net Income of the Trust Fund for each Financial Year as is not the subject of a Distribution under clause 12.2(a) or a decision to accumulate under clause 12.2(b) as part of the capital of the Trust Fund, and the Joint Trustees may use that amount for Distribution in accordance with this clause 12.

### 12.4 Sustainability of Distributions

In order to assist the Joint Trustees to achieve long term sustainable and reliable levels of available funding to meet the Trust Purpose, the Joint Trustees must have regard to the Allocation Budget and the Joint Trustee's Expense Budget whenever the Joint Trustees are considering the exercise of the Joint Trustees' powers under this clause 12.

### 12.5 Indirect Distribution Power

Further to the ILUA, the Joint Trustees may with the consent of the Regional Entity, by notice in writing to the State, direct that an asset that the Joint Trustees would otherwise be entitled to receive from the State under the ILUA, be transferred directly to the Economic Arm before it is received by the Trust, provided that:

- (a) the Economic Arm has otherwise satisfied all requirements in this Deed for a Distribution in relation to that asset, as if it were part of the Trust Fund; and
- (b) the Joint Trustees have assessed and approved the indirect Distribution in the manner contemplated in this clause 12.

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## 12.6 Funding Applications for Distributions

- (a) The Joint Trustees must only approve Distributions for which it has received a Funding application from a Yamatji Entity in accordance with the Funding Guidelines.
- (b) The Joint Trustees must review every Funding Application and determine within a reasonable timeframe whether to approve a Funding Application and if so, determine the nature and scope of the Distribution, including any relevant Payment Conditions, having regard to:
  - (i) this clause 12; and
  - (ii) the Funding Guidelines.
- (c) Having regard to the Distribution Principles, and having obtained advice from the Investment Committee, the Joint Trustees must approve a Funding Application provided that the Joint Trustees are satisfied with:
  - (i) compliance with the terms of the Trust Deed;
  - (ii) the value of the proposed Distribution will not jeopardise the long-term capacity of the Trust to pursue the Trust Purpose and support the intergenerational aspirations of the Yamatji Nation;
  - (iii) the Yamatji Entity is in good governance order; and
  - (iv) the standard of the documents submitted by the Yamatji Entity in its Funding Application having regard to:
    - A. the requirements in the Funding Guidelines, and
    - B. the standard reasonably expected of a submission for a project of a similar nature and scope.
- (d) The Joint Trustees may place conditions upon the release of a Distribution, including a Payment Condition or Sustainability Commitment.

## 12.7 Payment Conditions

The Joint Trustees may place certain conditions for release of Distributions to Yamatji Entities (**Payment Conditions**) having regard to any one or more of the following factors:

- (a) the size and timing of the Distribution to the Yamatji Entity;
- (b) the proposed use of the Distribution;
- (c) whether the Yamatji Entity's use of previous Distributions was materially in accordance with the terms of the Distribution;
- (d) acquittal requirements for release of 6 monthly instalments of a Distribution;
- (e) the Joint Trustees right of indemnity for the Joint Trustees costs and expenses;

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- (f) any monies owed by the Yamatji Entity to the Joint Trustees;
  - (g) the Yamatji Entity's conduct in relation to any Suspension Event; and
  - (h) the desire to return funds to the Trust over time.

## 12.8 Sustainability Commitment

- (a) The Joint Trustees must have regard to the principle, that where a Distribution recipient successfully generates a financial return from a Development Project or General Project, then it would be beneficial for some of those returns to be contributed to the Trust:
  - (i) to support the Yamatji Nation's vision for the settlement under the ILUA, to create a strong and sustainable foundation for current and future generations of the Yamatji Nation; and
  - (ii) to help ensure that sufficient funds will be available from the Trust Fund for future generations.
- (b) The Joint Trustees may, in consultation with the Regional Entity, make it a Payment Condition of a Distribution that the recipient must contribute to the relevant Sub Fund of the Trust an amount, or amounts, that together equal the market value of the Distribution from that Sub Fund (**Sustainability Amount**).
- (c) The Sustainability Amount shall be payable at such times and in such manner as agreed between the Joint Trustees, the Regional Entity and the Distribution recipient, or failing agreement then in the following manner until the Sustainability Amount has been paid and otherwise on terms acceptable to the Joint Trustees:
  - (i) 15 percent of the Distribution recipient's Annual Net Earnings (if any) derived by the Distribution recipient in a Financial Year from the relevant Development Project or General Project (as applicable), no later than 5 months after the end of that Financial Year;
  - (ii) 30 percent of the Distribution recipient's Net Capital Proceeds from the Disposal of the relevant Development Project or General Project (as applicable), no later than 2 months after receipt of the Net Capital Proceeds from the Disposal; and
  - (iii) proceeds from any other available source, as determined by the Distribution recipient.
- (d) The maximum aggregate liability of a Distribution recipient under clause 12.8(c)(i) and 12.8(c)(ii) to pay Net Annual Earnings and/or Net Capital Proceeds is capped at and must not exceed the Sustainability Amount for a particular Development Project or General Project (as applicable).
- (e) The Joint Trustees may require the Distribution recipient to grant a caveat, charge or other encumbrance as security for payment of the Sustainability Amount.

## 12.9 Distribution Accounts

Subject to clause 12.10, once the Joint Trustees have exercised the Joint Trustees discretion to make a Distribution to a Yamatji Entity in respect of a Financial Year the Joint Trustees must:

- (a) hold that amount in trust for that Yamatji Entity subject to any Payment Conditions and otherwise subject to the direction of that Yamatji Entity; and
- (b) establish, within the management accounts of the Trust Fund, a distribution account in the name of the Yamatji Entity (**Distribution Account**) to which that Distribution or any further Distribution may be credited.

## 12.10 Non-Forfeiture of Distribution Account

For the avoidance of doubt:

- (a) subject to clause 12.12(d), the amount standing to the credit of an Yamatji Entity in a Distribution Account is the property of the Yamatji Entity and may not be forfeited; and
- (b) the Yamatji Entity can request payment of the balance of the Distribution Account, subject to the provisions of this clause 12 relating to:
  - (i) Payment Conditions; and
  - (ii) suspension of payments.

## 12.11 Funding Guidelines

- (a) Subject to clause 12.1, the Joint Trustees must prepare and maintain Funding Guidelines.
- (b) The initial Funding Guidelines are set out in Schedule 1.
- (c) The Joint Trustees may Modify the Funding Guidelines from time to time **provided that** the:
  - (i) Funding Guidelines must at all times comply with the Governance Framework, the Joint Governance Principles, the Distribution Principles and the terms of this Deed (other than Schedule 1);
  - (ii) Funding Guidelines must be consistent with the Group Strategic Plan;
  - (iii) Joint Trustees have consulted with the Regional Entity and the Economic Arm;
  - (iv) Joint Trustees have obtained the prior written consent of the State, where the Modification occurs during the State Contribution Period;
  - (v) Joint Trustees provide a copy of the Modified Funding Guidelines to the:
    - (A) Yamatji Entities; and

- (B) State, where the Modification occurs during the State Contribution Period.

### 12.12 Suspension of Payments

- (a) The Joint Trustees may suspend payment of a Distribution (**Suspension Amount**) to a Yamatji Entity (other than a Yamatji Trustee) for a fixed period (**Suspension Period**) if:
- (i) the Yamatji Entity ceases to meet the definition of Yamatji Entity;
  - (ii) the Yamatji Entity's use of a previous or current Distribution was not materially in accordance with, or was seriously in breach of, the terms of the Distribution;
  - (iii) there is a serious breach by the Yamatji Entity of a Payment Condition;
  - (iv) a YE Suspension Notice has been issued in respect of the Yamatji Entity; or
  - (v) there is a serious breach by the Yamatji Entity of the Yamatji Entity's budget for the relevant Financial Year or quarter.
- (b) The Joint Trustees must advise the Yamatji Entity of:
- (i) the circumstances giving rise to the suspension (**Suspension Event**);
  - (ii) the Suspension Amount; and
  - (iii) the actions required to remove the suspension (**Suspension Remedy**).
- (c) Where the Suspension Event is as a result of a YE Suspension Notice, the Suspension Remedy must be the revocation or withdrawal of the YE Suspension Notice.
- (d) The Joint Trustees may forfeit the Suspension Amount if, in the Joint Trustees' reasonable opinion, the Yamatji Entity fails to complete the Suspension Remedy within the Suspension Period, and the forfeited Suspension Amount shall form part of the capital from the Sub Fund from which it was paid.

### 12.13 Non-Compliance Issues

- (a) The Joint Trustees must as soon as practicable issue a Yamatji Entity (**Suspended YE**) with a YE Suspension Event Notice in the event that:
- (i) the Suspended YE fails to meet the definition of a Yamatji Entity;
  - (ii) in the Joint Trustees' reasonable opinion, the Suspended YE fails to substantially or materially meet any compliance or reporting requirement specified in this Deed or any applicable Payment Conditions; or



- (iii) in the Joint Trustees' reasonable opinion, the Suspended YE repeatedly fails to meet any compliance or reporting requirement specified in this Deed or any applicable Payment Conditions,

**(a YE Suspension Event).**

- (b) Subject to clause 12.13(a), if the Suspended YE fails to meet any compliance or reporting requirement specified in this Deed (including Schedule 1) or any applicable Payment Condition, the Joint Trustees must take that into account under clause 12.5 when determining whether to make any subsequent Distribution to the Suspended YE, the amount of such Distribution (if any) and the Payment Conditions attached to such Distribution (if any).
- (c) An **YE Suspension Event Notice** must:
- (i) specify the nature and circumstances of the relevant YE Suspension Event;
  - (ii) specify the timeframe for the Suspended YE to complete YE Remedy Action, which must be no less than 20 Business Days after and no more than 3 months after the Joint Trustees provide the notice; and
  - (iii) where practicable, specify the appropriate YE Remedy Action.
- (d) The Joint Trustees must as soon as practicable issue the Suspended YE with a YE Suspension Notice if:
- (i) YE Remedy Action is not completed within the timeframe provided for in the YE Suspension Event Notice or within any subsequent timeframe agreed between the Joint Trustees and the Suspended YE; or
  - (ii) the YE Suspension Event is not, or is no longer, capable of YE Remedy Action.
- (e) An **YE Suspension Notice** must:
- (i) refer to the relevant YE Suspension Event and the relevant YE Suspension Event Notice;
  - (i) state that YE Remedy Action has not been completed or the YE Suspension Event is not, or is no longer, capable of YE Remedy Action for the purposes of clause 12.13(d); and
  - (ii) set out details of the consequences under clause 12.13(f).
- (f) If the Joint Trustees issue a Suspended YE with an YE Suspension Notice, then:
- (i) the Joint Trustees may, as far as is practical and in their discretion, provide reasonable financial and other assistance to:
    - (A) in the first instance, the Suspended YE or an administrator of the Suspended YE to enable the Suspended YE to again meet the requirements to be a Yamatji Entity or to otherwise resolve the relevant YE Suspension Event, with a view to:

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- (1) avoid the need to establish and appoint a replacement entity that meets the requirements of a Yamatji Entity; and
  - (2) subject to any conditions the Joint Trustees may reasonably require, ensure the ongoing good governance of the Suspended YE and avoid the recurrence of the matters that led to the YE Suspension Event; or
- (B) assist the Yamatji Nation to establish and appoint a replacement entity that meets the requirements of a Yamatji Entity to be a Yamatji Entity (and, to avoid doubt, in those circumstances that replacement entity will be subject to all requirements in this Deed); and
- (ii) notwithstanding anything else in this Deed, the Joint Trustees must, other than as permitted under clause 12.13(f)(i)(A), cease making Distributions or payment of instalments of Distributions to the Suspended YE until the YE Remedy Action is completed.

#### 12.14 Special Purpose Yamatji Entity Reporting

- (a) Subject to clause 12.14(c), the Joint Trustees may require a Special Purpose Report from a Yamatji Entity, at the Yamatji Entity's cost, in respect of a Financial Year.
- (b) The Special Purpose Report must include:
  - (i) the Yamatji Entity's activities for the previous Financial Year;
  - (ii) details of the services provided by the Yamatji Entity in the previous Financial Year;
  - (iii) details of the functions performed by the Yamatji Entity in the previous Financial Year;
  - (iv) information as to how the funds received by the Yamatji Entity from the Trust were used to advance the Trust Purpose;
  - (v) details of any contributions made by the Yamatji Entity to the Trust under a Sustainability Commitment;
  - (vi) details of all General Projects undertaken by the Yamatji Entity in the previous Financial Year and whether or not those General Projects have been completed;
  - (vii) a statement from the Yamatji Entity regarding the Yamatji Entity's expenditure as against the Yamatji Entity's budget for the previous Financial Year and, to the extent the expenditure exceeded the budget, a report on the steps that will be taken to reduce the Yamatji Entity's expenditure; and
  - (viii) a copy of the Yamatji Entity's financial statements for the previous Financial Year.

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- (c) The Joint Trustees may rely on the Yamatji Entity's audited annual reports if, in the Joint Trustees' reasonable opinion, they adequately address the matters in clause 12.14(b).

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## **13. Investment**

### **13.1 Joint Trustees' Investment Powers**

The Joint Trustees may invest part or all of the Trust Fund only:

- (a) in accordance with the Investment Principles and:
  - (i) the Investment Policy; or
  - (ii) where there is no Investment Policy, the Default Investment Policy;
- (b) in consultation with an Investment Committee appointed under clause 14;
- (c) in relation to an investment over the value of \$5 million, with the consent of the Investment Committee appointed under clause 14;
- (d) in relation to a Decision to Proceed, in consultation with the Regional Entity;
- (e) having regard to the Joint Trustees' powers; and
- (f) exercising the care, diligence and skill that a prudent person would exercise in managing the affairs of other persons.

### **13.2 Trustees Act**

The investment of trust assets must comply with Part III of the Trustees Act. In particular:

- (a) investment decisions must meet the requirements in section 18 of the Trustees Act; and
- (b) the investments must be reviewed at least once each year.

### **13.3 Investment Principles**

The Joint Trustees and the Investment Committee must have regard to the following Investment Principles when preparing or Modifying the Investment Policy and when considering the exercise of the Joint Trustees' investment powers:

- (a) the Investment Policy must provide specific guidelines for investment of the following Sub Funds:
  - (i) Administration Fund;
  - (ii) Future Fund;
  - (iii) Economic Development Fund;
  - (iv) Land Fund; and
  - (v) General Fund;
- (b) the Investment Policy must establish appropriate benchmarks for the Joint Trustees to report on actual performance of the Joint Trustees investments

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- against the agreed investment performance benchmarks identified in the Investment Policy, including the Joint Trustees costs and expenses for conducting the investments;
- (c) investments of the Future Fund must have an appropriate asset mix that reflects the long term goals of the Future Fund (being commensurate with perpetual charitable funds of this nature);
  - (d) investments of the Economic Development Fund and Land Fund must be:
    - (i) made in consultation with the Regional Entity and the Economic Arm;
    - (ii) developed having regard to the unique arrangements specified in clause 8 (Economic Development Fund) and clause 9 (Land Fund) of this Deed;
  - (e) the Investment Policy must:
    - (i) permit the Joint Trustees to make investments in Yamatji Investments and Impact Investments; and
    - (ii) provide guidance around the appropriate benchmarks and portfolio mix in relation to such investments.

#### 13.4 Investment Policy

- (a) Having regard to the Investment Principles and subject to clause 13.5, the Joint Trustees must prepare an Investment Policy for the investment of the Trust Fund in the following way:
  - (i) prepare a draft Investment Policy;
  - (ii) following the preparation of a draft Investment Policy, prepare an expression of interest for the services of one or more Investment Managers with proposed investment mandates in respect to both financial assets and land assets;
  - (iii) call for and receive proposals in response to the expressions of interest from prospective Investment Managers;
  - (iv) shortlist candidates for selection as the Investment Manager and present them to the Investment Committee with the Joint Trustees' views and opinions;
  - (v) arrange for shortlisted candidates to present proposals to the Investment Committee;
  - (vi) obtain feedback and recommendations from the Investment Committee on proposals from Investment Managers;
  - (vii) select the preferred Investment Manager or Investment Managers;
  - (viii) amend the draft Investment Policy having regard to the selected Investment Manager's proposals and/or investment mandates and provide it to the Investment Committee for feedback and recommendations; and

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- (ix) finalise the Investment Policy.
  - (b) Where a Licensed Trustee is a Joint Trustee:
    - (i) the Licensed Trustee and its Associates are eligible to respond to any expressions of interest called in accordance with clause 13.4(a)(iii); and
    - (ii) the Joint Trustees may only appoint the Licensed Trustee or its Associates as the Investment Manager or one of the Investment Managers with the prior written consent of the Investment Committee.

### 13.5 Review of the Investment Policy

The Investment Policy may be reviewed or Modified by the Joint Trustees, in consultation with the:

- (a) Regional Entity;
- (b) Investment Committee; and
- (c) State via the Government Partnership Committee (during the State Contribution Period).

### 13.6 Making the Investment Policy Available

At the end of each Financial Year, the Joint Trustees must provide a copy of the most recent Investment Policy to the:

- (a) Yamatji Entities;
- (b) Investment Committee; and
- (c) State.

## 14. Investment Committee

### 14.1 Functions

The Investment Committee must:

- (a) review proposals from Investment Managers and provide recommendations and feedback to the Joint Trustees;
- (b) review the draft Investment Policy as prepared by the Joint Trustees and provide recommendations and feedback to the Joint Trustees;
- (c) assist the Joint Trustees to review the performance of the investments made by the Joint Trustees against the agreed investment performance benchmarks identified in the Investment Policy;
- (d) review the Joint Trustees' compliance with its investment obligations under this Deed, and provide recommendations to the Joint Trustees as to how those obligations may be met;
- (e) provide unbiased investment advice and recommendations to the Joint Trustees, including in relation to the Investment Manager's proposals;
- (f) provide guidance to the Joint Trustees on:
  - (i) whether Funding Applications for Development Projects meet the requirements in the Funding Guidelines; and
  - (ii) the performance of a Yamatji Entity's investment pursuant to a Development Project; and
- (g) consider and, if the Investment Committee determines appropriate, give its consent to, investments and Applications of the Trust Fund over the value of \$5 million.

### 14.2 Composition

- (a) The Investment Committee must be appointed by the Joint Trustees and comprise:
  - (i) 1 representative from the Yamatji Trustee who shall be the chair of the Investment Committee;
  - (ii) 1 representative from the Licensed Trustee;
  - (iii) 2 Independent business Expert persons nominated by the Regional Entity on the recommendation of the Nominations Committee;
  - (iv) 1 Independent financial Expert person nominated by the Joint Trustees on the recommendation of the Nominations Committee.
- (b) The Joint Trustees may determine the remuneration payable (if any) to the Investment Committee.

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### 14.3 Qualifications

In addition to any additional qualifications specified by the Joint Trustees from time to time, an Investment Committee member must demonstrate the following qualifications:

- (a) financial literacy;
- (b) leadership experience;
- (c) in the case of the Independent business Expert in clause 14.2(a)(iii), at least 5 years relevant business or property development expertise or experience;
- (d) in the case of the Independent financial Expert in clause 14.2(a)(iv), at least 5 years investment expertise or experience in relation to funds under management of greater than \$500 million;
- (e) absence of conflicting commitments (other than the Yamatji Trustee representative or Licensed Trustee representative);
- (f) has not been disqualified from managing corporations or companies;
- (g) has not been convicted in a criminal proceeding or named a subject of a pending criminal proceeding (excluding traffic violations and other minor offences);
- (h) has not been found in a civil proceeding to have violated any federal or state securities or commodities law;
- (i) is not subject to any court or regulatory order or decree limiting his or her business activity, including in connection with the purchase or sale of any security or commodity; and
- (j) is not a director, officer or committee member of a Yamatji Entity (other than the Yamatji Trustee representative).

### 14.4 Selection Process

- (a) When selecting Investment Committee members, the Joint Trustees must request the Nominations Committee to:
  - (i) call for nominations by advertising in a range of different manners, including advertising in significant online and hard copy publications in the Joint Trustees discretion and in a suitable culturally appropriate manner; and
  - (ii) provide reasonable notice of the call for nominations.
- (b) When selecting the Investment Committee members, the Joint Trustees must request the Nominations Committee to:
  - (i) review the composition of the Investment Committee to ensure that there is a balanced mix of expertise and experience;
  - (ii) develop appropriate criteria for assessing the suitability of candidates;



- (iii) consider candidates on the basis of merit rather than any affiliation; and
- (iv) request from candidates and third party sources sufficient information to enable the Joint Trustees to assess the candidates' fulfilment of the qualifications in clauses 14.2 and 14.3 and the candidates' suitability.

#### 14.5 Investment Committee Decisions

- (a) Decisions of the Investment Committee will be determined and their meetings will be carried out in accordance with Schedule 3 of this Deed or as otherwise determined by the Joint Trustees from time to time.
- (b) The Investment Committee must adopt and comply with the Group Code of Conduct.

#### 14.6 Term of appointment

- (a) A person will continue to be a member of the Investment Committee until the earlier of the:
  - (i) expiration of a period of 3 years;
  - (ii) date on which the person:
    - (A) resigns;
    - (B) dies;
    - (C) becomes mentally incapacitated;
    - (D) has their nomination for appointment revoked by the relevant body or committee which nominated them in accordance with clause 14.2; or
    - (E) is removed as a member in accordance with clause 14.7.
- (b) A person is eligible for reappointment as a member of the Investment Committee, subject to clause 14.6(c).
- (c) A person must not be appointed as a member of the Investment Committee for more than 2 consecutive terms.

#### 14.7 Removing Investment Committee members

- (a) The Investment Committee may by resolution recommend that the Joint Trustees remove one of its members if the person:
  - (i) fails to attend 3 consecutive Investment Committee meetings without reasonable excuse; or
  - (ii) does an act or omission that the Investment Committee reasonably considers is a serious breach of the Group Code of Conduct.
- (b) A person removed under this clause 14.7 is ineligible for reappointment as a member of the Investment Committee.

## 15. Trust Strategic Plan

### 15.1 Purpose of Trust Strategic Plan

The purpose of the Trust Strategic Plan is to:

- (a) set out the long-term objectives to facilitate advancement of the Trust and the Trust Purpose having regard to:
  - (i) the Group strategic plan, and how best to compliment that strategic plan;
  - (ii) the anticipated budgets of the Trust;
  - (iii) anticipated Trust income and expenditure;
  - (iv) any requirements under the ILUAs; and
  - (v) any proposed priorities and programs of the Trust;
- (b) support the Yamatji Trustee's capacity building towards becoming and remaining the Sole Yamatji Trustee;
- (c) provide recommendations for improvement of the Governance Framework, Funding Guidelines and the Investment Policy which may include proposed amendments to the governing documents of any of the Yamatji Entities and this Trust Deed;
- (d) provide context having regard to the social, political, economic, government and environmental climate of the time;
- (e) provide recommendations for the better administration of the Trust having regard to content of the Joint Trustees' Annual Reports for the years covered by the Trust Strategic Plan.

### 15.2 Formulating Trust Strategic Plan

During the First Year, and every 3 years thereafter at the beginning of the relevant Financial Year, the Joint Trustees will consider and formulate a Trust Strategic Plan for the next 3 years using the following procedure:

- (a) the Joint Trustees will formulate a proposed Trust Strategic Plan, having regard to:
  - (i) the Group Strategic Plan;
  - (ii) the Joint Trustees' Annual Reports from previous years (if any);
  - (iii) the Funding Guidelines and Investment Policy;
  - (iv) the actual and anticipated administration, overheads and operating expenses of the Trust (if any);
  - (v) the Trust Fund and the financial position of the Trust; and

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- (vi) the findings of any Auditor's review of the Trust's performance;
  - (b) for the purpose of reviewing the current Trust Strategic Plan and seeking input on the proposed Trust Strategic Plan, the Joint Trustees will consult with:
    - (i) any Advisory Committees (if applicable);
    - (ii) the Yamatji Entities;
    - (iii) the Investment Committee; and
    - (iv) the State via the Government Partnership Committee, during the State Contribution Period; and
  - (c) having regard to the consultations conducted under clause 15.2(b) above, the Joint Trustees will then finalise the Trust Strategic Plan.

### 15.3 Modifying the Trust Strategic Plan

The Joint Trustees may Modify the Trust Strategic Plan during the Financial Years to which the Trust Strategic Plan relates provided the Joint Trustees follow a substantially similar procedure to the procedure outlined in clause 15.2.

### 15.4 Implementation of the Trust Strategic Plan

The Joint Trustees must administer the Trust in accordance with the Trust Strategic Plan and must seek to implement any recommendations contained in the Trust Strategic Plan.

### 15.5 Making Available the Trust Strategic Plan

As soon as practicable after the Trust Strategic Plan is finalised, the Joint Trustees must make it available for viewing by the:

- (a) Yamatji Entities;
- (b) Investment Committee; and
- (c) State.

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## 16. Joint Trustees Actions

### 16.1 Joint Trustees Discretions and Powers

- (a) Except where there is an express contrary provision in this Deed, every discretion given to the Joint Trustees is absolute and uncontrolled and every power given to it is exercisable at its absolute and uncontrolled discretion.
- (b) Subject to this Deed, in addition to the powers vested in the Joint Trustees by law, the Joint Trustees have:

the power to do all such lawful acts and things as are incidental or conducive to the attainment of the Trust Purpose.

### 16.2 Joint Trustees Decisions and Independence

- (a) Subject to any express provision to the contrary in this Deed, if the Joint Trustees acts in good faith, the Joint Trustees are not bound to implement any directives, resolutions of any meeting or views expressed by any of the Nominations Committee, Investment Committee, Advisory Committee (if any) or Yamatji Entity.
- (b) In making a decision, whether made on a question actually raised or implied in the acts or proceedings of the Joint Trustees:
  - (i) the Joint Trustees may resolve conclusively all questions of fact or interpretation;
  - (ii) a decision of the Joint Trustees may be made in the absolute discretion of the Joint Trustees and is conclusive in all respects and binds all persons interested in the Trust and whether or not the decision is reasonable, based on fact, or is arbitrary;
  - (iii) the Joint Trustees need not give any reason or justification in respect of a decision; and
  - (iv) the Joint Trustees may change a decision made by it previously.

### 16.3 Personal Interest of Joint Trustees

- (a) Where the Joint Trustees or any Associate of the Joint Trustees have an interest in a contract or arrangement, or proposed contract or arrangement, or in a matter being considered or about to be considered by the Joint Trustees, other than in respect of a distribution to a Yamatji Entity, the Joint Trustees must disclose the nature of the interest to the other Joint Trustee, the Regional Entity and the Investment Committee.
- (b) The Joint Trustees shall make regulations concerning the manner in which the Joint Trustees will manage conflicts of interest in relation to carrying out the role of the Joint Trustees in accordance with this Deed and shall provide a copy of the regulations to the Regional Entity and the Investment Committee.

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#### 16.4 Joint Trustees Consultation

Where the Joint Trustees are required under this Deed to consult with any party, the Joint Trustees may, acting reasonably, determine the appropriate time and manner for such consultation having regard to the nature, circumstances and costs of the consultation.

#### 16.5 Liability and Indemnity

Subject to clause 16.6, the Joint Trustees and any officer, agent or employee of the Joint Trustees, where purporting to act in the exercise of the trusts of this Deed or exercise powers or discretions under this Deed is:

- (a) not liable for any loss or liability; and
- (b) entitled to be indemnified from the Trust Fund in respect of any loss, liability, costs and expenses relating to:
  - (i) entering into this Deed or Modifying this Deed;
  - (ii) establishing, operating, administering, amending, terminating and winding up the Trust;
  - (iii) all matters incidental to the Trust; and
  - (i) all liability incurred (including liability for income tax and any other taxes and all fines and penalties payable in relation to those taxes) and acts and things done in connection with or resulting from the matters referred to in clause 16.5(b) including, but not limited to, the Joint Trustees performing their duties and exercising their powers and discretions under this Deed.

#### 16.6 Limitations

Notwithstanding clause 16.5, the Joint Trustees and any officer, agent or employee of the Joint Trustees are prohibited from being indemnified from the Trust Fund if the loss, liability, cost or expense is attributable to:

- (a) the dishonesty of that Joint Trustee, officer, agent or employee of the Joint Trustee;
- (b) gross negligence or recklessness of that Joint Trustee, officer, agent or employee of the Joint Trustee;
- (c) a deliberate act or omission known by that Joint Trustee, officer, agent or employee of the Joint Trustee to be a breach of trust; or
- (d) penalties under section 426-120 in Schedule 1 to the *Taxation Administration Act 1953* (Cth).

#### 16.7 Further Advisory Committees

- (a) This clause 16.7 does not apply to each committee the Joint Trustees are specifically required to form under this Deed.

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- (b) The Joint Trustees may in their discretion establish further advisory committees for particular purposes from time to time (**Advisory Committee**) and appoint and remove, or provide for the appointment and removal of, members of those Advisory Committees provided that:
    - (i) the Joint Trustees must determine the remuneration (if any) payable to an Advisory Committee; and
    - (ii) an Advisory Committee member does not have to be a Yamatji Nation Person.
  - (c) The Joint Trustees will determine the functions and proceedings of an Advisory Committee.
  - (d) If the Joint Trustees have established an Advisory Committee in respect of a particular matter, then the Joint Trustees must seek the opinion of that Advisory Committee before the Joint Trustees makes a decision in relation to that matter.
  - (e) Decisions of an Advisory Committee will be determined and their meetings convened in accordance with Schedule 3 of this Deed or as otherwise determined by the Joint Trustees from time to time.
  - (f) An Advisory Committee must adopt and comply with the Code of Conduct.
  - (g) The decisions of an Advisory Committee are recommendations only and do not bind the Joint Trustees.

## 17. Joint Trustee's Remuneration

### 17.1 Remuneration Principles

The Joint Trustee's remuneration must be structured in accordance with the following principles (**Remuneration Principles**):

- (a) there are appropriate incentives (pricing and otherwise) to encourage the Joint Trustees to seek to achieve agreed outcomes;
- (b) there is a regular outcomes-based assessment to ensure that Joint Trustee's services are provided to a sufficient standard and there are remuneration consequences arising out of the assessment;
- (c) stakeholders are clear on exactly what services are included in the Licensed Trustee's annual management fee, which must include all compliance tasks for the Trust (unless otherwise delegated to the Yamatji Trustee);
- (d) costs related to building the Yamatji Trustee's capacity during the State Contribution Period for the purposes of:
  - (i) clause 3.5; or
  - (ii) undertaking the Formal Handover Process,shall not form part of the Yamatji Trustee's budget when applying for a Distribution from the Administration Fund;
- (e) costs and expenses must be incurred in accordance with the Joint Trustee's Expense Budget or otherwise in consultation with the Regional Entity;
- (f) there is appropriate ongoing oversight over the Joint Trustee's remuneration and costs;
- (g) failure to achieve agreed outcomes may trigger an independent performance review;
- (h) the Joint Trustees must be accountable to stakeholders regarding procurement of external goods and services;
- (i) the Joint Trustees adopt robust and transparent processes regarding procurement of external goods and services;
- (j) there is maximum transparency in relation to Joint Trustee's remuneration and costs; and
- (k) the Joint Trustees are not in a position to incur excessive or unwarranted costs.

### 17.2 Licensed Trustee Remuneration

- (a) Subject to the Remuneration Principles, the Licensed Trustee may charge and be paid out of any part of the capital or income of the Trust Fund an annual management fee (**Fee**) during the term of the Licensed Trustee's

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engagement, being a percentage of the gross value of the Future Fund calculated and charged monthly in arrears.

- (b) The percentage rates comprising the Fee must be agreed in writing between the Licensed Trustee, the Yamatji Trustee and the Regional Entity and:
  - (i) must be determined having regard to the Remuneration Principles;
  - (ii) must provide a mechanism for a proportionate reduction in the annual management fee having regard to tasks that are transitioned to the Yamatji Trustee after the first five years of the Trust under clause 4.6; and
  - (iii) are otherwise fixed for the term of the Licensed Trustee's appointment.
- (c) The first Licensed Trustee's remuneration and costs must be:
  - (i) agreed between Yamatji Trustee, the Licensed Trustee, the Regional Entity and the State; and
  - (ii) set out in a written agreement signed by the Yamatji Trustee, the Licensed Trustee and the Regional Entity.
- (d) Any subsequent Licensed Trustee's remuneration and costs must be set out in a remuneration schedule attached to the Deed of Appointment which must meet the requirements in this clause 17.
- (e) The Licensed Trustee must:
  - (v) develop a policy and strategy for Aboriginal workforce development and retention within the Licensed Trustee's organisation;
  - (vi) set progressive annual targets for Aboriginal employment and retention; and
  - (vii) report annually in the Joint Trustee's Annual Report on the Licensed Trustee's progress against the targets.

### 17.3 Yamatji Trustee Remuneration

- (a) The Yamatji Trustee must not charge or be paid any remuneration out of any part of the capital or income of the Trust Fund.
- (b) The Yamatji Trustee may, in consultation with the Regional Entity, apply for a Distribution from the Administration Fund under clause 12, to meet the Yamatji Trustee's costs of undertaking its Core Functions which application:
  - (i) must be prepared having regard to the Remuneration Principles (as applicable to the Yamatji Trustee); and
  - (ii) must be made to the Regional Entity and:
    - (A) to the Licensed Trustee where there are Joint Trustees; or
    - (B) to the Custodian Trustee where there is a Sole Yamatji Trustee.



## 18. Costs and Expenditure

### 18.1 Costs and Expenses

- (a) Subject to the Remuneration Principles and this clause 18, the Joint Trustees may pay or reimburse itself from the Trust Fund for all costs and expenses reasonably and properly incurred in carrying out, administering and discharging the Trust and in exercising any power or discretion or authority conferred on the Joint Trustees by this Deed or the law.
- (b) Unless clause 17.3(b) is applied, Distributions from the Trust Fund do not form part of the Joint Trustee's costs and expenses.
- (c) The Joint Trustees must endeavour at all times to keep the costs of the administration of the Trust to the minimum necessary to perform their obligations.

### 18.2 Yamatji Business Procurement

- (a) The Joint Trustees must:
  - (i) develop a policy for implementing Yamatji Business procurement;
  - (ii) when developing the Trust Strategic Plan and Joint Trustee's Expense Budget, set progressive annual targets for procurement from Yamatji Businesses of goods and services for the Trust; and
  - (iii) report annually in the Joint Trustee's Annual Report on the Joint Trustees progress against the targets.
- (b) The Joint Trustee's procurement processes must always require the Joint Trustees to reasonably investigate whether there is a Yamatji Business that can be engaged.

### 18.3 Joint Trustee's Expense Budget

- (a) The Joint Trustees must establish internal controls of expenditure by the Joint Trustees including compiling an annual budget of expenses of the Trust (**Joint Trustee's Expense Budget**) which must incorporate a budget for each quarter.
- (b) The Joint Trustees must consult with the Regional Entity in relation to the Joint Trustee's Expense Budget.
- (c) The Joint Trustee's Expense Budget must include the remuneration of the Licensed Trustee.
- (d) The Joint Trustees must monitor the expenditure of the Trust in each quarter to ensure that the Trust expenses do not exceed the Joint Trustee's Expense Budget.
- (e) If the Joint Trustee's expenditure exceeds the Joint Trustee's Expense Budget in any quarter, the Joint Trustees must as soon as practicable:

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- (i) examine the Trust accounts and the Trust's activities in an effort to reduce the Joint Trustee's expenditure;
  - (ii) prepare a written report detailing:
    - (A) the extent to which the Joint Trustee's expenditure exceeds the Joint Trustee's Expense Budget; and
    - (B) the Joint Trustee's proposals to reduce the Trust expenditure; and
  - (iii) provide the report referred to in clause 18.3(e)(ii) to the Regional Entity.

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## 19. Records and Accounts

### 19.1 Books of Account and Receipts

- (a) The Joint Trustees must keep or cause to be kept proper accounts in respect of all financial transactions, receipts and payments on account of the Trust and of all dealings connected with the Trust which must give a true and fair view of the financial position of the Trust.
- (b) As soon as practicable after the end of each Financial Year the Joint Trustees must prepare or cause to be prepared financial statements showing the financial position of:
  - (i) the Trust Fund; and
  - (ii) each separate management account (including each Sub Fund),in respect of that Financial Year.

### 19.2 Audit

- (a) The financial statements and all transactions made by the Joint Trustees and the Yamatji Entities (including the Yamatji Trustee in its own capacity) must be audited by an Auditor.
- (b) For each Financial Year, the Joint Trustees must provide copies of the audited financial statements as soon as reasonably practicable after receipt to the:
  - (i) Yamatji Entities;
  - (ii) Investment Committee; and
  - (iii) State.

### 19.3 Trust Fund to be kept distinct

The Joint Trustees must keep the Trust Fund entirely separate and distinct from any other trust fund.

### 19.4 Receipts by others

Where the Joint Trustees make a payment or Applies income or capital from the Trust Fund to a recipient, receipt confirmed by the person purporting to be the treasurer, secretary or other proper officer of the recipient shall be sufficient discharge to the Joint Trustees.

### 19.5 Classification of Trust Income

In making any decision under this Deed the Joint Trustees may:

- (a) treat as income of the Trust Fund any profit, gain or receipt which is assessable income for the purposes of the Tax Law;

- (b) treat as expenditure against income of the Trust Fund (except that the Joint Trustees may only treat as expenditure against income of the Future Fund those expenditures, payments, losses or sums which are reasonably and properly incurred in relation to the Future Fund):
  - (i) any expenditure, payment or loss which is an allowable deduction for the purposes of the Tax Law; and
  - (ii) any sum which is a capital loss for the purposes of the Tax Law;
- (c) distinguish between income of a particular nature or from a particular source as defined or referred to in the Tax Law and deal with each in a particular manner irrespective of the manner in which any other income of a particular nature or from a particular source is dealt with; and
- (d) determine the income (within the meaning given in this clause) against which any loss (including, without limitation, any capital loss or any net capital loss), outgoing, expenditure or payment which is a deduction for the purposes of the Tax Law will be set off (except that the Joint Trustees may only set off such outgoings, expenditures or payments against income of the Future Fund to the extent that those outgoings, expenditures or payments are reasonably and properly incurred in relation to the Future Fund).

#### 19.6 Net Income

- (a) Subject to the following provisions of this 19.6, Net Income means the amount properly calculated to be the net income of the Trust in accordance with trust law and ordinary accounting concepts and principles.
- (b) The Joint Trustees may determine that the Net Income is otherwise than as stated in clause 19.6(a) whether generally or in respect of a particular receipt, profit, loss, liability, expenditure or other amount.
- (c) Without limiting the generality of the foregoing, the Joint Trustees may determine that the Net Income of the Trust be calculated as the amount properly calculated, in accordance with the ITAA, to be the net income of the Trust.
- (d) The Joint Trustees have the power to determine, for the purpose of calculating the Net Income, whether:
  - (i) the Joint Trustee's receipt of money or other property;
  - (ii) a profit made by the Joint Trustees in their capacity as such; and
  - (iii) a loss, liability or expenditure that is an allowable deduction for the purposes of the ITAA;

is to be included in that calculation as received or incurred by the Joint Trustees on revenue account and whether to credit or debit to Net Income or Capital of the Trust Fund.
- (e) The Joint Trustees have the power to determine whether the Capital of the Trust Fund or the Net Income of an Accounting Period is or is not reduced by any loss (on capital or revenue account) that has occurred in any earlier Accounting Period.

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- (f) **Capital of the Trust Fund** means the balance of the Trust Fund that is not Net Income of the Trust. Any receipt or expenditure which is properly excluded in the determination of the Net Income is deemed to be held, made or incurred on capital account and to be, relevantly, capital of the Trust Fund or loss or expenditure on capital account of the Trust Fund (as a matter of law and equity).

## 20. Joint Trustee's Annual Report

- (a) Within 6 months after the end of a Financial Year, the Joint Trustees will conduct a review of the Trust's activities for that Financial Year (**Annual Report**) which will include:
- (i) a brief review of whether the Trust's activities were carried out in accordance with the terms of the Trust Strategic Plan and this Deed;
  - (ii) details of the Yamatji Entities' Special Purpose Reports and/or audited annual reports, as appropriate;
  - (iii) a summary of the Trust's activities for the previous Financial Year;
  - (iv) a summary of the meetings held by the Investment Committee for the previous Financial Year;
  - (v) a summary of the investment performance of the Joint Trustees for the previous Financial Year;
  - (vi) a summary of actions arising in respect of the Administration Fund, Future Fund, Economic Development Fund, Land Fund and General Fund;
  - (vii) a summary of the amount standing to the credit of each of the Distribution Accounts at the end of the Financial Year;
  - (viii) in accordance with clause 12.12, details of the actual Distributions made, or the expenditure of funds, by the Joint Trustees for the previous period of three (3) Financial Years in relation to the Allocation Budget in respect of the Yamatji Entities;
  - (ix) a summary of the Joint Trustee's assessment of the Yamatji Entities' service delivery of their Core Functions; and
  - (x) a summary of the meetings held between the Joint Trustees regarding the progress of the Yamatji Trustee's transition towards meeting the Sole Yamatji Trustee Requirements.
- (b) The Annual Report is to be made available for viewing by the:
- (i) Auditor;
  - (ii) Yamatji Entities; and
  - (iii) State via the Government Partnership Committee.
- (c) Following preparation of the Annual Report, the Joint Trustees must engage and consult with the Regional Entity to identify, and develop a strategy in respect of, those aspects of the Annual Report on which the Joint Trustees could improve.
- (d) The Joint Trustees must ensure that they include in their Annual Report all Distributions including details of the:

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- (i) recipient of the Distribution;
  - (ii) amount of the Distribution;
  - (iii) purpose for which the Distribution is being applied;
  - (iv) reporting requirements that apply to the Distribution; and
  - (v) outcome of the Distribution, if known.
- (e) The Joint Trustees must report on Distributions in the Annual Report in accordance with the Funding Guidelines that applied at the time of the relevant Distribution (which may not be the same Funding Guidelines that apply at the time of preparing the Annual Report).

## 21. Strategic Review of the Trust

- (a) The Joint Trustees must undertake a strategic review of the Trust in consultation with the Yamatji Entities and the State (via the Government Partnership Committee) at the following times:
- (i) 5 years after the date of this Deed;
  - (ii) 10 years after the date of this Deed; and
  - (iii) thereafter, at the end of every 5 year period,
- (Strategic Review).**
- (b) The Strategic Review must consider the manner in which the Trust operates with the object of identifying:
- (i) any shortcomings in the Trust's operation;
  - (ii) any means of more effectively operating the Trust; and
  - (iii) the effectiveness of the Future Fund in enabling the Trust to carry out the Trust Purpose sustainably in perpetuity.
- (c) The Government Partnership Committee and the Regional Entity must agree the scope of the Strategic Review having regard to:
- (i) the value of the Trust Fund held by the Trust;
  - (ii) the cost, time and outcomes sought from the Strategic Review;
  - (iii) the Joint Trustee's proposed activities as set out in their current Strategic Plan; and
  - (iv) the success to date of the Joint Trustees in meeting the goals and objectives set out in their most recently completed Trust Strategic Plan.
- (d) When undertaking the Strategic Review, the Joint Trustees must:
- (i) consult with the Yamatji Entities; and
  - (ii) convene, at the Joint Trustee's cost, a meeting with the members of the Regional Entity (with the assistance of the Regional Entity) for the purpose of obtaining input into the Strategic Review.
- (e) The cost of undertaking the Strategic Review may be charged to and paid out of the Trust Fund.
- (f) The Joint Trustees must communicate the results of the Strategic Review to the:
- (i) Auditor;
  - (ii) Yamatji Entities;



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- (iii) Investment Committee; and
  - (iv) State.

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## 22. Modifying the Trust Deed

The Joint Trustees may only Modify the provisions of this Deed:

- (a) provided that it would not result in the Trust ceasing to be a trust for charitable purposes or the Trust ceasing to be entitled to endorsement as a tax exempt entity by the Commissioner of Taxation under the Tax Law;
- (b) in accordance with clause 9.3 of the ILUA;
- (c) following consultation with the Regional Entity;
- (d) with the prior written consent of the:
  - (i) Commissioner of Taxation, if required by the Tax Law;
  - (ii) Regional Entity; and
  - (iii) State if required under the ILUA.

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**23. Dispute resolution**

- (a) All matters in dispute between the Joint Trustees must be resolved in the manner specified in clause 4.4.
- (b) Any disputes in relation to the Joint Trustee's remuneration under clause 17 or costs and expenses under clause 18 shall be referred to the Dispute Resolution Procedure.
- (c) If a dispute arises between the Joint Trustees and a Yamatji Entity:
  - (i) any one or more of the parties involved in the dispute must try to resolve it themselves on an informal basis, in good faith, having regard to the spirit and intent of the Trust; and
  - (ii) if the dispute is not resolved informally, then any party may refer the matter to the dispute resolution procedure specified in the Group Charter.

## 24. General Legal Provisions

### 24.1 Notices

- (a) Any notice or communication relating to this Deed is to be in writing and may be given by an agent of the sender.
- (b) A notice or communication may be given by:
  - (i) hand delivery to the person's current address for service;
  - (ii) pre-paid ordinary mail or if the address is outside Australia by pre-paid air mail to the person's current address for service;
  - (iii) facsimile to the person's current number for service;
  - (iv) electronic mail to the person's current e-mail address; or
  - (v) such other means as the Joint Trustees determines in their discretion having regard to the purpose and contents of the notice and the intended recipients.
- (c) If a communication is given by:
  - (i) hand, it is taken to have been received at the time of delivery;
  - (ii) post, it is taken to be received if posted within Australia to an Australian address 3 Business Days after posting and in any other case 7 Business Days after posting;
  - (iii) facsimile and the sender's facsimile machine produces a transmission confirmation report indicating that the facsimile was sent to the addressee's facsimile, it is taken to be received by the addressee at the time indicated on that report, or the day after if sent after 5:00pm in Perth, Western Australia; or
  - (iv) electronic mail, it is taken to be received on the same day that it was sent, or the day after if sent after 5.00 pm in Perth, Western Australia.

### 24.2 Winding Up

- (a) The Joint Trustees may only wind up or terminate the Trust:
  - (i) following consultation with the:
    - (A) Investment Committee; and
    - (B) Yamatji Entities; and
  - (ii) with the prior written consent of the:
    - (A) Regional Entity, which must be approved by Special Resolution of its members; and
    - (B) State.

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- (b) If, upon the winding up of the Trust, there remains, after satisfaction of all its debts and liabilities, any assets whatsoever, the same must not be paid to or distributed among the Joint Trustees, or a member, director, employee, agent or officer of the Joint Trustees but must be transferred to a Yamatji Entity or one or more institutions, funds or authorities which:
- (i) have objects similar to the Trust Purpose;
  - (ii) is a Registered Charity;
  - (iii) is a Deductible Gift Recipient; and
  - (iv) prohibit distribution of its income and property among its members and directors (if any) to an extent at least as great as is imposed on the Trust by clause 2.4.
- (c) If, upon the revocation of the Trust's endorsement as a Deductible Gift Recipient, there remains, after satisfaction of all its debts and liabilities, any gifts, Fundraising Contributions or money received because of such gifts or Fundraising Contributions, the same must not be paid to or distributed among the Joint Trustees, or a member, director, employee, agent or officer of the Joint Trustees, but must be transferred to one or more institutions, funds or authorities which:
- (i) have objects similar to the Trust Purpose;
  - (ii) is a Registered Charity;
  - (iii) is a Deductible Gift Recipient; and
  - (iv) prohibit distribution of its income and property among its members and directors (if any) to an extent at least as great as is imposed on the Trust by clause 2.4.
- (d) The identity of the institutions, funds or authorities referred to in clauses 24.2(b) and 24.2(c) must be decided by the Joint Trustees:
- (i) following consultation with the Yamatji Entities; and
  - (ii) with the consent of the:
    - (A) Regional Entity;
    - (B) Commissioner of Taxation, if required by the Tax Law; and
    - (C) State.
- (e) Where gifts to an institution, fund or authority are deductible only if, among other things, the conditions set out in the relevant table item in subdivision 30-B of the ITAA97 are satisfied, a transfer under this rule must be made in accordance with those conditions.

### 24.3 Governing Law

This Deed will be governed by the laws of Western Australia.

**Executed by the Parties as a deed.**

Executed as a deed by )  
 [insert Settlor name] ) Signature  
 in the presence of: )

Signature of witness

Print name of witness in full

Occupation of witness

Executed as a deed by )  
 [insert Trustee name] ACN [insert ACN] )  
 under s 127 of the Corporations Act: )

Signature of Director

Signature of Director/Company Secretary  
(Delete title which does not apply)

Print name in full

Print name in full

Executed as a deed by )  
 [insert Trustee name] ACN [insert ACN] )  
 under s 127 of the Corporations Act: )

Signature of Director

Signature of Director/Company Secretary  
(Delete title which does not apply)

Print name in full

Print name in full

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## Schedule 1 – Funding Guidelines

### S1.1 Allocation Budget

- (a) Further to and in accordance with clause 11, the Joint Trustees will establish an Allocation Budget for each of the Sub Funds, available for the Yamatji Entities to access for Development Projects and General Projects for each 3 year period after the end of the first year.
- (b) The Joint Trustees will inform the Yamatji Entities of the Allocation Budget 6 months prior to the expiry of the previous Allocation Budget.
- (c) In accordance with the terms of these Funding Guidelines and the Trust Deed, a Yamatji Entity is eligible to apply for a Distribution from the Allocation Budgets.
- (d) Notwithstanding the requirements in this Schedule 1, the Allocation Budget for each of the Sub Funds for the first year of the Trust are **[\$XX]**.

### S1.2 Application Procedure

- (a) No Funding Application for a Distribution from the Administration Fund is required for the first year of the Trust.
- (b) A Funding Application for a Distribution from the Administration Fund must include:
  - (i) annual plan of the Yamatji Entity;
  - (ii) strategic plan of the Yamatji Entity;
  - (iii) most recent Special Purpose Report (if any) and/or audited annual report of the Yamatji Entity, to the extent not already provided to the Joint Trustees;
  - (iv) itemisation of the support which the Yamatji Entity is seeking from the Administration Fund;
  - (v) how the Yamatji Entity will apply the Administration Fund to deliver its Core Functions; and
  - (vi) budget and financial controls.
- (c) A Funding Application for a Distribution for a Development Project from the Allocation Budget must include a:
  - (i) Project Plan;
  - (ii) Due Diligence Report;
  - (iii) Key Governance Documents;

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- (iv) Impact Measurement Analysis;
  - (v) Regional Entity Approval;
  - (vi) Risk and Compliance plan; and
  - (vii) Requested Distribution.
- (d) A Funding Application for a Distribution for a General Project from the Allocation Budget must include a:
- (i) Project Plan;
  - (ii) Due Diligence Report;
  - (iii) Key Governance Documents;
  - (iv) Impact Measurement Analysis;
  - (v) Regional Entity Approval;
  - (vi) Risk and Compliance plan; and
  - (vii) Requested Distribution.
- (e) A Yamatji Entity may submit an application to the Joint Trustees for a Distribution from the unused portion of the Allocation Budget at any time throughout the year.

### **S1.3 Assessment of Applications**

The Joint Trustees must assess Funding Applications in accordance with clause 12.6.

### **S1.4 Reporting Requirements**

The Joint Trustees must require that a Yamatji Entity upon receipt of any Distribution ensures that it:

- (a) keeps financial accounts and records relating to the use of the Distribution to enable all income and expenditure in connection with the Distribution to be identified in the Yamatji Entity's accounts and records;
- (b) provides all information, records and documents as may be reasonably requested by the Joint Trustees from time to time;
- (c) reports to the Joint Trustees within 12 months of the Distribution:
  - (i) detailing the outcome of the Development Project or General Project where applicable;
  - (ii) comparing the outcome with the objectives of the Development Project or General Project as stated in the application made to the Joint Trustees where applicable;



- (iii) reporting on the satisfaction of any conditions that were attached to the Distribution; and
- (d) upon request of the Joint Trustees, provides to the Joint Trustees, on or before 30 June each relevant Financial Year, or such other time as the Joint Trustees determine, a certificate by the Yamatji Entity's auditor stating the amount of the Distribution spent, or committed to be spent, for the purpose of the Distribution.

## S1.5 Definitions

- (a) **Due Diligence Report** means a report that has been prepared by a suitably qualified independent adviser which outlines the legal, financial and commercial implications of the Development Project or General Project.
- (b) **Key Governance Documents** includes:
  - (i) annual plan of the Yamatji Entity;
  - (ii) strategic plan of the Yamatji Entity;
  - (iii) most recent Special Purpose Report (if any) and/or audited annual report of the Yamatji Entity, to the extent not already provided to the Joint Trustees; and
  - (iv) Declaration signed by all the Board of the Yamatji Entity that it is compliant with its governance requirements and capable of delivering the Project Plan.
- (c) **Impact Measurement Analysis** means a summary of the intended objectives and outcomes of the Development Project or General Project, including:
  - (i) an explanation of how the Development Project or General Project furthers the Trust Purpose and the Yamatji Entity's objects;
  - (ii) the expected sections or classes of the Yamatji Nation that will benefit from the outcomes;
  - (iii) the financial return on investment which the Yamatji Entity will receive;
  - (iv) the social return on investment which the Yamatji Entity will receive; and
  - (v) how the Yamatji Entity will measure the success of the Development Project or General Project.
- (d) **Project Plan** means a plan which includes information regarding the execution, management and control of the Development Project or General Project, including in particular:
  - (i) the budget and financial controls;
  - (ii) the timeline;
  - (iii) the management of required resources; and
  - (iv) a communication strategy.

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- (e) **Regional Entity Approval** means a document which confirms the Regional Entity's board of directors has considered and approved the Development Project or General Project and associated Distribution application.
- (f) **Risk and Compliance Plan** means a plan which:
- (i) sets out how the Yamatji Entity has applied, or will apply, its compliance program and governance policies or procedures in relation to the Development Project or General Project; and
  - (ii) outlines the anticipated risks of the Development Project or General Project and sets out how the Yamatji Entity will manage and report on these risks.
- (g) **Requested Distribution** means itemisation of the support which the Yamatji Entity is seeking from the Trust for the Development Project or General Project, including:
- (i) the amount and timing of the funds;
  - (ii) the parcels of land from the Land Fund;
  - (iii) any other rights, entitlements or opportunities arising under the ILUA and held by the Joint Trustees;
  - (iv) whether there is funding available for a project of this nature from other sources whether public or private;
  - (v) what steps the Yamatji Entity has taken to secure alternative funding and what alternative funding has been secured; and
  - (vi) the Yamatji Entity's projected timing and frequency of payments to the Trust further to a Sustainability Commitment.

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## Schedule 2 – Regional Entity Core Functions

### S2.1 Definitions

For the purpose of this Schedule 2, the following terms have the corresponding meaning:

**Common Platform** means a set of administrative functions or services designed to reduce duplication, limit costs and improve efficiency, to be developed by the Regional Entity for use by the Yamatji Entities, which may include the following:

- (a) policies and procedures for general office administration;
- (b) job description forms and enterprise bargaining agreements;
- (c) accounting systems, including accounts processing, payroll processing and financial reporting;
- (d) IT systems, including file management and communications;
- (e) membership database systems;
- (f) policies and procedures for conducting elections for director positions;
- (g) arrangements with third party service providers to provide the following at a group rate as amongst the Yamatji Entities:
  - (i) IT and communications services and equipment;
  - (ii) financial, legal, auditing and tax services;
  - (iii) insurance policies, including through one or more group insurance policies amongst the Yamatji Entities;
  - (iv) vehicle leasing contracts; and
  - (v) office equipment.

### S2.2 Core Functions Principles

The requirements in this Schedule 2 and the following principles apply to the performance of Core Functions and maintenance of the Common Platform by the Regional Entity:

- (a) the Regional Entity must perform the Core Functions and maintain the Common Platform in accordance with its objects to or for the benefit of the Yamatji Nation;
- (b) the Regional Entity must ensure that an appropriate service agreement is in place between each Yamatji Entity and the Regional Entity governing the performance of the Regional Entity's Core Functions and maintenance of the Common Platform;

- (c) the Regional Entity may exercise its independent discretion as to the most appropriate and effective manner of providing the Core Functions, maintaining the Common Platform and satisfying the Yamatji Entities' expectations of the Core Functions and the Common Platform;
- (d) the Joint Trustees are not required to fund the Regional Entity's costs of performing the Core Functions or the Common Platform over and above the Administration Funding approved in accordance with this Deed and any additional funding is a matter for the sole discretion of the Joint Trustees;
- (e) the Trust has limited Administration Funding available and it is essential that the Regional Entity and the Yamatji Entities work closely to determine the most efficient manner of delivering the Core Functions and the Common Platform;
- (f) the Regional Entity must act in good faith and ensure that the Core Functions and the Common Platform are completed, performed and maintained with due care, skill and diligence and in a professional manner; and
- (g) the nature, scope and costs of providing the Core Functions and the Common Platform will fluctuate over time.

### **S2.3 Determining the Core Functions**

- (a) The following initial Core Functions apply until Modified in accordance with item S2.5:
  - (i) developing and implementing the Group Strategic Plan;
  - (ii) being an advocate for the Yamatji Nation in respect of matters relating to Traditional Land, culture, heritage and legal matters;
  - (iii) being the representative of the Yamatji Nation in relation to country, culture and community outcomes;
  - (iv) supporting and assisting the Yamatji Entities to comply with the ILUAs; and
  - (v) communicating information regarding the Yamatji Settlement, ILUAs and the Trust to the Yamatji Entities and the Yamatji Nation in a culturally appropriate manner, and through a range of mediums; and
  - (vi) assisting the Yamatji Entities to prepare budgets and applications for Administration Funding.
- (b) The Regional Entity must deliver the Common Platform at no cost to the Yamatji Entities.

### **S2.4 Assessment of Core Functions**

Each Financial Year, the Joint Trustees must assess the Regional Entity's delivery of the Core Functions and the Common Platform following receipt of the Regional Entity's audited annual report or Special Purpose Report (if any) in accordance with the following process:

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- (a) the Joint Trustees may request feedback from and consult with the Yamatji Entities regarding the Core Functions and the Common Platform, in particular regarding:
    - (i) the standard of delivery of Core Functions and the Common Platform;
    - (ii) the ongoing need for the Core Functions and the Common Platform; and
    - (iii) any additional services that should be Core Functions and or form part of the Common Platform;
  - (b) the Joint Trustees must consider the Regional Entity's audited annual report or Special Purpose Report (if any); and
  - (c) the Joint Trustees must raise any concerns or queries with the Regional Entity and provide the Regional Entity with a reasonable opportunity to respond.

## **S2.5 Modification of Core Functions**

Having regard to the results of an assessment under item S2.4 the Joint Trustees may:

- (a) determine that certain Payment Conditions be imposed on the Regional Entity as part of any future Distributions;
- (b) in consultation with the Regional Entity, determine that a Core Function or an aspect of the Common Platform be Modified or removed and, if removed, fund the Yamatji Entities to obtain the services from a third party as part of the Yamatji Entities' operations;
- (c) consider (and in their absolute discretion, approve) a request from the Regional Entity for Administration Funding for the forthcoming Allocation Period to be increased to assist the Regional Entity to develop its organisational capacity, experience and expertise; and
- (d) consider (and in their absolute discretion, approve) a request from the Regional Entity to modify the Core Functions and the Common Platform for the forthcoming Allocation Period.

## **S2.6 Core Functions Delivery Agreements**

- (a) Core Functions delivered by the Regional Entity to the Yamatji Entities must be made by way of written agreement which will set out the nature, timing, conditions and any other relevant aspects of Core Function delivery.
- (b) The Joint Trustees must receive a copy of all agreements entered into between the Regional Entity and the Yamatji Entities, and any amendments to those agreements.

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## Schedule 3 – Committee Meeting Rules

### S3.1 Chair and Secretary

- (a) Subject to any specific requirement to the contrary in this Deed, at the first convened meeting of a committee, the members of the committee shall elect from among the committee members a Chair and a Secretary.
- (b) A person elected as Chair or Secretary under this clause S3.1 shall hold office until the election of a successor.
- (c) The Chair of the committee shall preside at all committee meetings at which the Chair is present.
- (d) The Chair has a right to vote at meetings.
- (e) The Secretary is responsible for keeping minutes of each meeting.

### S3.2 Holding Committee Meetings

- (a) A committee must meet at least once each Financial Year or as otherwise directed by the Joint Trustees.
- (b) Meetings of the committee shall be held at such times and places as the committee determines.

### S3.3 Attendance at Committee Meetings

A committee meeting may be attended by:

- (a) the committee members; and
- (b) any person that the committee invites to attend a committee meeting.

### S3.4 Quorum and Voting

- (a) No business shall be transacted at any meeting of a committee unless at least a quorum of committee members is present for the whole time during which the business is transacted.
- (b) At a meeting of a committee:
  - (i) not less than half of the committee members form a quorum; and
  - (ii) unless otherwise provided in this Deed, every question before the committee must be determined by a majority of the votes of the committee members present and voting on that question.

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### **S3.5 Meeting Business**

- (a) The content of the agenda for a committee meeting is to be determined by the Chair.
- (b) A committee member may apply to the Chair to have an item placed on the agenda.

### **S3.6 Minutes**

- (a) The Secretary is responsible for keeping minutes of each meeting.
- (b) At each meeting:
  - (i) the minutes of the previous meeting must be distributed to each committee member;
  - (ii) if necessary, the minutes may be Modified; and
  - (iii) the minutes must be signed and dated by the Chair confirming the minutes as a true record of the proceedings.

### **S3.7 Reporting to the Joint Trustees**

The Chair of the committee must:

- (a) provide the minutes of each meeting of that committee to the Joint Trustees; and
- (b) provide the recommendations of the committee to the Joint Trustees in connection with the purpose for which the committee was established and as requested or directed by the Joint Trustees.

### **S3.8 Use of Technology**

- (a) With the consent of all of the committee members, the committee may hold a meeting at two or more venues using any technology that gives the committee members as a whole a reasonable opportunity to participate.
- (b) The consent may be a standing one.
- (c) A committee member may only withdraw his or her consent within a reasonable period before the meeting.

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## Schedule 4 – Custodian Trustee

### S4.1 Appointment of Custodian Trustee

- (a) If there is a Sole Yamatji Trustee, the Sole Yamatji Trustee must appoint a Custodian Trustee with custodian and advisory functions (as set out in S4.3 and S4.4) to hold the legal title to the assets of the Trust not required by the Joint Trustees for the day to day operations of the Trust (“**Protected Property**”).
- (b) Section 14 and section 15 of the Trustees Act shall apply to the position of Custodian Trustee except to the extent that they are inconsistent with or are modified by this Schedule 4.

### S4.2 Qualifications of Custodian Trustee

The Custodian Trustee must:

- (a) hold a current “Australian financial services licence”, authorising the Custodian Trustee to provide a custodial or depositary service in accordance with section 766E of the Corporations Act or any other replacement legislation that deals with licensing of custodian or depositary service providers;
- (b) have at least 5 years’ experience of providing such a custodial or depositary service in relation to financial products (within the meaning of Chapter 7 of the Corporations Act) with a value of more than \$100 million (indexed annually in accordance with the Consumer Price Index);
- (c) have at least 3 years’ experience of carrying out the functions set out in section 14 and 15 of the Trustees Act;
- (d) have at least 1 year experience of carrying out the functions set out in section 14 and 15 of the Trustees Act in relation to trusts which benefit, predominantly, Aboriginal persons; and
- (a) be a “trustee company” as that term is defined in section 601RAB of the Corporations Act.

### S4.3 Custodian Functions

- (a) The custodian functions of the Custodian Trustee are:
  - (i) to hold legal title to the Protected Property and such other assets as the Joint Trustees may determine; and
  - (ii) such additional functions as may be agreed in writing between the Joint Trustees and the Custodian Trustee from time to time.



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- (b) Pursuant to the Trustees Act, where a Custodian Trustee is appointed to hold Protected Property:
- (i) the Protected Property will vest in the Custodian Trustee as if the Custodian Trustee were the sole trustee, and for that purpose vesting orders may, where necessary, be made under the Trustees Act;
  - (ii) the management of the Protected Property and the exercise of all powers and discretions exercisable by the Joint Trustees under the Trust shall be and remain vested in the Joint Trustees as fully and effectually as if there were no Custodian Trustee;
  - (iii) the sole function of the Custodian Trustee is to get in and hold the Protected Property and invest and dispose of the Protected Property as the Joint Trustees in writing direct, for which purpose the Custodian Trustee will execute all such documents and perform all such acts as the Joint Trustees in writing directs; and
  - (iv) the Custodian Trustee is not liable for acting on any direction from the Joint Trustees, but if the Custodian Trustee is of the opinion that any such direction conflicts with this Deed or the law, or exposes the Custodian Trustee to any liability, or is otherwise objectionable, the Custodian Trustee may apply to the Court for directions in the matter in accordance with the Trustees Act and any order giving directions binds both the Custodian Trustee and the Joint Trustees.
- (c) The Custodian Trustee may delegate its duties to one or more entities that meet the qualifications of a Custodian Trustee as set out in item S4.2.

#### **S4.4 Advisory Functions**

The advisory functions of the Custodian Trustee are as follows:

- (a) subject to clause S4.3 the Trust Fund remains vested in the Joint Trustees with all of the power to manage and administer the Trust Fund as if the Joint Trustees were the sole trustee;
- (b) pursuant to the Trustees Act and subject to the terms of this Deed, the Joint Trustees may follow and act on the Custodian Trustee's advice and the Joint Trustees will not be liable for anything done or omitted by the Joint Trustees because the Joint Trustees followed the advice of the Custodian Trustee;
- (c) where the Joint Trustees does not adopt a recommendation of the Custodian Trustee, the Joint Trustees must provide written feedback and reasons to the Custodian Trustee regarding the Joint Trustees' decision not to adopt the recommendation; and
- (d) if the Joint Trustees and the Custodian Trustee are unable to agree on any matter relating to this Deed, or the Joint Trustees or the Custodian Trustee believes that the opinion of the other conflicts with the law, this Deed, or is otherwise objectionable then either party may apply to the Court for directions in accordance with the Trustees Act and any order giving directions binds both the Joint Trustees and the Custodian Trustee.

## Schedule 5 - Default Investment Policy

### S5.1 Objectives

- (a) The objective of this Default Investment Policy is to provide a mechanism for the Joint Trustees to undertake investment activities:
- (i) on an interim basis until the Joint Trustees develop an Investment Policy in accordance with clause 13.4 of the Trust Deed;
  - (ii) taking into account the matters in section 20 of the Trustees Act; and
  - (iii) in accordance with a well performing but ultra-conservative investment strategy that preserves the Trust Fund.
- (b) The Joint Trustees must pursue the investment strategies in clauses S5.2 and S5.3 having regard to the objectives in clause S5.1(a).

### S5.2 Investing funds

Where this Schedule 5 applies, the Joint Trustees must only invest funds in investments that:

- (a) do not prevent the Joint Trustees from accessing all or part of the capital of the Trust Fund other than for a period of less than 3 consecutive months; and
- (b) fall within the "Asset Class" set out in the table below, in such proportion as the Joint Trustees determine within the corresponding "Asset Allocation Range" and having regard to the "Suggested Benchmark".

Asset class	Asset Allocation Range	Suggested Benchmark
Fixed income – Government	5%-20%	10%
Fixed income – Credit	10%-25%	16%
Cash	55%-80%	74%
		<b>100%</b>

\*as taken from page 21 of Morgan Stanley's special report "Giving Back: From Success to Significance (January 2014)"

### S5.3 Investing land

Where this Schedule 5 applies, the Joint Trustees must only invest land provided that:

- (a) the Joint Trustees comply with clause 9 of the Trust Deed;
- (b) the investment:
  - (i) does not necessitate a Decision to Proceed; or
  - (ii) necessitates a Decision to Proceed but only:

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- A. if the Joint Trustees considers the investment is reasonably necessary for the purpose of preserving the Trust Fund; and
  - B. following consultation with the Regional Entity.

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## Schedule 6 – Dispute Resolution Procedure

### S6.1 Dispute

On receipt of a Dispute Notice in accordance with clause 4.4(b)(ii), a Joint Trustee may invoke this Dispute Resolution Procedure to resolve a Dispute.

### S6.2 Trust Operations to Continue

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

### S6.3 Dispute Resolution

Where this Dispute Resolution Procedure is invoked, the Joint Trustees must:

- (i) try and resolve the Dispute having regard to the spirit and intent of this Trust and the nature of the Dispute, including by any of the following:
  - A. facilitating meetings between representatives of the parties; or
  - B. obtaining legal advice regarding the Dispute on the basis that the legal advisor is instructed to prepare advice that is neutral and unbiased as between the parties, and making that advice available to the parties; and
- (ii) refer the Dispute to mediation in accordance with clause S6.4 if the representatives of the parties are unable to resolve the Dispute within 30 days after the Dispute Notice is issued (or such longer period as the Joint Trustees may agree).

### S6.4 Mediation

- (a) If the Dispute is not resolved in accordance with clause S6.3 within 30 days after Dispute Notice is issue, the Joint Trustees must refer the matter to mediation by:
  - appointing a Mediator who is Independent to conduct a mediation between the parties in accordance with the Mediation Guidelines.
- (b) The parties to the Dispute must participate in the mediation in good faith and use their reasonable endeavours to resolve the Dispute.
- (c) The Joint Trustees shall bear the costs of the mediation, including engagement of the Mediator.

### S6.5 Expert Determination

- (a) If the Dispute is not resolved following mediation in accordance with clause S6.4 within 30 days after the Dispute Notice is issued, the Joint Trustees must refer the matter to Expert determination by:

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appointing an Expert who is Independent to determine the Dispute, having regard to clause S6.5(c).

- (b) Subject to clause S6.7, the Joint Trustees will bear the costs of the Expert.
- (c) The Expert appointed under clause S6.5(a):
  - (i) must act as an expert and not as an arbitrator;
  - (ii) must have no interest or duty which conflicts, or which may conflict, with his or her function as the Expert;
  - (iii) must not be a former or current employee or representative of any party; and
  - (iv) must disclose fully to the Joint Trustees, before entering into an agreement to act as an Expert, any interest or duty which may conflict with his or her position.

### **S6.6 Procedure for Expert Determination**

- (a) A Dispute will be determined by the Expert by way of a hearing in accordance with this clause S6.6.
- (b) Each party:
  - (i) may be legally represented at any hearing before the Expert;
  - (ii) will be entitled to produce to the Expert any materials or evidence which that party believes is relevant to the Dispute; and
  - (iii) will make available to the Expert all materials requested by him or her and all other materials which are relevant to his or her determination.
- (c) The Expert will not be bound by the rules of evidence.
- (d) Subject to any privileges under law, unless otherwise agreed by the parties, all material and evidence made available for the purposes of the determination will be kept confidential, unless disclosure by a party would be permitted under any provisions of this Deed.
- (e) The Expert will be entitled to refer aspects of the Dispute to a third person for the purpose of taking advice on a specific matter relating to the Dispute and must endeavour to ensure that any third party, servant, agent or consultant of the Expert will be subject to the same obligations of confidentiality as outlined above.
- (f) Subject to the Expert abiding by the rules of natural justice, the Expert will have the power to inform himself or herself independently as to the facts to which the Dispute relates and to take such measures as he or she thinks fit to expedite the determination of the Dispute.

### **S6.7 Determination of Expert**

- (a) The determination of the Expert will:

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- (i) be final and binding on the parties;
  - (ii) be made without delay and in any event within 28 days of being appointed as an Expert unless the parties otherwise agree in writing;
  - (iii) subject to paragraph (iv) below, be made on a confidential basis as between the parties to the Dispute;
  - (iv) be provided to the Joint Trustees; and
  - (v) determine what, if any, actions the parties must take to resolve the Dispute.
- (b) Unless the parties otherwise agree the Expert will determine which party will bear the costs of the determination (and if the Expert considers it appropriate, reimbursing the Joint Trustees for the costs of the Expert under clause S6.5) and in what proportion, having regard to:
- (i) the capacity of a party to meet these costs;
  - (ii) the degree to which the Expert considers that party was at fault or unreasonable in failing to agree to the matter under reference; or
  - (iii) that the party's conduct is vexatious or frivolous,
- and that party will bear those costs accordingly.
- (c) The Expert may make whatever orders he or she sees fit with respect to payment of costs, including the giving of a direction to the Joint Trustees that any funds held in a Distribution Account of a party, or future Distributions made to a party that is an Yamatji Entity, shall first be applied to the satisfaction of any costs order made by the Expert.

### **S6.8 Legal Proceedings**

To the extent that any legal proceedings are otherwise permitted under this Deed, no party is entitled to commence or maintain legal proceedings relating to any Dispute until the processes outlined in this Schedule have been followed, except where that party seeks urgent interlocutory or other urgent equitable relief or where the Custodian Trustee is applying to the Court for directions in accordance with the Trustees Act.

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**ANNEXURE A – GOVERNANCE FRAMEWORK**

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**ANNEXURE B - JOINT GOVERNANCE PRINCIPLES**