

# Yued Charitable Trust

South West Aboriginal Land and Sea Council  
Settlor

and

Perpetual Trustee Company Limited  
(ACN 000 001 007)  
Trustee

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## YUED CHARITABLE TRUST DEED

Date: 13 July 2018

### Parties

#### Settlor:

**South West Aboriginal Land & Sea Council  
Aboriginal Corporation  
ICN 3832** of 1490 Albany Highway, Cannington WA 6987

#### Trustee:

**Perpetual Trustee Company Limited ACN  
000 001 007** of Level 29, Exchange Plaza, 2 The Esplanade, Perth WA 6000

### Recitals

- A. The Settlor wants to create a trust to be known as the Yued Charitable Trust for the purpose of benefiting the Yued People, in the manner set out herein. The Trust is established for Charitable Purposes only.
- B. The Yued People have entered into agreements with Contributors in connection with the Yued Claim and the Native Title Rights and Interests of the Yued People. This trust will operate in perpetuity to receive, hold and apply the benefits derived from those agreements.
- C. The Trustee recognises and respects the fundamental connection between this Trust and the Yued People and that the source of the funds contributed to the Trust Fund includes financial benefits derived in connection with the Native Title Rights and Interests of the Yued People.
- D. For this purpose the Settlor has paid or intends on the execution of this Deed to pay to the Trustee the Settled Sum of \$10.00.
- E. The Trustee has agreed to be the Trustee of the Trust upon the trusts and subject to the terms and conditions set out in this Deed.

### Operative Part



## Chapter 1 - Interpretation

### 1.1 Definitions

In this Deed:

<b>Additional Services Fees</b>	Is defined in clause 13.1(a)(ii) of this Deed
<b>Advisory Committee Rules</b>	means the rules governing the proceedings and conduct of each Advisory Committee which are contained in <b>Schedule 6</b> as amended by the Trustee from time to time;
<b>Annual Plan</b>	means a plan for the activities of the Trust during a Financial Year in accordance with Chapter 9;
<b>Appointor</b>	The appointor is the Auditor;
<b>Associates</b>	has the meaning given to that term in section 318 of the <i>Income Tax Assessment Act 1936</i> (Cth);
<b>Auditor</b>	means a person who is: <ul style="list-style-type: none"> <li>(a) registered as a company auditor under the Corporations Act or an appropriately qualified member of the Institute of Chartered Accountants in Australia or of CPA Australia;</li> <li>(b) not a principal, member, shareholders, officer, agent, subcontractor, employee or related entity of the Trustee or of a related body corporate within the meaning of that term in the Corporations Act; and</li> <li>(c) not the Trustee's or the Trust's accountant</li> </ul> appointed in accordance with Chapter 14;
<b>Auditor's Annual Report</b>	means a report prepared by an Auditor under clause 14.4;
<b>Australian Auditing Standard</b>	means an Australian auditing standard prepared by the Auditing and Assurance Standards Board of the Australian Accounting Research Foundation as updated and amended from time to time;
<b>Australian Financial Services Licence or AFS Licence</b>	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;
<b>Charitable Purposes</b>	means any purpose that is charitable at law including, but not limited to, each of the charitable purposes contained in section 12(1) of the Charities Act and which is not a Disqualifying Purpose;
<b>Charities Act</b>	means the <i>Charities Act 2013</i> (Cth);
<b>Commissioner of Taxation</b>	means a Commissioner of Taxation, Second Commissioner of Taxation and Deputy Commissioner of Taxation as provided for in sections 4 and 7 of the Taxation Administration Act 1953;

<b>Confidential Information</b>	means all information determined by the Trustee to be confidential regarding the activities and operations of the Trust, the organisation and finance of the Trust and any related party and the operations and transactions undertaken by the Trust which is not in the public domain but does not include information which is in or becomes part of the public domain other than through the default of the party who divulges the information;
<b>Contributor</b>	means a contributor defined in Chapter 4;
<b>Corporations Act</b>	means the <i>Corporations Act 2001</i> (Cth) as amended;
<b>Deed</b>	means this trust deed as amended from time to time;
<b>Dispute</b>	means a dispute as defined in Chapter 12;
<b>Dispute Resolution Procedure</b>	means the procedure for resolving a Dispute set out in Chapter 12;
<b>Disqualifying Purpose</b>	has the meaning as contained in section 11 of the Charities Act;
<b>Distribute</b>	means to distribute, pay, commit, credit, apply or otherwise expend;
<b>Distribution Policy</b>	means the Distribution Policy approved by the Trustee in accordance with Chapter 6;
<b>Eligible Trustee</b>	means a Professional Trustee Company;
<b>Executive Office</b>	is defined in Chapter 11;
<b>Expert Determination</b>	means the process of expert determination provided for in Chapter 12;
<b>Financial Year</b>	means the period from the date of this Deed to the following 30 June and then each period of 12 months ending on 30 June in each year;
<b>First Year</b>	means the period from the date of this Deed to the following 30 June;
<b>Independent Expert</b>	means a mediator accredited under the National Mediator Accreditation System;
<b>Insolvency Event</b>	<p>With respect to a company an Insolvency Event occurs when:</p> <p>(a) a liquidator, provisional liquidator, receiver, receiver and manager, administrator, voluntary administrator, official manager, judicial manager, or similar official is appointed to the company or over the company's assets;</p> <p>(b) a company resolves to enter into a scheme, a composition or any similar arrangement or procedure with creditors; or</p> <p>(c) receives a statutory demand under section 459E of the Corporations Act, which the company fails to comply with, within the period for compliance or have set aside under section 459G of the Corporations Act.</p>

<b>Investment Policy</b>	means the Investment Policy approved by the Trustee in accordance with Chapter 7;
<b>Modify</b>	means extend, renew, vary, modify, correct, alter, amend or change;
<b>Native Title Rights and Interests</b>	has the same meaning given to that term in section 223 of the Native Title Act;
<b>Notifiable Event</b>	means when the Trustee: <ul style="list-style-type: none"> <li>(a) ceases to be a Professional Trustee Company;</li> <li>(b) Resigns;</li> <li>(c) Breaches a material provision of this Deed;</li> <li>(d) An Insolvency Event occurs; or</li> <li>(e) Commits any material breach of any law or statute in the performance of its duties under this Deed.</li> </ul>
<b>Preferred Notice Procedure</b>	means a notice procedure that is specific to the Yued People and is determined in accordance with clause 5.4;
<b>Professional Trustee Company</b>	means an organisation that: <ul style="list-style-type: none"> <li>(f) is a "trustee company" as that term is defined in section 601RAB of the Corporations Act;</li> <li>(g) holds a current relevant Australian Financial Services Licence: <ul style="list-style-type: none"> <li>A. covering the provision of all or substantially all of the "traditional trustee company services" defined in section 601RAA of the Corporations Act; and</li> <li>B. with appropriate authorisations as required to permit it to carry out functions under this Deed; and</li> </ul> </li> <li>(h) has at least 5 years' experience in carrying out the functions and providing the services similar to those required of the Trustee under this Deed;</li> </ul>
<b>Region</b>	has the meaning given in item S1.2 in Schedule 1 and applies to the word when used as an adjective ' <i>regional</i> ';
<b>Register of Yued People</b>	means the register entitled the "Register of Yued People" maintained in accordance with <b>Schedule 4</b> ;
<b>Settled Sum</b>	means \$10.00;
<b>Settlor</b>	means South West Aboriginal Land and Sea Council;

<b>Special Resolution</b>	means a resolution of a meeting of Yued People convened in accordance with Schedule 7, of which at least 21 days' notice has been given and which is approved by not less than seventy five percent of the people entitled to vote at the meeting;
<b>Strategic Plan</b>	means the strategic plan prepared in accordance with Chapter 10;
<b>Sub Fund</b>	means a sub fund established in accordance with Chapter 4;
<b>Tax Law</b>	means the <i>Income Tax Assessment Act 1936</i> (Cth), <i>Income Tax Assessment Act 1997</i> (Cth) and the <i>Taxation Administration Act 1953</i> (Cth) as amended from time to time;
<b>Trust</b>	means the trust created by this Deed;
<b>Trust Advisory Committee</b>	means the Advisory Committee established under Chapter 8;
<b>Trust Fund</b>	means: <ul style="list-style-type: none"> <li>(a) the Settled Sum;</li> <li>(b) all money, investments and assets paid or transferred to and accepted by the Trustee as additions to the Trust Fund;</li> <li>(c) all accretions to the Trust Fund;</li> <li>(d) all accumulations of income; and</li> <li>(e) the money, investments and property from time to time representing the above or into which they are converted,</li> </ul> and includes any Sub Fund and any part of the Trust Fund;
<b>Trust Objects</b>	are described in clause 2.3;
<b>Trust Name</b>	means the Yued Charitable Trust or such other name as described by the Trustee from time to time;
<b>Trustee</b>	means the entity named in this Deed as the Trustee and each subsequent trustee of the Trust appointed in accordance with Chapter 3;
<b>Trustee Fee</b>	Is defined in clause 13.1(a)(i) of this Deed
<b>Trustees Act</b>	means <i>Trustees Act 1962</i> (WA) as amended;
<b>Trustee's Powers</b>	are set out in <b>Schedule 5</b> ;
<b>Uncommercial Transaction</b>	is defined in clause 3.5(b);
<b>Yued Claim</b>	Yued Native Title Claim Area (WAD 6192 of 1998);
<b>Yued People</b>	has the meaning given in Schedule 1.

## 1.2 Interpretation

In this Deed, unless the contrary intention appears a reference to:

- (a) one gender includes any other gender; and
- (b) the singular includes the plural and the plural includes the singular; and
- (c) an officer or body of persons includes any other officer or body for the time being exercising the powers or performing the functions of that officer or body; and
- (d) this Deed or any other instrument includes any variation or replacement of it; and
- (e) a reference to a "law" includes any amendment or re-enactment of it that is for the time being in force, and includes all laws made under it from time to time; and
- (f) "under" includes "by", "by virtue of", "pursuant to" and "in accordance with"; and
- (g) "day" means a business day which means a day on which the major trading banks are open for business in Perth, except a Saturday, Sunday or public holiday; and
- (h) "person" includes a public body, company, or association or body of persons, corporate or unincorporated; and
- (i) "including" and similar expressions are not words of limitation; and
- (j) a person includes a reference to the person's personal representatives, executors, administrators, successors and permitted assigns; and
- (k) headings are for convenience only and do not affect the interpretation, or form part of, this Deed; and
- (l) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning; and
- (m) a clause is a reference to a clause of this Deed unless otherwise indicated; and
- (n) to "pay" includes to "apply" or "set aside".

## 1.3 Meaning of "consult"

Where this Deed imposes an obligation on the Trustee to consult with a person or committee, the manner and form of the consultation (subject to this Deed) is at the discretion of the Trustee (acting reasonably).

## 1.4 Status of Schedules

- (a) This Deed includes any schedule to this Deed.
- (b) Unless otherwise specified in this Deed a Modification to a schedule requires a Modification to this Deed in accordance with clause 15.4.

## Chapter 2 – Trust Objects

### 2.1 Declaration of Trust Fund

- (a) The Trustee acknowledges that the Settlor has paid the Settled Sum to the Trustee and the Trustee receives the Settled Sum as trustee of the Trust.
- (b) The Trustee declares that it will hold the Trust Fund and the income from the Trust Fund for the Trust Objects and otherwise on the trusts, with the powers and subject to the provisions in this Deed.
- (c) With the consent of the Trustee, other money and assets may be paid or transferred to, vested in and accepted by the Trustee as an addition to the Trust Fund and to be held by the Trustee as part of the Trust Fund.

### 2.2 Name of Trust

The Trust is called the **Yued Charitable Trust** or such other name as determined by the Trustee from time to time.

### 2.3 Trust Objects

- (a) The Trust Fund will:
  - (i) be applied by the Trustee in the Trustee's absolute discretion exclusively for the Trust Objects which are the provision of money, property or benefits for the promotion and advancement of the Charitable Purposes that benefit the current and future generations of Yued People; and
  - (ii) be applied for Charitable Purposes, including but not limited to the advancement and promotion of:
    - A. health, education, employment and social welfare of Yued People;
    - B. Yued heritage and culture;
    - C. the needs of Yued elders;
    - D. care and protection of *Yued Booja* (Yued Land).
- (b) The Trustee shall ensure that as far as practicable that the Trust Objects are applied overall in a way that fairly and equitably benefits a broad cross section of the Yued People.
- (c) For the avoidance of doubt, the Trustee will not be in breach of its obligations under this clause 2.3 by reason that:
  - (i) some sections of the Yued People may receive some benefits before other sections because of the limited financial resources of the Trust in any Financial Year;
  - (ii) different sections of the Yued People may receive benefits of different kinds to other sections of the Yued People; or
  - (iii) benefits may be applied from time to time towards individual, local or regional projects at the Trustee's discretion.

## **2.4 Not for Profit**

- (a) The Trust is to be carried out without purpose of profit or private gain for the Trustee, directors or members of the Trustee. No part of the Trust Fund or the income may be transferred or Distributed directly or indirectly by way of dividend, bonus or other profit distribution to the Trustee, or directors, employees or officers, or members of the Trustee.
- (b) Clause 2.4(a) does not prevent the payment in good faith of any of the following:
  - (i) Trustee remuneration which is permitted under 13.1;
  - (ii) reasonable costs, charges and expenses incurred in connection with the administration of the Trust;
  - (iii) reimbursement to any person (including any director, officer, employee or committee member of the Trustee) for any reasonable out of pocket expenses incurred in connection with the administration of the Trust;
  - (iv) a payment or application to a person in their capacity as a member of the Yued People under the Distribution Policy.

## **2.5 No Fixed Interests**

- (a) The Yued People 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 Trustee.
- (b) A Yued People member is not entitled, other than as expressly provided, to:
  - (i) interfere with or to question the exercise or non-exercise by the Trustee of its discretions, rights and powers;
  - (ii) exercise any rights, powers or privileges in respect of any assets of the Trust Fund; or
  - (iii) require the transfer to a Yued People member of any of the assets of the Trust Fund.

## Chapter 3 – The Trustee and Appointor

### 3.1 Trustee

The Settlor appoints the Trustee to be the first trustee of the Trust and the Trustee accepts appointment as Trustee of the Trust.

### 3.2 Term of First Trustee

Unless:

- (a) a Notifiable Event occurs and the Appointor removes the Trustee in accordance with the terms of this Deed; or
- (b) the Trustee retires;

the first Trustee may not be removed and replaced before the fifth anniversary of the date of this Trust.

### 3.3 Eligibility

At all times the Trustee must be an Eligible Trustee.

### 3.4 Appointor

- (a) The Appointor is the Auditor.
- (b) The Appointor may remove a Trustee and appoint an Eligible Trustee in its place pursuant to Schedule 8 of this Deed.

### 3.5 Uncommercial Transactions

- (a) No part of the Trust Fund or the income may be paid or applied, directly or indirectly, to or for:
  - (i) the Settlor;
  - (ii) the Trustee;
  - (iii) a Contributor; or
  - (iv) an associate of the Settlor, the Trustee or a Contributor,by way of an Uncommercial Transaction.
- (b) In clause 3.5(a), "**Uncommercial Transaction**" means the provision of a financial or other benefit, other than a payment or application under the Distribution Policy or a payment or application approved by the Commissioner of Taxation, on terms which:
  - (i) would not be reasonable in the circumstances if the benefit were provided on an arm's length basis; or
  - (ii) are more favourable to the recipient than the terms referred to in clause 3.5(b)(i),



and which a reasonable person in the position of the Trustee would not have entered into having regard to all relevant circumstances.

### **3.6 Disclosure of Interest**

- (a) Where the Trustee, a related or associated entity of the Trustee, an Associate of the Trustee, or any person that is a director or employee of the Trustee has any interest in a contract or arrangement, or proposed contract or arrangement, or in a matter being considered or about to be considered by the Trustee, the Trustee must disclose the nature of the interest to the Trust Advisory Committee as soon as possible after the relevant facts have come to the Trustee's knowledge and a record of such disclosure must be made by the Trustee.
- (b) The Trustee must make regulations concerning the manner in which the Trustee will manage conflicts of interest in relation to carrying out the role of Trustee in accordance with this Deed and must provide a copy of the regulations to the Trust Advisory Committee.
- (c) Where the Trustee has disclosed a matter to the Trust Advisory Committee under this clause 3.6, the Trustee must obtain the Trust Advisory Committee's prior consent before proceeding with that matter.

### **3.7 Trustee's Powers**

Subject to this Deed, in addition to the powers vested in the Trustee by law, the Trustee has:

- (a) all the powers that the Trustee would have if it were a natural person including the power to do all such other lawful acts and things as are incidental or conducive to the attainment of the Trust Objects;
- (b) the additional powers described in **Schedule 5**; and
- (c) no right to exercise a power in a manner that would or may result in the Trust:
  - (i) not being a trust for Charitable Purposes; and
  - (ii) not obtaining or retaining its income tax exempt endorsement under the Tax Law.

## Chapter 4 - Sub Funds

### 4.1 Establishment of Sub Funds

- (a) The Trustee may accept any money, investments or other assets transferred to or otherwise vested in the Trustee by any person, organisation or trustee of another trust ("**Contributor**"), including any income from the money, investments or other assets, as part of the Trust Fund ("**Sub Fund**") provided the Sub Fund is:
  - (i) held and applied by the Trustee at the sole discretion of the Trustee and exclusively for the Trust Objects; and
  - (ii) forms part of the Trust Fund and does not form a separate fund.
- (b) If the Contributor requests that the Sub Fund will be subject to one or more conditions, the Trustee may accept the Sub Fund subject to the Contributor's conditions as part of the Trust Fund in accordance with this Chapter.

### 4.2 Management of the Sub Funds

- (a) The Trustee may in the Trustee's absolute discretion determine a name for any Sub Fund for ease of management and identification.
- (b) Any Sub Fund vested in the Trustee forms part of the Trust Fund but, for the purposes of identification only, the Trustee may maintain separate management accounts for each Sub Fund, its income, any payments and the application of its income or capital.
- (c) The Trustee 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, subject to making sure that the Confidential Information of the Trust and the Trust Fund is maintained.
- (d) Any such reports and accounts are subject to any conditions agreed with the Contributor in respect of that Sub Fund.

## Chapter 5 - Yued People

### 5.1 Recognition of the Yued People

- (a) The Trustee must:
- (i) recognise and respect the fundamental connection between the Trust Fund and the Yued People and that the source of the funds contributed to the Trust Fund;
  - (ii) recognise as Yued People those persons included on the Register of Yued People;
  - (iii) recognise that in giving due and genuine consideration to the promotion and advancement of the Trust Objects:
    - A. projects that will benefit members of the Yued People are an important priority;
    - B. when assessing which sections of the Yued People will benefit from the Trust, it is reasonable and expected that the Trustee will focus on benefiting the Yued People in the first instance;
    - C. some sections of the Yued People may receive some benefits before other sections because of the limited financial resources of the Trust in any Financial Year;
    - D. different sections of the Yued People may receive benefits of different kinds to other sections of the Yued People; and
    - E. benefits may be applied from time to time towards individual, local or regional projects at the Trustee's discretion;
  - (iv) facilitate the establishment and operation of the Trust Advisory Committee in accordance with Chapter 8 to assist the Trustee with its functions under this Deed.
- (b) Nothing in this Chapter has the effect of limiting or restricting the class of Yued People or fettering the absolute discretion of the Trustee in the discharge of the Trustee's duties.

### 5.2 Register of Yued People

To assist it to fulfil the Trust Objects, the Trustee may prepare, maintain and update the Register of Yued People in accordance with **Schedule 4**.

### 5.3 Communications

- (a) All communications, reports, plans and other documentation required to be prepared by or for the Trustee under this Deed that must or may be provided to the members of the Yued People, must be prepared using plain English in a culturally appropriate manner, form and style, including diagrammatical representations.
- (b) The Trustee will in consultation with the Trust Advisory Committee develop appropriate mechanisms for communication with the Yued People to enable them to be informed about the management and operation of the Yued Charitable Trust.

- (c) The Trust Advisory Committee may provide advice to the Trustee as to the manner, form and style that may be appropriate, however, the Trustee may use any manner, form and style that it considers fulfils the requirements of this clause 5.3(b).

#### **5.4 Preferred Notice Procedure**

- (a) The Trustee may in consultation with the Trust Advisory Committee determine a Preferred Notice Procedure that is culturally appropriate for the Yued People and is to be followed in addition to the notice procedure in clause 15.3.
- (b) Whenever notice is required to be given by the Trustee to the members of the Yued People the Preferred Notice Procedure, if any, must also be followed.

#### **5.5 Consultation with Yued People**

- (a) The Trustee must develop appropriate mechanisms for dissemination of information with the Yued People. The Trustee and the Trust Advisory Committee which shall have regard to the following non exhaustive objectives:
  - (i) consultation shall be primarily via the Trust Advisory Committee;
  - (ii) ensure timely dissemination of information;
  - (iii) ensuring transparency and accountability in decision making; and
  - (iv) ensuring the operations of the Trust are just and fair.
- (b) The Trustee may from time to time review, modify and improve the mechanisms in clause 5.5(a) above.
- (c) The Trustee must consult with the Yued People at least once in each Financial Year regarding the Trust's activities and the Trustee may determine the manner of consultation with guidance from the Trust Advisory Committee. The manner of consultation must be undertaken in a cost effective manner and included in the Trustee Budget in accordance with clause 13.3. The manner of consultation may include:
  - (i) For the Trustee to convene and attend a meeting of the Yued People at such time and place the Trustee in its discretion determines in accordance with 5.5(a);
  - (ii) Disseminate information from time to time via post or electronic transmission to Yued People;
  - (iii) Attend locally organised meetings of Yued People.
- (d) To avoid doubt the Trustee may, but is not obliged to accept any information recommendation, advice or feedback, expressed by the Yued People at any meeting or expressed via any communication with the Trustee as a result of consultation under clause 5.5, however this clause 5.5(d) does not apply to meetings of Yued People convened for the purpose of Schedule 8.

## Chapter 6– Distribution

### 6.1 General Distribution Power

- (a) In exercising its power in this Chapter 6, the Trustee must have regard to achieving long term capacity and sustainability of the Trust Fund to support current and future generations of Yued People.
- (b) Subject to any requirement of a Contributor's agreement with Yued People or any of them or any Sub-Fund agreement, for a period of five years from the date of commencement of the Trust the Trustee may only distribute the net income of the Trust.
- (c) Subject to 6.1(a) and (b) in each Financial Year the Trustee may Distribute so much of the income and capital of the Trust for the Trust Objects in such amounts and on such conditions as the Trustee may determine (in accordance with the Distribution Policy and the terms of this Deed).
- (d) Notwithstanding clause 6.1(a) and (b), the Trustee shall not be bound to exercise its discretion to distribute any of the income and capital of the Trust Fund in any Financial Year and, where the Trustee has not distributed all of the income, the Trustee may accumulate and retain the income as part of the Trust Fund.

### 6.2 Default Accumulation

The Trustee 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 this Chapter as part of the capital of the Trust Fund and the Trustee may use that amount for Distribution in accordance with the Distribution Policy in subsequent financial years.

### 6.3 Distribution Policy

- (a) The first Distribution Policy is in Schedule 2.
- (b) All Distributions from the Trust Fund must be in accordance with an approved Distribution Policy.
- (c) The Distribution Policy must at all times meet the requirements of this Deed.
- (d) For the avoidance of doubt, the Trustee may approve multiple Distribution Policies, each of which may apply only in respect of a particular Sub Fund or Sub Funds.

### 6.4 Distribution Priority

- (a) The Trustee must, when preparing the Distribution Policy do so on the basis that the priority is for the Trust Fund to be applied in support of projects or programs that benefit Yued People in preference to direct support of individual members of the Yued People.
- (b) The Trustee must not make distributions to individuals in the form of cash payments or cash equivalents.

## **6.5 Review of the Distribution Policy**

- (a) The Distribution Policy may, when developing the Strategic Plan in Chapter 10 or at any other time, be reviewed or Modified by the Trustee, provided:
  - (i) the reviewed or Modified Distribution Policy is in accordance with:
    - A. the Trust Objects; and
    - B. the Strategic Plan.
  - (ii) the Trustee obtains the consent of the Trust Advisory Committee.
- (b) The reviewed or amended Distribution Policy must be recorded in writing and signed and dated on behalf of the Trustee.

## Chapter 7- Investment

### 7.1 Trustee's Investment Powers

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

- (a) as permitted under the Trustees Act;
- (b) in accordance with the Investment Policy;
- (c) having regard to the Trustee's Powers in **Schedule 5**; and
- (d) exercising the care, diligence and skill that a prudent person would exercise in investing a Trust Fund.

### 7.2 Investment Policy

The first Investment Policy is set out in **Schedule 3**.

### 7.3 Review of the Investment Policy

- (a) The Investment Policy may, when developing the Strategic Plan under Chapter 10 or at any other time, be reviewed or Modified by the Trustee, provided:
  - (i) the reviewed or Modified Investment Policy is **consistent with**:
    - A. the Trust Objects; and
    - B. the Strategic Plan,
  - (ii) the Trustee obtains **consent** of the Trust Advisory Committee.
- (b) The reviewed or amended Investment Policy must be recorded in writing and signed and dated on behalf of the Trustee.

## Chapter 8 – Trust Advisory Committee

### 8.1 General Purpose of the Trust Advisory Committee

The general purpose of the Trust Advisory Committee is to:

- (a) be the first point of guidance for the Trustee when undertaking its functions under this Deed;
- (b) assist the Trustee to manage its relationship with, and to liaise with, the Yued People; and
- (a) foster mutual respect and cooperation between the Trustee and the Yued People.

### 8.2 Functions

The functions of the Trust Advisory Committee are to:

- (a) make recommendations to the Trustee as to the fulfilment by the Trustee of the Trust Objects and terms of this Deed generally;
- (b) make recommendations to, consult with or provide consent (as the case may be and in the manner outlined in this Deed) to the Trustee regarding the following matters:
  - (i) clause 3.6(c) – Disclosure of Interest;
  - (ii) clause 6.5(a) – Distribution Policy;
  - (iii) clause 7.3(a) – Investment Policy;
  - (iv) clause 8.5(b) – Trust Advisory Committee members;
  - (v) clause 9.3(a) – Annual Plan;
  - (vi) clause 10.3(b) – Strategic Plan; and
  - (vii) clause 13.3(b) – Trustee Budget.

### 8.3 Composition

- (a) Subject to clause 8.4, the Trust Advisory Committee must comprise 8 persons consisting of:
  - (i) 7 members of the Yued People appointed by the Trustee; and;
  - (ii) a non-voting representative nominated by the Trustee (**Trustee Representative**).
- (b) Members of the Trust Advisory Committee are not permitted to appoint alternates or proxies.

### 8.4 Qualifications

Trust Advisory Committee representatives must demonstrate the following qualifications:



- (a) financial literacy;
- (b) leadership experience;
- (c) absence of conflicting commitments;
- (d) has not been disqualified from managing corporations or companies;
- (e) has not been convicted in a criminal proceeding or named a subject of a pending criminal proceeding (excluding traffic violations and other minor offences);
- (f) has not been found in a civil proceeding to have violated any federal or state securities law; and
- (g) 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.

## **8.5 Selection Process**

- (a) When selecting Trust Advisory Committee members, the Trustee must:
  - (i) call for nominations by advertising in a range of different manners, including significant online and hard copy publications, in a suitable culturally appropriate manner; and
  - (ii) provide reasonable notice of the call for nominations.
- (b) When selecting the Trust Advisory Committee members, the Trustee must:
  - (i) review the composition of the Trust Advisory Committee to ensure that there is a balanced mix of representation and experience;
  - (ii) develop appropriate criteria for assessing the suitability of candidates;
  - (iii) consider candidates on the basis of merit rather than any affiliation;
  - (iv) request from candidates and third party sources sufficient information to enable the Trustee to assess the candidates' fulfilment of the qualifications in clauses 8.3 and 8.4 and the candidates' suitability;
  - (v) in respect of the first Trust Advisory Committee appointed following establishment of the Trust consult with the Yued People.
- (c) When selecting the Trust Advisory Committee members, the Trustee may appoint up to two (2) alternate members who may replace a Trust Advisory Committee member who:
  - (i) resigns;
  - (ii) dies;
  - (iii) becomes mentally incapacitated;
  - (iv) is removed as a member in accordance with clause 8.7.

## 8.6 Term of appointment

- (a) A person will continue to be a member of the Trust Advisory 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. is removed as a member in accordance with clause 8.7.
- (b) A person must not be appointed as a member of the Trust Advisory Committee for consecutive terms. A person is eligible for reappointment as a member of the Trust Advisory Committee, if a period of 3 years has passed from the date their previous term of appointment ceased.

## 8.7 Removing Trust Advisory Committee members

- (a) The Trust Advisory Committee may by resolution remove one of its members if the person:
  - (i) fails to attend 3 consecutive Trust Advisory Committee meetings without reasonable excuse; or
  - (ii) does an act or omission that the Trust Advisory Committee reasonably considers is a serious breach of the Code of Conduct or Policy and Procedures Manual.
- (b) A person removed under this clause 8.7 is ineligible for reappointment as a member of the Trust Advisory Committee.

## 8.8 Remuneration

The Trustee may determine the remuneration of the Trust Advisory Committee.

## 8.9 Trust Advisory Committee Meetings and Decision Making

- (a) Decisions of the Trust Advisory Committee will be determined and their meetings will be carried out in accordance with **Schedule 6** of this Deed or as varied by the Trustee from time to time.
- (b) The Trust Advisory Committee must adopt and comply with a Code of Conduct and Policy and Procedures Manual.
- (c) Where this Deed requires the Trust Advisory Council to provide its consent or approval to any matter the Trust Advisory Council will do so by resolution approved by a majority of the Trust Advisory Council.

## 8.10 Disclosure of Interest

- (a) The Trust Advisory Committee or any person that is a member of the Trust Advisory Committee who has any interest in a contract or arrangement, or proposed contract or arrangement, or in a matter being considered or about to be considered by the Trustee must disclose the nature of the interest at a meeting of the Trust Advisory Committee as soon as possible after the relevant facts have come to his or her knowledge and a record of such disclosure must be made in the minutes of that meeting.
- (b) Where, subject to clause 8.10(c), a Trust Advisory Committee member has disclosed an interest under this clause:
  - (i) the member must leave the relevant meeting;
  - (ii) the meeting must consider whether a significant conflict exists for the member on the matter;
  - (iii) if the meeting determines that, acting reasonably, a significant conflict exists, the member must not be present at the meeting whilst the matter is being considered; and
  - (iv) if the meeting determines that, acting reasonably, no significant conflict exists, the member must be invited back to the meeting whilst the matter is considered and may take part in any decision about the matter.
- (c) In spite of a conflict being determined by the meeting to exist, the meeting may nevertheless invite the member back to the meeting if, acting reasonably, the meeting is of the opinion that the member's presence and involvement will not materially affect the decision.

## Chapter 9 - Annual Plan

### 9.1 Annual Plan

- (a) The Trustee will carry out its activities during the Financial Year in accordance with an approved Annual Plan.
- (b) The Annual Plan for the Trust will be in a form determined by the Trustee using plain English and prepared in a manner that is culturally appropriate for the Yued People and will outline the proposed activities of the Trust for each Financial Year having regard to:
  - (i) anticipated contributions to the Trust;
  - (ii) the Distribution Policy, any proposed priorities and programs, any eligible projects to which the Trustee has allocated funds for Distribution and any applications received by the Trustee for eligible projects;
  - (iii) the Investment Policy and proposed investment priorities;
  - (iv) the Accounts and financial position of the Trust from the previous Financial Year;
  - (v) the composition of the Trust Advisory Committee and proposed governance training.

### 9.2 First Annual Plan

In the First Year, the Trustee must formulate the first Annual Plan for implementation.

### 9.3 Formulating the Annual Plan

The Trustee will consider and formulate an Annual Plan for each Financial Year following the First Year using the following procedure:

- (a) at least 3 months before the end of a Financial Year, the Trustee, for the purpose of reviewing the current Annual Plan and formulating the new Annual Plan, will:
  - (i) consult with the Yued People;
  - (ii) consult with the Trust Advisory Committee;
  - (iii) have regard to the Strategic Plan; and
  - (iv) include the Trustee Budget and have regard to the administration, overheads and operating expenses of the Trust and the salary and expenses of the Executive Office of the Trust.
- (b) The Trustee will endeavour to finalise and provide to the Trust Advisory Committee the Annual Plan for each Financial Year prior to 30 June of each Financial Year.
- (c) The Trustee may amend the Annual Plan during the Financial Year to which the Annual Plan relates provided the Trustee follows a substantially similar procedure to the procedure outlined above.

## Chapter 10- Strategic Plan

### 10.1 Purpose of Strategic Plan

The purpose of the Strategic Plan is to:

- (a) set out the long term objectives to facilitate advancement of the Trust and the Trust Objects;
- (b) set policy guidelines for the Investment Policy and the Distribution Policy;
- (c) provide context having regard to the social, political, economic, government and environmental climate of the time;
- (d) provide recommendations for the better administration of the Trust having regard to the results of the Strategic Plan review;
- (e) consider the recommendations and feedback of the Yued People within the broader Trust Objects and Charitable Purposes; and
- (f) where appropriate, provide recommendations relating to amendments to this Deed that the Trustee may consider appropriate having regard to the results of the Strategic Plan Review.

### 10.2 First Strategic Plan

In the First Year, the Trustee must in consultation with the Trust Advisory Committee, develop, finalise and publish the first Strategic Plan for implementation during the first 3 years of the Trust in accordance with this Chapter.

### 10.3 Formulating Strategic Plans

Every 3 years, at the beginning of the relevant Financial Year, the Trustee will consider and formulate a Strategic Plan for the next 3 years using the following procedure:

- (a) the Trustee will formulate a proposed Strategic Plan, having regard to:
  - (i) each previous Annual Plan;
  - (ii) the Distribution Policy and the Investment Policy;
  - (iii) the administration, overheads and operating expenses of Trust;
  - (iv) the Trust Fund and the financial position of the Trust; and
  - (v) the findings of any review of the Trust's performance;
- (b) for the purpose of reviewing the current Strategic Plan and seeking input on the proposed Strategic Plan, the Trustee will consult with the Trust Advisory Committee;
- (c) having regard to the consultations conducted under clause 10.3(b) above, the Trustee will then finalise the Strategic Plan.

#### **10.4 Amending the Strategic Plan**

The Trustee may amend the Strategic Plan during the Financial Years to which the Strategic Plan relates provided the Trustee follows a substantially similar procedure to the procedure outlined in clause 10.3.

#### **10.5 Implementation of the Strategic Plan**

The Trustee will administer the Trust in accordance with the Strategic Plan and will seek to implement any recommendations contained in the Strategic Plan.

#### **10.6 Availability of Strategic Plan**

As soon as practicable after the Strategic Plan is finalised, the Trustee will make the Strategic Plan available for viewing by:

- (a) the Yued People;
- (b) the Trust Advisory Committee; and
- (c) the Auditor.

## Chapter 11 - Executive Office

### 11.1 Appointment of Executive Office

- (a) The Trustee must provide the functions of the Executive Office to administer the Trust and assist with the day to day management of the Trust and may do so by appointing for that purpose either:
  - (i) an employee or employees of the Trustee; or
  - (ii) a person or organisation.
- (b) The Trustee must use its best endeavours to minimise the costs of the Executive Office.

### 11.2 Functions of the Executive Office

- (a) The functions of the Executive Office are to:
  - (i) ensure regular communications are maintained with the Trust Advisory Committee, the Yued People and any other relevant Advisory Committees and assist the Trustee to comply with its obligations under Chapter 5;
  - (ii) provide organisational and managerial support to the Trustee;
  - (iii) assist the Trustee with the establishment, implementation and operation of the Trust;
  - (iv) assist the Trustee in exercising its functions and obligations under this Deed;
  - (v) convene Trustee meetings and assist the Trustee to perform its functions including preparing and distributing minutes and decisions of Trustee meetings if requested;
  - (vi) convene meetings of the Trust Advisory Committee, and any other Advisory Committees and assist the Trust Advisory Committee, and any other Advisory Committees to perform their functions, including preparing and distributing minutes and decisions of those committees if requested;
  - (vii) assist the Trustee with the engagement, management and review of service providers to the Trust;
  - (viii) send and receive notices as required;
  - (ix) call for applications for funding, assist applicants to complete applications, review applications and report to the Trustee;
  - (x) monitor the outcomes of applications for funding and report to the Trustee on those outcomes;
  - (xi) assist with preparation of the Annual Plan, and Strategic Plan; and
  - (xii) such other duties as the Trustee may determine from time to time.
- (b) The Executive Office will, through the Trustee, be subject to day to day instructions from the Trustee and will report to the Trustee.

### **11.3 Qualifications**

The Executive Office must demonstrate proven management capabilities and results, and must be able to provide sufficient personnel with the following characteristics:

- (a) an understanding of and previous experience working with Indigenous communities;
- (b) previous management experience;
- (c) tertiary education in a relevant field, with a minimum university degree of 3 years or a similar level of experience in lieu of such degree;
- (d) no criminal convictions;
- (e) acceptable Police Clearance Certificate; and
- (f) effective strategies to promote training and development within the Yued People to allow for and encourage capacity building and executive independence.

### **11.4 Selection Procedure and Contract**

- (a) The Trustee is responsible for ensuring the Executive Office meets the qualifications and functions of an Executive Office under this Chapter 11.
- (b) If Executive Office functions are provided by a person or organisation other than the Trustee the successful service provider must execute a service contract.



## Chapter 12- Dispute Resolution

### 12.1 Dispute

The Dispute Resolution Procedure in this Chapter applies to a dispute in relation to the administration and operation of the Trust between any of the Trustee, the Trust Advisory Committee, the Yued People, or any one or more of them, but does not apply to a dispute between Yued People ("**Dispute**").

### 12.2 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.

### 12.3 Informal Dispute Resolution

If a Dispute arises, the parties to the Dispute must try to resolve it themselves on an informal basis, in good faith, having regard to the spirit and intent of this Trust.

### 12.4 Formal Dispute Resolution

- (a) If the Dispute is not resolved in accordance with clause 12.3 within 30 days after the Dispute arises then any party to the dispute may give the Trustee written notice identifying the particulars of the Dispute ("**Dispute Notice**").
- (b) If the Trustee is unable to resolve the Dispute to the mutual satisfaction of the parties within 30 days after the Dispute Notice is given, then the Trustee or either party to the Dispute may only pursue the resolution of the Dispute by referring the matter to Expert Determination.

### 12.5 Expert Determination

- (a) If the Dispute must be referred to Expert Determination in accordance with clause 12.4(b), the parties must within 10 days agree to an Independent Expert to determine the Dispute. Failing agreement, either party may request the President of the Institute of Arbitrators and Mediators Australia, WA Chapter to appoint an Independent Expert having expertise in the matters the subject of the Dispute, to determine the Dispute.
- (b) If the Independent Expert appointed under clause 12.5(a) is unable to carry out the determination, another Independent Expert must be appointed in accordance with clause 12.5(a) to determine the Dispute.
- (c) The Independent Expert appointed under clause 12.5(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 parties, before entering into an agreement to act as an expert, any interest or duty which may conflict with his or her position.

## 12.6 Procedure for Expert Determination

- (a) 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.
- (b) The Independent Expert will not be bound by the rules of evidence.
- (c) 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.
- (d) The Independent 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 Independent expert will be subject to the same obligations of confidentiality as outlined above.
- (e) Subject to the Independent Expert abiding by the rules of natural justice, the Independent 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.
- (f) The Independent Expert may explore a resolution of the Dispute by consent of all parties to the Dispute. If the parties consent to a resolution of the Dispute, the determination of the Independent expert will be in accordance with the agreed resolution of the Dispute.

## 12.7 Determination of Expert

- (a) The determination of the Independent expert will:
  - (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; and
  - (iii) determine what, if any, adjustments may be necessary between the parties.
- (b) Unless the parties otherwise agree, the Independent Expert will determine which party will bear the costs of the determination and in what proportion, having regard to the degree to which he or she considers that party was at fault or unreasonable in failing to agree to the matter under reference or that the party's conduct is vexatious or frivolous, and that party will bear those costs accordingly.
- (c) The Independent Expert may make whatever orders he or she sees fit with respect to costs, including the giving of a direction to the Trustee that any future Distributions made to a party that is a Yued Person or beneficiary, or potential beneficiary, under the Charitable Trust first be applied to the satisfaction of any costs order made by the expert.
- (d) Unless otherwise ordered by the Independent expert, the Independent expert's costs shall be paid by the Trust.

## **12.8 Legal Proceedings**

No party is entitled to commence or maintain legal proceedings relating to any Dispute until the processes outlined in this Chapter have been followed, except where that party seeks urgent interlocutory or other urgent equitable relief.

## Chapter 13 - Costs and Expenditure

### 13.1 Trustee's Remuneration

- (a) The Trustee may apply the income or capital of the Trust Fund to pay fair and reasonable remuneration for the services of the Trustee in administering the Trust as follows:
  - (i) a trustee fee at a rate not exceeding 0.99% annually (GST inclusive) of the gross value of the Trust Fund (**Trustee Fee**); and
  - (ii) fees charged at an hourly rate (depending on the skills of the person required to undertake the task) and as published in its Financial Services Guide (FSG) from time to time by the Trustee (**Additional Services Fees**).
- (b) The Trustee will undertake the functions set out in Schedule 9 for the Trustee Fee and Additional Services Fees.

### 13.2 Costs and Expenses

- (a) The Trustee 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 Trustee by this Deed or the law including but not limited to those costs and expenses in Schedule 9.
- (b) The Trustee will endeavour at all times to:
  - (i) keep the costs of the administration of the Trust to the minimum necessary to perform its obligations; and
  - (ii) apportion costs of the administration of the Trust reasonably between all Sub Funds (and any part of the Trust Fund which does not form part of a Sub Fund), except where there are insufficient funds in a Sub Fund (or that other part of the Trust Fund) to meet such costs, in which case the Trustee will apportion those costs between the remaining Sub Funds (and that other part of the Trust Fund).

### 13.3 Trustee Budget

- (a) The Trustee must establish internal controls of expenditure by the Trustee including compiling a budget of expenses of the Trust for each quarter ("**Trustee Budget**").
- (b) The Trustee must consult with the Trust Advisory Committee in relation to the Trustee Budget.
- (c) The Trustee Budget must include the remuneration.
- (d) The Trustee Budget must be included in the Annual Plan
- (e) The Trustee must monitor the expenditure of the Trust in each quarter to ensure that the Trust expenses do not exceed the Trustee Budget.
- (f) If the Trustee's expenditure exceeds the Trustee Budget in any quarter, the Trustee and the Executive Office must examine the Trust accounts, the Trust's activities in an effort to reduce the Trust expenditure.

## Chapter 14 – Audit and Books of Account

### 14.1 Appointment of Auditor

The Trustee must appoint an Auditor to audit the financial records of the Trust.

### 14.2 Book of Accounts and Receipts

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

### 14.3 Resolutions to be recorded

Any determination or resolution of the Trustee pursuant to this Deed must be recorded in a written minute signed by the Trustee or, if the Trustee is a corporation, by an officer or other person authorised by the corporation to sign that minute.

### 14.4 Audit

- (a) The Trustee must arrange to have the financial statements prepared pursuant to clause 14.1 audited by the Auditor in accordance with Australian Auditing Standards and a report provided by that Auditor as to whether those financial statements are fair and accurate according to Australian Accounting Standards ("**Auditor's Annual Report**").
- (b) The Auditor's Annual Report must be endorsed on, or attached to, the balance sheet relating to the period in respect of which the Auditor's Annual Report relates.
- (c) The Trustee may pay for the costs of audits out of the Trust Fund.
- (d) As soon as practicable, and in any event, no later than twenty (20) Business Days after receipt of the Audited Annual Report, the Trustee must provide a copy of the Audited Annual Report to the Trust Advisory Committee.

## Chapter 15 - General Legal Provisions

### 15.1 Liability and Indemnity of Trustee

#### 15.1.1 Liability and indemnity

The Trustee and any officer, agent or employee of the Trustee, where purporting to act in the exercise of the powers or discretions under this Deed is:

- (a) not liable for any loss or liability; and
- (b) entitled to be indemnified out of the Trust Fund in respect of any loss, liability, costs or expenses relating to:
  - (i) entering into this Deed or any deed amending this Deed;
  - (ii) establishing, operating, administering, amending, retiring from, terminating and winding up the Trust; or
  - (iii) otherwise in respect of the Trust and all matters incidental to the Trust; and
  - (iv) any 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 Trustee performing its duties and exercising its powers, rights and discretions under this Deed.

#### 15.1.2 Limitations

Notwithstanding clause 15.1.1, the Trustee and any officer, agent or employee of the Trustee is not indemnified by the Trust Fund if the loss, liability, cost or expense is attributable to:

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

### 15.2 Tax Law

#### 15.2.1 Classification of Trust Income

In making any decision under this Deed the Trustee 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:
  - (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.

#### **15.2.2 Setting Aside for Income Tax Purposes**

- (a) The Trustee may set aside a sum which in the opinion of the Trustee may be sufficient to meet the income tax obligations of the Trustee (pursuant to any law which imposes income tax on the Trustee).
- (b) If the sum set aside is inadequate to meet the tax actually assessed, the Trustee may without prejudice to any other rights given by law or by this Deed:
  - (i) resort to the income of the Trust Fund for any subsequent Financial Year; or
  - (ii) recover the amount of the inadequacy from any money in the Trustee's hands belonging to the Trust Object for which the income assessment is issued.
- (c) If it appears to the Trustee that any sum set aside was excessive, the amount of the excess will be credited in the books of account of the Trust Fund to the Trust Object for which the provision was made and will be treated as though it had been set aside for that Trust Object in the Financial Year in which the provision was first made.
- (d) Nothing in this sub-clause will oblige the Trustee to set aside any sum or affect any rights of the Trustee if any assessment of tax is made against the Trustee for any amount so paid.

#### **15.3 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) a Preferred Notice Procedure.
- (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
  - (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.
- (d) For the purposes of this clause, any current address or telephone number of a member of the Yued People will be as it is recorded on the Register of Yued People.

## **15.4 Modification of the Trust Deed**

- (a) Subject to clause 15.4(b), the Trustee may Modify the provisions of this Deed to the extent that:
- (i) 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; and
  - (ii) such changes will generally benefit the Trust Objects.
- (b) The Trustee may not Modify the Trust Deed without the prior written consent of:
- (i) the Commissioner of Taxation, if required by the Tax Law; and
  - (ii) the Trust Advisory Committee.

## **15.5 General**

### **15.5.1 Trust Fund to be kept distinct**

The Trustee shall keep the Trust Fund entirely separate and distinct from any other trust fund and nothing shall require or cause the Trustee to join the Trust Fund the subject matter of this Deed with any other trust fund.

### **15.5.2 Governing Law**

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

### **15.5.3 Deposit of documents and records**

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

### **15.5.4 Disclosure of documents and records**

- (a) Subject to clause 15.5.4(b), the Trustee is not bound to disclose any document disclosing, or relating to, the deliberations of the Trustee as to the exercise, or non exercise, of any power, duty, authority or discretion vested in the Trustee or the reasons therefore.



- (b) Where this Deed provides that the Trustee must disclose any document relating to the Trust, the Trust Fund or the decisions of the Trustee to any person or entity, the Trustee must provide the relevant document to the relevant person or entity in accordance with the provisions of this Deed.

#### **15.5.5 Receipts by others**

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

#### **15.5.6 Trustee Consultation**

Where the Trustee is required under this Deed to consult with any party, the Trustee may in its absolute discretion determine the appropriate time and manner for such consultation having regard to the nature, circumstances and costs of the consultation.

#### **15.5.7 Trustee Independence**

- (a) Subject to any express provision to the contrary in this Deed, the Trustee's powers and discretion is absolute and it is not bound to implement:
  - (i) any directives or resolutions of any meeting of the Trust Advisory Committee or the Yued People; and
  - (ii) any views expressed by any Advisory Committee.
- (b) In making a decision for the purposes of making a Distribution for the benefit of the Trust Objects:
  - (i) the Trustee may resolve conclusively all questions of fact or interpretation;
  - (ii) the Trustee need not give any reason or justification in respect of a decision; and
  - (iii) the Trustee may change a decision made by it previously.

#### **15.5.8 Delegation of powers**

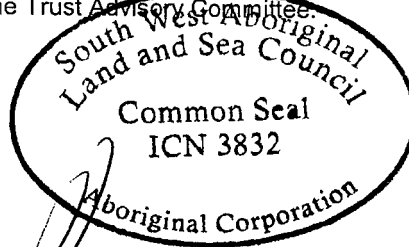
- (a) The Trustee may by power of attorney or otherwise delegate to any person any of the discretionary or other powers given to it under this Deed. The execution or exercise of any of the trusts or powers of this Deed by an attorney or delegate is valid and effectual and binds all persons interested in the Trust Fund.
- (b) The Trustee may employ a solicitor, accountant, broker or an employee or any other person to transact any business or to do any act required or permitted to be done under or in connection with the administration and management of the Trust. The costs

#### **15.5.9 Winding Up & Schemes**

- (a) The Trustee may only wind up or terminate the Trust with the prior written consent of a majority of the Trust Advisory Committee.
- (b) The Trustee may only wind up or terminate a Sub Fund with the prior written consent of the Contributor with respect to that Sub Fund.

(c) If, on the winding up of the Trust, any property remains after the satisfaction of all the Trust's debts and liabilities, the Trustee must give and transfer the property to or for one or more funds, authorities or institutions which are charitable at law and established for similar objects to the Trust Objects for the benefit of the Yued People, as the Trustee decides with consent of the Trust Advisory Committee.

Executed by South West Aboriginal Land & Sea Council Aboriginal Corporation ICN 3832 in accordance with its constitution in the presence of:



[Signature]  
Signature of authorised representative

[Signature]  
Signature of authorised representative

WAYNE NANNUP  
Full name of authorised representative

STEFAN LE ROUX  
Full name of authorised representative

10/7/2018  
Date

10/07/2018.  
Date

SIGNED in my presence for and on behalf of PERPETUAL TRUSTEE COMPANY LIMITED (ABN 42 000 001 007) by its attorneys under the Power of Attorney dated 16 September 2014 Registration No. M801764 who are personally known to me and each of whom declare they have no notice of revocation of the Power of Attorney thereof

[Signature]  
Attorney  
Glen Charles Mesch  
Full Name (please print)

[Signature]  
Attorney  
Pamela Kaye  
Full Name (please print)

State Manager WA  
Title

Snr Trust Manager - Native  
Title

[Signature]  
Witness

Tyler Hurley, 34 Driffield street  
Print Name and Address  
Hamersley WA 6022

## Schedule 1- Definition of Yued People

### S1.1 Yued People

**Yued People** are comprised of the people who are:

- (a) The descendants of one or more of the persons listed below:
  - (i) Balumara
  - (ii) Cayanga (also known as Tommy Kyanga)
  - (iii) Cubican
  - (iv) Edith Jarraha
  - (v) Helen Cundi
  - (vi) John CAlinga and Upona
  - (vii) Juranang
  - (viii) Jurry Pinjula
  - (ix) Jury Wongan
  - (x) Lizzie Frig
  - (xi) Maddeegro
  - (xii) Maria Junnop
  - (xiii) Mary Ginginga
  - (xiv) Mary, mother of William Williway
  - (xv) Mindeemurra
  - (xvi) Nyeerajap
  - (xvii) Sarah Bundaran
  - (xviii) Utonga and Yuroba
  - (xix) Weinin
- (b) Persons who have been adopted according to Yued and Noongar laws and customs by any of the persons listed in paragraph (a) or their descendants;
- (c) The descendants of the persons specified in paragraph (b);
- (d) Persons who are recognised by the Yued People through possessing substantial knowledge of Yued and Noongar laws and customs in relation to Yued Booja;
- (e) Other persons as a result of further genealogical and anthropological research who are the descendants of apical ancestors not listed in paragraph (a) and are

accepted by the Yued Native Title Claimant Group and the Yued Native Title Agreement Group.

## **S1.2 Region**

**Region** means the area of country defined by reference to the Yued Native Title Claim Area (WAD 6192 of 1998) and encompasses the Yued Native Title Agreement Group Area as defined by the proposed Yued Indigenous Land Use Agreement.

## Schedule 2 - Distribution Policy

### S2.1 Distribution

If the Trustee determines that a project is an "**Eligible Project**" then it may, in its absolute discretion (subject to the term of the Deed) allocate funds for Distribution subject to appropriate terms and conditions and having regard to:

- (a) the Priorities for that Financial year;
- (b) other applications and Eligible Projects; and
- (c) the value of the capital and all income of the Trust in a particular Financial Year subject to appropriate terms or conditions.

### S2.2 Eligible Projects

A project is an **Eligible Project** if it is or will be:

- (a) conducted for a Charitable Purpose;
- (b) for the benefit of 1 or more Yued People;
- (c) consistent with this Distribution Policy;
- (d) recommended by the Trust Advisory Committee; and
- (e) not an Excluded Project.

### S2.3 Excluded Projects

- (a) A project is an Excluded Project if it is or will be used (including in conjunction with 1 or more other projects) for the provision, application or crediting of money, a money equivalent or a right to money to individual Yued Persons.
- (b) A project will not be an Excluded Project if it is for the provision of in-kind goods or services to individual Yued Persons, as long as the Trustee takes reasonable steps to ensure that the in-kind goods or services are provided to the individual Yued Person in such a manner that they cannot be easily converted by the individual into money, a money equivalent or a right to money.

### S2.4 Programs

- (a) The Trustee in consultation with the Trust Advisory Committee may select and determine the funding programs ("Programs") for each Financial Year and may allocate a Budget for each Program. Each Program must be for the purpose of promoting any one or more of the Charitable Purposes.

### S2.5 Rules and Procedures

- (a) The Trustee in consultation with the Trust Advisory Committee may establish rules to assist the Trustee with the application and administration of the Distribution Policy including prescribing the application procedure:

- (i) in a manner that is culturally appropriate for the Community; and
  - (ii) to set out the funding Priorities for each Financial Year and allocate a Budget for each program;
  - (iii) to strive to seek out funding bodies to assist with Programs on a dollar for dollar matching basis;
  - (iv) be impartial in the applications of the Distribution Policy and not favour any particular sections of the Yued People. However, it is recognised that some sections of the Yued People may receive some benefits before other sections because of the limited financial resources of the Trust in any Financial Year. It is also recognised that different sections of the Yued People may enjoy benefits of different kinds; and
  - (v) subject to paragraph S2.4(a)(iv), to ensure that Distributions are made in a way that benefits a broad cross-section of the Yued People but without limiting the Trustee's discretion as to the manner in which it will seek to balance Distributions between individual, local and regional projects.
- (b) The Trustee must:
- (i) invite, receive and consider applications for assistance from the Trust;
  - (ii) monitor the implementation of Eligible Projects;
  - (iii) take appropriate action to ensure that any conditions relating to an Eligible Project are satisfied or that non-compliance is addressed.

## **S2.6 Applications**

- (a) A person or other entity may apply to receive assistance from the Trust for an Eligible Project.
- (b) The Trustee must review every application so made and determine:
  - (i) whether the application relates to an Eligible Project and will benefit any 1 or more Yued Person;
  - (ii) any other public or private funding program that is or may be providing assistance to the Yued Person;
  - (iii) the priority of the application in relation to other applications pending;
  - (iv) the success of the application and communicate it to the applicant;
  - (v) where the application is for the direct relief of poverty, if the applicant is in necessitous circumstances having regard to the following:
    - A. a person does not qualify for poverty relief merely because he or she is a Yued Person ;
    - B. the Trustee must determine if the person is in necessitous circumstances. A strong indicator of this is where the person's level of income is such that they are eligible to receive income tested government benefits;
    - C. where an applicant does not receive income tested government benefits, it does not on its own indicate lack of necessitous circumstances. A person's level of income is a useful guide only.

Consider the Taxation Ruling 2000/9 (and any amendments or variations to this Ruling); and

D. payments received under the Direct Benefits Trust.

- (c) An application will set out:
  - (i) full details of the project including timelines;
  - (ii) the type and amount of assistance sought from the Trust;
  - (iii) the expected Yued Persons who will benefit from the project and outcomes from the project;
  - (iv) the proposed method of acquittal; and
  - (v) any other information required under the application procedure.

### **S2.7 Non individual Applications**

The Trustee may consider applications for funding from non-individuals provided the Trustee, in deciding how much to distribute, considers the following:

- (a) the nature of the Eligible Projects that are proposed;
- (b) the amount that is spent on administration and what is actually being achieved;
- (c) what is reasonably required to ensure the proper and adequate administration and the costs involved;
- (d) whether there are any means available to act more efficiently or cost effectively;
- (e) whether there are any other sources of funding; and
- (f) requires that the funding is only applied towards Eligible Projects;
- (g) requires that applicant provides a budget for the funding to the Trustee that is approved by the Trustee and agrees to acquit to the Trustee for the funding quarterly;
- (h) requires that the applicant monitors its expenses in each quarter and does not exceed its budget;
- (i) requires the applicant provides annual report regarding its activities to the Trustee;
- (j) requires that the applicant is, and remains, endorsed as exempt from income tax;
- (k) in all other respects, that the Distribution Policy) is complied with.

### **S2.8 Reporting Requirements for non-individual applicants**

The Trustee may procure that the recipient of any Distribution pursuant to this Distribution Policy:

- (a) keeps financial account and records relating to the use of the Distribution to enable;

- (i) all income and expenditure in connection with the Distribution to be identified in the recipients accounts and records;
  - (ii) the preparation of financial statements in accordance with Australian Accounting Standards; and
  - (iii) the audit of those accounts and records in accordance with Australian Accounting Standards;
- (b) provides all information, records and documents as may be reasonably requested by the Trustee from time to time;
- (c) reports to the Trustee within 12 months of the Distribution:
  - (i) detailing the outcome of the Eligible Project;
  - (ii) comparing the outcome with the objectives of the Eligible Project as stated in the application made to the Trustee; and
  - (iii) reporting on the satisfaction of any conditions that were attached to the Distribution; and
- (d) upon request of the Trustee, provides to the Trustee, on or before 30 June each relevant year, or such other time as the Trustee determines, a certificate by a Chartered Accountant stating the amount of the Distribution spent, or committed to be spent, for the purpose of the Distribution.



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## Schedule 3 – First Investment Policy

### S3.1 DEFINITIONS

These definitions may include new terms not included in the Trust Deed. Refer to the Trust Deed for a description of other definitions used in this document.

<b>Australian Prudential Regulation Authority (APRA)</b>	an Australian government regulatory body which oversees banks, credit unions, building societies, general insurance and reinsurance companies, life insurance, friendly societies and most members of the superannuation industry.
<b>Australian Securities Exchange (ASX)</b>	the national organisation for dealing in equities (shares), bonds and other securities.
<b>ASX 100</b>	refers to the top 100 companies listed on the Australian Securities Exchange by market value. The ASX200 refers to the top 200 companies listed on the Australian Securities Exchange by market value.
<b>Consumer Price Index (CPI)</b>	is a social and economic indicator that measures changes in the general level of prices of consumer goods and services which typify those bought by Australian households. It allows comparisons of the relative cost of living over time and is used as a measure of inflation. It is defined in the trust deeds as the index published by the Australian Bureau of Statistics for Perth for all groups or if that index is suspended or discontinued, the index substituted for it by the Australian Statistician.
<b>Trust Advisory Committee (TAC)</b>	means the committee established under the Trust Deed
<b>Global Industry Classification Standard (GICS)</b>	is a system which classifies ASX listed companies into industry sectors. It allows investors to compare investments around the world based on their industry classification. This approach contributes to the transparency and efficiency in the investment process. The Australian market has traditionally been associated with 24 industry sectors.

<b>Investment Policy</b>	the policy which details the manner and processes in which trust money is to be invested. It is presented in this Investment Policy Statement (IPS).
<b>Standard &amp; Poors (S&amp;P)</b>	an international investment and credit rating organisation.
<b>Strategic Asset Allocation</b>	the composition of an asset mix within a portfolio, which aims to achieve the long-term investment return goals. Short-term relative performance of the various asset classes is not considered. Benchmark or preferred allocations for each asset class are typically established.
<b>Tactical Asset Allocation</b>	a process whereby the Strategic Asset Allocation benchmarks are varied on a short-term basis to take advantage of perceived pricing inefficiencies of the various asset classes. This is done with the aim to enhance returns in the shorter term.

## **S3.2 OVERVIEW**

### **S3.2.1 Background**

The Trust Advisory Committee (TAC) of the Yued Charitable Trust are committed building the financial resources of the Yued Charitable Trust, in order to provide for the long term needs of the Yued people.

Appropriate resourcing of the Yued strategic plan is a significant factor in the progress of the vision. The Yued Charitable Trust is identified as key contributors to the success of the Strategic plan.

The Yued Charitable Trust holds capital on behalf of the Yued people. The management and investment of the trusts funds, and the income generated by these funds, are a critical component of the current and future plans and goals of the Yued people.

The investment of the Trust Funds needs to be carefully and prudently controlled and monitored to ensure it is managed appropriately to meet community goals. Prudent investing for the Yued People means having strong risk management oversight and producing consistent and reliable returns.

This Investment Policy Statement describes the policy of the Trustee and is endorsed by the Trust Advisory Committee of the Yued Charitable Trust.

This Schedule should be read in conjunction with the Trust Deed.

### **3.2.2 Policy Objectives**

The objective of this document is to communicate the investment policy in order to ensure the prudent investment of the assets of the Yued Charitable Trust.

This policy incorporates:

- Investment guidelines
- The investment strategy;
- Benchmarks & performance measures for the fund; and
- A governance framework.

### **S3.2.3 Policy Considerations**

Factors to be taken into consideration in setting the Investment Policy and selecting investment products will include:

- Strategic and financial goals of the Yued People;
- Guidance of the Yued TAC;
- The Yued Charitable Trust Deed
- The Trustees Act;
- Nature and value of investments, (including liquidity, marketability and diversity) and associated risks of such investments;
- Purposes for which investments are held and the investment time frame;
- Issues affecting an investment and its value, including tax (arising from the Group's particular tax status), costs, expenses, potential for capital gain and loss;
- The term of any investment and its relationship with the investment purpose; and
- The impact of inflation.

### **S3.2.4 Policy Governance**

This document stipulates the governance process for management of the investments of the Yued Charitable Trust and describes how this policy is to be implemented to achieve the investment objectives.

Perpetual Trustee Company has been appointed as trustee and Investment Advisor of the Yued Charitable Trust. Perpetual as Trustee of the Trust works closely with the TAC which supports and guides the Trustee to govern the Trust. The Trustee consults with the TAC about the way in which funds are to be invested and distributed.

Review of the Investment Policy is the responsibility of the Trustee, in consultation with Yued TAC and the Investment Adviser. The policy will be reviewed annually with a view to comparing outcomes against intention, and it should be actively updated every three years.

A detailed governance framework is outlined in section S3.6 of this document.

### **S3.3 INVESTMENT GUIDELINES**

#### **S3.3.1 Investment Objectives**

The objectives of this policy are;

- To ensure the prudent investment of the investment portfolios such that income and capital can be applied for the benefit of the Community.

#### **S3.3.2 Investment Principals**

The Trustee will adopt prudent and sound investment principles, which include income generation targets, exposure to capital growth and appropriate diversification guidelines.

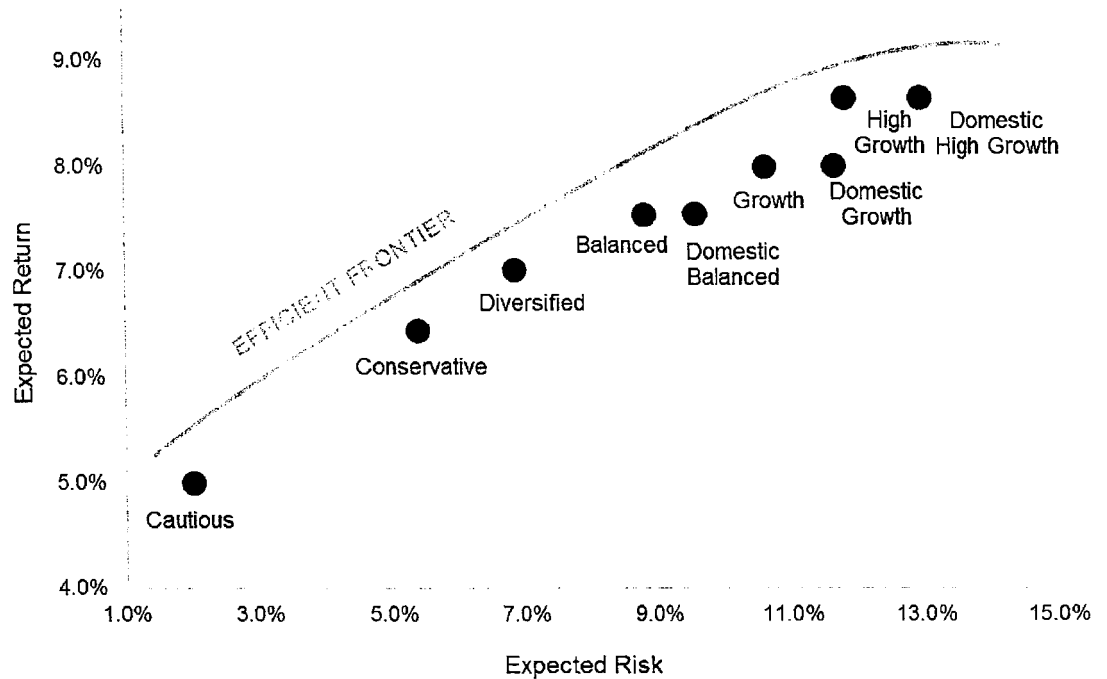
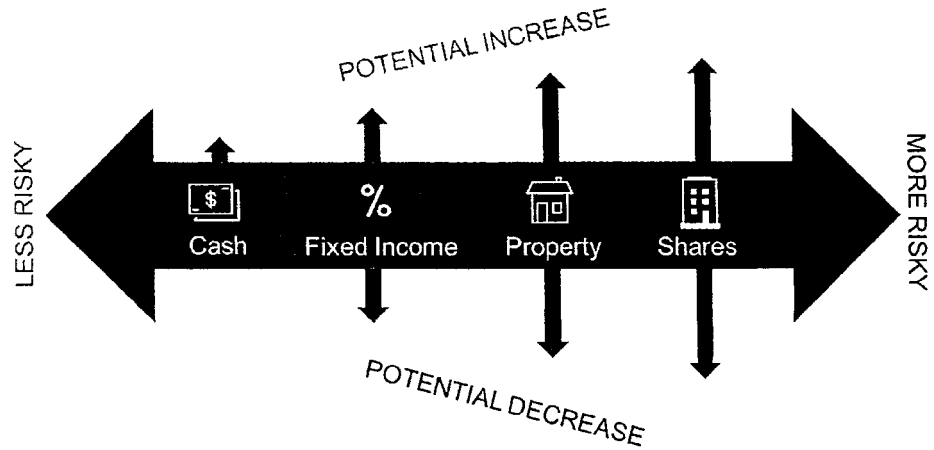
The Trustee accepts that asset values of growth assets may decline in real terms from time to time, and expects that, on the basis of the investment profile adopted, capital losses may occur in any 4.6 out of 20 years. Over a longer investment cycle, a minimum performance requirement for the Fund is that the initial capital will be maintained in real terms.

The Trustee will prudently manage investment reserves having regard to all aspects of risk, particularly:

- Compliance and reputation risk;
- Volatility risk;
- Manager risk;
- Liquidity risk;
- Diversifiable risk; and
- Inflation risk.

#### **S3.3.3 Risk and Return**

The Trustee accepts that over the long run (periods of 10 years or more), a risk and return trade-off exists across asset classes. The agreed risk and return hierarchy is as follows:



**S3.3.6 Risk Management**

The key strategy for the investment portfolio is to adopt appropriate investment strategies for the protection of both capital and income generation, without substantially risking the capital value of the portfolio.

This translates into the following broad objectives:

- To invest in assets within legal and regulatory constraints;
- Diversify the investments across asset class, manager and product to ensure a 'risk adjusted return' which reflects the nominated risk profile;

- Ensure that Investment Manager(s) operate in an effective and cost-efficient basis and comply with the investment rules;
- Delegate responsibility to providers with:
  - Integrity;
  - Appropriate expertise and professional skills;
  - Relevant experience in managing the specific requirements
  - Transparent accountability.

### **S3.3.7 Liquidity Objectives**

Liquidity risk is a significant portfolio risk and should be managed carefully. Liquidity risks are to be managed as follows:

- Retain sufficient liquidity to meet cashflow requirements by matching saleability or maturity of assets to capital requirements.
- Capital stable assets should be considered where asset price fluctuations may otherwise jeopardise meeting cashflow objectives.
- Where cashflow is to be met from a managed fund, the investments within the fund must retain liquidity levels commensurate with timing of cashflow requirements.
- Given that unforeseen circumstances may arise, regardless of expected cashflow requirements, it is prudent to limit the use of illiquid assets. Illiquid assets that are unable to be sold within 90 days must therefore be limited to no more than 20% of the portfolio at all times.

### **S3.3.8 Reinvestment and Drawdown Policy**

Drawdowns from the portfolios will occur, as agreed between the Trustee and TAC, and in accordance with the annual budget of the applicable Trust.

## **S3.4 INVESTMENT FUNDS AND STRATEGIES**

The investment strategy for the Yued Charitable Trust is informed by the annual budget.

The Investment strategy recognises that whilst the primary financial activity for the Trust funds will be operational in nature, whilst at the same time an opportunity for income generation through investment of the fund exists.

### **S3.4.1 Approved Investment**

The Trustee permits managed funds and direct investment in the following asset categories:

- Cash deposits, cash management trusts, investments with Australian licensed and regulated banks and deposit taking institutions with no less than a AA credit rating;
- Australian Government and corporate bonds and managed fixed interest products;

- Direct fixed income securities listed on the Australian Stock Exchange;
- Australian property directly or through listed Real Estate Trusts (REITs) and managed real estate products;
- Australian equities directly or through managed funds and international equities through managed funds; and
- Alternative Asset Class managed products.

### S3.4.2 Benchmarks and Asset Allocation Bands

The Trustee has approved the following benchmarks and asset class bands (range) for the investment portfolio asset allocations. These bands provide for responsiveness to changes in the investment environment and enable the Trustee to choose particular weightings within these bands according to the conditions of the prevailing market and economic conditions.

Yued Charitable Trust – Portfolio		
Asset class	Target allocation	Approved range
Cash	5%	0-10%
Fixed Income	12%	0-30%
Income Alternatives	3%	0-5%
Property	10%	5-15%
Australian Shares	46%	25-64%
International Shares	14%	0-22.5%
Growth Alternatives	10%	5-15%

Note: Defensive Alternatives include those alternative assets and alternative strategies (using potentially traditional assets) with volatility commensurate with traditional fixed interest (average volatility projected at 5.1%pa). Growth Alternatives include those alternative assets and alternative strategies (using potentially traditional assets) with volatility more commensurate with traditional growth assets (average volatility projected at 10.8%pa).

Unless specifically authorised, the Trustee shall not enter into any type of margin lending arrangement, nor allow any other borrowing to leverage the portfolio.

At no time shall the combined exposure to all Alternative Investment class products exceed 30% of the total assets of the Fund. Unless authorised by the Trustee, single strategy products will not be permitted under this policy.

The Trustee notes franked dividends from its investments in Australian equities may be received.

#### S3.4.2.1 Risk and Return

Investment of the fund will be undertaken in accordance with the below risk and return profile.

	<b>Risk Profile</b>	<b>Growth Asset Allocation</b>	<b>Defensive Asset Allocation</b>	<b>Return Benchmark</b>
Charitable Trust Portfolio	Domestic Growth	80%	20%	CPI + 4.5%

#### S3.4.2.2 Strategic Asset Allocation

The Trustee accepts that while returns may vary significantly year to year, over long term periods, the returns from each asset class are more consistent. By adopting a Strategic Asset Allocation, the Trustee seeks to take advantage of more consistent long term returns, to provide a higher level of certainty regarding long term outcomes.

#### S3.4.2.3 Tactical Asset Allocation

The Trustee accepts that over shorter periods, investment markets may harbour imbalances which alter the shorter term risk and likely return (relative to the long run) from one or more asset classes. The Trustee accepts that these imbalances may persist for some time.

The Trustee recognises that the successful use of Trustee tactical asset allocation will likely enhance the long term returns. This needs to be balanced with the inherent increased risk to long term outcomes that occurs when making short term deviations from the long term optimum asset allocation.

Taking the balance between short term risks and long term risks into account, the appointed Investment Manager will be allowed to deviate from the strategic asset allocation within tolerance bands detailed in the asset allocation table under item 0 of this document.

Tactical asset allocation will not be executed by way of derivative overlay or other techniques, and only through temporary asset allocation changes within the defined bands.

#### S3.4.2.4 Diversification

Asset and manager diversification should be employed in the Trusts to reduce the likelihood of generating negative returns. Appropriate diversification of managed funds and individual investment selection will be undertaken to offset investment risk.

The ranges specified in the tables above provide flexibility for events such as significant withdrawals or contributions to the Fund, as well as adjustments to the asset allocation to account for significant over- or under-valuation of an asset class.



The benchmark represents the long term asset allocation for the Fund that best reflects the desired risk profile. It is understood that with market fluctuations, withdrawals and contributions it is unlikely that at any point in time the actual asset allocation will exactly equal the benchmark.

The likely characteristics of each of the individual asset classes in the asset allocation are defined in the in this document.

### **S3.4.3 Guidelines for Investment Managers**

This section details the guidelines associated with each asset class. These guidelines are to be used when selecting investments and are to be adhered to by the mandated Investment manager(s).

#### **S3.4.3.1 Ethical**

The Yued People are committed to their community and strategic visions. The Yued People seek to invest as a responsible community, and also seek to ensure that investments are consistent with the Yued community vision. This requires that investments support and do not oppose the communities strategic priorities of health and wellbeing, caring for culture and country, and education and economic participation for the Yued People.

The Investment Manager should therefore consider the nature of each proposed investment and its suitability given the communities focus on community development. Companies that engage in unethical practices (such as tobacco, alcohol, gaming, armaments and pornography) should be avoided where these practices are a significant part of the business.

Where investments retain minor exposures to undesirable industries (e.g. Wesfarmers' tobacco sales through the Coles retail supermarket division, alcohol production or sales or gaming related activities), the Investment Manager should consider whether quality, suitable alternatives are available that fully meet our community focus.

#### **S3.4.3.2 Cash**

For the purposes of this policy cash securities are deemed to be:

- Short dated bank bills;
- 11am and 24 hour call deposits;
- AAA rated cash management trusts; and
- Term deposits;

Guidelines for investing in cash securities are:

- All direct investments are to be with banks currently holding an Australian banking license;
- Cash securities including bank bills, term deposits and other fixed term cash products are to be no longer than 365 days;
- Longer dated bank secured investments must be allocated against fixed interest; and

- Exposure to cash investments through managed funds, such as cash management trusts, is allowable provided the ratings criteria above are followed.

#### S3.4.3.3 Fixed Income

For the purposes of this policy fixed income securities are deemed to be:

- Commonwealth Government bonds;
- State Government or Government authority bonds;
- Bank and corporate bonds, medium term notes, floating rate notes, debentures or other forms of transferable, coupon bearing instruments;
- Mortgage backed notes; Indexed bonds and annuities;
- Longer dated bank-secure investments (in excess of 365 days);
- Managed funds which invest in the above; and
- Zero-coupon bonds are not permitted.

Guidelines for investing in fixed income securities directly are:

- All direct bank and corporate securities must have a minimum rating of **BBB-** (investment grade);
- Only direct securities which actively trade in liquid markets can be directly purchased; and
- All direct fixed interest securities should be purchased using a hold to maturity approach to eliminate capital gains and losses that occur through market movements.

The Trustee may invest in subordinated debt issuance and hybrid issuances by companies and financial institutions, based on the recommendations of the Investment Manager.

#### S3.4.3.4 Property

Property assets are to be held via listed Real Estate Investment Trusts, managed property funds or through high-quality unlisted property syndications with reputable managers. When assessing these syndications, the inherent constraints on liquidity for the Fund must be taken into consideration.

No physical property is to be held directly as part of the investment portfolio due to difficulty in diversification and valuation uncertainty.

Managed property funds may hold direct property provided they have adequate diversification and the liquidity risks fall within the overall portfolio liquidity risk guidelines.

Direct property may be considered subject to input and due diligence provided by reputable property experts.

#### S3.4.3.5 Australian and international shares

For the purposes of this policy, Australian and International Shares are deemed to be:

- Shares, convertible notes, options or any other security, that exposes the portfolio to the movement in the value of an organisation's equity;
- Any exchange-traded derivatives for the purpose of hedging the portfolio;
- Any managed investment where more than 70% of the assets of the product are made up of Australia and or International equities; and
- Unless utilising an Individually Managed Account (IMA) product or other facility that manages international equities on a discretionary basis, direct international equities should not be held.

Unless otherwise advised, direct share portfolio investments will be:

- Australian equities only; and
- Adopt a sector-balanced approach.

#### S3.4.3.6 Alternative investments

Alternative assets include private equity, infrastructure, opportunistic property, commodities, hedge funds and specialist credit.

Alternative Assets are traditionally included to provide a lower correlation to other asset classes. Their inclusion in a well-diversified portfolio has the ability to potentially improve 'risk adjusted returns'.

The Trustee believes that it is desirable to diversify the portfolio with assets that have low correlations to each other, and that the greater the diversity assets with low correlation, the lower the portfolio risks.

Investment in some alternatives such as hedging strategies employed by hedge funds managers relies more heavily on manager skill (Alpha) and less on market performance (Beta). Where Alpha is the primary driver of return, unlike traditional asset classes, diversification across a number of asset managers and investment strategies is required.

Other alternatives are so named because of the type of assets in which they invest, despite employing traditional long-only strategies to execute the investment opportunity. Infrastructure and specialist credit are examples. As with traditional managers, these managers rely heavily on market returns or Beta.

Guidelines for investing in alternatives are:

- Single manager and single strategy exposures to alternative asset classes should be avoided; and
- Strategies should engage below-average levels of debt relative to the universe of peers for each strategy. Debt for the purposes of this policy includes direct debt and derivative instruments which 'leverage' returns (including options and futures contracts).

#### S3.4.3.7 Aboriginal Economic Development Investments

The Trustee may accept a lower return or higher risk by making investments in Aboriginal economic development investments. Provided investments in such Aboriginal economic development investments do not exceed 10% of the balance of the Trust Funds available for investment.

#### S3.4.3.8 Fees

The fees for Investment Management are outlined in the Agreement for Services.

#### S3.4.3.9 Conflicts of interest

The Trustee seeks to manage potential actual or perceived conflicts of interest in the management of investments for the fund. Accordingly the Trustee requires that the Investment Manager act in accordance with the Trustees conflict of interest policy.

### **S3.5 BENCHMARKS AND PERFORMANCE MEASUREMENT**

#### **S3.5.1 Performance Reporting**

The Investment Manager will present to the Trustee on a quarterly basis, if required. In addition an investment portfolio performance report is to be compiled by the Investment Manager and shall be provided to the Trustee on a quarterly basis. The report is to include:

- Return on investment, expressed as a percentage;
- Performance report on income and market movements;
- Return on funds managed compared to the relevant benchmark index;
- The percentage of exposure to each asset class compared to the target allocation as determined by the Investment Policy; and
- Any other meaningful data required by the Trustee.

Investment Managers should be capable of providing on-line and up-to-date reports on all key aspects of the investment portfolio, including valuation, income, and performance against benchmark where required.

#### **S3.5.2 Benchmark Selection**

The performance of the Investment Manager(s) is to be evaluated by setting absolute return guidelines focussed on the CPI plus required benchmarks. The Trustee should be provided with additional information on market-related benchmarks by asset class and median manager performance comparisons.

A good benchmark is measurable, testable, specified in advance and appropriate for the manager's style and approach. The benchmark may be used for managed investments including direct share portfolios, i.e. measured against Australian equities S&P/ASX 200 Accumulation Index.

In regard to benchmarks for performance for each asset class, the following benchmarks may be used:

Cash		UBS Australia Bank Bill Index
Australian Interest	Fixed	UBS Australia Composite Bond Index
International Interest	Fixed	Citigroup World Government Bond Index (Hedged)
Property		S&P/ASX 200 REIT Accumulation Index
Australian Equities		S&P/ASX 200 Accumulation Index
International Equities		MSCI World ex Australia Accumulation Index; hedged and unhedged
Alternative Investments		Defensive Alternatives- UBS Bank Bill Index + 2% or Growth – UBS Bank Bill Index + 5%

With regard to Alternative Assets, it is recommended that equity-like returns from a risk profile ranking between equities and fixed interest are used. An absolute return benchmark is appropriate for such managers.

### S3.5.3 Performance Benchmarks

Investment performance will be measured according to the below expectations.

#### Charitable Trust – Portfolio

RISK PROFILE	EXPECTED INCOME P.A.	EXPECTED GROWTH P.A.	EXPECTED TOTAL RETURN P.A.	EXPECTED VOLATILITY P.A.	RETURN OBJECTIVE ABOVE CPI	OVER ROLLING TIME PERIOD OF (YEARS)	PROBABILITY OF MEETING RETURN OBJECTIVE	PROBABILITY OF NEGATIVE RETURN	LIKELIHOOD OF NEGATIVE RETURN
Domestic Growth	4.3%	3.7%	8.0%	11.8%	4.5%	5 to 10	65.6%	25%	5 in 20 years

Returns depicted in this table reflect possible returns over the long run. They do not depict actual or forecast returns in any period or in the short- to medium-term.

### S3.5.4 Investment Manager Performance

Investment Manager(s) for the purpose of this document are defined as professional investment managers mandated to invest funds on behalf of the Group.

The Trustee will, on a quarterly basis, review the performance of the investment portfolio as assessed using the performance benchmarks outlined in section 0.

Investment Managers will be reviewed by the Trustee based on the performance of the Fund against benchmarks, and on the delivery of requested services.

### **S3.6 GOVERNANCE OF THE INVESTMENT POLICY**

#### **S3.7.1 Roles and Responsibilities**

##### S3.7.1.1 The Trustee

The Trustee has ultimate responsibility for ensuring that the investment of funds is properly managed. The Trustee must appoint an Investment Manager to assist the Trustee in making investment decisions. The Trustee may not make investments or amend either the Investment Policy or the Accumulation Policy without consulting with the appointed Investment Manager.

The role of the Trustee is to:

- Prepare and approve an Investment Policy for the investment of the Trust fund in consultation with the investment manager and the TAC;
- Approve asset allocation bands, investment guidelines, and portfolios (and ensure they are consistent with the Trust objects, the Deed obligations, Strategic plan, accumulation policy and any relevant sub fund agreement); and
- Review at least once per annum and amend when appropriate.

##### S3.7.1.2 The Trust Advisory Committee

The TAC advises the Trustee on the strategic and financial goals and objects of the Trust, and guides the day to day management of the Trust.

The TAC is responsible for considering draft and modified investment policies, and providing feedback to the Trustee to assist to finalise the policy.

The TAC is responsible for contributing to reviews on investment performance.

##### S3.7.1.3 Investment Manager

In addition to the appointment procedure and investment guidelines contained in this document an appointed investment manager will be required to comply with authority and responsibilities as follows:

Compliance with the investment policy at all times. Any exceptions are to be approved by the Trustee;

- Reporting all compliance breaches
- Design and recommend asset allocation benchmarks and tolerance bands that will deliver the requirements of the investment policy for approval by the Trustee;
- Prepare and provide portfolio reporting on a quarterly basis to the Trustee; and
- Respond to all other requests for information from Trustee within 3 work days.

### **S3.7.2 Appointment of Investment Manager**

Investment Manager(s) for the purpose of this document are defined as professional investment managers mandated to invest funds on behalf of the Trust.

Investment Managers will be reviewed by the Trustee based on the performance of the Fund against benchmarks, and on the delivery of requested services.

Selection of advisers for these roles will take into account, among other criteria specific to the role:

- demonstrated commitment to best-practice portfolio management;
- the skills and experience the adviser brings to the role;
- the substance and viability of the adviser; and
- the costs that can be expected to be incurred.

All investment managers must be in a position to meet the investment objectives. In addition an investment manager must:

- Hold an appropriate Australian Financial Services License;
- Provide evidence of being in a sound financial position and be able to show a minimum of three years measured financial performance;
- Have appropriate professional indemnity insurance cover and provide evidence of such cover upon request;
- Demonstrate a strong understanding of the requirements of a fiduciary and 'prudent investment' principles;
- Demonstrate they are able to deliver an appropriate service to the Yued Charitable Trust. This includes both the wealth management credentials/expertise and the ability to deliver a high quality service;
- Demonstrate a long term track record in constructing portfolios (in asset classes relevant to the proposal). Particular attention is to be paid to risk management and return;
- Be a high quality manager at a reasonable price, albeit not necessarily the lowest cost manager;
- Quote transparent fees on a 'total cost of investing' basis (including adviser, platform and underlying investment expenses). Transaction costs on underlying investment will be quoted per transaction and also converted to an annual estimate based on historical portfolio turnover; and
- Have strong communication skills and processes together with effective reporting to allow the Trustee to carry out their responsibilities.

The Trustee will review the performance of the investment portfolio on a quarterly basis using the performance benchmarks outlined in section 5.

The performance of the Investment Manager will be reviewed on an annual basis, with a view to considering the engagement every three years, acknowledging that investment cycles may be relatively long. In assessing the Investment Manager's performance, consideration will be given to the following:

- investment performance;
- investment style;
- responsiveness;
- communication;
- proactive approach to investment opportunities;
- value adding customer service; and
- flexible, accurate and timely reporting and compliance with this IPS.

### **S3.7.3 Review of Policy**

Review of the Investment Policy is the responsibility of the Trustee.

Proposed changes to the policy will be recommended by the Investment Manager to the Trustee for ratification. Once recommended changes have been approved, the Responsible Person will ensure that the changes are incorporated into the policy.

The policy shall be reviewed and updated in accordance with the Trust Deed at least every three years or as required to account for major changes in investment objectives and guidelines. In the first year of the policy's implementation the Trustee should be regularly updated by the Investment Manager to enable any amendments to be made to ensure the objectives of the Trust are likely to be achieved.

Significant underperformance of the portfolio against both the investment objectives and/or the appropriate composite benchmarks for the agreed asset allocation may result in termination of the Investment Manager prior to the scheduled review.

On an ongoing basis the policy should be reviewed if major changes in capital markets, regulatory environment, the investment environment, or in the governance of the Trust occur. Such changes may include:

- Fundamental change in the long term inflation rate or in expected investment returns;
- Emergence of new investment products or product offerings;
- Changes in the structure of financial support for the Yued Charitable Trust;
- Change in Government policy; and
- Significant change in governance structure, e.g. changes in composition of the DMC.

The Investment Manager will be expected to provide relevant information or responses with respect to such developments promptly, as well as a view and recommendation as to their impact on the portfolio from time to time.



## Schedule 4 - Register of Yued People

### S4.1 Relationship to the Yued People

- (a) The Trust Objects include benefiting current and future generations of Yued People, which may require the identification of the Yued People via the establishment and maintenance of a Register of Yued People.
- (b) Subject to S4.3, all members of the Yued People are eligible to be included on the Register of Yued People.
- (c) The Yued People are identified by reference to the Yued Native Title Claim.
- (d) The Trustee may prepare, update and maintain the Register of Yued People in accordance with this Schedule 4.
- (e) The Register of Yued People is the Register from which the Trustee determines to whom the Trustee may make distributions.

### S4.2 Register of Yued People

- (a) The Register of Yued People shall include the following information for each person on the Register:
  - (i) Name, address and date of birth (to the extent known); and
  - (ii) the date the member was entered onto the Register of Yued People.

### S4.3 Eligibility for Register of Yued People

- (a) The Register of Yued People as amended from time to time, must include only those persons that are within the Yued group as defined in Schedule 1.
- (b) A person is not entitled to receive any financial benefits as a reason alone of being a claimant or a member of the Yued People.

### S4.4 Register of Yued People

#### S4.4.1 Applications

- (a) In order to determine applications for inclusion on the Register of Yued People the Trustee must ensure that the requirements in S4.3 are met.
- (b) On receipt of an application the Trustee will seek advice from the Trust Advisory Council, South West Aboriginal Land and Sea Council, its successor or other body or corporation with sufficient knowledge and understanding to be able to determine whether the applicant is a Yued Person:
  - (i) as to whether a person is a Yued Person; and
  - (ii) request confirmation in writing as to whether the applicant is a Yued Person.
- (c) On receipt of the advice referred to in (b)(ii) determine whether the applicant may be included on the Register.

#### **S4.5 Removal from the Register**

- (a) A person may be removed from the register if:
- (i) requested by the person; or
  - (ii) the person dies.

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## Schedule 5 - Trustees Powers

### S5.1 No Derogation

The powers duties, authorities and discretions in this schedule are in addition to and do not derogate from the powers, duties, authorities and discretions contained in the Trustees Act 1962.

### S5.2 Powers

Subject to the provisions of this Deed, the Trustee may:

- (a) change an investment for any others or vary the terms and conditions on which an investment is held;
- (b) sell or otherwise dispose of the whole or any part of the investments or property of the Trust Fund;
- (c) borrow or raise or secure the payment of money in any manner the Trustee thinks fit and secure the repayment of any debt, liability, contract, guarantee or other engagement in any way and, in particular, by mortgage, charge, lien, encumbrance, debenture or other security, fixed or floating, over any present or future asset of any kind and wherever situated;
- (d) take and act on the opinion of a barrister or solicitor practising in Australia in relation to the interpretation or effect of this Deed or any of the trusts or powers of this Deed without responsibility for any loss or error resulting from doing so, but this provision does not stop the Trustee from applying to a court of competent jurisdiction;
- (e) take any action the Trustee thinks fit for the adequate protection or insurance of any part of the Trust Fund;
- (f) purchase, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, and other negotiable or transferable instruments of any kind;
- (g) subject to the trusts of this Deed, generally:
  - (i) perform any administrative act; and
  - (ii) pay or deduct all reasonable costs, charges, commissions, stamp duties, imposts, outgoings and expenses of or incidental to the Trust Fund or its management or which the Trustee thinks fit to pay or deduct (whether or not the Trustee is under any legal obligation to make the payment) or in connection with the preparation, execution and stamping of this Deed, as though the Trustee were the absolute owner of the Trust Fund and the income of the Trust Fund;
- (h) employ and pay or provide any benefit for any employee without being responsible for the default of the employee or for any loss occasioned by the employment;
- (i) engage and pay any agent, contractor or professional person without being responsible for the default of the agent, contractor or employee or for any loss occasioned by the engagement;
- (j) attract, encourage and accept as part of the Trust Fund any gifts (by will or otherwise), donations, settlements or other dispositions in money, moneys worth

or property and any other form of financial assistance to or in favour of the Trust Fund and either retain them in their original form without selling or converting them into money, or invest, apply or deal with them in any way that the Trustee may invest, apply or deal with the Trust Fund under this Deed;

- (k) decline or otherwise refuse to accept as part of the Trust Fund any gift (by will or otherwise), donation, settlement or other disposition in money, moneys worth or property;
- (l) manage any real property it holds with all the powers of an absolute owner including, but not limited to, power to allow any eligible Yued People member to occupy the property on the terms and conditions the Trustee thinks fit;
- (m) fetter or otherwise limit the exercise of its powers or discretions; and
- (n) do all other things incidental to the exercise of the Trustee's powers under this Deed.

## Schedule 6 – Advisory Committee Meeting Rules

### S6.1 Chair and Secretary

- (a) At the first convened meeting of a committee, the representatives of the committee shall elect from among the committee representatives a Chair and a Secretary.
- (b) A person elected as Chair or Secretary under this item S6.1 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.

### S6.2 Holding Committee Meetings

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

### S6.3 Attendance at Committee Meetings

- (a) A committee meeting may be attended by:
  - (i) the committee representatives; and
  - (ii) any person that the committee invites to attend a committee meeting.

### S6.4 Quorum and Voting

- (a) No business shall be transacted at any meeting of a committee unless at least a quorum of committee representatives is present for the whole time during which the business is transacted.

### S6.5 At a meeting of a committee:

- (a) the two members of the Yued People and the Trustee Representative forms a quorum; and
- (b) unless otherwise provided in this Deed, every question before the committee must be determined by a majority of the votes of the committee representatives present and voting on that question.

### S6.6 Meeting Business

- (a) The content of the agenda for a committee meeting is to be determined by the Chair.

- (b) A committee representative may apply to the Chair to have an item placed on the agenda.

### **S6.7 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 representative;
  - (ii) if necessary, the minutes may be Modified; and
  - (iii) the minutes must be signed and dated by the Chairman or the Trustee Representative confirming the minutes as a true record of the proceedings.

### **S6.8 Reporting to the Trustee**

- (a) The Chair of the committee must:
  - (i) provide the minutes of each meeting of that committee to the Trustee; and
  - (ii) provide the recommendations of the committee to the Trustee in connection with the purpose for which the committee was established and as requested or directed to or by the Trustee.

### **S6.9 Use of Technology**

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

## Schedule 7– Meetings of Yued People

### **S7.1 Meetings of the Yued People**

#### **S7.1.1 Holding meetings**

- (a) The Trustee may convene and attend meetings of the Yued People from time to time.
- (b) A meeting of the Yued People must be held at a reasonable time and place.
- (c) A meeting of the Yued People must deal with:
  - (i) confirmation of the minutes of the last meeting; and
  - (ii) all matters set out in the notice of meeting of the Yued People.

#### **S7.1.2 Notice of meeting of the Yued People**

- (a) The Trustee must give members of the Yued People at least 21 days' clear notice of a meeting of the Yued People.
- (b) The notice must set out the place, date and time of the meeting and the matters to be discussed at the meeting of the Yued People.
- (c) If there is a change to the time or place of a meeting of the Yued People, reasonable notice of the change must be given to members of the Yued People.
- (d) The Trustee may give notice of a meeting to the Yued People by:
  - (i) fax;
  - (ii) in person;
  - (iii) email; or
  - (iv) post.
- (e) A meeting of the Yued People will not be invalid merely because:
  - (i) a notice was not sent to a particular person; or
  - (ii) a person did not receive the notice.

#### **S7.1.3 Quorum**

- (a) The quorum necessary for a meeting of the Yued People is the greater of 20 people and 10% (or more), of the persons on the Register of Yued People.
- (b) The quorum must be present at all times.
- (c) If there is no quorum within 1 hour of the proposed time for the meeting, or such further time on the same day as is agreed by all Yued People present, the meeting will be adjourned to the same time and place and day of the week

following the original proposed time. If no quorum is present at the second meeting, the meeting is dissolved.

#### **S7.1.4 Chairing meetings of the Yued People**

- (a) The Trust Advisory Committee may select a chairperson for the meeting, which may be an independent chair.
- (b) The chairperson of the meeting may expel any attendee from a meeting of the Yued People if the chairperson reasonably considers that the person's conduct is inappropriate behaviour, including:
  - (i) the use of offensive or abusive language which is directed to any person, object or thing; and
  - (ii) attendance at the meeting while under the influence of any kind of drug including but not limited to any alcoholic substance.

#### **S7.1.5 Voting at meetings of the Yued People**

- (a) The Yued People must make decisions at meetings to which this schedule applies by consensus, and if consensus cannot be reached then majority vote.
- (b) If a decision is required to be decided by majority vote, each person whose name appears on the Register of Yued People and who is present at the time for casting a vote, has a vote.
- (c) A resolution put to the vote must be decided by a simple majority unless there is a requirement for a Special Resolution, in which case a resolution of which 21 days notice has been given must be approved by not less than seventy five percent of the people entitled to vote at the meeting.
- (d) A proxy is entitled to a separate vote for each member of the Yued People the person represents, in addition to any vote the person may have as a member of the Yued People in their own right. A person may hold no more than 3 proxies.

### **S7.2 Minutes of meetings of the Yued People**

- (a) The Trustee must ensure that the minutes of resolutions at a meeting of the Yued People are recorded in the following manner:
  - (i) in writing;
  - (ii) specifying the date and location of the meeting;
  - (iii) specifying the names of the persons present at the meeting;
  - (iv) detailing the decisions that were made in accordance with this schedule.
  - (v) specifying how the decision was made (i.e. according to the Approved Process, unanimously, by consensus or the number of votes for and against);
  - (vi) signed by the chairperson of the meeting plus 2 other members of the Yued People who were present at the meeting;
  - (vii) verified by those persons signing as a true and correct record of the decisions made; and



- (viii) entered in a decisions register to be kept by the Trustee containing minutes of all resolutions made by the Yued People.

## Schedule 8 - Appointment of New Trustee

### S8.1 Removal and Appointment

- (a) Subject to clause 3.2 of this Deed, if the Yued People by Special Resolution determine the Trustee should be removed and replaced by a new Eligible Trustee they must accordingly inform the Trustee, the Trust Advisory Committee and the Auditor and must follow the process outlined in S8.3.
- (b) If the Trust Advisory Committee resolves by Special Resolution they reasonably believe a Notifiable Event has occurred they must follow the processes outlined in S8.2 and S8.3.

### S8.2 Resolution S8.1(b)

- (a) In the event the Trust Advisory Committee resolves it reasonably believes a Notifiable Event has occurred, it may by notice in writing to the Appointor outline the relevant details of the event and request the Appointor investigate whether a Notifiable Event has occurred.
- (b) Upon receipt of notice of a Notifiable Event the Appointor must promptly investigate or engage an appropriately qualified professional person or organisation to promptly investigate the alleged Notifiable Event and prepare a written report (**Report**) which must conclude:
  - (i) Whether a Notifiable Event has occurred;
  - (ii) Any specific action required by the Trustee to rectify the Notifiable Event, if it is capable of being rectified; and
  - (iii) If the Notifiable Event is capable of being rectified, the date by which it must be rectified (**Rectification Date**).
- (c) The Trustee must cooperate with the Appointor and provide the Appointor or the representative of the Appointor, with access to the records of the Trust to facilitate the preparation of the Report.
- (d) The Appointor must provide a copy of the Report to the Trustee and the Trust Advisory Committee within 7 days of completion.
- (e) If:
  - (i) the Trustee fails to rectify any Notifiable Event which is capable of being rectified by the Rectification Date; or
  - (ii) the Notifiable Event cannot be rectified;

the Trust Advisory Committee must follow the process outlined in S8.3 to remove the Trustee and appoint a new Eligible Trustee.

## **S8.3 Resolution S8.1(a)**

### **S8.3.1 The Auditor**

A representative of the Auditor will take the place of the Trustee Representative of the Trust Advisory Committee for purpose of implementing this process.

### **S8.3.2 Expression of Interest**

- (a) Before appointing a new Eligible Trustee the Trust Advisory Committee must advertise for expressions of interest from Eligible Trustees by sending targeted requests to at least three Eligible Trustees.
- (b) The targeted request will:
  - (i) Describe the nature of the services;
  - (ii) Prescribe the time limit within which an Eligible Trustee must respond which must be at least 14 days;
  - (iii) Request that the Eligible Trustee provide a written summary of its qualifications, skills and experience including:
    - A. Rates of remuneration, how remuneration is calculated and an indicative budget for all trustee fees and expenses;
    - B. Capacity available to perform the services;
    - C. Evidence of the relevant licences and approvals enabling the Eligible Trustee to carry out the functions required by this Deed;
    - D. Details or recommendations for the performance of the services; and
    - E. Any other details that illustrate that the Eligible Trustee will act in good faith and in the best interest of the Trust and the Yued People.

### **S8.3.3 Trust Advisory Committee recommendation**

- (a) The Trust Advisory Committee may only consider applications from Eligible Trustees who comply with any requirements stated in the request for an expression of interest.
- (b) The Trust Advisory Committee must consider each application having regard to:
  - (i) The reputation, experience and skills of the Eligible Trustee;
  - (ii) The ability of the Eligible Trustee to meet the obligations of the Trustee and the Trust; and
  - (iii) The Eligible Trustees' understanding and acknowledgement that the requirements of the Trustee are unique and extensive and the Eligible Trustee's appointment requires a unique level of service and commitment.
- (c) The Trust Advisory Committee will select a preferred Eligible Trustee.

**S8.3.4 Removal and Appointment**

- (a) Once the Trust Advisory Committee have selected a preferred Eligible Trustee pursuant to S8.3.3(c) the Trust Advisory Committee will request that the Trustee call a meeting of Yued People in accordance with Schedule 6 to consider a Special Resolution to remove and replace the Trustee with the Trust Advisory Committee's preferred Eligible Trustee.
- (b) The Trust Advisory Committee will within 7 days of the meeting, in writing advise the Appointor and the Trustee of the outcome of the meeting's consideration of the Special Resolution.
- (c) The Appointor must promptly investigate whether the process established in this Schedule has been followed and if satisfied that the Yued People have resolved by Special Resolution to remove the Trustee and appoint a new Eligible Trustee, issue a notice to the Trustee of an intention to appoint a new trustee (**Intention to Remove**).
- (d) The Appointor must by Deed appoint a new Eligible Trustee within seven days of issuing the Intention to Remove. The Trustee is deemed to be removed as Trustee with effect from the date of the appointment of the New Eligible Trustee.

## Schedule 9 - Trustee's Remuneration

### **S9.1 Trustee Fee (Clause 13.1(a))**

The Trustee will provide the following services for the Trustee Fee (Clause 13.1(a)) including:

- (a) Acting as custodian, and hold safe custody of all assets within the Trust;
- (b) Establishing accounts including sub-accounts;
- (c) Monitoring compliance with this Deed;
- (d) Investing Trust Funds;
- (e) Reviewing and Modifying the Investment Policy;
- (f) Reviewing and Modifying the Distribution Policy;
- (g) Preparing the first Strategic Plan;
- (h) Preparing the Annual Plan;
- (i) Arranging for the preparation of financial accounts and audit, including the appointment of accountant and auditor;
- (j) Responsibility for maintaining trust records including safe keeping of Trust Deeds and other documents;
- (k) Convening and attending up to four meetings per year being Trust Advisory Council or meetings of Yued People and acting as/employing the Trustee Representative, including taking minutes; .
- (l) Work undertaken to ensure that Trustee is meeting the required fiduciary standards;
- (m) Facilitating any dispute resolution process;
- (n) Provide real-time reporting of all financial transactions, income, maintenance of platform, distributions etc.;
- (o) Maintaining business continuity plan and risk management frameworks;
- (p) Appointing service providers including (but not limited to) Executive Office providers, accountants, auditors and strategic planners. For the avoidance of doubt, the Trustee Fee does not include the actual costs of the service provider or the services rendered by such provider. The Trustee Fee includes only the work required to source and appoint such service providers.
- (q) Reviewing and processing up to 24 applications for distribution from the Trust per financial year.

### **S9.2 Additional Service Fees (Clause 13.1(a)(ii))**

Services for which the Trustee may charge Additional Service Fees include all work performed or services provided by the Trustee that are not included in the Trustee Fee. Additional Service Fees include the following:

- (a) services relating to real estate assets including buying and selling, inspecting, letting, reporting, arranging and supervising repairs, valuation, arranging insurance;
- (b) management of interstate or foreign assets;
- (c) carrying on a business;
- (d) preparation and lodgement of tax returns or other required tax forms and obtaining taxation advice (internally or from an external party);
- (e) preparation of financial statements where required and lodgement with any applicable regulator;
- (f) reconstruction of capital gains tax records;
- (g) attending to and managing litigation;
- (h) company formation and re-structure;
- (i) complex or contentious business including internal legal advice and instructing external lawyers;
- (j) necessary attendances with third parties which are required to give effect to the Trustee's appointment;
- (k) the provision of information to external parties such as auditors, lawyers and regulators; and
- (l) services of an otherwise unusual or onerous nature.

### **S9.3 Additional costs and expenses (Clause 13.2)**

Additional costs and expenses for which the Trustee is indemnified to recover from the Trust in accordance with Clause 13.2 include, but are not limited to:

- (a) The cost of service providers (whether third party or internally sourced) including but not limited to Executive Office service providers, lawyers, accountants, strategic planners and auditors, provided a transparent competitive selection process had been followed prior to final selection and appointment;
- (b) reimbursement of 'out of pocket' expenses associated with holding meetings, consulting with Yued People and operating the Trust including the cost of venue hire, catering, hire cars, printing etc.;
- (c) the cost of specialist advice where there are complex, difficult or contentious issues.