

SHAUN GERARD BERG

('the Settlor')

-and-

PERPETUAL TRUSTEE COMPANY LTD

ABN 42 000 001 007

('Trustee')

KOKATHA GENERAL TRUST

Berg Lawyers
Barristers and Solicitors
37 Hurtle Square
ADELAIDE SA 5000
T: (08) 82327360
E: sberg@berglawyers.com.au

KOKATHA GENERAL TRUST

DEED DATE: 13 May 2016.

PARTIES

1. **SHAUN GERARD BERG** of 37 Hurtle Square, Adelaide SA 5000 ('the Settlor')
2. **PERPETUAL TRUSTEE COMPANY LTD** ABN 42 000 001 007 of Level 11, 101 Grenfell Street Adelaide SA 5000 ('the Trustee')

WHEREAS the Settlor desires to establish a perpetual trust for charitable purpose and in furtherance of such desire has paid to the Trustee the sum of TEN DOLLARS (\$10.00).

NOW BY THIS DEED THERE IS CONSTITUTED a perpetual charitable trust to be known as the **KOKATHA GENERAL TRUST** or such other name as the Trustee may determine from time to time the income and capital whereof will be employed in the manner hereafter appearing for the public charitable purposes hereafter appearing and which shall be governed and administered in accordance with the following clauses, namely:

1. DEFINITIONS AND INTERPRETATIONS

- 1.1 In this Deed where the context so admits or requires the expression:

'accretion' includes bonus shares and any capital profits resulting or arising from the conversion or re-investment of a gift;

'Act' shall mean and include all Proclamations, Order-in-Council, instruments, regulations, rules, by-laws and Ordinances made thereunder;

'Applicable Anti-Corruption Laws' means any anti-corruption laws (including the U.S. *Foreign Corrupt Practices Act*, the UK *Bribery Act*, the *Australian Criminal Code Act 1995* (Cth) and the *Criminal Law Consolidation Act 1935* (SA)) that are applicable to the Settlor, the Trustee, the Kokatha People, the Kokatha PBC or a Contributor;

'Auditor' means an auditor appointed in accordance with clause 16;

'Binding Decision' is defined in clause 2.9(2);

'Charitable Objects' means the purposes and objects of the Trust set out in Schedule 1;

'Contributor' means a Contributor as defined in clause 11.1;

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

'corporation' shall mean a body corporate howsoever constituted including a corporation within the meaning of the Corporations Act, an association society institution or body incorporated under the Association Incorporations Act 1985 and a corporation within the meaning of the Corporations (Aboriginal and Torres Strait Islander) Act 2006;

'Deed of Appointment' means a deed for the appointment of a new Trustee that meets the requirements set out in Schedule 2;

'Distribute' means to distribute, pay, commit, credit, apply or otherwise expend;

'Distribution Policy' means a distribution policy approved by the Trustee in accordance with clause 6.4(a);

'Financial Year' 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;

'Generally Accepted Accounting Principles' means:

- (a) accounting standards as defined by section 9 of the Corporations Act;
- (b) the requirements of the Corporations Act as to the preparation, form and content of annual financial statements required under section 295 of the Corporations Act (whether or not section 295 of the Corporations Act applies); and
- (c) those generally accepted accounting principles and practices which are applied consistently in Australia in the preparation of financial statements, other than those which are inconsistent with the standards and requirements referred to in paragraph (a) and (b) of this definition;

'gift' includes the subject matter of a gift to the Trust and any accretions to that gift and the money investments and property for the time being representing the same and the income thereof respectively and applies to the residue of a gift out of which a payment or application of capital or income has been made by the Trustee;

'income' includes:

- (a) items that are income according to ordinary concepts;
- (b) items assessable within the meaning of the Tax Act; or
- (c) a net capital gain under the provisions of the Tax Act (notwithstanding that the amount is capital);

'Independent' for the purposes of this Deed means:

- (a) is not the Kokatha PBC;
- (b) is not an entity in which the Kokatha People or the Kokatha PBC have a material membership interest (in accordance with section 960-135 of the *Income Tax Assessment Act 1997* (Cth));
- (c) is not an entity which is controlled by the Kokatha People or the Kokatha PBC;
- (d) it has not received (directly or indirectly) a Distribution from this Trust;

- (e) is not purporting to and has not purported to, with the express or implied approval or acquiescence of the Kokatha People or the Kokatha PBC, represent or be acting on behalf of the Kokatha People or the Kokatha PBC;
- (f) does not have a membership interest (in accordance with section 960-135 of the *Income Tax Assessment Act 1997* (Cth)) in a Related Entity;
- (g) is not and has not, within the previous three years been a consultant to, advisor to, auditor of or other service provider to the Kokatha People, the Kokatha PBC or a Related Entity, and has not had any direct involvement in the activities of the Kokatha People or the Kokatha PBC;
- (g) has had no material contractual relationship material interest in or business affiliation with or other relationship with any member of the Kokatha People, the Kokatha PBC or a Related Entity which would hinder the entity in the impartial and objective discharge of their duties;
- (h) is not a Kokatha Person,

except that a Trustee does not fail to meet requirements (a) to (h) above by reason only that they are or have been a Trustee in respect of this Trust and except that an Auditor does not fail to meet requirements (a) to (h) above by reason only that they are or have previously been the Auditor;

‘Insolvency Event’ occurs when, in respect of a company:

- (a) the company resolves to go into liquidation;
- (b) a liquidator, a provisional liquidator, receiver, receiver and manager, administrator (other than a special administrator under Part 11-2 of the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth)), official manager, judicial manager or similar official is appointed to the company or over the company’s assets or undertaking;
- (c) the company resolves to enter into a scheme, composition or any similar arrangement or procedure with creditors; or
- (d) the company being taken under section 459F(1) of the *Corporations Act* (including as applied to Aboriginal and Torres Strait Islander corporations pursuant to the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Cth)) to have failed to comply with a statutory demand;

‘Kokatha People’ means the indigenous persons from time to time who are the native title holders as described in the Approved Determination of Native Title (as that term is defined in the *Native Title Act 1993* (Cth)) made 1 September 2014 pursuant to *Starkey v State of South Australia* [2014] FCA 924, including as varied pursuant to any appeal of the determination or pursuant to section 13 of the *Native Title Act 1993* (Cth);

‘month’ and ‘year’ mean calendar periods;

‘person’ includes a corporation;

'Professional Trustee Company' means a professional trustee company that must:

- (a) be a trustee company within the meaning of section 601RAB of the Corporations Act;
- (b) hold a current relevant Australian Financial Services Licence with appropriate authorisations as required to permit it to carry out functions under this Deed;
- (c) have at least two years' experience in carrying out the functions and providing the services similar to those required under this Deed; and
- (d) be Independent.

'Related Body Corporate' has the meaning in the Corporations Act;

'Related Entity' means:

- (a) the Kokatha PBC;
- (b) any entity, other than this Trust or the Trustee, in which one or more members of the Kokatha People or the Kokatha PBC has a material membership interest (in accordance with section 960-135 of the *Income Tax Assessment Act 1997* (Cth));
- (c) an entity, other than this Trust or the Trustee, which is controlled by one or more Kokatha People, or the Kokatha PBC;
- (d) an entity which has received any Distribution from this Trust; or
- (e) an entity that, to the knowledge of and with the express or implied approval or acquiescence of the Kokatha People or the Kokatha PBC, purports to represent or be acting on behalf of the Kokatha People or the Kokatha PBC, as applicable;
- (f) the Kokatha (Olympic Dam Agreement) Association Incorporated (Incorporation Number A39581);

'Removal Event' means a Removal Event as defined in clause 5.6;

'Special Resolution' means a decision passed by a simple majority of the Kokatha People present and voting at a meeting of the Kokatha People (as administered by the Kokatha PBC);

'Sub-Fund' means a Sub-Fund as defined in clause 11.1;

'Sub-Fund Agreement' means a Sub-Fund Agreement as defined in clause 11.3;

'Tax Act' means the Income Tax Assessment Act 1936 and the Income Tax Assessment Act 1997 as applicable and as amended;

'Trust' means the trust or trusts hereby constituted subject to such variations as are hereby authorised and where applicable includes the Trust Fund and the public

charitable purpose herein expressed and the means of achieving those charitable purposes as set out as authorised by this Deed;

'Trustee Act' means The Trustee Act 1936 of the State of South Australia as amended from time to time;

'Trustee' means the Trustee of the Trust for the time being;

'Trust Fund' means the aforementioned sum paid or to be paid by the Settlor to the Trustee and such other moneys and property (either real or personal) as shall hereafter be given transferred vested devised or bequeathed from time to time to the Trust by any persons and any investments or other property into which the said sum or such money or property may be converted and accretions thereto and all if any accumulations of income of the Trust Fund lawfully made, and includes any Sub Fund and any part of the Trust Fund.

- 1.2 Except to the extent that such interpretation should be excluded by or repugnant to the context:

Words importing the singular number included the plural number and vice versa;

A reference to 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;

Words like "including" and similar expressions are not words of limitation;

Words importing any gender shall include the other gender except where such would not be considered consistent with Kokatha laws and customs;

All references to statutes shall also refer to statutes amending modifying or re-enacting or replacing the statutes referred to, and includes all laws made under them from time to time;

References herein to 'this Deed' include this Deed as lawfully amended, altered or replaced from time to time.

2. PURPOSES AND APPLICATION OF THE TRUST FUND

- 2.1 The Trustee shall hold the Trust Fund in perpetuity and subject to this Deed shall pay or apply such part or parts or the whole of the Trust Fund and the income thereof (including any income which may be derived by the Trust as a beneficiary of or which may be allocated to the Trust by the Trustee of any other trust or trust fund whether now in existence or hereafter or to be established) in Australia for the Charitable Objects as the Trustee in its absolute discretion thinks fit **PROVIDED ALWAYS:**

- (1) subject to the express provisions of this Deed no application shall be made of the Trust Fund for any purpose which is not a public charitable purpose;
- (2) subject to any laws limiting the accumulation of moneys by a trustee, the Trustee may accumulate such part of the income of the Trust Fund as the Trustee may from time to time think fit and shall hold such accumulation as part of the Trust Fund and may thereafter (subject to the express provisions of

this Deed) pay or apply such accumulations as the Trustee considers appropriate for the Charitable Objects or may use such accumulation to acquire investments hereby authorised for the purpose of enabling the Trust Fund to generate income for the purposes of the Charitable Objects or to meet the obligations and liabilities of the Trust Fund;

- (3) notwithstanding anything hereinbefore contained the Trustee shall have power in its absolute discretion to accept any money or other assets which may hereafter be transferred to it as such Trustee and to hold the same UPON TRUST for the Charitable Objects or such particular Charitable Object or Objects as the Contributor may at the time of such transfer specify in writing and the Trustee may agree in the form of a Sub Fund Agreement.

2.2 If the Trustee so chooses at any time and from time to time the Trustee may:

- (1) treat any profit, gain or receipt (including one that may be considered to be capital) which is assessable income for the purposes of the Tax Act as net income of the Trust Fund;
- (2) treat any expenditure, payment or loss which is an allowable deduction for the purposes of the Tax Act as expenditure against the net income of the Trust Fund; or
- (3) distinguish between income of a particular nature or character or from a particular source as defined or referred to in the Tax Act and deal with income of a particular nature or character or from a particular source in one manner and income of any other nature and character or from any other source in a different manner.

2.3 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 applied directly or indirectly by way of dividend, bonus or other profit distribution to the Trustee, or directors or members of the Trustee.

2.4 Clause 2.3 does not prevent the payment in good faith of any of the following, in accordance with this Deed:

- (1) reasonable costs, charges and expenses incurred in connection with the administration of the Trust;
- (2) reimbursement to any person (including the Trustee and any officer, employee or member of the Trustee) for any reasonable out of pocket expenses incurred in connection with the administration of the Trust;
- (3) reasonable rental for any real or personal property leased to the Trustee as trustee of the Trust;
- (4) reasonable remuneration to the Trustee or any other person (including any officer, employee or shareholder of the Trustee) for services reasonably provided by the Trustee as trustee of the Trust; or

- (5) any application of the Trust Fund to a Kokatha Person under a Distribution Policy.
- 2.5 The Kokatha People do not have any interest in any particular part of the Trust Fund or any investment made by the Trustee, and they or any of them are not entitled, other than as expressly provided, to:
 - (1) interfere with or to question the exercise or non exercise by the Trustee of its rights and powers;
 - (2) exercise any rights, powers or privileges in respect of any assets of the Trust Fund; or
 - (3) require the transfer, distribution, or application to a member of the Kokatha People of any of the assets of the Trust Fund.
- 2.6 (Recognition of the Kokatha People)
 - (1) The Trustee recognises and respects:
 - (a) the fundamental connection between the Trust Fund and the Kokatha People; and
 - (b) that the sources of the funds contributed to the Trust Fund may include financial benefits in connection with the Native Title Rights and Interests (as that term is defined in the *Native Title Act 1993* (Cth)) of the Kokatha People including compensation for any extinguishment and impairment of those Native Title Rights and Interests.
 - (2) Nothing in this clause 2 has the effect of limiting or restricting the Charitable Objects or fettering the discretion of the Trustee in the discharge of the Trustee's duties insofar as the Trustee is required or permitted to exercise a discretion in accordance with the terms of this Deed.
- 2.7 The Trustee must:
 - (a) assist to improve, enhance and support the development of the corporate governance practices amongst the Kokatha People, the Kokatha PBC and the Advisory Committee; and
 - (b) ensure that meetings of the Kokatha People and the Advisory Committee are convened (as to timing and number of meetings) and held in an efficient, responsible and cost effective manner and with consideration as to whether they should be held at all.
- 2.8 (Consultation with the Kokatha People)
 - (a) The Trustee must develop appropriate mechanisms for participation, consultation and information dissemination with the Kokatha People, which shall have regard to the following non exhaustive objectives:

- (i) encouraging participation by the Kokatha People in the operation of the Trust;
 - (ii) preparing the Kokatha People for effective participation in meetings;
 - (iii) ensuring transparency and accountability in decision making; and
 - (iv) ensuring the operations of the Trust are fair, just and equitable and effective in meeting the Charitable Objects.
- (b) The Trustee must consult with the Kokatha People at least once in each Financial Year regarding the Trust's activities.
- (c) The Trustee must convene and pay the reasonable expenses of holding at least one meeting of the Kokatha People each Financial Year, including for the purpose in clause 2.8(a).
- (d) Where under this Deed, the Trustee is required to seek the consent of the Kokatha People or consult with the Kokatha People and:
 - (i) the Trustee has made at least two attempts to facilitate the calling and holding of a meeting to either seek the consent of the Kokatha People or consult with the Kokatha People on the matter; and
 - (ii) the Kokatha People have not made a valid decision to either consent or not consent on the matter or have not held a duly convened meeting for the purpose of the consultation within three months of the Trustee first giving notice to the Kokatha People to call the meeting,

the Trustee may act without the Kokatha People's consent or may act without consulting with the Kokatha People on that matter despite any clause in this Deed to the contrary.
- (e) The Trustee may attend, speak at and record the minutes of meetings of the Kokatha People (insofar as the matters relate to the Trust).

2.9 (Meetings and Decision Making by the Advisory Committee)

- (1) Decisions of the Advisory Committee will be determined and their meetings will be carried out in accordance with Schedule 3.
- (2) A decision of the Advisory Committee is a '**Binding Decision**' where and to the extent that:
 - (i) it relates to:
 - A. a proposal (by the Trustee or the Advisory Committee) to make a Distribution in accordance with this Deed;
 - B. the approval of a Distribution Policy (or the approval of a modification to a Distribution Policy) in accordance with this Deed;

- C. the formulation of a draft Strategic Plan in accordance with this Deed; or
 - D. the amendment of the Trust Deed in accordance with this Deed (except to the extent that it relates to this clause 2.9);
 - (ii) all members of the Advisory Committee are present at the meeting and it is a unanimous decision of those Advisory Committee members entitled to vote in relation to the decision; and
 - (iii) in the opinion of the Trustee, acting reasonably, the decision if implemented by the Trustee will not or is not likely to be in breach of this Deed, any policies and procedures relating to this Deed, in relation to a Sub Fund the relevant Sub Fund Agreement, or any duties or obligations of the Trustee at law.
- (3) The Trustee may obtain the opinion of a barrister or solicitor practising in Australia (or apply to a court of competent jurisdiction) and if the Trustee obtains advice (or obtains directions from a court of competent jurisdiction) that a decision of the Advisory Committee is, or is likely to be, in breach of this Deed, any policies and procedures relating to this Deed, in relation to a Sub Fund the relevant Sub Fund Agreement, or any duties or obligations of the Trustee at law, the Trustee will be acting reasonably under clause 2.9(2)(iii) if the Trustee forms the corresponding opinion.
- (4) If the Trustee is of the opinion that a decision or recommendation of the Advisory Committee is not a Binding Decision by reason of clause 2.9(2)(iii), the Trustee must give written notice of that opinion to the Advisory Committee including reasons for the Trustee's opinion.
- (5) If the Advisory Committee is entitled to make a Binding Decision in respect of a matter under clause 2.9(2)(i) and the Advisory Committee makes a single decision or recommendation in respect of the matter which is not unanimous or which is not made by all members of the Advisory Committee the decision or recommendation made or given by the Advisory Committee is not binding on the Trustee although the Trustee must consider that decision or recommendation.
- (6) To avoid doubt:
- (i) a decision or recommendation of the Advisory Committee in respect of matters other than those identified in clause 2.9(2)(i) is not a Binding Decision;
 - (ii) any decision or recommendation made or given by the Advisory Committee or any members of the Advisory Committee which is not a Binding Decision is not binding on the Trustee although the Trustee must give consideration to that decision or recommendation; and
 - (iii) the exercise of the Trustee's discretions and powers as provided for under this Deed (including any obligations in relation to the

administration of the Trust) must comply with the terms of a Binding Decision.

- (7) Where under this Deed, the Trustee is required to seek a decision of the Advisory Committee or consult with the Advisory Committee and:
- (i) the Trustee has made at least two attempts to facilitate the calling and holding of a meeting in accordance with Schedule 3 to either seek the decision of the Advisory Committee or consult with the Advisory Committee on the matter (as the case may be); and
 - (ii) the Advisory Committee has not made a valid decision, or has not held a duly convened meeting for the purpose of the consultation, within three months of the Trustee first giving notice to the Advisory Committee to call the meeting,

the Trustee may act without the Advisory Committee's decision or may act without consulting with the Advisory Committee on that matter despite any clause in this Deed to the contrary.

3. CHARITABLE OBJECTS

- (1) The Trustee may in its absolute discretion permit the Trust Fund to be held as such or invested, or sell call in or convert the same or any part thereof into money and shall at its like discretion invest the money arising thereby and all cash requiring investment in the name or under the control of the Trustee in any of the investments authorised herein and with full power from time to time at such discretion as aforesaid to vary and exchange the same for others of a like nature (provided such activities are consistent with any Distribution Policy and Strategic Plan);
- (2) The Trustee shall be responsible for carrying out and promoting the Charitable Objects and for the conduct of the Trust and for the management of the Trust Fund in such a manner as the Trustee shall in its absolute discretion think appropriate but subject always to the provision of this Deed (and provided such activities are consistent with any Distribution Policy and Strategic Plan);
- (3) Without prejudice to the generality of the discretions conferred upon the Trustee by the sub-clauses of this Clause it shall be lawful for the Trustee in exercise of such discretion to pay or transfer income or capital (as the case may be, but subject to the express provisions of this Deed in relation to making Distributions from the Trust Fund) to any other charitable company institution trust or body having objects materially similar to or including all or most of the Charitable Objects, and the Trustee shall be entitled to covenant to make annual payments to any other such charitable company institution trust or body if it shall think so fit (but subject to the express provisions of this Deed in relation to making Distributions from the Trust Fund);
- (4) Without prejudice to the generality of the discretions conferred upon the Trustee by the sub-clauses of this Clause the Trustee may, subject to it obtaining the consent of the Advisory Committee and any Contributor (if required by any Sub Fund Agreement) by scheme made in writing by it constitute a new charitable company institution trust or body for any of the Charitable Objects and pay or transfer income or capital to such charitable company institution trust or body and such scheme may include any

provision which can lawfully be included in a charitable scheme and in particular may include provisions for extending the power of investment beyond trustee securities, for the holding of investments in the name of a nominee and for the remuneration of any such nominees or of any corporate or professional trustee of such scheme and may constitute as trustee of any such scheme any person or body corporate whether or not including the Trustee itself (but subject in all cases to the express provisions of this Deed in relation to making Distributions from the Trust Fund);

- (5) Generally the Trustee may co-operate with or contribute to any charitable company, institution, trust or body of the type referred to in sub-clauses (3) or (4) of this Clause 3 (but subject to the express provisions of this Deed in relation to making Distributions from the Trust Fund);
- (6) **PROVIDED THAT** any reference in this Clause 3 to a charitable company, institution, trust or body is a reference to one whose purposes are charitable within the legal meaning of the word 'charitable'.

4. DISTRIBUTION OF ASSETS

In the event of the Trust being wound up or its endorsement as a deductible gift recipient under the Tax Act is revoked, any money and property remaining after the payment of the Trust's liabilities shall be transferred to another organisation in Australia established for similar purposes to that of the Trust that is a deductible gift recipient under the Tax Act (provided that organisation is first approved by the Kokatha People, the Advisory Committee and any Contributor (if required by a Sub Fund Agreement)).

5. APPOINTMENT AND REMOVAL OF TRUSTEES

- 5.1 The provisions herein contained as to the appointment of a new Trustee and the discharge and retirement of a Trustee shall apply by way of extension to and not in substitution for the powers of appointment conferred upon trustees by the Trustee Act.
- 5.2 The first Trustee of the Trust is Perpetual Trustee Company Ltd ABN 42 000 001 007, who will be appointed for a term of five (5) years.
- 5.3 An entity will only be eligible to be and remain Trustee if it is a Professional Trustee Company. A Trustee must be appointed by a Deed of Appointment, for a term specified in the Deed of Appointment. A Trustee shall be appointed for a term commencing at the start of a Financial Year and ending at the end of a Financial Year. However if the Trustee is replacing a Trustee which has retired or been removed part way through a Financial Year, then the term of appointment shall also include the additional period from the date of appointment to the end of the Financial Year in which the incoming Trustee was appointed.
- 5.4 To avoid doubt, all changes of Trustee require the consent of each Contributor if required under the relevant Sub Fund Agreement.
- 5.5 (General Power of Removal of Trustee)
 - (1) The Trustee may be removed by Special Resolution of the Kokatha People, provided that:

- (a) the consent of the Contributor is obtained, if required by, and in accordance with, a Sub Fund Agreement; and
 - (b) a notice of intention to move the resolution is provided to the Trustee, signed by the greater of 20 Kokatha People or 10% (or more) of the Kokatha People.
- (2) Upon receipt of notice under clause 5.5(1)(b), the Trustee must convene a meeting of the Kokatha People.
- (3) At the meeting convened under clause 5.5(2), the Trustee is entitled to put its case to the Kokatha People by:
 - (a) delivering a written statement to the Kokatha People which must be included in the notice of meeting of the Kokatha People; and
 - (b) the Trustee's nominated representative speaking to the motion at the meeting.
- (4) To avoid doubt, the general power to remove the Trustee under this clause 5.5 is independent of the specific power in clause 5.6 and does not require a Removal Event.

5.6 (Removal of Trustee as a result of a Removal Event)

- (1) A "Removal Event" for the purposes of this clause occurs if the Trustee:
 - (a) ceases to be a Professional Trustee Company;
 - (b) commits an Insolvency Event;
 - (c) breaches any material provision of this Deed or any Sub Fund Agreement;
 - (d) commits any material breach of any law or statute in the performance of its duties under this Deed
- (2) Any of the following may notify the Auditor in writing if they reasonably believe a Removal Event has occurred in relation to the Trustee, and must provide sufficient written details of the Removal Event to the Auditor ("Removal Event Notice"):
 - (a) the Advisory Council;
 - (b) any accountant or lawyer for the Trustee (in its capacity as Trustee);
 - (c) a Contributor;
 - (d) the Kokatha PBC.

- (3) A copy of the Removal Event Notice must be provided to each of the persons referred to in clause 5.6(2).
- (4) Upon receipt of a Removal Event Notice, the Auditor must promptly investigate the Removal Event and the Trustee must provide full cooperation and full disclosure to the Auditor to facilitate the investigation.
- (5) Following the investigation, the Auditor must provide the Trustee and each of the persons referred to in clause 5.6(2) with a report in respect of the Removal Event Notice ("Auditor's Investigation Report"), which report must contain the Auditor's:
 - (a) conclusion as to whether a Removal Event has occurred;
 - (b) opinion whether there is specific action required by the Trustee to rectify or remedy the circumstances that gave rise to the Removal Event, and if so, what that is; and
 - (c) recommendation as to whether, having regard to the nature and scope of the Removal Event, the Trustee should be removed.
- (6) If the Auditor's Investigation Report concludes that a Removal Event has occurred:
 - (a) the Trustee must promptly call a meeting of the Kokatha People to consider the report; and
 - (ii) pending notification of a decision under clause 5.6(7), the Trustee must not make any Distributions or investments of the Trust Fund or otherwise deal with the Trust Fund except to the extent reasonably necessary to:
 - A. preserve the Trust Fund;
 - B. facilitate meetings of the Kokatha People;
 - C. undertake any specific action referred to in clause 5.6(7); or
 - D. respond to an emergency affecting the Trust or the Kokatha People.
- (7) Following receipt of the Auditor's Investigation Report, the Kokatha People or a Contributor with the right under a Sub Fund Agreement may do any of the following insofar as it is reasonable having regard to, and consistent with, the Auditor's Investigation Report:
 - (a) give notice to the Trustee that a Removal Event has occurred and there is specific action required by the Trustee to rectify or remedy the circumstances that gave rise to the Removal Event; or
 - (b) having regard to the nature and scope of the Removal Event, or the failure of the Trustee to take any specific action notified pursuant to

clause 5.6(7)(a), issue a notice of removal of the Trustee (“Termination Notice”) to the Trustee and provide a copy to all persons referred to in clause 5.6(2).

- (8) To avoid doubt, the procedure set out in this clause 5.6 does not prevent or limit any rights of a Contributor or other entity to apply to the Court for orders as to the removal of the Trustee.

5.7 (Procedure upon removal of Trustee)

- (1) Upon receipt of a Termination Notice or upon expiry of the term of appointment of the Trustee, the Trustee may continue to act as Trustee on an interim basis for the sole purpose of:
- (a) preserving the Trust Fund;
 - (b) undertaking the minimum activities necessary to administer the Trust in the ordinary and usual course in accordance with the most recent Strategic Plan of the Trust, and otherwise in accordance with the terms of this Deed; and
 - (c) facilitating the appointment by the Kokatha People of a Professional Trustee Company as new Trustee either within three months of the date of the Termination Notice or as soon as possible after the expiry of the term of the Trustee's appointment (as applicable).
- (2) Where the Kokatha People are unable to appoint a Professional Trustee Company as new Trustee:
- (a) within three months of a Termination Notice, then the outgoing Trustee must by a Deed of Appointment appoint another Professional Trustee Company (which must not be a Related Body Corporate of the outgoing Trustee) as Trustee for a term no greater than 12 months; or
 - (b) within one month of the expiry of the term of the Trustee's appointment, then the outgoing Trustee may continue as Trustee for another term of 12 months commencing on the expiry of the existing term of appointment (after which the Trustee must again follow the process set out in clause 5.7(1)).
- (3) To avoid doubt, any appointment or re-appointment of Trustee under this clause 5.7 does not require the consent of a Contributor.
- (4) The outgoing Trustee must provide written notice of the appointment of a new Professional Trustee Company to the persons referred to in clause 5.6(2) within seven days of the appointment.
- (5) Provided the new Trustee is eligible to act and accepts the appointment as Trustee of the Trust, ownership and control of the Trust Fund will vest in the new Trustee on the later of:

- (a) the date immediately following the expiry of the term of the existing Trustee, or the date of the Termination Notice (as the case may be); and
 - (b) the date of execution of a Deed of Appointment of the new Trustee.
- (6) To avoid doubt, the procedure set out in this clause 5.7 does not prevent or limit any rights of a Contributor or other entity to apply to the Court for orders as to the appointment of a replacement Trustee.

5.8 (Consequences of resignation or removal of Trustee)

- (1) If the Trustee resigns or is removed, or its term of appointment ends, the outgoing Trustee must:
- (a) within seven days provide all books and Financial Records (as defined in the Corporations Act) and other information in its possession to the new Trustee and must do all things necessary for the purposes of vesting ownership and control of the Trust Fund in the new Trustee; and
 - (b) covenant in writing in favour of the new Trustee that it will do all things necessary to transfer legal title in the assets of the Trust Fund to the new Trustee and to sign all documents and do all things reasonably required to enable the incoming Trustee to assume the office of and to carry out the duties as Trustee of this Trust.
- (2) The incoming Trustee must execute a Deed of Appointment.
- (3) Subject to the provisions of clause 5.8(1), the outgoing Trustee is from the time it ceases to be the Trustee, discharged from further performance of the obligations and duties imposed upon it by reason of acting as Trustee of the Trust.

5.9 (General Power of Appointment)

- (1) Where there is, or will be, no Trustee (either through the removal, expiry of the term of appointment or resignation of the existing Trustee), a new Professional Trustee Company may be appointed, or the prior Trustee may be re-appointed, by Special Resolution of the Kokatha People, provided that:
- (a) the consent of the Contributor is obtained, if required by, and in accordance with, a Sub Fund Agreement;
 - (b) notice of intention to move the resolution, signed by the greater of 20 Kokatha People or 10% (or more) of the Kokatha People, is given by the Kokatha People or the Advisory Committee to the Trustee (and if there is no Trustee, the Auditor) and any Contributor if required under a Sub Fund Agreement, at least one month before the meeting (which may occur at the same meeting referred to in clause 5.5) of the Kokatha People is to be held.

6. DISTRIBUTION

- 6.1 (General Distribution Power) In each Financial Year the Trustee may Distribute so much of the Trust Fund (whether income or capital) for the Charitable 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).
- 6.2 (Distribution)
- (a) The Trustee must not make a Distribution except:
 - (i) subject to clause 2.9(7), having first obtained a decision of the Advisory Committee in relation to the Trustee's proposed Distribution; or
 - (ii) in accordance with a decision by the Advisory Committee (whether or not in response to a Trustee's proposed Distribution),and provided the Distribution is consistent with the Distribution Policy.
 - (b) No Distribution of income or any other capital contributions to the Trust Fund can be made prior to an approved Distribution Policy being in place that applies to that income or other capital contribution to the Trust Fund.
 - (c) If the decision of the Advisory Committee under clauses 6.2(a)(i) or 6.2(a)(ii) is a Binding Decision, then the Trustee must make the Distribution, or refrain from making the Distribution (as the case may be), in accordance with that decision.
- 6.3 (Applications)
- (a) A person or entity may apply to receive assistance from the Trust.
 - (b) The Trustee and the Advisory Committee (except to the extent provided otherwise under, and in accordance with, the Distribution Policy), must review every application so made.
 - (c) An application must set out sufficient particulars to enable the Trustee and Advisory Committee to consider the application.
- 6.4 (Distribution Policy)
- (a) The Trustee must from time to time approve one or more Distribution Policies for the Distribution of the Trust Fund.
 - (b) The Trustee must not approve a Distribution Policy except:
 - (i) either:
 - A. subject to clause 2.9(7), having first obtained a decision of the Advisory Committee in relation to the Trustee's proposed Distribution Policy; or

- B. in accordance with a decision initiated by the Advisory Committee (whether or not in response to a Trustee's proposed Distribution Policy); and
- (ii) with the approval of the Kokatha People by way of Special Resolution; and
- (iii) if required under a Sub Fund Agreement, with the consent of a Contributor.
- (c) A detailed record of the meeting at which the Kokatha People approved the Distribution Policy (in accordance with clause 6.4(b)(ii)), must be provided to a Contributor if required under a Sub Fund Agreement.
- (c) If the decision of the Advisory Committee under clause 6.4(b)(i) is a Binding Decision then the Trustee must approve, or refrain from approving (as the case may be), the Distribution Policy in accordance with that decision, subject to clauses 6.4(b)(ii) and (iii).
- (d) A Distribution Policy must:
 - (i) meet the requirements of:
 - A. this Deed;
 - B. the Strategic Plan; and
 - C. each Sub Fund Agreement, but only to the extent that the Distribution Policy applies to a particular Sub Fund;
 - (ii) be impartial and not favour any particular sections of the overall community of Kokatha People. However, it is recognised that some sections of the community 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 community may enjoy benefits of different kinds;
 - (iii) subject to clause 6.4(d)(ii), ensure that Distributions are made in a way that benefits a broad cross-section of the community, 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;
 - (iv) not provide for or permit Distributions to individual members of the Advisory Committee or any other Kokatha Person in a position of authority or influence over the Distribution Policy or this Trust to influence their decisions or as an inducement or reward to discharge their relevant functions otherwise than in good faith, in accordance with this Deed and with Applicable Anti-Corruption Laws and with any of their duties to the Kokatha People; and

- (v) address the matters set out in the guidance notes in Schedule 4.
 - (e) A Distribution Policy must be recorded in writing and the Trustee Representative must sign and date a copy.
 - (f) To avoid doubt, the Trustee may approve multiple Distribution Policies, each of which:
 - (i) may apply only in respect of a particular Sub Fund or Sub Funds;
 - (ii) may apply in respect of a particular Sub Fund during successive (but not overlapping) periods identified in the relevant Distribution Policy; and
 - (iii) is prepared using the guidance notes for a Distribution Policy in Schedule 4.
- 6.5 (Modification of the Distribution Policy) A Distribution Policy may be reviewed or modified when developing the Strategic Plan in accordance with this Deed or at any other time, provided the Trustee must not modify a Distribution Policy unless it follows the process, and satisfies the requirements, set out in clause 6.4.
- 6.6 (Making the Distribution Policy Available)
- (a) The Trustee must make a copy of the current Distribution Policies available for inspection by the Kokatha People, during business hours.
 - (b) Upon the approval of a Distribution Policy (including a modified Distribution Policy), the Trustee must provide a copy of the Distribution Policy to:
 - (i) the Advisory Committee;
 - (ii) any member of the Kokatha People seeking a copy, upon request;
 - (iii) the Kokatha PBC, upon request; and
 - (iv) a Contributor if required by, and in accordance with, the relevant Sub Fund Agreement.
- 6.7 (Reporting Requirements for Distribution recipients) The Trustee may (and must, if required by a Sub Fund Agreement in respect of Distributions from the relevant Sub Fund) impose a condition upon the release of any Distribution that the recipient of the Distribution must do one or more of the following:
- (a) keeps appropriate financial accounts and records relating to the use of the Distribution;
 - (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 reporting on the satisfaction of any conditions that were attached to the Distribution; and

- (d) upon request of the Trustee, provide to the Trustee, on or before 30 June each relevant year, or such other time as the Trustee determines, a certificate by a qualified accountant stating the amount of the Distribution spent, or committed to be spent, for the purpose of the Distribution.

7. THE ADVISORY COMMITTEE, AND DELEGATION OF POWERS AND MANAGEMENT

7.1 (Advisory Committee)

- (1) Within 30 days of execution of this Deed, the Trustee must facilitate the establishment of a committee, to be called the Advisory Committee, in accordance with Schedule 3 for the purposes of:
 - (a) providing recommendations to the Trustee, including by way of Binding Decisions, as to the fulfilment by the Trustee of the Charitable Objects and the general administration of this Deed;
 - (b) reviewing the Trustee's compliance with its obligations under this Deed, and providing recommendations to the Trustee as to how those obligations may be met;
 - (c) assisting the Trustee to manage its relationship with, and to liaise with, the Kokatha People and the Kokatha PBC; and
 - (d) fostering mutual respect and cooperation between the Kokatha People, the Trustee and the Kokatha PBC.
- (2) The Trustee must support and develop the Advisory Committee to ensure that it fulfils the purposes for which it is established.
- (3) The Trustee may only support the establishment and operation of one Advisory Committee at any time in connection with this Deed and all Sub Funds and Sub Fund Agreements.
- (4) The Advisory Committee must at all times satisfy the requirements set out in Schedule 3.
- (5) The reasonable costs of the Advisory Committee, including the remuneration (if any) of the members of the committee payable in accordance with Schedule 3:
 - (i) are to be paid by the Trustee;
 - (ii) may be paid out of the Trust Fund.

- 7.2 The Trustee may from time to time appoint any person or persons to be the attorney or attorneys, agent or agents of the Trustee to exercise on behalf of the Trustee in any place such of the trust powers and discretions hereby given to or conferred upon the Trustee as it thinks fit.

- 7.3 In connection with the carrying out of all or any of the trusts and powers herein contained the Trustee may hire engage or employ and avail itself of the services of professionally qualified persons and specialists (including stockbrokers bankers accountants barristers solicitors architects and surveyors) and managers secretaries clerks or other persons as in its absolute discretion acting reasonably it may think fit and may reasonably remunerate them out of the capital or income of the Trust.

8. REMUNERATION OF THE TRUSTEE

- 8 The Trustee shall out of the income of the Trust Fund in the first place pay and reimburse itself for all costs and expenses of or incidental to the management of the Trust Fund or the execution of any of the trusts or powers expressed or implied herein including the reasonable remuneration of the Trustee in accordance with Clause 2.4 and always in accordance the relevant Deed of Appointment.

9. POWERS OF THE TRUSTEE

Subject to the provisions of this Deed including requirements imposed in relation to Distributions from the Trust Fund, in the exclusive furtherance of the Charitable Objects the Trustee shall have all the powers of an absolute beneficial owner of the Trust Fund together with full powers to do all such acts and things as may be necessary or proper for such furtherance and its powers shall not be restricted by any principle of construction but shall operate (subject always to the provisions of this Deed) according to the widest generality of which the foregoing words are capable and in particular (but without prejudice to the generality of the foregoing powers) the Trustee shall have for such furtherance the powers following, which are given in addition to and not in derogation of all the powers by law or equity vested in trustees namely the power to:

- (1) adopt and be bound by the provisions of any contract or arrangements made by other persons or corporations for the performance of any of the purposes of the Trust and may pay such sum as seems reasonable to the Trustee in order to secure the rights to use any of the papers, studies, drawings, list, applications or intellectual property developed or acquired by such other person or corporation in relation to such contracts or arrangements;
- (2) purchase lease acquire create donate or provide property of all kinds whether real or personal and including securities debts deposits and choses in action of every description;
- (3) pay or apply any income of the Trust at any time or times or hold and carry forward the same for subsequent payment or application otherwise than in the year of its receipt;
- (4) at any time and from time to time sell exchange realise call in convert or otherwise deal dispose or partition any real or personal property comprising or forming part of the Trust Fund or any part thereof or any interest therein as fully as if it were the absolute owner thereof;
- (5) advance and lend moneys to and to borrow and raise moneys from and to secure by mortgage bill of sale lien of charge fixed or floating legal quotable or otherwise the payment of money to any persons firms companies corporations governmental or municipal bodies upon such terms with or without security or interest as the Trustee

shall deem fit and the Trustee is hereby expressly empowered to join with any company or natural person in executing any mortgage or other document for the purpose of securing the payment of money to the Trustee jointly with any company or natural person and if the Trustee is a company and give to and execute a registered floating charge over all the property (both present and future) of the company and the property (both present and future) of the Trust Fund held by it as Trustee and to give and execute any other charge or security registrable under the Companies Act and the Trustee may borrow or raise moneys to be used in deriving income or gain in augmentation of the Trust Fund notwithstanding that the Trust Fund may already be wholly invested or applied or that the moneys to be borrowed or raised may exceed the sum or value of the Trust Fund and no tender shall be concerned to inquire as to whether the necessity for any such borrowings has arisen or as to the purpose for which it is required or as to the application of the money borrowed. Without limiting the generality of the foregoing, the Trustee shall have the power to borrow and raise moneys by way of offshore loans outside the ordinary jurisdiction and in a currency other than Australian;

- (6) take such steps by personal or written appeals, public meetings or otherwise, as may from time to time be deemed expedient for the purpose of procuring contributions to the Trust Fund, in the shape of donations, annual subscriptions or otherwise;
- (7) take any gift of property whether subject to any special trust or not, for any one or more of the Charitable Objects PROVIDED THAT in case the Trustee shall take hold any property which may be the subject of any trusts the Trustee shall only deal with the same in such manner as is allowed by law having regard to such trusts;
- (8) invest or apply the Trust Fund in the purchase or by way of contribution to the purchase of or at interest upon the security of such stocks funds shares securities or other investments or property of whatsoever nature and whatsoever situate and whether involving liability or not and whether producing income or not or upon such personal credit with or without security and whether or not subject to payment of interest as the Trustee shall think fit including (but without prejudice to the generality of the foregoing) in effecting, maintaining, exchanging, converting, surrendering or otherwise dealing with any policy or policies of insurance or assurance whatsoever to the intent that the Trustee shall have the same full and unrestricted powers of investing and transposing investments and laying out money in all respects as if it was absolutely entitled thereto beneficially together with power to invest the moneys of the Trust not immediately required for its purposes in or upon such investments securities or policies as the Trustee shall determine.
- (9) permit any moneys, bonds, certificates or other securities for money (whether in the case of such securities they are to bearer or transferable by delivery only) or documents of title to property real or personal for the time being subject to the trusts hereof, to be and remain deposited with any bank, finance company, trust, company or other institution and to permit any investments securities or other real or personal property which or any share or interest wherein shall be for the time being subject to the trusts hereof to be and remain invested in the name of nominees in the name of Trustees upon such terms as to remuneration and in all other respects as the Trustee shall in its absolute discretion think proper, with power to permit any such banks, finance companies or other institutions or such nominees to manage the property so deposited or the property so invested.

- (10) discharge any liabilities affecting leasehold or other property of a wasting or onerous nature.
- (11) either vest any land which may be acquired for any of the purposes of the Deed (including its enjoyment in kind) in any person as a trustee upon trust for sale with power to postpone sale or to direct that such land be held by such person or persons and in such manner as the Trustee may think fit.
- (12) occupy or use or permit to be occupied or used for the purpose of the trusts hereof the whole or any part of any property which is comprised in the Trust Fund and in the case of occupation or use otherwise than by the Trustee to permit such occupation for such period or periods and either free or in consideration of such rent or other payment and generally upon such terms and conditions and subject to such stipulations and provisions as the Trustee in its absolute discretion shall determine.
- (13) insure against loss or damage by fire or from any other risk any property for the time being comprised in the Trust Fund to any amount and to pay the premiums for such insurance out of the income or capital of the Trust Fund or the property itself and any money received by the Trustee under such a policy shall be treated as if it were the proceeds of sale of the property insured.
- (14) act as trustee and to undertake and execute any charitable trusts which may lawfully be undertaken by the Trustee to further the Charitable Objects and to perform any services in connection with the Charitable Objects gratuitously or otherwise.
- (15) institute and defend proceedings at law or in equity and to proceed to the final determination thereof or compromise the same as the Trustee shall consider advisable.
- (16) time to time cause to be incorporated any company in such a manner that the same shall be established for exclusively Charitable Objects and the purposes either general or particular and to pay or transfer to any such company all or any part or parts of or any asset comprised in the Trust Fund and in such event the receipt of such company shall be a full discharge to the Trustee.
- (17) from time to time to discharge any debt or debts of any company established pursuant to the last foregoing power or to undertake with any such company to discharge the same or to assume or undertake jointly or severally with any such company liability or other debt or debts thereof whether by way of guarantee indemnity or otherwise and generally upon such terms as to limit of liability, terms of payment or otherwise as the Trustee in its absolute discretion thinks fit and to give security in respect whereof by mortgaging or charging in any manner the Trust Fund or any part or parts thereof of any asset comprised therein.
- (18) enter into any arrangement with any Government or authority, (Federal State, territory, municipal, local or otherwise) or with a charitable company, institution, trust or body that may be conducive to the Charitable Objects or any of them and to obtain from any such Government or authority, charitable company, institution, trust or body any rights, privileges and concessions which the Trustee may think desirable to obtain and to carry out, exercise and comply with such arrangements, rights, privileges and concessions.

- (19) invest the Trust Fund or any part thereof in any manner or engage in any dealings or transactions which it shall in its absolute discretion determine notwithstanding that the same may not be authorised by law for the investment of trust funds including and without restricting the generality of the foregoing powers of investment in shares stock bonds debentures debenture stock mortgages or deposits or in purchasing or improving any land or property or any interest in land or property and vary and transpose any such investment from time to time;
- (20) pay all expenses and outgoings which may be incurred by it in relation to the Trust Fund and the execution of the trusts hereof;
- (21) demise or let any property forming part of the Trust Fund for such terms at such rent and with or without taking a premium fine or foregift and subject to such provisions as to the Trustee shall appear desirable;
- (22) accept surrenders of lease upon such terms and subject to such conditions as to the Trustee shall appear desirable;
- (23) appoint and remove or suspend and pay such officers clerks servants or agents as it may from time to time deem desirable and determine their duties and powers and fix their salaries and remuneration and (if considered necessary) require security if such amount as it deems fit for the proper and efficient discharge of such duties;
- (24) improve repair maintain manage use or demolish any real or personal property forming part of the Trust Fund and insure the same against loss or damage by fire or such other risks the Trustee thinks fit and discharge out of income or capital all outgoings properly payable in respect of the property without prejudice to the right of the Trustee to make it a condition of letting any person into the possession of the property (whether as tenant at will or otherwise) that such person shall pay and discharge all or any such property and grant or acquire easements or other rights and generally deal with such land or join in dealings with the same as if beneficially entitled thereto and without being responsible for any loss;
- (25) exercise all rights privileges and perform all duties appertaining to any share for the time being subject to the Trusts of this Trust Deed with liberty to assent to any arrangements modifying those rights and privileges or duties or providing for the listing of those shares on a Stock Exchange and agree to any scheme or arrangements for the reconstructions or the increase or reduction of the capital of any company and for such purpose deposit surrender or exchange any of those or the title thereto and pay any calls or contributions or other necessary expenses in connection with those shares or any arrangement as aforesaid;
- (26) in its absolute discretion as if the Trustee were acting on its own behalf solely or jointly with any other person company corporation or association to open bank accounts of every description upon such terms and conditions as the Trustee shall think fit and to conduct and operate such accounts in such manner as the Trustee shall think fit including without limiting the effect thereof the power to operate any such account on overdraft and to agree to the Bank debiting any such account with interest costs charges expenses and liabilities incurred by the bank at any time or from time to time on behalf of the Trustee and in addition to any other power herein contained to borrow or raise or secure the payment of money in such manner as the Trustee shall think fit and to secure the same or the repayment or performance of any debt liability contract

guarantee or other engagement incurred or to be entered into by the Trustee in any way with such bank;

- (27) carry on any business which the Trustee may in its absolute discretion think fit either alone or in association with any other person, corporation or trust or in partnership including (without restricting the generality thereof) associations or partnerships with the Trustee either in its own right or in its capacity as Trustee or in any other capacity or with a company or companies in which the Trustee is directly or indirectly interested either in its own right or in its capacity as Trustee or in any other capacity and for such purpose to retain and employ the whole or any part of the Trust Fund and also to advance for the purposes of the same such further moneys forming part of the Trust Fund as the Trustee shall think proper and to expend any moneys forming part of the Trust Fund in managing and carrying on the same including the purchase and acquisition of any real or personal property and if the Trustee considers necessary in the course of such management or carrying on the same to borrow money or mortgage and give security over any property forming part of the assets of such venture with priority (if the Trustee thinks fit) over any charge hereby created and generally to act in all matters relating to the said venture as if the Trustee were beneficially entitled thereto AND IT IS FURTHER PROVIDED that if an associate or partner of any such venture shall be engaged therein at the time of his death the Trustee may carry on that venture in association or partnership with the estate of the deceased associate or partner for so long as the Trustee and/or the legal personal representatives of the deceased associate or partner think fit AND IT IS FURTHER PROVIDED that the Trustee may employ in any such venture as manager, overseer, workman or other necessary employee any of the persons mentioned above or their associates in the absolute discretion of the Trustee; and
- (28) do such other lawful acts and things as are in its opinion incidental to or conducive to the attainment of the general purposes of the Trust.

Each of the said powers shall be independent and shall not be limited or restricted by reference or inference from the terms of any of the other powers specified in this Deed, subject always to the express provisions in the remainder of this Deed, and save that Distributions of the Trust Fund may only be made in accordance with clause 6.

10. TRUSTEE MAY ACT NOTWITHSTANDING PERSONAL INTEREST

- 10.1 Subject to the requirements of any Sub Fund Agreement, no person dealing with the Trustee shall be concerned to enquire as to the adequacy of the powers of the Trustee in relation to such dealings or as to the proper exercise by the Trustee of any of the powers authorities or discretions vested in the Trustee by the provisions of this Deed or as to the propriety or regularity of any transaction affecting the Trust Fund or any of the assets thereof or to see the application of any moneys paid to the Trustee or paid as directed by the Trustee and in the absence of fraud on the part of any such person dealing with the Trust such dealing shall be deemed so far as regards the safety and protection of such persons to be within the powers of the Trustee and to be valid and effectual accordingly and the receipt of the Trustee or any person or body corporate directed to be paid by the Trustee of any moneys shall effectually discharge any such person dealing with the Trustee from any liability in respect thereof. In this clause the expression 'the Trustee' shall also include any person to whom the powers, authorities and discretions or any of them of the Trustee shall have been delegated from time to time.

- 10.2 Where the Trustee has disclosed that it or any associate of the Trustee has an interest in a contract or arrangement, or proposed contract or arrangement, or in a matter being considered or about to be considered by the Trustee, the Trustee must disclose the nature of the interest to the Advisory Committee.
- 10.3 The Trustee shall make regulations concerning the manner in which the Trustee will manage conflicts of interest in relation to carrying out the role of the Trustee in accordance with this Deed and shall provide a copy of the regulations to the Advisory Committee.

11. SUB-FUNDS

11.1 (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") as part of the Trust Fund ("Sub Fund") provided:
- (i) the Kokatha People provide their consent; and
 - (ii) the Sub Fund:
 - A. is held and applied by the Trustee exclusively for the Charitable Objects (in accordance with the terms of this Deed); and
 - B. forms part of the Trust Fund and does not form a separate fund.
- (b) A Sub Fund shall include all income, accretions and money, investments or assets from time to time representing the Sub Fund or into which it is converted.
- (c) 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 clause 11.

11.2 (Management of the Sub Funds)

- (a) The Trustee may, in the Trustee's absolute discretion, and subject to any Sub Fund Agreement, 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 must 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 any confidential information relating to other Sub Funds of the Trust Fund is maintained.

- (d) Any such reports and accounts are subject to the terms of the Sub Fund Agreement in respect of that Sub Fund.

11.3 (Sub-Fund Agreements)

- (a) The Trustee may enter into a written agreement with a Contributor in respect of a Sub Fund ("Sub Fund Agreement") and to avoid doubt, the exercise of the Trustee's discretions and powers as provided for under this Deed (including any obligations in relation to the administration of this Trust) must comply with the terms of each Sub Fund Agreement.
- (b) Where the Contributor is not the Kokatha People, the Kokatha People must be a party to the Sub Fund Agreement (or the Kokatha PBC for and on behalf of the Kokatha People).
- (c) Where there is a decision of the Kokatha People that the Trustee enter into a Sub Fund Agreement, the Trustee must enter into that Sub Fund Agreement.
- (d) To avoid doubt, the Trustee must cooperate in good faith in carrying out any review of the Trust contemplated by a Sub Fund Agreement and, subject to the provisions of this Deed, must give consideration to any recommendations of such a review.

11A. GIFTS

Notwithstanding anything else contained in this Deed the Trustee may retain in its original form any gifts to the Trust without selling or converting the same into money and the Trustee may invest any gifts or any parts thereof in a common fund or aggregate any gifts or parts thereof for investment and shall have plenary power of allocating among any gifts (or parts thereof) so invested any accretions to or income of that investment.

12. ANTI CORRUPTION

- (1) In entering into this Deed and in performing their obligations under this Deed, the Settlor and the Trustee must comply with all Applicable Anti-corruption Laws and represent and warrant on behalf of themselves and their personnel and representatives, that they:
 - (i) have not given, offered to give, received or agreed to accept and will not give, offer to give, receive or agree to accept anything of value, directly or indirectly, in violation of an Applicable Anti-corruption Law; and
 - (ii) have not authorised, offered, promised or given and will not authorise, offer, promise or give anything of value, directly or indirectly, to anyone in order to influence, induce or reward official action or to influence or induce that person to act in breach of a fiduciary duty, a duty of good faith, impartiality or trust ("acting improperly") in relation to this Deed or to reward the person for acting improperly or in circumstances where the recipient would be acting improperly by receiving the thing of value.

- (2) No party to this Deed shall be obligated to take action under this Deed where it believes in good faith that:
 - (i) another party has violated any Applicable Anti-Corruption Law through its entering into this Deed or performing its obligations under this Deed; or
 - (ii) taking that action would itself violate any Applicable Anti-corruption Law.

13. ANNUAL DISTRIBUTIONS REPORT

- (1) The Trustee must in respect of, and within 60 days following the end of, each Financial Year prepare a report ("Annual Distributions Report") which shall provide as follows:
 - (a) the name of each member of the Kokatha People or any other person or entity that received a Distribution in the preceding Financial Year;
 - (b) the amount of any Distribution together with any payment conditions that were imposed;
 - (c) the Financial Year to which it applies;
 - (d) any departures from any application process or from the Distribution Policy;
 - (e) any breaches of or non-compliance with payment conditions or suspensions of payment and a brief explanation of each; and
 - (f) the purpose for which is was provided.
- (2) The Trustee must ensure that during business hours, a copy of the finalised Annual Distributions Report is made available for inspection by the Kokatha People; and
- (3) Where required by a particular Sub Fund Agreement, the Trustee must ensure that a copy of each finalised Annual Distributions Report is provided to the relevant Contributor for the purpose of that particular Sub Fund Agreement.

14. ACCOUNTS

The Trustee shall keep or cause to be kept:

- (1) books and accounts in relation to all the activities of the Trust Fund in accordance with Generally Accepted Accounting Principles; and
- (2) all receipts and payments assets and liabilities of the Trust Fund and of all other matters necessary to show the financial position of the Trust.

15. TRUSTEE'S ANNUAL REPORT

- (1) The Trustee will be responsible for reviewing and determining whether the activities of the Trust over a Financial Year were carried out in accordance with the terms of the Strategic Plan, the Distribution Policy and this Deed.

- (2) Within three months after the end of a financial year, the Trustee will conduct the review referred to in clause 15(1) and prepare a report in relation to that review ("Trustee's Annual Report") which will include:
 - (a) a summary of the Trust's activities for the previous Financial Year;
 - (b) details of the amount of Distributions made, or the expenditure of funds, by the Trustee for the previous Financial Year and, if applicable, the projects to which the Distributions relate;
 - (c) confirmation as to whether the Trustee considers that all Distributions were made in accordance with this Deed (and in particular clause 6) and, if the Trustee cannot make that statement, or considers there is a qualification or exception to that statement, then a brief explanation as to the qualifications or exceptions to the statement or reasons as to why the statement cannot be made;
 - (d) an overview of the Annual Distributions Report; and
 - (e) details of all outgoings that are not Distributions including any costs and remuneration of the Trustee, the members of the Advisory Committee, and any other costs associated with meetings.
- (3) The Trustee must ensure that during business hours, a copy of the finalised Trustee's Annual Report is made available for inspection by the Kokatha People.
- (4) Where required by a particular Sub Fund Agreement, the Trustee must ensure that a copy of each finalised Trustee's Annual Report is provided to the relevant Contributor for the purpose of that particular Sub Fund Agreement.

16. AUDITOR

16.1 (Appointment of Auditor)

The Trustee must appoint an Auditor who must perform the functions outlined in this Trust Deed, and the Trustee and any Auditor must otherwise comply with any audit requirements under a Sub Fund Agreement.

16.2 (Auditor's Annual Report)

- (a) Within three months after the publication of the Trustee's Annual Report for a Financial Year in accordance with clause 15, or within six months after the end of a Financial Year, whichever is the earlier, the Auditor must audit the Trust and the Trust Fund in order to:
 - (i) produce a report known as the "Auditor's Annual Report" that must:
 - A. audit the Trustee's compliance with the objects and terms of this Deed (including any plans, policies, rules or other documents contemplated by this Deed) and any Sub Fund Agreement;

- B. audit whether the Trust remains in existence;
 - C. audit whether the Trust and the Trust Fund have been properly administered in accordance with any applicable laws, regulatory requirements and accounting standards;
 - D. audit the financial statements maintained by the Trustee (and the accounts and financial records from which the financial statements have been prepared) of the Trust;
 - E. audit whether the Trustee's Annual Report for the relevant Financial Year has been prepared in accordance with this Deed;
 - F. include the Trustee's accounts compiled for each Sub Fund;
 - G. include details of all Trust outgoings that are not Distributions to members of the Kokatha People;
 - H. audit whether proper and adequate accounts and financial records have been kept for the Trust and the Trust Fund; and
 - I. be prepared pursuant to an engagement to perform agreed-upon procedures regarding financial and non-financial information, in accordance with Australian Auditing Standard ASRS 4400, or any subsequent applicable Australian Auditing Standard and in accordance with the requirements, if any, of a relevant Sub Fund Agreement; and
- (ii) prepare any other specific report required under the relevant Sub Fund Agreement.
- (c) The Trustee must provide to the Auditor all records, accounts and other documents (including financial and other records) required by the Auditor to comply with this clause 16.2 and clause 16.1.
- (d) The audit referred to must be in relation to each Financial Year or part thereof.

16.3 (Qualifications)

- (a) The Auditor must be a person who, or in the case of a firm, of whom at least one partner, is a registered company auditor who has been registered with the Australian Securities and Investments Commission as a company auditor for no less than two years.
- (b) The Auditor or, in the case of a firm, all persons who carry out the audit referred to in clause 16.2, must be Independent.

16.4 (Consent to selection of Auditor)

The Trustee must select the Auditor with the consent of a Contributor if required under the relevant Sub Fund Agreement.

16.5 (Making Available the Auditor's Annual Report)

As soon as practicable after the Auditor's Annual Report is finalised, the Trustee will make the Auditor's Annual Report (or a modified version of the Auditor's Annual Report in accordance with a Sub Fund Agreement) available for viewing by, and provide reasonable access to:

- (a) the Kokatha People; and
- (b) any Contributor, if required by, and in accordance with the relevant Sub Fund Agreement.

17. **LIABILITY OF TRUSTEE**

17.1 The Trustee shall only be liable for its own wilful default in the performance of the Trusts hereof and shall not be liable for any mere neglect or unwitting breach of trust or any involuntary loss.

17.2 In particular and without restricting the generality of the foregoing:

- (1) the Trustee shall be chargeable only in respect of such moneys as it shall actually receive; and
- (2) the Trustee shall not be liable for any loss occasioned by the default of its officers servants or employees or any person rendering services in connections with the Trust nor for any default of its own other than wilful default nor for any involuntary loss or loss occasioned by the failure to insure or maintain any insurance nor for any loss accruing from a loss in value of any property comprising part of the trust or in which the Trust is invested.

17.3 The Trustee, if acting in good faith and provided it has acted in compliance with this Deed, shall be entitled to be indemnified out of the Trust Fund in respect of all liabilities incurred in the performance of or relating to the execution or attempted execution of any powers, duties, authorities or discretions invested in the Trustee under the provisions of this Deed and in respect of all actions proceedings costs claims and demands relating to any matter or thing done or omitted to be done concerning the Trust Fund.

18. **AMENDMENT OF THIS DEED**

18.1 It shall be lawful for the Trustee at any time or times by deed or deeds:

- (1) subject to it first obtaining the consent of the Kokatha People by way of Special Resolution; and
- (2) subject to it first obtaining the consent of any Contributor (if required under a Sub Fund Agreement),

to:

- (3) vary or extend the provisions of this Deed and generally to declare new or further charitable trusts affecting the Trust Fund to further the Charitable Objects PROVIDED THAT no alteration shall be made which would cause the Trust to cease to be a charity according to the laws of the State of South Australia and the Commonwealth of Australia and PROVIDED FURTHER THAT the Trustee shall be expressly empowered (subject to (1) and (2) above) to modify or vary the trusts and powers hereby declared if and insofar as the same may be required for the purpose of obtaining exemption for the income of the Trust Fund pursuant to sub section 50.5 of the Income Tax Assessment Act 1997, as amended from time to time or of any Act repealing or replacing the same;
- (4) if at any time hereinafter it shall appear to the Trustee that either by reason of change in the law affecting the administration of charities or trusts or of changes in social or political conditions or by reason of defect or omission in the provisions of this Deed or for the more effectual execution of the Charitable Objects, the Trustee should possess or be invested with any further or other administrative powers which the Trustee does not or may not possess it shall be lawful for the Trustee (subject to (1) and (2) above) by deed or deeds to supplement or alter or amend the provisions of this Deed to such extent (but to such extent only) as may in its opinion be requisite for the purpose of conferring on the Trustee such further or other administrative powers PROVIDED THAT nothing in this Clause shall authorise or be deemed to authorise any departure from or modification of the trusts declared by Clause 2 hereof; or
- (5) to terminate any of the trusts or to revoke or terminate all of the trusts of this Deed and to pay or apply the whole of the Trust Fund then remaining to or for the benefit of any Charitable Objects.

18.2 The Trustee must notify the Commissioner of Taxation or any other person or body designated by law from time to time for the purpose of registering or approving of charities, charitable bodies or charitable trusts of any revocation addition alteration or amendment of the provisions of this Deed.

19. SEVERANCE

If it is held by a Court of competent jurisdiction that any part of this trust deed is void voidable illegal or unenforceable or this Trust Deed would be void voidable illegal or unenforceable unless any part of this Trust Deed was severed therefrom that part shall be severable from and, provided that does not result in the removal of any rights afforded to a Contributor, it shall not affect the continued operation of the rest of the Trust Deed.

20. GOVERNING LAW

This Trust is to be governed by and constituted in accordance with the laws of the State of South Australia.

21. USE OF ASSETS AND INCOME

The assets and income of the Trust shall be applied solely in furtherance of its above-mentioned objects and no portion shall be Distributed directly or indirectly to the Trustee or any of its

members or directors except as bona fide compensation for services rendered or expenses incurred on behalf of the Trust.

22. STRATEGIC PLAN

22.1 The purpose of the Strategic Plan is to:

- (a) set out the long term objectives to facilitate advancement of the Trust and the Charitable Objects;
- (b) provide context for the operation of the Trust generally having regard to the social, political, economic, government and environmental climate of the time;
- (c) provide recommendations for the better administration of the Trust having regard to the results of the Strategic Plan review; and
- (d) 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.

22.2 (Formulating Strategic Plans)

- (a) In the first year of the operation of this Trust, the Advisory Committee and the Trustee must endeavour to jointly develop, finalise and make available the first Strategic Plan for implementation, in accordance with this clause 22.
- (b) Every three years, the Advisory Committee and the Trustee must endeavour to jointly develop, finalise and make available a new Strategic Plan for implementation during the following period, in accordance with this clause 22.
- (c) The Advisory Committee and the Trustee are to formulate all Strategic Plans using the following procedure:
 - (i) At least three months before the end of the relevant Financial Year, the Trustee must meet with the Advisory Committee for the purpose of reviewing the current Strategic Plan (if any) and formulating a draft Strategic Plan for the forthcoming three Financial Years having regard to the success or otherwise of past Strategic Plans.
 - (ii) The Trustee must also consult with the Kokatha PBC regarding the draft Strategic Plan.
 - (iii) The Trustee must endeavour to prepare a draft Strategic Plan for the forthcoming three Financial Years prior to 30 June of the relevant Financial Year.
 - (iv) If prior to 30 June of the relevant Financial Year the Advisory Committee makes a Binding Decision in relation to a Strategic Plan, the Trustee must prepare a draft Strategic Plan in accordance with that decision.

- 22.3 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 22.2.
- 22.4 The Trustee will administer the Trust in accordance with the Strategic Plan and will seek to implement any recommendations contained in the Strategic Plan.
- 22.5 The Trustee must make any Strategic Plan available for viewing by, and provide reasonable access to:
- (a) the Kokatha People, the Advisory Committee and the Kokatha PBC;
 - (b) any Contributor, if required by, and in accordance with, the relevant Sub Fund Agreement; and
 - (c) the Auditor.

SCHEDULE 1

Charitable Objects

The purpose for which the Trust is established are as follows, to the extent each purpose is charitable under both the law of South Australia and the law of the Commonwealth of Australia (including the *Charities Act 2013* (Cth)):

- (1) The relief of poverty, misfortune, sickness, destitution, disadvantage, distress, dispossession, and suffering among all Aboriginal persons of the native title claim group described in the Kokatha Uwankara Native Title Claim being Federal Court Action No. SAD 90/2009.
- (2) To promote, encourage, preserve and develop the knowledge, understanding, appreciation and enjoyment of the tradition, culture, heritage and environment of the Kokatha People or their organisations created to support these outcomes;
- (3) To promote and advance cultural heritage teaching of the Kokatha People and to fund the participation of the Kokatha People in traditional ceremonial activities;
- (4) To assist the Kokatha People to meet the cost of traditional and non-traditional funeral expenses;
- (5) To assist the Kokatha People with the advancement of their primary, secondary and tertiary education and it may include the provision of educational and sporting scholarships which provide a reasonable living allowance as well as the payment of fees, books and associated educational expenses;
- (6) To assist the Kokatha People to undertake vocational training and to participate in regional employment schemes, which may be of benefit to the Kokatha People in seeking employment;
- (7) To assist the Kokatha People in the development of business plans and with the acquisition and development of businesses owned or to be owned by a member or members of the Kokatha People in order to enhance the business/management skills of the Kokatha People and promote the employment opportunities, economic potential and general welfare of the Kokatha People;
- (8) To assist the Kokatha People in pursuance of agricultural or pastoral interests and to assist with the funding of any such agricultural or pastoral interests acquired for or by a member or members of the Kokatha People in order to enhance the business/management skills of the Kokatha People and promote the employment opportunities, economic potential and general welfare of the Kokatha People;
- (9) To assist the Kokatha People with housing and transport;
- (10) To assist the Kokatha People in relation to matters that arise in respect of native title, traditional law, custom and culture including the resolution of their native title claims or the protection or advancement of their native title rights and interests;
- (11) To meet such other objects as are appropriate to advance the health, education and welfare of the Kokatha People.

- (12) To take advantage of investment and commercial opportunities that, or that relate to, the Kokatha People, and to exploit those opportunities to generate assets and other funds to be used for the creation of employment opportunities for the Kokatha People.

SCHEDULE 2

Deed of Appointment

(1) Parties

- (a) The parties to a Deed of Appointment must be:
 - (i) the new Trustee; and
 - (ii) the Kokatha People.
- (b) A Deed of Appointment must be executed for and on behalf of the Kokatha People by the Kokatha PBC.
- (c) To avoid doubt, if there is no other party who could execute a Deed of Appointment other than the new Trustee, the Deed of Appointment may be a deed poll by the new Trustee.

(2) Terms

A Deed of Appointment must:

- (a) Contain a term to the effect that on and from the appointment date, the new Trustee will be the sole trustee of the Trust and will abide by and perform all of the obligations of the Trustee under this Deed.
- (b) Specify an appointment date and time, being a date and time immediately after the date and time the outgoing Trustee has ceased to be the Trustee of the Trust.
- (c) Specify the term of appointment of the new Trustee.
- (d) Contain a covenant expressed to be for the benefit of the outgoing Trustee that, subject to the new Trustee being fully indemnified out of the assets of the Trust, the new Trustee:
 - (i) fully indemnifies the outgoing Trustee against all debts and liabilities which the outgoing Trustee has properly incurred whilst acting as Trustee of the Trust under and in accordance with the provisions of this Deed and any Sub Fund Agreement and which are unpaid at the time the outgoing Trustee ceases to be the Trustee; and
 - (ii) will be responsible for and duly pay all such debts and all future debts and liabilities in relation to the Trust in accordance with the provisions of this Deed and any Sub Fund Agreement.
- (e) Contain a covenant by the new Trustee, expressed to be for the benefit of the outgoing Trustee, the Kokatha People and each Contributor under each then existing Sub Fund Agreement, that it:

- (i) assumes all of the outgoing Trustee's liabilities and obligations arising under or in relation to each Sub Fund Agreement to which the outgoing Trustee was a party; and
 - (ii) will do all things necessary (including executing any documents) to assume those liabilities and obligations or to enter into a replacement agreement with each Contributor in the form of each relevant Sub Fund Agreement to which the outgoing Trustee was a party.
- (f) Specify the proper law of the deed as the law in force in the State of South Australia.

SCHEDULE 3

Advisory Committee

1 Advisory Committee Members

- (a) The Advisory Committee must from time to time comprise no less than four (4) and no greater than eight (8) members of the Kokatha People, each of whom must be financially literate.
- (b) Members of the Advisory Committee cannot appoint alternates or proxies.

2 Appointment of members

- (a) The Trustee must appoint the members of the Advisory Committee nominated by the Kokatha People. The Kokatha People may not nominate more people than there are positions on the Advisory Committee.
- (b) The initial members shall be appointed and hold office for 2 Financial Years.
- (c) Subsequent members who are appointed to replace retiring members shall also be appointed and hold office for 2 Financial Years.
- (d) In the event that a member ceases to be a member of the Advisory Committee prior to the expiration of the term of their appointment, then the Kokatha PBC may nominate another person who meets the relevant criteria as a member in their place. Such person shall, subject to paragraph 3 below, be appointed by the Trustee and remain in that position until the expiration of the term of the original appointee or until replaced by the Trustee in accordance with a nomination under paragraph 2(a) above.

3 Terms of Appointment of all Advisory Committee Members

- (a) An Advisory Committee member is eligible for reappointment, but is not entitled to sit on the Advisory Committee for longer than six years in any 10 year period.
- (b) Notwithstanding paragraph 2 above, if a term of an Advisory Committee member has expired, or that person is removed (other than for the reasons in paragraphs 4(a), (b), (d) or (e)), that member's term continues until a new appointment to that position is made.

4 Removal from the Advisory Committee

Subject to paragraph 3(b), a person ceases to be a member of the Advisory Committee if:

- (a) the person dies;
- (b) the person resigns by giving notice to the Advisory Committee;
- (c) the term of the person's appointment expires;

- (d) the member is removed for any reason by a Special Resolution of the Kokatha People;
- (e) the member is removed by a vote of the majority of other members of the Advisory Committee on the grounds that the person has failed to attend three consecutive Advisory Committee meetings (whether or not they had a reasonable excuse for their non-attendance); or
- (f) the person is no longer eligible to be a member of the Advisory Committee.

5 Meetings of the Advisory Committee

- (a) The Advisory Committee will meet as often as is necessary or required to deal with the business of the Trust or the Trustee.
- (b) Where the Advisory Committee is required to consent to, approve of, or endorse a matter under this Deed, the consent, approval or endorsement is to be given by a decision of the Advisory Committee in accordance with this paragraph 5.
- (c) Advisory Committee meetings may be called by at least half of the Advisory Committee members or by the Trustee by giving reasonable notice to each of the Advisory Committee members of the time, date and place of the meeting and the general nature of the business to be conducted at the meeting.
- (d) The Trustee shall facilitate the calling and holding of Advisory Committee meetings.
- (e) The date, time and place of the Advisory Committee meeting must not unreasonably prevent a member from attending, wherever unavoidable.
- (f) The quorum will be half the number of members on the Advisory Committee plus one.
- (g) If a quorum is not present within two hours from the time appointed for the Advisory Committee meeting, or such further time on the same day as is agreed by all the members present, the Advisory Committee meeting will be adjourned to another date and time as agreed by all Advisory Committee members present (or if there are no Advisory Committee members present, or no agreement, then as decided by the Trustee). If no quorum is present at the second meeting, the meeting is dissolved.
- (h) The Trustee must ensure that its representative (personally or by their alternate) attends each Advisory Committee meeting.
- (i) An officer or agent of the Kokatha PBC may attend meetings of the Advisory Committee as an observer only.
- (j) The Advisory Committee may elect a chairperson and a secretary.

- (k) The Advisory Committee will seek to arrive at unanimous decisions or decisions by consensus. However if a unanimous decision or a consensus decision cannot be achieved, every question before the Advisory Committee must be determined by a majority of the votes of the committee members present and voting on that question.
- (l) In the event that the Advisory Committee makes a decision to not approve an application for a Distribution made by or on behalf of a person who is Kokatha Person, then the Advisory Committee must provide the relevant person with a brief written explanation as to why the application was not granted.
- (m) The Advisory Committee may request the Trustee procure an Independent person with expertise in a particular field (being either a specified person or a person to be chosen by the Trustee who meets the criteria specified by the Advisory Committee) to provide advice (either in person at one or more meetings of the Advisory Committee, or in writing) to the Advisory Committee to assist it to perform its role under this Deed. Unless the Trustee acting reasonably considers the request to be unreasonable (including because it is unnecessary, incapable of being complied with, an imprudent use of the Trust Fund or otherwise contrary to law, this Deed, a policy or plan made under this Deed, or a Sub Fund Agreement), the Trustee must comply with the request.

6 Duties of the Advisory Committee members

The Advisory Committee members have the following duties:

- (a) a duty of care and diligence;
- (b) a duty of good faith;
- (c) a duty of disclosure of material personal interests; and
- (d) a duty not to improperly use their position or information.

7 Disclosure of Interest

- (a) A member of the Advisory Committee who has any interest (other than a Native Title Right and Interest) in a contract or arrangement, or proposed contract or arrangement, or an interest (other than a Native Title Right and Interest or an interest as a member of the community which is identical to that of all other members of the community) in a matter being considered or about to be considered by the Advisory Committee, must disclose the nature of the interest at a meeting of the 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 a member of the Advisory Committee has disclosed an interest under this item:
 - (i) the member must leave the relevant meeting;

- (ii) the remaining members of the Advisory Committee at the meeting must consider whether a significant conflict exists for the member of the Advisory Committee on the matter; and
- (iii) if the remaining members of the Advisory Committee at the meeting determine that a significant conflict exists, the member of the Advisory Committee must not be present at the meeting whilst the matter is being considered.
- (c) If the remaining members of the Advisory Committee at the meeting determine that no significant conflict exists, the member must be invited back to the meeting whilst the matter is being considered and may deliberate and vote on any decision about the matter.

8 Remuneration and Costs of the Advisory Committee

- (a) The reasonable costs of the Advisory Committee, including the reasonable remuneration (if any) of the members of the committee as approved by the Kokatha People as part of a Distribution Policy (and as approved by the Trustee), are to be paid by the Trustee out of the Trust Fund.
- (b) The remuneration for each member must be measured against, and must not exceed:
 - (i) professional fees ordinarily charged by persons providing such services on an arm's length basis, taking into account the skill, experience and ability of the relevant member; or
 - (ii) if there are no comparable professional fees of that kind, fees ordinarily paid to Aboriginal people to participate in Aboriginal heritage surveys in South Australia.
- (c) The Trustee may arrange for appropriate and ongoing governance training for any or all of the Advisory Committee members.

9 Communicating Decisions to the Trustee

- (a) The secretary of the Advisory Committee, or if there is no secretary or the secretary is not present, the Trustee's representative present, must keep minutes of meetings of the Advisory Committee.
- (b) The Advisory Committee must communicate its decisions to the Trustee 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;

- (v) specifying how the decisions was made (i.e. unanimously, by consensus or the number of votes for and against); and
 - (vi) signed by the chair of the meeting plus two other Advisory Committee members who were present at the meeting.
- (c) The Trustee must enter the notification of the Advisory Committee's decision into a decisions register to be kept by the Trustee containing the minutes of all resolutions made by the Advisory Committee.

SCHEDULE 4

Distribution Policy

The following guidance notes are provided to assist the Trustee when preparing the Distribution Policy. The Trustee must have regard to the following checklist of matters which are not an exhaustive list and are provided by way of example only.

Setting the Priorities

- ☐ Develop the funding priorities for the Trust. Consider for example:
 - Inspire community members to achieve beyond their current circumstances and reach their full potential;
 - Assist community members that are on Government welfare to no longer be supported by Government welfare;
 - Improve the housing, living conditions, economic circumstances, health and general standard of living of the community;
 - Assist the community in becoming economically independent by the establishment or support of economic enterprises or interests in economic enterprises or otherwise;
 - Provide transport and communication services in regional and remote communities;
 - Achieve a balance between:
 - the various funding programs;
 - projects that bring immediate benefits to the community or a section of it and projects that bring multi-generational, long term benefits to future generations of the community; and
 - individual, local and regional projects;
 - Strive to avoid funding projects or programs that would or should otherwise be funded by the government;
 - Seek matching funding or contributions from other sources for programs of the Trust;
 - Avoid duplication of programs already operating in the region;
 - Assist community members with capacity building and development activities relating to the good governance and administration of community organisations and trusts.
- ☐ In developing funding priorities, take into account:
 - The results of current research on the factors which affect the social and economic success of Indigenous groups in Australia and internationally.
 - The results of current research on the factors that would contribute to optimising the community's social, psychological, cultural and economic development and wellbeing.
 - Any effective social and community development programs and opportunities to work in alliances and partnerships with programs operated by governments or other organisations.

Programs

- ☐ Develop the funding programs for the Trust. Consider for example:
 - Community Development Program:
 - local community projects, community facilities, services including sports based community projects;

- regional community projects; and
- capacity building projects designed to extend the capacity of community members, community organisations including organisational development etc.
- Education and Training Program:
 - grants for payment of school fees, scholarships, training costs etc;
 - computer training;
 - financial literacy and numeracy training;
 - education about home ownership etc;
 - projects that enhance school attendance and performance including sports based projects; and
 - governance and directors training.
- Health Related Programs:
 - obesity and weight loss;
 - medical expenses;
 - medical treatment, travel and accommodation costs;
 - healthy eating and exercise projects including sports based projects; and
 - health insurance.
- Law and Culture Program:
 - Men's law and culture;
 - Women's law and culture;
 - preservation and advancement of Aboriginal Language, Art and Culture; and
 - funerals and related expenses.
- Aboriginal Economic Development Program:
 - business training and development;
 - business plans, capacity training;
 - business support projects (not direct investment in a business);
 - improved economic independence amongst community members through supporting the planning and developing of sustainable Indigenous enterprises and by supporting industry initiatives that enhance these enterprises; and
 - identifying enterprise opportunities, supporting enterprise planning and development with feasibility studies, business planning, market research, business management training, business mentoring services, identifying and facilitating joint venture partnerships.
- Relief of Needs Arising From Old Age Program:
 - superannuation contributions; and
 - accommodation or nursing home facilities.
- Relief of Poverty Program:
 - the relief of poverty and severe disadvantage of the Kokatha People is an immediate priority; and

- this program is to be primarily focussed on the Kokatha People and the majority of the benefits of this program will be for the benefit of genuine relief of poverty of the Kokatha People in the Northern Region of South Australia.

Distribution Rules and Procedures

- ☐ How much of the funds for Distribution will be set aside for application Distributions?
- ☐ How will the Trustee encourage and assist community members to make applications for Distributions?
- ☐ How will the Trustee assess competing applications for Distributions for different purposes?

Consultation and Consent

- ☐ What are the Trustee's arrangements to obtain a decision of the Advisory Committee about the Distribution Policy?
- ☐ What are the Trustee's arrangements to obtain the consent of the Kokatha People about the Distribution Policy?
- ☐ Which Contributors must give their consent to the Distribution Policy? Is consent required for the whole Distribution Policy or just in relation to a particular Sub Fund? How will the Trustee obtain the consent?
- ☐ What are the Trustee's arrangements to obtain a decision of the Advisory Committee about application Distributions?

Compliance

- ☐ Does the Distribution Policy comply with this Deed?
- ☐ Will there be just one Distribution Policy or multiple Distribution Policies?
- ☐ Does the Distribution Policy comply with all Sub Fund Agreements?
- ☐ Does the Distribution Policy comply with the current Strategic Plan?
- ☐ Has the Distribution Policy been recorded in writing and signed by the Trustee Representative?

EXECUTED AS A DEED on

13 May 2016.

SIGNED SEALED AND DELIVERED
by the said **SHAUN GERARD BERG**
in the presence of:

.....
Shaun Berg

.....
[Signature]

WITNESS

Rebecca Jade McCarthy

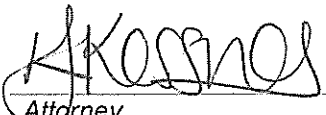
SIGNED in my presence for and on behalf of
**PERPETUAL TRUSTEE COMPANY
LIMITED** (ABN 42 000 001 007) by its
attorneys under the Power of Attorney dated
16 September 2014 Registration No.
12215745 who are personally known to me
and each of whom declare they have no
notice of revocation of the Power of Attorney
thereof:



Attorney

GABOR SZEKERNYES
Print Name

SENIOR ADVISER
Title



Attorney

Laura Kessner
Print Name

Trust Manager
Title



Witness

JOHN A HENDER
Print Name