

THIS DEED OF VARIATION is made the 21ST day of August
2019

BY **EQUITY TRUSTEES WEALTH SERVICES LIMITED**

(ABN 33 006 132 332) of 2/575 Bourke Street Melbourne Victoria

("the Trustee")

RECITALS:

- A. By a Deed of Settlement made on 7th day of June 2011 ("**the Trust Deed**") between South West Aboriginal Land & Sea Council Aboriginal Corporation ("**the Founder**") and ANZ Trustees Limited ACN 006 132 332 ("**the Trustee**") a perpetual charitable trust known as the "Noongar Charitable Trust" ("**the Trust**") was established.
- B. On 4 July 2014, the Trustee changed its name to Equity Trustees Wealth Services Limited.
- C. Clause 11 of the Trust Deed provides as follows:

"11. AMENDMENTS TO TRUST DEED

- 11.1 The Trustee shall have the power by deed to amend or vary the terms of this Deed before the Vesting Date, as it may think fit, but only with the prior written consent of the Founder.
- 11.2 Other than as expressly permitted by law, nothing in this clause will authorise or be deemed to authorise any departure or modification of the trusts declared in this deed to the extent that it would result in the Trust ceasing to be a trust for purposes which are charitable at law and that satisfied the requirements for endorsement of the Trust under Subdivision 50-B of the *Income Tax Assessment Act 1997* (Cth)."

- D. The Trustee desires to vary the terms and provisions of the Trust Deed in the manner hereinafter provided.
- E. The Trust has not vested at the date of this Deed.
- F. The Trustee considers the changes effected by this Deed will generally benefit the Charitable Objects.
- G. The Founder has consented in writing to the amendment of the Trust Deed in the form of this Deed of Variation. Consent is evidenced by the Founder signing this Deed.

THIS DEED WITNESSES:

1. Definitions

- 1.1 Words which are defined in the Trust Deed and which are used in this Deed shall have the same meaning in this Deed as in the Trust Deed unless the subject matter or context otherwise requires.

2. Miscellaneous Matters Affecting Interpretation

- 2.1 Headings are used for convenience only and are not to be construed as in any way affecting or qualifying the meaning of any of the provisions of this Deed.
- 2.2 Words importing the singular shall include the plural and vice versa and words in the first person singular shall include the third person singular and words importing the masculine gender, the feminine gender and the neuter gender shall include all genders.

2.3 References to any statutory enactment shall mean and be construed as references to that enactment as amended and re-enacted from time to time and to every statute substituted therefor.

3. Amendment of Clause 5

3.1 The Trustee hereby amends Clause 5.1, by inserting after the words "net income" the words "and capital".

3.2 The Trustee hereby amends Clause 5.2, by inserting after the words "net income" the words "and capital".

3.3 The Trustee hereby amends Clause 5.3, by inserting after the words "net income" the words "and capital".

4. Amendment to Clause 14.

4.1 Clause 14.1 of the Trust Deed is hereby deleted and replaced by the following clause.

"14.1 The Trustee may only wind up or terminate the Trust with the prior written consent of the Advisory Council and the Founder."

4.3 The Trustee hereby makes the following amendment to Clause 14.2:

replace "as directed or authorised by the Advisory Council" with "as approved by the Advisory Council and the Founder."

5. Amendment to Schedule 1.

5.1 The Trustee hereby makes the following amendments to Schedule 1 of the Trust Deed –

5.1.1 The Trustee hereby deletes Clause 1(b) of Schedule 1 the Trust Deed and replaces it with:

"(a) A fee of 0.575% (incl GST) of the value of the Trust Fund for the delivery of Trustee services;

(b) Should the Trustee also invest the Trust Fund, the Trustee may charge a further 0.575% (incl GST) of the value of managed investments (inclusive of Management Expense Ratios of Management Investment Schemes and exclusive of third party fees)"

6. Confirmation of Trust Deed

6.1 In all other respects the Trustee confirms the provisions of the Trust Deed.

IN WITNESS WHEREOF the Trustee)
has executed this Deed on the day)
and year first hereinbefore)
mentioned.)

EXECUTED by **EQUITY TRUSTEES**)
WEALTH SERVICES LIMITED ACN)
006 132 332 by its Attorneys under)
Power of Attorney dated 27th May 2016)
which is registered at Landgate Dealing)
No. N413124 PA in the presence of:)

Signature of witness

Trish Harvey
(Print Name)
Trust Manager
Equity Trustees

Signature of Attorney

Aaron Tunks
Authorised Person - Schedule II

Office & Name of Attorney

Signature of Attorney

Adrian Michael Green
Authorised Signatory - Schedule II

Office & Name of Attorney

The Founder confirms its consent to the execution by the Trustee of this
amending deed:

THE COMMON SEAL of
South West Aboriginal Land
& Sea Council Aboriginal Corporation
ABN 42 485 265 673

Chief Executive Officer

WAYNE NANNUP
Name (print)



Director

KEVIN FITZGERALD
Name (print)

**SOUTH WEST ABORIGINAL LAND & SEA COUNCIL ABORIGINAL
CORPORATION**

("the Founder")

and

ANZ TRUSTEES LIMITED

("the Trustee")

DEED OF TRUST
Noongar Charitable Trust

ANZ Trustees Limited
(ABN 33 006 132 332)
Level 9, 77 St Georges Terrace Perth WA 6000

TEL: 1800 011 047

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THIS DEED OF TRUST is made on *the 7th of June* 2011

**BETWEEN: SOUTH WEST ABORIGINAL LAND & SEA COUNCIL
ABORIGINAL CORPORATION** ABN 42 485 265 673
of 1490 Albany Highway Cannington Western Australia
("the Founder")

AND: ANZ TRUSTEES LIMITED ABN 33 006 132 332 of Level 9, 77 St
Georges Terrace Perth Western Australia
("the Trustee")

RECITALS:

- A.** The Founder desires to establish a trust fund to be held by the Trustee for charitable purposes in the Commonwealth of Australia upon the terms and conditions set out in this deed.
- B.** The Founder has paid to the Trustee the sum of \$10 (***the settled sum***) to be held by the Trustee upon the trusts outlined in this deed.
- C.** The Trustee has consented to accept the settled sum and to become the trustee of the Trust subject to the powers and provisions of this deed.

NOW THIS DEED WITNESSES as follows:

1. NAME

This trust shall be known as the **Noongar Charitable Trust**.

2. DEFINITIONS

In this deed where the context so requires or admits the following terms shall have the following meanings:

"Advisory Council" means the Advisory Council appointed in accordance with Schedule 3 of this deed;

"Annual Accounting Period" means the period from the date of this deed to the next ensuing 30 June and thereafter a period of twelve months ending on 30 June in each year or such other period as the Trustee may determine from time to time;

"Charitable objects and purposes" means the objects and purposes set out in Schedule 2 to this deed;

"Community" means all the Noongar Peoples or organisations established for the benefit of the Noongar Peoples or any group of them;

"Deed" means this deed as originally executed and as it may from time to time be lawfully amended varied or added to;

"the Founder" includes any of its permitted successors and assigns from time to time;

"Fund" means the trust established pursuant to this deed;

"Net Income" means the income generated from the Trust Fund (during an Annual Accounting Period) after deduction of all applicable taxes, charges, costs and fees including all properly incurred costs, charges and management fees of the Trustee and any other expenditure or outgoings not of a capital nature;

"Noongar Peoples" means those persons who are descended from the Noongars who were the Traditional Owners of the land at the time of the first European settlement of the regions now covered by the following Native Title claims – WC 97/71, WC 06/4, WC 98/58, WC 98/70, WC 96/109

and WC 00/007 and also for the area of the Perth Metropolitan Region not covered by these claims;

"Trustee" means the person named in this deed as the Trustee and any other trustee or trustees for the time being of the Fund whether original additional or substituted;

"Trust Fund" means the settled sum, all moneys investments and assets from time to time paid or transferred to and accepted by the Trustee as additions to the trust fund, all accretions to the trust fund, all accumulations of investment income and the moneys investments and property from time to time representing them and any part or parts of them or into which they may be converted.

2.1 Miscellaneous matters affecting interpretation:

- a) headings are used for convenience only and are not to be construed as in any way affecting or qualifying the meaning of any of the provisions of this deed;
- b) words importing the singular (including defined words) include the plural and vice versa and words importing any gender include all genders;
- c) a reference to any statute or any provision of a statute means a reference to that statute or provision as amended and re-enacted from time to time and to every statute or provision substituted therefore.

3. DECLARATION OF TRUST

The Founder declares that the Trustee will and the Trustee declares that the Trustee will stand possessed of the Trust Fund and the income from the Trust Fund upon the trusts and subject to the powers and provisions contained in this deed.

4. IDENTIFICATION OF ACCOUNTS

- 4.1 The Trustee may, for the purposes of identification only, and where expedient to do so, create and maintain separate sub-funds in respect of amounts of capital and/or net income.
- 4.2 The Trustee may name any sub-fund as the Trustee thinks fit.

5. DISTRIBUTION OF INCOME AND CAPITAL

- 5.1 The Trustee must hold the Trust Fund on trust to pay or apply all or any part of the net income of the Trust Fund for the charitable objects and purposes in accordance with the terms of this deed.
 - 5.2 The net income of the Trust Fund shall be applied solely:
 - a) in furtherance of the charitable objects and purposes; and
 - b) in payment of bona fide compensation for services rendered or expenses incurred on behalf of, or in furtherance of, the charitable objects and purposes;and no portion shall be distributed directly or indirectly by the Trustee on any other basis.
 - 5.3 The Trustee shall ensure as far as is practicable that distribution of the net income of the Trust Fund is applied overall in a way that fairly and equitably benefits a broad cross section of the Community.
 - 5.4 In applying the Trust Fund to any benefits received by or offered to the Community the Trustee shall, where possible, use its reasonable endeavours to augment or leverage off programmes and funding offered by government and non-government entities so that the benefit of the application of the Trust Fund is maximised and does not result in other beneficial programmes being withdrawn or reduced.
 - 5.5 Notwithstanding the foregoing provisions of this clause 5, the Trustee may in any Annual Accounting Period accumulate and retain as part of the Trust
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Fund such of the income as it thinks fit and add it to the capital of the Trust Fund.

- 5.6 The Trustee shall in distributing the net income of the Trust Fund take into account any recommendation of the Advisory Council.

6. POWERS

The Trustee may from time to time exercise all or any of the powers and discretions outlined as follows which so far as they do not restrict the powers and discretions vested in the Trustee by law shall be deemed to be supplementary or additional to those powers and discretions:

- 6.1 to invest or apply moneys of the Trust Fund (including by way of the provision of loans or the provision of security for obtaining loan funds but excluding by way of grant);
- 6.2 to provide funds by way of loan pursuant to Clauses 6.1 on terms recommended by the Advisory Council which terms may be more favourable as to interest, repayment term and/or the provision of security, than would otherwise be commercially available;
- 6.3 without limiting the effect of Clause 6.1, to invest moneys of the Trust Fund in investments authorised by the laws of Australia or any of its states or territories for the investment of trust funds;
- 6.4 to sell or otherwise dispose of the whole or any part of the investments or property of the Trust Fund;
- 6.5 to borrow or raise or secure the payment of money in such manner as the Trustee may think fit and to secure the same in any way and in particular by the issue of any mortgage charge lien encumbrance debenture or other security fixed or floating over any asset present or future of whatsoever kind or wheresoever situated;
- 6.6 to take and act upon the opinion of a barrister practising in Australia in relation to the interpretation or effect of this Deed or any of the trusts or powers of this Deed without responsibility for any loss or error consequent

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- upon so acting provided that nothing in this provision shall prohibit or impede the Trustee from applying to any court of competent jurisdiction;
- 6.7 to take such action as the Trustee shall think fit for the adequate protection or insurance of any part or parts of the Trust Fund and to do all such other things as may be incidental to the exercise of the powers and authorities conferred on the Trustee by this Deed;
- 6.8 to purchase, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, and other negotiable or transferable instruments of whatsoever kind;
- 6.9 subject to the trusts of this Deed, generally to perform any administrative act, give effectual receipts and discharges to any person for any moneys or things, pay or deduct all costs, charges, commissions, stamp duties, imposts, outgoings and expenses of or incidental to the Trust Fund or its management or which the Trustee may think fit to pay or deduct (whether or not the Trustee is under any legal obligation to make any such payment) or in connection with the preparation execution and stamping of this Deed, as though the Trust Fund and the income were owned absolutely by the Trustee;
- 6.10 to employ and pay or provide any benefit for any servant or employee and the Trustee shall not be responsible for the default of any such servant or employee or for any loss occasioned by the employment;
- 6.11 to engage and pay any agent (including any agent related to the Trustee), contractor, or professional person and the Trustee shall not be responsible for the default of any such agent, contractor or employee or for any loss occasioned by the engagement;
- 6.12 to enter into and perform escrow agreements, whether voluntary or compulsory, relating to the issue of shares, stocks, debentures or any other securities issued by any corporation listed on a recognised stock exchange on such terms and conditions as the Trustee deems fit;
- 6.13 to attract and encourage and accept as part of the Trust Fund any gifts, donations, bequests, devises, settlements or other dispositions in money, moneys worth or property to or in favour of the Trust Fund and to either retain them in their original form without selling or converting the same into
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money or to invest or apply or deal with the same in any way in which the Trustee is empowered to invest or apply or deal with the Trust Fund in accordance with this Deed;

- 6.14 to manage any real property it holds with all the powers of an absolute owner including, but not limited to, power to allow any of the Beneficiaries to occupy the property on the terms and conditions the Trustee thinks fit;
- 6.15 to hold, use, purchase, construct, demolish, maintain, repair, renovate, reconstruct, develop, improve, sell, transfer, convey, surrender, let, lease, exchange, take and grant options or rights in, alienate, mortgage, charge, pledge, reconvey, release or discharge or otherwise deal with any real or personal property and in particular with shares, debentures or securities of any company and with or without deferred, restricted, qualified or special rights relating thereto;
- 6.16 to partition or agree to the partition of or to subdivide or agree to the subdivision of any land or other property which or any interest in which may for the time being be subject to the trusts hereof and to pay any moneys by way of equality of partition.

7. LIABILITY FOR BREACHES OF TRUST

The Trustee where purporting to exercise trusts discretions and powers of this Deed and any officer agent or employee of the Trustee purporting to exercise discretions or powers under this Deed shall not be liable for any loss or liability and shall be entitled to be indemnified from the Trust Fund in respect of any loss or liability, unless the loss or liability is attributable to the dishonesty of or the wrongful act or omission of the Trustee.

8. INDEMNITY OF TRUSTEE FROM TRUST FUND

- a) Except for and in respect of a breach of trust knowingly and wilfully committed by it, its officers, agents or employees, the Trustee shall be entitled to be indemnified out of the Trust Fund in respect of:
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- (i) all costs and expenses incurred by the Trustee relating to the entering into any deed amending this Deed or relating to the establishment, operation, administration, amendment, termination and winding up of the Fund, or otherwise in respect of the Fund and all matters incidental to the Fund; and
 - (ii) all liability incurred (including liability for income tax and any other taxes and all fines and penalties payable in relation to the foregoing) and acts and things done in connection with or consequential upon the matters set out in Clause 8(a)(i) including, without limitation of the generality thereof, the fulfilment, performance and exercise by the Trustee of its duties, obligations, powers, rights, authorities and discretions pursuant to this Deed;
- b) The right of the Trustee to indemnity for losses or liabilities incurred in respect of the Fund and to recoupment for expenditure incurred shall in respect of any matter whatsoever be limited to the moneys and property comprising the Trust Fund from time to time.

9. ACCOUNTS

- 9.1 The Trustee shall keep or cause to be kept proper accounts in respect of all receipts and payments on account of the Trust Fund and of all dealings connected with the Trust Fund and as soon as practicable but no later than three months after the end of each Annual Accounting Period the Trustee shall prepare or cause to be prepared a statement showing the financial position of the Trust Fund at the conclusion of that accounting period including a balance sheet and statement of income and expenditure (**Trust Statements**) and shall, promptly after their preparation, provide a copy of the Trust Statements to the Founder. The Trust Statements must be audited annually.

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- 9.2 A summary report of all transactions of the Trust Fund (including a statement of income and expenditure, balance sheet, cash flow estimate and other reasonably available accounting information) shall be prepared and provided by the Trustee to the Advisory Council at least once per year.

10. TRUSTEE FEES

For so long as ANZ Trustees Limited (**ANZ Trustees**) is the Trustee pursuant to this Deed, it shall be entitled to receive out of the Trust Fund fees and charges calculated and paid in accordance with Schedule 1.

11. AMENDMENTS TO TRUST DEED

- 11.1 The Trustee shall have the power by deed to amend or vary the terms of this Deed before the Vesting Date, as it may think fit, but only with the prior written consent of the Founder.
- 11.2 Other than as expressly permitted by law, nothing in this clause will authorise or be deemed to authorise any departure or modification of the trusts declared in this deed to the extent that it would result in the Trust ceasing to be a trust for purposes which are charitable at law and that satisfied the requirements for endorsement of the Trust under Subdivision 50-B of the *Income Tax Assessment Act 1997* (C'th).

12. ADVISORY COUNCIL

- 12.1 The Advisory Council shall:
- a) make recommendations to the Trustee with respect to the distribution*of the net income of the Trust Fund for the charitable objects and purposes.
 - b) do all other things required of it pursuant to this deed in accordance with the Advisory Council Rules.

c) in considering any decisions proposed to be made by it, consider:

- (i) the charitable objects and purposes;
- (ii) the matters set out in clause 5.3 and 5.4

12.2 The Trustee shall at least once per annum provide to the members of the Advisory Council a copy of the financial statements for the Trust and any such additional information as the Members reasonably require for the performance of their functions.

12.3 At least twice per annum the Trustee will meet with the members of the Advisory Council to discuss and review the administration of the Trust.

13. GENERAL

13.1 The receipt of the person purporting to be the treasurer, secretary, or other proper officer for the time being of any recipient of a payment or application of income or capital from the Trust Fund pursuant to this Deed shall be a sufficient discharge to the Trustee and the Trustee shall not be bound to see to the application of such payment or application.

13.2 Subject always to an express provision to the contrary contained in this Deed, each discretion vested in the Trustee shall be absolute and uncontrolled and every power vested in it shall be exercisable in the absolute and uncontrolled discretion of the Trustee.

13.3 The Trustee shall have the power to determine whether any moneys are to be considered as capital or income and whether any expenses, outgoings or other payment ought to be paid out of capital or income and to determine all questions and matters of doubt arising in the execution of the trusts of this deed and so that every such determination whether made upon a question actually raised or implied in the acts or proceedings of the Trustee shall be conclusive and binding on all persons interested under this Deed.

14. TERMINATION OF THE FUND

- 14.1 The Trustee will terminate the trust or vary the trust deed upon a written request by the Advisory Council. No request shall be made unless and until an agreement has been entered into between the Community and the State of Western Australia in relation to the Trust Fund.
- 14.2 If the Trust Fund is terminated in accordance with clause 14.1 any property which remains after the satisfaction of all its debts and liabilities, shall be paid or transferred by the Trustee to another charitable organisation or fund with similar purposes which is not carried on for profit or gain of its individual members or the fund trustee as the case may be as directed or authorised by the Advisory Council.

15. PROPER LAW

This Deed shall be construed and take effect in accordance with the laws of Western Australia.

SCHEDULE 1 – AGREED FEES AND CHARGES FOR ANZ TRUSTEES LIMITED

In accordance with Clause 10 of this Deed ANZ Trustees Limited shall be entitled to be paid fees and charges from the Trust Fund as follows:

1. Fees

- (a) An establishment fee of \$10,000.00 (inclusive of GST)
- (b) An annual fee of:
 - \$2,000.00 plus
 - 0.55% per annum (inclusive of GST) of the first \$1 million of the gross value of the assets in the Trust Fund;
 - 0.22% per annum (inclusive of GST) of the next \$9 million of the gross value of the assets in the Trust Fund;
 - 0.11% per annum (inclusive of GST) of the gross value of the assets in the Trust Fund over \$10 million.

2. Time for payment

The fee shall be calculated and paid by monthly instalments in arrears at the end of each month.

3. Other Charges

In addition the Trustee may charge:

- (a) an annual tax fee for the preparation of any necessary tax returns including but not limited to GST Business Activity Statements and applications for refunds of imputation credits at such rates per hour as the Trustee considers reasonable;

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- (b) if required by the Advisory Council, a fee for providing secretarial services to the Advisory Council.

4. **Changes in GST**

The fees that are expressed as GST inclusive at Clause 1 of this Schedule shall not apply if there is a change in the rate of GST. Instead a new GST inclusive fee shall be determined by converting the existing GST inclusive fee to a GST exclusive figure and multiplying it by the then prevailing rate of GST.

SCHEDULE 2 – CHARITABLE OBJECTS AND PURPOSES

The charitable objects and purposes of the Trust are:

1. the relief of poverty, sickness, suffering, destitution, misfortune and helplessness of the Community;
2. to provide grants scholarships, bursaries and other assistance (financial or otherwise) for the education, including vocational training and economic and enterprise training of the members of the Community;
3. to promote health in the Community;
4. to provide for the needs of the elderly and infirm members of the Community;
5. to provide cultural and heritage benefits to the Community;
6. to provide grants and other assistance for the protection and preservation of the natural environment;
7. to provide transport and communication services to the Community;
8. to provide for the long term needs of future generations of members of the Community;
9. to promote, protect and maintain the traditional laws and culture of the Community;
10. to provide assistance to the Community for housing programmes;
11. to provide funding for or to implement Community projects, Community facilities and Community activities for the furtherance of these charitable objects and purposes;

to the extent that doing so is charitable at law or is incidental or ancillary to an object that is charitable at law.

SCHEDULE 3 – ADVISORY COUNCIL

Appointment of Members

1. There shall be a minimum of 3 and a maximum of 5 members of the Advisory Council; the initial members shall be appointed by the Trustee as soon as possible after the execution of this deed.
2. The appointment of each member of the Advisory Council shall be for a period of two (2) years, but he or she shall be eligible for re-appointment. Any casual vacancy arising during the period of two years shall be filled by appointment by the Trustee in its sole discretion.
3. Nominations for membership of the Advisory Council shall be submitted to the Trustee at least one month prior to the expiration of each two year period.
4. The Trustee shall consider all nominations and make such appointments as it sees fit provided that the Trustee will give priority to nominations recommended by any body or corporation that from time to time may, in the opinion of the Trustee, represent the majority of the members of the Community.

Meetings of the Advisory Council

1. The Advisory Council shall meet as often as it decides but not less than once per calendar year.
2. Members may appoint one of their number to be the chairman.
3. The Advisory Council shall ensure that minutes of their meetings are taken but shall otherwise make such rules about the conduct of their meetings as they see fit.
4. Any decisions of the Advisory Council to be given to the Trustee shall be made by a majority of members and shall be in the form of minutes signed by the Chairman.