

# Self-Determination Fund - Trust Deed

Dated 21 NOVEMBER 2022

Self-Determination Fund Limited (ABN/ACN 56663801956 / 663801956)  
("Trustee")

Jill Gallagher AO ("Settlor")

# Self-Determination Fund - Trust Deed

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# Self-Determination Fund - Trust Deed

## Details

Parties	Settlor and Trustee	
Trustee	Name	Self-Determination Fund Limited
	ABN/ACN	56663801956 / 663801956
	Address	48 Cambridge Street, COLLINGWOOD VIC 3066
	Email	[REDACTED]
	Attention	<i>Nadina Brockhurst</i>
Settlor	Name	Jill Gallagher AO
	Address	[REDACTED]
	Email	[REDACTED]
Governing law	Victoria (see clause 24)	
Trust	Self-Determination Fund	
Date of deed	See signing page	
Recitals	A	The Settlor seeks to establish a trust to be called the "Self-Determination Fund" for certain public charitable purposes.
	B	The Settlor has paid the Fund Establishment Sum to the Trustee to be held by the Trustee on the trust declared in this deed.
	C	The Fund must at all times be Endorsed as a Charity.
	D	The Trustee:  (a) is incorporated under the <i>Corporations Act 2001</i> (Cth) as a public company limited by guarantee with the power to act as the trustee of the Fund;  (b) has agreed to apply in its capacity as trustee of the Fund to be Endorsed as a Charity; and  (c) has agreed to apply in its capacity as trustee of the Fund for the Fund be Endorsed as a DGR.
	E	The Trustee is willing to act as the trustee of the Fund, and to hold the Fund Establishment Sum and any other money as may be paid, given or transferred to the Trustee,

including such funds as might be granted by the State under the Self-Determination Fund Agreement, on the trust contained in this deed.

# Self-Determination Fund - Trust Deed

## General terms

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### 1 Interpretation

#### 1.1 Definitions

Unless a contrary intention appears, words and phrases used in this deed have the following meanings:

**Aboriginal Representative Body** means the entity that is declared to be the Aboriginal Representative Body under section 11 of the Treaty Act or under section 18 of the Treaty Act. At the date of this deed, the Aboriginal Representative Body is the First Peoples' Assembly of Victoria Limited (ABN 51 636 189 412).

**Accounting Period** 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, or any other period that the Trustee decides from time to time.

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

**ACNC Governance Standards** means the governance standards established in accordance with Chapter 3, Division 45 of the ACNC Act, with which an entity Endorsed as a Charity must comply.

**Affiliate** of a party means an entity or person directly or indirectly controlling or controlled by or under common control with the relevant party. The term "control" means, in respect of an entity, the right to:

- (a) exercise the majority of the voting rights of shareholders of that entity;
- (b) appoint the majority of the members of the board of that entity; or
- (c) determine the policy and strategy of that entity.

**Allocation Budget** means the budget approved and adopted as set out in clause 8.1.

**ARB Threshold** means an amount of a proposed distribution or investment, specified in a Direction to Trustee.

**Assets** means all the property, rights (including Intellectual Property) and income of the Fund.

**Business Day** means a day on which banks are open for general banking business in Melbourne (not being a Saturday, Sunday or public holiday in that place).

**Code of Conduct** means any code of conduct applicable to the Trustee in accordance with a Direction to Trustee.

**Company Constitution** means the constitution of the company that is the Trustee.

**Conflicts Policy** means a Direction to Trustee setting out a policy for the management of conflicts of interest with respect to the Self-Determination Fund.

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

**Deductible Gift Recipient** means a fund, authority or institution to which tax deductible gifts may be made in accordance with Division 30 of the Tax Act.

**Details** means the section of this deed headed "Details".

**Director** means a director of the Trustee.

**Direction to Trustee** means directions given by the Aboriginal Representative Body to the Trustee from time to time in accordance with clause 6.4.

**Dispute Resolution Policy** means a Direction to Trustee relating to the process for resolving disputes that arise in connection with the administration of the Fund.

**Distribution Policy** means a Direction to Trustee setting out parameters, processes or rules to be followed by the Trustee in connection with distributions made from Assets, subject to provisions of this deed and Relevant Law.

**Endorsed as a Charity** means registered as a charity by the Australian Charities and Not-for-profits Commission and endorsed for income tax exemption by the Commissioner of Taxation.

**Endorsed as a DGR** means registered as a charity by the Australian Charities and Not-for-profits Commission with the subtype "public benevolent institution" and endorsed by the Commissioner of Taxation as a deductible gift recipient.

**First Peoples** means:

- (a) Traditional Owners of Country in Victoria; and
- (b) Aboriginal and Torres Strait Islander persons who are living in the place now known as Victoria.

**Fund** has the meaning given in clause 2.

**Fund Establishment Sum** means \$100.

**Independent Valuer** means with respect to any Investment at any time, a person selected by the Trustee who is not an Affiliate of the Trustee, and who is experienced in the valuation of assets similar to that Investment.

**Intellectual Property** means all intellectual property rights including current and future registered and unregistered rights in respect of copyright, designs, circuit layouts, trade marks, trade secrets, know-how, confidential information, patents, invention and discoveries and all other intellectual property as defined in article 2 of the Convention Establishing the World Intellectual Property Organisation 1967.

**Investment** means an investment made by the Trustee using, and forming part of, Assets.

**Investment Policy** means the Direction to Trustee setting out the parameters, processes or rules to be followed by the Trustee in connection with the investment of Assets, subject to provisions of this deed and Relevant Law.

**Liabilities** means all present liabilities of the Fund including:



- (a) any provision taken into account in determining the liabilities of the Fund; and
- (b) any amounts which have been set aside for distribution under clause 7.

**Market Value** of an Asset means:

- (a) in the case of an Asset that is cash or a deposit with an Australian authorised deposit-taking institution, its face value plus any accrued interest;
- (b) in the case of an Asset that is a financial product traded on a financial market, the latest closing price on that market that is readily available to the Trustee, unless:
  - (i) applicable accounting standards require the value to be a different amount (such as the bid price gross of transaction costs) in which case the value is that other amount; or
  - (ii) the Trustee reasonably believes that the closing price or the value under applicable accounting standards does not represent the true value of the Asset, in which case the value will be as determined by a Valuer at the expense of the Fund;
- (c) in the case of an Asset that is an interest in a fund that is not listed or quoted for dealing on any financial market:
  - (i) the redemption price of the interest as last quoted by the manager, trustee or responsible entity of the fund; plus
  - (ii) any income entitlements accrued at that date as last advised by the manager, trustee or responsible entity. Where the fund is operated by the Trustee or a related body corporate of the Trustee, the redemption price of the interest (excluding any allowance for transaction costs) and the accumulated income entitlements must be determined in accordance with the constitution governing the fund;
- (d) in the case of an Asset that is a real estate asset, the latest independent valuation of the real estate asset or, for a real estate asset not yet revalued since its acquisition, the real estate asset's purchase price (including acquisition costs, the total costs of subsequent additions and costs to date for development in progress, where applicable); and
- (e) in the case of any other Asset, the value of the Asset determined in accordance with relevant accounting standards or, if the Trustee is of the opinion that such valuation does not truly reflect the value of the Asset, such value as last determined by a Valuer at the expense of the Fund.

**Relevant Law** means:

- (a) any law which is applicable to the Trustee in the exercise of its powers or performance of its obligations under this deed;
- (b) any provisions in the ACNC Act which apply to the Trustee or Fund; and
- (c) any requirement of the Corporations Act, the *Australian Securities and Investments Commission Act 2001* (Cth) and any other present or future law of the Commonwealth of Australia or any State or Territory which the Trustee must satisfy in order for the Trustee to avoid a relevant penalty, detriment or disadvantage.

**Self-Determination Fund Agreement** means the agreement entered into between the Aboriginal Representative Body and the State for the purposes of section 35 of the Treaty Act.

**State** means the State of Victoria.

**Strategic Plan** means the plan approved and adopted as set out in clause 8.3.

**Tax Act** means the *Income Tax Assessment Act 1997* (Cth) or the *Income Tax Assessment Act 1936* (Cth) as appropriate.

**Taxes** means all taxes, including without limitation income, capital gains, recoupment, debits, land, sales, payroll, fringe benefits, group, profit, interest, property, undistributed profits, withholding, GST and wealth taxes, stamp, documentary, financial institutions, registration and other duties, municipal rates, and all other imposts, deductions and charges, related interest, penalties, charges, fees or other amounts assessed, charged, assessable or chargeable by or payable to any national, state or municipal taxation authority.

**Traditional Owner** has the meaning given to that term under the Treaty Negotiation Framework established by agreement between the Aboriginal Representative Body and State of Victoria under section 30 of the Treaty Act.

**Treaty Act** means the *Advancing the Treaty Process with Aboriginal Victorians Act 2018* (Vic).

**Trustee** means the person named in the Details as the first trustee of the Fund (and any successor for the time being as trustee of the Fund).

**Trustee's Expense Budget** means the budget approved and adopted as set out in clause 8.2.

## 1.2 Interpretation

Unless the contrary intention appears, in this deed:

- (a) a reference to a clause or schedule is a reference to a clause of or schedule to this deed;
- (b) the word "law" includes common law, principles of equity and legislation and a reference to legislation includes regulations as modified by applicable instruments under them and any variation or replacement of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the meaning of general words is not limited by specific examples introduced by "including", "for example" or "such as" or similar expressions;
- (e) amend includes vary, delete or replace;
- (f) person includes a firm, a body corporate, an unincorporated association and an authority;
- (g) the cover page, contents, headings, footnotes and finding lists are for convenience only and do not affect interpretation of this deed;
- (h) a reference to a year (other than a Financial Year or year of income), quarter or month means a calendar year, calendar quarter or calendar month respectively;

- (i) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (j) a reference to a document (including this deed) includes any variation or replacement of it; and
- (k) the word “present” in the context of a person being present at a meeting includes participating using technology approved by the Trustee for the purposes of the meeting.

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## **2 Name of trust**

The trust established under this deed is called the Self-Determination Fund (“Fund”).

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## **3 Establishment of trust**

### **3.1 Establishment**

- (a) The Settlor has upon the execution of this deed transferred to the Trustee the Fund Establishment Sum and directs that the Trustee is to, and the Trustee declares that it will:
  - (i) act as trustee of the Fund; and
  - (ii) hold the Assets on the terms of this deed as a public charitable trust with the purposes set out in clause 4.1 of this deed.
- (b) It is intended that money will be:
  - (i) contributed to the Fund by the State; and
  - (ii) raised from members of the public and other non-government sources,

which, together with any additional property rights and income, will be held by the Trustee on and subject to the terms of this deed.

### **3.2 Trustee to pursue purposes**

In managing and conducting the affairs of the Fund, the Trustee shall direct its efforts towards furthering the purposes of the Fund set out in this deed.

### **3.3 Commencement of Fund**

The Fund commences when the Settlor pays to the Trustee the Fund Establishment Sum.

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## **4 Purposes**

### **4.1 Purposes**

- (a) The Fund is established in Australia, must be operated in Australia and must be maintained exclusively for charitable benevolent purposes.
- (b) While recognising the strength and resilience of First Peoples, the Fund is established for the purposes of the relief of poverty, distress or disadvantage of First Peoples by:

- (i) supporting First Peoples to have equal standing with the State in treaty negotiations; and
  - (ii) providing a financial resource independent from the State, that empowers First Peoples to build capacity, wealth and prosperity,
- with such support and empowerment including, without limitation, the provision of services, information and advice.
- (c) To the extent not inconsistent with clause 4.1(b), the purposes of the Fund include the following purposes in relation to First Peoples:
    - (i) the advancement of social and community welfare, including in relation to individuals or families;
    - (ii) the advancement of health, including the relief of sickness, disease or human suffering;
    - (iii) the advancement of education;
    - (iv) the maintenance, promotion and advancement of the culture of First Peoples;
    - (v) the promotion of reconciliation, mutual respect and tolerance between groups of individuals in Australia;
    - (vi) promoting or protecting human rights;
    - (vii) advancing and protecting the natural environment;
    - (viii) promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country, in furtherance or in aid of one or more of the purposes listed above; and
    - (ix) all other things as may be incidental or ancillary to the attainment of the purposes in clause 4.1(b) and these purposes.
  - (d) In furtherance of the purposes in this clause 4.1, the Fund may provide support or funding for persons and initiatives that include (among other things):
    - (i) activities such as capacity-building and training programs for the purpose of developing First Peoples' skills, capabilities and competence;
    - (ii) strengthening First Peoples' governance and internal decision-making structures, facilitating community meetings and research to support proposals in treaty negotiations;
    - (iii) First Peoples-owned enterprises, where such support is consistent with the purposes in this clause 4.1;
    - (iv) education and leadership training for First Peoples; and
    - (v) land, sea and water management and use initiatives.
  - (e) The Trustee will ensure that the Fund does not directly provide community and social services.

## **4.2 Fundraising**

The Trustee may solicit donations and other forms of financial assistance to, or for the benefit of, the purposes, including by conducting fundraising initiatives.

## **4.3 Deductible Gift Recipient status**

If the Fund is Endorsed as a DGR, the Trustee must not act or fail to act in such a way as to cause the endorsement of the Fund as a Deductible Gift Recipient to be revoked.

## **4.4 Capital may be applied for purposes of the Fund**

The Trustee may apply capital as well as income of the Fund for the purposes referred to in this clause 4.

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# **5 Trustee**

## **5.1 Initial trustee**

Self-Determination Fund Limited is the first trustee of the Fund.

## **5.2 Minimum requirements for the Trustee**

The trustee of the Fund must be a company in relation to which the following requirements are satisfied:

- (a) the trustee must be capable, in its capacity as trustee of the Fund, of maintaining the endorsement of the Fund once it is Endorsed as a Charity;
- (b) the company must be a public company limited by guarantee;
- (c) the company must apply to be Endorsed as a Charity and maintain that endorsement if it is granted;
- (d) the company must not act as trustee of any trust other than the Fund and only carry out business relating to its role as trustee of the Fund;
- (e) the Aboriginal Representative Body must be the sole member of the company that is the trustee, and the trustee must be subject to the control of the Aboriginal Representative Body (except during a period where there is no Aboriginal Representative Body for the purposes of the Treaty Act);
- (f) the board of Directors must satisfy the board composition criteria specified by the Aboriginal Representative Body from time to time, including criteria with respect to governance and financial experience and qualifications;
- (g) the Company Constitution must:
  - (i) require the trustee to operate on a not-for-profit basis;
  - (ii) to the extent permitted by this deed and Relevant Law, require the trustee to conduct its business in accordance with any Directions to Trustee to the extent practicable;
  - (iii) enable the trustee to carry out the functions and exercise the powers given to it under this deed; and

- (iv) remain substantially the same as at the date of the Self-Determination Fund Agreement, save for any amendments or variations made in accordance with clause 11 of the Self-Determination Fund Agreement.

### **5.3 Retirement of the Trustee**

The Trustee:

- (a) must retire as the trustee of the Fund if:
  - (i) required by Relevant Law;
  - (ii) the Trustee goes into liquidation (other than for the purpose of a reconstruction or amalgamation on terms previously communicated to the Aboriginal Representative Body);
  - (iii) the Trustee ceases to satisfy the requirements in clause 5.2; or
  - (iv) removed by the Aboriginal Representative Body under clause 5.4,

and any such retirement will be effective on the appointment of a replacement trustee by the Aboriginal Representative Body in accordance with clause 5.5; and

- (b) agrees to do everything it needs to in order to assist the Aboriginal Representative Body to appoint a successor Trustee.

### **5.4 Removal of the Trustee**

- (a) The Aboriginal Representative Body may remove the Trustee of the Fund by giving not less than 2 months' prior written notice to the Trustee.
- (b) On removal of the Trustee, the Aboriginal Representative Body must appoint a successor Trustee and the Trustee agrees to do everything it needs to in order to assist the Aboriginal Representative Body to appoint a successor Trustee.

### **5.5 Appointment of new Trustee**

A replacement Trustee may be appointed by the Aboriginal Representative Body by instrument in writing, provided that the replacement trustee:

- (a) satisfies the requirements specified in clause 5.2; and
- (b) executes a deed by which it covenants to be bound by this deed as if it had originally been a party to it.

### **5.6 Release**

When it retires or is removed, the outgoing Trustee is released from all obligations in relation to the Fund arising after the time it retires or is removed. The outgoing Trustee must execute and deliver any documents and do every other thing which is necessary or desirable to effect the appointment of the successor Trustee.

## **5.7 Endorsed charity**

The Trustee must not act or fail to act in such a way as to cause the Fund not to be Endorsed as a Charity.

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# **6 Powers**

## **6.1 Trustee's powers**

- (a) Subject to this deed, the Trustee has within and outside Australia all the powers in relation to the Fund, its Assets and Liabilities, that it is legally possible for a natural person, corporation or trustee to have, and to fetter its own discretion, as if it were the absolute and beneficial owner of all Assets acting in its personal capacity.
- (b) Without limiting the power conferred by clause 6.1(a) or any other provision of this deed, the Trustee has power to:
  - (i) invest in real or personal property of any nature;
  - (ii) divide the Assets into sub-portfolios or sub-funds;
  - (iii) borrow or raise money (whether or not on a secured basis and in any manner whatsoever including all forms of financial accommodation and debt facilities);
  - (iv) to grant all types of security (whether for the obligations of the Trustee or another person), including over Assets;
  - (v) subject to clause 7, make distributions from the Assets in accordance with the purposes of the Fund;
  - (vi) employ staff;
  - (vii) incur liabilities and obligations of any kind; and
  - (viii) make co-investments with related parties of the Trustee.

## **6.2 Other capacities**

The Trustee (and any of its associates to the extent applicable) may:

- (a) deal with itself (as trustee of the Fund or in another capacity) including to engage any of its associates to provide services to the Trustee; and
- (b) be interested in any contract or transaction with itself (as trustee of the Fund or in another capacity) and retain for its own benefit any profits or benefits derived from any such contract or transaction.

## **6.3 Power of delegation**

- (a) The Trustee may authorise any person to act as its agent or delegate (in the case of a joint appointment, jointly and severally) to hold title to any Asset, perform any act or exercise any discretion within the Trustee's power.
- (b) The Trustee may include provisions in the authorisation to protect and assist those dealing with the agent or delegate and to limit the Trustee's liability, as the Trustee thinks fit.

- (c) An agent or delegate appointed by the Trustee may be an associate of the Trustee.
- (d) The Trustee must notify the Aboriginal Representative Body of any agent or delegate appointments in the next quarterly report relating to the activities of the Fund (required under clause 16.1(a)).

#### **6.4 Directions to Trustee**

- (a) The Aboriginal Representative Body may from time to time:
  - (i) give Directions to Trustee in relation to:
    - (A) priority areas for the application of Assets by the Trustee;
    - (B) the Distribution Policy;
    - (C) the Investment Policy;
    - (D) the Code of Conduct;
    - (E) the Dispute Resolution Policy;
    - (F) a Conflicts Policy;
    - (G) the formation, composition, functions and processes of an Advisory and Investment Committee to advise the Trustee;
    - (H) reporting in relation to the activities of the Trustee and financial position of the Fund;
    - (I) any other matters relevant to the administration of the Fund; and
  - (ii) vary, revoke or replace a Direction to Trustee by giving a subsequent Direction to Trustee.
- (b) A Direction to Trustee must be notified to the Trustee by the Aboriginal Representative Body, and will take effect at the time notice is received by the Trustee or as otherwise specified in the Direction to Trustee.
- (c) To the extent permitted by this deed and Relevant Law, the Trustee is entitled and required to exercise its powers and carry out its functions in accordance with any Directions to Trustee.
- (d) The Trustee must not comply with a Direction to Trustee to the extent that doing so would or may in the Trustee's opinion result in the Trustee:
  - (i) breaching or acting inconsistently with the Trustee's duties under this deed;
  - (ii) acting inconsistently with the Treaty Act;
  - (iii) contravening any Relevant Law or committing an illegal act;
  - (iv) losing an effective and enforceable right of indemnity which the Trustee would otherwise have had; or



- (v) incurring a liability that is not limited to the Assets out of which the Trustee is entitled to be indemnified.
- (e) Notwithstanding clauses 6.4(d), if the Trustee acts properly in accordance with a Direction to Trustee, the Trustee is entitled to, but is not required to, undertake any further enquiries in respect of the relevant Direction to Trustee and will be considered to have acted in accordance with its duties.
- (f) The Trustee may (but is not obliged to) by notice request that the Aboriginal Representative Body issue or modify a Direction to Trustee. The Aboriginal Representative Body is not obliged to issue or modify a Direction to Trustee in accordance with such a request.

## **6.5 Guidance and information from the Aboriginal Representative Body**

In administering the Fund, the Trustee must consider any guidance or information provided by the Aboriginal Representative Body from time to time in relation to consultations with First Peoples conducted by the Aboriginal Representative Body which are relevant to the administration of the Fund.

## **6.6 Trustee may rely**

The Trustee may obtain and may act on:

- (a) the opinion or advice of counsel or solicitors, whether or not instructed by the Trustee, in relation to the interpretation of this deed or any other document or generally in connection with the Fund;
- (b) advice, opinions, statements or information from any bankers, accountants, auditors, valuers, financial advisers and other persons consulted by the Trustee, including members of any Advisory and Investment Committee established by the Trustee, who are believed by the Trustee in good faith to be expert in relation to the matters on which they are consulted; and
- (c) any other document provided to the Trustee in connection with the Fund on which it is reasonable for the Trustee to rely,

and the Trustee will not be liable for anything done or omitted by it in good faith in reliance on any opinion, advice, statement, information or document.

## **6.7 Exercise of discretion**

Subject to this deed, the Trustee may in its absolute discretion decide how, when and how often to exercise its powers.

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# **7 Distributions**

## **7.1 Trustee may make distributions**

Subject to clauses 7.2 and 7.3, the Trustee may apply the Assets by making distributions to further the purposes of the Fund.

## **7.2 Distribution process**

Any distributions made by the Trustee from the Assets must be:

- (a) made in accordance with an assessment and oversight process determined by the Trustee from time to time, having regard to the Distribution Policy, which:
  - (i) specifies the eligibility criteria in relation to distributions that are consistent with the purposes of the Fund;
  - (ii) contains principles for distributions from Assets that ensure distributions by the Trustee, as a whole, fairly and equitably benefit a broad cross-section of First Peoples;
  - (iii) ensures, to the extent practicable, that funds distributed are used by recipients for purposes that are consistent with the purposes of the Fund, including through the imposition of conditions and reporting requirements in accordance with the Distribution Policy;
- (b) consistent with any other requirements of the Distribution Policy (subject to this deed and Relevant Law);
- (c) consistent with the Allocation Budget, Trustees Expense Budget and Strategic Plan, having regard to the sustainability of the Fund; and
- (d) within any monetary limit specified by the Distribution Policy.

### **7.3 Effective funding**

In making distributions from the Fund, the Trustee will:

- (a) have regard to the State's current and proposed funding and delivery of services to the Victorian public, including First Peoples;
- (b) seek to focus on initiatives or activities that in the Trustee's view are not adequately funded by the State; and
- (c) ensure the Fund does not directly provide community and social services.

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## **8 Budgets and strategic plans**

### **8.1 Allocation Budget**

- (a) The Trustee must prepare and submit to the Aboriginal Representative Body for approval an annual Allocation Budget for each year of the Trust's operation, setting out:
  - (i) expected income of the Fund during the relevant year, including actual and anticipated contributions from the State;
  - (ii) amounts available during the relevant year for distributions from Assets to further the purposes of the Fund; and
  - (iii) expected amounts of distributions from Assets as against each of the purposes in section 4.1(b) (and within each purpose, as against each priority area identified in a Direction to Trustee for the application of Assets by the Trustee).

- (b) The Allocation Budget for each year must be approved by the Aboriginal Representative Body before the approved document is adopted by the Trustee.
- (c) The Allocation Budget can be varied with the approval of the Aboriginal Representative Body.

## **8.2 Trustee's Expense Budget**

- (a) The Trustee must prepare and submit to the Aboriginal Representative Body for approval an annual Trustee's Expense Budget for each year of the Trust's operation, including a budget of expenses for each quarter.
- (b) The Trustee's Expense Budget for each year must be approved by the Aboriginal Representative Body before the approved document is adopted by the Trustee.
- (c) The Trustee's Expense Budget can be varied with the approval of the Aboriginal Representative Body.

## **8.3 Strategic Plan**

- (a) The Trustee must, after consulting with the Aboriginal Representative Body, prepare and submit to the Aboriginal Representative Body for approval a Strategic Plan in respect of each 4 year period of the Fund's operation, setting out:
  - (i) the Trustee's longer-term plans to facilitate the advancement of the purposes of the Fund;
  - (ii) the aspirations and priorities of First Peoples communities in different areas of Victoria relevant to the Fund as communicated to the Trustee by the Aboriginal Representative Body;
  - (iii) proposals and mechanisms for reporting and transparency to the First Peoples; and
  - (iv) any strategic direction on matters significantly affecting land, culture and inherent rights that come from Aboriginal lore and law and culture as relevant to the Fund.
- (b) The Strategic Plan must be approved by the Aboriginal Representative Body before the approved document is adopted by the Trustee.

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# **9 Investments**

## **9.1 Trustee may invest Assets**

Subject to clause 9.2, the Trustee may, in such amounts and on such conditions as the Trustee determines, invest the Assets to further the purposes of the Fund.

## **9.2 Investment process**

Any investment of Assets must be:

- (a) made in accordance with any Investment Policy (subject to this deed and Relevant Law);

- (b) consistent with any advice obtained by the Trustee from appropriately qualified and licensed financial advisers;
- (c) consistent with the Allocation Budget, Trustee's Expense Budget and Strategic Plan, having regard to the sustainability of the Fund; and
- (d) within any monetary limit specified by the Investment Policy.

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## **10 Control of distributions and investments**

### **10.1 Notification to Aboriginal Representative Body**

The Trustee must not make a distribution under clause 7 or an investment under clause 9 which would exceed the ARB Threshold, unless:

- (a) the Trustee has given notice to the Aboriginal Representative Body of the proposed distribution or investment; and
- (b) the Aboriginal Representative Body either:
  - (i) gives notice to the Trustee that it does not oppose the proposed distribution or investment; or
  - (ii) within 5 weeks of receiving notice from the Trustee under clause 10.1(a), does not give notice to the Trustee that the Aboriginal Representative Body opposes the proposed distribution or investment.

### **10.2 Opposition**

The Trustee must not make a proposed distribution or investment which would exceed the ARB Threshold if the Aboriginal Representative Body has given the Trustee notice that the Aboriginal Representative Body opposes that proposed distribution or investment.

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## **11 Fees and expenses**

### **11.1 Reimbursement for expenses**

- (a) The Trustee is entitled to reimbursement of all expenses properly incurred in connection with the administration of the Fund, and those expenses may be recovered by the Trustee out of income of the Fund. If the income of the Fund is insufficient for that purpose, then to the extent of such insufficiency the Trustee may recover expenses out of the capital comprised in the Assets.
- (b) Expenses recoverable by the Trustee include expenses connected with the following:
  - (i) expenses of the Trustee incurred in its corporate capacity (including payment to a Director of reasonable remuneration for their services as a Director, having regard to the remuneration of directors of similar organisations) to the extent such expenses are properly incurred in connection with the administration of the Fund;

- (ii) this deed, the formation of the Fund and any investment vehicle in which the Fund expects to have a direct or indirect interest, substantially in proportion to the proposed interest;
- (iii) the acquisition, disposal, insurance, custody (including custodian fees) and any other dealing with Assets;
- (iv) any proposed acquisition, disposal or other dealing with any Investment;
- (v) borrowing arrangements and raising money on behalf of the Fund or guarantees in connection with the Fund, including hedging costs, and costs relating to interest rate swaps or any gearing facility;
- (vi) the investigation, negotiation, acquisition (including any costs associated with the establishment of an entity to hold property), registration, custody, holding, management, supervision, maintenance, insurance, valuation, sale of or other dealing with property in which the Fund has a direct or indirect interest (or attempting or proposing to do so) and the receipt, collection or distribution of income or other Assets;
- (vii) the services of asset managers, property managers, development managers, project managers, leasing agents, sales agents and collection agents appointed in respect of any real property in which the Fund has a direct or indirect interest, which may include an associate of the Trustee;
- (viii) travel and accommodation expenses of Directors and employees of the Trustee in connection with the purposes of the Fund or the acquisition, holding, management, supervision, repair, maintenance, valuation, disposal or proposed disposal or any transaction in connection with any Asset or proposed Asset;
- (ix) the administration or management of the Fund or its Assets and Liabilities;
- (x) Taxes (including any amount charged by a supplier of goods or services or both to the Trustee by way of or as a reimbursement for GST) and financial institution fees;
- (xi) the engagement of agents, valuers, contractors and advisers (including legal advisers, investment advisers and cultural advisers) whether or not the agents, valuers, contractors or advisers are associates of the Trustee;
- (xii) accounting and compliance with taxation laws and procedures (whether internal expenses of the Trustee or paid to third parties) and the preparation and audit of the taxation returns and accounts of the Fund;
- (xiii) termination of the Fund and the retirement or removal of the Trustee and the appointment of a replacement;
- (xiv) any court proceedings, arbitration or other dispute concerning the Fund including proceedings against the Trustee, except to the extent that the Trustee is found by a court to be in breach of trust or to have been grossly negligent, in which case any expenses paid or reimbursed under this paragraph must be repaid;

- (xv) fees payable to any audit committee for the Fund; and
  - (xvi) complying with any Relevant Law.
- (c) In this clause:
- (i) “expenses” includes internal expenses of the Trustee incurred in connection with these matters (including appointing and maintaining staff); and
  - (ii) where an expense involves amounts paid by the Trustee to related bodies corporate for services, the expenses must be incurred on terms that are reasonable and are not more than the costs that would have been incurred on arm’s length terms.

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## **12 Liability and Indemnity of Trustee**

### **12.1 Liability and indemnity**

The Trustee is indemnified against all liabilities in contract, tort or otherwise incurred by it through any act or omission in the exercise or bona fide intended or purported exercise of the powers, duties and discretions under this deed except where due to the Trustee’s own fraud or gross negligence, and has a lien on the Assets for that indemnity.

### **12.2 Liability limited to Assets**

The liability of the Trustee to any person in respect of the Fund including any contracts entered into as trustee of the Fund or in relation to any Assets is limited to the Trustee’s ability to be indemnified from the Assets.

### **12.3 When Trustee is not liable**

The Trustee is not liable for:

- (a) any act or default done or omitted to be done in the exercise or bona fide intended or purported exercise of its powers, duties and discretions;
- (b) any loss or expenses incurred by the Trustee through the insufficiency or deficiency of any security in or on which any of the Assets are invested;
- (c) any loss or damage arising from the bankruptcy, insolvency or tortious acts of any person with whom any moneys or securities are deposited; or
- (d) any other loss, damage or misfortune whatever except where due to the Trustee’s own fraud or wilfully or knowingly being a party to a breach of trust.

### **12.4 Liability for agents**

References in this clause 12 to the Trustee include a Director, delegates and agents appointed by it under this deed.

### **12.5 Indemnity continues**

The indemnity in clause 12.1:

- (a) is in addition to any indemnity allowed by law; and

- (b) continues to apply after the Trustee retires or is removed as trustee of the Fund.

## **12.6 Right of indemnity not affected by unrelated breach**

Where a liability is incurred pursuant to a proper exercise of the Trustee's powers under this deed or at law, the Trustee may exercise any of its rights of indemnification or reimbursement out of the Assets to satisfy that liability to any creditor of the trustee (in its capacity as Trustee or responsible entity of the Fund), despite any loss the Fund may have suffered or any diminution in the value of Assets as a consequence of any unrelated act or omission by the trustee or by any person or entity acting on behalf of the trustee.

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# **13 Valuations**

## **13.1 Valuations of Assets**

- (a) The Trustee may cause valuations of the Assets at any time, but must value the Assets at least annually.
- (b) The Trustee is not to be regarded as having any special expertise in valuation.
- (c) The Trustee may determine the value of Assets, and valuation methods and policies for each category of Assets and change them from time to time. In the absence of any other determination by the Trustee, the value of an Asset will be its Market Value.

## **13.2 Valuations of Investments**

- (a) The Trustee may cause valuations of each Investment at any time by an Independent Valuer, but must value the Investments at least annually.
- (b) The Trustee is not to be regarded as having any special expertise in valuation.

## **13.3 Valuation principles**

The following valuation principles must be applied by the Trustee to any valuation of Investments:

- (a) unlisted Investments will be valued on a fair value basis using an appropriate recognised valuation standard (e.g. discounted cash flow) as approved by the Trustee, subject to the Trustee's discretion to make adjustments in good faith to account for factors such as any significant change in the circumstances of a particular Investment; and
- (b) listed Investments will be valued at the average mid-market closing price calculated over the period of 10 Business Days in the relevant market immediately preceding the valuation, making any adjustments the Trustee considers appropriate having regard to the dividend cycle and other extraordinary and exceptional events.

## **13.4 Reliance on valuations**

Each Independent Valuer will be required to determine any valuation in accordance with generally accepted accounting practices for valuing assets of the relevant kind and will be required to carry appropriate professional indemnity insurance. Calculations made by the Trustee (or for which the Trustee is

ultimately responsible) will be made in reliance on such valuations and the Trustee has no obligation to attempt to verify or affirm any such valuation.

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## **14 Audit and access**

### **14.1 Auditor**

The Trustee must appoint and may at any time replace as Fund auditor either a registered company auditor, or a firm of chartered accountants of which at least one partner is a registered company auditor.

### **14.2 Right to conduct audits**

The Aboriginal Representative Body, or its nominee, may conduct audits relevant to the performance of the Trustee's obligations under this deed, including:

- (a) the Trustee's operational practices and procedures as they relate to this deed, including security procedures, protocols and guidelines;
- (b) the accuracy of the Trustee's records and reports in relation to the Fund;
- (c) the Trustee's compliance with Relevant Law;
- (d) material (including books and records) in the possession of the Trustee relevant to the management of the Fund; and
- (e) any other matters determined by the Aboriginal Representative Body to be relevant to the Fund,

provided that the Aboriginal Representative Body, or its nominee, uses reasonable endeavours to ensure that such audits do not unreasonably delay or disrupt in any material respect the Trustee's performance of its duties as Trustee.

### **14.3 Access by the Aboriginal Representative Body**

- (a) The Aboriginal Representative Body or its nominee may, at reasonable times and on giving reasonable notice to the Trustee:
  - (i) access the premises of the Trustee;
  - (ii) require the provision by the Trustee, its employees or agents of records and information in a data format and storage medium accessible by the Aboriginal Representative Body by use of the Aboriginal Representative Body's existing computer hardware and software;
  - (iii) inspect and copy documentation, books and records, however stored, in the custody or under the control of the Trustee, its employees or agents; and
  - (iv) require assistance in respect of any inquiry into or concerning the Fund or this deed. For these purposes, an inquiry includes any administrative or statutory review, audit or inquiry (whether within or external to the Aboriginal Representative Body) and any request for information directed to the Aboriginal Representative Body.
- (b) The Trustee must provide access to its computer hardware and software and equipment to the extent necessary for the Aboriginal Representative



Body to exercise its rights under this clause, and provide the Aboriginal Representative Body with any reasonable assistance requested by the Aboriginal Representative Body to use that hardware and software.

#### **14.4 No reduction in responsibility**

The requirement for, and participation in, audits does not in any way reduce the Trustee's responsibility to perform its duties as the Trustee of the Fund.

#### **14.5 Survival**

The obligations under this clause 14 survive termination of the Fund and continue for a period of 7 years after the Termination Date.

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## **15 Accounts**

### **15.1 Trustee to keep accounts**

The Trustee must keep or cause to be kept proper accounts in respect of all receipts and payments on account of the Fund and of all dealings connected with the Fund.

### **15.2 Trustee to prepare financial statement**

As soon as practicable, but no more than 4 months after the end of each Accounting Period, the Trustee must prepare or cause to be prepared a financial statement showing the financial position of the Fund at the end of that Accounting Period.

### **15.3 Financial statement to be audited**

- (a) The financial statement must be audited by a person registered, or taken to be registered, as an auditor under Part 9.2 of the Corporations Act.
- (b) The auditor must not be the Trustee, a Director, a member of any advisory committee or closely related to any of them.

### **15.4 Accounts open to inspection**

The accounts must be kept at the place which the Trustee determines and be open to inspection by:

- (a) any Director; and
- (b) the Aboriginal Representative Body or its nominee.

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## **16 Reporting**

### **16.1 Reports**

The Trustee will prepare and distribute, or arrange to be distributed, to the Aboriginal Representative Body the following reports and other information in accordance with the frequency set out below:

- (a) a quarterly report relating to the activities of the Fund within 30 days of the end of each calendar quarter;

- (b) an annual report relating to the activities of the Fund and the impact of those activities in advancing the purposes of the Fund, within 60 days of the end of each Accounting Period. Each annual report must include audited financial statements, administration costs, and all distributions made from the Self-Determination Fund; and
- (c) such other reports and information as may be specified in a Direction to Trustee.

## **16.2 Meetings**

- (a) The Aboriginal Representative Body may require the Trustee on reasonable notice to attend meetings with the Aboriginal Representative Body to discuss the information and/or reports provided under clause 16.1. The Aboriginal Representative Body may choose whether such meetings are to be held in private or public.
- (b) The Aboriginal Representative Body will at minimum require the Trustee to attend one public meeting annually, at a date to be notified by the Aboriginal Representative Body.

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## **17 ACNC Act requirements**

The Trustee must comply with applicable financial and reporting requirements under the ACNC Act and ACNC Governance Standards.

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## **18 Notices**

### **18.1 Form of notice**

- (a) A notice required under this deed to be given to Trustee must be given in writing, or in such other manner as the Trustee determines.
- (b) A notice required under this deed to be given to the Aboriginal Representative Body must be given in writing, or in such other manner as the Aboriginal Representative Body determines.

### **18.2 When notice received**

A notice is effective only at the time of receipt in legible form.

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## **19 Winding up of Fund and Deductible Gift Recipient status**

### **19.1 Winding up**

The Trustee may decide at any time that the Fund should be wound up, provided that the decision to wind up the Fund has the prior approval of the Aboriginal Representative Body.

### **19.2 Remaining property**

Subject to clause 19.3, if on the winding up or dissolution of the Fund there remains after satisfaction of all its debts and liabilities any property, the property must be given or transferred to some other fund, authority or institution that is a charity with similar purposes to the Fund.

### **19.3 Revocation of Deductible Gift Recipient status**

If the Fund is Endorsed as a DGR and such endorsement is subsequently revoked (whether or not the Fund is wound up or dissolved), despite any other provision in this deed, all remaining gifts, deductible contributions and any money received in respect of such gifts and contributions must be transferred to another fund, authority or institution which is a Deductible Gift Recipient with similar purposes to the Fund.

### **19.4 Aboriginal Representative Body to determine other fund**

The other fund, authority or institution referred to in clause 19.2 or clause 19.3 is to be determined by the Aboriginal Representative Body at or before the time of dissolution of the Fund or the Fund ceasing to be Endorsed as a DGR (as applicable), or, failing such a determination, by a judge who has or acquires jurisdiction in the matter.

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## **20 Variation of this deed**

The Trustee may by deed amend this deed provided that:

- (a) no part of the Assets becomes subject to any trusts other than trusts for public charitable purposes; and
- (b) such amendment is consistent with the Treaty Act, the Self-Determination Fund Agreement and has the prior approval of the Aboriginal Representative Body.

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## **21 Counterparts**

This deed may be executed in counterparts. All counterparts when taken together are to be taken to constitute one instrument.

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## **22 Severance**

If all or part of any provision of this deed is void or invalid or would otherwise result in all or part of this deed being void or invalid in a jurisdiction for any reason, then it is severed for that jurisdiction without affecting the validity or operation of any other provision of this deed or of that provision in any other jurisdiction.

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## **23 Other restrictions and obligations excluded**

To the maximum extent permitted by law, all restrictions on the exercise of the Trustee's powers or obligations which might otherwise be implied or imposed by law are excluded, including any restriction or obligation of the Trustee in its capacity as trustee of the Fund arising under any legislation.

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## **24 Governing law**

This deed is governed by the law in force in Victoria.

**EXECUTED** as a deed

# Self-Determination Fund - Trust Deed

## Signing page

DATED: 21. 11. 2022

EXECUTED by SELF-  
DETERMINATION FUND LIMITED in  
accordance with section 127(1) of the  
*Corporations Act 2001* (Cth) by  
authority of its directors:



Signature of director

NADINA BROCKHURST

Name of director (block letters)

SIGNED by and on behalf of JILL  
GALLAGHER:



Gunditjmarra Mob.  
Signature

JILL Gallagher  
Name (block letters)



Signature of director/company  
secretary\*

\*delete whichever is not applicable

ROMAN HENRY

Name of director/company secretary\*  
(block letters)

\*delete whichever is not applicable

In the presence of:



Signature of witness

SHREE LONG

Name of witness