

Trust Deed

Engineers Without Borders Foundation.

Details

Date

22 June 2006

Parties

Name	Engineers Without Borders Australia Limited
Role	Trustee
Notice details	PO Box 79 Elsternwick, Victoria 3185.

Background

- A The Trustee is incorporated under the *Corporations Act 2001* (Cth) and is capable of exercising the functions of trustee pursuant to this Deed.
- B The Trustee wishes to establish a public benevolent institution ("**the Foundation**") to directly relieve the poverty, sickness, suffering, distress, misfortune, disability, destitution or helplessness of rural Aboriginal communities and other disadvantaged groups in Australia ("**a group**") by carrying out engineering projects that will:
- (a) provide or improve services and facilities (such as water and sewerage) and thereby raise the living standards of members belonging to a group;
 - (b) develop the economic infrastructure and resources of a group's local community to enable the members of a group to become self-managing (for example by improving the technical capability of group members through training them how to use computers and providing computers for their use);
 - (c) restore and improve the management of land for the use, benefit or development of the members of a group (for example by conducting a soil erosion study or preparing a road report that specifically addresses the issues faced by members of a group);
 - (d) raising community awareness of the needs of a group's members and conducting research into how those needs may best be met by engineering solutions; and
 - (e) to seek funding and donations from the community and from State and Commonwealth governments, government authorities and other bodies, which are solely to be applied to achieve the predominant object as set out in this clause B of the Background to this Deed ("**Principal Purpose**").
- C The Trustee has prior to the execution of this Deed provided the sum of \$10 as the Trust Fund to be held by the Trustee upon Trust for the Trust Purposes ("**Original Contribution**").
- D The Trustee has agreed to act as Trustee and perform and administer the Trust as signified by the execution of this Deed.

Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this Deed:

Contributor means any person who donates money or other property to the Trust Fund to be applied for the Principal Purpose.

Income of the Trust means the income derived by the Trust after providing for depreciation, amortisation and taxation and duties of any kind imposed by law and after deducting all expenses necessarily incurred in gaining the gross income and for the avoidance of doubt includes income derived by the Gift Fund.

ITAA 97 means the *Income Tax Assessment Act 1997* (Cth).

Trust Accounting Year means as the case may require:

- (i) the period from the date of this Deed to the next 30 June;
- (ii) the period from 1 July in any year to 30 June in the next year; and
- (iii) the period from the 1 July immediately preceding the termination of this Trust until termination.

Trust Deed or Deed means this deed as altered or varied from time to time by any variation or alteration lawfully made under clause 12.

Trust Fund means:

- (a) the Original Contribution;
- (b) all money, investments and assets paid or transferred to and accepted by the Trustee as additions to the Trust Fund;
- (c) all accretions to the Trust Fund;
- (d) all accumulations of income; and
- (e) the money, investments and property from time to time representing the above or into which they are converted,

and includes any part of the Trust Fund.

Trustee means the person or corporation named as such in this Deed or any other Trustee or Trustees for the time being whether original, additional, surviving, alternate or substituted and whether a natural person or persons, companies, corporations or otherwise or one or more classes of them severally.

1.2 Interpretation

In this Deed, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;

- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause or paragraph is to a clause or paragraph of this Deed;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to **dollar** or **\$** is to Australian currency;
- (f) a reference to time is to Victoria, Australia time;
- (g) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other legal entity;
- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the *Corporations Act 2001*(Cth) has the meaning given to it in the *Corporations Act 2001* (Cth) and 'Associate' has the meaning set out in sections 10-17 (inclusive) of the *Corporations Act 2001*(Cth);
- (k) the meaning of general words is not limited by specific examples introduced by **including, for example** or similar expressions;
- (l) words defined in the Background have the same meaning in this Deed; and
- (m) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

1.3 Headings

Headings are used for convenience only and do not affect the interpretation of this Deed.

2. Establishment of Trust

2.1 Establishment

The Trustee has paid the Original Contribution to establish the Trust Fund and create the Trust.

2.2 Name of trust

The Trust constituted by this Deed shall be known as Engineers Without Borders Foundation ('Trust').

2.3 Trustees

The Trustee shall be the first Trustee of the Trust.

2.4 Trust assets

The assets of the Trust shall comprise the Original Contribution and all further contributions, in cash or in property or otherwise, held by the Trustee for the Principal Purpose.

3. Application of the income and capital of the trust fund

- (a) The Trustee shall apply the income and/or capital of the Trust Fund solely for the Principal Purpose.
- (b) Any income not so applied by the Trustee shall be accumulated by the Trustee so far as the law may allow and shall be added to and form part of the capital of the Trust Fund.

4. Establishment and operation of Gift Fund

4.1 Maintaining a Gift Fund

The Trustee must maintain for the Principal Purpose of the Trust a fund (Gift Fund):

- (a) to which gifts of money or property for that purpose are to be made;
- (b) to which any money received by the Trust because of those gifts is to be credited; and
- (c) that does not receive any other money or property.

4.2 Limits on use of Gift Fund

The Trustee must use the following only for the Principal Purpose of the Trust:

- (a) gifts made to the Gift Fund;
- (b) any money received because of those gifts.

4.3 Winding up

- (a) At the first occurrence of:

- (i) the winding up of the Gift Fund; or
- (ii) the Trust ceasing to be endorsed as a deductible gift recipient under Subdivision 30-BA of the ITAA97,

any surplus assets of the Gift Fund remaining after the payment of liabilities attributable to the Trust shall not be paid to or distributed to the Trustee, but will be given to or transferred to another fund, authority or institution as the Trustee shall in its sole discretion select, provided that the fund, authority or institution selected by the Trustee is entitled to receive tax deductible gifts.

- (b) Where gifts to a fund, authority or institution are deductible only if, among other things, the conditions set out in the relevant table item in Subdivision 30-B of the ITAA 97 are satisfied, a transfer under this clause must be made in accordance with those conditions.

4.4 Bank account

The Trustee must maintain a separate bank account for the Gift Fund.

4.5 Gift Fund part of the Trust Fund

To avoid any doubt; it is declared that the Gift Fund forms part of the Trust Fund.

4.6 Receipts

Receipts issued for gifts must state;

- (i) the name of the Trust Fund;
- (ii) the Australian Business Number applicable to the Trust; and
- (iii) the fact the receipt is for a gift.

5. Trustee's powers

5.1 Investment

The Trustees must invest money of the Trust Fund only in a way in which trustees are permitted to invest under the laws of Australia or of any state or territory of Australia.

5.2 Other powers

The Trustee may:

- (a) change an investment for any others or vary the terms and conditions on which an investment is held;
- (b) sell or otherwise dispose of the whole or any part of the investments or property of the Trust Fund;
- (c) take and act on 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 resulting from doing so, but this provision does not stop the Trustee from applying to a court of competent jurisdiction;
- (d) take any action for the adequate protection or insurance of any part of the Trust Fund;
- (e) purchase, draw, make, accept, endorse, discount, execute and issue promissory notes, bills of exchange, and other negotiable or transferable instruments of any kind;
- (f) subject to the trusts of this deed, generally:
 - (i) perform any administrative act; and
 - (ii) pay or deduct all costs, charges, commissions, stamp duties, imposts, outgoings and expenses of or incidental to the Trust Fund or its management (whether or not the Trustee is under any legal obligation to make the payment) or in connection with the preparation, execution and stamping of this deed, as though the Trustee were the absolute owner of the Trust Fund and the income of the Trust Fund;
- (g) attract and encourage donations, gifts (by will or otherwise), endowments, trust distributions and other forms of financial assistance to or for the benefit of the Trust;
- (h) employ and pay or provide any benefit for any employee without being responsible for the default of the employee or for any loss occasioned by the employment;
- (i) engage and pay any agent, contractor, professional person or employee without being responsible for the default of the agent, contractor, professional person or employee or for any loss occasioned by the engagement;
- (j) accept as part of the Trust Fund any gifts (by will or otherwise), donations, settlements or other dispositions in money, moneys worth or property to or in favour of the Trust Fund

and either retain them in their original form without selling or converting them into money, or invest, apply or deal with them in any way that the Trustees may invest, apply or deal with the Trust Fund under this deed;

- (k) decline or otherwise refuse to accept as part of the Trust Fund any gift (by will or otherwise), donation, settlement or other disposition in money, moneys worth or property;
- (l) manage any real property it holds with all the powers of an absolute owner;
- (m) do all other things incidental to the exercise of the Trustee's powers under this deed.

5.3 Powers are supplementary

The powers and discretions in clause 5.2 are to be treated as supplementary or additional to the powers vested in trustees by law.

6. Additional powers

The Trustee shall have the following additional powers:

(a) **Power to collect donations**

To arrange for the collection of donations from Contributors;

(b) **Power to enter into arrangements**

To enter into any arrangements with any government or authority that are conducive to any of the objects of the Trust and to obtain from any such government or authority any rights, privileges and concessions (including any patents, trade marks or similar rights) the Trustee thinks fit to obtain; and to carry out, exercise and comply with any such arrangements, rights, privileges and concessions;

(c) **Power of conversion of assets**

As the Trustees think fit, to direct the sale calling in or conversion into money of any of the Trust Fund and power to hold or make available for the use of others (whether with or without consideration) any of the Trust Fund;

(d) **Power to appoint an agent**

Instead of acting itself, to employ and pay a solicitor, accountant, broker or other agent ('Agent') to transact any business or to do any act required or permitted to be done in connection with the collection, holding, administration and management of the Trust Fund and its income, including the collection, receipt and payment of money or acting as custodian or nominee to hold any assets of the Trust Fund. Any such Agent shall be entitled to be paid and allowed all usual reasonable costs, charges and expenses incurred. Nothing in this Deed shall prevent an Agent who is not a Trustee being paid all usual reasonable professional and other charges for any business transacted, time expended or acts done by him or his firm or his employees in connection with the Trust Fund or its income or anything arising under this Deed, regardless of the fact that the Agent may be an associate of the Trustees.

(e) **Power to make rules**

Subject to this Deed, to make rules dealing with any matter relating to the Trust and in particular rules regulating:

- (i) meetings of the Trustee and the procedure to be followed at such meetings;
 - (ii) who shall benefit from the Trust and the mode, terms and conditions on which benefits are to be provided.
- (f) **Power to vary rules**

To provide for the making of additions, alterations and rescissions of any rule from time to time in force provided that the Australian Taxation Office is advised of those additions, alterations and rescissions.
- (g) **General power**

To do all other lawful acts and things as are incidental or conducive to the attainment of the general purposes of the Trust.
- (h) **Disposition of Property**

To sell, exchange or otherwise dispose of any property and to grant options or rights to purchase, exchange or otherwise acquire any property upon such terms and conditions as the Trustee may in its absolute discretion think fit; and to vary any contract for sale, buy at any auction, rescind any contract for sale and re-sell any property upon such terms and conditions as the Trustee may in its absolute discretion think fit.
- (i) **Variation of Investments**

From time to time, to vary any of the investments of the Trust Fund for or into any other authorised modes of investment. This power shall enable the Trustee to participate in the amalgamation or reconstruction of any company in which any shares stocks debentures notes or other securities are held as investments of the Trust Fund.
- (j) **Bank Accounts**

From time to time, to open and operate in Australia and elsewhere bank and cheque accounts and other negotiable or transferable instruments. The Trustee shall operate bank accounts and make all such arrangements for dealing with receipts, discharges and payments as it may determine as appropriate from time to time and may give, vary and revoke instructions as to the custody and disposal of any security.
- (k) **Power to revalue investments**

To revalue investments comprising the Trust Fund according to their current market value, and any capital surplus or loss resulting from such revaluation shall be credited or debited, as the case may be, to a capital reserve account.

7. Administration of Trust

- (a) The Trust shall be administered by the Trustee.
- (b) The Trustee must solicit and collect donations from Contributors.

8. Accounts and audit

8.1 Accounts

The Trustee shall keep or cause to be kept proper books of account of all sums of money received and expended by or on behalf of the Trust Fund and of all sales and purchases of investments and of the assets and liabilities of the Trust Fund as will sufficiently explain the transactions and financial position of the Trust Fund and enable true and fair profit and loss accounts and balance sheets and any other accounts to be prepared in respect of the Trust Fund. The Trustee shall cause those records to be kept in such manner as to enable them to be conveniently and properly audited;

8.2 Profit and loss

The Trustee shall as soon as practicable after 30 June (or such other accounting date as may be decided upon by the Trustee) in each year prepare or cause to be prepared a profit and loss account showing the calculation of the income of the Trust Fund for the period to 30 June in that year or other accounting date (as the case may be) and a balance sheet as at the date to which the profit and loss account is made up (provided that such other date is not more than 18 months after the date up to which the last accounts of the Trust have been prepared). The first accounts of the Trust shall be made up for the year ending 30 June 2006.

8.3 Audit

- (a) The Trustee shall have the accounts of the Trust audited by an auditor appointed by the Trustee ('Auditor'). No person shall be eligible for appointment as an Auditor unless that person is a registered company auditor under part 9.2 of the Corporations Act 2001 carrying on practice in Australia. The Auditor shall report to the Trustee as to:
 - (i) whether the accounts have been properly drawn up so as to give a true and fair view of the profit and loss of the Trust for the financial year and the state of affairs of the Trust as at the end of the year;
 - (ii) whether proper provision has been made in the accounts of the Trust for bad and doubtful debts;
 - (iii) whether the accounting records have in his opinion been properly kept;
 - (iv) whether he has obtained all necessary information and explanations he required; and
 - (v) whether there are any defects or irregularities in the accounts.
- (b) Where the Auditor comments adversely upon any matter he shall report on his reasons for such comments.
- (c) The Auditor shall not be an associate of the Trustee.
- (d) The Auditor shall continue in office until he resigns or is removed by the Trustee. The Trustee shall appoint a qualified Auditor to act in place of any Auditor so removed and any new Auditor must confirm his willingness to act as Auditor prior to his appointment.

9. Appointment and Retirement of Trustees

9.1 Resignation

The Trustee may at any time resign as Trustee but must first nominate another Trustee as replacement Trustee. Resignation of the Trustee must be evidenced by a Deed of Retirement and Appointment of Trustee between the outgoing Trustee and the incoming Trustee.

9.2 Vacation of office

The office of a Trustee is immediately vacated if the Trustee enters into bankruptcy administration, receivership or any other form of insolvency administration.

9.3 Change in Trustees

In relation to any change in Trustee, acts and deeds done or signed for the proper vesting of the Trust Fund in a replacement Trustee are to be done and signed by the continuing or retiring Trustee at the expense of the Trust Fund except that an outgoing Trustee who is or may be liable as a Trustee for taxes will not be bound to transfer the Trust Fund unless the ongoing or new Trustee indemnifies from the Trust Fund the outgoing Trustee against any present or future liability incurred by the outgoing Trustee as a direct or indirect consequence of its acting as Trustee of the Trust.

10. Liability of the Trustees

10.1 Trustees not liable for loss

The Trustee acting in good faith as Trustee under this Deed is not liable for any loss unless the loss is attributable to:

- (i) its dishonesty; or
- (ii) the wilful commission or omission by it or its employees or agents of any act in breach of trust,

and, in particular, the Trustee shall not be liable for any loss incurred acting honestly in accordance with any written advice of any Agent or other professional adviser. In applying the income of the Trust Fund as provided by clause 3, the Trustee may make payment without being responsible to see to the actual application of the money so paid.

10.2 No obligation to investigate

Nothing in this Deed shall impose any obligation on the Trustee to investigate the accounts or management or control of any company or person in which any assets held under this Deed may be invested. The Trustee is also not under any obligation to take any steps or bring any action or in any other manner seek to vary alter amend or add to the constitution of any such company or person or to interfere with the management government or control of any company or person. No neglect or omission in this respect shall be chargeable as a breach of trust.

11. Jurisdiction clause

- (a) This Deed and the administration of the Trust shall be governed by the laws of the State of Victoria.
- (b) The Trustee is only allowed to invest Trust money in ways that an Australian law allows Trustees to invest trust money.

12. Power to vary Trust Deed

Subject to clause 14, the Trustee may at any time by deed or by resolution vary all or any of the provisions in this Deed provided that the Australian Taxation Office is advised of those additions, alterations and rescissions.

13. Termination of the Trust

- (a) The Trustee may terminate the Trust by deed or oral declaration recorded in minutes.
- (b) If on the winding up of the Trust any property remains after the satisfaction of all its debts and liabilities, the Trustee must pay or apply the property to another fund, authority or institution selected by the Trustee, provided that the fund, authority or institution is endorsed as a Public Benevolent Institution in accordance with Item 4.1.1 of the table in subsection 30-45(1) of the ITAA 1997.

14. Exclusion from benefits

- (a) Despite any other provision of this Deed, the Trustee is absolutely prohibited from directly or indirectly benefiting under this Deed.
- (b) Despite any other provision of this Deed, this clause shall not be capable of amendment pursuant to clause 12 or otherwise.

15. GST

15.1 Interpretation

In this clause, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.

15.2 GST gross up

If a party makes a supply under or in connection with this agreement in respect of which GST is payable, the consideration for the supply but for the application of this subclause (**GST exclusive consideration**) is increased by an amount equal to the GST exclusive consideration multiplied by the rate of GST prevailing at the time the supply is made.

15.3 Reimbursements

If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with subclause 15.2.

15.4 Tax invoice

A party need not make a payment for a taxable supply made under or in connection with this agreement until it receives a tax invoice for the supply to which the payment relates.

16. Notices and other communications

16.1 Service of notices

A notice or communication under this Deed (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified in the Details, as varied by any Notice given by the recipient to the sender.

16.2 Effective on receipt

A Notice given in accordance with subclause 16.1 takes effect:

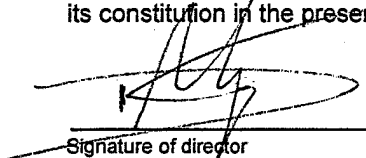
- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, by 5.00pm on the next Business Day after transmission on a Business Day, the recipient informs the sender that it has not received the entire Notice,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

Signing page

EXECUTED as a deed

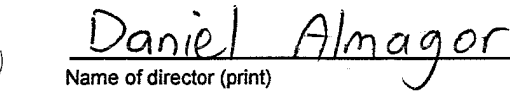
The common seal of
Engineers Without Borders Limited is affixed to this document in accordance with
its constitution in the presence of



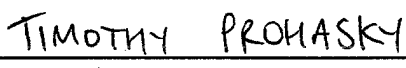
Signature of director



Signature of director/company secretary
(Please delete as applicable)



Name of director (print)



Name of director/company secretary (print)