

Papua New Guinea Conservation Trust Fund

Trust Deed

**The Nature Conservancy
Papua New Guinea Conservation Trust Fund Limited**

Prepared by _____ **1999**
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PAPUA NEW GUINEA CONSERVATION TRUST FUND TRUST DEED

DATE _____ 1999

PARTIES

- (1) **THE NATURE CONSERVANCY**, a non-profit corporation incorporated in the United States of America and working in Papua New Guinea and elsewhere to support the conservation of biological diversity and the sustainable use of natural resource (the "**Settlor**")
- (2) **PAPUA NEW GUINEA CONSERVATION TRUST FUND LIMITED**, a company incorporated under the law of Papua New Guinea, of Mogoru Moto Building, Champion Parade, Port Moresby (the "**Trustee Company**").

RECITALS

- A. The Settlor wants to establish a charitable trust to provide financial support for projects and activities within Papua New Guinea that promote the conservation of biodiversity, or the ecologically sustainable use of natural resources, within Papua New Guinea, or within a particular area or region of Papua New Guinea, for the benefit of the public in Papua New Guinea, or the residents of that area ("**Conservation-oriented projects and activities**").
- B. The Settlor has settled K1,000 on the Trustee Company (of which the Trustee Company acknowledges receipt) to hold on trust on the terms of this deed.
- C. The Trustee Company agrees to act as the first trustee for the Fund and to hold the Fund on the terms of this deed.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Words and expressions

In this deed, unless the context suggests another meaning:

"**Act**" means the *Companies Act 1997* (PNG) as it applies to the Company for the time being;

“Annual Report” means a report mentioned in clause 17.1 Publication of Annual Reports etc.

“Conservation-oriented projects and activities” see Recital A.

Note 1 The following are examples of conservation-oriented projects:

- ones that involve education in, or the dissemination of information about, the conservation of biodiversity, awareness of the importance of the conservation of biodiversity or techniques for conserving biodiversity;
- ones designed to help protect areas or regions of critical conservation value from inappropriate development or exploitation;
- ones establishing or encouraging alternatives to development that is not ecologically sustainable;
- projects that help resource owners to integrate conservation activities into development projects;
- ones to educate and inform resource owners, government agencies and other in the need for conservation or in techniques of conservation of biodiversity;
- ones that provide technical assistance that supports the conservation of biodiversity.

“Director” means a person who has been appointed or holds office as a director of the body corporate that is the Trustee, and whose appointment has not terminated.

“Donation” means money or property donated to the Fund and, if the terms of the Donation, as accepted by the Trustee Company, so provide, includes money and property derived from or attributable to the investment or application of that money or property.

“Donation Arrangement”: see clause 5.1 Power to accept Donations.

“Financial Report” means a report prepared as required by clause 16.2 Financial reports.

“Financial Year” means a period of 12 months ending on 30 June.

“Fund” means the Papua New Guinea Conservation Trust Fund established as mentioned in clause 2 Establishment of the Fund.

“Last Day”: see clause 26 Terminating the Fund.

“Manual” means the Fund Operations Manual described in clause 12.1 Fund Operations Manual

“Settlor” means:

- (a) in relation to a power or function of The Nature Conservancy under this deed that The Nature Conservancy has appointed another person or body to exercise or perform – the other person or body;
- (b) in relation to other powers and functions of The Nature Conservancy under this deed – The Nature Conservancy.

Note 1 See clause 30 Appointments by the Settlor.

“Settlor-Appointer” means The Nature Conservancy or another person or body to whom The Nature Conservancy has transferred in writing its powers and functions as Settlor under this Trust Deed.

Note 1 See clause 30 Appointments by the Settlor.

“**Stakeholder**” means a person or body who has, or may have, an interest or stake in the outcome of the Fund’s operations. It includes without limitation each of the following:

- (a) the Settlor and each appointee of the Settlor;
- (b) persons who make Donations;
- (c) local government bodies ;
- (d) the Papua New Guinea Minister or Ministers with responsibility for conservation, the environment and resource development;
- (e) persons or bodies operating projects that have been or are being supported by the Fund, or that are applying for support from the Fund.

“**Tax**” means a tax or duty, however imposed and by whatever name called, and includes a surcharge and a tax or duty imposed as additional tax or duty or penalty tax or duty.

“**Tax law**” means a law of Papua New Guinea, or of another jurisdiction, that imposes or makes provision for the imposition of a Tax.

1.2 References to trustee

A reference in this deed to the *trustee* of the Fund includes a reference to a legal person or entity acting as trustee of the Fund.

Note 1 The Directors and Offices of the company that is the Trustee Company are not themselves trustees, but have obligations under the general law, and under their contracts of employment with the Trustee Company, to see to it that the provisions of this deed, including in particular the provisions about conflicts of interest (clause 23 Corruption and Conflicts of Interest) are all observed.

1.3 General interpretation provisions

In this deed, unless the context suggests another meaning:

- (a) [*legislation*] a reference at a particular time to a particular statute or subordinate legislation, or to particular provisions of a statute or subordinate legislation (a written law):
 - (i) is to the written law as in force at that time; and
 - (ii) if the written law has been replaced by another written law – is to the written law that replaces it; and
 - (iii) is also a reference to subordinate legislation (such as regulations and by-laws), and the provisions of subordinate legislation, made or issued under or for the purposes of the written law; and

- (b) [*other documents*] a reference at a particular time to a particular deed, document or arrangement, or to any of its provisions:
 - (i) is a reference to it as in operation at that time; and
 - (ii) if the contract, document or arrangement has been re-made or novated – is also a reference to it as re-made or novated; and
- (c) [*number*] the singular includes the plural and vice versa; and
- (d) [*individuals*] a reference to an individual is also a reference to any kind of legally recognised body or entity whether incorporated or not, and vice versa; and
- (e) [*gender*] a reference to one gender is also a reference to the other genders; and
- (f) [*cross-references*] a reference to a particular clause or other provision, or to an exhibit, is to that clause or provision of, or that exhibit to, this constitution; and
- (g) [*parts of speech*] other parts of speech or grammatical forms of an expression defined in or for the purposes of this constitution have corresponding meanings; and
- (h) [*Kina*] a reference to currency is to the currency of Papua New Guinea; and
- (i) [*bankruptcy*] a reference to bankruptcy or winding up is also to:
 - (i) bankruptcy, winding up, liquidation or dissolution for the purposes of the Act; and
 - (ii) anything else that has a substantially similar effect to any of these under the law of a relevant jurisdiction; and
 - (iii) the procedures, circumstances and events that constitute or relate to bankruptcy or winding up as so defined.

1.4 Recitals etc

The recitals and the appendixes to this deed are all provisions of this deed.

1.5 Headings

Headings (including those in brackets) and notes in this constitution are not part of this deed. They are for convenience only and do not affect interpretation.

2. ESTABLISHMENT OF THE FUND

2.1 Establishing the Fund

The Settlor declares that, on the execution of this deed, the Trustee Company holds the Fund on trust on the terms of this deed.

2.2 The trustee

The Trustee Company agrees to act as the first trustee of the Fund and to hold the Fund on the terms of this deed.

3. PURPOSE OF THE FUND

3.1 Primary purpose of Fund

The Fund is organised and operated exclusively for charitable, scientific, and educational purposes.

Specifically, the purpose of the Fund is to provide financial support for Conservation-oriented projects and activities.

3.2 Restrictions on the use of the Fund — distributions

No part of the net earnings of the Fund shall inure to the benefit of, or be distributable to, a Director or officer of the Trustee Company or another individual, but this does not prevent the Trustee Company paying reasonable expenses and reasonable compensation for services rendered and making payments and distributions in furtherance the purposes set out in clause 3.1 Primary purpose of Fund.

3.3 Restrictions on the use of the Fund — lobbying

No substantial part of the activities of the Fund shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Fund must not participate in, or intervene in (including the publishing or distribution of statements concerning) any political campaign on behalf of (or in opposition to) any candidate for public office.

4. WHAT THE FUND CONSISTS OF

The Fund consists of:

- (a) the settled sum referred to in recital B; and
- (b) Donations given to the Trustee Company to be paid into the Fund, or applied as part of the Fund; and

- (c) income and other property derived from or attributable to the investment or application of property mentioned in paragraph (a) or (b), or to another application of this paragraph (c).

5. DONATIONS TO THE FUND

5.1 Power to accept Donations

The Trustee Company may accept a Donation of money or other property to the Fund. It may enter into binding arrangements with donors for the management or application of those Donations (called "*Donation Arrangements*"). In doing so it must act consistently with its obligations.

Note 1 See, for example, the purposes of the Fund (clause 3.1 Primary purpose of Fund).

5.2 Seeking Donations

The Trustee Company must take reasonable steps to seek out and encourage appropriate Donations.

6. TAX STATUS OF FUND

6.1 Trustee Company's duty

The Trustee Company must do whatever is necessary so that the Fund is recognised as, and attracts the most favourable treatment available for, a charitable trust fund under Papua New Guinea and other relevant tax laws.

6.2 Compliance with Tax Laws

The other provisions of this deed do not require the Trustee Company to do something that is a contravention of a Tax Law, or prevent the Trustee Company from doing anything that has to be done to comply with a Tax Law.

7. INVESTMENTS

7.1 Authorised investments

Subject to the rest of this clause 7 Investments, and to the terms of a particular Donation, the Trustee Company may invest or apply the Fund in any way, including in real property, personal property, securities of any kind (whether fully or partly paid), cash and deposits.

Note 1 The Trustee Company will also have to comply with the terms of its constitution (for example, about how

Board decisions are made) in exercising its powers as trustee of the Fund.

7.2 Investment policy and investment guidelines

The Trustee Company must adopt an investment policy and investment guidelines for the investment of the Fund.

The policy must set out the Trustee Company's policy on the investment of the Fund, including:

- (a) limits, if any, on the kinds of assets the Fund may be invested;
and
- (b) targets and benchmarks for investment performance.

The guidelines are to set out the way the Trustee Company will give effect to the investment policy for particular parts of the Fund, for example, to give effect to Donation Arrangements.

7.3 Review

The Trustee Company must review investment policy and investment guidelines at least once every 12 months.

7.4 Investments to be consistent with policy and guidelines

Investments are to be consistent with the investment policy and the relevant investment guidelines as in force when the investment was made, unless the terms of a Donation Arrangement require otherwise.

7.5 Expert advice

The Trustee Company must engage 1 or more asset managers with expertise in the investment of funds in the domestic and international markets.

It may engage an expert investment adviser.

Selection must be through an open, transparent and competitive tender.

7.6 Roles of asset manager and investment adviser

The asset managers are to invest, on behalf of the Trustee Company, the money of the Fund available for investment.

The investment advisers are to:

- (a) advise the Trustee Company on the investment of the Fund;
and
- (b) help prepare and review the investment guidelines mentioned in clause 7.2 Investment policy and investment guidelines.

Note 1 For engaging asset managers, investment advisers etc see clauses 7.5 Expert advice, and 8.1(b) Managing the Fund.

8. MANAGEMENT

8.1 Managing the Fund

The Trustee Company has all the powers in respect of the Fund that is possible under the law to confer on a trustee.

The Trustee Company may deal with the Fund as though it were the absolute owner of the assets comprising the Fund.

In particular, it may do any of the following:

- (a) engage an Executive Officer, and other staff, on terms and conditions it determines;
- (b) engage anyone it determines to have relevant competence, on terms it determines, to provide a service of any kind in respect of the Fund;
- (c) delegate its powers and functions (except this power of delegation);
- (d) start and continue legal proceedings in relation to the Fund;
- (e) deal with and compromise or settle claims and demands in respect of the Fund, including claims in respect of tax;
- (f) act in any matter on the opinion or advice of, or on information from, experts (such as valuers and lawyers);
- (g) enter into contracts in relation to the Fund that include provisions protecting itself, to the extent permitted by law;
- (h) if it must or may buy, sell or deal with property of the Fund – delay doing so for as long as it thinks proper, and do so in a way it thinks proper (such as fixing reserve prices for property sold at auction);
- (i) rely on the apparent authenticity of a signature or an official mark on an instrument (including a cheque and a transfer) given to it, unless it has reason to suspect that it is not genuine;
- (j) borrow, and obtain financial accommodation, for the purposes of the Fund.

Subject to clause 23 Corruption and Conflicts of Interest, a fee payable for a service provided as mentioned in clause 8.1 (a) or (b) may be recovered or paid from the Fund, and the person paid need not, despite any connection with the Fund or the Trustee Company, account to the Fund for it.

8.2 Delegations

The Trustee Company may delegate any of its powers or functions to a Director or officer of the Trustee Company, or to another person,

specified in the instrument of delegation. A delegation may be subject to conditions specified in the instrument of delegation.

A delegation must be in writing. Anything done by a delegate under a delegation is to be taken to have been done by the Trustee Company.

9. TRUSTEE COMPANY'S DISCRETIONS

Subject to the other provisions of this deed, the Trustee Company has an absolute discretion in acting in connection with the Fund and may exercise or not exercise any of the trusts, powers or discretions at any time.

10. HOW THE FUND IS TO BE USED

10.1 Use of Fund

The Fund is to be spent:

- (a) in supporting Conservation-oriented projects and activities, to the extent that to do so is a purpose that, for the purposes of the law, is a charitable purpose; and
- (b) in meeting the liabilities and expenses of the Fund.

Note 1 See also clause 11 Programs and Budgeting, about forward programs, and clause 12 Fund Operations Manual, about the *Fund Operations Manual*.

10.2 How support given

Subject to the rest of this deed and the terms of a Donation Arrangement relevant to the grant of support, support can be given in any 1 or more of the following ways:

- (a) by direct grant, either with or without conditions;
- (b) by direct or indirect investment;
- (c) by making loans, with or without security;
- (d) by providing or arranging for the provision of other resources;
- (e) by providing guarantees or other financial support.

11. PROGRAMS AND BUDGETING

11.1 Programs and budgets

The Trustee Company must adopt a program and program budget (including Fund operations) for each Financial Year.

A program is to set out:

- (a) the kinds of projects and activities to be supported during the Financial Year; and
- (b) the Trustee Company's estimates of the income and expenditure of the Fund for the Financial Year; and
- (c) an allocation of the proposed expenditure for each kind of project or activity proposed to be supported; and
- (d) any other matter the Trustee Company thinks appropriate to include in the program or program budget.

The Trustee Company may vary a program or program budget during a Financial Year.

11.2 Programs and budgets to be adhered to

The Trustee Company must strive to adhere to the program and the program budgets adopted for a Financial Year.

12. FUND OPERATIONS MANUAL

12.1 Fund Operations Manual

The Trustee Company must, as soon as practicable, adopt and publish a Fund Operations Manual.

12.2 Contents of Manual

The Manual must include the following:

- (a) the Trustee Company's procedures for handling Donations;
- (b) the general approach the Trustee Company adopts in assessing Donation proposals, including its approach to expenditure, investment and reporting conditions proposed to be attached to Donations;
- (c) the Trustee Company's general fund raising strategy, to seek Donations to the Fund;
- (d) the criteria the Trustee Company will use in selecting fund managers, investment advisers and other expert advisers;
- (e) the Trustee Company's policy concerning the proportion of fund income which will be available for expenditure (*the spending rule*);
- (f) the Trustee Company's general investment strategy for the Fund (which must be consistent with its obligations as trustee), including matters such as:
 - (i) the extent to which the fund is to be held in diversified investments; and

- (ii) the kinds of investments the Trustee Company will use;
- (g) the Trustee Company's policy in relation to contracts and other arrangements with providers of goods and services including asset managers;
- (h) the procedures the Trustee Company will follow for the financial management of the Fund;
- (i) the procedures the Trustee Company will follow for the preparation and publication of accounts of the Fund;
- (j) the procedures for audit of the accounts of the Fund and preparation of annual financial statements;
- (k) the procedures for review of the operations of the Fund and the procedures for selection of an external independent reviewer under clause 13 Monitoring and Evaluating Fund Operations;
- (l) how audited annual financial statements and reviews of the Fund will be made available publicly;
- (m) the Trustee Company's policies with respect to eligibility of activities and eligibility of applicants for support;
- (n) the way in which the Trustee Company will seek proposals for projects and activities to be supported, and other ways in which possible projects and activities are to be identified;
- (o) the ways in which projects and activities are assessed for support from the Fund;
- (p) the Trustee Company's policy with respect to the types of support that will be made available;
- (q) the way in which, and the bases on which, the Trustee Company makes decisions about whether the Fund, will support a particular project or activities, the level of support to be given and the conditions to be imposed on that support;
- (r) how the Trustee Company will help applicants prepare proposals for support;
- (s) the Trustee Company's procedures for reviewing the Fund and monitoring and evaluating projects and activities being supported by the Fund;
- (t) the procedures for payment of grants and other forms of support and for reporting by recipients of support;
- (u) the organisational structure of the Trustee Company (including the establishment, functions and operations of advisory bodies and committees established by the Trustee Company).

12.3 Dissemination of Manual

The Trustee Company must publish the Manual, and may do so in any way.

The Trustee Company must give a copy of the Manual to any Stakeholder who asks, but may impose a reasonable charge for doing so.

12.4 Trustee Company to follow procedures set out in Manual

The Trustee Company must comply with the procedures and policies set out in the Manual.

Note 1 This means that delegates of the Trustee Company, when exercising their delegated powers, must also comply with the Manual.

12.5 Amendment of Manual

The Trustee Company may amend the Manual at any time.

13. MONITORING AND EVALUATING FUND OPERATIONS

13.1 Annual review

The Trustee Company must ensure that the operations of the Fund for each Financial Year are reviewed by an appropriate qualified person.

13.2 Triennial review

The review conducted every third year must be conducted by a person who is independent of the Trustee Company, and selected by the Trustee Company through an open, transparent and competitive tender.

For the purposes of this clause 13.2 Triennial review, a person is not to be considered not independent merely because:

- (a) it is or has been engaged by the Trustee Company to audit the Trustee Company as required by law; or
- (b) it is or has been engaged by the Trustee Company or a person involved in a project supported by the Fund to audit the project or part of the project.

The Trustee Company must cooperate with the reviewer in the conduct of the review.

13.3 Purpose of reviews

The purpose of a review under this clause 13 Monitoring and Evaluating Fund Operations, is to ensure that:

- (a) the Fund's operations continue to conform to the purposes of the Fund and to this deed; and
- (b) the Fund is being managed efficiently and effectively; and
- (c) the governance of the Fund and of the Trustee Company is appropriate.

Note 1 For the Fund's purposes see clause 3.1 Primary purpose of Fund.

13.4 Reports

The Trustee Company must ensure that a reviewer reports the results of the review to the Trustee Company.

The Trustee Company must make reviewers' reports publicly available but:

- (a) it may withhold a report, or part of a report, if to disclose it:
 - (i) would breach an obligation of confidentiality on the Trustee Company; or
 - (ii) would prejudice an investigation into a suspected criminal offence, or the enforcement of a right of the Trustee Company; or
 - (iii) would unreasonably disclose personal information about an individual; and
- (b) may impose a reasonable charge for providing copies of reports.

Note 1 See also clause 15.3 (d) Annual Stakeholder General Assembly, and clause 17 Reports etc. For Donors and Others, for giving reports to Stakeholders.

13.5 Donor compliance checks

The Trustee Company must take reasonable steps to cooperate with a donor that wants to confirm that the Trustee Company has complied with the terms of the Donation Arrangement.

14. MONITORING AND EVALUATING SUPPORTED PROJECTS AND ACTIVITIES

Fund support for a project or activity must be subject to conditions imposed by the Trustee Company that, in its opinion, will ensure that the project or activity is monitored and reviewed at regular intervals appropriate to the kind of project or activity, and the kind of support, to ensure the project or activity is consistent with, and to the extent practicable gives effect to, the purposes of the Fund.

Note 1 For the Fund's purposes see clause 3.1 Primary purpose of Fund.

15. STAKEHOLDER INVOLVEMENT

15.1 Openness in operations

The Trustee Company must, so far as is practicable and consistent with its obligations as trustee and its other obligations (for example, obligations of confidentiality under arrangements with donors), operate in an open, transparent and accessible way.

15.2 Technical and other advice

The Trustee Company may establish committees and consultative groups.

The functions and procedures of these committees and groups are to be as determined by the Trustee Company.

15.3 Annual Stakeholder General Assembly

The Trustee must, at least once every 12 months, convene and hold a Stakeholder General Assembly in Papua New Guinea.

The following provisions apply in relation to Stakeholder General Assemblies.

- (a) The primary function of a Stakeholder General Assembly is to provide a forum for Stakeholders to discuss matters relating to the Fund and its operations and to advise the Trustee Company about those matters. Without limiting this, a Stakeholder General Assembly is to provide a forum:
 - (i) for Stakeholders to inquire about programs, procedures and strategies of the Trustee Company, and for the Trustee Company to obtain Stakeholders' views on those matters; and
 - (ii) for Stakeholders to be informed about the Fund's operation and performance and the operation and performance of the projects and activities supported by the Fund, and for the Trustee Company to obtain Stakeholders' views on those matters; and
 - (iii) for Stakeholders to indicate to the Trustee Company the kind of information they want about the Fund and the projects and activities it supports; and
 - (iv) for Stakeholders to suggest persons who should be considered for appointment as Directors; and
 - (v) for Stakeholders to review and discuss the Fund's Annual Report and financial reports and actions taken by the Trustee Company.

- (b) The Trustee Company may hold Stakeholder General Assemblies in different parts of Papua New Guinea.
 - (c) The Trustee Company must convene a Stakeholder General Assembly by publishing, in a newspaper circulating generally in Papua New Guinea (and in any other way it determines), at least 1 months notice of the Assembly.
 - (d) At least 1 month before an Assembly, the Trustee Company must publish documents about the Fund's operations, including:
 - (i) the most recent Annual Report; and
 - (ii) the most recent audited financial statements of the Fund and of the Trustee Company; and
 - (iii) an agenda, prepared by the Trustee Company.
- Note 1 See clause 17 Reports etc. For Donors and Others, for Annual Reports.
- (e) The chair of a Stakeholder General Assembly is to be a person appointed for that purpose by the Trustee Company.
 - (f) The Trustee Company may make rules about the procedure to be followed at a Stakeholder General Assembly. Subject to those rules, the procedure at an Assembly is to be as the chair directs.
 - (g) A resolution of a Stakeholder General Assembly does not bind the Trustee Company. However, the Trustee Company must have regard to the resolution when considering a matter to which the resolution relates.

16. ACCOUNTS AND AUDITING

16.1 Financial records

The Trustee Company must keep written financial records that:

- (a) correctly record and explain the transactions on the Fund and the financial position and performance of the Fund; and
- (b) enable true and fair financial statements for the Fund to be prepared and audited.

The records are to be kept as the Trustee Company determines.

16.2 Financial reports

The Trustee Company must cause a Financial Report on the Fund to be prepared for each Financial Year.

The Report is to include:

- (a) a profit and loss statement; and

- (b) a balance sheet; and
- (c) a statement of cashflows;

with such notes as the Trustee Company thinks appropriate to explain them.

The Financial Report must give a true and fair view of the financial position of the Fund.

Note 1 The Report in addition to the financial statements the Trustee Company must prepare under the Act.

16.3 Audit of financial reports and statements

The Trustee Company must have the Financial Report for a Financial Year audited by an auditor who is:

- (a) qualified to audit the accounts of a public company; and
- (b) independent of the Trustee Company.

Selection of the auditor must be through an open, transparent and competitive tender.

16.4 Independence of auditors

For the purposes of this clause 16 Accounts and Auditing, an auditor is not to be considered not independent merely because:

- (a) it is or has been engaged by the Trustee Company to audit the Trustee Company as required by law; or
- (b) it is or has been engaged by the Trustee Company or a person involved in a project supported by the Fund to audit the project or part of the project.

16.5 Audit report

The auditor must give the Trustee Company a written opinion about the following:

- (a) whether the Trustee Company has given the auditor all information and assistance needed to conduct the audit;
- (b) whether the Trustee Company has kept the financial records required by this deed to be kept;
- (c) whether the Financial Report give a true and fair view of the financial position of the Fund.

17. REPORTS ETC FOR DONORS AND OTHERS

17.1 Publication of Annual Reports etc

As soon as practicable after the end of a Financial Year, but no later than 6 months after the end of the Financial Year, the Trustee

Company must make available to Stakeholders a written report on the operations of the Fund during the Financial Year.

The report must include:

- (a) the Financial Report for the Fund for the Financial Year, and the auditor's opinion on it; and
- (b) the report of the review of the Fund's operations for the Financial Year; and
- (c) a report on the results of monitoring and review of Fund supported projects and activities during the Financial Year.

Note 1 See clauses 13 Monitoring and Evaluating Fund Operations, and clause 16 Accounts and Auditing.

17.2 Publications generally

The Trustee Company must make its annual financial statements and Annual Reports, and Financial Reports for the Fund, and the review reports under clause 13 Monitoring and Evaluating Fund Operations, available to the public generally, for example, through public libraries.

17.3 Other publications

This clause 17 Reports etc. For Donors and Others, does not override clause 13.4 Reports, nor limit how the Trustee Company disseminates information about the Fund.

18. QUALIFICATIONS FOR TRUSTEE COMPANY

If the qualifications and requirements set out in Appendix A are not complied with for a continuous period of 3 months, the Trustee Company must notify the Settlor without delay after the 3 months end.

Note 1 The Settlor can remove the Trustee Company from office: see clause 24.2 Removal; or to take proceedings to enforce the trust: see clause 28 Right of the Settlor.

19. FIDUCIARY OBLIGATIONS AND RESPONSIBILITIES OF TRUSTEE COMPANY AND DIRECTORS

This deed, in particular clause 20 Trustee Company's Liabilities and Indemnities, and clause 21 Liability and Indemnities for Directors and Officers of the Trustee Company, do not limit the responsibility and liabilities the Trustee Company has, and the Directors have, under the general law, for:

- (a) failing to act in good faith; or
- (b) failing to act prudently; or

- (c) acting in breach of the trust under this deed or in breach of its or their fiduciary obligations; or
 - (d) failing to act honestly; or
 - (e) intentionally or recklessly failed to exercise the required degree of care and diligence;
- in relation to a matter affecting the Fund or the Trustee Company.

20. TRUSTEE COMPANY'S LIABILITIES AND INDEMNITIES

20.1 Trustee Company not liable for certain matters

The Trustee Company is not liable for losses, liabilities and expenses arising out of anything it does or fails to do while acting properly and in that capacity. In particular, it is not liable merely because:

- (a) Trust property that is auctioned does not attract a particular price; or
- (b) it relied on information or a document given to it by its agent or adviser, unless it actually knows that it is incorrect; or
- (c) it relied on a document as authentic, unless it actually knows that it is not authentic; or
- (d) it relied on an opinion or information from an expert, unless it actually knows that the expert does not have the appropriate expertise; or
- (e) it relied on an opinion or information from a banker or the Trust's auditor; or
- (f) it complied with a law or an order or direction of a court or government agency or official; or
- (g) something the operator of a securities title, transfer or holding system does or does not do.

The Trustee Company is not liable for any loss, costs or damage merely because it failed to exercise, or delayed in exercising, a power, function or duty under this deed.

20.2 Trustee Company to be indemnified

The Trustee Company is to be indemnified out of the Fund for all losses, liabilities and expenses incurred in relation to the proper performance of its duties as trustee of the Fund, which may include, in particular, the following:

- (a) Taxes imposed on it in relation to the Fund;
- (b) liabilities arising in respect of Fund (for example, calls on shares);

- (c) fees to persons appointed or engaged in relation to the Fund, including legal costs on a full indemnity basis;
- (d) costs in connection with this deed and any amendment to this deed, for example, for drafting, stamping and lodgment;
- (e) costs in connection with the retirement or appointment of a trustee or a Fund auditor;
- (f) costs in connection with contracts and proposed contracts in relation to the Fund;
- (g) compliance costs for regulatory and legislative compliance, including Taxation returns;
- (h) costs connected with meetings with and reports to Stakeholders;
- (i) administration costs of the Fund;
- (j) costs connected with seeking, negotiating and administering Donations;
- (k) costs connected with investigations and inquiries into projects and activities to be supported, or possibly supported, by the Fund.

21. LIABILITY AND INDEMNITIES FOR DIRECTORS AND OFFICERS OF THE TRUSTEE COMPANY

21.1 Liability

A Director or officer of the Trustee Company is not liable for loss or damage arising out of anything he or she does or fails to do while acting properly and in that capacity.

21.2 Indemnity

The Trustee Company may indemnify a Director or officer of the Trustee Company out of the Fund for a loss or liability incurred while acting properly and in that capacity.

22. EXCLUSIONS FROM PROTECTION

Clause 20 Trustee Company's Liabilities and Indemnities, does not affect, and clause 21 Liability and Indemnities for Directors and Officers of the Trustee Company, does not authorise a person or the Trustee Company to be indemnified in respect of, a liability or a loss that arises because the Trustee Company, or the Director or officer concerned:

- (a) failed to act honestly in a matter concerning the Fund; or

- (b) intentionally or recklessly failed to exercise, in relation to a matter affecting the Fund, the required degree of care and diligence.

23. CORRUPTION AND CONFLICTS OF INTEREST

23.1 Corrupt practices forbidden

The Trustee Company must not:

- (a) make, offer, or authorise a payment or transfer of anything of value to a governmental official, political organisation, or official thereof, or a candidate for political office; nor
- (b) accept a payment or a transfer of property from any person or organisation;

for the purpose of influencing an official act or decision by or for such person to obtain, retain or direct business to any person.

23.2 What is a conflict of interest?

A Director and an executive officer of the Trustee Company is in a position of conflict of interest if his or her personal, business, family or financial interests, or the interests of his or her traditional group, could or do conflict with:

- (a) his or her duties as a Director; or
- (b) the Trustee Company's duties as trustee of the Fund.

Here are some examples of conflicts of interest:

- (i) a Director's business is involved in a project or activity applying for support from the Fund;
- (ii) a Director's traditional group is opposed to a project or activity applying for support from the Fund;
- (iii) the applicants for support from the Fund are members of a Director's extended family group;
- (iv) there is clear friendship or hostility between members of a Director's extended family group and those promoting a project or activity applying for support from the Fund;
- (v) there is, or there has within the previous 3 years been, a material business or professional relationship between a Director and those who will benefit financially from a project or activity applying for support from the Fund.
- (vi) there is any interest identified by Section 117(1) of the Act.

The Secretary or Chief Executive Officer of a Papua New Guinea Government Department is not in a conflict of interest merely

because he or she holds that position, but is in a position of conflict of interest if the project or activity concerned is to be carried out by or by arrangement with the Department.

23.3 Conflicts to be declared

A Director or an executive officer of the Trustee Company who is in a position of conflict of interest must declare the conflict as follows and otherwise in accordance with Section 118 of the Act:

- (a) in the case of the Chairman:
 - (i) if the next meeting of the Board of Directors is more than 1 week after the relevant facts have come to his or her knowledge – forthwith declare the conflict to the Settlor and ensure that written notice of the conflict is tabled at the next meeting of the Board of Directors; or
 - (ii) otherwise – ensure that written notice of the conflict is tabled at the next meeting of the Board of Directors;
- (b) in the case of any other Director or an executive officer:
 - (i) if the next meeting of the Board of Directors is more than 1 week after the relevant facts have come to his or her knowledge – forthwith declare the conflict to the Chairman and ensure that written notice of the conflict is tabled at the next meeting of the Board of Directors; or
 - (ii) otherwise – ensure that written notice of the conflict is tabled at the next meeting of the Board of Directors.

23.4 Directors not to vote etc while in position of conflict

A Director must not vote on a resolution concerning, or otherwise involve himself or herself in the business of the Trustee Company in relation to, a matter on which he or she is in a position of conflict of interest (although the Director may be counted for quorum purposes).

23.5 Accounting to the Fund for profit where conflict of interest exists

A Director or executive officer of the Trustee Company must pay into the Fund for all gain or profit he or she makes, or his or her family or traditional group makes, directly or indirectly from a transaction in respect of which he or she is in a position of conflict of interest.

23.6 Trustee Company may excuse

Clause 23.5 Accounting to the Fund for profit where conflict of interest exists, does not apply in relation to a transaction if:

- (a) the Director or executive officer made a declaration in relation to the transaction as required by clause 23.3 Conflicts to be declared; and
- (b) the Board of Directors, after considering the declaration and all the circumstances, so resolves.

The resolution is not effective unless at least two-thirds of the Directors entitled to vote on the resolution vote in favour of it.

24. RESIGNATION, REMOVAL AND REPLACEMENT OF THE TRUSTEE COMPANY

24.1 Resignation

The Trustee Company may resign from office as trustee of the Fund, by giving 6 months written notice to the Settlor. The Settlor may agree to a shorter period of notice.

24.2 Removal

The Settlor may, by written notice to the Trustee Company, remove it from office as trustee of the Fund.

The Settlor does not have to give a reason for removing the Trustee Company.

24.3 Appointment of new trustee

If there is no trustee of the Fund, the Settlor may appoint as trustee a company qualified to be trustee.

The costs of transferring property and records of the Fund to a new trustee are expenses of the Fund.

25. AMENDING THIS DEED

25.1 Power to amend this deed

The Trustee Company may, with the consent of the Settlor, amend this deed by deed.

25.2 Restriction on amendments

An amendment is not valid unless:

- (a) the amendment does not alter the purposes of the Fund set out in clause 3.1 Primary purpose of the Fund; or
- (b) the Trustee Company is satisfied that the amendment is necessary to ensure that the Fund has the benefit of the most favourable treatment available to charitable trusts under the Tax Laws of Papua New Guinea and other relevant Tax Laws.

26. TERMINATING THE FUND

26.1 Settlor may decide to terminate

The Settlor may decide to terminate the Fund from a specified day (the “*Last Day*”).

26.2 Trustee Company may decide to terminate

The Trustee Company may, with the consent of the Settlor, decide to terminate the Fund from a specified day (also the “*Last Day*”).

26.3 What happens when the decision to terminate is made

After the Last Day, the Trustee Company must not accept further Donations, and must not make a payment out of the Fund except:

- (a) a grant payment that the Trustee Company is obliged to make under grant arrangements entered into before the Last Day; or
- (b) a payment made in the course of winding up the Fund.

26.4 Effect on other termination powers

This clause 26 Terminating the Fund, does not limit the effect of any other law about terminating the Fund.

27. WINDING UP

As soon as practicable after the Last Day, the Trustee Company must dissolve the Fund and:

- (a) first, pay the expenses incurred by it as trustee in winding up; and
- (b) next, pay the other fees, expenses and liabilities (except those mentioned in paragraph (c)) it incurred in relation to the Fund;
- (c) next, pay repay donors amounts to which they are entitled in accordance with their Donation Arrangements;
- (d) next, pay the balance to 1 or more bodies established for charitable, scientific or educational purposes that have objects that, in the Trustee Company’s reasonable opinion, are similar to those set out in clause 3 Purpose of the Fund, and that attract the most favourable tax treatment available for charitable trust funds.

The assets of the Fund are not to be distributed under paragraph 27(d) to a Director or officer of the Trustee Company, or to an individual.

28. RIGHT OF THE SETTLOR

The Settlor has power to take proceedings to prevent a breach of a trust arising under this deed, or in respect of a breach of trust arising under this deed, and may pursue against either or both the Trustee Company and the directors of the Trustee all remedies available at law or in equity, including, without limitation, injunction, damages, and restitution. The Settlor is entitled to be paid from the Fund reasonable enforcement costs and litigation expenses incurred in such proceedings.

This clause 28 Right of the Settlor, does not limit any other power to take proceedings.

29. EFFECT OF THIS DEED

29.1 This deed binds Trustee Company and others

This deed binds the Trustee Company and donors, and those who claim through them.

29.2 This deed does not create agency or partnership

None of the following:

- (a) this deed;
- (b) a trust created under this deed;
- (c) a trust associated with this deed;

of itself creates a relationship of principal and agent, or of partnership, between the donors and the Trustee Company, or between the donors themselves.

30. APPOINTMENTS BY THE SETTLOR

30.1 Appointments to exercise Settlor's powers and functions

The Settlor-Appointer may appoint a person or body to exercise or perform the Settlor's powers or functions under this deed that are specified in the instrument of appointment.

30.2 Effect of appointments

An appointment may authorise the appointee to appoint another person or body to exercise the power or perform the function, but must do so expressly.

30.3 Conditions

An appointment may be subject to conditions specified in the instrument of appointment.

30.4 When appointments take effect

An appointment is effective when written notice of the appointment is given to the Trustee Company.

31. WAIVER OF RIGHTS

The Trustee Company can waive a right it has under this constitution but only by doing so expressly.

That the Trustee Company does not exercise, or delays in exercising, a right or power does not mean that it has given it up or waived it or that it cannot exercise it, or other rights and powers, later.

That the Trustee Company exercises or waives a right or power once or partly does not mean that it cannot exercise it again (partly or completely), or other rights or powers later.

32. NOTICES

32.1 How to serve

Subject to the rest of this clause 32 Notices, a notice may be served on (which includes sent or given to) a person for the purposes of this deed in any of the following ways:

- (a) by giving it to the person;
- (b) by post, that is, by sending it by pre-paid post addressed to the person at the person's address;
- (c) by fax, that is, by sending it by fax addressed to the person at the person's fax number;
- (d) in any other way the law provides for service on the person with acceptable evidence.

32.2 Addresses

The Trustee Company may assume that a person's address, fax number or e-mail address is that last known to the Trustee Company.

32.3 Service by post

A notice served by post is taken to have been received when it would be received in the ordinary course of post.

32.4 Service by fax

A notice served by fax is taken not to be served unless a complete and correct transmission report is received.

It is taken to be received by the addressee (whether it is in fact received or not) on the day of transmission.

32.5 Service by e-mail

A notice served by e-mail is taken not to be served if the computer system used to send it reports that it was not received by anyone.

It is taken to be received by the addressee (whether it is in fact received or not) on the day of transmission.

32.6 Confirmation of service

Subject to clauses 32.4 Service by fax, and 32.5 Service by e-mail, service is not effective unless:

- (a) the person served confirms in writing receipt of the notice; or
- (b) there is acceptable evidence, for example, by affidavit, or electronic fax or email confirmation of transmission, or postal certification of delivery, that the notice was served on the person.

33. SEVERING PROVISIONS OF THIS DEED

If a provision of this deed is invalid or unenforceable in a particular jurisdiction, it is to be read (if possible) to be valid and enforceable but, if it cannot, this deed, so far as it can, takes effect as if it did not include the provision. In any case, the validity and enforceability of the provision in other jurisdictions are not affected.

34. LAW AND JURISDICTION

This deed is governed by the law of Papua New Guinea and, in any matter arising under it, the Trustee Company, the donors and those who claim through them submit to the non-exclusive jurisdiction of the courts exercising jurisdiction under that law.

APPENDIX A -- QUALIFICATIONS OF AND REQUIREMENTS FOR THE TRUSTEE COMPANY

(clause 18 Qualifications for Trustee Company)

Company

- (1) The Trustee Company must be a company incorporated under the *Companies Act 1997* (PNG).

Directors

- (2) There must be at least 9 Directors (not counting Alternate Directors).
- (3) The Secretary or Chief Executive Officer of the Papua New Guinea Government Department with responsibility for matters relating to the environment and to conservation must be a Director, but is not entitled to hold office as Chair of the Board of Directors of the Trustee Company.
- (4) A person must not hold office as a Director if the person holds an elective office in a Papua New Guinea legislature or local governing body.
- (5) The selection criteria to be applied in the selection of persons to be appointed as Directors must include:
 - a demonstrated commitment to the principles and objectives of the Fund;
 - a proven record of distinguished accomplishment, honesty, integrity and experience in Papua New Guinea;
 - availability to meet the commitments involved in being a Director;
 - good standing in the community;
 - ability and willingness to work in a team environment.

The Directors may amend these criteria, but an amendment is not effective unless at least 50% of all the Directors entitled to vote on the resolution (whether present or not) vote in favour of it.

- (6) The procedure for selecting and appointing Directors must be open and transparent, and include:
 - public advertisement of the vacancy, and a call for nominations from the public; and
 - a requirement that an appointment not be made unless notice of the resolution for the appointment has been given to each Director entitled to vote on the resolution at least 14 days before the resolution is voted on.

(7) In making appointments of Directors, the Directors must strive to ensure that at least the following interests and areas of expertise are reflected among the Directors:

- conservation planning, science or management;
- community-based conservation;
- financial management;
- experience in the private sector;
- experience in project management, development and operations.

The Directors may amend this list of interests and areas of expertise, but an amendment is not effective unless at least 75% of all the Directors entitled to vote on the resolution (whether present or not) vote in favour of it.

(8) As far as possible, there should be similar numbers of male and female Directors.

(9) The constitution of the Trustee Company, and the terms of employment or engagement of its executive officers, must ensure that each Director and executive officer complies with clause 23 Corruption and Conflicts of Interest.

Note 1 Clause 23 Corruption and Conflicts of Interest, relates to conflicts of interest.

Chair

(10) A person in full-time employment as a member of the national public service of Papua New Guinea, or a Constitutional office-holder, or an employee of a Papua New Guinea public body, is not eligible to hold office as Chair of the Directors.

(11) The Chair of the Directors is not to be removed from office as Chair unless at least 75% of all the Directors entitled to vote on the resolution to remove (whether present or not) vote in favour of the resolution.

Staff

(12) The Executive Officer must be entitled to attend all meetings of Directors (except during discussions directly concerning re-appointment, his or her performance, tenure or remuneration).

Note 1 Unless also a Director, he or she will have no power to vote.

SIGNED, SEALED and DELIVERED
for **THE NATURE CONSERVANCY**

by its authorised officer

in the presence of:

Signature of authorised officer

Signature of witness

Name of authorised officer

Name of witness

**THE COMMON SEAL of PAPUA
NEW GUINEA CONSERVATION
TRUST FUND LIMITED** (being a
body corporate) was affixed in the
presence of, and the sealing is attested
by:

Signature of Director

Name of Director

Signature of witness

Name of witness