

**CUSTODIAN DEED**

**PARTIES**

**Benjamin Forster**  
(hereafter referred to as "Artist")

**AND**

---

(hereafter referred to as "Custodian")

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**THIS DEED** dated \_\_\_\_ day of \_\_\_\_\_ 2013

**BETWEEN**

**Benjamin Forster** of 35 Rawson Street, Newtown, New South Wales

(“Artist”)

And

\_\_\_\_\_ of \_\_\_\_\_

(“Custodian”)

**PREAMBLE**

This project is designed to facilitate collective ownership of cultural artifacts. This humble experiment will establish a social method for cultural preservation, acknowledging cultural production and consumption as inherently collective. Inspired by an interest in alternative models of exchange, paired with the imminent pragmatic concerns surrounding my upcoming relocation, I have devised a system of social custodianship of my artwork.

Upon entering a transitional phase of my life, I am no longer able to care for an ever-growing collection of works. I want to invite others who value my practice and work (**maybe you**), to enter into custodial relationships with one or multiple of my pieces. This relationship is personal and reciprocal, formalised through the signing of a legally binding Custodian Agreement. Custodians become caretakers responsible for the continuation and maintenance of the artwork under their care, but also are able to access and enjoy the work freely. They become part of an extended network of Custodians, acknowledged as active supporters and entitled to a financial stake in the work. Ultimately this relationship is intimate and personal, encouraging dialogue and conversation about our positions within the production, consumption and preservation of culture.

*Further Reading:*

- Tamen, Miguel. (2001). *Friends of Interpretable Objects*. London, England : Harvard University Press
- Hirsch, Antonia Ed. (2012). *Intangible Economies*, Vancouver, Canada : Fillip Editions
- Simpson, Moira. (2007). *From Treasure House to Museum... and Back*. In Watson, Sheila (Ed.), *Museums and their Communities*. New York : Routledge
- Hyde, Lewis. (1983). *The Gift: Imagination and the Erotic Life of Property*, Canada: Random House

## **RECITALS**

- A.** The Artist has created an Artwork described in the document marked Annexure A.
- B.** The Custodian intends to enter into a custodial relationship with the Artist, taking care of the Artwork subject to the rights and obligations set forth in this Agreement.
- C.** The Custodian accepts and agrees to the terms of this Agreement.
- D.** The Custodian accepts and agrees that this Agreement is for a participatory Artwork. The Custodian will be able to purchase the Artwork from the Artist after a minimum of six months of custodianship.

## **OPERATIVE PART**

### **1. Interpretation**

This deed is governed by the laws of the state of New South Wales, and the parties, submit to the non-exclusive jurisdiction of the courts of that state.

In the interpretation of this deed:

- a) References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- b) Words denoting the singular include the plural and vice versa; words denoting individuals or persons include bodies corporate and vice versa; references to documents or agreements also mean those documents or agreement as changed, novated or replaced, and words denoting one gender include all genders;
- c) Grammatical forms of defined words or phrases have corresponding meanings;
- d) Parties must perform their obligations on the dates and times fixed by reference to the capital city of the state of New South Wales;
- e) Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
- f) If the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;
- g) References to a party are intended to bind their executors, administrators and permitted transferees; and

- h) Obligations under this deed affecting more than one party bind them jointly and each of them severally.

## 2. Definitions

**“Agreement”** This Deed, and any counterparts thereof.

**“Artist”** Creator and owner of the Artwork. For the purposes of this Agreement, the Artist remains Benjamin Forster of 25 Rawson Street, Newtown NSW.

**“Artwork”** Created by the Artist and the subject of this Agreement. As defined and detailed specifically in Annexure A and agreed to by the parties.

**“Custodians”** The collective group of Custodians to whom the Artist enters into Custodian Deeds. The Custodians remain those to whom current and valid Custodian Deeds are entered into with the Artist.

**“Intellectual Property Rights”** The rights given to the Artist over the creations of his mind. These rights give the Artist an exclusive right over the use of his creation.

**“Sale”** The transaction between the Artist and a third party (not a party to this Agreement) whereby the Artist assigns his rights and interests in the Artwork for consideration.

## 3. Artwork

The Artist has created an Artwork as described in Annexure A.

## 4. Consideration

The parties agree that the Custodian shall pay an amount of \$1.00 to the Artist upon entering into this deed.

## 5. Delivery of Artwork

The delivery of the Artwork will take place within twenty-eight (28) days after the execution of this Agreement. The Custodian is responsible for all costs associated with the delivery of the Artwork.

## 6. Sale of Artwork

- a) In the event of a Sale of the Artwork by the Artist to a third party, this Agreement is terminated.

- b) It is agreed between the Artist and the Custodian, that in the event of a Sale of the Artwork, the Custodian shall receive a 15% commission of the Sale.
- c) It is agreed between the Artist and Custodian that the Custodian can purchase the Artwork from the Artist after a minimum of six months of custodianship. Should the Artist sell the Artwork to the Custodian, the Custodian shall receive a 15% commission of the Sale.

## **7. Intellectual Property Rights**

- a) The Intellectual Property Rights and moral rights, including but not limited to copyright, shall remain with the Artist at all times.
- b) In entering this Agreement, the Custodian agrees and acknowledges that under no circumstances may the Custodian reproduce, copy, distribute or replicate the Artwork.
- c) The Custodian agrees and acknowledges that the Artwork must not be used to create any form of person profit or financial gain for the Custodian.

## **8. Publicity and Media**

- a) The Custodian agrees and acknowledges that they must not talk, represent, publish or make any statement about the Artist or Artwork or on behalf of the Artist.
- b) The Custodian must direct all media and other enquiries about the Artwork to the Artist within a reasonable time.

## **9. Custodian's Acknowledgement**

- a) The Artist will acknowledge the Custodian's role in the of the Artwork:
  - (i) On the Artist's website ([www.emptybook.net](http://www.emptybook.net)); and
  - (ii) Whenever the work is exhibited, published or otherwise publicly presented.
- b) All descriptions of the Artwork that are exhibited, published or otherwise displayed will include words or text in conjunction with the presentation of the Artwork to the effect of:
  - (i) *"This work is in the custodianship of (The Custodian)"*
- c) In any publications including the Artwork the Artist shall acknowledge the support of the Custodian in the following format

- (i) *“Benjamin Forster would like to acknowledge and thank all the custodians of his work, (the full list of Custodians)”*

#### **10. Presentation of the Artwork**

- a) The Artwork shall not be installed or otherwise presented, publically or privately, without the prior written consent of the Artist.
- b) In the event that the Artist grants consent to the Custodian to install, exhibit, display or otherwise present the Artwork, publically or privately, the Custodian must display a sign or notice stating the name of the Artist and the name of the Artwork at the cost of the Custodian and must be displayed in a prominent position near the Artwork for the duration of the installation, exhibition or display.

#### **11. Borrowing Rights**

- a) The Artist retains at all times the sole right to determine the exhibition, installation, display or publication of the Artwork.
- b) The Custodian must make the Artwork available to the Artist for exhibition, documentation, installation or any other reasonable purpose with reasonable warning to the Custodian.
- c) The Artist shall bear the costs of transport and freight of the Artwork from the Custodian to the destination for exhibition, documentation, or installation of the Artwork.

#### **12. Contact Details**

The Artist and the Custodian must notify the other party should there be any changes to their contact details.

#### **13. Maintenance of the Artwork**

- a) The Custodian must at all times keep the Artwork in its original condition as specified in Annexure C.
- b) The Custodian will be responsible for the periodic cleaning, maintenance and protection of the Artwork at the Custodian’s cost.
- c) The Custodian must adhere to any specific maintenance requirements of the Artwork as detailed in Annexure B.

- d) The Custodian must undertake any repairs to the Artwork that may be necessary or required and, to the extent that it is practicable, the Artist shall be given the opportunity to perform the repairs for a reasonable fee.

#### **14. Damage or Alteration**

- a) This clause will remain in effect for the time that the Artwork remains in the care and custody of the Custodian. The Custodian must not destroy, damage, add, alter, amend or modify the Artwork in any way from its condition upon issue. The condition of the Artwork upon issue to the Custodian is agreed to by both parties as the condition described in Annexure C.
- b) In the event of the Artwork being destroyed, damaged, added to, altered, amended or modified by the Custodian or any other person not being the Artist or any servant, agent or contractor of the Artist, the Custodian agrees to purchase the Artwork for 50% of the value of the Artwork as determined by the Artist and reviewed in consultation with the Custodian, within fourteen (14) days of notice to the Artist that the Artwork is affected by the terms of this clause 14(b).

#### **15. Termination of Agreement**

- a) The Artist can terminate this Agreement:
  - (i) At any time, and for any reason whatsoever without any obligation on the Artist to act in good faith, upon giving twenty-eight (28) days' written notice to the Custodian. Upon termination, the Artwork must be returned to the Artist within twenty-eight (28) days of the notice at the Artist's expense.
  - (ii) Upon any breach of this Agreement by the Custodian.
- b) Without prejudice to the Artist's rights in paragraphs 15(a)(i) and 15(a)(ii), the Artist may seek to recover from the Custodian any costs, losses, liabilities or expenses that the Artist becomes liable for, due to the failure of the Custodian to remedy the breach of any term or condition of this Agreement.
- c) If the Artist terminates this Agreement due to the breach or failure of any term or condition of this Agreement by the Custodian, the Custodian is responsible for all costs associated with the return of the Artwork to the Artist.
- d) The Custodian can terminate this Agreement:

- (i) The Custodian may terminate this Agreement by written notice to the Artist.
- (ii) In the event that the Custodian terminates the Agreement, the Custodian shall bear all costs associated with the return of the Artwork to the Artist.

## **16. Death of the Custodian**

The Agreement will terminate automatically on the death or permanent incapacity of the Custodian in which the executors, assigns, attorneys or heirs of the Custodian shall be responsible for the return of the Artwork to the Artist.

## **17. Death of the Artist**

On the death or permanent incapacity of the Artist, all signatories of all current and enforceable Custodian Agreements (collectively referred to as “Custodians”) are jointly and severally granted an equal share as tenants in common in all Artworks created by the Artist. Thereafter all instances of the term “Artist” within this Agreement will refer to the “Custodians”.

## **18. Annexures**

All Annexures attached to or referred to within this Agreement will be deemed to form part of this Agreement. In the event of any discrepancy, contradiction or ambiguity between anything contained in this Agreement and anything contained in an Annexure, the provisions of the Agreement shall prevail.

## **19. Notices**

A communication required by this deed, by a party to another, must be in writing and may be given to them by being:

- a) Delivered personally; or
- b) Posted to their address specified in this agreement, or as later notified by them, in which case it will be treated as having been received on the second business day after posting; or
- c) Faxed to the facsimile number of the party with acknowledgment of receipt received electronically by the sender, when it will be treated as received on the day of sending; or



- d) Sent by email to their email address, when it will be treated as received on that day.

**20. Counterparts**

This deed may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the deed will be the date on which it is executed by the last party.

**21. Costs**

Each party will pay their own costs in relation to this deed.

**EXECUTED AS A DEED**

**SIGNED SEALED & DELIVERED** by )  
Benjamin Forster in the presence of: )

\_\_\_\_\_  
Signature

Signature of witness

Print name of witness

\_\_\_\_\_

**SIGNED SEALED & DELIVERED** by )  
in the presence of: )

\_\_\_\_\_  
Signature

Signature of witness

Print name of witness

\_\_\_\_\_

## **ANNEXURE A // ARTWORK DESCRIPTION**

*Short Message Service, 2012*

Custom electronics and digitised text

Dimensions Variable

**Value: \$4000**

Package includes associated data on a USB Stick

### **Description:**

Benjamin Forster invites speculation about the connections between objects and data in contemporary systems of thought and technology. Although the most dominant feature of this work is the transaction between viewers' phones and the microcontroller displayed in the gallery, there are other elements to consider. They include the coding which generates and distributes the digitised text, the graphical or typographical decisions concerning what appears on the screens of viewers' phones and the material or presentation aspect of work which can be enjoyed in the gallery. With audiences able to experience some aspect of the work anywhere in the world and forward it to others, Forster's coding generates collective activity of a global and instantaneous nature – a characteristic arguably anticipated by precedents such as instructions in Mail Art.

During the exhibition Benjamin Forster's work could be accessed by SMS 0434 377 980.

### **Exhibition History:**

2013: *Foundation's edge*, QUT Gallery, Brisbane QLD

2012: *Yonder*. The Perth Institute of Contemporary Art, Perth

## **ANNEXURE B // MAINTENANCE NOTES**

### **Machines:**

1. *Short Message Service* shall not be installed or operated without consent and detailed instructions from the Artist.
2. If installed, the Machine-based works should always be supervised when operating. In case of mechanical fault, turn off at power and contact the Artist.
  - (a) Short Message Service has an active prepaid Optus sim card with the number 0434 377 980.
  - (b) This work requires phone credit to run. We recommend \$30 a month charge up, which allows unlimited SMS's to be sent.
3. When not installed all components must remain stored safely within original packaging.
4. Machine-based artworks must be transported and stored in a manner that will not compromise their condition.
  - (a) Machine-based artworks must not be exposed to materials containing acid, pigment, chemicals, or liquid.
  - (b) Machine-based artworks must not be exposed to any abrasive materials.
  - (c) Components of the machine-based artworks must not be utilised for any other purpose other than specified by the Artist.
5. Machine-based artworks must be kept in a clean and controlled environment.
  - (a) Drastic changes in temperature and humidity must be avoided.
  - (b) Machine-based artworks must not be exposed to levels of sunlight that can cause damage or discoloration.
  - (c) Machine-based artworks should be kept in an environment free from excess water, dust and/or debris.
  - (d) Machine-based artworks should only be handled with clean hands
  - (e) If dust accumulates, clean machines only gently with a non-abrasive, clean white cloth.
6. *Short Message Service* running instructions:

When starting up the light will be magenta for about 30-45 seconds while the device connects to the network. This will then turn white, and flash. This signals that the device is waiting for incoming SMS's.

If the light turns RED - reset turn the power on and off again. (There is sometimes a problem initialising the SD card - if this persists check that the MicroSD is properly installed.)

If the LED is stuck on any colour other than green for more than 30seconds - Reset the device.

If the Device is not making a regular beeping noise while stuck on green - Reset the device.

## **Digital Content:**

- 1.** Media must be transported and stored in a manner that will not compromise its condition.
  - (a) Media on a USB stick must not be exposed to water, dirt/grit, or magnets
  - (b) Media must be kept in a clean and controlled environment, free from drastic changes or excess levels of humidity and temperature.
- 2.** If media is stored in a format or on a device that becomes inaccessible or otherwise obsolete, the artist must be consulted to determine a plan for updating the media file's format or storage hardware.
- 3.** If media is accessed from its digital storage device, it may not be altered or augmented
  - (a) The digital storage device may not be used for any other purpose
  - (b) Media may not be accessed in a way that may corrupt or damage the files
  - (c) Storage hardware must always be properly ejected and never exposed to excess levels of power.
  - (d) The file structure detailed in the "Contents.txt" file that is located at the root directory of the media must be preserved.
- 4.** Media is not to be duplicated or reproduced without written consent of the Artist.

**ANNEXURE C // CONDITION REPORT**

**Number of items in work:** pending

**Packaging:** pending

**Condition:** pending

