

# Charitable Trust Deed establishing Impact Open Source Software Trust

This deed is made the 20 day of April 2018

## Parties

Ashley Michael Bowe

of Faleata  
Apia, Samoa

Edith Woischin

of 18 Tennyson Street,  
Te Aro, Wellington, New Zealand

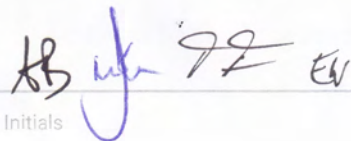
Moana John Eruera

of 12B Regent Street,  
Springfield, Rotorua, New Zealand

Timo Franz

of 18 Tennyson Street,  
Te Aro, Wellington, New Zealand

As "Trustees" of the Impact Open Source Software Trust.

  
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## 1. Declaration of trust



- 1.1. The signatories to this deed wish to establish and settle one dollar on the trust. The Trustees will hold all money, investments, funds and property which the Trustees may from time to time purchase, receive or otherwise acquire for the objects of the trust set out in this deed ("Trust Fund"), upon the terms and conditions set out in this trust.

## 2. Name

- 2.1. The name of the trust is **Impact Open Source Software Trust** or such other name as the trustees shall from time to time determine ("Trust").

## 3. Establishment of charitable trust and objects

- 3.1. **Trust Fund:** the Trust Fund will be held on the trusts declared under this deed.
- 3.2. **Objects:** the objects of the Trust are to advance the enjoyment of human rights and the realisation of the United Nations Sustainable Development Goals, in particular the relief of poverty, hunger and social inequalities, and the advancement of health, education and peaceful societies in New Zealand and abroad, by developing, maintaining, promoting and training in the use of suitable open source technologies ("Technologies") that will:
- 3.2.1. improve States' and Civil Society's ability to implement, monitor, analyse and communicate States' Human Rights obligations and measures, as well as the Sustainable Development Goal targets set out by the United Nations;
  - 3.2.2. encourage transparency and accountability of States related to States' Human Rights obligations and realisation of Sustainable Development Goals; and
  - 3.2.3. encourage sharing of intellectual property and technological knowledge and expertise between States and Civil Society.
- 3.3. **Means of achieving objects:** the Trustees may in order to achieve the objects of the Trust, in addition to all other powers vested in the Trustees, undertake such activities and enterprises in New Zealand and abroad as may be necessary or desirable, including to
- 3.3.1. organise and provide training workshops, activities and materials on the use of new and existing Technologies;
  - 3.3.2. facilitate and provide installation and configuration of new and existing Technologies;
  - 3.3.3. facilitate and provide custom development services of new and existing Technologies;

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- 3.3.4. facilitate and provide technical support for new and existing Technologies;
- 3.3.5. seek, accept and receive donations, subsidies, grants, and gifts in money, in kind or partly in both; and
- 3.3.6. undertake such other activities and enterprises determined by the Trustees to further the purposes of the Trust.

#### 4. Incorporation


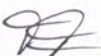
- 4.1. The Trustees intend to incorporate the Trust as a trust board under Part 2 of the Charitable Trusts Act 1957 under the name "Impact Open Source Software Trust", or such other name as the Trustees may decide. Upon incorporation the trust property shall vest in the trust board ("Board") and the Board shall have all the powers and obligations conferred and imposed upon the Trustees by this deed.

#### 5. Office

- 5.1. The office of the Trust shall be in New Zealand at such place as the Board may from time to time determine.

#### 6. Trustees

- 6.1. **Signatories to be first Trustees:** the persons named in this deed as Trustees shall be the first Trustees of this Trust.
- 6.2. **Number of Trustees:** the number of Trustees shall not be less than three. Should vacancy reduce the number of Trustees below three, the vacancy shall be filled as soon as practicable in accordance with the terms of this deed.
- 6.3. **Appointment of Trustee:** the Board can appoint a new Trustee by a resolution passed by majority decision. Any Trustee has the right to veto any proposed Trustee during any such vote. In the case of a tie the proposed Trustee is not appointed.
- 6.4. **Cessation of office of Trustee:** any person shall cease to be a Trustee if he or she or they:
  - 6.4.1. resigns as a Trustee in accordance with this deed; or
  - 6.4.2. is removed from office by the other Trustees in accordance with this deed; or
  - 6.4.3. is found to be a mentally disordered person under the meaning of Mental Health Act 1992; or
  - 6.4.4. is declared bankrupt; or
  - 6.4.5. dies.

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- 6.5. **Resignation of Trustee:** a Trustee can resign at any time by giving notice to all other Trustees by email.
- 6.6. **Removal of Trustee:** notwithstanding anything contained in this deed, a Trustee may at any time be removed as a Trustee of the Trust by the following process:
1. a call for removal with reasons must be circulated to all Trustees and a meeting called to discuss the proposed removal;
  2. the reasons for the proposed removal are put forward and the Trustee in question is given the right to respond;
  3. the call for removal is put to a vote and must be approved by a majority decision. In the case of a tie, the motion is not passed.

Reasons for removal:

- failure to represent and/or pursue the objects of the Trust;
- bringing the reputation of the Trust into disrepute;
- failure to declare conflicts of interest;
- failure to attend a minimum of 50% of scheduled Trustee meetings within any given 6-month period.

## 7. Trustee powers

- 7.1. In addition to the powers provided by the general law of New Zealand or contained in the Trustee Act 1956, in managing the Trust Fund and the affairs of the Trust, the Trustees will have all the powers of absolute owners of the Trust Fund to do all lawful acts and things consistent with the charitable purpose of the Trust, including all acts and things incidental to, or conducive to the attainment of the objects of the Trust.
- 7.2. The Board is empowered to seek incorporation in accordance with the provisions of the Charitable Trusts Act 1957.
- 7.3. Without limiting the powers set out in 7.1, the powers that the Board may exercise in order to carry out its charitable objects are:
- 7.3.1. to use the Trust Fund as the Board thinks necessary or proper in payment of costs and expenses of the Trust, including the employment and dismissal of professional advisors, agents, officers and staff as may be reasonable and proper;
  - 7.3.2. to purchase, take on lease or in exchange or hire or otherwise, acquire any land or real or personal property and any rights or privileges which may be reasonable and proper for the purpose of



attaining the charitable objects of the Trust, and to sell, exchange, let, bail or lease, with or without option of purchase of, in any other manner, dispose of such property, rights or privileges.

- 7.3.3. to invest any surplus funds in any way permitted by law for investment of Charitable Trust funds and upon such terms as the Board thinks fit; and
- 7.3.4. to do all things as may from time to time be necessary or desirable to enable the Board to give effect to and attain the charitable objects of the Trust.

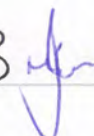
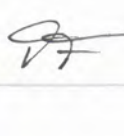
## 8. Management of the Trust

### 8.1. General

- 8.1.1. The Trustees shall have the absolute management and entire control of the Trust Fund
- 8.1.2. The Trustees may from time to time appoint, enumerate and dismiss officers and employees of the Trust
- 8.1.3. Any individual, whether or not a Trustee, may be appointed as an officer or employee of the Trust.

### 8.2. Decision Making and Conflicts of Interest

- 8.2.1. Subject to the terms of this deed, decisions shall be made by consensus, where no Trustee blocks a proposed decision. Consensus does not necessarily imply unanimity and allows decisions made by majority vote where Trustees can object without blocking. If consensus is not possible, then a proposed decision will be postponed or withdrawn.
- 8.2.2. Trustees may only block consensus to decisions that are fundamental to the objects set out in this deed or potentially disastrous to the Trust.
- 8.2.3. The Board shall be committed to working through differences and ensuring that all Trustees are heard at all times, thereby enabling robust consensual decision-making.
- 8.2.4. Decisions can be made during Trustee meetings or by using suitable online platforms.
- 8.2.5. All decisions must be made in pursuit of the objects set out in this deed.

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- 8.2.6. A conflict of interest exists for a Trustee if the Trustee's interests or duty in a particular matter conflicts, or might conflict, with his or her or their duty to the Trust.
- 8.2.7. When a conflict of interest exists for a Trustee, the Trustee must declare the nature of the conflict or the potential conflict and may not
- take part in deliberations or proceedings including decision-making in relation to the conflict of interest; or
  - be counted in the quorum required for decision-making on the matter for which the Trustee has the conflict of interest.
- 8.2.8. The Board shall maintain a Conflict of Interest Register where all Trustees and any employees or agents of the Trust shall record any actual or potential conflicts of interest
- 8.2.9. All decisions must be recorded in writing, electronic mail or suitable online platforms and be made publicly available, unless confidentiality is required.

### 8.3. Roles

- 8.3.1. **Chairperson:** the Trustees shall elect one Trustee to act as Chairperson, either from year to year, or for such period as the Trustees may decide. The duties of the Chairperson shall be those from time to time prescribed by the Board.
- 8.3.2. **Secretary:** the Trustees may appoint a Secretary who may be honorary, or may be a full-time or part-time employee of the Trust. The duties of the Secretary shall be those from time to time prescribed by the Board.
- 8.3.3. **Treasurer:** the Trustees may appoint a Treasurer who may be honorary, or may be a full-time or part-time employee of the Trust. The duties of the Treasurer shall be those from time to time prescribed by the Board.

### 8.4. Meetings

- 8.4.1. **Frequency:** The Board will meet such number of times per year as the Trustees think fit. Meetings may be held in person or by other means of communicating as decided by the Board.
- 8.4.2. **Initiation of meetings:** Trustees may call a meeting at any time by a majority of the Trustees agreeing to do so in writing.
- 8.4.3. **Notice:** all Trustees must be notified by the person calling the meeting. It is the responsibility of each Trustee to maintain up to

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date contact information. For meetings where major strategic and spending decisions are to be made all Trustees must be notified of the meeting at least seven days in advance OR all Trustees must be present if less notice is given for the decision to stand.

8.4.4. **Quorum:** the quorum for a meeting shall be a majority of the Trustees then holding office, unless otherwise excluded by an existing conflict of interest.

8.4.5. **Chair:** the Chairperson of the Board or the Chairperson's nominee shall chair each meeting.

8.4.6. **Minutes:** the Secretary or a Trustee nominated by the Board shall keep minutes of the Trustee meeting and make available for inspection by Trustees at reasonable times, and will include the names of those present and all matters resolved at such meetings.

8.5. **Delegation of powers:**

8.5.1. The Board may delegate to any person or committee, whether or not a Trustee or Trustees, such of the powers of the Trustees as the Trustees may decide.

8.5.2. Any committee or person to whom the Board has delegated powers will be bound by the terms of the Trust and any terms and conditions of the delegation set by the Board.

8.5.3. The Board will be able to revoke wholly or partly such delegations at will.

8.6. **Accounts**

8.6.1. **Financial year:** the financial year of the Trust will be 1 April to 31 March.

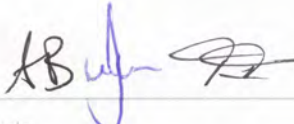
8.6.2. **Accounting records:** the Trustees will keep true and fair accounts of all money received and expended by the Trust.

8.6.3. **Audit or review:** the Board may arrange for the accounts of the Trust for that financial year to be audited or reviewed by any accountant (not being a Trustee) appointed for that purpose.

8.6.4. **Bank account:** the Trustees may open and operate such accounts at any registered bank in New Zealand as they determine from time to time.

9. **Income, benefit and advantage**

9.1. Any income, benefit or advantage will be applied to the charitable objects of the Trust;

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- 9.2. No private pecuniary profit shall be made by any person involved in this Trust except that:
- 9.2.1. any Trustee may receive full reimbursement for all expenses properly incurred by that Trustee in connection with the affairs of the Trust;
  - 9.2.2. the Board may pay reasonable and proper remuneration to any officer or servant of the Trust (whether a Trustee or not) in return for services actually rendered to the Trust;
  - 9.2.3. any Trustee may be paid all usual professional, business or trade charges for services rendered, time expended and all acts done by that person or by any firm or entity of which the Trustee is a member, employee or associate in connection with the affairs of the Trust; and
  - 9.2.4. any Trustee may retain any remuneration properly payable to them by any company or undertaking with which the Trust may be in any way concerned or involved for which the Trustee has acted in any capacity whatsoever, notwithstanding that the Trustee's connection with that company or undertaking is in any way attributable to their connection with the Trust.
- 9.3. No Trustee or any person associated with a Trustee shall participate in or materially influence any decision made by the Trustees in respect of any payment to or on behalf of that Trustee or associate person of any income, benefit or advantage whatsoever. Any such income paid shall be reasonable and relative to that which would be paid in an arm's length transaction (being open market value).
- 9.4. The provision and effect of this clause shall not be removed from this deed and shall be implied into any document replacing this deed of trust.

## 10. Mediation and arbitration

- 10.1. Any dispute arising out of or relating to this deed may be referred to mediation, a non-binding dispute resolution process in which an independent mediator facilitates negotiation between parties.
- 10.2. Mediation may be initiated by any party to the dispute writing to the other party and identifying the dispute which is being suggested for mediation. The parties may agree on a suitable person to act as mediator or may ask the Arbitrators' and Mediators' Institute of New Zealand Inc. to appoint a mediator.
- 10.3. The mediation shall be terminated by
- (a) the signing of a settlement agreement by the parties; or





- (b) notice to the parties by the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified; or
  - (c) notice by one or more of the parties to the mediator to the effect that further efforts at mediation are no longer justified; or
  - (d) The expiry of sixty (60) working days from the mediator's appointment, unless the parties expressly consent to an extension of this period.
- 10.4. If the mediation should be terminated as provided in 10.3(b), 10.3(c) or 10.3(d) any dispute or difference arising out of or in connection with this deed, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in New Zealand in accordance with New Zealand law and the current Arbitration Protocol of the Arbitrators' and Mediators' Institute of New Zealand Inc. The arbitration shall be by one arbitrator to be agreed upon by the parties and if they should fail to agree within twenty-one (21) days, then to be appointed by the President of the Arbitrators' and Mediators' Institute of New Zealand Inc.

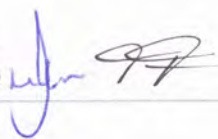
## 11. Trustee liability

- 11.1. **No liability of Trustees, with exception:** no Trustee shall be liable for any loss to the Trust Fund not attributable to that Trustee's own discretion, or to the wilful commission or omission by that Trustee of an act known by that Trustee to be a breach of trust. No Trustee shall be bound to take any proceedings against a co-Trustee for any breach or alleged breach of trust committed by the co-Trustee.
- 11.2. **Indemnity of Trustees:** each Trustee shall be entitled to a full and complete indemnity from the Trust Fund for any personal liability which that Trustee may incur in any way arising from or in connection with that Trustee acting or purporting to act as Trustee of the Trust, provided such liability is not attributable to that Trustee's own dishonesty, or to the wilful commission or omission by that Trustee of an act known by that Trustee to be a breach of trust.

## 12. Alteration of Deed

- 12.1. This deed may only be altered, added to, rescinded or otherwise amended by unanimous agreement of all of the Trustees, provided that no such amendments shall detract from the charitable nature of the Trust or amend this alteration of deed clause. Abstinance or absence from voting from any of the Trustees renders any amends invalid.

## 13. Liquidation of Trust

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- 13.1. **Winding up:** if at any time the Trustees decide that for any reason it is no longer practicable or desirable to carry out the purposes of the Trust then the Trustees by unanimous agreement of all of the Trustees wind up the Trust. Abstention or absence from voting from any of the Trustees renders any winding up vote invalid.
- 13.2. **Distribution:** on the winding up of the Trust all surplus assets after the payment of debts and liabilities will be given to other charitable organisations within New Zealand and that are as closely aligned to the Trust objects as possible and as the Board will decide. If the Board is unable to make such a decision, the surplus assets will be disposed of in accordance with the directions of the High Court pursuant to section 27 of the Charitable Trusts Act 1957 or subsequent enactment.



## Signed as a deed

Signed by

**Ashley Michael Bowe**

Ashley Michael Bowe

In presence of:

Signature witness

Lagafuaina Tavita

Name of witness

Director (SIU), ombudsman

Occupation

Samoa

City of residence

Signed by

**Edith Woischin**

Edith Woischin

In presence of:

Signature witness

Rachael Shaw

Name of witness

Biologist

Occupation

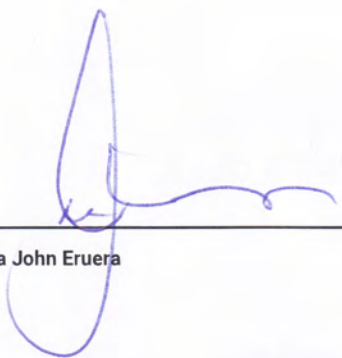
Wellington

City of residence




Signed by

**Moana John Eruera**

  
Moana John Eruera

In presence of:

  
Signature witness

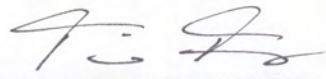
Name of witness

Occupation

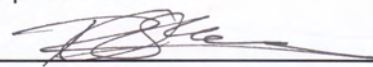
City of residence

Signed by

**Timo Franz**

  
Timo Franz

In presence of:

  
Signature witness

Name of witness

Occupation

City of residence

"I hereby certify that this is a correct copy of the trust deed of the Impact Open Source Software Trust as per section 10 (2) of the Charitable Trusts Act 1957"  
Wellington, 11 May 2018

 (Timo Franz)