
2. Amendment of the Trust Deed

From the date of this Deed, the Trust Deed is amended and restated as set out in the amended version of the Trust Deed attached to this Deed as Attachment 1.

3. Continuation of Trust Deed and inconsistency

3.1 Continuation of Trust Deed

3.1.1 The Trust Deed is confirmed and continues in effect except as amended by this Deed.

3.1.2 The amendments to the Trust Deed do not affect:

- (a) the validity or enforceability of the Trust Deed; or
- (b) any accrued rights or liabilities of any party under the Trust Deed.

3.2 Inconsistency

If there is an inconsistency between this Deed and the Trust Deed, the provisions of this Deed prevail to the extent of that inconsistency.

4. Incorporated terms

Clauses 18 (*Governing law*), 19 (*Interpretation*) and 20 (*General*) of the Trust Deed are incorporated by reference into this Deed and bind the Trustee as if they were repeated (*mutatis mutandis*) in this Deed.

5. Electronic execution

A party may sign this Deed, and any variations to it, by electronic means where permitted by law.



Signing Page

Executed as a deed by **APIDTT Pty Ltd ACN 638 389 072** in its capacity as trustee of the **Asia Pacific Internet Development Trust** in accordance with s 127(1) and (3) of the *Corporations Act 2001* (Cth):

.....
Signature of Director

.....
Signature of Director

.....
Print full name

.....
Print full name

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Trust Deed Asia Pacific Internet Development Trust

JUN MURAI
and

APIDTT PTY LTD
ACN 638 389 072
and

APNIC PTY LTD
ACN 081 528 010
and

WIDE RESEARCH INSTITUTE CO., LTD
Corporation Registration Number 0104-01-040908

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Background

- A. The Asia Pacific Network Information Centre (**APNIC**) is the Regional Internet Registry for the Asia Pacific Region with delegated authority for assigning and managing Internet Protocol (**IP**) addresses (among other things). APNIC Pty Ltd ACN 081 825 010 provides corporate and other services to APNIC.
- B. The WIDE Project is a project in Japan founded by Keio University, Tokyo Institute of Technology and The University of Tokyo, as represented by WIDE in this Deed. The Founder is the president of the WIDE Project.
- C. The Founder has paid the amount of \$100 (**Settled Sum**) to the Trustee for the purpose of founding a perpetual charitable trust, to be known as 'Asia Pacific Internet Development Trust' (**Trust**).
- D. Other money or property may from time to time be paid or transferred to the Trustee for the purposes of the Trust.
- E. The Founder desires to declare the charitable trusts upon which the Settled Sum and other property paid or transferred to the Trustee will be held on terms of this Trust Deed.

This Deed Witnesses

1. Definitions

In this Deed:

Approved Institution means a fund, authority or institution named in or approved by the Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of Subdivision 30-B of the *Income Tax Assessment Act 1997* (Cth).

APNIC Foundation means the APNIC Foundation Limited (a company incorporated under the Hong Kong Companies Ordinance as a company limited by guarantee and not having share capital) of 21/F Edinburgh Tower, The Landmark, 15 Queen Road Central, Hong Kong.

Asia Pacific Region includes each of the jurisdictions comprised in the region served by APNIC in its function as a Regional Internet Registry.

Business Day means a day other than a Saturday, Sunday or public holiday in Brisbane, Australia.

Charitable means charitable according to the laws of both the State of Queensland and the Commonwealth of Australia.

Change of Control means a situation or occurrence where a person which is a body corporate comes under the Control of a person who did not Control that body corporate before the change.

Claim means any action, claim, demand or proceeding.

Control has the meaning in s 50AA of the *Corporations Act 2001* (Cth).

Guardian means the guardian of the Trust appointed under clause 8 from time to time.

2.2 The Trustee:

- 2.2.1 will pay from the Trust Fund, all proper costs and expenses incurred by the Trustee in administering the Trust and the Trust Fund; and
- 2.2.2 may then (in its absolute discretion) pay or apply the income and the whole or any part of the capital of the Trust Fund to the Object of the Trust in any year, as follows:
- (a) the Trustee will determine the amount of income and / or capital of the Trust Fund to pay or apply to the Objects of the Trust in each year (**the Distributable Amount**); and
 - (b) unless determined by the Trustee to the contrary in respect of a particular year, the Trustee must then pay, apply or allocate so far as practicable:
 - (i) 50% of the Distributable Amount to projects selected by APNIC; and
 - (ii) 50% of the Distributable Amount to projects selected by WIDE;
- provided that all projects, payments, applications or allocations meet the Objects of the Trust.

3. Objects of the Trust

The Objects of the Trust are to undertake or fund projects or activities that:

- 3.1 advance social or public welfare of the general public in the Asia Pacific Region by improving and increasing availability, affordability and accessibility of the public Internet in the region;
- 3.2 relieve the poverty, distress or disadvantage of individuals and families in the Asia Pacific Region by improving and increasing availability, affordability and accessibility of the public Internet in the region; and
- 3.3 advance education of the general public in the Asia Pacific Region by improving and increasing availability, affordability and accessibility of research and education networks in the region.

4. Trustee's discretion

- 4.1 In exercising discretions under this Deed, the Trustee may consider:
- 4.1.1 any recommendations of:
 - (a) the Guardian;
 - (b) APNIC;
 - (c) WIDE; and
 - (d) the APNIC Foundation;
 - 4.1.2 the provisions and objects of any other trust (including a trust established by a testamentary instrument), to the extent that those objects are consistent with the Object, where:

- (b) as required by the Guardian from time to time on particular issues which the Guardian considers may affect the Trust or Trustee.

8.3 Appointment of additional or replacement Guardians

- 8.3.1 The Guardian may by notice in writing to the Trustee appoint a person as an additional or replacement Guardian who has consented in writing to that appointment and to be bound by the terms of this Deed.
- 8.3.2 A person ceases to be a Guardian:
 - (a) if an Insolvency Event occurs in relation to the Guardian;
 - (b) if the Guardian resigns as Guardian by notice in writing to the other Guardian or Guardians and Trustee.
- 8.3.3 If there is no existing legal person appointed as Guardian the Trustee must:
 - (a) as soon as reasonably practicable (and within 90 days);
 - (b) appoint as Guardians one or more appropriate legal persons who have provided their consent in writing to that appointment and to be bound by the terms of the Deed;
 - (c) by written resolution of the Trustee.

8.4 Decisions of the Guardian

- 8.4.1 Where there is only one Guardian, decisions of the Guardian are to be made by written resolution provided to the Trustee.
- 8.4.2 Where there is more than one Guardian, decisions of the Guardian must be made by consensus or simple majority vote.

9. Trustee

- 9.1 The Guardian may appoint an Australian body corporate as the sole Trustee of the Trust.
- 9.2 For so long as the Trustee is trustee of the Trust, it must not without the prior written consent of the Guardian:
 - 9.2.1 undergo any Change of Control;
 - 9.2.2 appoint or remove any director;
 - 9.2.3 change its legal residence or domicile; or
 - 9.2.4 amend its constitution.
- 9.3 The Guardian may from time to time remove or replace the Trustee by notice in writing to the Trustee.
- 9.4 Without limitation to clause 9.3, a Trustee ceases to be a Trustee:
 - 9.4.1 if an Insolvency Event occurs in relation to the Trustee;

- 9.4.2 if the Trustee resigns as Trustee by notice in writing to the Guardian.
- 9.5 Decisions of the Trustee may be made by majority vote, unless:
- 9.5.1 this Deed provides otherwise, or
- 9.5.2 the Trustee unanimously decides that a decision should be made on another basis and the Guardian has consented to the decision being made on that other basis.
- 9.6 The Trustee may make decisions in relation to the Trust by executing a document containing a statement of the decision.
- 9.7 The Trustee and its members are not entitled to receive any remuneration or other financial reward from the Trust merely for being the Trustee or a member of the Trustee.
- 9.8 Notwithstanding clause 9.7, the Trustee is entitled to be reimbursed from the Trust for out of pocket expenses reasonably incurred by the Trustee in performing its obligations as a trustee of the Trust.
- 9.9 Nothing in clause 9.7:
- 9.9.1 prevents a payment being made from the Trust to a member, or a Related Body Corporate of a member, for goods or services supplied in connection with, and for the purpose of furthering, the Objects of the Trust; or
- 9.9.2 prevents the Trustee from making a grant or other payment (including a reasonable allocation for indirect or overhead costs) to a member or Related Body Corporate of a member, provided the Trustee is satisfied that the arrangement is on reasonable terms and in furtherance of the Objects of the Trust.
- 9.10 Nothing in clauses 9.7 to 9.9 permits any distribution of Trust property that would be inconsistent with the Trust's status as a not-for-profit charitable trust, or authorises any payment that is, in substance, a distribution of profit or surplus.

10. Powers of the Trustee

- 10.1 The Trustee must exercise all powers to further the charitable purposes and the Objects of the Trust.
- 10.2 The Trustee is not liable to account to any person for the exercise of a discretion.
- 10.3 In addition to the powers vested in them by Law, the Trustee has the power to:
- 10.3.1 retain the Trust Fund or any part of it in its actual state and condition for any period;
- 10.3.2 realise the assets of the Trust Fund or any part of it;
- 10.3.3 invest the assets of the Trust Fund solely in investments or securities authorised by law for the investment of trust money, and to vary those investments or securities;
- 10.3.4 hold any immovable property in any manner the Trustee decide, and to sell that property;
- 10.3.5 accept or refuse any money, investments, or property offered, given, bequeathed or devised to the Trust;

- 10.3.6 decide whether to hold money, investments or property offered, given, bequeathed or devised to the Trust as capital or income of the Trust Fund;
- 10.3.7 amalgamate the Trust Fund with any other charity if the amalgamation is permitted by law and is consistent with the Object;
- 10.3.8 sell, exchange, convey, lease, mortgage, charge, agree to let, license and otherwise manage any land which, or the proceeds of sale of which, may form part of the Trust Fund as if the Trustee were the beneficial owners;
- 10.3.9 construct, pull down, rebuild, enlarge, maintain, alter, equip and insure any premises forming part of the Trust Fund;
- 10.3.10 accumulate any income remaining in the Trust Fund at the end of a financial year by investing that income in any manner authorised by this Deed, despite the provisions of clause 2. Any accumulations made in that way will be held as an accretion to the capital of the Trust Fund;
- 10.3.11 conduct and settle all Claims and disputes arising in connection with the Trust Fund or the Trust;
- 10.3.12 invest or hold or allow the whole or any part of the Trust Fund to remain in the name of or under the control of:
 - (a) any two or more persons; or
 - (b) any corporation,as nominees of the Trustee;
- 10.3.13 raise funds and to invite and receive contributions from any person by way of subscription, donation and otherwise;
- 10.3.14 raise any money for the purpose of the Trust, with or without security or by mortgaging or charging any part of the Trust Fund;
- 10.3.15 take and act on the advice or opinion of any person whom the Trustee reasonably believes is qualified to give that advice or opinion, on any matter in connection with this Deed, the Trust and the Trust Fund, but this clause does not oblige the Trustee to act in accordance with any advice nor prohibit the Trustee from applying to any court;
- 10.3.16 delegate the exercise of any power of the Trustee to a sub-committee, on the conditions that:
 - (a) any sub-committee must give regular reports to the Trustee;
 - (b) the Trustee must consider every report at the next meeting of the Trustee; and
 - (c) any expenditure made by a sub-committee must be in accordance with a budget previously agreed by the Trustee;
- 10.3.17 engage or employ any person or corporation (but not a Trustee) as CEO (or equivalent) who is an ex-officio voting member of the board of the Trustee, advisers, managers or otherwise and to pay out of the capital or income of the Trust Fund any relevant fees, remuneration expenses or outgoings payable in connection with that engagement or employment;

10.3.18 do any act or thing which in the opinion of the Trustee is necessary for the proper and efficient management of the Trust Fund; and

10.3.19 carry out any of the powers in this clause 10.3.3 through an agent.

11. Bank Account

11.1 The Trustee must:

11.1.1 open and maintain one or more account in the name of the Trust, at any financial institutions they decide; and

11.1.2 implement procedures for the prudent operation of those accounts.

12. Amendment

12.1 The Trustee may vary this Deed by entering into a deed of variation with the prior written consent of the Guardian.

12.2 No amendment may be made, and nothing in clause 12.1 authorises the making of any amendment to:

12.2.1 the Objects; or

12.2.2 that causes or results in the Trust ceasing to be charitable.

13. Indemnity

13.1 The Trustee and any agents or employees of the Trustee acting in the exercise of the Trusts or in the exercise of powers or discretions under this Deed are:

13.1.1 not liable for any loss or liability; and

13.1.2 entitled to be indemnified from the Trust Fund in respect of any loss, liability, costs and expenses (including liability for income tax and any other taxes and all fines and penalties payable in relation to those taxes) in connection with:

(a) entering into this Deed or any deed amending this Deed;

(b) establishing, operating, administering, amending, terminating and winding up the Trust; and

(c) all matters incidental to the Trust; and

(d) acts and things done in connection with the matters referred to in clause 13.1.2 including the Trustee performing its duties and exercising its powers and discretions under this Deed,

13.2 Notwithstanding clause 13.1, the Trustee and any agents or employees of the Trustee are prohibited from being indemnified from the Trust Fund if the loss, liability, cost or expense is attributable to:

13.2.1 the dishonesty of that Trustee, agent or employee;

- 13.2.2 gross negligence or recklessness of that Trustee, agent or employee; or
- 13.2.3 a deliberate act or omission known by that Trustee, agent or employee to be a breach of trust.

14. Accounts and Audit

- 14.1 The Trustee must:
 - 14.1.1 keep proper accounts of all sums of money received by and expended from the Trust Fund, the matters in respect of which the receipt and expenditure takes place and of the assets and liabilities of the Trust Fund; and
 - 14.1.2 cause a balance sheet and statement of income and expenditure to be drawn up each year.
- 14.2 The annual financial statements of the Trust must be audited by a chartered accountant appointed by the Trustee (**Auditor**). The Trustee may appoint the Auditor on terms they consider appropriate and may remove the Auditor and appoint a replacement.

15. Restrictions on exercise by powers by Trustee

The Trustee must not exercise any power or discretion in connection with the Trust in a way that results in the application of the Trust Fund or the income of the Trust Fund being applied to any purpose that is not exclusively charitable.

16. Termination of the Trust

- 16.1 The Trustee may, by unanimous decision, terminate the Trust if the Trustee consider that it is inappropriate or impractical for the Trust to continue.
- 16.2 If on the termination of the Trust there remains, after satisfaction of all debts and liabilities, any property (**Surplus Property**), that Surplus Property must be given or transferred to one or more Approved Institutions which:
 - 16.2.1 have objects similar to the Objects;
 - 16.2.2 is maintained exclusively for or covenants to use its property exclusively for charitable purposes; and
 - 16.2.3 the terms of which preclude the distribution of its income and property among its beneficiaries or members.
- 16.3 The Approved Institution to which Surplus Property will be distributed must be determined by the Trustee at or before the time of termination or, if the Trustee do not make a determination, by a judge who has jurisdiction in the matter.

17. Notices**17.1 Delivery of notice**

17.1.1 A notice or other communication required or permitted to be given to a person under this Deed must be in writing and may be delivered:

- (a) personally to the person;
- (b) by leaving it at the person's address or, if the person is a company, at the company's registered office;
- (c) by posting it by prepaid post addressed to the person at the person's address; or
- (d) by email to the person's email address.

17.1.2 The address and email address of each party are set out on page 1 of this Deed. A party may change its address or email address by giving notice to the other parties.

17.2 Time of delivery

A notice or other communication is deemed delivered:

- 17.2.1 if delivered personally or left at the person's address, upon delivery;
- 17.2.2 if posted within Australia to an Australian address, 2 Business Days after express posting and in any other case, 6 Business Days after posting;
- 17.2.3 if delivered by email, subject to clause 17.2.4, at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient; and
- 17.2.4 if received after 5.00pm or on a day which is not a business day in the place it is received, at 9.00am on the next business day in that place.

18. Governing law

This Deed is governed by the law applying in the State of Queensland, Australia and the parties submit to the non-exclusive jurisdiction of the courts of the State of Queensland, Australia.

19. Interpretation**19.1 Words and headings**

In this Deed, unless expressed to the contrary:

- 19.1.1 words denoting the singular include the plural and vice versa;
- 19.1.2 the word 'includes' in any form is not a word of limitation;

- 19.1.3 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 19.1.4 headings and sub-headings are for ease of reference only and do not affect the interpretation of this Deed; and
- 19.1.5 no rule of construction applies to the disadvantage of the party preparing this Deed on the basis that it prepared or put forward this Deed or any part of it.

19.2 Specific references

In this Deed, unless expressed to the contrary, a reference to:

- 19.2.1 a gender includes all other genders;
- 19.2.2 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- 19.2.3 any document (such as a deed, agreement or other document) is to that document (or, if required by the context, to a part of it) as amended, novated, substituted or supplemented at any time;
- 19.2.4 writing includes writing in digital form;
- 19.2.5 'this Deed' is to this Deed as amended from time to time;
- 19.2.6 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
- 19.2.7 a clause, schedule or attachment is a reference to a clause, schedule or attachment in or to this Deed;
- 19.2.8 any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- 19.2.9 a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 19.2.10 a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and
- 19.2.11 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

20. General

20.1 Counterparts

This Deed may be executed in counterparts, all of which taken together constitute one document.

20.2 Entire agreement and no reliance

- 20.2.1 This Deed:

- (a) constitutes the entire agreement between the parties; and
- (b) supersedes and cancels any contract, deed, arrangement, related condition, collateral arrangement, condition, warranty, indemnity or representation imposed, given or made by a party (or an agent of a party) prior to entering into this Deed.

20.2.2 The parties acknowledge that in entering into this Deed each party has not relied on any representations made by the other parties (or their agents or employees) other than matters expressly set out in this Deed.

20.3 Liability

If a party consists of 2 or more people or entities, an obligation of that party binds each of them jointly and severally.

20.4 Severability

20.4.1 Any provision of this Deed that is held to be illegal, invalid, void, voidable or unenforceable must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

20.4.2 If it is not possible to read down a provision as required by this clause, part or all of the clause of this Deed that is unlawful or unenforceable will be severed from this Deed and the remaining provisions continue in force.

20.5 Waiver

The failure of a party at any time to insist on performance of any provision of this Deed is not a waiver of the party's right at any later time to insist on performance of that or any other provision of this Deed.

20.6 Further assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Deed.

20.7 Survival and enforcement of indemnities

20.7.1 Each indemnity in this Deed is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Deed.

20.7.2 It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Deed.

20.8 No merger

The warranties, undertakings, agreements and continuing obligations in this Deed do not merge on completion of the transactions contemplated by Deed.

20.9 Business Day

If a payment or other act is required by this Deed to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

