

# CONSTITUTION

## **Australian Access Federation Limited**

ACN [630 805 319]

A public company limited by guarantee

Approved by Members on 29 August 2018 to be effective from 4 January 2019



<b>CONSTITUTION .....</b>	<b>1</b>
<b>1 Defined terms &amp; interpretation .....</b>	<b>1</b>
<b>2 Objects .....</b>	<b>2</b>
<b>3 Aims .....</b>	<b>2</b>
<b>4 Income and property of Company .....</b>	<b>3</b>
<b>5 Nature of Company .....</b>	<b>3</b>
<b>6 Eligibility .....</b>	<b>3</b>
<b>7 Membership.....</b>	<b>4</b>
<b>8 Fees .....</b>	<b>4</b>
<b>9 Ceasing to be a Member .....</b>	<b>4</b>
<b>10 De-registration and suspension.....</b>	<b>5</b>
<b>11 Member Representatives .....</b>	<b>6</b>
<b>12 Board to manage Company .....</b>	<b>6</b>
<b>13 Number of Directors .....</b>	<b>6</b>
<b>14 Appointment.....</b>	<b>6</b>
<b>15 Nomination and election .....</b>	<b>7</b>
<b>16 Chair and Deputy Chair.....</b>	<b>7</b>
<b>17 Secretary.....</b>	<b>8</b>
<b>18 Minutes and Registers.....</b>	<b>8</b>
<b>19 Removal .....</b>	<b>8</b>
<b>20 Vacation of office and vacancies .....</b>	<b>8</b>
<b>21 Remuneration of Directors .....</b>	<b>9</b>
<b>22 Directors' meetings .....</b>	<b>10</b>
<b>23 Use of technology for meetings .....</b>	<b>10</b>
<b>24 Committees .....</b>	<b>10</b>
<b>25 Delegation.....</b>	<b>11</b>
<b>26 Decision on questions.....</b>	<b>11</b>
<b>27 Written Resolutions .....</b>	<b>11</b>
<b>28 Directors' interests .....</b>	<b>11</b>
<b>29 Validity of acts of the Board .....</b>	<b>13</b>
<b>30 Calling general meeting .....</b>	<b>13</b>

<b>31</b>	<b>Annual general meeting .....</b>	<b>13</b>
<b>32</b>	<b>Notice of general meeting .....</b>	<b>13</b>
<b>33</b>	<b>Member .....</b>	<b>14</b>
<b>34</b>	<b>Quorum .....</b>	<b>14</b>
<b>35</b>	<b>Adjournment.....</b>	<b>14</b>
<b>36</b>	<b>Use of technology for meetings .....</b>	<b>15</b>
<b>37</b>	<b>Chairperson .....</b>	<b>15</b>
<b>38</b>	<b>Decision on questions.....</b>	<b>15</b>
<b>39</b>	<b>Poll.....</b>	<b>16</b>
<b>40</b>	<b>Voting rights .....</b>	<b>16</b>
<b>41</b>	<b>Votes by proxy .....</b>	<b>16</b>
<b>42</b>	<b>Document appointing proxy .....</b>	<b>16</b>
<b>43</b>	<b>Written resolutions .....</b>	<b>17</b>
<b>44</b>	<b>Funds .....</b>	<b>17</b>
<b>45</b>	<b>Audit and accounts.....</b>	<b>17</b>
<b>46</b>	<b>Inspection of records .....</b>	<b>17</b>
<b>47</b>	<b>Service of notices .....</b>	<b>18</b>
<b>48</b>	<b>Winding up .....</b>	<b>18</b>
<b>49</b>	<b>Indemnity .....</b>	<b>18</b>
	<b>Appendix 1 – Application to become a Member .....</b>	<b>20</b>
	<b>Appendix 2 – Form of appointment of Proxy .....</b>	<b>22</b>

# CONSTITUTION

## Australian Access Federation Limited

### Name

The name of the company is Australian Access Federation Limited (**Company**).

### Preliminary

#### 1 Defined terms & interpretation

1.1 In this Constitution unless the contrary intention appears:

**Auditor** means the Company's auditor.

**Board** means the board of Directors of the Company.

**Board Committees** has the meaning given in clause 24.1.

**Chair** means the Director nominated as chairperson of the Board from time to time.

**Constitution** means this Constitution, being the constitution of the Company as amended from time to time.

**Corporations Act** means the *Corporations Act 2001* (Cth) as modified or amended from time to time.

**Director** means a director of the Company appointed in accordance with this Constitution.

**Financial year** means the year ending on 31 December.

**Independent** means a person that is not employed or otherwise engaged in a service capacity by, and does not (in the opinion of the Board) have any material or pecuniary relationship with, the Company or any Member, or any of their related bodies corporate.

**Member** means a person who is registered by the Company in its register of Members as a member of the Company.

**Member Representative** means a person appointed as such under clause 11.

**Secretary** means any person appointed by the Board to perform any of the duties of a secretary of the Company and if there are joint secretaries, any one or more of such joint secretaries.

1.2 In this Constitution, unless the contrary intention appears:

- (a) the singular includes the plural and vice versa and words importing a gender include other genders;
- (b) words importing natural persons include corporations;
- (c) words and expressions defined in the Corporations Act have the same meaning in this Constitution;

- (d) headings are for ease of reference only and do not affect the construction of this Constitution;
  - (e) a reference to a person includes a firm, corporation or any other entity; and
  - (f) to the extent applicable, Division 8 of Part 1.2 of the Corporations Act applies (with any necessary variations) as if the terms of this Constitution were provisions of the Corporations Act.
- 1.3 Unless the contrary intention appears in this Constitution, an expression in a clause of this Constitution has the same meaning as in a provision of the Corporations Act that deals with the same matter as the clause.
- 1.4 The replaceable rules in the Corporations Act do not apply to the Company.

## **Objects and Aims**

### **2 Objects**

- 2.1 The objects of the Company include but are not limited to:
- (a) supporting online access to shared research and education infrastructure, resources and services by researchers, teachers and students in Australia;
  - (b) developing and implementing a governance model and consistent technologies to support a trusted national authentication and authorisation regime; and
  - (c) entering into cross-federation arrangements to support international collaboration.

### **3 Aims**

- 3.1 To give effect to its objects, the Company must:
- (a) manage the operations of the Company either directly or by engaging appropriate service organisations on a contractual basis;
  - (b) provide a forum for the discussion and selection of appropriate standards and technologies required to create an effective access environment meeting the Authentication, Authorisation and Accounting (AAA) needs of Australian researchers and educators;
  - (c) facilitate access to identified overseas research and teaching infrastructure by engaging in cross-federation activities with international access federations;
  - (d) invest the Company's funds and use sums of money out of the Company's funds to support the operational requirements of the Company and other related activities subject to this Constitution; and
  - (e) hold periodic meetings of its Members,
- and the Company may also:
- (f) either directly or indirectly, provide training for support staff working with the Company technologies;

- (g) receive fees from Members, subscriptions and fees from users of the Company's services and apply for, and accept, money by way of grant, gift, bequest or otherwise in accordance with clause 44;
- (h) receive, obtain and hold land, securities and other property, real or personal;
- (i) publish and/or promote the publication of any printed or electronic material or produce and promote the production of any audio/visual material relating to the Company's objects;
- (j) enter into an arrangement or agreement with, become a member of, subscribe to, or affiliate with, any organisation having objects consistent with those of the Company;
- (k) procure, transfer or deal with copyrights, privileges, exemptions, certificates, licences, patents, trademarks and the like deemed necessary or convenient for the Federation;
- (l) employ staff;
- (m) insure against risks as appropriate; and
- (n) do all other lawful things necessary.

## **Company**

### **4 Income and property of Company**

- 4.1 The income and property of the Company will only be applied towards the promotion of the objects and aims of the Company set out in clauses 2 and 3.
- 4.2 No income or property will be paid or transferred directly or indirectly to any Member of the Company except for payments to a Member:
  - (a) in return for any services rendered or goods supplied in the ordinary and usual course of business to the Company; or
  - (b) of interest at a rate not exceeding current bank overdraft rates of interest for moneys lent.

### **5 Nature of Company**

- 5.1 The Company is a public company limited by guarantee.
- 5.2 The liability of each Member is limited. Each Member guarantees to contribute up to a maximum of one dollar (\$1) to the assets of the Company if the Company is wound up while the Member is a Member, or within one year afterwards, and if at the time of winding up the debts and liabilities of the Company exceed its assets. The liability of each member is limited to making such contribution and no more.

## **Membership**

### **6 Eligibility**

- 6.1 Membership in the Company is available to body corporates that:
  - (a) have a contract for services with the Company; and
  - (b) undertake or support education, research or research and development in Australia, including but not limited to:

- (i) tertiary education institutions, such as universities or vocational education institutions;
- (ii) Government, commercial research institutions and not-for-profit entities;
- (iii) Government or commercial product and service organisations delivering products or services to the education and research sector; and
- (iv) any other entity approved by the Board from time to time.

## 7 Membership

- 7.1 Any eligible body corporate may apply to be a Member in accordance with this clause 7.
- 7.2 Each body corporate that is a participant of Australian Access Federation Incorporated (**AAF Inc**) as at the date it converts from an incorporated association under the *Associations Incorporation Act 2009* (NSW) to a company limited by guarantee under the Corporations Act (**Conversion Date**) will, unless the body corporate requests otherwise by notice in writing to AAF Inc prior to the Conversion Date, be deemed to be, and will automatically become, a Member of the Company as at the Conversion Date (without the need to make an application to the Company to become a Member) and:
- (a) will be named as a member in the Company's application for registration as a company;
  - (b) will have the rights and obligations of Members under this Constitution; and
  - (c) have as its Member Representative under this Constitution the person appointed by it as its Member Representative in respect of AAF Inc immediately prior to the Conversion Date.
- 7.3 Applications for membership of the Company must be made in writing in the form on in accordance with the requirements set out in Appendix 1 and be signed on behalf of the applicant.
- 7.4 The Board will consider each application for membership as soon as practicable after the application is received and will approve or reject (and may seek further information regarding) each application.
- 7.5 As soon as practicable following acceptance of an application for membership by the Board, the Company will send the applicant written notice of the acceptance which notice will be subject to the payment by the applicant of any applicable joining fee within 28 days of the Company's notice.
- 7.6 Upon payment of any applicable fees by the applicant, the name of the applicant will be entered in the register of Members and the applicant becomes a Member. The Company will notify the applicant when they have become a Member.
- 7.7 The rights and privileges of every Member are personal to each Member and are not transferable by the Member's own act or by operation of law, and terminate on the cessation of membership.

## 8 Fees

- 8.1 The Board may determine that a joining fee and/or annual fee is payable by Members and fix the time and manner in which such fee(s) is payable.
- 8.2 Where fees are payable and a Member is in arrears on fees three months following the due date for payment, that Member may be removed by the Company as a member.

## 9 Ceasing to be a Member

- 9.1 A Member's membership of the Company will, unless the Board resolves otherwise, cease:
- (a) if the Member ceases to trade;
  - (b) if the Member gives the Secretary written notice of resignation, provided the Member has paid to the Company all amounts it owes to the Company;
  - (c) as provided in clause 8.2;
  - (d) if the Board decides to de-register a Member under clause 10;
  - (e) if a liquidator is appointed in connection with the winding-up of the Member or an order is made by a Court for the winding-up or deregistration of the Member;
  - (f) if the Member ceases to be eligible under clause 6 to be a Member;
  - (g) if the Member is expelled by a unanimous decision of the other Members; or
  - (h) if the Member is in arrears on any fees or charges under its contract for services with the Company three months following the due date for payment of such fees or charges.
- 9.2 Any Member ceasing to be a Member will remain liable for and will pay to the Company any moneys which were due to the Company at the date of ceasing to be a Member.

## **10 De-registration and suspension**

- 10.1 The Board may de-register a Member from the Company, or suspend a Member from the rights and privileges of membership for a specified period, if the Member has engaged in conduct detrimental to the interests of the Company and has persistently refused or neglected to comply with any notice provided by the Board to remedy the conduct or failed to comply with this Constitution.
- 10.2 If the Board determines to de-register or suspend a Member, the Board must provide written notice to the Member advising of, and specifying the grounds for, the de-registration or suspension.
- 10.3 A Member may appeal against its de-registration or suspension by providing written notice to the Company within 14 days of receipt of the notice referred to in clause 10.2, requesting that a general meeting be convened to vote on whether the de-registration or suspension should be upheld.
- 10.4 The Board:
- (a) must convene a general meeting within 21 days of receipt of a notice from a Member referred to in clause 10.3; and
  - (b) must provide the grounds for de-registration to the Members entitled to attend the general meeting.
- 10.5 At the general meeting:
- (a) the only business will be the question of the Member's de-registration;
  - (b) the de-registered Member must be given an opportunity to be heard; and
  - (c) voting by secret ballot will occur and by simple majority a decision made on whether the de-registration or suspension should be upheld.



## **11 Member Representatives**

- 11.1 A Member may by written notice to the Company, appoint a natural person to act as its representative (**Member Representative**) to represent the Member in connection with the Company.
- 11.2 A Member may remove and replace its Member Representative from time to time by notice in written addressed to the Secretary of the Company.
- 11.3 Subject to the terms of a Member Representative's appointment, a Member Representative is entitled to:
- (a) exercise at a general meeting all the powers which the Full Member which appointed him or her could exercise if it were a natural person;
  - (b) stand for election as a Director; and
  - (c) be counted towards a quorum on the basis that the Member is to be considered personally present at a general meeting by its Member Representative.
- 11.4 The chairperson of a general meeting may allow a Member Representative to vote on the condition that he or she subsequently establishes his or her status as a Member Representative within a period prescribed by and to the satisfaction of the chairperson of the general meeting.

## **Powers and duties of the Board**

### **12 Board to manage Company**

- 12.1 The Board:
- (a) governs the Company and manages its affairs in accordance with the Corporations Act, this Constitution;
  - (b) may exercise all powers of the Company that this Constitution and the Corporations Act do not require to be exercised by the Company in general meeting; and
  - (c) has the power to perform all acts and do all things that appear to the Board to be necessary or desirable for the proper management and affairs of the Company.
- 12.2 Every Director and other agent or officer of the Company must keep confidential all aspects of all transactions of the Company, except:
- (a) to the extent necessary to enable the person to perform his or her duties to the Company;
  - (b) as required by law; and
  - (c) when requested by the Board to disclose information to the Auditor or to a general meeting of the Company.

## **Directors**

### **13 Number of Directors**

- 13.1 The Board shall comprise not less than 3 and not more than 8 Directors.

### **14 Appointment**

- 14.1 The initial Directors of the Company are the persons who have consented to act as directors and are named in the Company's application for registration as a company.
- 14.2 Subsequent to the initial Directors:
- (a) up to 6 Directors may be elected from nominated Member Representatives by resolution passed by secret ballot at a general meeting;
  - (b) up to 2 Directors determined by the Board to be Independent may be appointed by approval from not less than three-quarters of the Directors present at a meeting of the Board; and
- 14.3 All Directors will hold office from the end of the general meeting or Board meeting (as applicable) immediately following their election for a term of 2 years.
- 14.4 No Director may serve more than 4 terms (that is, 8 years in total) as a Director.

## 15 Nomination and election

- 15.1 A Member Representative is eligible for election as a Director if they:
- (a) are nominated by two Member Representatives entitled to vote (unless the Member Representative was previously elected as a Director and is currently a Director)
  - (b) are not an employee of the Company;
  - (c) give the Company their signed consent to act as a director of the Company and disclose any potential conflicts of interest; and
  - (d) are not ineligible to be a director under the Corporations Act.
- 15.2 Nominations must be delivered to the Secretary by the date specified by the Secretary in the call for nominations.
- 15.3 If the number of nominations received is:
- (a) equal to the number of positions to be filled, then the nominated Member Representatives will be taken as elected;
  - (b) more than the number of positions to be filled, an election will be conducted by secret ballot at the annual general meeting in the way the Board may direct; or
  - (c) insufficient to fill all the positions, the candidates nominated will be taken as elected and further nominations may be solicited by the Board and if nominations are received for more than the remaining number of positions to be filled, an election will be conducted by secret ballot at the annual general meeting in the way the Board may direct.

## 16 Chair and Deputy Chair

- 16.1 The Directors will, annually, elect on such terms as the Directors determine:
- (a) one Director to act as chairperson (**Chair**); and
  - (b) one Director to act as deputy chairperson (**Deputy Chair**).

- 16.2 The Chair is the spokesperson for the Company and presides over general meetings and board meetings. If the Chair is unwilling or unable to perform the role of Chair, the Deputy Chair will perform that role.
- 16.3 If the Chair is not present within 15 minutes after the time appointed for holding a Board meeting or general meeting, or is unwilling or unable to act as chairperson of that meeting, the Deputy Chair will act as chairperson of that meeting.
- 16.4 If both the Chair and the Deputy Chair are not present within 15 minutes after the time appointed for holding a Board meeting or general meeting, or are unwilling or unable to act as chairperson of that meeting, the Directors present for a Board meeting, or the Members present for a general meeting, may elect one of the Directors present to be chairperson of that meeting.

## **17 Secretary**

- 17.1 There must be at least one secretary of the Company, appointed by the Board for a term and at remuneration and on conditions determined by the Board.
- 17.2 The Secretary is entitled to attend and be heard on any matter at all Directors' and general meetings.
- 17.3 The Board may, subject to the terms of the Secretary's employment contract, suspend, remove or dismiss the Secretary. A Director performing the role of Secretary will not be remunerated for this role.

## **18 Minutes and Registers**

- 18.1 The Board must cause minutes to be made of:
- (a) the names of the Directors present at all Directors' meetings and meetings of Board Committees;
  - (b) all proceedings and resolutions of general meetings, Directors' meetings and meetings of Board Committees;
  - (c) all resolutions passed by the Board in accordance with clause 27;
  - (d) all appointments of officers;
  - (e) all orders made by the Board and Board Committees; and
  - (f) all disclosures of interests made under clause 28.
- 18.2 Minutes must be signed by the chairperson of the meeting or by the chairperson of the next meeting of the relevant body.
- 18.3 The Company must keep all registers required by this Constitution and the Corporations Act.

## **19 Removal**

- 19.1 The Company may remove a Director by resolution passed at a general meeting.

## **20 Vacation of office and vacancies**

- 20.1 The office of a Director immediately becomes vacant if the Director:

- (a) is prohibited by the Corporations Act or other legislation from holding office as a director;
- (b) resigns by notice in writing to the Company;
- (c) is removed in their capacity as Member Representative by the Member they represent;
- (d) is the Member Representative of a Member that ceases to be a Member;
- (e) becomes of unsound mind or otherwise legally incapable of managing their affairs;
- (f) becomes bankrupt;
- (g) if appointed as an Independent Director under clause 14.2(b), not less than three quarters of the Directors (not counting the Director in question) agree the Director is no longer Independent;
- (h) not less than three quarters of the Directors (not counting the Director in question) agree to remove the Director as a Director;
- (i) is directly or indirectly interested in any contract or proposed contract with the Company and fails to declare the nature of the interest as required by the Corporations Act;
- (j) is convicted of an indictable offence;
- (k) fails to attend 3 consecutive Board meetings without leave of absence approved by the Chair.

20.2 The Board may, if a vacancy is created under clause 20.1, appoint a Member Representative as Director, where the vacancy is a Director appointed under clause 14.2(a)), or an Independent person as Director, where the vacancy is a Director appointed under clause 14.2(b)), to fill the vacant office for the balance of the term of the Director who has vacated office.

20.3 The Board may act even if there are vacancies on the Board.

20.4 If the number of Directors is not sufficient to constitute a quorum at a Directors' meeting, the Board may act only to call a general meeting.

## **21 Remuneration of Directors**

21.1 The Company must not pay fees to a Director for acting as a Director unless the Members in general meeting decide otherwise.

21.2 The Company may:

- (a) pay a Director for the work that they do for the Company, other than as a Director, if the amount is no more than a reasonable fee for the work done; or
- (b) reimburse a Director for expenses properly incurred by the Director in connection with the affairs of the Company.

21.3 Any payment made under clause 21.2 must be approved by the Directors.

21.4 The Company may pay for premiums for insurance indemnifying Directors, as allowed for by law (including under the Corporations Act) and this Constitution.

## **Proceedings of Directors**

## 22 Directors' meetings

- 22.1 The Chair or Deputy Chair may at any time, and the Secretary must on the written request of 2 or more Directors, call a Directors' meeting.
- 22.2 The Directors must meet at least 3 times in each calendar year at the place and time that the Directors may decide.
- 22.3 A Directors' meeting must be called on at least 48 hours notice of a meeting to each Director.
- 22.4 Subject to the Corporations Act, in accordance with clause 23, a Directors' meeting may be held by the Directors communicating with each other by any technological means by which they are able simultaneously to hear each other and to participate in discussion. The Directors need not all be physically present in the same place for a Directors' meeting to be held.
- 22.5 The Directors may meet together, adjourn and regulate their meetings as they think fit.
- 22.6 A quorum of Directors will be that number of Directors which is equal to at least 50% of all of the appointed Directors at that time. If a quorum is not present after half an hour of when the meeting was due to start, the meeting will be dissolved. Where a quorum cannot be established for the consideration of a particular matter at a meeting of Directors, the chairperson of the meeting of Directors may call a general meeting to deal with the matter.
- 22.7 Notice of a meeting of Directors may be given in writing, or the meeting may be otherwise called using any technology agreed to by the Directors.

## 23 Use of technology for meetings

- 23.1 Where a Board meeting is convened by teleconference or video-conference:
- (a) each Director given notice of the meeting must be advised in the notice that the meeting is to be held by teleconference or video-conference;
  - (b) each Director must be given reasonable access to teleconference or video-conference facilities, as the case may be, at the time proposed for the meeting;
  - (c) each Director participating in the meeting must be able to hear each other participating Director at all times during the meeting (unless he or she chooses to leave the meeting before its conclusion, with the consent of the chairperson);
  - (d) at the commencement of the meeting each Director must acknowledge his or her presence at the meeting to all other participating Directors; and
  - (e) no Director may leave the meeting by disconnecting his or her telephone or video-conference equipment unless the chairperson has previously given consent (and a Director who disconnects without the chairperson's prior consent is conclusively presumed to have been present for the entire duration of the meeting).

## 24 Committees

- 24.1 The Board may establish committees with powers delegated by the Board (**Board Committees**) and may revoke any and all powers delegated to, and change the makeup of, or dissolve, any Board Committee.
- 24.2 The members of the Board Committees will be appointed by the Board and at least one member of each of the Board Committees must be a Director.

- 24.3 Meetings of any Board Committees will be governed by the provisions of this Constitution which deal with Directors' meetings so far as they are applicable and are not inconsistent with any directions of the Board. The provisions apply as if the members of each of the Board Committees was a Director.
- 24.4 Clause 27 regarding written resolutions applies to resolutions of Board Committees as if the members of each of the Board Committees was a Director.

## **25 Delegation**

- 25.1 The Board may, upon any terms and conditions or restrictions as they see fit, delegate any of its powers (including this power to delegate), other than those which by law must be dealt with by the Board to:
- (a) any Board Committees;
  - (b) a Director;
  - (c) an employee of the Company; or
  - (d) any other person.
- 25.2 Any Board Committees to which, or person to whom, any powers have been delegated must exercise their powers in accordance with any directions of the Board and a power exercised in that way is taken to have been exercised by the Board.
- 25.3 Any Board Committees to which, or person to whom, any powers have been delegated may be authorised by the Board to sub-delegate all or any of the powers for the time being vested in it.
- 25.4 The Board may at any time vary or revoke any delegation of power.

## **26 Decision on questions**

- 26.1 Subject to this Constitution, questions arising at a meeting of Directors are to be decided by a majority of votes of the Directors present and voting and, subject to clause 28, each Director has one vote.
- 26.2 The chair of a meeting of Directors does not have a casting or second vote in addition to his or her deliberative vote.

## **27 Written Resolutions**

- 27.1 The Board may pass a resolution without a Director's meeting being held if the requisite majority of Directors entitled to vote on the resolution agree in writing that they are in favour of the resolution. The resolution is passed when the requisite majority of Directors required to pass the resolution agree to it in writing (which can include confirmation by email).
- 27.2 For the purposes of clause 27.1, separate copies of a document may be used for signing by Directors if the wording of the resolution and statement is identical in each copy.
- 27.3 Any document referred to in this clause 27 may be in the form of an electronic transmission.
- 27.4 The minutes of Directors' meeting must record that a meeting was held in accordance with this clause 27.

## **28 Directors' interests**

- 28.1 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is avoided or rendered voidable merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 28.2 No Director contracting with or being interested in any arrangement involving the Company is liable to account to the Company for any profit realised by or under any such contract or arrangement merely because of the Director holding office as a director or because of the fiduciary obligations arising out of that office.
- 28.3 A Director is not disqualified from contracting with the Company in any respect merely because of being a Director.
- 28.4 A Director or a body or entity in which a Director has a direct or indirect interest may:
- (a) enter into any agreement or arrangement with the Company;
  - (b) hold any office or place of profit other than as Auditor; and
  - (c) act in a professional capacity other than as Auditor,
- and the Director or the body or entity can receive and keep beneficially any remuneration, profits or benefits under any agreement or arrangement with the Company or from holding an office or place of profit in or acting in a professional capacity with the Company.
- 28.5 A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not:
- (a) be present while the matter is being considered at the meeting; or
  - (b) vote on the matter,
- unless permitted by the Corporations Act to do so, in which case the Director may:
- (c) be counted in determining whether or not a quorum is present at any meeting of Directors considering that contract or arrangement or proposed contract or arrangement;
  - (d) sign or countersign any document relating to that contract or arrangement or proposed contract or arrangement; and
  - (e) vote in respect of, or in respect of any matter arising out of, the contract or arrangement or proposed contract or arrangement.
- 28.6 A Director may be or become a director or other officer of, or otherwise interested in, any related body corporate or any other body corporate promoted by the Company or in which the Company may be interested as a vendor, shareholder or otherwise and is not accountable to the Company for any remuneration or other benefits received by the Director as a director or officer of, or from having an interest in, that body corporate.
- 28.7 Without limiting his or her other obligations, a Director who is an employee, member of a governing body or contractor of a Member that has a material financial interest in a matter that is being considered at a Directors' meeting must not:
- (a) be present while the matter is being considered at the meeting; or
  - (b) vote on the matter,

unless the other Directors resolve otherwise.

## **29 Validity of acts of the Board**

If it is discovered that:

- (a) there was a defect in the appointment of a person as a Director; or
- (b) any of the circumstances specified in clause 20 applied to a person appointed as a Director,

all acts of the Board before the discovery was made are as valid as if the person had been duly appointed and was not disqualified.

## **Meetings**

### **30 Calling general meeting**

30.1 The Board may, at any time, call a general meeting on a date and at a time and place the Board determines.

30.2 A Member may:

- (a) only request the Board to call a general meeting in accordance with section 249D of the Corporations Act; and
- (b) not request or call and arrange to hold a general meeting except under section 249E or 249F of the Corporations Act.

### **31 Annual general meeting**

31.1 The Board must hold a general meeting once each financial year.

31.2 In addition to any other business that may be transacted at an annual general meeting, the business of the annual general meeting is to:

- (a) confirm the minutes of the last annual general meeting and of any general meeting held since that meeting;
- (b) receive from the Board reports on the activities of the Company during the last financial year;
- (c) elect Directors; and
- (d) receive and consider accounts prepared by an independent accountant, which will be sufficient to meet the requirements of an independent audit for GST and BAS returns.

### **32 Notice of general meeting**

32.1 Subject to the provisions of the Corporations Act allowing general meetings to be held with shorter notice, at least 21 days written notice (exclusive of the day on which the notice is served or deemed to be served and of the day for which notice is given) must be given of that meeting to each person who is at the date of the notice:

- (a) a Member;
- (b) a Director or Secretary; and



(c) an Auditor.

32.2 A notice calling a general meeting:

- (a) must specify the place, date and time of the meeting and if the meeting is to be held in two or more places, the technology that will be used to facilitate this; and
- (b) must state the general nature of the business to be transacted at the meeting.

32.3 No business other than that specified in the notice calling a general meeting may be transacted at the meeting.

32.4 A Member desiring to bring any business before a general meeting may give written notice of that business to the Secretary who must, unless the Board determines otherwise, include that business in the next notice calling a general meeting.

32.5 The Board may postpone or cancel any general meeting whenever they think fit (other than a meeting called as the result of a request under clause 30.2). The Board must give notice to all persons entitled to receive notice of general meetings of the postponement or cancellation of a general meeting and the place, date and time of any new meeting.

32.6 The failure or accidental omission to send a notice of a general meeting (including a proxy appointment form) to any Member or other person or the non-receipt of a notice (or form) by any Member or other person does not invalidate the proceedings at or any resolution passed at the general meeting.

## **Proceedings at general meetings**

### **33 Member**

33.1 A Member may be present at a general meetings by one Member Representative, or by proxy appointed in accordance with clause 41, representing that Member.

### **34 Quorum**

34.1 No business may be transacted at a general meeting unless a quorum of Members is present when the meeting proceeds to business. A quorum of Members is at least fifty per cent of the Members plus one.

34.2 If a quorum is not present within 30 minutes after the time appointed for a general meeting:

- (a) if the general meeting was called on the requisition of Members, it is automatically dissolved; or
- (b) in any other case:
  - (i) it will stand adjourned to the same time and place 7 days after the meeting, or to another day, time and place determined by the Board; and
  - (ii) if at the adjourned general meeting a quorum is not present within 30 minutes after the time appointed for the general meeting, the general meeting is automatically dissolved.

### **35 Adjournment**

35.1 The chairperson of a general meeting at which a quorum is present:

- (a) in his or her discretion may adjourn the general meeting with the meeting's consent; and
  - (b) must adjourn the general meeting if the meeting directs him or her to do so.
- 35.2 An adjourned general meeting may take place at a different venue from that of the initial general meeting.
- 35.3 The only business that can be transacted at an adjourned general meeting is the unfinished business of the initial general meeting.
- 35.4 Notice of an adjourned general meeting must be given in accordance with clause 32.1 if a general meeting has been adjourned for more than 21 days.

## **36 Use of technology for meetings**

Where a meeting of Members is convened by teleconference or video-conference:

- (a) each Member given notice of the meeting must be advised in the notice that the meeting is to be held by teleconference or video-conference;
- (b) each Member must have reasonable access to teleconference or video-conference facilities, as the case may be, at the time proposed for the meeting;
- (c) each Member participating in the meeting must be able to hear each other participating Member at all times during the meeting (unless he or she chooses to leave the meeting before its conclusion, with the consent of the chairperson);
- (d) at the commencement of the meeting each Member must acknowledge his or her presence at the meeting to all other participating Members; and
- (e) no Member may leave the meeting by disconnecting his or her telephone or video-conference equipment unless the chairperson has previously given consent (and a Member who disconnects without the chairperson's prior consent is conclusively presumed to have been present for the entire duration of the meeting).

## **37 Chairperson**

- 37.1 The chairperson of a general meeting will be determined in accordance with clause 16.

## **38 Decision on questions**

- 38.1 A resolution put to the vote of a meeting is decided on a show of hands unless a poll is demanded by not less than three Members present, or by the chairperson of the meeting.
- 38.2 Unless a poll is demanded:
- (a) a declaration by the chairperson that a resolution has been carried, carried by a specified majority, or lost; and
  - (b) an entry to that effect in the minutes of the meeting,
- are conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.
- 38.3 Subject to the Corporations Act in relation to special resolutions, a resolution is carried at a general meeting if a majority of the votes cast on the resolution are in favour of the resolution.

- 38.4 A decision of a general meeting may not be impeached or invalidated on the ground that a person voting at the general meeting was not entitled to do so.
- 38.5 If there is a dispute at a general meeting about a question of procedure, the chairperson of the general meeting may determine the question.

## **39 Poll**

- 39.1 A poll may be demanded before a vote is taken or before or after the voting results on a show of hands are declared. The demand for a poll may be withdrawn.
- 39.2 A poll will be taken when and in the manner that the chairperson of the general meeting directs, other than a poll demanded on the election of the chairperson, or the adjournment of a general meeting, which must be taken immediately.
- 39.3 The result of the poll will be the resolution of the meeting at which the poll was demanded.
- 39.4 The chairperson of a general meeting may determine any dispute about the admission or rejection of a vote on a poll. The chairperson's determination, if made in good faith, will be final and conclusive.

## **Votes of Members**

### **40 Voting rights**

- 40.1 A Member entitled to vote has, on either a show of hands or a poll, one vote.
- 40.2 A Member is not entitled to vote if there are any amounts due and payable but unpaid by the Member to the Company as at the date of the meeting.
- 40.3 The chairperson of a general meeting does not have a casting vote at general meetings.
- 40.4 An objection to the qualification of a voter may only be raised at the general meeting or adjourned general meeting at which the voter tendered its vote. An objection must be referred to the chairperson of the general meeting, whose decision is final. A vote which the chairperson does not disallow because of an objection is valid for all purposes.

### **41 Votes by proxy**

- 41.1 A Member may appoint any employee of any other Member as its proxy. A proxy may demand or join in demanding a poll and may vote on a poll.
- 41.2 A proxy may vote or abstain as he or she chooses except where the appointment of the proxy directs the way the proxy is to vote on a particular resolution. If a proxy votes at all, the proxy will be deemed to have voted all directed proxies in the manner directed.

### **42 Document appointing proxy**

- 42.1 An appointment of a proxy must be in the form set out in Appendix 2.
- 42.2 No Member may hold more than 5 proxy appointments for any general meeting.

- 42.3 A proxy may be appointed for all general meetings or for any number of general meetings or for a particular purpose, and a proxy's appointment is valid at an adjourned general meeting.
- 42.4 If a proxy appointment is signed by the Member but does not name the proxy or proxies in whose favour it is given, the chairperson may either cast as proxy or complete the appointment by inserting the name or names of one or more Directors or the Secretary.
- 42.5 The written appointment of a proxy must be received by the Company at least 48 hours (unless otherwise specified in the notice of meeting to which the proxy relates) before the time for holding the general meeting or adjourned general meeting at which the appointee is intended to vote.

### **43 Written resolutions**

- 43.1 The Members may pass a resolution without a Member's meeting being held if all Members entitled to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document. The resolution is passed when all such Members have signed.
- 43.2 For the purpose of clause 43.1, separate copies of a document may be used for signing by Members if the wording of the resolution is identical in each copy of the document.
- 43.3 Any document referred to in clause 43.2 may be in the form of a facsimile or electronic transmission.
- 43.4 The minutes of Members' meetings must record that a meeting was held in accordance with this clause 43.
- 43.5 Where the Corporations Act or this Constitution requires a resolution to be passed or approved by a majority other than a simple majority, the process outlined in this clause 43 applies mutatis mutandis save for the requirement that the applicable required majority of Members must be in favour of the resolution and sign the document.

## **Miscellaneous**

### **44 Funds**

- 44.1 The funds of Company may be derived from Member fees, services fees, grants and donations and any other sources that the Board decides.

### **45 Audit and accounts**

- 45.1 The Board must cause the Company to keep written financial records in relation to the business of the Company in accordance with the requirements of the Corporations Act.
- 45.2 The Board must cause the financial records of the Company to be audited in accordance with the requirements of the Corporations Act.

### **46 Inspection of records**

- 46.1 Except as otherwise required by the Corporations Act, and subject to clause 46.2, the Board may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them will be open for inspection by Members other than Directors.
- 46.2 The financial records and other documents of the Company must be open to inspection at a place in Queensland, free of charge, by Members at reasonable times determined by the Board.

## 47 Service of notices

- 47.1 Any notice, document or other communication required or permitted to be given under this Constitution or by law may be given in any manner (including through the use of technology) so long as such manner complied with applicable law and any policies and procedures relating to the giving and receiving of notices and other communications as determined by the Directors from time to time.

## 48 Winding up

- 48.1 If the Company is wound up:

- (a) each Member; and
- (b) each person who has ceased to be a Member in the preceding year,

undertakes to contribute to the property of the Company for the:

- (c) payment of debts and liabilities of the Company (in relation to paragraph (b), contracted before the person ceased to be a Member) and payment of costs, charges and expenses of winding up; and
- (d) adjustment of the rights of such Members and former Members amongst themselves,

such amount as may be required, not exceeding one dollar (\$1).

- 48.2 If any surplus assets remain following the winding up of the Company, the surplus assets will not be paid to or distributed amongst Members, but will be given or transferred to another body corporate which, by its constitution, is:

- (a) required to pursue objects similar to the objects of the Company;
- (b) required to apply its profits (if any) or other income in promoting its objects; and
- (c) not carried on for the profit or gain of its individual members,

such corporation to be determined by the Members at or before the winding up.

## 49 Indemnity

- 49.1 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act the Company indemnifies every person who is or has been an officer of the Company against any liability (other than for legal costs) incurred by that person as such a Director or Secretary (**officer**) of the Company (including liabilities incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).

- 49.2 To the extent permitted by law and subject to the restrictions in section 199A of the Corporations Act, the Company indemnifies every person who is or has been an officer of the Company against reasonable legal costs incurred in defending an action for a liability incurred by that person as such an officer of the Company (including such legal costs incurred by the officer as an officer of a subsidiary of the Company where the Company requested the officer to accept that appointment).

- 49.3 The amount of any indemnity payable under clauses 49.1 or 49.2 will include an additional amount (**GST Amount**) equal to any GST payable by the officer being indemnified (**Indemnified Officer**) in connection with the indemnity (less the amount of input tax credit claimable by the Indemnified

Officer in connection with the indemnity). Payment of any indemnity which includes a GST Amount is conditional upon the Indemnified Officer providing the Company with a GST tax invoice for the GST Amount.

## Appendix 1 – Application to become a Member

### AAF Limited Membership Application

Note: Complete this form if you are applying to become a Member of the Australian Access Federation, a Company Limited by Guarantee (AAF LTD). Please read the Australian Access Federation Limited Constitution before completing this form.

Application for Membership of the Australian Access Federation Limited

Company limited by guarantee, as defined in the Corporations Act 2001 (Corporations Act).

Once completed, this form is to be submitted to the Secretary ([secretary@aaf.edu.au](mailto:secretary@aaf.edu.au)) of the AAF LTD and accompanied by a covering letter on the applicant's letterhead signed by the person authorised to act on behalf of the organisation.

Full name of Applicant (Body Corporate) seeking to become a Member of the AAF

Applicant's ABN

Address of Applicant to be recorded in the AAF Register of Members

Postal address:

State or Territory:

Postcode:

Nature of Applicant's business in the research and education sector

Name of person authorised by the Applicant to act on its behalf on matters relating to the AAF

Title of authorised person

Address of authorised person

Postal Address:

State or Territory:

Postcode:

Email address:

#### Declaration

I have read the AAF Constitution and if admitted to the AAF as a Member, I agree that my organisation will be bound by the AAF LTD Constitution as amended from time to time.

.....

(Full name of person authorised by the Applicant to seek Membership of AAF LTD)

.....

(Signature)

Date .....

## Example Covering Letter

Your University or Organisation Logo

(date)

The Secretary  
Australian Access Federation  
Level 21, Turbot St  
Brisbane  
QLD  
4000

To the Secretary of the AAF,

Please find attached a signed Application Form from the <University Name or Organisation Name> to become a Member of the Australian Access Federation Limited.

<IT Director/CIO Name> and their successors are authorised by the <University or Organisation Name> to act on our behalf on matters relating to the Australian Access Federation Limited.

Yours sincerely

Signature  
<Name of Authorising Officer>  
<Signature Block>



## Appendix 2 – Form of appointment of Proxy

### Form of appointment of proxy

I, .....  
(full name)

of .....  
(Organisation name and address of Member appointing proxy – **Appointing Member**)

am authorised by the Appointing Member to appoint the following person:

.....  
(full name of proxy)

of .....  
(Organisation name and address of Member who employs proxy)

who is an employee of a Member of the Australian Access Federation Limited, as the proxy for the Appointing Member to vote at the meeting of the Australian Access Federation Limited, to be held on:

.....

and at any adjournment of that meeting.

\*The proxy is authorised to vote in favour of/against (delete as appropriate) the resolution(s) (insert details):

\_\_\_\_\_  
  
\_\_\_\_\_

.....  
(Signed for Appointing Member)

(\*To be inserted if desired.)

Date .....

Note A proxy must be an employee of a Member of the Australian Access Federation Limited.