

CONSTITUTION

AUSTRALIAN RESEARCH DATA COMMONS LIMITED

BANKI HADDOCK FIORA

LAWYERS

Level 10, 179 Elizabeth Street Sydney NSW 2000 Australia

Telephone 61 2 9266 3400 Facsimile 61 2 9266 3455

email@bhf.com.au www.bhf.com.au

TABLE OF CONTENTS

1. Introduction	1
1.1 Definitions	1
1.2 Interpretation	1
1.3 <i>Corporations Act 2001 and ACNC Act</i>	2
1.4 Replaceable rules excluded	2
1.5 Headings	2
1.6 Business day	2
1.7 References to and calculations of time	2
2. Purpose	2
2.1 Objects	2
2.2 Powers	3
2.3 Income	3
3. Liability of members	3
3.1 Limitation	3
3.2 Contribution	3
4. Membership	4
4.1 Membership	4
4.2 Form of application	4
4.3 Admission to membership	4
4.4 Entitlements	4
4.5 The Register	4
4.6 Notification by members	4
5. Membership fees	5
5.1 Admission fee	5
5.2 Annual fee	5
5.3 Determination of fees	5
6. Cessation of membership	5
6.1 Resignation	5
6.2 Cessation of membership	5
7. General meetings	6
7.1 Convening	6
7.2 Notice	6
7.3 Cancellation or postponement	6
7.4 Representation of member	7
8. Proceedings at general meetings	7
8.1 Quorum	7
8.2 Absence of quorum	7

Constitution

8.3	Ordinary and special business	7
8.4	Appointment of chairperson	7
8.5	Chairperson's powers	8
8.6	Adjournment of meetings	8
9.	Voting at general meetings	8
9.1	Voting rights	8
9.2	Decisions	8
9.3	Chairperson's vote at general meetings	8
9.4	Demand for a poll	8
9.5	Evidence of resolutions	9
9.6	Objections	9
9.7	Alterations to this constitution	9
10.	Proxies	9
10.1	Appointment	9
10.2	Form of proxy	9
10.3	Effect of proxy	9
10.4	Voting by proxy	10
11.	Directors	10
11.1	Number of directors	10
11.2	Chairperson	10
11.3	Composition	10
11.4	Appointment and retirement of directors	11
11.5	Insufficient directors	12
11.6	Removal of directors	12
11.7	Resignation	12
11.8	Vacation of office	12
11.9	Determination of fees	12
11.10	Payment for expenses	13
12.	Alternate directors	13
12.1	Power to appoint	13
12.2	Rights and powers	13
12.3	Suspension or revocation	13
12.4	Form	13
12.5	Termination of appointment	13
13.	Selection Committee	14
13.1	Role of Selection Committee	14
13.2	Constitution of Selection Committee	14
13.3	Chairperson	14

Constitution

13.4	Endorsement of candidates for election as directors	14
14.	Powers and duties of directors	14
14.1	General management	14
14.2	Negotiable instruments	15
14.3	Appointment of attorney	15
15.	Proceedings of directors	16
15.1	Meetings of directors	16
15.2	Convening of meeting	16
15.3	Notice of meeting	16
15.4	Quorum	16
15.5	Absence of quorum	17
15.6	Chairperson	17
15.7	Chairperson's vote at directors meetings	17
15.8	Voting rights	17
15.9	Decisions	17
15.10	Teleconference	17
15.11	Circulated resolutions	18
15.12	Committees	19
15.13	Validation of acts	19
16.	Directors' interests	19
16.1	Disclosure	19
16.2	Prohibition	19
17.	Minutes	20
18.	Secretary	20
19.	Accounts, audit and records	20
19.1	Accounts	20
19.2	Audit	20
19.3	Reporting	21
19.4	Inspection	21
20.	Notices	21
20.1	Means of giving notices	21
20.2	Time notices are given	22
20.3	Proof of giving notices	22
20.4	Notice of general meeting	22
21.	Indemnity	22
21.1	Right to indemnity	22
21.2	Restrictions	22

Constitution

21.3 Legal costs 23

21.4 Insurance premiums 23

22. Winding up 23

ANNEXURE A 24

ANNEXURE B 25

CORPORATIONS ACT 2001

A company limited by guarantee

CONSTITUTION

of

AUSTRALIAN RESEARCH DATA COMMONS LIMITED

1. Introduction

1.1 Definitions

1.1.1 In this constitution, unless the context otherwise requires:

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012*;

Company means Australian Research Data Commons Limited;

eResearch means the application of advanced information and communications technology to the practice of research;

NCRIS means the Commonwealth of Australia's National Collaborative Research Infrastructure Strategy;

Register means the register of members kept in accordance with clause 4.5.1;

Secretary means a person appointed to perform the duties of a secretary of the Company; and

Selection Committee means the committee constituted under clause 13.2.1.

1.1.2 Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

1.2 Interpretation

1.2.1 Unless the context otherwise requires a word which denotes:

- (a) the singular denotes the plural and vice versa;
- (b) any gender denotes the other genders; and
- (c) a person includes an individual, a body corporate and a government.

1.2.2 Unless the context otherwise requires a reference to:

- (a) any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation;
- (b) any other instrument where amended or replaced means that instrument as amended or replaced; and
- (c) a thing or amount is a reference to the whole and each part of it.

Constitution

1.3 Corporations Act 2001 and ACNC Act

Except where the contrary intention appears in this constitution, an expression has, in a provision of this constitution which deals with a matter dealt with by a relevant provision of the *Corporations Act 2001* and the *ACNC Act*, has the same meaning as in the provision of the *Corporations Act 2001* or the *ACNC Act* as the case may be.

1.4 Replaceable rules excluded

To the extent permitted by law, the replaceable rules in the *Corporations Act 2001* do not apply to the Company.

1.5 Headings

Headings must be ignored in the interpretation of this constitution.

1.6 Business day

A reference to a business day means a business day as defined in the *Corporations Act 2001*.

1.7 References to and calculations of time

1.7.1 Where a period of time is specified and is to be calculated before or after a given day, act or event it must be calculated without counting that day or the day of that act or event.

1.7.2 A provision of this constitution, except that specifying the time for deposit of proxies with the Company, which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.

2. Purpose

2.1 Objects

2.1.1 The objects for which the Company is established are:

- (a) to administer funding provided by the Commonwealth government and other parties;
- (b) to advocate the development and use of eResearch technologies in Australia that relate to integrated data-intensive infrastructure;
- (c) to promote innovative approaches to the way Australian researchers and their collaborators create, use, share and store research data and tools;
- (d) to provide unified and coherent research platforms and supporting infrastructure with a view to facilitating data-intensive, cross-disciplinary and global collaborative research;
- (e) to promote access to quality data services and tools for the Australian research community (including access to sophisticated horizon scanning tools);
- (f) to build collaborative partnerships with organisations such as research institutions, national research domains, resource suppliers and governments, as well as global eResearch infrastructure and industry;

Constitution

- (g) to expedite pathways to translation of research through the use of eResearch infrastructure; and
- (h) to do all other things that may appear to the Company to be incidental or conducive to the attainment of any of the objects for the benefit of the Australian research community.

2.1.2 Each object in clause 2.1.1 is independent of the other objects.

2.2 Powers

The Company can only exercise the powers in section 124(1) of the *Corporations Act 2001* to:

- (a) carry out the objects in clause 2.1.1; and
- (b) do all things incidental or convenient in relation to the exercise of the power under paragraph (a).

2.3 Income

The income and property of the Company:

- (a) may only be applied to the carrying out of the objects of the Company referred to in clause 2.1.1 and the exercise of the powers referred to in clause 2.2; and
- (b) must not be paid directly or indirectly to any member,

provided that nothing in this constitution prevents the payment in good faith by the Company of:

- (c) reasonable and proper remuneration and expenses to any officer of the Company in accordance with clauses 11.9 and 11.10;
- (d) reasonable and proper remuneration and expenses to any employee of the Company or to any member or other person in return for services or goods provided to the Company in the usual course of business;
- (e) interest at market rates on money borrowed from any member; or
- (f) market rent for premises let by any member to the Company.

3. Liability of members

3.1 Limitation

The liability of the members is limited.

3.2 Contribution

Each member must contribute to the assets of the Company, if the Company is wound up during the time it is a member or within 1 year afterwards, such amount as may be required (not exceeding \$100) for:

- (a) payment of the debts and liabilities of the Company contracted before the time at which it ceases to be a member;

Constitution

- (b) the costs, charges and expenses of winding up the Company; and
- (c) the adjustment of the rights of the contributories among themselves.

4. Membership

4.1 Membership

4.1.1 The members of the Company are the persons who are members of the Company as at the date of the adoption of this constitution and, subject to clause 4.1.2, such other persons whose interests align with the objects of the Company as the directors admit to membership.

4.1.2 Members can be publicly funded research institutions, universities or NCRIS facilities, and other categories as determined by the directors.

4.1.3 A natural person cannot be a member of the Company.

4.2 Form of application

An application for membership must be:

- (a) in writing in the form set out in annexure A or as otherwise approved by the directors; and
- (b) signed by the applicant.

4.3 Admission to membership

If an application for membership is accepted, the name and details of the applicant must be entered in the Register.

4.4 Entitlements

Each member has the right to:

- (a) receive notices of and attend and be heard at any general meeting; and
- (b) vote at any general meeting.

4.5 The Register

4.5.1 A register of members of the Company must be kept in accordance with the *Corporations Act 2001*.

4.5.2 The following must be entered in the Register in respect of each member:

- (a) the full name and address of the member;
- (b) the date of admission to and cessation of membership; and
- (c) such other information as the directors require.

4.6 Notification by members

Each member must notify the Secretary in writing of any change in the name or address of the member within 1 month after the change.

Constitution

5. Membership fees

5.1 Admission fee

On admission or re-admission to membership, a member must pay the membership fee determined by the members from time to time.

5.2 Annual fee

5.2.1 In addition to any amount payable under clause 5.1, each member must in accordance with this clause 5.2 pay the annual membership fee determined by the members from time to time.

5.2.2 When a person is admitted or re-admitted as a member in the period:

- (a) 1 January to 30 June in any year, the member must on admission or re-admission pay the full annual membership fee for that year; and
- (b) 1 July and 31 December in any year, the member must on admission or re-admission pay half of the annual membership fee for that year.

5.2.3 Each member must, by 1 January each year, pay the annual membership fee for the period from that 1 January to the next 31 December.

5.3 Determination of fees

5.3.1 The fees referred to in clauses 5.1 and 5.2 may be the same for all members or may differ depending on the category of membership.

5.3.2 The fees referred to in clause 5.2 must not exceed \$5,000 per member for any calendar year or such other amount as the members determine at annual general meetings. Should a member not wish to pay the fee referred to in clause 5.2 for the forthcoming year then they may resign from the company before the new fee takes effect.

5.3.3 From the date of adoption of this constitution, until any determination otherwise by the members in accordance with clause 5.1 or 5.2, the fees referred to in those clauses for research institutions, universities and NCRIS facilities will be \$0.

6. Cessation of membership

6.1 Resignation

6.1.1 A member may not resign from membership of the Company until it has paid all debts owed to the Company.

6.1.2 A member may resign from membership of the Company by giving written notice to the Secretary.

6.1.3 The resignation of a member takes effect 1 month from the date of receipt of the notice of resignation or such later date as is stated in the notice.

6.2 Cessation of membership

A member ceases to be a member:

- (a) on it being dissolved or otherwise ceasing to exist;

Constitution

- (b) when the member's fees payable under clause 5 are not paid by the due date for payment and the failure to pay is not rectified within 2 months after notice from the Company,

although the directors may reinstate the member on rectification of any such default or other action which is capable of remedy.

7. General meetings

7.1 Convening

7.1.1 Except as permitted by law a general meeting must be held at least once in every calendar year.

7.1.2 A director may convene a general meeting at any time.

7.1.3 A member may:

- (a) only request the directors to convene a general meeting in accordance with section 249D of the *Corporations Act 2001*; and
- (b) not convene or join in convening a general meeting except under section 249E or 249F of the *Corporations Act 2001*.

7.2 Notice

7.2.1 A notice of a general meeting must:

- (a) be given at least 21 days before the meeting;
- (b) specify the place, the day and the hour of meeting; and
- (c) except as expressly set out in this constitution, state the general nature of the business to be transacted.

7.2.2 The accidental omission to give notice of any general meeting to, or the non receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the general meeting.

7.3 Cancellation or postponement

7.3.1 The directors may cancel or postpone the holding of any general meeting whenever they think fit (other than a meeting requisitioned by members under the *Corporations Act 2001*).

7.3.2 Written notice of the cancellation or postponement must be given to all persons entitled to receive notice of the meeting at least 7 days before the date for which the meeting was convened and must specify:

- (a) the reason for the cancellation or postponement; and
- (b) where the meeting is postponed, a date, time and place for holding the meeting.

7.3.3 There must be at least 21 days between the date on which a notice postponing the meeting is given and the date on which the meeting is to be held.

Constitution

7.3.4 The only business that may be transacted at a postponed meeting is that specified in the original notice convening the meeting.

7.3.5 The accidental omission to give notice of the cancellation or postponement of any general meeting to, or the non receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the postponed meeting.

7.4 Representation of member

Any member may be represented at any general meeting by its proxy or attorney or otherwise in accordance with the *Corporations Act 2001*, and if so represented is deemed to be present in person.

8. Proceedings at general meetings

8.1 Quorum

8.1.1 No business may be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.

8.1.2 A quorum for general meetings is constituted by more than 50% of members, provided that if there are less than three members the quorum is constituted by all members.

8.2 Absence of quorum

If a quorum is not present within 30 minutes after the time appointed for the meeting, where the meeting was convened on the requisition of members, the meeting is dissolved, or in any other case:

- (a) the meeting stands adjourned to the day, and at the time and place, which the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and
- (b) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, the members present constitute a quorum.

8.3 Ordinary and special business

8.3.1 The business of an annual general meeting is:

- (a) to receive and consider the profit and loss account, the balance sheet, the reports of the directors and the auditors and the directors' statement required by the *Corporations Act 2001* to be attached to the accounts of the Company;
- (b) where necessary, to appoint auditors; and
- (c) to transact any other business which under this constitution, the *Corporations Act 2001* or the *ACNC Act* ought to be transacted at an annual general meeting.

8.3.2 All other business transacted at an annual general meeting and all business transacted at any other general meeting is special.

8.4 Appointment of chairperson

8.4.1 The chairperson of directors' meetings is entitled to preside as chairperson at every general meeting.

Constitution

8.4.2 The directors present at a general meeting must elect one of their number to be chairperson of the meeting if the chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unwilling to act.

8.5 Chairperson's powers

Subject to the terms of this constitution and the *Corporations Act 2001*, the chairperson's ruling on all matters relating to the order of business, procedure and conduct of the general meeting is final and no motion of dissent from a ruling of the chairperson may be accepted.

8.6 Adjournment of meetings

8.6.1 The chairperson may, with the consent of any meeting at which a quorum is present, and must if so directed by the meeting, adjourn the meeting to another time and place.

8.6.2 The only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.

8.6.3 When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

8.6.4 Except as provided by clause 8.6.3, it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

9. Voting at general meetings

9.1 Voting rights

Each member present at a general meeting has 1 vote.

9.2 Decisions

Each matter submitted to a meeting must be decided on a show of hands or a poll demanded in accordance with clause 9.4.

9.3 Chairperson's vote at general meetings

The chairperson of a general meeting is not entitled to a second or casting vote.

9.4 Demand for a poll

9.4.1 A poll may be demanded by:

- (a) the chairperson;
- (b) at least 5 members entitled to vote on the resolution; or
- (c) members with at least 5% of the votes that may be cast on the resolution on a poll.

9.4.2 A poll may be demanded:

- (a) before a vote is taken;
- (b) before the voting results on a show of hands are declared; or
- (c) immediately after the voting results on a show of hands are declared.

Constitution

- 9.4.3 The demand for a poll may be withdrawn.
- 9.4.4 The demand for a poll does not prevent the continuance of a meeting for the transaction of business other than the question on which a poll is demanded.
- 9.4.5 A poll demanded on a matter other than the election of a chairperson or on a question of adjournment must be taken when and in the manner the chairperson directs. The result of the poll is the resolution of the meeting at which the poll is demanded.
- 9.4.6 A poll demanded on the election of a chairperson or on a question of adjournment must be taken immediately.

9.5 Evidence of resolutions

Unless a poll is demanded in accordance with clause 9.4, a declaration by the chairperson that a resolution has on a show of hands been:

- (a) carried;
- (b) carried unanimously or by a particular majority; or
- (c) lost,

and an entry to that effect in the book containing the minutes of the proceedings of the Company, signed by the chairperson of that or the next succeeding meeting, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

9.6 Objections

- 9.6.1 An objection may be raised to the qualification of a voter only at the meeting at which the vote objected to is given or tendered.
- 9.6.2 The objection must be referred to the chairperson of the meeting, whose decision is final.
- 9.6.3 A vote not disallowed following the objection is valid for all purposes.

9.7 Alterations to this constitution

This constitution may be altered in accordance with the *Corporations Act 2001*.

10. Proxies

10.1 Appointment

A member who is entitled to vote at a meeting may appoint proxies in accordance with the *Corporations Act 2001*.

10.2 Form of proxy

A document appointing a proxy must be in the form set out in annexure B or as otherwise approved by the directors.

10.3 Effect of proxy

- 10.3.1 An instrument appointing a proxy confers authority to demand or join in demanding a poll.

Constitution

10.3.2 If a proxy is only for a single meeting it may be used at any postponement or adjournment of that meeting, unless the proxy states otherwise.

10.3.3 A proxy may be revoked at any time by notice in writing to the Company.

10.4 Voting by proxy

10.4.1 An instrument appointing a proxy may specify the manner in which the proxy is to vote in respect of a particular resolution and, where an instrument of proxy so provides, the proxy is not entitled to vote on the resolution except as specified in the instrument.

10.4.2 A vote given in accordance with the terms of an instrument of proxy or of a power of attorney is valid despite:

- (a) the previous death or unsoundness of mind of the principal; or
- (b) the revocation of the instrument (or of the authority under which the instrument was executed) or of the power,

if the Company has not received written notification of the death, unsoundness of mind or revocation at the registered office of the Company before the commencement of the meeting at which the instrument is used or the power is exercised.

11. Directors

11.1 Number of directors

11.1.1 Until otherwise determined by the members in a general meeting, the Company must have at least 3 and no more than 7 directors.

11.1.2 Alternate directors are not to be treated as directors for the purpose of determining the number of directors holding office.

11.2 Chairperson

The chairperson is a director elected by the directors from time to time.

11.3 Composition

11.3.1 The initial directors are the people who have agreed to act as directors and who are named as proposed directors in the application for registration of the Company.

11.3.2 The directors comprise the initial directors and such other persons appointed or elected in accordance with this clause 11.

11.3.3 A person is eligible for election as a director of the Company if they:

- (a) have been endorsed by the Selection Committee;
- (b) give the Company their signed consent to act as a director of the Company; and
- (c) are not ineligible to be a director under the *Corporations Act 2001* or the *ACNC Act*.

Constitution

11.4 Appointment and retirement of directors

- 11.4.1 Subject to clause 11.1, 11.3.3 and 11.4.10:
- (a) the Company may, by resolution, elect any natural person to be a director, either as an addition to the existing directors or as otherwise provided in this clause 11.4; and
 - (b) the directors may appoint any natural person to be a director to fill a casual vacancy.
- 11.4.2 At each annual general meeting of the Company each director appointed under clause 11.4.1(b) since the last annual general meeting must retire from office.
- 11.4.3 At each annual general meeting of the Company held after the third anniversary of the registration of the Company one third of the directors (excluding any director referred to in clause 11.4.2 and rounded to, if necessary, to the nearest whole number) must retire from office as directors. For clarity, if the company has seven eligible Directors then a minimum of two must retire from the office as Directors at the applicable general meeting.
- 11.4.4 At each annual general meeting of the Company held after the fifth anniversary of the registration of the Company any director who, if that director does not retire, will at the conclusion of the meeting have been in office for 3 or more years and for 3 or more annual general meetings since that director was last elected to office must retire from office as a director.
- 11.4.5 The directors who must retire at an annual general meeting in accordance with clause 11.4.3 are those who have been longest in office since their last election but, as between persons who were last elected as directors on the same day, those to retire must be determined by agreement among themselves or, in the absence of agreement, by lot.
- 11.4.6 The Company may, by resolution, fill the office vacated by a director under clause 11.4.2, 11.4.3 or 11.4.4 by electing a person to that office.
- 11.4.7 Subject to this clause 11, a director retiring from office under clause 11.4.2, 11.4.3 or 11.4.4 may stand for re-election.
- 11.4.8 The retirement of a director from office under clause 11.4.2, 11.4.3 or 11.4.4 and the re-election of the director or the election of another person to that office (as the case may be) take effect at the conclusion of the meeting at which the retirement and re-election or election occur.
- 11.4.9 A person elected as a director under clause 11.4.6 must retire under clause 11.4.3 or 11.4.4 on the same day that the director in whose place that person was elected would otherwise have had to retire under clause 11.4.3 or 11.4.4.
- 11.4.10 A person may be re-elected or elected to the office of director at a general meeting only if the person has, before that meeting, been endorsed for re-election or election to the office of director by the Selection Committee.
- 11.4.11 A director may not hold office for a period in the aggregate of nine years or more.

Constitution

11.5 Insufficient directors

- 11.5.1 In the event of a vacancy in the office of a director, the remaining directors may act to appoint a person to fill the vacancy if that person:
- (a) gives the Company their signed consent to act as a director of the Company; and
 - (b) is not ineligible to be a director under the *Corporations Act 2001* or the *ACNC Act*.
- 11.5.2 If the number of remaining directors is not sufficient to constitute a quorum at a meeting of directors, they may act only for the purpose of convening a general meeting.

11.6 Removal of directors

- 11.6.1 The Company may by resolution in general meeting remove a director from office.
- 11.6.2 The Company may, subject to clause 11.3.3, by resolution in general meeting appoint another person as a replacement to a director removed from office under clause 11.6.1.

11.7 Resignation

- 11.7.1 Any director may retire from office on giving notice in writing to the Company of that director's intention to do so.
- 11.7.2 The resignation of a director takes effect from the date of receipt of the notice of resignation or such later date as is stated in the notice.

11.8 Vacation of office

In addition to the circumstances in which the office of a director becomes vacant by virtue of the *Corporations Act 2001* or another provision of this constitution, the office of director becomes vacant if the director:

- (a) becomes an insolvent under administration;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (c) is absent without the consent of the directors from the meetings of the directors held during a continuous period of 6 months and the directors resolve that the office of that director be vacated;
- (d) becomes prohibited from being a director by reason of an order made under the *Corporations Act 2001*; or
- (e) becomes a disqualified person under the *ACNC Act*.

11.9 Determination of fees

- 11.9.1 The directors may be paid by way of fees for their services the reasonable and proper amounts, if any, determined by the Company in general meeting.
- 11.9.2 The initial directors' fees must be determined by the persons who are members of the Company as at the date of the adoption of this constitution, and may afterwards only be varied in accordance with clause 11.9.1 at intervals of not less than 3 years.

Constitution

11.9.3 Directors' fees accrue from day to day.

11.10 Payment for expenses

In addition to their fees, the directors may, on resolution of the Company in general meeting, be paid all travelling, accommodation and other expenses reasonably and properly incurred by them:

- (a) in attending and returning from meetings of the directors or any committee of the directors or any general meetings; or
- (b) otherwise in the execution of their duties as directors.

12. Alternate directors

12.1 Power to appoint

A director may, with the approval of the other directors, appoint any person to act as an alternate director in place of the appointor whenever the appointor is unable to act personally by reason of illness, absence or any other cause and may do so generally, for a meeting, for any other purpose or for a specified period.

12.2 Rights and powers

12.2.1 An alternate director is entitled to notice of meetings of the directors and, if the appointor is not present at such a meeting, is entitled to attend and vote in the appointor's place.

12.2.2 An alternate director may exercise any powers that the appointor may exercise and the exercise of any power by the alternate director is deemed to be the exercise of the power by the appointor.

12.3 Suspension or revocation

12.3.1 A director who has appointed an alternate director may revoke or suspend the appointment of that alternate director.

12.3.2 The directors may suspend or remove an alternate director by resolution after giving the appointor 7 days' notice of their intention so to do.

12.4 Form

Each appointment, revocation or suspension under clause 12.1 or 12.3.1 must be made by notice in writing signed by the director making it.

12.5 Termination of appointment

In addition to the circumstances in which the office of a director becomes vacant by virtue of the *Corporations Act 2001* or another provision of this constitution, the appointment of an alternate director terminates:

- (a) if the director for whom the alternate director acts as alternate ceases to hold office as director;
- (b) on the happening in respect of the alternate director of any event which causes a director to vacate the office of director; or

Constitution

- (c) if by writing left at the registered office of the Company the alternate director resigns from the appointment.

13. Selection Committee

13.1 Role of Selection Committee

The role of the Selection Committee is to consider and endorse for consideration of the members of the Company the suitability of candidates for re-election or election to the office of director at general meetings.

13.2 Constitution of Selection Committee

13.2.1 The Selection Committee consists of up to 3 persons appointed by the directors, being:

- (a) up to 2 directors, other than any director who is a candidate for re-election; and
- (b) at the election of the directors:
 - (i) 1 additional director, other than a director who is a candidate for re-election; or
 - (ii) 1 person independent of the directors or executive.

13.2.2 A member of the Selection Committee holds office for a period of 1 year from the conclusion of first directors' meeting after each annual general meeting and each person appointed to fill a casual vacancy holds office until the person in whose place that person was appointed would otherwise have ceased to hold office.

13.3 Chairperson

The Selection Committee will elect one of its members to preside as chairperson at meetings of the Selection Committee.

13.4 Endorsement of candidates for election as directors

13.4.1 The Selection Committee may take any action that it thinks appropriate, including advertising vacancies, to identify persons suitable for re-election or election to the office of director.

13.4.2 In determining whether to endorse a candidate for re-election or election to the office of director, the Selection Committee must have regard to the qualifications of the candidate relevant to, or the experience of the candidate in, any fields of expertise specified by the directors.

13.4.3 The Selection Committee must notify the directors of the candidates it endorses for election or re-election at least 2 months before each general meeting at which the election or re-election of directors is to be considered.

14. Powers and duties of directors

14.1 General management

14.1.1 The business of the Company is to be managed by the directors who may exercise all those powers of the Company as are not, by the *Corporations Act 2001*, the *ACNC Act* or by this constitution, required to be exercised by the Company in general meeting.

Constitution

- 14.1.2 Without limiting the powers of management conferred on the directors by any other provision of this constitution, the directors may exercise all the powers of the Company to:
- (a) borrow money;
 - (b) mortgage or charge any property or business of the Company or all or any of its uncalled capital;
 - (c) issue debentures; and
 - (d) give any other security for any debt, liability or obligation of the Company or of any other person.
- 14.1.3 No decision made or resolution passed by the Company in general meeting invalidates any prior act of the directors which would have been valid if that decision or resolution had not been made or passed.
- 14.1.4 The directors must comply with their obligations under legislation and at common law and, while the Company is registered as a charity under and the *ACNC Act*, the directors must comply with their obligations under Governance Standard 5 made under the *ACNC Act*, which are:
- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company;
 - (b) to act in good faith in the best interests of the Company and to further the charitable purposes of the Company;
 - (c) not to misuse their position as a director;
 - (d) not to misuse information they gain in their role as a director;
 - (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 16;
 - (f) to ensure that the financial affairs of the Company are managed responsibly; and
 - (g) not to allow the Company to operate while it is insolvent.

14.2 Negotiable instruments

All cheques, promissory notes, bankers drafts, bills of exchange and other negotiable instruments, and all receipts for money paid to the Company may be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, by any 2 directors or in such other manner as the directors determine.

14.3 Appointment of attorney

- 14.3.1 The directors may appoint any person to be an attorney of the Company:
- (a) for the purposes;
 - (b) with the powers, authorities and discretions (being powers, authorities and discretions vested in or exercisable by the directors);

Constitution

- (c) for the period; and
- (d) subject to the conditions,
they think fit.

14.3.2 Any power of attorney may contain those provisions for the protection and convenience of persons dealing with the attorney that the directors think fit and may also authorise the attorney to delegate all or any of the powers, authorities and discretions vested in the attorney.

15. Proceedings of directors

15.1 Meetings of directors

15.1.1 The directors may meet together for the despatch of business and adjourn and otherwise regulate their meetings as they think fit.

15.1.2 The directors are to be treated as present together when in communication by telephone or other means of audio or audio-visual communication if each of the directors participating in the communication is able to hear each of the other participating directors.

15.2 Convening of meeting

Any director may at any time, and a Secretary must on the requisition of any director, convene a meeting of the directors.

15.3 Notice of meeting

15.3.1 Notice of every directors' meeting must be given to each director.

15.3.2 Subject to clause 15.3.3, any notice of a meeting of directors may be given in writing or orally, and by email, telephone or any other means of communication and must be given at least 5 days prior to the meeting.

15.3.3 All directors may waive in writing the required period of notice for a particular meeting.

15.4 Quorum

15.4.1 No business may be transacted at any meeting of the directors unless a quorum of directors is present at the time when the meeting proceeds to business.

15.4.2 Unless otherwise determined by the Company in general meeting, at a meeting of directors a quorum is present if there are present at least 50% of Directors and in any event not less than 3 directors.

15.4.3 An alternate director is counted in a quorum at a meeting at which the director who appointed the alternate is not present (provided that the alternate is, under the *Corporations Act 2001*, entitled to vote).

Constitution

15.5 Absence of quorum

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

- (a) the meeting stands adjourned to the day, and at the time and place, which the directors determine or, if no determination is made by the directors, to the same day in the next week at the same time and place; and
- (b) if at the adjourned meeting a quorum is not present within 30 minutes after the time appointed for the meeting, meeting, the directors present constitute a quorum.

15.6 Chairperson

If at any meeting the chairperson is not present within 15 minutes after the time appointed for holding the meeting or is unwilling to act, the directors present may choose one of their number to be chairperson of the meeting.

15.7 Chairperson's vote at directors meetings

A chairperson is not entitled to a second or casting vote.

15.8 Voting rights

Subject to this constitution, at each directors' meeting each director present has 1 vote.

15.9 Decisions

15.9.1 Decisions of the directors will be effective if passed by a vote of a majority of those directors present and entitled to vote at the meeting.

15.9.2 A person who is an alternate director is entitled (in addition to their own vote if that person is a director) to 1 vote on behalf of each director whom that person represents as an alternate director at the meeting and who is not present at the meeting.

15.10 Teleconference

15.10.1 For the purpose of this constitution the contemporaneous linking together in oral communication by telephone, audio-visual or other instantaneous means (**Teleconference**) of a number of the directors (being not less than a quorum) constitutes a meeting of the directors.

15.10.2 The provisions of this constitution relating to a meeting of the directors apply to a Teleconference insofar as they are not inconsistent with the provisions of this clause 15.10.

15.10.3 The following provisions apply to a Teleconference:

- (a) each of the directors taking part in the meeting must be able to hear and be heard by each of the other directors taking part at the commencement of the meeting and each director so taking part is deemed for the purposes of this constitution to be present at the meeting; and
- (b) at the commencement of the meeting each director must announce their presence to all other directors taking part in the meeting.

15.10.4 If the Secretary is not present at a Teleconference one of the directors present must take minutes of the meeting.

Constitution

15.10.5 A minute of the proceedings of a Teleconference is sufficient evidence of the proceedings and of the observance of all necessary formalities if the minute is certified to be a correct minute by the chairperson of the meeting.

15.11 Circulated resolutions

15.11.1 If:

- (a) all of the directors, other than:
 - (i) any director on leave of absence approved by the directors;
 - (ii) any director who is disqualified from considering the act, matter, thing or resolution in question on the grounds that that director is not entitled at law to do so or has a conflict of interest; and
 - (iii) any director who the directors reasonably believe is not entitled at law to do the act, matter or thing or to vote on the resolution in question, assent to a document containing a statement to the effect that an act, matter or thing has been done or resolution has been passed; and
- (b) the directors who assent to the document would have constituted a quorum at a meeting of directors held to consider the act, matter, thing or resolution,

then that act, matter, thing or resolution is to be taken as having been done at or passed by a meeting of the directors.

15.11.2 For the purposes of clause 15.11.1:

- (a) the meeting is to be taken as having been held if:
 - (i) the directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to by a director; or
 - (ii) the directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to by a director;
- (b) two or more separate documents in identical terms each of which is assented to by one or more directors are to be taken as constituting one document; and
- (c) a director may signify assent to a document by signing the document or by notifying the Company of the director's assent in person, electronically or by post, telephone or other method of written, audio or audio visual communication.

15.11.3 Where a director signifies assent to a document otherwise than by signing the document, the director must by way of confirmation sign the document at the next meeting of the directors attended by that director, but failure to do so does not invalidate the act, matter, thing or resolution to which the document relates.

15.11.4 Where a document is assented to in accordance with clause 15.11.1, the document is to be taken as a minute of a meeting of directors.

Constitution

15.12 Committees

15.12.1 The directors may:

- (a) delegate any of their powers to committees consisting of such directors or other persons as they think fit and may revoke the delegation; and
- (b) appoint advisory committees.

15.12.2 Any committee formed under clause 15.12.1 must conform to any regulations that may be imposed on it by the directors.

15.12.3 Unless otherwise determined by the directors, the meetings and proceedings of a committee are governed by the provisions in this constitution regulating the meetings and proceedings of the directors.

15.12.4 The directors may at any time by resolution revoke any delegation of power or disband any committee established under this clause 15.12.

15.13 Validation of acts

All acts done:

- (a) at any meeting of directors or a committee of directors; or
- (b) by any person acting as a director,

are, although it is afterwards discovered that there was some defect in the appointment or continuance in office of any of the persons concerned or that any of them were disqualified or were not entitled to vote, as valid as if each of them had been duly appointed and had duly continued in office and was entitled to vote.

16. Directors' interests

16.1 Disclosure

16.1.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):

- (a) to the other directors; or
- (b) if all of the directors have the same conflict of interest, to the members at the next general meeting, or at an earlier time if reasonable to do so.

16.1.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.

16.2 Prohibition

16.2.1 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clause 16.2.2:

- (a) be present at the meeting while the matter is being discussed; or

Constitution

- (b) vote on the matter.

16.2.2 A director may still be present and vote if:

- (a) their interest arises because they are a member of the Company, and the other members have the same interest;
- (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the Company;
- (c) their interest relates to a payment by the Company under clause 21.1, or any contract relating to an indemnity that is allowed under the *Corporations Act 2001*;
- (d) the Australian Securities and Investments Commission makes an order allowing the director to vote on the matter; or
- (e) the directors who do not have a material personal interest in the matter pass a resolution that:
 - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the Company; and
 - (ii) states that those directors are satisfied that the interest should not stop the director from voting or being present.

17. Minutes

The directors must carry out the obligations imposed on the Company by the *Corporations Act 2001* to cause minutes of meetings to be kept.

18. Secretary

A Secretary holds office on such terms, as to remuneration and otherwise, as the directors determine.

19. Accounts, audit and records

19.1 Accounts

19.1.1 The directors must cause proper accounting and other records to be kept in accordance with the *Corporations Act 2001* or the *ACNC Act*.

19.1.2 The directors must distribute copies of every profit and loss account and balance sheet (including every document required by law to be attached to them) as required by the *Corporations Act 2001* or the *ACNC Act*.

19.2 Audit

19.2.1 A registered company auditor must be appointed.

19.2.2 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the *Corporations Act 2001* and the *ACNC Act*.

19.2.3 If the total annual income of the Company exceeds, or may reasonably be expected to exceed, \$100,000, the Company must cause a report by a registered company auditor on the accounts of the Company to be made every 12 months and to be submitted to:

Constitution

- (a) where the incorporating legislation of any member which is a university so requires, the Council of the university; and
 - (b) each member,
- within 3 months after the end of each 12 month period to which the report relates.

19.3 Reporting

The Company must:

- (a) report to members in accordance with its obligations under the *Corporations Act 2001* and the *ACNC Act*; and
- (b) within 1 month after it provides a report to the Commonwealth under its NCRIS funding agreement with the Commonwealth, provide a copy of the report to each member.

19.4 Inspection

19.4.1 Subject to the *Corporations Act 2001* and the *ACNC Act* the directors determine:

- (a) whether and to what extent;
- (b) at what times and places; and
- (c) under what conditions,

the accounting records and other documents of the Company or any of them are open to the inspection of members other than directors.

19.4.2 A member other than a director does not have the right to inspect any document of the Company except as:

- (a) provided by law; or
- (b) authorised by the directors or the Company in general meeting.

20. Notices

20.1 Means of giving notices

A notice may be given to the addressee by:

- (a) delivering it in writing to the street address of the addressee;
- (b) sending it by prepaid ordinary post to the street address of the addressee; or
- (c) sending it to the email address of the addressee,

specified in the Register or by such other method of communication determined by the directors.

Constitution

20.2 Time notices are given

A notice is to be regarded as given:

- (a) if delivered, at the time of delivery;
- (b) if sent by post, on the 3rd day after posting; or
- (c) if sent by email, at the time the email is sent unless the sender receives an automated message that the email has not been delivered.

20.3 Proof of giving notices

20.3.1 Proof of the sending of a notice by email and the time of dispatch may be established by production of a delivery confirmation report by the machine from which the email was sent that indicates the email was received by the addressee.

20.3.2 Proof of the sending of a notice by another method of communication determined by the directors may be established in the manner determined by the directors for such notices.

20.4 Notice of general meeting

20.4.1 Notice of every general meeting must be given in the manner authorised by this constitution to:

- (a) every member;
- (b) every director; and
- (c) the auditor for the time being of the Company.

20.4.2 No other person is entitled to receive notice of general meetings.

21. Indemnity

21.1 Right to indemnity

Subject to this clause 21, to the extent permitted by law the Company indemnifies each officer against any liability to another person incurred by the officer as an officer of the Company.

21.2 Restrictions

The indemnity referred to in clause 21.1 does not indemnify an officer against a liability:

- (a) owed to the Company or a related body corporate as defined in section 50 of the *Corporations Act 2001* (**Related Body Corporate**);
- (b) for a pecuniary penalty order under section 1317G of the *Corporations Act 2001* or a compensation order under section 1317H, 1317HA or 1317HB of the *Corporations Act 2001*; or
- (c) that is owed to someone other than the Company or a Related Body Corporate and did not arise out of conduct in good faith.

Constitution

21.3 Legal costs

21.3.1 The indemnity referred to in clause 21.1 does not indemnify an officer against legal costs incurred in defending an action for a liability incurred as an officer of the Company if the costs are incurred:

- (a) in defending or resisting proceedings in which the officer is found to have a liability for which the officer could not be indemnified under clause 21.2;
- (b) in defending or resisting criminal proceedings in which the officer is found guilty;
- (c) in defending or resisting proceedings brought by the Australian Securities and Investments Commission or a liquidator for a court order if the grounds for making the order are found by the court to have been established; or
- (d) in connection with proceedings for relief to the officer under the *Corporations Act 2001* in which the court denies the relief.

21.3.2 For the purposes of this clause 21.3, the outcome of proceedings is the outcome of the proceedings and any appeal in relation to the proceedings.

21.4 Insurance premiums

The Company may, in accordance with the *Corporations Act 2001* and the *ACNC Act*, pay the premiums on contracts insuring a person who is or has been an officer of the Company.

22. Winding up

If on the winding up of the Company there remains after satisfaction of all its debts and liabilities any property, that property may only be paid or distributed to one or more charities having similar objects to the Company and rules prohibiting the distribution of their assets and income to members. The charity or charities are to be determined by the Company in general meeting prior to the winding up of the Company, or, if no such determination is made, by court order.

ANNEXURE A

Application for membership of Australian Research Data Commons Limited

(name)

applies for membership of Australian Research Data Commons Limited and agrees to be bound by its constitution.

.....
Signature

.....
Name (please print)

.....
Office held

ANNEXURE B

Proxy form

Name and address of member:

Appointment of proxy

I appoint:

(name of person)

or in that person’s absence, or if no person is named, the chairperson of the meeting as my proxy to vote in accordance with the following directions (or, if no directions have been given, as the proxy sees fit) at the general meeting of Australian Research Data Commons Limited to be held on *[insert date, time and place]* and at any adjournment of that meeting.

Vote on resolutions

Resolution 1: That ##

For Against

Dated:

.....
Signature

.....
Signature

.....
Name (please print)

.....
Name (please print)

.....
Office held

.....
Office held

SIGNING THIS FORM

Two directors or a director and secretary (or in the case of a sole director company, the sole director and secretary) or a duly authorised officer of the member must sign this form on behalf of the member. If signed by an authorised officer, please provide the original or an attested copy of the authority. The authority must be signed by 2 directors or a director and secretary (or in the case of a sole director company, the sole director and secretary).

If signing on behalf of a member as the member's attorney, please provide the original or an attested copy of the power of attorney.