



AeRO Members Agreement



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ADVOCATE

COLLABORATE

COMMUNICATE

www.aero.edu.au

MEMBERS agreement

DATED: 8 JUNE 2016

PARTIES

The entities listed in Schedule 1 to this Agreement.

BACKGROUND

- A The entities listed in Schedule 1 to this Agreement have established an unincorporated joint venture known as the Australasian eResearch Organisations (**AeRO**) for the purpose of carrying out the Activities.
- B This Agreement sets out the terms and conditions that govern the membership of AeRO and the conduct of the Activities.

THE PARTIES AGREE

1 Definitions

In this Agreement:

Activities means the activities of AeRO undertaken to support the Objectives, and may include projects, events, working groups and other activities as decided by the Members.

Administrator means the Full Member appointed in this role from time to time pursuant to clause 10.3(a).

Associate Member means an entity admitted and not ceased as an Associate Member and having the rights set out in clause 5.3.

CEO means the chief executive officer or equivalent (regardless of the name given to that position) of AeRO appointed from time to time in accordance with clause 10.2.

Executive Committee means the executive committee of AeRO appointed in accordance with clause 6.

Financial Year means a 12 month period from and including 1 January in a year to and including 31 December of that year.

Full Member means an entity admitted and not ceased as a Full Member and having the rights set out in clause 5.2.

Intellectual Property includes all copyright (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patents), plant varieties, trademarks (including service marks), designs, circuit layouts, all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields and any right to have confidential information kept confidential.

meeting means any meeting held face-to-face or virtually via telephone and/or videoconferencing and/or equivalent technologies and any combination thereof.

Member means, from time to time, the Full Members, Associate Members and any other members of AeRO admitted by the Executive Committee and not ceased as a member, being the parties to this Agreement (including a party admitted under clause 0).

Membership Fees means the fees to be paid by a Member as set out under clause 6.

Objectives means the objectives of AeRO set out in clause 3.

Term means the duration of the Agreement commencing on the date it is executed by the parties.

2 Term

This Agreement commences on the date of this Agreement and will remain in force for a period of five (5) years (the **Term**) or until it terminates in accordance with clause 13.

3 Objectives

The objects of AeRO are to:

- (a) position itself as the national association of organisations committed to advancing the use and support of IT for research impact, excellence and productivity (**eResearch**);
- (b) support the coordination of initiatives amongst its Members;
- (c) support increasing integration and maturity of eResearch solutions across the sector;
- (d) support the development of the eResearch workforce nationally;
- (e) build a community which enhances communication, collaboration and workforce mobility;
- (f) support the enhanced impact of eResearch on research excellence and productivity; and
- (g) advocate the development and use of eResearch capabilities with government, academia, industry and others as appropriate.

4 Commitment by Members

Each Member agrees to:

- (a) diligently support the pursuit of the Objectives and the conduct of the Activities;
- (b) pay Membership Fees in accordance with this Agreement;
- (c) cooperate with each other Member to assist in securing funding from a range of sources for the purposes of carrying out the Activities and pursuing the Objectives;
- (d) keep AeRO and each other Member reasonably informed regarding significant cross-organisational eResearch activities in which it is involved;

- (e) publicise AeRO so as to make its role widely known within each Member's organisation and to the public generally;
- (f) encourage others to participate in AeRO and the Activities; and
- (g) act in good faith with respect to AeRO and each other Member.

5 Members

5.1 Membership

- (a) At the date of this Agreement, the Members agree that there may be Full Members and Associate Members of AeRO.
- (b) The Executive Committee may establish new categories of AeRO membership as considered necessary to support the Objectives or the Activities. No category of membership may exceed the rights attaching to those of Full Members.
- (c) The Executive Committee may remove or alter categories of AeRO membership if there are no current Members in that category or all of the Members in that category agree.
- (d) The entities listed in Schedule 1 are all Full Members of AeRO, and they are all of the current Members of AeRO, at the date of this Agreement.

5.2 Full Member

- (a) Full Members have the following rights:
 - (i) to vote in elections for the Executive Committee;
 - (ii) to nominate candidates for election to positions on the Executive Committee;
 - (iii) to be publically acknowledged by AeRO as a Member of AeRO; and
 - (iv) to participate in the Activities.
- (b) Each Full Member has an equal ownership interest in the assets, and equal responsibility for the liabilities, of AeRO.

5.3 Associate Member

- (a) Associate Members have the right to participate in the Activities.
- (b) Associate Members do not have the right to:
 - (i) vote in elections for the Executive Committee;
 - (ii) nominate candidates for election to positions on the Executive Committee; or
 - (iii) be publically acknowledged by AeRO as a Member of AeRO.
- (c) Associate Members do not have any ownership interest in the assets, or responsibility for the liabilities, of AeRO.

5.4 Application for Membership

- (a) Applications to become a Member must be made in writing to AeRO in the form determined by the Executive Committee, including a nomination as to the category of Member the applicant wants to be.
- (b) Within 30 days of receiving a membership application, the Executive Committee must decide whether to approve or reject the application and notify the applicant of its decision.
- (c) New Members may only be admitted by agreement of the Executive Committee.
- (d) If an application is approved, the applicant must, within the time reasonably required by the Executive Committee:
 - (i) pay the applicable Membership Fee; and
 - (ii) agree in writing (in a form approved by the Executive Committee from time to time) to be bound by the provisions of this Agreement as if the new Member was a signatory to it, or the approval will lapse and the applicant must re-submit their application.
- (e) The Executive Committee will, on payment of the applicable Membership Fee, record the applicant as a Member.

6 Membership Fees

- (a) The Executive Committee will set, review and update the Membership Fees annually.
- (b) Members will be invoiced for their Membership Fees prior to the commencement of each Financial Year.
- (c) Members must pay the applicable Membership Fees at the start of each Financial Year, and otherwise at the time and in the manner required by the Executive Committee.
- (d) Membership Fees are due by 15 February of the Financial Year they apply to and if not paid by that date are deemed overdue.
- (e) The Executive Committee may determine Membership Fees for additional categories of Members.
- (f) Membership Fees are not refundable and no Member will be entitled to any refund of Membership Fees, including on ceasing to be a Member.
- (g) Where an entity becomes a Full Member part way through a Financial Year, that entity will be required to pay a pro-rata amount of their Membership Fee for that year.
- (h) For so long as any Memberships Fees of a Member are overdue, that Member will cease to have any rights as a Member (including to use any other Member Intellectual Property or AeRO Intellectual Property pursuant to clause 11) and must not participate in Activities as a Member.
- (i) If any Memberships Fees of a Member remain overdue as at 15 April of the Financial Year they apply to, a written notice (**Reminder**) will be issued to the Member requesting payment of the overdue Membership Fees within 30 days of the date of Reminder (**Due Date**). If the Member has not paid the overdue Membership Fees by the Due Date, with effect on the Due Date, the Member will be deemed to have given notice in writing to the Executive Committee pursuant to clause 12(a) withdrawing as a Member of AeRO (and the remainder of clause 12 will apply in respect of that Member).
- (j) The Members acknowledge and agree that Membership Fees are to be used solely in conduct of the Activities and pursuit of the Objectives.

7 Executive Committee

7.1 Structure of the Executive Committee

- (a) The Executive Committee will consist of:
 - (i) four representatives nominated by the Full Members appointed and removed in accordance with clause 7.2; and
 - (ii) up to two independent persons appointed and removed in accordance with clause 7.2 that do not have any contractual or financial relationship with, and are not providing services to or receiving services from, any Full Member.
- (b) The Executive Committee will elect a chair of the Executive Committee from their number by a majority vote of the Executive Committee.
- (c) The CEO will not be a member of the Executive Committee.

7.2 Appointment and Removal of Executive Committee members

- (a) Any Full Member may nominate a candidate to be on the Executive Committee.
- (b) Any Full Member may nominate candidates for the independent positions on the Executive Committee.
- (c) Executive Committee members will be appointed, and may be removed and replaced, by resolution of the Full Members.
- (d) The Executive Committee may appoint a person to be a member of the Executive Committee to fill a casual vacancy. The appointee must be the same category of appointment under clause 7.1(a) (that is, representative or independent) as the vacating person. The appointee will hold the position until the next Full Members Meeting, and will be eligible for re-election by the Full Members at that meeting. Any such person may be removed by resolution of the Full Members at any time.
- (e) The Full Members will by resolution determine the terms of appointment of Executive Committee members.

8 Members Council

- (a) The Members will establish a council (**Members Council**) comprised of a representative or nominee of each Member for the purposes of:
 - (i) advising the Executive Committee and CEO on matters relevant to AeRO and the Activities; and
 - (ii) assisting the Executive Committee to establish, oversee and conclude subcommittees, working groups, task forces, projects and other activities, to identify funding opportunities, and to coordinate advocacy.
- (b) The Members Council will determine the times and manner in which it will meet.

9 Meetings and voting

9.1 Full Member meetings

- (a) The Full Members must meet at least annually.
- (b) An extraordinary general meeting of the Full Members may be convened at any time by the Executive Committee, or by not less than four Full Members if there are 12 or less Full Members of AeRO (or by a majority of Full Members if there are less than four), or by one third of the Full Members by number if there are more than 12 Full Members of AeRO.
- (c) Unless otherwise agreed by at least a two-thirds majority of all Full Members, notice of Full Member meetings must be given to all Full Members at least 21 days' prior to the date of the meeting.
- (d) The quorum for a Full Members meeting is a majority of the Full Members.
- (e) At a meeting of Full Members, each Full Member has one vote (and the chairperson, being the chairperson of the Executive Committee, does not have a casting vote).
- (f) All Full Members must be given an opportunity to comment on all matters requiring a resolution or decision of the Full Members (either at the relevant meeting or by correspondence with the other Full Members where matters are to be decided without a meeting).
- (g) Unless provided otherwise in this Agreement or the Full Members determine otherwise, decisions of a meeting of Full Members will be by simple majority vote of all Full Members present.
- (h) The Full Members may pass a resolution, or otherwise make a decision, by a simple majority of all Full Members signing a document or endorsing an email to that effect.

9.2 Executive Committee meetings

- (a) Executive Committee meetings will take place at least once every three months, and each Executive Committee Member must be given at least 14 days' notice of the date, place, time and agenda of the meeting.
- (b) In respect of each question arising at a meeting of the Executive Committee, each Executive Committee member has one vote.
- (c) The quorum for a meeting of the Executive Committee is a majority of the Executive Committee members.
- (d) Decisions of the Executive Committee will be by simple majority vote of the Executive Committee members present. The chair of the Executive Committee will not have a second or casting vote in addition to his or her own vote.
- (e) The Executive Committee may pass a resolution or otherwise make a decision on matters discussed at an Executive Committee meeting by all members of the Executive Committee signing a document, or endorsing an email, to that effect.
- (f) Minutes and resolutions of an Executive Committee meeting will be recorded and made available to all Full Members within 21 days of an Executive Committee meeting, and a summary provided to all other Members in the same timeframe.

10 Management of AeRO

10.1 Executive Committee

The Executive Committee will manage AeRO in the interest of AeRO Members in accordance with this Agreement. The Executive Committee is responsible to the Members for:

- (a) providing accountability and reporting to key stakeholders, including Members, potential Members, funding bodies, and government agencies;
- (b) developing and approving Activities, strategic and action plans, policies and budgets for AeRO, identifying key performance indicators, and monitoring and reporting achievement against them;
- (c) ensuring the achievement and fulfilment of approved Activities, strategic and action plans, policies and budgets;
- (d) regularly setting, reviewing and updating Membership Fees; and
- (e) establishing and winding-up subcommittees, working groups, task forces, projects and other activities through mechanisms decided by the Executive Committee with the advice of the Members.

In managing AeRO, members of the Executive Committee must have regard to and act entirely in the best interests of AeRO. Where a member of the Executive Committee has a real, potential or perceived conflict of interest, it must be declared to the Executive Committee as soon as practicable and before any matter is considered in respect of which the real, potential or perceived conflict of interest exists. The other members of the Executive Committee must determine, as per Clause 9.2(d), an appropriate course of action to manage that conflict, and will inform the Full Members of both the conflict declaration and the course of action.

10.2 CEO role and responsibilities

The CEO:

- (a) may be appointed and removed by the Executive Committee;
- (b) will be subject to the direction of the Executive Committee; and
- (c) will be responsible to the Executive Committee for the fulfilment of the role description agreed between the Executive Committee and the CEO from time to time.

10.3 Administration

- (a) The Executive Committee will from time to time appoint (and may remove and replace) one of the Full Members to perform administrative and operational functions for AeRO, on terms agreed with that Full Member (**Administrator**).
- (b) The Administrator will undertake such tasks as reasonably required by the Executive Committee on behalf of AeRO including:
 - (i) operating and maintaining a bank account;
 - (ii) performing administrative tasks in connection with the Activities;
 - (iii) keeping records of dealings or transactions concerning the Activities and AeRO;
 - (iv) confirming that there is appropriate insurance cover in place for AeRO Activities;

- (v) subject to clause 10.4 and clause 5.2(b), acquiring and holding AeRO assets on behalf of the Full Members;
- (vi) subject to clause 10.4 and clause 5.2(b), incurring and satisfying AeRO liabilities on behalf of the Full Members; and
- (vii) providing to the Executive Committee a statement of income and expenditure for AeRO and the Activities at least once every 3 months (which is to be forwarded by the Executive Committee to the Full Members).
- (c) Unless the Full Members determine otherwise, the Administrator must provide to all Full Members an audited statement of income and expenditure for AeRO and the Activities for each Financial Year (or part thereof), within 5 months of the end of each Financial Year.
- (d) The Administrator will be reimbursed for its reasonable costs incurred of being the Administrator, other than to the extent that the costs arise from the Administrator's fraud, negligence or wilful misconduct.
- (e) The Administrator may resign at any time by giving 90 days' prior written notice to the Executive Committee. The Administrator must take all steps, and provide such assistance, as reasonably required by the Executive Committee to transition the assets and liabilities of AeRO to a new Administrator (or, if determined by the Executive Committee, to the Executive Committee) in an orderly and timely manner including transferring all assets and liabilities of AeRO to the new Administrator (or, if applicable, to the Executive Committee).

10.4 Income, assets and liabilities

- (a) The Members acknowledge and agree that the income and assets of AeRO:
 - (i) will be held on trust by the Administrator (or where there is no Administrator, by the Executive Committee) for the Full Members equally;
 - (ii) will only be applied towards the promotion of the Objectives and Activities; and
 - (iii) will not be transferred to any Member (other than in the Member's capacity as Administrator, if applicable), except for payments to a Member in return for any services rendered or goods supplied in the ordinary and usual course of business in relation to AeRO or on termination pursuant to clause 13(c).
- (b) No Member (including the Administrator) may acquire an asset, or incur any liability, for AeRO without the approval of the Executive Committee.
- (c) The Executive Committee must not approve the acquisition of assets, or the incurring of liabilities, for AeRO in excess of:
 - (i) the budget for a Financial Year for AeRO provided by the total aggregate amount of Membership Fees for that Financial Year; or
 - (ii) any dedicated budget for specific Activities separately approved by the Executive Committee.
- (d) The Executive Committee must not approve the acquisition of any single asset, or the incurring of any single liability, for AeRO in excess of the lesser of \$15,000 or 15% of the total aggregate amount of Membership Fees received for that Financial Year, without the prior consent of not less than 75% (by number) of the Full Members.

10.5 Indemnities

- (a) The Full Members severally and in equal proportions indemnify the Administrator against any claim, action or proceeding and any cost, loss or expense (**Liability**) suffered or incurred by the Administrator in acting as the Administrator under or in connection with this Agreement, other than to the extent that the Liability arises from the Administrator's fraud, negligence or wilful misconduct.
- (b) The Administrator indemnifies each other Full Member against any Liability which any other Full Member pays or is liable for in relation to or as a result of the failure of the Administrator to perform, in its capacity as an Administrator, an obligation under this Agreement.
- (c) Each Full Member (**Indemnifier**) indemnifies each other Full Member against any Liability that any other Full Member pays or is liable for in relation to or as a result of the failure of the Indemnifier to perform an obligation under this Agreement.
- (d) This clause 10.5 survives termination of AeRO (on termination of this Agreement) and, in respect of a Member, withdrawal of the Member from AeRO.

11 Intellectual Property

- (a) Any Intellectual Property owned or licensed by a Member (**Member Intellectual Property**) that is made available by the Member for use by AeRO, or by the other Members, for the purposes of AeRO, may be used for the sole purpose of undertaking the Activities and pursuing the Objectives.
- (b) Use of Member Intellectual Property by AeRO or the Members for the purpose of AeRO will not affect ownership of that Intellectual Property, which remains the property of the Member contributing it to AeRO.
- (c) Unless the Full Members unanimously agree otherwise, all Intellectual Property and any other tangible or intangible outputs arising out of or in connection with the Activities whether before or after the date of this Agreement (**AeRO Intellectual Property**):
 - (i) will be held on trust by the Administrator (or where there is no Administrator, by the Executive Committee) for the Full Members equally from time to time; and
 - (ii) may be used by AeRO and all Members free of charge for the purpose of undertaking the Activities and pursuing the Objectives.
- (d) From the date that a Member ceases to be a Member of AeRO (**Ceasing Member**):
 - (i) unless the Ceasing Member agrees otherwise, AeRO and all other Members must cease using the Member Intellectual Property of the Ceasing Member; and
 - (ii) unless the Executive Committee determines otherwise, the Ceasing Member must cease using all other Member Intellectual Property and all AeRO Intellectual Property.
- (e) This clause 11 survives termination of AeRO (on termination of this Agreement) and, in respect of a Member, withdrawal of the Member from AeRO.

12 Withdrawal

- (a) A Member may withdraw as a Member of AeRO by providing 30 days' notice in writing to the Executive Committee. The Executive Committee will notify Members of the withdrawal of any Member.
- (b) If a Member withdraws, on the date of withdrawal, the Member ceases to be a Member and ceases to be a party to, and relinquishes all rights under, this Agreement (including any rights of a Full Member in or to the assets of AeRO and any rights of a Member to use all other Member Intellectual Property or AeRO Intellectual Property pursuant to clause 11).
- (c) The withdrawal of a Member:
 - (i) will not affect the enforceability of any other obligations of that Member or rights against that Member accrued at that time;
 - (ii) will not relieve the rights or obligations of that Member under clauses 10.5, 11 and 0;
 - (iii) will not entitle that Member to recover any Membership Fees paid by it prior to the date of the withdrawal.

13 Termination

- (a) The unincorporated joint venture known as AeRO terminates on the expiry of the Term or otherwise:
 - (i) by the then current Full Members unanimously agreeing to terminate this Agreement and AeRO; or
 - (ii) when there is only one (or no) Members of AeRO.
- (b) Termination of AeRO will not affect the continuing enforceability of any rights or obligations of the Members pursuant to this Agreement accrued at the time of termination including rights and obligations expressed to survive termination of AeRO.
- (c) On termination of AeRO, unless the Full Members unanimously agree otherwise:
 - (i) all outstanding liabilities of AeRO will be satisfied; and
 - (ii) all assets of AeRO will be realised and the proceeds (if any) (less costs of realisation and satisfying any remaining liabilities) will be distributed to the Full Members in equal proportions.
- (d) The then current Full Members can agree to extend AeRO past the expiry of the Term for such further period and on such terms as a simple majority may agree providing such agreement is reached prior to the expiration date of the Term being reached.

14 Publicity and confidentiality

- (a) The Chair of the Executive Committee or their designate is principally responsible for making public announcements on behalf of AeRO and a Member will not make any formal public announcement on behalf of AeRO without obtaining the Executive Committee's approval.
- (b) Each Member must keep all confidential information of each other Member including, without limitation, any trade secrets, operational know-how, or any information concerning the Member, management and finances of that Member or in relation to AeRO, confidential and not disclose it or otherwise place it at the disposal of any other person, except:
 - (i) to employees, other Members, legal advisers, auditors and other consultants requiring the information for the purposes of this Agreement;
 - (ii) with the consent of the Member who supplied the information or to whom it relates;
 - (iii) if the information was prior to the date of this Agreement lawfully in the possession of the recipient of the information through a source other than the Member who supplied the information or to whom it relates;
 - (iv) if required by law; or
 - (v) if the information is or becomes generally and publicly available other than through the default of the Member who discloses the information.
- (c) Members will not publish any information or material arising from the Activities or about AeRO without the prior authorisation of the Executive Committee.
- (d) Each Member gives AeRO permission to use the Member's name and logo only for the purposes of promotion by AeRO of its Objectives and Activities, subject to any constraints imposed by the Member.
- (e) This clause 14 survives termination of AeRO (on termination of this Agreement) and, in respect of a Member, withdrawal of the Member from AeRO.

15 Relationship of the Members

The Members agree that:

- (a) the rights, duties and obligations of the Members, including as parties under this Agreement, are several and not joint or joint and several;
- (b) nothing in this Agreement creates, or is to be taken to create any partnership between the Members or any of them; and
- (c) except as otherwise specifically provided in this Agreement, a Member does not have the authority or power to act for, or to create or assume any responsibility or obligation on behalf of any other Member.

16 GST

If a party to this Agreement (the supplier) is required to pay GST in respect of a supply made under, or pursuant to, or by reason of a breach of, this Agreement, the recipient of the supply must (in addition to any other payment for, or in connection with, the supply) in receipt of a valid tax invoice from the supplier for the supply, pay to the supplier an amount equal to such GST.

17 Miscellaneous provisions

- (a) No agreement or understanding varying this Agreement will be legally binding unless agreed in writing by all of the Full Members. Any variation to this Agreement agreed in writing by the Full Members will be notified to, and binding on, all Members.
- (b) A failure or delay to exercise a power or right is not a waiver of that right, and the exercise of a power or right does not preclude the future exercise of that or any other power or right. A waiver of a power or right must be in writing and signed by the party giving the waiver.
- (c) This Agreement is the entire agreement between the Members as to its subject matter. It supersedes all prior agreements, representations, conduct and understandings between the Members with respect to its subject matter and/or with respect to AeRO, including any memorandum of understanding (or similar document) in place in respect of AeRO prior to the date of this Agreement.
- (d) No Member may assign or sub-license its rights under this Agreement other than with the prior written consent of the other Members.
- (e) The law of this Agreement is the State of New South Wales.
- (f) The Members will do all things and execute all documents required to permit or facilitate the performance of the transactions contemplated by this Agreement.
- (g) This Agreement may be executed in counterparts, which when taken together are one instrument.
- (h) If a clause or a part of a clause of this Agreement is found to be invalid or unenforceable (whether in respect of a Member or generally), it will be severed from this Agreement and this Agreement will otherwise continue in force.

18 Interpretation rules

In this Agreement, unless a contrary intention appears:

- (a) a reference to this Agreement or any other document is a reference to this Agreement or other document as amended, varied, novated, supplemented or replaced from time to time;
- (b) a reference to a party to this Agreement or any other instrument includes that party's executors, administrators, successors and permitted assigns;
- (c) any Schedules and the Background to this Agreement form part of this Agreement and have effect as if set out in full in this Agreement; and
- (d) the words **including, for example** and **such as** (and any other forms of those words) are to be construed without limitation.

Schedule 1 – Full Members at date of Agreement

	Member
	AAF – Australian Access Federation Inc. ABN 13 155 355 695
	AARNet – AARNet Pty Ltd ABN 54 084 540 518
	CAUDIT – Council of Australian University Directors of Information Technology ABN 39 514 469 351
	CSIRO – Commonwealth Scientific and Industrial Research Organisation ABN 41 687 119 230
	eRSA – eResearch SA Ltd ABN 95 602 771 844
	QCIF – Queensland Cyber Infrastructure Foundation Ltd ABN 13 225 133 729
	TPAC – University of Tasmania – Tasmanian Partnership for Advanced Computing ABN 30 764 374 782