CONSTITUTION

Ascham Foundation Limited

ACN 001 477 970

A Company Limited by Guarantee

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1 Definitions and Interpretation

1.1 Definitions

In this Constitution unless a contrary intention appears:

ACNC Act means the *Australian Charities and Not-for-profits Commission Act 2012* (Commonwealth), or any other legislation relating to the establishment or operation of an Australian charities commission and/or a national regulatory framework and/or national education body or otherwise for the not-for-profit sector, and includes:

(a) any regulations made under that Act or any other such legislation; and

(b) any rulings or requirements of the Commissioner of the Australian Charities and Not-for-profits Commission under that Act, or any commissioner or body under any other such legislation, having application to the Foundation.

Alternate Council Director means a person appointed as an alternate Council Director under clause 22.1.

Applicable Not-for-profit Laws means any law relating to the regulation of charities or not-for-profit entities applicable to the Foundation, including each the Charitable Fundraising Act, the Tax Act and the ACNC Act.

Appointed Director means a Director appointed by the Council in accordance with clause 11.2(a).

Auditor means the auditor or Reviewer for the time being of the Foundation.

Board means all or some of the Directors acting as a board.

Chair means the Chairman of Directors appointed under clause 21.1.

Charitable Fundraising Act means the legislation of any State or Territory of Australia, or the Commonwealth of Australia, regulating the raising of funds for charitable purposes and applicable to the Foundation, which may, for example, include the *Charitable Fundraising Act 1991* (NSW).

Committee means a committee of Directors constituted under clause 18.

Constitution means the constitution of the Foundation as amended from time to time, and a reference to a clause is a reference to a clause of this Constitution.

Corporations Act means the *Corporations Act 2001* (Commonwealth).

Council means the members for the time being of the Council of Governors of the School.

Council Director means a Director appointed in accordance with clause 11.2(a) and includes an Alternate Council Director.

Director means a person holding office as Director of the Foundation.

Directors means all or some of the persons holding office as Directors of the Foundation.

Deputy Chair means the Deputy Chair appointed under clause 21.1.

Elected Director means a Director elected by the Members in accordance with clause 11.2(b).

Equivalent Clauses has the meaning given to it in clause 1.4.

Foundation means Ascham Foundation Limited being an Australian Public Foundation Limited by Guarantee established under the Corporations Act which bears the Australian Business Number (**ABN**) 79 001 477 970.

General Meeting means a meeting of the Members of the Foundation.

Imported Provisions means the following provisions of the Corporations Act:

(a) Sections 191 to 194 (*disclosure of, and voting on matters involving, material personal interests*); and

(b) Divisions 1 to 7 of Part 2G.2 (*meetings of members*).

Member means a member of the Foundation under clause 7 whose name has been entered on the Register of the Foundation as a Member and whose membership has not ceased.

Minimum Donation means an amount determined by the Board from time to time.

Register means the register of Members under the Corporations Act.

Registered Entity means a body corporate registered under the ACNC Act.

Registered Office means the registered office for the time being of the Foundation.

Related Body Corporate has the same meaning it has in the Corporations Act.

Reviewer means a reviewer under the ACNC Act.

Rule means a rule made by the Board in accordance with clause 16.

Schedule means a schedule to this Constitution.

School means Ascham School Limited, ACN 000 036 788.

Seal means the common seal (if any) of the Foundation.

Secretary means a person appointed as a secretary of the Foundation and includes an honorary Secretary and where appropriate includes an acting secretary and a person appointed by the Directors to perform all or any of the duties of a secretary of the Foundation.

1.2 Interpretation

In this Constitution unless the contrary intention appears:

(a) words importing any gender include all other genders;

(b) the singular includes the plural and vice versa;

(c) a reference to a law includes regulations and instruments made under the law;

(d) a reference to a law or a provision of a law includes amendments, re- enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise;

(e) a power, an authority or a discretion reposed in a Director, the Directors, the Foundation in general meeting or a Member may be exercised at any time and from time to time;

(f) where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions or in any other manner approved by the Directors;

(g) "writing" and "written" includes printing, typing and other modes of reproducing words in a visible form including, without limitation, any representation of words in a physical document or in an electronic communication or form or otherwise; and

(h) Australian dollars, dollars, A$ or $ is a reference to the lawful currency of Australia.

1.3 Signing

Where, by a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions, or in any other manner approved by the Directors.

1.4 Application of the Corporations Act

(a) If, while the Foundation is a Registered Entity, the Corporations Act operates such that an Imported Provision does not apply to the Foundation because the Foundation is a Registered Entity:

(i) a clause in the same terms as the Imported Provision, along with any relevant definitions in the Corporations Act, is deemed to be included in this Constitution and to apply to the Foundation to the extent the Imported Provision would have applied to the Foundation were the Foundation not a Registered Entity (**Equivalent Clause**); and

(ii) a reference in this Constitution to an Imported Provision is deemed to be a reference to the Equivalent Clause.

(b) For the purposes of this Constitution, if the provisions of the Corporations Act or the ACNC Act conflict with the terms of this Constitution on the same matter, the provisions of the relevant Act prevail to the extent of the conflict.

(c) In this Constitution unless the contrary intention appears:

(i) an expression has, in a provision of this Constitution that deals with a matter dealt with by a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act; and

(ii) "section" means a section of the Corporations Act.

1.5 Headings

Headings are inserted for convenience and are not to affect the interpretation of this Constitution.

1.6 Replaceable rules do not apply

The provisions of the Corporations Act that apply as replaceable rules are displaced by this Constitution and accordingly do not apply to the Foundation.

2 Purpose of the Foundation

2.1 Objects

The objects of the Foundation are to assist the Council to preserve, develop and maintain the standards, position and facilities of the School:

(a) by soliciting donations and gifts to or for the benefit of the School or any of its funds or accounts from its past students, parents and friends and from any other source deemed appropriate for the promotion of the School by the Council (**Supporters**);

(b) to create opportunities for the School to attract and retain the continuing interest and financial support of its Supporters;

(c) to raise monies by gift, grant, sponsorship or otherwise, and to establish and manage funds for purposes in accordance with the plans of the School, including but not limited to:

(i) the acquisition of land or facilities for the School;

(ii) the acquisition, construction or maintenance of School buildings;

(iii) scholarships for students or prospective students of the School; and

(iv) School educational programs;

(d) to act as trustee and to perform and discharge the duties and functions incidental thereto where this is incidental or conducive to the attainment of these objects;

(e) to do such other things as are incidental or conducive to the attainment of these objects; and

(f) to do all or any of the things authorised by the Corporations Act.

3 Powers

The Foundation has the legal capacity and powers of an individual and also has all the powers of a Body Corporate under the Corporations Act.

4 Application of income for Objects only

4.1 Profits

The profits (if any) or other income and the property of the Foundation, however derived:

(a) must be applied solely towards the promotion of the purposes of the Foundation as set out in clause 2.1; and

(b) may not be paid or transferred to the Members, in whole or in part, either directly or indirectly by way of dividend, bonus or otherwise.

4.2 Payment in good faith

The above clause does not prevent payment in good faith to a Member, or to a firm of which a Member is a partner:

(a) of remuneration for services to the Foundation;

(b) for goods supplied in the ordinary course of business;

(c) of interest on money borrowed from a Member at a rate not exceeding that fixed for the purposes of this clause by the Foundation in a general meeting;

(d) of a reasonable rent for premises let by a Member; or

(e) of any such payment, distribution or transfer as may be permitted by the Applicable Not-for-profit Laws.

5 Winding Up

5.1 Contributions by members

(a) Each Member undertakes, and joint Members jointly and severally undertake, to contribute to the Foundation's property if the Foundation is wound up while they are a Member, or within one year after they cease to be a Member.

(b) This contribution is for:

(i) payment of the Foundation's debts and liabilities contracted before they ceased to be a Member;

(ii) the costs of winding up; and

(iii) adjustment of the rights of the contributories among themselves.

(c) The amount is not to exceed $100.

5.2 Application of Property

(a) If any property remains on the winding up or dissolution of the Foundation and after satisfaction of all its debts and liabilities, that property may not be paid to or distributed among the Members but must be given or transferred to the Council to be used for the benefit of the School or at the request of the Council, or if the School shall have ceased to exist to one or more other charitable fund or institution within New South Wales:

(i) having objects similar to the objects of the Foundation; and

(ii) whose constitution prohibits the distribution of its income and property among its Members to an extent at least as great as imposed on the Foundation under this Constitution.

(b) The fund or institution will be determined by the Members at or before the time of dissolution.

5.3 Revocation of Australian Tax Office Endorsement

(a) Where the Foundation has been endorsed as a deductible gift recipient as an organisation or in relation to a public fund under Subdivision 30-BA of the *Income Tax Assessment Act 1997* (Commonwealth) (as amended), then where:

(i) the Foundation is wound up; or

(ii) the fund is wound up; or

(iii) the endorsement under Subdivision 30-BA of the *Income Tax Assessment Act 1997* (Commonwealth) is revoked,

then any surplus assets of the Foundation or fund remaining after payment of all liabilities must be transferred to an institution or fund that complies with clause 5.2 and is an endorsed deductible gift recipient.

(b) Where the Foundation operates more than one gift fund for which it is a deductible gift recipient and its endorsement under Subdivision 30-BA of the *Income Tax Assessment Act 1997* (Commonwealth) is revoked only in relation to one of those gift funds then it may transfer any surplus assets of the fund after payment of all liabilities to any other gift fund for which it is endorsed as a deductible gift recipient

6 Receipts

Where the Foundation issues a receipt in respect of a gift, contribution or donation of money or property, the Foundation must comply with all applicable laws in relation to any such receipt, including without limitation the provisions of the Applicable Not-for-profit Laws.

7 Membership

7.1 Number of members

(a) The minimum number of Members of the Foundation will be 50 or such greater number as the Directors determine from time to time, subject to that number complying with the Corporations Act.

(b) The Members at the date of adoption of this Constitution and any person the Directors admit to Membership under clause 7.2 whose name has been entered on the Register are the Members of the Foundation.

(c) The Directors may from time to time increase or decrease the maximum number of Members.

7.2 Admission as a member

The Directors may admit any person as a Member if the person:

(a) is eligible under clause 7.3;

(b) consents to become a Member and to be bound by this Constitution and such consent has not been withdrawn or revoked, in each case in any manner the Directors determine; and

(c) either

(i) has, by cash, cheque or electronic transfer, made one or more subscriptions or donations to the Foundation which, in aggregate, are of an amount that is at least equivalent to the amount of the Minimum Donation; or

(ii) is a person invited to become a Member by the Directors who has submitted an application for Membership in accordance with clause 7.4.

7.3 Membership Criteria

To be eligible to be a Member, a person that satisfies the requirements of clause 7.2(c)(i) or clause 7.2(c)(ii) must:

(a) be a natural person; and

(b) be at least eighteen years of age.

7.4 Membership Process (for persons who satisfy clauses 7.2(b) and 7.2(c)(i))

(a) The Directors may determine at a meeting of Directors to admit any person as a Member where that person has met all of the requirements in clauses 7.2(a), 7.2(b) and 7.2(c)(i).

(b) When the Directors have determined to admit a person to Membership pursuant to clause 7.4(a), the Secretary must immediately notify the person of that determination.

7.5 Membership Process (for persons who do not satisfy clause 7.2(b) and/or clause 7.2(c)(i))

(a) The Directors may invite a person to become a Member where that person has met the requirements in clause 7.2(a) and that person either:

(i) in the opinion of the Directors, has made non-monetary contributions (such as goods, services, equipment or other tangible assets) to the Foundation which, in aggregate, have a value that is at least equivalent to the amount of the Minimum Donation; or

(ii) satisfies 7.2(c)(i) but has not provided their consent to become a Member and to be bound by this Constitution or has withdrawn any such consent as required by clause 7.2(b).

(b) A person invited to become a Member is eligible to submit an application for Membership, which must:

(i) contain that person's consent to become a Member and to be bound by this Constitution (as required by clause 7.2(b));

(ii) be made in writing, signed by the applicant; and

(iii) be in such form as the Directors from time to time prescribe.

(c) Each application for Membership must be considered by the Directors at the meeting of Directors first occurring after the application is made. At that meeting the Directors must determine whether to admit the applicant to Membership of the Foundation or whether to reject the application.

(d) When an applicant has been accepted or rejected for Membership the Secretary must immediately notify the applicant of the decision of the Directors.

7.6 Directors' discretion to admit or refuse admission as a Member

The Directors have the discretion to refuse any person admission as a Member without giving any reason for refusing.

7.7 Joint holders

If two or more persons are registered as a Member, they are taken to hold the membership as joint tenants with benefits of survivorship and the person whose name appears first on the Register is the only joint holder entitled to receive notices from the Foundation. Only the person whose name appears first on the Register (or if that person does not vote the next named joint

Member, or if that person does not vote, the next named etc) may vote on behalf of that Member.

8 Ceasing to be a member

8.1 Cessation of membership

A Member ceases to be a Member on:

(a) death;

(b) resignation by written notice to the Foundation having immediate effect or with effect from a specified date occurring not more than seven days after the service of the notice;

(c) becoming of unsound mind or a person whose personal estate is liable to be dealt with in any way under a law related to mental health;

(d) becoming bankrupt or insolvent or making an arrangement or composition with creditors of a person's joint or separate estate generally; and

(e) the passing of a resolution by the Directors at any time or Members in general meeting pursuant to clause 8.2.

8.2 Termination of membership

Subject to this Constitution the Directors at any time or Members in general meeting may terminate the membership of a Member if the Member:

(i) refuses or neglects to comply with this Constitution or any applicable Rules or regulations made by the Directors;

(ii) engages in conduct which in the opinion of the Directors is unbecoming of the Member or prejudicial to the interests of the Foundation;

(iii) fails to pay any debt due to the Foundation or to the School for a period of three months after the date for payment (such debt not including a Minimum Donation referred to in clause 7.2 (c) (i). or

(iv) refuses or neglects to comply with the terms of any policies of the Foundation as adopted and amended from time to time (including in particular the failure to provide the Foundation with such information as is required to accurately maintain the Register) or is otherwise determined by the Directors to be an inactive Member of the Foundation.

8.3 Limited liability

The Members have no liability as Members except as set out in clause 5.1.

9 General Meetings

9.1 Annual general meetings

Annual general meetings of the Foundation are to be held in accordance with the Corporations Act.

9.2 Convening a general meeting

The Directors may convene and arrange to hold a general meeting of the Foundation when they think fit and must do so if required to do so under the Corporations Act.

9.3 Notice of a general meeting

Notice of a meeting of Members must be given in accordance with clause 33 and the Corporations Act.

9.4 Calculation of period of notice

In computing the period of notice under clause 9.3, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

9.5 Cancellation or postponement of general meeting

(a) Where a meeting of Members (including an annual general meeting) is convened by the Directors they may by notice, whenever they think fit, cancel the meeting or postpone the holding of the meeting to a date and time determined by them.

(b) This clause 9.5 does not apply to a meeting convened in accordance with the Corporations Act by a single Director, by Members, by the Directors on the request of Members or to a meeting convened by a Court.

9.6 Notice of cancellation or postponement of a meeting

(a) Notice of cancellation, postponement or change of place of a general meeting must state the reason for cancellation or postponement and be given:

(i) to each Member individually; and

(ii) to each other person entitled to be given notice of a meeting of the Foundation's Members under the Corporations Act.

9.7 Contents of notice of postponement of meeting

A notice of postponement of a general meeting must specify:

(a) the postponed date and time for the holding of the meeting;

(b) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and

(c) if the meeting is to be held in two or more places, the technology that will be used to facilitate the holding of the meeting in that manner.

9.8 Number of clear days for postponement of meeting

The number of clear days from the giving of a notice postponing the holding of a general meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days' notice of the general meeting required to be given by this Constitution or the Corporations Act.

9.9 Business at postponed meeting

The only business that may be transacted at a general meeting the holding of which is postponed is the business specified in the original notice convening the meeting.

9.10 Proxy at postponed meeting

Where by the terms of an instrument appointing a proxy:

(a) the proxy is authorised to attend and vote at a general meeting or general meetings to be held on or before a specified date; and

(b) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy,

then, by force of this clause 9.10, that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, unless the Member appointing the proxy gives to the Foundation at its Registered Office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

9.11 Non-receipt of notice

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

9.12 Director entitled to notice of meeting

A Director is entitled to receive notice of and to attend all general meetings and is entitled to speak at those meetings.

10 Proceedings at general meetings

10.1 Reference to a member

Unless a contrary intention appears, a reference to a Member in this clause 10 means a person who is a Member or a proxy of that Member.

10.2 Number of a quorum

(a) Subject to clause 10.1, one (1) Council Director and four (4) Members present in person constitute a quorum at a general meeting.

(b) In determining whether a quorum is present, each individual attending as a proxy is to be counted, except that:

(i) where a Member has appointed more than one proxy, only one is to be counted; and

(ii) where an individual is attending both as a Member and as a proxy, that individual is to be counted only once.

10.3 Requirement for a quorum

An item of business may not be transacted at a general meeting unless a quorum is present when the meeting proceeds to consider it. If a quorum is present at the time the first item of business is transacted, it is taken to be present when the meeting proceeds to consider each subsequent item of business unless the Chair of the meeting (on the Chair's own motion or at the request of a Member or proxy who is present) declares otherwise.

10.4 If quorum not present

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

(a) if convened by a Director or at the request of Members, is dissolved; and

(b) in any other case, stands adjourned to the same day in the next week and the same time and place, or to such other day, time and place as the Directors appoint by notice to the Members and others entitled to notice of the meeting.

10.5 Adjourned meeting

At a meeting adjourned under clause 10.4(b), two (2) persons each being a Member or proxy and one (1) Council Director present at the meeting are a quorum. If a quorum is not present within fifteen minutes after the time appointed for the adjourned meeting, the meeting is dissolved.

10.6 Appointment and powers of Chair of general meeting

If the Directors have elected one of their number as Chair of their meetings, that person is entitled to preside as Chair at a general meeting.

10.7 Absence of Chair at general meeting

If a general meeting is held and:

(a) a Chair has not been elected by the Directors; or

(b) the elected Chair is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

then the following may preside as chair of the meeting (in order of precedence):

(c) the deputy Chair if a Director has been so elected by the Directors; or

(d) a Director or Member elected by the Members present to preside as chair of the meeting.

10.8 Conduct of general meetings

(a) The Chair of a general meeting:

(i) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;

(ii) may require the adoption of any procedure which is, in the Chair's opinion, necessary or desirable for proper and orderly debate or discussion and the proper and orderly casting or recording of votes at the general meeting; and

(iii) may, having regard where necessary to the Corporations Act, terminate discussion or debate on any matter whenever the Chair considers it necessary or desirable for the proper conduct of the meeting.

(b) A decision by the Chair under this clause is final.

10.9 Adjournment of general meeting

(a) The Chair of a general meeting may at any time during the meeting adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place, but:

(i) in exercising the discretion to do so, the Chair may, but need not, seek the approval of the Members present in person or by proxy; and

(ii) only unfinished business is to be transacted at a meeting resumed after an adjournment.

(b) Unless required by the Chair, a vote may not be taken or demanded by the Members present in person or by proxy in respect of any adjournment.

10.10 Notice of adjourned meeting

It is not necessary to give any notice of an adjournment or of the business to be transacted at any adjourned meeting unless a meeting is adjourned for one month or more. In that case, notice of the adjourned meeting must be given as in the case of an original meeting.

10.11 Questions decided by majority

Subject to the requirements of the Corporations Act, a resolution is taken to be carried if a simple majority of the votes cast on the resolution are in favour of it.

10.12 Equality of votes – no casting vote for Chair

If there is an equality of votes, either on a show of hands or on a poll, then the Chair of the meeting is not entitled to a casting vote in addition to any votes to which the Chair is entitled as a Member or proxy or attorney.

10.13 Voting on show of hands

At any general meeting a resolution put to the vote of the meeting must be decided on a show of hands unless a poll is properly demanded and the demand is not withdrawn. A declaration by the Chair that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the Foundation, is conclusive evidence of the fact. Neither the Chair nor the minutes need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

10.14 Poll

If a poll is demanded:

(a) it must be taken in the manner and at the date and time directed by the Chair and the result of the poll is the resolution of the meeting at which the poll was demanded;

(b) on the election of a Chair or on a question of adjournment, it must be taken immediately;

(c) the demand may be withdrawn; and

(d) the demand does not prevent the continuance of the meeting for the transaction of any business other than the question on which the poll has been demanded.

10.15 Votes of Members

(a) Every Member has one vote.

(b) Subject to this Constitution:

(i) on a show of hands, each Member present in person and each other person present as a proxy of a Member has one vote; and

(ii) on a poll, each Member present in person has one vote and each person present as proxy of a Member has one vote for each Member that the person represents.

10.16 Right to appoint proxy

(a) Subject to the Corporations Act, a Member entitled to attend a meeting of the Foundation is entitled to appoint another person (whether a Member or not) as proxy to attend in the Member's place at the meeting. A proxy has the same right as the Member to speak and vote at the meeting and may be appointed in respect of more than one meeting.

(b) The instrument appointing a proxy must be in writing under the hand of the appointor or of his attorney duly authorised in writing or, if the appointor is a corporation, either under seal or under the hand of an officer or attorney duly authorised. The instrument appointing a proxy will be deemed to confer authority to demand or join in demanding a poll. A Member will be entitled to instruct his proxy to vote in favour of or against any proposed resolutions. The proxy may vote as he thinks fit unless otherwise instructed.

(c) The instrument appointing a proxy may be in the form set out in Schedule 1 to this Constitution.

(d) The instrument appointing a proxy and the power of attorney or other authority, if any, under which it is signed or a notarially certified copy of that power or authority will be deposited at the registered office of the Foundation, or at such other place within the State as is specified for that purpose in the notice convening the meeting, not less than 48 hours before the time for holding the meeting or adjourned meeting at which the person named in the instrument proposes to vote, or, in the case of a poll, not less than 24 hours before the time appointed for the taking of the poll, and in default the instrument of proxy will not be treated as valid.

(e) A vote given in accordance with the terms of an instrument of proxy will be valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument or of the authority under which the instrument was executed, if no notice in writing of such death unsoundness of mind or revocation as aforesaid has been received by the Foundation at the registered office by 5pm on the day before the commencement of the meeting or adjourned meeting at which the instrument is used.

10.17 Validity of vote in certain circumstances

Unless the Foundation has received written notice of the matter before the start or resumption of the meeting at which a person votes as a proxy or attorney, a vote cast by that person is valid even if, before the person votes:

(a) the appointing Member dies; or

(b) the Member revokes the appointment or authority.

10.18 Objection to voting qualification

(a) An objection to the right of a person to attend or vote at the meeting or adjourned meeting:

(i) may not be raised except at that meeting or adjourned meeting; and

(ii) must be referred to the Chair of the meeting, whose decision is final.

(b) A vote not disallowed under the objection is valid for all purposes.

11 Directors

11.1 Number of Directors

The number of Directors shall be such number between six (6) and thirteen (13) as the Members shall determine from time to time, subject to clause 11.2, and that number complying with the Corporations Act.

11.2 Appointment of Directors

The Directors will be appointed in the following way:

(a) Up to three (3) Directors may be appointed by the Council (**Council Directors**); and

(b) Such number not less than three (3) and not more than ten (10) Directors as determined in accordance with clause 11.1 elected by the Members (**Elected Directors**).

11.3 Directors elected at general meeting

The Foundation may, at a general meeting at which an Elected Director retires or otherwise vacates office, by resolution fill the vacated office by electing a person to that office.

11.4 Qualification of Directors

(a) In respect of Elected Directors, to be eligible for the office of Elected Director a person must:

(i) be a Member of the Foundation, and

(ii) consent in writing to act as a Director.

(b) In respect of Council Directors, to be eligible for the office of Council Directors a person must:

(i) be appointed by the Council; and

(ii) consent in writing to act as a Director.

(c) A majority of the Directors must be persons who, because of their tenure of some public office or other position or activity in the community, have a responsibility to the community as a whole, and a high degree of responsibility to the public in controlling and administering the Foundation.

11.5 Election of officers

(a) At the first meeting of the Directors held following the Foundation's adoption of this Constitution, the Directors shall appoint from the Directors the officers of the Foundation. Thereafter, the Directors shall appoint those officers from the Directors with such frequency as the Directors from time to time determine.

(b) A resolution to appoint any officer of the Foundation in accordance with clause 11.5(a) must be supported by a majority of the Council Directors voting on the resolution.

11.6 Rotation of Elected Directors

(a) Each Elected Director must retire from office at the conclusion of the fourth annual general meeting after that Elected Director was last elected or appointed.

(b) The Members may by Ordinary resolution remove any Elected Director before the expiration of that Director's period of office, and may by an Ordinary Resolution appoint another person in the place of that Director.

11.7 Reappointment of Directors

Elected Directors are entitled to seek appointment as Directors on two (2) occasions only so that an Elected Director's period of service to the Foundation shall not exceed a period of eight (8) years, with an exception that, at the conclusion of their second term, the Director serving as the Chair may be appointed on a third occasion allowing the Chair's service period up to twelve (12) years.

11.8 Office held until conclusion of meeting

Subject to clause 11.7, a retiring Director holds office until the conclusion of the meeting at which that Director retires but is eligible for re-election.

11.9 Casual vacancy or additional Director

(a) The Directors may at any time appoint any person to be an Elected Director, either to fill a casual vacancy or as an addition to the existing Directors, provided the total number of Directors does not exceed the maximum number determined in accordance with clause 11.1.

(b) A Director appointed under this clause holds office until the conclusion of the next annual general meeting of the Foundation but is eligible for election at that meeting.

12 Remuneration of Directors

The Directors may not be paid any remuneration for their services as Directors.

13 Expenses of Directors

No payment will be made to any Director other than a payment:

(a) for reasonable out of pocket travelling, accommodation and other expenses as the Director may incur when travelling to or from meetings of the Directors or a Committee or when otherwise engaged on the business of the Foundation where the amount payable does not exceed an amount previously approved by the Directors;

(b) for any services rendered to the Foundation by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Directors and where the amount payable is approved by the Directors and is not more than an amount which commercially would be reasonable payment for the service;

(c) of any salary or wage due to the Director as an employee of the Foundation where the terms of employment have been approved by the Directors; and

(d) relating to an indemnity in favour of the Director and permitted by section 199A of the Corporations Act or a contract of insurance permitted by section 199B of the Corporations Act where the amount payable is approved by the Directors.

14 Vacation of office of Director

In addition to the circumstances in which the office of a Director becomes vacant under the Corporations Act, the office of a Director becomes vacant if the Director:

(a) becomes ineligible to be a Director under the ACNC Act while the Foundation is a Registered Entity;

(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) resigns from the office by notice in writing to the Foundation;

(d) becomes insolvent or bankrupt, compounds with his creditors, or assigns his estate for the benefit of his creditors;

(e) is absent personally or by Alternate Council Director at three successive meetings of the Directors without leave of absence from the Directors; or

(f) becomes prohibited for being a Director by reason of any order of any court of competent jurisdiction.

15 Powers and duties of Directors

15.1 Directors to manage the Foundation

(a) The Directors are to manage the business of the Foundation and may exercise all the powers of the Foundation that are not, by the Corporations Act or by this Constitution, required to be exercised by the Foundation in general meeting.

(b) The Directors will cause the Foundation to be conducted in accordance with this Constitution and the Principles and Commitments.

15.2 Specific powers of Directors

Without limiting the generality of clause 15.1, and subject to any trusts relating to the assets of the Foundation, the Directors may exercise all the powers of the Foundation to borrow or raise money, to charge any property or business of the Foundation, and to give any security for a debt, liability or obligation of the Foundation or of any other person.

16 Rules

Subject to this Constitution, the Directors may from time to time by resolution make and rescind or alter Rules which are binding on Members for the management and conduct of the business of the Foundation.

17 Appointment of attorney

(a) The Directors may, by power of attorney, appoint any person to be the attorney of the Foundation for the purposes and with the powers, authorities and discretions held by the Directors for the period and subject to the conditions that they think fit.

(b) A power of attorney granted under clause 17 may contain any 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 (including by way of appointment of a substitute attorney) all or any of the powers, authorities and discretions of the attorney.

18 Directors' committees

(a) The Directors may delegate any of their powers, other than powers required by law to be dealt with by Directors as a board, to a committee or committees consisting of such one or more of their number as they think fit.

(b) A committee to which any powers have been delegated under clause 18 must exercise those powers in accordance with any directions of the Directors. A power so exercised is taken to have been exercised by the Directors.

19 Powers of delegation

The powers of delegation expressly or impliedly conferred by this Constitution on the Directors are conferred in substitution for, and to the exclusion of, the power conferred by Section 198D of the Corporations Act.

20 Proceedings of directors

20.1 Directors meetings

(a) The Directors may meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit.

(b) A Director may at any time, and the Secretary must on the written request of a Director, convene a meeting of the Directors.

20.2 Questions decided by majority

A question arising at a meeting of Directors is to be decided by a majority of votes of Directors present and entitled to vote, and that decision is for all purposes a decision of the Directors.

20.3 Alternate Council Director or proxy and voting

A person who is present at a meeting of Directors as an Alternate Council Director has one vote for each absent Director who would be entitled to vote if present at the meeting and for whom that person is an Alternate Council Director. If that person is also a Director, then that person also has one vote as a Director in that capacity.

20.4 Resolutions requiring approval of Council Directors

No resolution of the Board relating to the use or expenditure of any monies, other than in the ordinary course of day to day administration or investment of the funds of the Foundation, shall be validly passed if any Council Director votes against it.

21 Chair and deputy Chair of directors

21.1 Election of Chair

(a) The Directors may elect from their number a Chair and a Deputy Chair of their meetings and may also determine the period for which the persons elected as Chair and Deputy Chair are to hold office.

(b) A resolution to appoint any officer of the Foundation in accordance with clause 11.5(a) must be supported by a majority of the Council Directors voting on the resolution.

21.2 Absence of Chair at Directors' meeting

If a Directors' meeting is held and:

(a) a Chair has not been elected under clause 21.1, or

(b) the Chair is not present within ten minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

then the Deputy Chair, if elected under clause 21.1, must be the Chair of the meeting or, if the Deputy Chair is not present, the Directors present must elect one of their number to be a Chair of the meeting.

21.3 No casting vote for Chair at Directors' meetings

In the event of an equality of votes cast for and against a question, the Chair of the Directors' meeting does not have a second or casting vote.

22 Appointment of Alternate Council Director

22.1 Appointment

(a) Subject to the Corporations Act, the Council may appoint a person to be an Alternate Council Director in the Council Director's place during such period as the Council thinks fit.

(b) Subject to the Corporations Act, an appointment of an Alternate Council Director must be effected by a notice in writing signed by the Council Director who makes or made the appointment, and delivered to the Foundation.

22.2 Notice

An Alternate Council Director is entitled to notice of all meetings of the Directors and, if the appointor does not participate in a meeting, the Alternate Council Director is entitled to participate and vote in the appointor's place.

22.3 Alternate Council Director's powers

An Alternate Council Director may exercise all the powers of the appointor except the power to appoint an Alternate Council Director and, subject to the Corporations Act, may perform all the duties of the appointor except to the extent that the appointor has exercised or performed them.

22.4 Alternate Council Director responsible for own acts and defaults

Whilst acting as a Director, an Alternate Council Director:

(a) is an officer of the Foundation and not the agent of the appointor, and

(b) is responsible to the exclusion of the appointor for the Alternate Council Director's own acts and defaults.

22.5 Alternate Council Director and remuneration

An Alternate Council Director is not entitled to receive from the Foundation any remuneration or benefit for services provided as an Alternate Council Director.

22.6 Termination of appointment of Alternate Council Director

The appointment of an Alternate Council Director may be terminated at any time by the appointor even if the period, if any, of the appointment of the Alternate Council Director has not expired, and terminates in any event if the appointor ceases to be a Director.

22.7 Termination in writing

The termination of an appointment of an Alternate Council Director must be effected by a notice in writing signed by the appointer and delivered to the Foundation.

22.8 Alternate Council Director and number of Directors

An Alternate Council Director is not to be taken into account separately from the appointor in determining the number of Directors.

22.9 No other alternate

Other than as provided in clause 22.1, no Director may appoint an alternate to exercise that Director's powers and responsibilities.

23 Quorum for directors' meeting

(a) At a meeting of Directors, the number of Directors whose presence in person is necessary to constitute a quorum is as determined by the Directors, and, unless so determined, is one half of the Directors holding office, or if there is an odd number of Directors, then the majority of Directors holding office, provided that no quorum will be obtained without the presence in person of at least one (1) Council Director.

(b) The continuing Directors may act despite a vacancy in their number. If their number is reduced below the minimum fixed by clause 11.1, the continuing Directors may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a general meeting.

24 Chair of directors' committee

The Members of a committee may elect one of their number as Chair of their meetings. If a meeting of a committee is held and:

(a) a Chair has not been elected; or

(b) the Chair is not present within ten minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

then the Members involved may elect one of their number to be Chair of the meeting.

25 Meetings of committee

25.1 Adjourning a meeting

A Committee may meet and adjourn as it thinks proper.

25.2 Determination of questions

(a) Questions arising at a meeting of a Committee are to be determined by a majority of votes of the Members present and voting.

(b) In the event of an equality of votes, the Chair of the meeting does not have a casting vote.

26 Circulating resolutions

The Directors may pass a resolution without a Directors' meeting being held if all of the Directors 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. 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. Subject to the requirements of clause 20.4, the resolution is passed when the last Director signs.

27 Validity of acts of directors

All acts done at a meeting of the Directors or of a committee of Directors, or by a person acting as a Director are, even if it is afterwards discovered that:

(a) there was a defect in the appointment or continuance in office of a person as a Director or of the person so acting; or

(b) a person acting as a Director was disqualified or was not entitled to vote,

valid as if the relevant person had been duly appointed or had duly continued in office and was qualified and entitled to vote.

28 Secretary

28.1 Appointment of Secretary

There must be at least one Secretary who is to be appointed by the Directors.

28.2 Suspension and removal of Secretary

The Directors may suspend or remove a Secretary from that office.

28.3 Powers, duties and authorities of Secretary

A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Directors. The exercise of those powers and authorities and the performance of those duties by a Secretary are subject at all times to the control of the Directors.

29 Documents

Documents executed for and on behalf of the company must be executed by:

(a) two Directors;

(b) a Director and the Secretary; or

(c) such other persons as the Directors by resolution appoint from time to time.

30 Accounts

(a) The Directors must cause proper financial records to be kept and cause the accounts of the Foundation to be audited as required by law.

(b) The Directors must distribute to the members copies of the annual financial reports of the Foundation accompanied by a copy of the Auditor's report and Directors' report.

31 Seals

31.1 Safe custody of common seals

The Directors must provide for the safe custody of any seal of the Foundation.

31.2 Use of common seal

If the Foundation has a common seal or duplicate common seal:

(a) it may be used only by the authority of the Directors, or of a Committee authorised by the Directors to authorise its use; and

(b) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Directors to countersign that document or a class of documents in which that document is included.

32 Inspection of records

32.1 Inspection by Members

Subject to the Corporations Act, the Directors may determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Foundation or any of them will be open to inspection by the Members (other than Directors).

32.2 Right of a Member to inspect

A Member (other than a Director) does not have the right to inspect any document of the Foundation except as provided by law or authorised by the Directors or by the Foundation in general meeting.

33 Service of documents

33.1 Document includes notice

In this clause 33, a reference to a document includes a notice.

33.2 Methods of service

(a) The Foundation may give a document to a Member:

(i) personally;

(ii) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or

(iii) by sending it to a fax number or electronic address nominated by the Member.

(b) A document sent by post:

(i) if sent to an address in Australia, may be sent by ordinary post; and

(ii) if sent to an address outside Australia, must be sent by airmail; and

(iii) in either case is taken to have been received on the day after the date of its posting.

(c) If a document is sent by fax or electronic transmission, delivery of the document is taken:

(i) to be effected by properly addressing and transmitting the fax or electronic transmission; and

(ii) to have been delivered on the day following its transmission.

33.3 Evidence of service

A certificate in writing signed by a Director or a Secretary stating that a document was sent to a Member by post or by fax or electronic transmission on a particular date is prima facie evidence that the document was so sent on that date.

34 Indemnity

The Foundation may indemnify any current or former Director, Secretary or executive officer of the Foundation or of a Related Body Corporate of the Foundation out of the property of the Foundation against:

(a) every liability incurred by the person in that capacity (except a liability for legal costs); and

(b) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity,

except to the extent that:

(c) the Foundation is forbidden by statute to indemnify the person against the liability or legal costs; or

(d) an indemnity by the Foundation of the person against the liability or legal costs would, if given, be made void by statute.

35 Insurance

The Foundation may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or executive officer of the Foundation or of a Related Body Corporate of the Foundation against liability incurred by the person in that capacity, including a liability for legal costs, unless:

(a) the Foundation is forbidden by statute to pay or agree to pay the premium; or

(b) the contract would, if the Foundation paid the premium, be made void by statute.

36 Contract

The Foundation may enter into an agreement with a person referred to in clauses 34 and 35 with respect to the matters covered by these clauses. An agreement entered into pursuant to this clause may include provisions relating to rights of access to the books of the Foundation conferred by the Corporations Act or otherwise by law.

Schedule 1

Appointment of Proxy

Ascham Foundation Limited ACN 001 477 970

I/We_____[name] of

_____[address]

being a member/members of the abovenamed Company hereby appoint

_____[name] of

_____[address]

or, in his or her absence_____[name] of

_____[address]

as my/our proxy to vote for me/us on my/our behalf at the meeting of the members of the

Company to be held on the_____day of_____20_____ and at any adjournment of that meeting.

[Insert if desired] This form is to be used in favour of / against the resolution (strike out whichever is not desired)

[Insert details of specific resolutions]

SIGNED _____

NAME _____

DATED _____

This notice must be returned to Ascham Foundation Limited at [registered office or other address] by [time] on [date] [insert specific details ensuring that the time is 48 hours before the time for the holding of the meeting]