#### **PART 1 - PRELIMINARY**

## 1 Name and nature of company

- 1.1 The name of the company is The Hutchins Foundation Limited.
- 1.2 The company is a public company limited by guarantee without a share capital.

#### 2 Definitions

**2.1** Unless a different meaning is indicated:

Annual General Meeting means the Annual General Meeting of the Foundation;

bequest means a legacy or other benefit passing under a will;

**Foundation Board** means the Foundation Board of Directors of the Foundation:

**Board of Management** means The Hutchins School Board;

Corporations Act means the Corporations Act 2001 (Commonwealth);

deferred gift means -

- (a) a gift of an asset with a retention of a life interest to the donor or another person nominated by the donor; or
- (b) a covenant by the donor that the donor's legal representative will pay a specified amount to the Foundation;

**Director** means a Director of the Foundation Board:

Foundation means The Hutchins Foundation Limited;

gift includes -

- (a) a deferred gift; and
- (b) a non-realisable gift; and
- (c) a realisable gift;

**Member** means a person who is a member of the Foundation under article 11.6;

**non-realisable gift** means a gift of an asset which cannot be realised immediately;

**person** means an individual, the estate of an individual, a corporation, an authority, an association (whether incorporated or not), a partnership and a trust;

**Principal** means the Principal, Headmaster or other similar designated title, of the School;

realisable gift means a gift of cash or an asset which can be realised immediately;

**representative** means a person appointed as such under article 15;

**School** means The Hutchins School established under the *Christ College Act 1926*;

**Secretary** means the Secretary of the Foundation Board;

writing includes any method of reproducing or representing words in a visible form.

#### 3 References

- **3.1** Unless a different meaning is indicated:
  - (a) a reference to a law includes a reference to regulations, rules, by-laws and other instruments made under the law;
  - (b) a reference to a law or a provision of a law includes a reference to any amendment, reenactment, consolidation or replacement of that law or the provision;
  - (c) a reference to a numbered article is a reference to a provision of this Constitution.

#### 4 Grammar

- **4.1** Unless a different meaning is indicated:
  - (a) **may** is permissive;
  - (b) **must** is mandatory;
  - (c) **is to** is directory;
  - (d) the singular includes the plural and the plural includes the singular;
  - (e) any part of speech or grammatical forms of a defined word or defined term have corresponding meanings;
  - (f) **include** is not be construed as a limitation.

## **5** Corporations Act provisions

**5.1** Unless a different meaning is indicated, a word, term or expression relating to a matter that is dealt with in a provision of the Corporations Act has the same meaning as in that provision.

## 6 Headings

**6.1** Headings do not affect the interpretation of this Constitution.

### **PART 2 - OBJECTS AND POWERS**

## 7 Objects

- 7.1 The objects of the Foundation are to provide financial assistance for
  - (a) the development and maintenance of the standards, status and facilities of the School; and
  - (b) educational research projects; and
  - (c) scholarships, bursaries, endowments and educational allowances; and
  - (d) visits from overseas academic specialists; and

- (e) the acquisition of library books, works of art, educational plant and equipment; and
- (f) the development of new teaching methods; and
- (g) the development of the cultural environment of the School; and
- (h) the future viability of the School; and
- (i) any other appropriate object as directed by the Board of Management.
- 7.2 The Foundation must only apply its income and property in promoting the objects of the Foundation.

## **8** General powers

- **8.1** The Foundation may:
  - (a) raise finance by any desirable means to -
    - (i) acquire land, facilities or buildings for the use of the School; and
    - (ii) construct or maintain buildings used, or to be used, by the School; and
  - (b) invest and deal with money of the Foundation not immediately required as prescribed in the by-laws; and
  - (c) establish and administer trusts and funds for educational purposes and any objects of the Foundation; and
  - (d) appoint persons to provide assistance or services required
    - (i) to attain the objects of the Foundation; and
    - (ii) to exercise its powers; and
  - (e) do anything necessary or conducive to the attainment of the objects of the Foundation and the exercise of its powers and the performance of its functions.

## **PART 3 - MEMBERSHIP**

### 9 Membership of Foundation

- **9.1** The Foundation consists of Members
- **9.2** A person who has made a gift or bequest or a combination of a gift and bequest to the Foundation of \$1,000 or more in value is a member of the Foundation.
- **9.3** The Foundation Board may alter the amount referred to in article 9.2 as it considers appropriate.
- **9.4** A person who was a Member of the Foundation before the commencement of the Constitution is a Member for the purposes of this constitution

## 12 Resignation

- **12.1** A Member may resign by written notice to the Secretary.
- 12.2 Unless otherwise specified in the notice, a resignation takes effect on the date of the notice.

# 13 Cessation of Membership

- **13.1** A person ceases to be a Member
  - (a) on resignation; or
  - (b) on the death of that person.
- **13.2** Any right, entitlement or privilege attached to membership terminates on cessation of membership.

## 14 Limited liability and non-transfer of rights and obligations

- **14.1** A Member has no liability as a Member except as set out in article 40.7.
- **14.2** Any right, entitlement, privilege or obligation of a person as a Member is not capable of being transferred or transmitted to another person.

# 15 Representatives of Members

- **15.1** A Member may appoint any person as his or her representative.
- 15.2 The appointment must -
  - (a) be in writing in the form determined by the Foundation Board; and
  - (b) specify the term of appointment; and
  - (c) be signed by the Member; and
  - (d) be lodged with the Secretary.
- 15.3 An appointment of a representative may be made -
  - (a) for a specific event; or
  - (b) generally; or
  - (c) for a specified term; or
  - (d) for an indefinite term.
- **15.4** A Member may revoke an appointment by written notice to the Secretary.
- 15.5 On the death of a Member -
  - (a) the appointment of a representative of the Member terminates; and
  - (b) a representative appointed under article 15.3 (b) or 15.3 (d) may apply to become a Member as if he or she were eligible under article 10.1.
- **15.6** A representative may -
  - (a) exercise the rights and entitlements of the Member; and
  - (b) apply to become a Director.

### 15 A Honorary Membership

- 15A.1 The Foundation Board may confer honorary membership on a person who, in its opinion
  - a) has rendered notable service to the Foundation; or
  - b) has vigorously promoted the objects of the Foundation; or
  - c) has substantially contributed to the objects of the Foundation; or
  - d) has distinguished himself or herself by service to The Hutchins School; or
  - e) is deserving of that conferment.
- 15A.2 An honorary member
  - a) has no voting rights; and
  - b) is not eligible to hold office on the Foundation Board.
- 15A.3 Honorary membership may be conferred
  - a) for a specified term; or
  - b) for an indefinite term.
- 15A.4 Honorary membership automatically terminates whichever occurs first;
  - a) at the end of the specified term;
  - b) on death.

### PART 4 - FOUNDATION BOARD OF DIRECTORS

### 16 Composition of Foundation Board of Directors

- **16.1** The Foundation Board is composed of
  - (a) the Principal, as an ex- officio Director; and
  - (b) Members appointed by the Board of Management under article 17; and
  - (c) any other persons appointed by the Board of Management under article 17.
- **16.2** The membership of the Foundation Board is to be at least 7 and not more than 12 Directors, excluding the Principal.

## 17 Nomination and appointment of Directors

- **17.1** A Member may nominate to be a Director by written notice lodged with the Secretary.
- 17.2 Nominations are to be lodged at least 21 days before the Annual General Meeting.

- 17.3 The Secretary is to forward nominations, together with any relevant information, as soon as practicable to the Board of Management for its consideration.
- 17.4 The Board of Management -
  - (a) is to consider all nominations; and
  - (b) may accept or reject any nomination as it considers appropriate; and
- 17.5 The Board of Management is not required to give reasons for rejecting any nomination.
- 17.6 The Board of Management -
  - (a) is not required to appoint Directors from the nominations received; and
  - (b) may appoint as a Director any Member who has not nominated
  - (c) with the prior approval of the Foundation Board, may appoint as a Director a person who is not a Member but who has the appropriate expertise and interest.
- 17.7 The appointment of a Director is to be confirmed by resolution passed at the Annual General Meeting.

#### 18 Term of office of Directors

- **18.1** Subject to article 18.3, the term of office of a Director is 3 years from the date of confirmation of appointment.
- **18.2** A Director is eligible for re-appointment.
- 18.3 The term of office of 6 Directors, as determined by the Board of Management, whose appointments are confirmed at the first Annual General Meeting of the Foundation following the commencement of this Constitution is a period of 4 years.

#### 19 Office bearers

- **19.1** The office bearers of the Foundation are -
  - (a) the President; and
  - (b) the Vice President; and
  - (c) the Secretary.
- 19.2 The office bearers mentioned in article 19.1 (a) and (b)
  - (a) must be Directors; and
  - (b) are elected at the Annual General Meeting.
- 19.3 The Secretary is to be appointed by the Foundation Board on any terms it considers appropriate.

#### 20 Term of office of office bearers

- **20.1** The term of office of the President and Vice President is 3 years from the date of election.
- **20.2** The President and Vice President are eligible for re-election for one further term of 3 years.

#### 21 Vacation of office of Director

- **21.1** The office of Director is vacated if the Director -
  - (a) ceases to be a Director by virtue of, or becomes prohibited from being a Director because of an order made under, the Corporations Act; or
  - (b) becomes bankrupt or insolvent or makes an arrangement or composition with creditors; or
  - (c) becomes of unsound mind or a person whose property is liable to be dealt with under a law relating to mental health; or
  - (d) resigns office or refuses to act; or
  - (e) is removed from office; or
  - (f) is absent from 3 meetings of the Foundation Board without the consent of the Foundation Board and the Foundation Board resolves that his or her office be vacated.

#### 22 Removal from office

**22.1** The Board of Management may remove a Director, other than the Principal, from office for any reason it considers appropriate.

#### 23 Casual vacancies

- **23.1** If the office of a Director becomes vacant, the Board of Management may fill the vacancy for the balance of the unexpired term of that office.
- 23.2 If the office of President becomes vacant -
  - (a) the Vice President is to take office as President; and
  - (b) the Board of Management is to appoint a Vice President from the Directors; and
  - (c) the Board of Management may appoint another Director.

### **24** Payment to Directors

- **24.1** A Director is not entitled to be paid fees for performing the duties and responsibilities as a Director.
- **24.2** The Foundation Board may resolve to pay a Director
  - (a) out-of- pocket expenses incurred for, or on behalf of, the Foundation; and
  - (b) reasonable remuneration for services rendered or goods supplied to the Foundation in the ordinary course of business.

### 25 General powers and functions of Foundation Board

- **25.1** The Foundation Board is to exercise all the powers of the Foundation except those powers that are required by the Corporations Act to be exercised by a general meeting.
- **25.2** The Foundation Board is to manage the business of the Foundation.

### **26** Execution of documents

- **26.1** The Foundation Board may execute a document by fixing its common seal to the document as witnessed by -
  - (a) two Directors; or
  - (b) a Director and the Secretary; or
  - (c) a Director and another person appointed by the Foundation Board for that purpose.
- 26.2 Negotiable instruments may be signed, drawn, accepted, endorsed or otherwise executed by or on behalf of the Foundation by the Secretary and the Principal or the Principal's nominee.
- **26.3** The Foundation Board may resolve that any signature on any document may be made by any mechanical or other means.

## PART 5 - MEETINGS OF FOUNDATION BOARD

### 27 Convening meetings

- **27.1** The Foundation Board is to meet at least 4 times in each calendar year at the times and places the Foundation Board determines.
- 27.2 Three Directors may convene a meeting of the Foundation Board.
- **27.3** The Foundation Board may meet, adjourn and otherwise regulate its meetings and proceedings as it considers appropriate.
- 27.4 The Secretary is to give notice of each meeting of the Foundation Board to each Director -
  - (a) at least 21 days before the date of the meeting; or
  - (b) at least 24 hours before the date of the meeting if all the Directors consent.
- 27.5 A notice of a meeting must -
  - (a) set out the place, date and time of the meeting; and
  - (b) state the general nature of the business of the meeting.
- **27.6** The Chairman of the Board of Management is entitled to attend a meeting of the Foundation Board but has no voting rights.

### 28 Procedure at meetings

- **28.1** The President is to chair a meeting of the Foundation Board.
- **28.2** If the President is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to chair the meeting, the Vice President is to chair the meeting.
- **28.3** If the Vice President is not present or is unable or unwilling to chair the meeting, the Directors present at the meeting must elect one of their number to chair the meeting.
- **28.4** A quorum for a meeting of the Foundation Board is 5 Directors, including any representative who is present in place of a Member who is a Director.

- **28.5** Subject to the Corporations Act, a resolution of the Directors is passed if the majority of the votes cast are in favour of the resolution.
- **28.6** Each Director has one vote.
- **28.7** If there is an equality of votes, the person chairing the meeting has a casting vote in addition to a vote as a Director.

### PART 6 - ANNUAL GENERAL MEETINGS

# 29 Annual General Meeting

- **29.1** The Foundation must hold an Annual General Meeting as required by, and in accordance with, the Corporations Act.
- 29.2 The financial year of the Foundation ends on 31 December in each year and, as required by the Corporations Act, an Annual General Meeting is to be held within 5 months after that date.
- **29.3** The business of an Annual General Meeting is to include the following:
  - (a) the consideration of the annual financial report, the Directors' report and the auditor's report for the Foundation;
  - (b) the confirmation of the appointment of Directors;
  - (c) the appointment of the auditor;
  - (d) any other business required to be dealt with at an Annual General Meeting by the Corporations Act.
- 29.4 Any resolution passed at an Annual General Meeting or at an adjourned Annual General Meeting, or any cancellation or adjournment of an Annual General Meeting, is not invalid only because a person entitled to receive notice of the meeting, adjournment or cancellation did not receive notice.

#### 30 Quorum

- **30.1** A quorum for an Annual General Meeting is 10 Members.
- 30.2 An item of business may not be transacted at an Annual General Meeting unless a quorum is present.
- 30.3 If a quorum is present at the beginning of the Annual General Meeting, it is taken to be present throughout the Meeting, unless the person chairing the Meeting declares it otherwise.
- **30.4** If a quorum is not present at an Annual General Meeting within 15 minutes after the time appointed for the Meeting, the Members present are taken to constitute a quorum.

# 31 Chairing Annual General Meetings

- **31.1** The President is to chair an Annual General Meeting.
- **31.2.** If the President is not present within 15 minutes after the time appointed for the holding of the Meeting or is unable or unwilling to chair the Meeting, the Vice President is to chair the Meeting.
- 31.3 If the Vice President is not present or is unable or unwilling to chair the Meeting, the Directors present at the Meeting must elect one of their number to chair the Meeting.
- 31.4 The person chairing an Annual General Meeting
  - (a) has charge of the general conduct of the Meeting and of the procedures to be adopted at the Meeting; and
  - (b) subject to the approval of the Members, may admit observers to, and may exclude or remove observers from, the Meeting; and
  - (c) may invite people who are not Members, proxies or representatives to attend and speak if, in his or her opinion, it is in the interests of the Foundation that they do so, but may remove such people from the Meeting; and
  - (d) having regard to the Corporations Act, may terminate discussion or debate on any matter if he or she considers it necessary or desirable for the proper conduct of the Meeting.
- **31.5** Any decision made under 31.4 is final.

### **32** Voting on resolutions

- **32.1** Every resolution submitted to an Annual General meeting must be decided on a show of hands.
- 32.2 Before a vote is taken, the person chairing the Meeting must inform the Meeting if an appointment of a proxy specifies the way the proxy is to vote on a particular resolution, how the proxy votes are to be cast.
- **32.3** Subject to the Corporations Act, a resolution submitted to the Annual General Meeting is passed if a majority of the votes cast is in favour of it.
- **32.4** If there is an equality of votes, the resolution is determined in the negative.
- 32.5 The person chairing the meeting or the minutes need not state, and it is not necessary to prove, the number or proportion of the votes recorded in favour of or against the resolution.
- 32.6 An entry in the minutes that a resolution was carried or carried unanimously or by a particular majority, or was determined in the negative, is evidence of the fact.

### PART 7 - COMMITTEES

#### 33 Committees

**33.1** The Foundation Board may establish any committees it considers appropriate to assist it in the exercise of its powers and the performance of its functions.

- 33.2 A committee consists of -
  - (a) a Director appointed by the Foundation Board who is to chair the committee; and
  - (b) any other Members or Directors appointed by the Foundation Board as it considers appropriate; and
  - (c) a member of the Board of Management appointed under article 33.3.
- **33.3** The Board of Management may appoint a member of the Board of Management as a member of a committee.
- 33.4 The term of office of a member of a committee-
  - (a) is as determined by the Foundation Board; and
  - (b) may be terminated by the Foundation Board at any time before the term expires.
- 33.5 A committee, with the approval of the Foundation Board, may form a working party to assist it in the performance of a specific function.
- 33.6 The Foundation Board is to determine the roles and responsibilities of a committee.
- 33.7 The Foundation Board may abolish a committee at any time.

# 34 Delegation to committee

- **34.1** The Foundation Board may delegate any of its powers to a committee.
- **34.2** A committee must exercise any power delegated to it in accordance with any directions of the Foundation Board.
- 34.3 The Foundation Board may revoke or vary any power delegated to a committee.

# 35 Meetings of committees

- **35.1** A committee may meet and adjourn as it considers appropriate or as directed by the Foundation Board.
- **35.2** A resolution submitted to a committee meeting is passed if a majority of the votes cast is in favour of it.
- **35.3** If there is an equality of votes, the resolution is determined in the negative.
- **36.4** A committee is to
  - (a) keep minutes of all meetings; and
  - (b) submit a copy of the minutes to the Secretary.

## **PART 8 - MISCELLANEOUS**

#### 36 Seal

- **36.1** The seal of the Foundation must be -
  - (a) kept in a safe place; and

(b) used only with the authority of the Foundation Board.

## 37 Indemnity

- 37.1 The Foundation must indemnify a person who is or has been a Director or Secretary against -
  - (a) any liability incurred by that person whilst acting in that capacity; and
  - (b) all legal costs incurred by that person in defending an action for that liability.
- 37.2 Article 37.1 only applies if the person has not committed a fraud, acted dishonestly or engaged in wilful misconduct.

#### 38 Insurance

- **38.1** The Foundation may pay or agree to pay a premium for a contract of insurance insuring a person who is or has been a Director or Secretary against -
  - (a) any liability incurred by that person whilst acting in that capacity; and
  - (b) all legal costs incurred by that person in defending an action for that liability.

### 39 Distributions and payments

- 39.1 The Foundation must not make any distribution to a Director, a Member or the Secretary, whether by way of dividend, bonus, surplus on winding up or otherwise, except as provided in article 40.2.
- **39.2** The Foundation, with the approval of the Foundation Board and acting in good faith, may pay to a Member or the Secretary -
  - (a) reasonable remuneration in consideration for services rendered or goods supplied to the Foundation in the ordinary course of business; and
  - (b) reasonable out-of-pocket expenses incurred.

## 40 Winding up

- **40.1** The provisions of the Corporations Act in relation to a voluntary winding up apply.
- 40.2 Any surplus on winding up after satisfaction of all the debts and liabilities of the Foundation must be given or transferred to the Board of Management to be used for the benefit of the School.
- **40.3** If the School has ceased to exist, the surplus must be given or transferred to one or more companies, associations or institutions -
  - (a) that have objects similar to the objects of the Foundation; and
  - (b) whose constitutions prohibit them from making distribution to their members to at least the same extent as is provided in this Constitution.
- **40.4** The one or more companies, associations or institutions to which the surplus is to be given or transferred under article 40.3 is to be determined -
  - (a) by the Members; or

- (b) if there is no such determination within 30 days of the winding up, by the Supreme Court of Tasmania on application made to it by the liquidator.
- 40.5 Each Member undertakes to contribute to the assets of the Foundation on its winding up -
  - (a) while being a Member; or
  - (b) within one year after ceasing to be a Member.
- **40.6** The contribution is for -
  - (a) payment of the debts and liabilities of the Foundation contracted before ceasing to be a Member; and
  - (b) payment of the costs, charges and expenses of winding up; and
  - (c) the adjustment of the rights of contributors among themselves.
- **40.7** The contribution required to be paid under article 40.5 is not to exceed \$10.

### 41 By-laws

- **41.1** The Foundation Board, with the approval of the Board of Management, may make by-laws it considers necessary or desirable for the proper control, management and administration of the Foundation.
- **41.2** A by-law -
  - (a) is subject to this Constitution; and
  - (b) must not be inconsistent with this Constitution; and
  - (c) is binding on all Members; and
  - (d) has the same effect as provisions of this Constitution.
- **41.3** The Foundation Board, with the approval of the Board of Management, may amend, substitute or repeal by-laws.
- **41.4** The amendment, substitution or repeal of a by-law does not affect the validity of anything done before its amendment, substitution or repeal.