



# **Activ Foundation Limited Constitution**

**A Public Company Limited by Guarantee**

ACN 060 921 271 | ABN 11 553 592 765

ASIC registration effective 16 February 2024

## Table of contents

<b>1.</b>	<b>NAME OF THE COMPANY</b> .....	<b>4</b>
<b>2.</b>	<b>PREAMBLE</b> .....	<b>4</b>
<b>3.</b>	<b>DEFINITIONS AND INTERPRETATION</b> .....	<b>4</b>
	3.1 Definitions .....	4
	3.2 Interpretation.....	8
<b>4.</b>	<b>APPLICATION OF THE CORPORATIONS ACT AND THE ACNC ACT</b> .....	<b>9</b>
<b>5.</b>	<b>OBJECTS AND ACTIVITIES</b> .....	<b>9</b>
	5.1 Objects .....	9
	5.2 Activities of the Company.....	10
	5.3 Not for profit.....	10
	5.4 Company powers .....	11
<b>6.</b>	<b>STRUCTURE AND ROLES WITHIN THE COMPANY</b> .....	<b>11</b>
	6.1 Membership .....	11
	6.2 Board of Directors .....	11
	6.3 Chief Executive Officer.....	11
<b>7.</b>	<b>ACTIV FOUNDATION LIMITED MEMBERSHIP</b> .....	<b>11</b>
	7.1 Membership Composition .....	11
	7.2 Eligibility Criteria of Membership .....	12
	7.3 Nomination and Appointment of Membership.....	12
	7.4 Rotation and Terms of Membership .....	12
	7.5 Cessation or Resignation of Membership.....	13
	7.6 Consequences of Cessation of Membership .....	13
	7.7 Casual Membership Vacancies.....	13
	7.8 Vacation of Office of Members .....	13
	7.9 Initial Membership.....	13
	7.10 Code of Conduct and Ethics of Membership .....	14
	7.11 Rights of Membership .....	14
	7.12 Non-Board Member Convenor .....	14
	7.13 Membership Not Transferable.....	14
	7.14 Liability of Membership .....	14
	7.15 Subscription of Membership.....	15
	7.16 Register of Membership .....	15
	7.17 Records and Rights of Inspection by Membership .....	15
	7.18 Suspension of Membership.....	15
<b>8.</b>	<b>DIRECTORS</b> .....	<b>16</b>
	8.1 Number of Directors and Composition of Board .....	16
	8.2 Director Eligibility .....	16
	8.3 Initial Directors .....	16
	8.4 Rotation and Term of Directors .....	16
	8.5 Appointment, Resignation and Removal of Directors .....	17
	8.6 Appointment of Office Bearers (Chairperson and Deputy Chairperson(s)) ...	17
	8.7 Duties of Officers of the Company .....	17
	8.8 Director Vacation of Office .....	18
	8.9 Director Leave of Absence.....	18
	8.10 Powers of the Board .....	19
	8.11 Director Disclosure of Conflicts of Interest and Other Interests .....	19
	8.12 Directors' Fees.....	20
	8.13 Directors' Access to Documents .....	20

<b>9.</b>	<b>BOARD DIRECTOR MEETINGS .....</b>	<b>20</b>
9.1	Convening Board Meetings .....	20
9.2	Notice of Board Meetings.....	20
9.3	Quorum at Board Meetings .....	21
9.4	Meeting Procedures .....	21
9.5	Chairperson of Directors .....	22
9.6	Decisions of Directors .....	22
9.7	Minutes .....	22
9.8	Resolutions in Writing .....	22
9.9	Validity of Acts .....	23
<b>10.</b>	<b>COMMITTEES .....</b>	<b>23</b>
10.1	Establishment of Committees.....	23
10.2	Composition and Role of Committees .....	23
10.3	Board Committee Decisions.....	23
<b>11.</b>	<b>COMPANY SECRETARY .....</b>	<b>23</b>
<b>12.</b>	<b>ANNUAL GENERAL MEETINGS .....</b>	<b>24</b>
12.1	Holding Annual General Meetings.....	24
12.2	Business of Annual General Meetings .....	24
<b>13.</b>	<b>GENERAL MEETINGS .....</b>	<b>24</b>
13.1	Convening of General Meetings by Request of the Board of Directors.....	24
13.2	Convening of General Meetings by Request of the Membership.....	24
13.3	Notice of General Meeting .....	24
13.4	Waiving Notice.....	25
13.5	Postponing or Cancelling a Meeting.....	25
13.6	Quorum at General Meetings .....	25
13.7	Proxies.....	25
13.8	Electronic Voting .....	26
13.9	Resolutions Put to the Vote of the Membership .....	27
13.10	Resolutions Put to a Poll of the Membership.....	27
13.11	Chairperson of General Meetings .....	28
13.12	Resolutions in Writing .....	28
13.13	Auditor’s Right to Be Heard.....	28
13.14	Use of Technology at General Meetings .....	28
13.15	Adjourning General Meetings.....	29
13.16	Minutes .....	29
<b>14.</b>	<b>DIRECTORS’ INDEMNITY AND INSURANCE .....</b>	<b>30</b>
14.1	Indemnity and insurance .....	30
14.2	No Limits.....	30
<b>15.</b>	<b>ACCOUNTS AUDIT AND RECORDS .....</b>	<b>30</b>
15.1	Accounts.....	30
15.2	Auditor .....	31
<b>16.</b>	<b>NOTICES .....</b>	<b>31</b>
<b>17.</b>	<b>AMENDING THIS CONSTITUTION .....</b>	<b>32</b>
<b>18.</b>	<b>WINDING UP .....</b>	<b>32</b>
18.1	General Winding Up.....	32
18.2	Distribution of Assets or Loss of Endorsement.....	32
18.3	Other.....	32
<b>19.</b>	<b>TRANSITIONAL PROVISIONS.....</b>	<b>33</b>

## 1. Name of the Company

The name of the Company is Activ Foundation Limited.

## 2. Preamble

- (a) Activ Foundation Incorporated (formerly the Slow Learning Children’s Group) (the **Association**) was formed as an incorporated association in 1951 by a group of dedicated families who believed their children living with intellectual Disability deserved better and came together in support of each other.
- (b) The Company is proud of this heritage and those founding families who had the courage and belief that their children with developmental Disability deserved better. They had the leadership and the passion to build something for generations to come. As the Disability sector evolved, so did the organisation and it continues to evolve.
- (c) Whilst the Company’s original core services were focused on people with developmental Disability it now embraces all people living with Disability. Further, the founding families’ attributes of leadership, passion, courage and vision still drive the organisation today. These attributes underpin the honour and respect held for the capabilities and potential of people living with Disability and of their right to choice, freedom and empowerment to live their life full of growth and happiness.
- (d) The ‘Activ Council’ was formed on the 26 October 2014 consisting of 12 members to assume the responsibility and obligations that previously sat within the original membership of the Association.
- (e) The ‘Activ Council’ will be disbanded upon this Constitution taking effect when the Company is registered under the Corporations Act. At this time, up to six (6) of the “Council Members” will be appointed as Members of the Company, along with up to ten (10) Directors, who are to be the existing members of the Association’s Board. The amalgamation of these two groups will comprise the Membership of the Company.

## 3. Definitions and interpretation

### 3.1 Definitions

**Accounting Period** means the period from the date of incorporation of the Company to the following 30 June and then each period of twelve months ending on 30 June in each year or any other period that the Board decides.

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

**ACNC Commissioner** means the Commissioner of the Australian Charities and Not-for-profits Commission for the purposes of the ACNC Act.

**Annual Report** means a detailed report prepared by the Directors to advise Members and the general public of the Company’s activities and operational and financial performance over a 12 month period.

**ASIC** means the Australian Securities and Investments Commission.

**Annual Financial Statements** means the set of financial reports prepared in accordance with the Australian Accounting Standards, subject to an independent audit. The key components of the Annual Financial Statements are the Statement of Comprehensive Income, Statement of Financial Position, Notes to the Financial Statements, Director's Declaration and the Auditor's Report.

**Association** has the meaning given in rule 2(a).

**Auditor** means the auditor, if any, of the Company appointed under rule 15.2.

**Bankrupt** means, in relation to a person, the state of being "insolvent under administration" as defined in the Corporations Act or having signed an authority under section 188 of the *Bankruptcy Act 1966* (Cth).

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

**Board Moratorium Period** means the period of two (2) years from the date the Director ceased to be a Director.

**Business Day** means a day which is not a Saturday, Sunday, public holiday or bank holiday in the city of Perth, Western Australia.

**Chairperson** means the Director appointed under rule 8.6, and **chairperson** means either the Chairperson or a Director elected to be the chairperson for any Board meeting under rule 9.5 or any general meeting under rule 13.11.

**Chief Executive Officer** means the person appointed as the Chief Executive Officer of the Company.

**Commissioner** means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the ITAA97.

**Committee** means a committee of the Board established and governed by rule 10.

**Community Housing Assets** means:

- (a) land and/or premises transferred to the Company as a community housing provider by the Housing Authority, but does not include land or land and premises that the Housing Authority sells at market value to the Company;
- (b) land and/or premises acquired by the Company wholly or partly with funding provided by the Housing Authority, including but not limited to where such funding is comprised of:
  - (i) funding provided directly by the Housing Authority;
  - (ii) GST input tax credits claimed by the Company in connection with any supplies which are funded wholly or in part by the Housing Authority;
- (c) a legal interest in land and/or premises acquired by the Company wholly or partly with funding provided by the Housing Authority or where the acquisition is facilitated by the Housing Authority;
- (d) land and/or premises acquired by the Company wholly or in part with borrowings leveraged off or cash flow generated from any assets in the Company's portfolio in which the Housing Authority has an interest;
- (e) land and/or premises where the Housing Authority is identified as having an interest in any legal agreement;

- (f) land and/or premises procured with the proceeds of sale of land and/or premises in which the Housing Authority has an interest; and
- (g) housing constructed by the Housing Authority or improvements made on land and/or premises by the Housing Authority,

provided that the Housing Authority has a legal interest in any such land/or premises by way of legal agreement between the Housing Authority and the Company.

**Community Housing Provider** means an organisation that provides community housing and has successfully achieved registration under the Community Housing Regulatory Framework as a tier 1, 2 or 3 provider.

**Community Housing Regulatory Framework** means a regulatory administrative system implemented by the Housing Authority to register and regulate Community Housing Providers.

**Company** means the company named in rule 1.

**Conflict of Interest** means a material personal interest which arises when a personal interest, fiduciary or otherwise, conflicts with, or has the potential to conflict with, a person's duty as a member of either the Company, Board or Committee.

**Constitution** means this constitution and any amendments to or substitutions for it.

**Contribution** means:

- (a) a contribution of money or property as described in item 7 of the table contained in section 30-15 of the ITAA97 in relation to a fundraising event; or
- (b) a contribution of money as described in item 8 of the table contained in section 30-15 of the ITAA97 in relation to a successful bidder at an auction that was a fundraising event,

held for the Objects.

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

**Deductible Gift Recipient** means an institution, fund, authority or any other entity that is endorsed as a deductible gift recipient by the Commissioner under Division 30 of the ITAA97 or is a specific listed deductible gift recipient under Division 30 of the ITAA97.

**Delegate** means, the individual appointed and delegated to be the Chief Executive Officer to act in his or her absence.

**Delegations Policy** means the Company's Delegation of Authority Policy

**Deputy Chairperson** means the Director(s) appointed under rule 8.6.

**Director** means a person appointed as a Director of the Company under rule 8.5, and also known as **Board Member**.

**Disability** shall mean a disability that is attributable to one or more intellectual, cognitive, neurological, sensory, psychiatric or physical impairment whether congenital or occurring as a result of an event or disease that is permanent or likely to be permanent and result in substantial functional or cognitive limitation including, but not limited to:

- (a) communication;
- (b) social interaction;
- (c) learning;
- (d) mobility;
- (e) self care; and
- (f) self-management,

and, as determined by the Board in accordance with the Company's Objects, the term "people living with Disability" may include people with other disabilities.

**Employee Moratorium Period** means the period of two (2) years from the date of ceasing employment with the Company.

**Housing Authority** means a body corporate constituted under the *Housing Act 1980 (WA)* as amended.

**ITAA97** means the *Income Tax Assessment Act 1997 (Cth)*.

**Legal Costs** of a person means legal costs incurred by that person in defending an action for a Liability of that person.

**Liability** of a person means any liability incurred by that person as an officer of the Company or a subsidiary of the Company.

**Member** means any person who is a member of the Company under rule 7 and **Membership** has a corresponding meaning.

**Non-Board Member** means any person who is a Member of the Company who is not a Director.

**Non-Board Member Convenor** means the person appointed to that role under rule 7.12.

**Objects** means the objects referred to in rule 5.1.

**Office Bearers** means the Chairperson of the Board and the Deputy Chairperson(s).

**Proxy** includes an attorney.

**Register of Members** means the list of Membership of the Company maintained under rule 7.16.

**Registered Charity** means an entity registered by the ACNC Commissioner as a charity in accordance with the ACNC Act.

**Relevant Officer** means each person who is or has been a Director or Secretary and any other officers or former officers of the Company or of its related corporations that the Board determines.



**Secretary** means any person appointed as a secretary of the Company under rule 11.

**Special Resolution** means a resolution of the Company passed at a general meeting by not less than 75% of the votes cast by Members who are present at the meeting and are entitled to vote on a resolution of which written notice has been provided in accordance with rule 13.3.

**Surplus Property** means all assets and property remaining after the satisfaction of:

- (a) the debts and liabilities of the Company; and
- (b) the costs, charges and expenses of winding up the Company,

but does not include books relating to the management of the Company or Community Housing Assets.

**Transitional Provisions** means those provisions of this Constitution appearing in Schedule 1.

### 3.2 Interpretation

- (a) This interpretation clause applies unless inconsistent with the context.
- (b) A reference to **resolve, resolution** or **ordinary resolution** means a resolution (other than a Special Resolution) which is passed, as applicable:
  - (i) at a general meeting by the majority of the Members who are present and entitled to vote;
  - (ii) at a Board meeting by the majority of Directors who are present and entitled to vote; or
  - (iii) in writing in accordance with rules 9.8 or 13.12.
- (c) If a word or phrase is defined, then its other grammatical forms have a corresponding meaning.
- (d) The singular includes the plural and vice versa.
- (e) A reference to a gender includes any gender.
- (f) The word *includes* and similar words are not words of limitation and do not restrict the interpretation of a word or phrase in this Constitution.
- (g) A reference to a document includes a variation or replacement of it.
- (h) A reference to a statute includes its subordinate legislation and a modification, replacement or re-enactment of either.
- (i) A reference to a person includes a reference to an individual, company, body corporate, trust, partnership, incorporated association, unincorporated body, joint venture, organisation and any other form of entity.
- (j) A reference to a Member present at a general meeting is a reference to a Member present in person, by technology or by proxy.
- (k) A reference to a Director present at a Board meeting is a reference to a Director present in person or by technology.



- (l) A reference to notices includes formal notices of meetings and all documents and other communications from the Company to Members.
- (m) A reference to writing and written includes printing, electronic documents and other ways of representing or reproducing words in a visible form.
- (n) If the date on which a thing must be done is not a Business Day, then that thing must be done on the next Business Day.
- (o) If a period of time runs from a given date, act or event, then the time is calculated exclusive of the date, act or event.
- (p) Headings are used for convenience only and do not affect the interpretation of this Constitution.

#### **4. Application of the Corporations Act and the ACNC Act**

- (a) Subject to rule 3, a word or expression used in a rule that deals with a matter dealt with by a provision of the Corporations Act or the ACNC Act has the same meaning as in that provision.
- (b) The replaceable rules do not apply to the Company except those which operate as mandatory rules for public companies limited by guarantee under the Corporations Act.
- (c) Except as otherwise expressly provided in this Constitution, whilst the Company is a Registered Charity, the provisions of the Corporations Act which do not apply to a body corporate registered under the ACNC Act by virtue of section 111L of the Corporations Act, do not apply to the Company.

#### **5. Objects and activities**

##### **5.1 Objects**

The objects of the Company are to:

- (a) offer people living with Disability opportunities to enjoy full participation in their community and empower them to pursue the life they choose;
- (b) provide services and supports to meet the needs and choices of people living with Disability, including but not limited to:
  - (i) employment;
  - (ii) accommodation;
  - (iii) respite;
  - (iv) education and training; and
  - (v) community participation and inclusiveness,and to develop and promote access to services and supports to meet such needs and choices;
- (c) maximise opportunities for persons living with Disability to participate in determining the Company's policies;
- (d) represent the interests of persons living with Disability in the development of government social and economic policy;

- (e) promote at all levels of the community and government an understanding and acceptance of the aspirations, rights and responsibilities of people living with a Disability;
- (f) advance self-determination by people living with a Disability; and
- (g) improve the quality of life for people living with Disability, to harness the resources of the community to make a positive difference in the lives of people with Disability and to enable people living with Disability to pursue the life they choose.

## **5.2 Activities of the Company**

The Company must operate solely for the purpose of promoting and advancing the Objects. However, the Company is not required to promote all of the Objects at the same time or in any particular order and may, in its absolute discretion, determine the level and amount of promotion, funding or any other support which should be applied to any particular Object at any given time.

## **5.3 Not for profit**

- (a) Subject to rule 5.3(b), the income and property of the Company must be applied solely towards the Objects and no part of that income or property may be paid, transferred or distributed, directly or indirectly, to any Director or Member except in good faith in the promotion of the Objects.
- (b) Rule 5.3(a) does not prohibit making a payment approved or ratified by the Board:
  - (i) for out-of-pocket reasonable expenses incurred by a Director in performing a duty as a Director;
  - (ii) for out-of-pocket reasonable expenses incurred by a Member on behalf of the Company in performing a duty as a Member;
  - (iii) in good faith for a good or service supplied to the Company by a Director (other than in the capacity as a Director of the Company) or Member, where:
    - (A) the supply has the prior approval of the Board; and
    - (B) the amount payable is a commercially reasonable payment for the supply;
  - (iv) of reasonable and proper interest on money borrowed from a Member or Director by the Company;
  - (v) of reasonable and proper rent for premises let by any Member or any Director to the Company;
  - (vi) for indemnification of or payment of premiums on contracts of insurance for any Director to the extent permitted by law and this Constitution; or
  - (vii) for any reasonable remuneration of a Director determined under rule 8.12.

## **5.4 Company powers**

The Company has the powers conferred on it by the Corporations Act.

## **6. Structure and Roles within the Company**

### **6.1 Membership**

- (a) The Membership will comprise of the Board of Directors and Non-Board Members in accordance with rule 7.1.
- (b) The role of the Membership is to promote the interests of the Company and to exercise such powers as described in this Constitution.

### **6.2 Board of Directors**

- (a) Each Director shall be deemed to be a Member of the Company upon their appointment as a Director.
- (b) The Board is responsible for the overall performance of the Company, setting its strategic direction, establishing policies and overseeing the Company's financial position.
- (c) The Board may approve a Board Charter which sets out the separation of authority, establishes the relationship between the Board and management and includes a description of their respective functions and responsibilities.
- (d) The Board may appoint a Chairperson and Deputy Chairperson(s) as outlined in rule 8.6.

### **6.3 Chief Executive Officer**

- (a) The Board must appoint a Chief Executive Officer who is responsible for the day-to-day management of the business and affairs of the Company and has the powers and undertakes the responsibilities as determined, and in the manner determined by the Board and governed by the Delegations Policy.
- (b) The Chief Executive Officer will be remunerated in the manner and amount as the Board determines.

## **7. Activ Foundation Limited Membership**

### **7.1 Membership Composition**

- (a) Subject to rule 7.1(b), the Membership will consist of a minimum of 7 (seven) Members up to a maximum of sixteen (16) eligible Members, comprising of:
  - (i) up to ten (10) Directors appointed under rule 8.5; and
  - (ii) up to six (6) Non-Board Members appointed under rule 7.3(c), provided that at all times the number of Non-Board Members must be greater than 25 per cent of the total number of Members.
- (b) At all times the Membership of the Company must comprise at least three (3) Members who have lived experience with a Disability (i.e. a family member or themselves).

## 7.2 Eligibility Criteria of Membership

- (a) Each Director of the Company becomes a Member upon their appointment as a Director under rule 8.5.
- (b) Membership of Non-Board Members is open to individuals who:
  - (i) have satisfied the Employee Moratorium Period (if applicable);
  - (ii) are at least 18 years of age;
  - (iii) have not been disqualified from being a Director under the Corporations Act; and
  - (iv) have not been disqualified from being a responsible person by the ACNC Commissioner under the ACNC Act,and includes former Directors of the Company (and, for clarity, any former Director will be able to serve as a Non-Board Member immediately, without a Board Moratorium Period applying) and former members of 'Activ Council' provided, in either case, that the individual meets the criteria in rule 7.2(b)(iii) and 7.2(b)(iv) above.

## 7.3 Nomination and Appointment of Membership

- (a) Each Director shall be deemed to be a Member of the Company upon their appointment as a Director under rule 8.5.
- (b) Nominations for the appointment of Non-Board Members may be made by the Directors or Non-board Members in writing in the form determined by the Board.
- (c) The appointment of Non-Board Members is (upon recommendation of the Board having received nominations) by a majority vote of the Members present and voting at a general meeting (which includes proxy votes) in accordance with procedures that have been determined by the Board, to decide the persons who are to be appointed as Non-Board Members.
- (d) The appointment of any Non-Board Member is subject to the Member providing to the Company, prior to or on appointment as a Member, a signed form consenting to becoming a member.

## 7.4 Rotation and Terms of Membership

- (a) A Director is a Member so long as they are a Director of the Company.
- (b) On and from the registration of the Company under the Corporations Act, the rotation and terms for Non-Board Members will initially be:
  - (i) three (3) Non-Board Members will be appointed for a term expiring at the conclusion of the first annual general meeting following their appointment; and
  - (ii) three (3) Non-Board Members will be appointed for a term expiring at the conclusion of the second annual general meeting following their appointment.
- (c) Any Non-Board Member appointed, or re-appointed, after registration of the Company under the Corporations Act will be, subject to the terms of this Constitution, appointed or re-appointed for a two (2) year term.
- (d) Subject to rules 7.4(e) and 7.4(f), upon the passing of the service periods under rules 7.4(b) and 7.4(c), a Non-Board Member is deemed to have retired from the Membership and is eligible to be re-appointed to the Membership.

- (e) Subject to rule 7.4(f) and the Transitional Provisions, a Non-Board Member must not hold office as a Member for a continuous period of more than twelve (12) years.
- (f) Prior service as a member of 'Activ Council' before the Company is registered under the Corporations Act, shall constitute service as a Non-Board Member.

## **7.5 Cessation or Resignation of Membership**

- (a) A Member automatically ceases to be a Member of the Company if the Member:
  - (i) ceases to be eligible under rule 7.2;
  - (ii) being an individual, dies, is or becomes Bankrupt, is or becomes of unsound mind or is or becomes a person whose property is liable to be dealt with in any way under a law relating to mental health;
  - (iii) in the case of a Non-Board Member, resigns or retires as a Member by giving written notice to the Chairperson of the Company;
  - (iv) being a Member who is a Director of the Company, ceases to be a Director the Company under rule 8.8;
  - (v) is removed by a Special Resolution of the Membership, which resolves that the Member must vacate the position; or
  - (vi) is absent without leave or reasonable excuse from four (4) consecutive general meetings, and the Membership resolves that the office of that Member be vacated.
- (b) The effective date of resignation of a Member will be the effective date stated in the resignation as a Member or, in the event the resignation does not include an effective date, the date the resignation is received by the Chairperson.

## **7.6 Consequences of Cessation of Membership**

- (a) If a person ceases to be a Member under rule 7.5, the Member loses any rights (including voting rights) arising as a result of Membership.
- (b) When a person's Membership ceases, the Secretary must remove the person's name from the Register of Members as soon as practicable.

## **7.7 Casual Membership Vacancies**

The Board may, in consultation with the Non-Board Member Convenor, appoint a person who is eligible under rule 7.2(b) to fill a vacant Non Board Member position caused otherwise than by the expiration of the term of office, and that new person holds office only until the conclusion of the next annual general meeting.

## **7.8 Vacation of Office of Members**

The Membership may act notwithstanding a vacancy occurring in a Member position as long as the minimum number of members are abided by as outlined in rule 7.1.

## **7.9 Initial Membership**

The initial Membership of the Company comprises the persons specified in the application to ASIC to register the Company under the Corporations Act.

## 7.10 Code of Conduct and Ethics of Membership

Each Member will comply with the Company's code of conduct as developed and updated by the Board.

## 7.11 Rights of Membership

- (a) All Members are entitled, unless there is a conflict of interest, to:
  - (i) receive notices of, attend, be heard at and vote (one vote only on any given resolution) at any general meeting;
  - (ii) receive a copy of the Annual Report and Annual Financial Statements of the Company; or
  - (iii) vote on resolutions relating to:
    - (A) the appointment and cessation of Members, Board Directors and Non-Board Members;
    - (B) Board Director Chair Honorarium; and
    - (C) Director remuneration (if applicable).
- (b) Non-Board members also have the right to appoint a Non-Board Member Convenor under rule 7.12.

## 7.12 Non-Board Member Convenor

- (a) A Non-Board Member Convenor will be elected from the Non-Board Members, by a majority vote of the collective Non-Board Members at the annual general meeting each year.
- (b) The role of the Non-Board Member Convenor is to facilitate the communication between the Non-Board Members and the Chairperson which may include:
  - (i) communicating the proposal of agenda items for consideration at general meetings;
  - (ii) communicating availability for meetings; and
  - (iii) consolidating feedback of proposed constitutional changes.
- (c) The Non-Board Member Convenor holds no additional power to any other Member.

## 7.13 Membership Not Transferable

Membership and the associated rights are personal and cannot be transferred.

## 7.14 Liability of Membership

- (a) The Company is a Public Company Limited by Guarantee and accordingly, liability of Members is limited.
- (b) Each Member must contribute an amount of not more than **\$1.00** to the property of the Company if it is wound up while they are a Member or within 12 months after they cease to be a Member for:
  - (i) payment of the Company's debts and liabilities incurred before they ceased to be a Member; and
  - (ii) the costs, charges and expenses of winding up

## **7.15 Subscription of Membership**

The Company must not charge a subscription fee for Membership.

## **7.16 Register of Members**

- (a) The Company must update the Register of Members to reflect the appointment or removal of a person as a Member, as soon as practicable after the appointment, suspension or removal occurs.
- (b) The Register of Members must contain the information required by the Corporations Act and the class of Membership of each Member (if applicable).
- (c) The Register of Members shall be available for inspection by written application to the Company at its registered address consistent with the Corporations Act. Only the information required to be maintained in the Register of Members under the Corporations Act shall be available for inspection.

## **7.17 Records and Rights of Inspection by Membership**

- (a) Members are entitled to receive the following:
  - (i) the Annual Financial Statements;
  - (ii) the Company's Annual Report;
  - (iii) Annual Directors Report;
  - (iv) a copy of the minutes of any general meeting; and
  - (v) a copy of any resolutions of Members that is passed without a meeting.
- (b) Members are also entitled to:
  - (i) at all reasonable times review a copy of Activ's register of members; and
  - (ii) on request, a copy of Activ's constitution.

## **7.18 Suspension of Membership**

- (a) The Board may suspend a Member from Membership of the Company for a period determined by the Board if:
  - (i) the Member fails to comply with this Constitution; or
  - (ii) the Member's conduct is considered by the Board (acting reasonably) to be prejudicial or detrimental to the interests of the Company.
- (b) The Board must give the Member written notice of the suspension, which remains in effect immediately upon notice, until revoked by the Board or a decision is made by Members under rule 7.18(d).
- (c) During the period of suspension, the Member loses any rights (including voting rights) arising as a result of Membership.
- (d) The Members may resolve to confirm the suspension as determined by the Board, remove the suspension and re-instate the Member's Membership rights, including by imposing any conditions, or take such other action as permitted by this Constitution.



- (e) When a person's Membership is suspended, the Secretary must record in the Register of Members:
  - (i) that the person's Membership is suspended;
  - (ii) the date on which the suspension takes effect; and
  - (iii) the period of the suspension.
- (f) When the period of the suspension ends, the Secretary must record in the Register of Members that the person's Membership is no longer suspended.

## **8. Directors**

### **8.1 Number of Directors and Composition of Board**

- (a) There must be no less than five (5) and no more than ten (10) Directors of the Company which must at all times comprise at least (2) Directors who have lived experience with a Disability (i.e. a family member or themselves).
- (b) The Board must consist of the following office-bearers:
  - (i) a Chairperson; and
  - (ii) a minimum of one (1) and a maximum of two (2) Deputy Chairpersons (at the discretion of the Board).

### **8.2 Director Eligibility**

- (a) A person is eligible for appointment as a Director if that person:
  - (i) is at least 18 years of age;
  - (ii) has satisfied the Employee Moratorium Period;
  - (iii) has not been disqualified from being a Director under the Corporations Act;
  - (iv) has not been disqualified from being a responsible person by the ACNC Commissioner under the ACNC Act; and
  - (v) meets any additional eligibility criteria, qualification or experience requirements determined by the Board from time to time.

### **8.3 Initial Directors**

The initial Directors of the Company are the persons specified in the application to ASIC to register the Company under the Corporations Act.

### **8.4 Rotation and Term of Directors**

- (a) A Director holds office for a period of two (2) years from the conclusion of the annual general meeting in the year of their appointment, until the conclusion of the second annual general meeting following their appointment.
- (b) Subject to rule 8.4(c), a Director is deemed, upon the passing of the service period determined under this rule 8.4, to have retired from their office as a Director and is eligible to be re-appointed to the Board.

- (c) Subject to rule 8.4(e), a Director must not hold office for a continuous period of more than 10 years.
- (d) Subject to rule 8.4(e), any person who has served as a Director for a period of ten (10) consecutive years is not eligible for re-appointment as a Director until the Board Moratorium Period expires.
- (e) Prior service as a member of the Board of the Association before the Company is registered under the Corporations Act shall constitute service as a Director.

## **8.5 Appointment, Resignation and Removal of Directors**

- (a) Subject to rules 8.1, 8.2 and rule 8.4, the Membership may appoint Directors by ordinary resolution at a general meeting.
- (b) The Board may determine the rules which govern the nomination and appointment of Directors.
- (c) The Board may appoint a Director to fill a vacant position on the Board subject to rules 8.1, 8.2 and 8.4, and that new Director holds office only until the conclusion of the next annual general meeting.
- (d) Each of the Directors must be appointed by a separate resolution, unless:
  - (i) the Directors, or Members present have first passed a resolution that the appointments may be voted on together; and
  - (ii) no votes were cast against that resolution.
- (e) A person must not be appointed as a Director unless, prior to their appointment, that person has provided
  - (i) a signed consent to act as a Director of the Company; and
  - (ii) a signed consent to become a Member of the Company.
- (f) The Membership may, at any time by resolution, remove any Director from office for any reason and appoint a replacement.

## **8.6 Appointment of Office Bearers (Chairperson and Deputy Chairperson(s))**

- (a) At the first Board meeting occurring after each annual general meeting, if necessary the Board must appoint Directors to the office-bearer positions identified under rule 8.1(b).
- (b) Subject to rule 8.8, office bearers will hold office for a period of one (1) year commencing from the conclusion of the Board meeting at which they were appointed to the relevant office bearer position, until the conclusion of the first Board Meeting occurring after the next annual general meeting following their appointment.
- (c) Subject to rule 8.4, an office bearer may be re-appointed to an office bearer position.

## **8.7 Duties of Officers of the Company**

- (a) The Directors, Secretary and any other officers of the Company must at all times comply with the duties imposed on them by the Corporations Act, the ACNC Act and any other applicable law.

- (b) Each Director must:
  - (i) act with reasonable care and diligence;
  - (ii) act honestly and fairly in the best interests of the Company for its Objects;
  - (iii) not misuse their position or information they gain as a Director or officer of the Company;
  - (iv) disclose any Conflicts of Interest;
  - (v) ensure that the financial affairs of the Company are managed responsibly; and
  - (vi) not allow the Company to operate while it is insolvent (as defined under the Corporations Act).

## 8.8 Director Vacation of Office

- (a) 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 a Director:
  - (i) dies;
  - (ii) resigns or retires from office by written notice to the Chairperson of the Company;
  - (iii) is no longer eligible to be a Director under rule 8.2;
  - (iv) becomes of unsound mind or a person whose property is liable to be dealt with in any way under a law relating to mental health;
  - (v) is or becomes Bankrupt;
  - (vi) is absent for more than four (4) Board meetings in the same financial year, of which he or she has received notice, without a reason which is accepted by the Chairperson, and the Directors resolve that the office of that Director be vacated;
  - (vii) is removed as a Director under rule 8.5(f);
  - (viii) becomes disqualified from being a Director under the Corporations Act; or
  - (ix) becomes prohibited or disqualified from being a responsible entity by the ACNC Commissioner under the ACNC Act.
- (b) The effective date of resignation of a Director will be the effective date stated in the resignation as a Director or, in the event the resignation does not include an effective date, the date the resignation is received by the Chairperson.
- (c) The Board may act with a vacancy occurring in any position on the Board, so long as the minimum requirements in rule 8.1 are met.

## 8.9 Director Leave of Absence

- (a) Where a Director is unable to fulfil some or all of their duties as a Director due to extenuating circumstances, the Board may grant that Director a leave of absence for any period that the Board may determine by ordinary resolution, provided that the period must not exceed 6 months.
- (b) Despite any other rule in this Constitution, for the purposes of calculating whether a quorum of Directors is satisfied, a Director granted a leave of absence is to be excluded from that calculation for the period of their leave of absence.
- (c) The Board may make policies in relation to the granting of a leave of absence, including the rights and obligations of Directors granted a leave of absence and their right to access Board papers, agendas and minutes.

## 8.10 Powers of the Board

- (a) The Board is vested with the management of the Company's affairs and the control of the funds and other property of the Company.
- (b) The Board may exercise all of the powers of the Company except those which must, under this Constitution or the Corporations Act, be exercised by the Members at a general meeting.
- (c) A power of the Board can only be exercised:
  - (i) by resolution at a meeting of Directors;
  - (ii) by written resolution under rule 9.8;
  - (iii) in accordance with a delegation of powers; or
  - (iv) by any other means permitted by this Constitution or the Corporations Act.
- (d) The Board must comply with any Board policies, governance rules and codes of conduct as developed and updated by the Board.
- (e) Subject to this Constitution, the provisions of the Corporations Act, the provisions of the ACNC Act and any regulations prescribed by the Company in general meeting, no regulation made by the Company in general meeting invalidates any prior act of the Board that would have been valid if that regulation had not been made.
- (f) The Board, may by power of attorney, appoint any person, whether nominated directly or indirectly by the Board, to be the attorney of the Company for any purposes, with any powers, authorities, and discretions for any period and subject to any conditions that the Board determines.
- (g) The Board may delegate any of their powers, other than those which by law must be dealt with by the Board to:
  - (i) a Committee;
  - (ii) a Director;
  - (iii) an officer of the Company; or
  - (iv) the Chief Executive Officer.
- (h) The Board may revoke or vary a delegation previously made whether or not the delegation is expressed to be for a specified period.
- (i) The Directors may continue to exercise all of their powers despite any delegation.

## 8.11 Director Disclosure of Conflicts of Interest and Other Interests

- (a) A Director who has a Conflict of Interest in a matter being considered or about to be considered by the Board must:
  - (i) disclose the nature of that interest at Board meeting as soon as possible after the relevant facts have come to his or her knowledge, and record of that disclosure must be made in the minutes of that meeting; and
  - (ii) not be present while the Board is considering the matter nor cast any vote in relation to that matter,

unless the remaining Directors who do not have a Conflict of Interest in the matter have passed a resolution that:

- (iii) identifies the Director, the nature and extent of the Director's interest in the matter and its relation to the affairs of the Company; and
  - (iv) states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present.
- (b) The Board may make regulations requiring the disclosure of Conflicts of Interest that a Director, and any person considered by the Board to be related to or associated with a Director, may have in relation to any matter concerning the Company or a related corporation.

### **8.12 Director's Fees**

Each Director is entitled to reasonable remuneration to the extent permitted by law under the ACNC Act and as the Members decides by resolution.

### **8.13 Directors' access to documents**

- (a) A Director has a right of access to the financial records of the Company at all reasonable times.
- (b) If the Directors agree, the Company must give a Director or former Director access to:
  - (i) certain documents, including documents provided for or available to the Directors; and
  - (ii) any other documents referred to in those documents.

## **9. Board Director Meetings**

### **9.1 Convening Board Meetings**

- (a) The Chairperson or any one (1) Director may convene a Board meeting whenever they determine.
- (b) The Secretary must, on the request of the Chairperson or one (1) Director, convene a meeting of the Board.

### **9.2 Notice of Board Meetings**

- (a) Subject to this Constitution, notice of a Board meeting must be given to each person who is, at the time of giving the notice, a Director, except a Director on a leave of absence approved by the Board.
- (b) A notice of a Board meeting:
  - (i) must specify the date, time and place of the meeting; and
  - (ii) must state the nature of the business to be transacted at the meeting.
- (c) A Director may waive notice of a Board meeting by written notice to the Chairperson to that effect.
- (d) The date, time or place of a Board meeting must not unreasonably prevent a Director from attending.

- (e) The non-receipt of notice of a Board meeting by, or a failure to give notice of a Board meeting to, a Director does not invalidate any act, matter or thing done or resolution passed at the meeting if:
  - (i) the non-receipt or failure occurred by accident or error; or
  - (ii) before or after the meeting, the Director:
    - (A) waives notice of that meeting; or
    - (B) notifies the Company of his or her agreement to that act, matter, thing or resolution personally or by post, telephone, fax or other electronic means; or
  - (iii) the Director attends the meeting.

### **9.3 Quorum at Board Meetings**

- (a) No business may be transacted at Board meeting unless a quorum of Directors is present at the time the business is dealt with.
- (b) The quorum at Board meetings is the lowest integer which is equal to or greater than fifty percent (50%) of the number of Directors at that time, but in any event shall be not less than three (3).
- (c) If a quorum is not present within 30 minutes after the time appointed for the Board meeting, the meeting stands adjourned to the date, time and place as the Board decides.
- (d) If the number of Directors in office at any time is not sufficient to constitute a quorum at Board meeting or is less than the minimum number of Directors fixed under this Constitution, the remaining Directors (if any) may only act to the extent that there is an emergency requiring them to act or to appoint an additional Director to the Board, under rule 8.5(c).

### **9.4 Meeting Procedures**

- (a) The Board may meet together for the dispatch of business and adjourn and otherwise regulate their Board meetings as they determine.
- (b) A Board meeting may be held at 2 or more venues using any technology that gives the Directors entitlement to be heard at a Board meeting a reasonable opportunity to participate.
- (c) All the rules in this Constitution relating to Board meetings apply, so far as they can and with any necessary changes, to Board meetings using technology.
- (d) A Board meeting using technology is taken to be held at the place decided by the chairperson of the meeting, as long as at least one of the Directors involved was at that place for the duration of the meeting.
- (e) If, before or during the Board meeting, a technical difficulty occurs which means that one or more Directors cease to participate, the chairperson may adjourn the meeting until the difficulty is remedied or may, if a quorum of Directors remains present, continue with the Board meeting.
- (f) The Board may extend an invitation to any person or representative of a corporation it deems appropriate to attend a Board meeting, provided that the invitee is not entitled to vote on matters.

## 9.5 Chairperson of Directors

- (a) Subject to this Constitution, the Chairperson, or in the Chairperson's absence a Deputy Chairperson, must preside as Chairperson at each meeting of the Board.
- (b) In the absence of both the Chairperson and the Deputy Chairpersons, the remaining Directors must elect a Director to preside as chairperson of the meeting.

## 9.6 Decisions of Directors

- (a) A Board meeting at which a quorum is present may exercise all the powers and discretions vested in or exercisable by the Board under this Constitution.
- (b) Subject to this Constitution, questions arising at a Board meeting must be decided by an ordinary resolution of the Directors present and entitled to vote, and an ordinary resolution passed by the Directors is for all purposes deemed a decision of the Board.
- (c) Where the votes on a proposed resolution are equal, the chairperson has a casting vote in addition to his or her vote as a Director.

## 9.7 Minutes

- (a) The Secretary must cause minutes of all proceedings of the Board and of Advisory Committees to be taken and then to be entered, within 30 days after the relevant meeting is held, in a minute book (which includes a minute book in electronic form) kept for that purpose.
- (b) The Secretary must ensure that all minutes, except resolutions in writing treated as determinations of the Board, are signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

## 9.8 Resolutions in writing

- (a) The Directors may pass a circular resolution without a Board meeting being held.
- (b) A circular resolution is passed if all the Directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in rule 9.8(c).
- (c) Each Director may sign or otherwise agree to a circular resolution by:
  - (i) signing a single document setting out the resolution and containing a statement that they agree to the resolution;
  - (ii) signing separate copies of a document setting out the resolution and containing a statement that they agree to the resolution, as long as the wording of the resolution is the same in each copy; or
  - (iii) notifying the Company of their agreement by post, electronic means or other method of written communication.
- (d) A resolution in writing may consist of several documents in like form, each signed or otherwise agreed by one or more Directors and if so agreed, it takes effect on the latest date on which a Director signs or otherwise agrees to the resolution in the manner set out in rule 9.8(c).



## **9.9 Validity of acts**

An act done by a person acting as a Director or at a Board meeting attended by a person acting as a Director, is not invalidated merely because of:

- (a) a defect in the appointment of the person as a Director;
- (b) the person being disqualified to be a Director or having vacated office; or
- (c) the person not being entitled to vote,

if that circumstance was not known by the person or the Board (as applicable) when the act was done.

## **10. Committees**

### **10.1 Establishment of Committees**

The Board may establish Committees to advise the Company on any matter relating to the Company.

### **10.2 Composition and role of Committees**

Unless inconsistent with this Constitution, the Board may:

- (a) appoint and remove Committee members, or make provision for the appointment and removal of Committee members;
- (b) determine the responsibilities and powers of any Committee; and
- (c) make and amend the rules governing the proceedings and conduct for each Committee.

### **10.3 Board Committee decisions**

The opinion or decisions of a Committee are recommendations only and do not bind the Board in any way.

## **11. Company Secretary**

- (a) The Company must have a Secretary at all times.
- (b) The Board must appoint the Secretary and may terminate the appointment of the Secretary.
- (c) The Board may determine the terms and conditions of appointment and removal of a Secretary, including remuneration (if any).
- (d) The Secretary may carry out any act required by this Constitution or any law to be carried out by the Secretary of the Company.

## **12. Annual General Meetings**

### **12.1 Holding Annual General Meetings**

The Company must hold an annual general meeting each year within 6 months after the end of its financial year in line with the Corporations Act and ACNC Act.

### **12.2 Business of Annual General Meetings**

The business of an annual general meeting may include any of the following, even if not referred to in the notice of meeting:

- (a) confirmation of the minutes of the previous general meeting;
- (b) the consideration of the reports that are required under the ACNC Act; and
- (c) asking questions about the management of the Company and asking questions of the Auditor (if any).

## **13. General meetings**

### **13.1 Convening of General Meetings by request of the Board of Directors**

- (a) The Board may convene a general meeting of the Membership at any time.
- (b) The Board must convene a general meeting if a written request for a general meeting to be held, is received from at least 20% of the Membership who are entitled to vote at a general meeting.

### **13.2 Convening of General Meetings by request of the Membership**

The Membership of the Company may convene a general meeting of the Members provided that the requirements in sections 249E or 249F of the Corporations Act are satisfied.

### **13.3 Notice of General Meeting**

- (a) 21 days' notice of every general meeting convened under rules 13.1 or 13.2 must be given to:
  - (i) every Member entitled to receive notice;
  - (ii) each Director; and
  - (iii) the Auditor (if any).
- (b) A notice of general meeting must specify:
  - (i) the date, time and place of the meeting;
  - (ii) if the meeting is to be held in 2 or more places, the technology that will be used to facilitate the meeting;
  - (iii) the general nature of the business to be transacted at the meeting;
  - (iv) if any Special Resolution is to be proposed at the meeting, the proposed Special Resolution set out in full; and
  - (v) any other matters required by the ACNC Act or Corporations Act.
- (c) The Board may also extend an invitation to any person, corporation or other entity to attend a general meeting, provided that any invitee is not entitled to vote on matters.

#### **13.4 Waiving notice**

- (a) A person may waive notice of a general meeting by written notice to the Company or by attendance at the general meeting.
- (b) The non-receipt of notice of a general meeting, or a failure to give notice of a general meeting to any person or entity entitled to receive notice of a general meeting does not invalidate any act, matter or thing done or resolution passed at the general meeting if:
  - (i) the non-receipt or failure occurred by accident or error; or
  - (ii) before or after the meeting, the Member:
    - (A) waives notice of that meeting; or
    - (B) notifies the Company of his or her agreement to that act, matter, thing or resolution personally or by post, telephone, fax or other electronic means; or
  - (iii) the Member attends the meeting.

#### **13.5 Postponing or cancelling a meeting**

- (a) Subject to rule 13.5(b), the Board may change the venue for, postpone or cancel a general meeting at its own discretion by providing such notice to the Membership as the Board determines is reasonably practicable and appropriate in the circumstances.
- (b) If a general meeting is called and arranged to be held by the Membership, the Board may not cancel it without the consent of the Membership.

#### **13.6 Quorum at General Meetings**

- (a) No business may be transacted at a general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of Members is present.
- (b) A quorum at any general meeting is the lowest integer which is equal to or greater than fifty per cent (50%) of the number of Members as at the date of the meeting, present in person or by proxy.
- (c) For the purpose of determining whether a quorum is present under rule 13.6(b), a person attending as a proxy of a Member is deemed to be a Member.
- (d) If a quorum is not present within 30 minutes after the time appointed for a general meeting the meeting must be dissolved.

#### **13.7 Proxies**

- (a) A Member may appoint a proxy.
- (b) A proxy must be a Member of the Company.
- (c) A proxy may be appointed for:
  - (i) all general meetings;
  - (ii) any number of general meetings; or
  - (iii) a particular general meeting.
- (d) A Member can be appointed a proxy for no more than three (3) Members.

- (e) An appointment of a proxy must be in writing in the form provided by the Company and determined by the Board.
- (f) Proxies for General Resolutions –
  - (i) The Member appointing the proxy may give specific directions as to how the proxy can speak or vote on his or her behalf in a general meeting with general resolutions. If no instructions are given to the proxy, the proxy may speak or vote as the proxy sees fit.
- (g) Proxies for Special Resolutions –
  - (i) The Member appointing the proxy may give specific directions for the proxy to speak on their behalf, however the proxy CANNOT vote on behalf of the member by show of hands.
  - (ii) A proxy vote will only be accepted for Special Resolutions by way of written form outlining the Special Resolutions.
  - (iii) The form must be completed by the Member and deposited to the Chairperson at least 48 hours prior to the commencement of the meeting, otherwise it will be deemed null and void.
- (h) No amendment made to a motion contained in the notice of meeting is permitted at that meeting.
- (i) If the Company has approved a form for the appointment of a proxy, the appointing Member must use that form.
- (j) A proxy is not entitled to vote on a show of hands (but this does not prevent a Member appointed as a proxy from voting as a Member on a show of hands).
- (k) Subject to any other rule within this rule 13.7, a proxy is entitled to a separate vote for each Member the person represents, in addition to any vote the person may have as a Member in his or her own right.
- (l) The appointment of a proxy is revoked by the appointor attending and taking part in the general meeting.

### **13.8 Electronic Voting**

- (a) The Board may decide that a Member who is entitled to attend and vote on a resolution at a general meeting may cast their vote:
  - (i) in real time during the general meeting by electronic means; or
  - (ii) in advance of the general meeting by recording their vote with the Company using electronic or other means.
- (b) Where the Board has determined that a Member may lodge an electronic vote, the Board must make policies and procedures (consistent with this rule 13.8 and the Corporations Act) for the casting of electronic votes, including in respect of:
  - (i) the form, method and manner of voting by electronic means; and
  - (ii) when electronic votes must be received by the Company to be valid and effective.

### **13.9 Resolutions put to the Vote of the Membership**

- (a) A resolution put to the vote at any general meeting must be resolved by the Members on a show of hands unless a poll is demanded under rule 13.10.
- (b) Before a vote is taken, the chairperson must inform the meeting whether any proxy votes have been received and how the proxy votes are cast.
- (c) Except where stipulated by law or the rules of this Constitution, a resolution put to a vote at a general meeting is to be decided by an ordinary resolution of the votes cast by the Members present in person or by proxy and entitled to vote at the general meeting.
- (d) Where the votes on a proposed resolution are equal, the chairperson of the meeting has a casting vote in addition to his or her vote as a Member (if applicable).
- (e) A challenge to a right to vote at a general meeting:
  - (i) may only be made at the general meeting; and
  - (ii) must be determined by the chairperson, whose decision is final.
- (f) A vote allowed by the chairperson of a meeting under this rule is valid for all purposes.
- (g) If a poll is not duly demanded under rule 13.10(a), a declaration by the chairperson which reflects a show of hands, and an entry to that effect in the book containing the minutes of the proceedings of the Company, is conclusive evidence of the result of the vote on a particular resolution. Neither the chairperson nor the minutes need to state the number or proportion of the votes recorded for or against a resolution.

### **13.10 Resolutions put to a Poll of the Membership**

- (a) A poll may only be demanded by:
  - (i) the chairperson of the meeting; or
  - (ii) at least 2 Members present in person or by their proxy.
- (b) The demand for a poll may be withdrawn.
- (c) If a poll is duly demanded at a general meeting, it must be carried out as a vote by secret ballot.
- (d) A demand for a poll does not prevent a general meeting continuing for the transaction of any business, except the question on which the poll has been demanded.
- (e) The result of the poll is the resolution of the meeting at which the poll was demanded.
- (f) Rules 13.9(b) to 13.9(f) (inclusive) apply to any vote undertaken by a poll.

### **13.11 Chairperson of General Meetings**

- (a) Subject to this Constitution, the Director elected as Chairperson of the Board of Directors must preside as chairperson at each general meeting.
- (b) In the absence of the Chairperson, a Deputy Chairperson must preside as chairperson at each general meeting.
- (c) The Directors present at the meeting must elect one of the Directors as chairperson of the meeting if:
  - (i) there is no Chairperson or Deputy Chairpersons;
  - (ii) the Chairperson and Deputy Chairpersons are not present within 10 minutes after the time appointed for the meeting; or
  - (iii) the Chairperson and Deputy Chairpersons are present within that time but is not willing or able to act as chairperson of the meeting.
- (d) Subject to the terms of this Constitution, a ruling of the chairperson on all matters relating to the order of business, procedure and conduct of the general meeting is final.

### **13.12 Resolutions in Writing**

- (a) A resolution in writing signed by each of the Members and containing a statement that they are in favour of the resolution is valid as if it had been passed at a duly convened general meeting.
- (b) A resolution in writing cannot be used:
  - (i) for a resolution to remove the Auditor, appoint a Director or remove a Director;
  - (ii) for passing a Special Resolution; or
  - (iii) where the Corporations Act or this Constitution requires a meeting to be held.
- (c) A resolution in writing may consist of several documents in like form, each signed by one or more of the Members and if so signed, it takes effect on the latest date on which a Member signs one of the documents.
- (d) A document generated by electronic means which purports to be a facsimile of a resolution of the Members is to be treated as a resolution in writing.

### **13.13 Auditor's Right to be Heard**

The Auditor (if any) is entitled to attend and be heard at a general meeting on any part of the business of that meeting that concerns the Auditor (if any) in their professional capacity.

### **13.14 Use of Technology at General Meetings**

Subject to the Corporations Act:

- (a) the Company may hold a general meeting at 2 or more venues using any technology that gives the Members entitled to be heard at a general meeting a reasonable opportunity to participate;
- (b) a general meeting using technology is taken as held at the place decided by the chairperson of the general meeting, as long as at least one of the Members involved was at that place for the duration of the general meeting; and

- (c) if, before or during the general meeting, a technical difficulty occurs which means that one or more Members cease to participate, the chairperson may adjourn the general meeting until the difficulty is remedied or may, if a quorum of Members remains present, continue with the general meeting.

### **13.15 Adjourning General Meetings**

- (a) The chairperson of a general meeting may, and must if so directed by the Members, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting except the business left unfinished at the meeting from which the adjournment took place.
- (b) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- (c) Where a meeting is adjourned, the Directors may change the venue for, postpone or cancel the adjourned meeting, unless the meeting was called and arranged to be held under the Corporations Act.
- (d) Any resolutions or Special Resolutions passed at the adjourned meeting take effect on the date of the adjourned meeting.

### **13.16 Minutes**

- (a) The Secretary must cause proper minutes of all proceedings of general meetings to be taken and then to be entered within 30 days after the holding of each general meeting in a minute book (which includes a minute book in electronic form) kept for that purpose.
- (b) The Secretary must ensure that all minutes are checked and signed as correct by the chairperson of the general meeting to which those minutes relate or by the chairperson of the next succeeding general meeting.
- (c) When minutes have been entered and signed as correct under this rule, they are, until the contrary is proved, evidence that:
  - (i) the general meeting to which they relate (in this rule called "the meeting") was duly convened and held;
  - (ii) all proceedings recorded as having taken place at the meeting did in fact take place at the meeting; and
  - (iii) all appointments or elections purporting to have been made at the meeting have been validly made.
- (d) During business hours all Members have the right to inspect signed minutes of general meetings.



## **14. Directors' Indemnity and Insurance**

### **14.1 Indemnity and Insurance**

To the extent permitted by law, the Company:

- (a) must indemnify each Relevant Officer against:
  - (i) a Liability of that person; and
  - (ii) Legal Costs of that person;
- (b) may make a payment (whether by way of advance, loan or otherwise) to a Relevant Officer in relation to Legal Costs of that person;
- (c) must pay, or agree to pay, a premium for a contract insuring (including appropriate runoff insurance) a Relevant Officer against:
  - (i) a Liability of that person; and
  - (ii) Legal Costs of that person; and
- (d) may enter into an agreement or deed with a Relevant Officer under which the Company must do all or any of the following:
  - (i) keep books of the Company and allow either or both that person and that person's advisers access to those books on the terms agreed;
  - (ii) indemnify that person against any Liability of that person;
  - (iii) make a payment (whether by way of advance, loan or otherwise) to that person in relation to Legal Costs of that person; and
  - (iv) keep that person insured in relation to any act or omission by that person while a Relevant Officer of the Company or a subsidiary of the Company, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).

### **14.2 No Limits**

Nothing in rule 14:

- (a) affects any other right or remedy that a person to whom those rules apply may have in relation to any loss or liability referred to in those rules; or
- (b) limits the capacity of the Company to indemnify or provide insurance for any person to whom those rules do not apply.

## **15. Accounts Audit and Records**

### **15.1 Accounts**

- (a) The Board must cause proper accounting and other records to be kept in respect of the Company under all applicable laws.
- (b) The Company must prepare a financial report for each Accounting Period under all applicable laws.

## 15.2 Auditor

- (a) The Company must have its financial report (including any documents required to be attached to or prepared with the financial report) either audited or reviewed as determined by the Board and as required by law.
- (b) The remuneration of the Auditor must be fixed by the Board.

## 16. Notices

- (a) Subject to this rule, a notice is anything written to or from the Company under any rule in this Constitution.
- (b) Written notice under this Constitution may be given to the Company by:
  - (i) delivering it to the Company's registered office;
  - (ii) posting it to the Company's registered office or to another address chosen by the Company for notice to be provided; or
  - (iii) sending it to an email or other electronic address notified by the Company.
- (c) Written notice under this Constitution may be given to the Member or Director of the Company:
  - (i) by delivering it to them in person;
  - (ii) by posting it to, or leaving it at, in respect of:
    - (A) the Member, at the address of the Member recorded in the Register of Members, or such alternative address nominated by the Member; or
    - (B) a Director, the address nominated by the Director for service of notices;
  - (iii) sending it to an email address nominated by the Member or Director for service of notices; or
  - (iv) by notifying the Member or Director at an email or other electronic address nominated by them, that the notice is available at a specified place or address approved by the Board and nominated by the Member as a means of receiving notices (including an electronic address, an electronic link to any website, document or attachment to the electronic address).
- (d) A notice is taken to be given when:
  - (i) delivered in person, or left at the recipient's address, on the day it is delivered;
  - (ii) sent by post, on the fifth day after it is posted;
  - (iii) sent by email, on the Business Day it was sent or if it was not sent on a Business Day, on the first Business Day immediately following the day it was sent; and
  - (iv) if given under rule 16(c)(iv), on the first Business Day immediately after the notification that the notice is available was sent.

## **17. Amending this Constitution**

This Constitution may be amended by a Special Resolution of the Membership.

## **18. Winding up**

### **18.1 General winding up**

- (a) The Company may resolve to wind up by Special Resolution.
- (b) Immediately prior to the winding up of the Company, all Community Housing Assets in which the Housing Authority has a legal interest under a legal agreement with the Company, are to be, in accordance with the legal agreement and as directed by the Housing Authority, transferred to:
  - (i) the Housing Authority; or
  - (ii) another registered Community Housing Provider in Western Australia.
- (c) Upon the winding up of the Company, the Surplus Property, if any, must not be paid to or distributed among the Members or Directors of the Company but must be transferred to one or more institutions, funds or authorities which:
  - (i) have objects similar to the Objects;
  - (ii) is a Registered Charity;
  - (iii) is a Deductible Gift Recipient; and
  - (iv) prohibit distribution of its income and property among its Members and directors (if any) to an extent at least as great as is imposed on the Company by rule 5.3.

### **18.2 Distribution of assets or loss of endorsement**

If, upon the revocation of the Company's endorsement as a Deductible Gift Recipient, there remains, after satisfaction of all its debts and liabilities, any gifts, Contributions or money received because of such gifts or Contributions, the same must not be paid to, or distributed among, the Members or Directors of the Company, but must be transferred to one or more institutions, funds or authorities which:

- (a) have one or more objects similar to the Objects;
- (b) is a Registered Charity;
- (c) is a Deductible Gift Recipient; and
- (d) prohibit distribution of its income and property among its Members and directors (if any) to an extent at least as great as is imposed on the Company by rule 5.3.

### **18.3 Other**

- (a) The identity of the institutions, funds or authorities referred to in rules 18.1 and 18.2 must be decided by Special Resolution of the Membership.
- (b) Where gifts to an institution, fund or authority are deductible only if, among other things, the conditions set out in the relevant table item in subdivision 30-B of the ITAA97 are satisfied, a transfer under this rule must be made in accordance with those conditions.

## 19. Transitional Provisions

- (a) The Transitional Provisions set out in **Schedule 1** shall apply in accordance with their terms as if set out in the Constitution in full.
- (b) In the case of any inconsistency between the Transitional Provisions and any other provision of the Constitution, the Transitional Provisions will prevail.
- (c) The Transitional Provisions shall have continuing force and effect in accordance with their terms.

~ End of Document ~

### Schedule 1– Transitional Provisions

1. For the purposes of these Transitional Provisions:
  - (a) “Effective Date” means the date the Constitution takes effect under the Corporations Act; and
  - (b) terms uniquely defined in the Constitution and used in these Transitional Provisions will have those defined meanings.
2. With respect to those holding office as at the Effective Date as a Non-Board Member, the following provisions shall apply:
  - (a) the Non-Board Members listed in column 1 of **Table A**:
    - (i) shall be deemed to be a Non-Board Member on and from the Effective Date;
    - (ii) shall be deemed to retire or their appointment to office terminate as at the time listed in column 4 of Table A against each of their names (without prejudice to their opportunity to be re-appointed to office, subject to the provisions of the Constitution); and
    - (iii) are eligible for reappointment for further term or terms comprising no more in aggregate than the continuous period expiring at the conclusion of the Annual General Meeting listed in column 5; and

Table A				
Column 1	Column 2	Column 3	Column 4	Column 5
Name of Non-Board Member	Terms of office served (or currently serving) as at the Effective Date	Term of appointment as Non-Board Member on and from the Effective Date (1 year or 2 years)	Deemed date of scheduled retirement from office	Eligibility for re-appointment - Permitted continuous term expiry
John Francks	9 years	1 year	AGM 2024	AGM 2026
Laurence Iffla	7 years	2 years	AGM 2025	AGM 2028
Leonie Walker	9 years	1 year	AGM 2024	AGM 2026
Kenneth Booth	9 years	2 years	AGM 2025	AGM 2026
John Groves	9 years	1 year	AGM 2024	AGM 2026
Neil Guard	2 years	2 years	AGM 2025	AGM 2033

- (b) a Non-Board Member listed in Table A holds office until the date mentioned in column 4 of Table A against their name.

~ End of Document ~