



a *genü* company

Constitution

Activ Foundation Limited

A Public Company Limited by Guarantee

ACN 060 921 271 | ABN 11 553 592 765

Approved by Members
By way of Special Resolution
at the General Meeting
held on 26 June 2024

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1. Name of 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' was disbanded on 16 February 2024, upon the Company being registered under the Corporations Act. At that time, up to six (6) of the "Council Members" were appointed as Members of the Company, along with up to ten (10) Directors, who were the existing members of the Association's Board. The amalgamation of these two groups will comprise the Membership of the Company.
- f. On 1 July 2024, Activ Foundation Limited and Karingal St Laurence Ltd (KSL); decided that it was in the best interests of both organisations to merge to benefit all of their participants and members, and KSL became the sole member of Activ.

3. Type of Company

- a. The Company is a not-for-profit public company limited by guarantee which is established to be, and to continue as, a Registered Charity.
- b. Subject to this Constitution, each person who is a Member and each person who was a Member during the year ending on the day of the commencement of the winding up of the Company, undertakes to contribute to the property of the Company for:
 - (i) payment of debts and liabilities of the Company;
 - (ii) payment of the costs, charges and expenses of winding up; and
 - (iii) any adjustment of the rights of the contributories among Members.
- c. The amount that each Member or past Member is liable to contribute is limited to \$1.00

4. Replaceable Rules & Amending the Constitution

- a. This Constitution displaces the Replaceable Rules to the extent that it is inconsistent with any Replaceable Rules.
- b. The Member may amend this Constitution by passing a Special Resolution provided that the Member must not pass a Special Resolution that amends this Constitution if passing it causes the Objects to no longer be charitable.

5. Definitions and Interpretation

5.1 Definitions

In this Constitution, unless there is something in the subject or context which is inconsistent:

- a. **ACNC** means Australian Charities and Not-for-Profits Commission;
- b. **ACNC Act** means *Australian Charities and Not-for-Profits Commission Act 2012* (Commonwealth);
- c. **ACNC Commissioner** means the Commissioner of the Australian Charities and Not-for-profits Commission for the purposes of the ACNC Act;
- d. **ACNC Regulation** means *Australian Charities and Not-for-profits Commission Amendment Regulation 2013* (Commonwealth);
- e. **AGM** means annual general meeting;
- f. **Board** means the board of Directors of the Company;
- g. **Body Corporate** means a legally incorporated association or group of persons;
- h. **Business Day** means a day that is not a Saturday, Sunday or public holiday in Western Australia;
- i. **By-Laws** means the by-laws adopted and amended by the Board from time to time in accordance with clause 17;
- j. **Carer** has the meaning given to it by the *Carers Recognition Act 2012* (Vic);
- k. **Chairperson** means the Director appointed under clause 9.5, and **chairperson** means either the Chairperson or a Director elected to be the chairperson for any Board meeting under clause 12.3b or any general meeting under clause 8.6b.
- l. **Commissioner** means the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the ITAA97;
- m. **Committee** means a committee established in accordance with clause 13;
- n. **Community Housing Assets** means:
 - (i) 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;

- (ii) 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:
 - (A) funding provided directly by the Housing Authority;
 - (B) GST input tax credits claimed by the Company in connection with any supplies which are funded wholly or in part by the Housing Authority;
- (iii) 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;
- (iv) 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;
- (v) land and/or premises where the Housing Authority is identified as having an interest in any legal agreement;
- (vi) land and/or premises procured with the proceeds of sale of land and/or premises in which the Housing Authority has an interest; and
- (vii) 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;

- o. **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;
- p. **Community Housing Regulatory Framework** means a regulatory administrative system implemented by the Housing Authority to register and regulate Community Housing Providers;
- q. **Company** means Activ Foundation Limited;
- r. **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;
- s. **Constitution** means this constitution as amended or supplemented from time to time;
- t. **Corporations Act** means *Corporations Act 2001* (Commonwealth);
- u. **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;
- v. **Deputy-Chairperson** means a person appointed to that position pursuant to clause 9.5a(ii) and includes any assistant or acting Deputy-Chairperson under this Constitution;

- w. **Director** means any person holding the position of a director of the Company and Directors means the directors for the time being of the Company or, as the context permits, such number of them as have authority to act for the Company;
- x. **Directors Present** means, in connection with a Board meeting, a Director being present in person or pursuant to clause 12.1d;
- y. **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:
- (i) communication;
 - (ii) social interaction;
 - (iii) learning;
 - (iv) mobility;
 - (v) self care; and
 - (vi) 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.
- z. **Financial Year** means the year from 1 July to 30 June, unless the Board passes a resolution to change the term of the financial year, and the Commissioner of the ACNC approves the resolution pursuant to section 60.85 of the ACNC Act;
- aa. **Housing Authority** means a Body Corporate constituted under the *Housing Act 1980 (WA)* as amended;
- bb. **Insolvent** means a Body Corporate will be Insolvent if:
- (i) the Body Corporate resolves to go into external administration as that term is defined in section 5-15 of the Insolvency Practice Schedule (Corporations) (Schedule 2 to the Corporations Act);
 - (ii) a liquidator, a provisional liquidator, receiver, receiver and manager, administrator, restructuring practitioner, official manager, judicial manager or similar official is appointed to the Body Corporate or over the Body Corporate's assets or undertakings;
 - (iii) an application is made to the Court to wind up the Body Corporate;
 - (iv) an application is made to de-register the Body Corporate;
 - (v) a Court grants an application to wind up the Body Corporate;
 - (vi) an application is granted to de-register the Body Corporate;
 - (vii) the Body Corporate resolves to enter into a scheme, a composition or any similar arrangement or procedure with creditors;
 - (viii) the Body Corporate receives a statutory demand under section 459E of the Corporations Act, which the Company fails to comply with, within the period for compliance or have set aside under section 459G of the Corporations Act;
 - (ix) the Body Corporate is considered insolvent under the Corporations Act;

- (x) the Body Corporate passes a resolution to wind up; or
- (xi) the Body Corporate passes a resolution to de-register;
- cc. **ITAA97** means the *Income Tax Assessment Act 1997* (Commonwealth);
- dd. **KSL** means Karingal St Laurence Ltd (ABN 74 614 366 031);
- ee. **Member** means a member of the Company pursuant to clause 7 and **Membership** has the corresponding meaning;
- ff. **Member Present** means in connection with a meeting of Members, a Member being present (in person or by conference pursuant to clause 8.2c), or by proxy or attorney or, in the case of a Body Corporate, by a Representative;
- gg. **Member's Guarantee Amount** means the amount referred to in clause 3.c;
- hh. **Objects** means the objects of the Company as set out in clause 6.1a;
- ii. **Office** means the registered office for the time being of the Company;
- jj. **Office Bearer** means a person holding any of the offices specified in clause 9.5;
- kk. **Officer** has the same meaning as given to that term in section 9 of the Corporations Act;
- ll. **Ordinary Resolution** means a resolution passed by the Member that is supported by more than fifty per cent (50%) of the votes cast by Members Present;
- mm. **Register of Members** means the Register of Members to be kept pursuant to the Corporations Act;
- nn. **Registered Charity** means an entity registered by the ACNC Commissioner as a charity in accordance with the ACNC Act;
- oo. **Registration** means registration of the Company as a public company limited by guarantee by the Australian Securities and Investments Commission;
- pp. **Replaceable Rules** means the replaceable rules applicable to a public company limited by guarantee set out in the Corporations Act;
- qq. **Representative** means a person authorised in accordance with section 250D of the Corporations Act to act as a representative of a Body Corporate, as described in clause 7.5;
- rr. **Secretary** means the person appointed as the secretary of the Company under clause 16 and includes any assistant or acting secretary;
- ss. **Special Resolution** means a resolution:
 - (i) of which notice has been given under clause 8.3; and
 - (ii) that has been passed by seventy-five per cent (75%) or more of the votes cast by Members Present;

- tt. **Surplus Property** means all assets and property remaining after the satisfaction of:
- (i) the debts and liabilities of the Company; and
 - (ii) 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.

5.2 Interpretation

In this Constitution, unless there is something in the subject or context which is inconsistent:

- a. the singular includes the plural and vice versa;
- b. each gender includes the other gender;
- c. the word **person** means a natural person and any partnership, association, body or entity whether incorporated or not;
- d. the words **writing** and **written** include any other mode of representing or reproducing words, figures, drawings or symbols in a visible form;
- e. where any word or phrase is defined, any other part of speech or other grammatical form of that word or phrase has a cognate meaning;
- f. a reference to any clause or schedule is to a clause or schedule of this Constitution;
- g. a reference to any statute, proclamation, rule, code, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, code, regulation or ordinance replacing it;
- h. an expression used in a particular Part or Division of an Act or Regulation that is given by that Part or Division a special meaning for the purposes of that Part or Division has, unless the contrary intention appears, in any clause that deals with a matter dealt with by that Part or Division the same meaning as in that Part or Division; and
- i. headings do not form part of or affect the construction or interpretation of this Constitution.

6. Objects and Not-for-profit

6.1 Objects

- a. The objects of the Company are to:
 - (i) offer people living with Disability opportunities to enjoy full participation in their community and empower them to pursue the life they choose;
 - (ii) provide services and supports to meet the needs and choices of people living with Disability, including but not limited to:
 - (A) employment;

- (B) accommodation;
- (C) respite;
- (D) education and training; and
- (E) community participation and inclusiveness,

and to develop and promote access to services and supports to meet such needs and choices;

- (iii) maximise opportunities for persons living with Disability to participate in determining the Company's policies;
 - (iv) represent the interests of persons living with Disability in the development of government social and economic policy;
 - (v) 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;
 - (vi) advance self-determination by people living with a Disability; and
 - (vii) 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.
- b. The Company can only exercise the powers in section 124(1) of the Corporations Act to:
- (i) carry out the Objects of the Company; and
 - (ii) do all things incidental or ancillary to the exercise of power under clause 6.1b(i).

6.2 Activities

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.

6.3 Income and Property

- a. Subject to clause 6.3b, 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. Clause 6.3a 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 clause 6.4.

6.4 Remuneration of Directors

- a. No remuneration shall be made to any Director for their services as a Director of the Company unless that payment has been approved by a Special Resolution.
- b. **Clause 6.3** does not preclude Directors being remunerated for:
 - (i) out of pocket expenses incurred by the Director in the performance of any duty as a Director where the amount payable does not exceed an amount previously approved by the Board;
 - (ii) for any service rendered to the Company by the Director in a professional or technical capacity, other than in the capacity as Director, where the provision of the service has the prior approval of the Board and where the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable for the service.

7. Membership

7.1 Eligibility for Membership

- a. Subject to clause 7.1b, the only person entitled to be a Member of the Company is KSL.
- b. The Directors of the Company from time to time (jointly) are entitled to be a Member but only if KSL becomes Insolvent.

7.2 Rights of Members

- a. The Member is entitled to receive:
 - (i) notices of, attend, be heard at and vote at (one vote on any given resolution) at any general meeting; and

- (ii) a copy of the annual financial report, Directors report or Auditor's report (if any) of the Company within the time frame specified in the Corporations Act.
- b. In addition to each Member being entitled to vote at all general meetings, the Board will determine from time to time what additional benefits shall attach to Membership.

7.3 Register of Members

- a. Upon the appointment or removal of a Member, the Board must update the Register of Members to reflect the appointment or removal of the Member, as soon as practicable after the appointment or removal occurs.
- b. The Register of Members shall be available for inspection free of charge by any Member upon request and upon reasonable notice being provided.
- c. Subject to the Corporations Act, the Member shall be provided with a copy of entries in the Register of Members upon request.

7.4 Membership Entitlements Not Transferable

A right, privilege or obligation which a person has by reason of being a Member:

- a. is not capable of being transferred or transmitted to another person; and
- b. terminates on cessation of the person's Membership.

7.5 Representative

- a. This clause 7.5 only applies to Members which are a Body Corporate.
- b. Where a Member is a Body Corporate, it shall appoint as its Representative a natural person.
- c. The name and address of the Representative will be entered in the Register of Members as the representative of the Body Corporate.
- d. All correspondence and notices from the Company will be served on that Representative and any notice served on a Representative will be deemed to be service on the Body Corporate which is represented by that particular Representative.
- e. If the appointment of a Representative by the Body Corporate is made by reference to a position held, the appointment shall identify the position.
- f. Despite clause 7.4, a Body Corporate may remove and replace a Representative where the Body Corporate gives written notice to the Board in a form approved by the Board.
- g. A signature by a Representative of a Body Corporate on behalf of that Body Corporate is taken to be the signature of that Body Corporate for the purposes of this Constitution.
- h. Any power or right of a Body Corporate as granted by this Constitution can be exercised by the Representative of that particular Body Corporate. For the sake of clarification, a Member of the Company that is a Body Corporate is only entitled to one (1) vote.

- i. Bodies Corporate are represented at meetings of Members by their Representatives, subject to the right of a Representative to appoint a proxy pursuant to clause 1.
- j. The actions of a Representative bind the Body Corporate which is represented by that particular Representative.
- k. Each Representative will comply with the terms of this Constitution in all matters pertaining to the Company as if a Member himself or herself.

7.6 Cessation of Membership

- a. A Member's Membership will cease:
 - (i) on the date that the Secretary receives written notice of resignation from that Member;
 - (ii) in the case of a natural person, upon that Member dying or becoming 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 Body Corporate, upon that Member becoming Insolvent;
 - (iv) if the Member ceases to be eligible under clause 7; or
 - (v) if the Company resolves by Special Resolution to terminate the Membership of a Member whose conduct or circumstances in the opinion of the Company renders it undesirable that that Member continue to be a Member of the Company. The Member shall be given at least twenty-one (21) days' notice of the proposed resolution and shall be given the opportunity to be heard at the meeting at which the resolution is proposed.
- b. A Member may at any time, pursuant to clause 7.6a(i), resign as a Member but shall continue to be liable for:
 - (i) any monies due by the Member to the Company; and
 - (ii) any sum for which the Member is liable as a Member of the Company under clause 3.b.
- c. In the event the Member of the Company ceases to be a Member pursuant to clause 7.6a, the Board may approve the appointment of a new Member to the Company, the choice of that new Member being within the full and unfettered discretion of the Board.

8. General Meetings

8.1 AGMs

While the Company has a sole Member, the Company is not required to hold an AGM.

8.2 Convening of General Meetings

- a. The Board may convene a general meeting of the Company at any time.
- b. Notwithstanding section 111L of the Corporations Act:
 - (i) the Member may call a general meeting; and

(ii) the Company will do so,

in accordance with the provisions of Part 2G.2 of the Corporations Act pertaining to the rights of Members to call a general meeting.

c. A general meeting of the Company may be convened at two (2) or more venues, or by using virtual meeting technology only, using any technology that gives the Member a reasonable opportunity to participate in the meeting.

8.3 Notice of General Meeting

a. Notwithstanding section 111L of the Corporations Act, and subject to section 249H of the Corporations Act, at least twenty-one (21) days' notice of any general meeting shall be given specifying:

(i) the date, time and place of the meeting;

(ii) the general nature of any business to be transacted at the meeting;

(iii) if a Special Resolution is to be proposed, the details of the proposed Special Resolution set out in full and the intention to propose it;

(iv) if the meeting is to be held in two or more places, or by using virtual meeting technology only, the technology that will be used to facilitate this; and

(v) any other information required by the ACNC Act or Corporations Act.

b. The accidental omission to give notice of any general meeting to or the non-receipt of notice of a meeting by any person entitled to receive notice will not invalidate the proceedings at or any resolution passed at the meeting.

c. Subject to clause 8.3b, notice of every general meeting shall be given in any manner authorised by this Constitution to:

(i) the Member;

(ii) every Director; and

(iii) the auditor for the time being of the Company (if any).

8.4 Cancellation or Postponement of General Meeting

a. Subject to the provisions of the Corporations Act and this Constitution, the Board may cancel a general meeting of the Company:

(i) convened by the Board; or

(ii) which has been convened by the Member pursuant to clause 8.2b upon receipt by the Company of a written notice withdrawing the requisition signed by the Member.

b. The Board may postpone a general meeting or change the venue at which it is to be held. No business shall be transacted at any postponed meeting other than the business stated in the notice to the Member relating to the original meeting.

c. Where any general meeting is cancelled or postponed or the venue for a general meeting is changed:

- (i) the Board shall provide in writing to each person entitled to receive notice of the meeting of the cancellation, the change of venue or the postponement of the meeting by any means permitted by this Constitution and in the case of the postponement of a meeting, the new place, date and time for the meeting; and
- (ii) any failure to notify in writing any person entitled to receive notice of the meeting or failure of a person to receive a written notice shall not affect the validity of the cancellation, the change of venue or the postponement of the meeting.

8.5 Quorum

- a. No business may be transacted at any general meeting unless there is a quorum of Members Present at all times during the meeting.
- b. A quorum for a general meeting is the sole Member.
- c. For the purpose of determining whether a quorum is present under clause 8.5b, a person attending as a Representative of the Member is deemed to be a Member.
- d. If within thirty (30) minutes after the time appointed for holding a general meeting a quorum is not present:
 - (i) the meeting, if convened upon the requisition of Members, shall be dissolved;
 - (ii) in any other case:
 - (A) it will stand adjourned to such other date, time and place as the Board may by notice to the Members appoint; and
 - (B) if at such adjourned meeting a quorum is not present within thirty (30) minutes after the time appointed for the holding of the meeting, the meeting shall be dissolved.

8.6 Chairperson

- a. The Chairperson of the Board shall preside as chairperson at each general meeting.
- b. Where a general meeting is held and:
 - (i) there is no Chairperson; or
 - (ii) the Chairperson is not present within thirty (30) minutes after the time appointed for the holding of the meeting or, if present, is unwilling to act as the Chairperson of the meeting,

then the following person will be chairperson in lieu of the Chairperson in the order of availability set out below:

- (iii) the Deputy-Chairperson;
- (iv) another Director chosen by the Directors present at the meeting;
- (v) the Secretary; and
- (vi) the Representative of the Member.

- c. The rulings of the chairperson of a general meeting on all matters relating to the order of business, procedure and conduct of the meeting shall be final and no motion of dissent from such rulings shall be accepted.

8.7 Resolutions in writing

- a. In accordance with section 249B of the Corporations Act, a resolution in writing signed by the Member and containing a statement that it is in favour of the resolution shall be valid as if it had been passed at a duly convened meeting of the Member.
- b. A document generated by electronic means which purports to be a facsimile of a resolution of the Member is to be treated as a resolution in writing.
- c. A document bearing a facsimile or e-mail of a signature is to be treated as signed and an e-mail approving a resolution is also to be treated as a signature.

8.8 Use of technology at general meetings

Subject to the Corporations Act:

- a. the Company may hold a general meeting at two (2) or more venues, or using virtual meeting technology only, using any technology that gives the Member 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 the Member 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 the Member ceases to participate, the chairperson may adjourn the general meeting until the difficulty is remedied.

8.9 Adjournments

- a. The chairperson of a general meeting at which a quorum is present:
 - (i) may adjourn a meeting with the consent of the meeting; and
 - (ii) shall adjourn the meeting if the meeting so directs, to a time and place as determined.
- b. No business may be transacted at any adjourned general meeting other than the business left unfinished at the meeting from which the adjournment took place.
- c. A resolution passed at a meeting resumed after an adjournment is passed on the day it was passed.
- d. It is not necessary to give any notice of an adjournment of a general meeting or of the business to be transacted at the adjourned meeting except if the meeting is adjourned for thirty (30) days or more in which case notice of the adjourned meeting shall be given as in the case of an original meeting.

8.10 Determination of Questions

- a. The Directors may decide the manner in which voting is to take place at a general meeting which may include by a show of hands or by electronic means or a combination of both.

- b. 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 Member.
- c. Any decision made by the Member must be made by the directors of the Member in accordance with the rules and voting requirements under the Member's constitution.
- d. A declaration by the chairperson of the result of a vote on a resolution by a show of hands and an entry to that effect contained in the minutes of the proceedings of the Company which has been signed by the chairperson of the meeting or the next succeeding meeting shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.

8.11 Voting Rights

A Member has one (1) vote.

8.12 Disqualification

No person other than:

- a. the Member;
- b. a Representative of the Member; or
- c. a proxy of a:
 - (i) Member; or
 - (ii) Representative of a Member,shall be entitled to a vote at a general meeting.

8.13 Objection to Qualification to Vote

Any challenge as to the qualification of a person to vote at a general meeting or the validity of any vote tendered may only be raised at the meeting and shall be determined by the chairperson whose decision shall be final and conclusive, and a vote allowed by the chairperson shall be valid for all purposes.

8.14 No Casting Vote

In the case of an equality of votes, the chairperson of the meeting at which the show of hands is taken is not entitled to a casting vote in addition to a deliberative vote.

8.15 Proxies

- a. The Member may appoint a proxy who must be a director of KSL.
- b. A proxy may be appointed for:
 - (i) any number of general meetings; or
 - (ii) a particular general meeting.

- c. Unless otherwise provided in the instrument, an instrument appointing a proxy is taken to confer authority:
 - (i) to agree to a meeting being convened by shorter notice than is required by the Corporations Act or by this Constitution;
 - (ii) to speak to any proposed resolution on which the proxy may vote;
 - (iii) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (iv) to vote on any procedural motion, including any motion to elect the chairperson, to vacate the office of chairperson or to adjourn the meeting;
 - (v) to act generally at the meeting; and
 - (vi) even though the instrument may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the rescheduled or adjourned meeting or at the new venue.
- d. If the Company has approved a form for the appointment of a proxy, the appointing Member must use that form.
- e. 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).
- f. The appointment of a proxy is revoked by the Member or the Member's representative attending and taking part in the general meeting.

9. Appointment and Removal of Directors

9.1 Number of Directors

The Board of Directors shall consist of not fewer than seven (7) Directors and not more than eleven (11) Directors which must comprise the current directors of KSL.

9.2 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 not been disqualified from being a Director under the Corporations Act;
 - (iii) has not been disqualified from being a responsible person by the ACNC Commissioner under the ACNC Act; and
 - (iv) meets any additional eligibility criteria, qualification or experience requirements determined by the Board from time to time.

- b. A person who is or was formerly employed by KSL or the Company shall be ineligible to be a Director until a period of two (2) years has passed since that person ceased to be an employee of KSL or the Company.
- c. A person shall not be a Director of the Company at the same time as being an employee of the Company.

9.3 Appointment, Resignation and Removal of Directors

- a. Subject to clauses 9.1, 9.2 and 9.4, the Member may appoint Directors by Ordinary Resolution.
- b. The Member may, at any time by resolution, remove any Director from office for any reason and appoint a replacement.

9.4 Term

- a. Where a Director is also a director of KSL, that Director will hold office as a Director of the Company until the conclusion of their term as a director of KSL.

9.5 Office Bearers

- a. The Chairperson and Deputy Chairperson shall be the chairperson and deputy chairperson of KSL.
- b. The Office Bearers shall hold office for a term of one (1) year (unless they have less than one (1) year remaining in their term as Directors, in which case they shall hold office for the remainder of their terms as Directors), but shall be eligible for reappointment provided that Office Bearers shall not hold office beyond their retirement or removal from the Board as a Director.

9.6 General Right to Appoint and Remove Directors

The Board may act despite any vacancy in their body but if the number falls below the minimum fixed in accordance with clause 9.1, the Board may only act:

- a. for the purpose of:
 - (i) increasing the number of Directors to the minimum under clause 9.1; or
 - (ii) convening a general meeting; or
 - b. in emergencies,
- but for no other purpose.

9.7 Vacation of Office

- a. Any Director may resign from office on giving written notice to the Company at the Office of his or her intention to retire and the resignation shall take effect on the date expressed in the notice (provided the date is not earlier than the date of delivery of the written notice to the Company).
- b. The office of a Director shall become vacant if the Director:
 - (i) dies;
 - (ii) is no longer eligible under clause 9.2;
 - (iii) ceases as a current director of KSL;
 - (iv) becomes bankrupt or makes any arrangement or composition with creditors generally;
 - (v) becomes prohibited from being a director of, or managing, a company by reason of any order made under the Corporations Act;

- (vi) is convicted of an indictable offence;
- (vii) has been disqualified by the ACNC Commissioner, at any time during the preceding twelve (12) months, from being a responsible entity of a registered entity under section 45.20(4) of the ACNC Regulation;
- (viii) becomes of unsound mind or a person whose personal estate is liable to be dealt with in any way under the law relating to mental health;
- (ix) is removed from office by the Company;
- (x) resigns by notice in writing to the Company; or
- (xi) is absent without permission of the Board from three (3) consecutive meetings of the Board, and the Board resolves that this constitutes resignation.

9.8 Filling of Vacancies on the Board

- a. In the event of a casual vacancy occurring on the Board, the Board shall, in relation to a Director vacancy, appoint a person who is eligible to be a Director to fill the vacancy.
- b. Any Director appointed or elected pursuant to clause 9.8a shall hold office until the conclusion of the term of the vacating Director.
- c. Time served pursuant to clause 9.8a does not count towards the maximum term specified in clause 9.4.

9.9 Acting Office Bearers

- a. In the event of a vacancy occurring in the position of Chairperson, the Deputy-Chairperson shall assume office as acting Chairperson until the next meeting of the Board, at which time the Board shall appoint a new Chairperson from their number for either a full new term or for the balance of the term of the vacating Chairperson.
- b. In the event of a vacancy occurring in the position of Deputy-Chairperson, at the next meeting of the Board the Board shall appoint a new Deputy-Chairperson from their number for either a full new term or for the balance of the term of the vacating Deputy-Chairperson.
- c. If any Office Bearer is temporarily absent or temporarily unable to perform his or her duties, the Board may authorise another Director to act in the vacant position during the absence or inability of the Office Bearer.
- d. Nothing in clause 9.9 permits any person to simultaneously hold more than one position of Office Bearer.

10. Powers and Duties of Directors

10.1 Duties of Directors

- a. Each Director is subject to, and shall comply at all times with, the duties set out in Governance Standard 5 in section 45.25 of the ACNC Regulation.
- b. In accordance with Governance Standard 4 in section 45.20 of the ACNC Regulation, the Board will take reasonable steps to ensure that the Board does not at any time include a Director who is disqualified from managing a corporation under the Corporations Act or from being a responsible entity under subsection 45.20(4) of the ACNC Regulation.

10.2 Powers of Directors

- a. The control, management and conduct of the Company shall be vested in the Board and it shall exercise all such powers of the Company as are not by the Corporations Act, the ACNC Act, the ACNC Regulation or by this Constitution required to be exercised in any other manner.
- b. If the Company has only one (1) Member, a Director is, pursuant to section 187 of the Corporations Act, taken to have acted in good faith in the best interests of the Company even if that Director is acting in the best interests of that Member, if the following conditions are satisfied:
 - (i) the Director acts in good faith in the best interests of that Member; and
 - (ii) the Company is not insolvent at the time the Director acts and does not become insolvent because of the Director's act.

10.3 Negotiable Instruments

- a. All cheques, promissory notes, drafts, bills of exchange and other negotiable instruments, all requests or arrangements for electronic fund transfers and all receipts for money paid to the Company shall be signed, drawn, accepted, endorsed or otherwise executed as the case may be by two (2) people authorised by resolution of the Board.
- b. The Board may authorise:
 - (i) a Director(s);
 - (ii) the Secretary;
 - (iii) the chief executive officer of the Company; or
 - (iv) another staff member of the Company,to sign such instruments.

10.4 Conferment of Powers

- a. The Board may from time to time confer upon any Director for the time being or any other person as they may select such of the powers exercisable under this Constitution by the Board as it may think fit for such time and to be exercised for such purposes and on such terms and conditions and with such restrictions as it may think expedient.
- b. Powers conferred under this clause 10.4 may be exercised concurrently with the powers of the Board in that regard and the Board may from time to time withdraw, revoke or vary all or any of such powers.

11. Directors' Disclosure 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.

12. Proceedings of Directors

12.1 Meetings of Directors

- a. The Board may meet together for the despatch of business, adjourn and otherwise regulate their meetings and proceedings as it thinks fit.
- b. A Director may at any time, and the Secretary upon the request of any one (1) Director or the Chairperson shall, convene a meeting of the Board by giving at least twenty-four (24) hours' notice of the meeting to all Directors, provided that the Director or Secretary shall have used their best endeavours to ensure that the notice was properly served and received.
- c. Notice of a meeting of the Board need not be in writing.
- d. Subject to clause 12.1e, a Board meeting may be convened or held using any technology consented to by a majority of Directors. The consent may be a standing one. A Director may withdraw consent to the use of a particular technology within a reasonable time period before a Board meeting.
- e. The particular technology used to convene or hold a Board meeting, pursuant to clause 12.1d, shall be available and accessible to all Directors who wish to attend the Board meeting.
- f. 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.

12.2 Quorum

- a. A quorum of Directors Present shall be present at all times during a Board meeting. No business may be transacted during an inquorate period of the meeting.
- b. A majority of the total number of Directors in office as at the date of the relevant Board meeting shall constitute a quorum for all Board meetings.

- c. A Director who is disqualified from voting on a matter pursuant to clause 11.a due to not obtaining the consent of the Board shall be counted in the quorum despite that disqualification.

12.3 Chairperson

- a. The Chairperson of the Board shall be the chairperson for all meetings of the Board.
- b. If a meeting of the Board is held and the Chairperson is:
 - (i) not present within fifteen (15) minutes after the time appointed for the holding of the meeting; or
 - (ii) if present, does not wish to chair the meeting,then the Deputy-Chairperson shall be the chairperson of the meeting.
- c. If the Deputy-Chairperson is:
 - (i) not present within fifteen (15) minutes after the time appointed for the holding of the meeting; or
 - (ii) if present, does not wish to chair the meeting,then the other Directors Present shall elect one of their number to be the chairperson of the meeting.

12.4 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 two (2) or more venues, or using virtual meeting technology only, using any technology that gives the Board members entitled 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 Board meeting, as long as at least one of the Directors involved was at that place for the duration of the Board 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.

12.5 Voting

- a. A resolution of the Board shall be passed by a majority of votes of the Directors Present at the meeting who vote on the resolution. A resolution passed by a majority of the votes cast by the Directors Present will, for all purposes, be taken to be a determination of the Board.
- b. Each Director shall be entitled to one (1) vote on a resolution of the Board.

- c. In the case of an equality of votes at a meeting of the Board, the Chairperson may exercise a casting vote in addition to a deliberative vote.

12.6 Resolutions by Directors

- a. The Board may pass a resolution without a Board meeting being held if a majority of the total number of Directors sign a document containing a statement that they are in favour of the resolution set out in that document. For this purpose, signatures can be contained in more than one (1) document.
- b. A facsimile transmission which is received by the Company and which purports to have been signed by a Director shall for the purposes of this clause 12.6 be taken to be in writing and signed by that Director at the time of the receipt of the facsimile transmission by the Company in legible form.
- c. An email transmission which is received by the Company and which purports to have been sent by a Director shall for the purposes of this clause 12.6 be taken to be in writing and signed by that Director at the time of the receipt of the email transmission by the Company.
- d. A vote made by a Director using an online voting platform operated or commissioned by the Company shall for the purposes of this clause 12.6 be taken to be in writing and signed by that Director at the time the vote was received by the online voting platform.

13. Committees

- a. The Board may form and delegate any of its powers to a Committee consisting of such Directors and/or other persons as it thinks fit and may from time to time revoke such delegation.
- b. The Board has the power to require any Committee to have all decisions made by that Committee ratified by the Board.
- c. A Committee shall in exercise of the powers delegated to it conform to any directions and restrictions that may be imposed on it by the Board. A power so exercised shall be taken to be exercised by the Board.
- d. The meetings and proceedings of any Committee consisting of more than one (1) person will be governed by the provisions for regulating the meetings and proceedings of the Board contained in this Constitution.
- e. A minute of all the proceedings and decisions of every Committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Board are required by the Corporations Act, notwithstanding section 111L, and this Constitution to be made entered and signed. A copy of such Committee minutes shall be tabled at the next Board meeting.

14. Validation of Acts of Directors

All acts done:

- a. at any meeting of the Board; or
- b. by any person acting as a Director,

shall, even if it is discovered afterwards that there was a defect in the appointment or continuance in office of any such Director or person or that they or any of them were

disqualified or were not entitled to vote, be as valid as if every such person had been duly appointed or had continued in office and was duly qualified to be a Director and had been entitled to vote.

15. Minutes

- a. The Board shall cause minutes to be kept in such a manner as is required by the Corporations Act for the purposes of recording:
 - (i) the names of the Directors Present at each meeting of the Board and of Directors Present at each meeting of any Committee;
 - (ii) all orders, resolutions and proceedings of general meetings and of meetings of the Board and of Committees; and
 - (iii) such matters as are required by the Corporations Act or the ACNC Act or the ACNC Regulation to be recorded in the record books of the Company including without limitation all declarations made or notices given by any Director of his or her interest in any contract or proposed contract or the holding of any office or property whereby any conflict of duty or interest may arise.
- b. Such minutes shall be signed by the chairperson of the meeting, or the Chairperson of the next succeeding meeting and minutes which purport to be signed accordingly shall be received in evidence without any further proof as sufficient evidence that the matters and things recorded by such minutes actually took place or happened as recorded and of the regularity of such matters and things and that the same took place at a meeting duly convened and held.

16. Appointment and Tenure of Secretary

- a. There shall be at least one Secretary appointed by the Board, for a term and on conditions determined by the Board.
- b. The Board may remove any Secretary so appointed.

17. By-Laws

- a. The Board may from time to time make such By-Laws as are in its opinion necessary and desirable for the proper control, administration and management of the Company's affairs, operations, finances, interests, effects and property and to amend and repeal those By-Laws from time to time.
- b. A By-Law shall be subject to this Constitution and shall not be inconsistent with any provision contained in this Constitution.
- c. When in force, a By-Law is binding on the Member and has the same effect as this Constitution.
- d. Subject to clause 17.e, the Board will adopt such measures as it deems appropriate to bring to the notice of the Member all By-Laws, amendments and repeals.
- e. The Board will provide the Member with reasonable notice of any proposed changes to the By-Laws regarding the eligibility requirements for Membership classes before the changes are implemented.

18. Execution of Documents

- a. Without limiting the manner in which the Company may execute any contract, including as permitted under section 126 of the Corporations Act, the Company may execute any agreement, deed or other document by:
 - (i) two (2) Directors signing the same; or
 - (ii) one (1) Director and one (1) Secretary signing the same.
- b. Nothing in this Constitution requires the Company to execute any agreement, deed or other document under common seal for the same to be effectively executed by the Company.

19. Accounts and Inspection of Records

The Board shall:

- a. cause proper financial records to be kept and shall, if required by the ACNC Act or the ACNC Regulation, prepare and distribute copies of the financial reports of the Company and a Directors' report;
- b. where required by the ACNC Act, cause the financial records to be audited or reviewed by a properly qualified auditor or other entity authorised by the ACNC Act; and
- c. from time to time determine whether and to what extent and at what times and places and under what conditions or regulations the accounting and other records of the Company or any of them will be open to the inspection of the Member.

20. Service of Notices

- a. A notice may be given by the Company to the Member by:
 - (i) serving it on the Member personally;
 - (ii) sending it by post to the Member or leaving it at the Member's address shown in the Register of Members or otherwise the address supplied by the Member to the Company for the giving of notices;
 - (iii) facsimile to the facsimile number supplied by the Member to the Company for the giving of notices; or
 - (iv) sending it to the electronic address supplied by the Member to the Company for the giving of notices.
- b. Any Member who has not left at or sent to the Office his or her place of address for inclusion in the Register of Members as the place at which notices may be given to the Member shall not be entitled to receive any notice.
- c. Where a notice is sent by post, service of the notice shall be taken to be effected by properly addressing, prepaying and posting a letter containing the notice and shall be deemed to have been effected on the second day after the date of posting. Service of a notice to a Member outside Australia shall be deemed to have been made in the ordinary course of the post.

- d. Where a notice is sent by facsimile or other electronic means, service of the notice shall be taken to be effected by properly addressing and sending the notice and in such case shall be taken to have been effected on the business day after it is sent.
- e. Evidence of service of a notice may be established by proving that the envelope containing the notice and stamped appropriately was properly posted and a certificate given by any Officer of the Company to that effect shall be conclusive evidence of service.

21. Winding Up

21.1 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 clause 6.3.

21.2 Distribution of Assets on 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 clause 6.3.

21.3 Other

- a. The identity of the institutions, funds or authorities referred to in clauses 21.1 and 21.2 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 clause must be made in accordance with those conditions.

22. Indemnity

22.1 Indemnity

- a. To the extent permitted by law every Officer (and former Officer) of the Company shall be indemnified out of the funds of the Company against all costs, expenses and liabilities incurred as such an Officer or employee (or former Officer or employee).
- b. However, no such Officer (or former Officer) shall be indemnified out of the funds of the Company under this clause unless:
 - (i) it is in respect of a liability to another person (other than the Company or a related Body Corporate to the Company) where the liability to the other person does not arise out of conduct involving a lack of good faith; or
 - (ii) it is in respect of a liability for costs and expenses incurred:
 - (A) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the Officer (or former Officer) or in which the Officer (or former Officer) is acquitted; or
 - (B) in connection with an application, in relation to such proceedings, in which the court grants relief to the Officer (or former Officer) under the Corporations Act.

22.2 Payment of Indemnity Policy Premium

- a. To the extent permitted by law the Company may at the discretion of the Board enter into and/or pay a premium in respect of a policy of insurance insuring an Officer (or former Officer) of the Company against any liability incurred by such person in that capacity (whether in respect of acts or omissions prior to or after the date of the issue of the policy or both) except for:
 - (i) a liability arising out of conduct involving a wilful breach of duty in relation to the Company; or
 - (ii) a liability arising out of conduct that contravenes the governance standards in sections 45.5 to 45.25 of the ACNC Regulation.
- b. The Board shall have the discretion to approve the terms and conditions of any such policy of insurance.
- c. Where an Officer (or former Officer) has the benefit of an indemnity pursuant to an insurance policy in respect of his or her actions or omissions then the Company shall not be required to indemnify the Officer under clause 22 except to the extent that the indemnity affected by the insurance policy does not fully cover the person's liability.

22.3 Indemnity to Continue

The indemnity granted by the Company contained in clauses 22 and 22.2 shall continue in full force and effect notwithstanding the deletion or modification of that clause, in respect of acts and omissions occurring prior to the date of the deletion or modification.

Annexure A Form of Appointment of Proxy

Activ Foundation Limited
(incorporated under the *Corporations Act 2001*)

PROXY FORM

1. Your details:

(Please print your name and address)

Name of Member/Representative: _____

ACN/ABN (if applicable): _____

Address: _____

City: _____

State: _____

Postcode: _____

Telephone: _____

2. Appoints

Name: _____

(Please print name of proxy)

or failing the person so named, or if no person is named, the **Chairperson of the Meeting** to vote in accordance with the following directions or, if no directions have been given, as the proxy or the Chairperson sees fit at the (Annual) General Meeting of Activ Foundation Limited to be held on *[insert date]* commencing at *[insert time]* and at any adjournment thereof.

3. Directions

4. Signature

5. Date