



## **Valais Blacknose Australia Ltd**

ACN 680 910 356

### **Constitution**

endorsed by Members on 23 September 2024

## NOTE

This document is the Constitution for a public company limited by guarantee and incorporated under the Corporations Act 2001 (Cth) and contains a number of provisions which set out how the company is to be managed.

The provisions incorporate or amend the forty-one replaceable rules described in the Corporations Act 2001 (Cth) and have additional rules to assist Members and Directors of the company to manage the affairs of their company efficiently.

Directors and Members should see the provisions contained in this Constitution as merely a guide to how they must conduct the affairs of their company. Where there is any doubt as to the management of the company, the powers of Directors or Members to make a decision or take a particular act, reference should be made to the Corporations Act 2001 (Cth) and advice sought from the company's professional advisers.

© BJT Legal Pty Ltd 2024

## Contents

1.	Definitions and interpretation.....	4
2.	Object.....	6
3.	Powers .....	6
4.	No profits for Members.....	6
5.	Membership .....	6
6.	Removal and cessation of membership .....	9
7.	Dispute resolution .....	10
8.	General Meetings.....	12
9.	Proceedings at General Meetings .....	13
10.	Voting at General Meetings.....	15
11.	Proxies and representatives.....	17
12.	Directors.....	18
13.	Powers of the Board.....	21
14.	Board meetings .....	21
15.	Duties of Directors.....	23
16.	Committees .....	24
17.	Appointment of chairperson and deputy chairperson .....	25
18.	Secretary and Public Officer.....	25
19.	Operations manager.....	25
20.	Indemnity and insurance .....	25
21.	Execution of documents .....	26
22.	Winding up .....	27
23.	Accounts and records.....	27
24.	Notices .....	28
25.	Amendment to Constitution .....	29

**Constitution of**  
**VALAIS BLACKNOSE AUSTRALIA LTD**

**1. Definitions and interpretation**

**1.1. Definitions**

In this Constitution, unless the context requires otherwise:

- (a) **ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012 (Cth)* as amended from time to time
- (b) **Act** means the *Corporations Act 2001 (Cth)* and any statutory modification, amendment or re-enactment thereof from time to time in force, and a reference to any section shall mean a section of the Act;
- (c) **AGM** has the same meaning as the term 'AGM' in the Act;
- (d) **ASIC** means the Australian Securities and Investments Commission;
- (e) **Associate Members** means Members that are not a Breeder Members;
- (f) **Board** means all of the Directors for the time being acting as a board;
- (g) **Breeder Member** means a Member who qualifies as a Breeder Member pursuant to clause 5.5(a);
- (h) **Business Day** means any day which is not a Saturday, Sunday or Public Holiday in Melbourne, Victoria;
- (i) **By-law** means a by-law made by the Board in accordance with clause 13.4;
- (j) **Company** means the Valais Blacknose Australia Ltd being an Australian public company limited by guarantee established under the Act which bears the ACN 680 910 356.
- (k) **Constitution** means this constitution as amended from time to time;
- (l) **Director** means an individual holding office as a director of the Company and a reference to **Directors** means some or all of the Directors acting as the Board;
- (m) **General Meeting** means a meeting of the Members of the Company and includes an AGM;
- (n) **Guarantee Amount** means the sum of \$20.00;
- (o) **Member** means any person whose name is, for the time, being recorded in the Register of the Company as a member and includes Breeder Members and Associate Members;
- (p) **Object** means the object of the Company as set out in clause 2;
- (q) **Office or Registered Office** means the registered office for the time being of the Company;
- (r) **Register** means the register of Members, Directors and other information required by the Act;

- (s) **Replaceable Rules** mean the replaceable rules applicable to a public company limited by guarantee set out in the Act.
- (t) **Secretary** means an individual appointed as secretary of the Company in accordance with clause 18.1;
- (u) **section** means a section of the Act;
- (v) **Sheep** means a pedigree Valais Blacknose sheep as defined by the VBA Regulations;
- (w) **Special Resolution** has the meaning assigned to it by Section 9 of the Act;
- (x) **VBA Regulations** means the Valais Blacknose Australia Regulations which contain the breed standards set down by the Board for the breeding, grading and registration of Sheep (as amended from time to time);
- (y) **Written** or **In writing** includes printing and lithography and other modes of reproducing or representing words in a visible form, and shall include electronic means provided the same can be recorded in a permanent form.

## 1.2. Interpretation

In this Constitution unless a different intention appears:

- (a) the singular includes the plural and vice versa;
- (b) words importing any include all other genders;
- (c) a reference to a person includes a natural person, corporation or other body corporate;
- (d) a reference to a law includes regulations and instruments made under the law;
- (e) a reference to a law or a provision of a law includes any amendments, re-enactments or replacements of that law or the provision, whether by the State or the Commonwealth of Australia or otherwise
- (f) a reference to a clause is a reference to a clause in this Constitution;
- (g) words and expressions in this Constitution that deal with a matter dealt with by a particular provision of the Act have the same meaning as they have in the Act;
- (h) a reference to a meeting includes a meeting by technology where all attendees have reasonable opportunity to participate;
- (i) a reference to a person being present in person includes an individual participating in a meeting as described in clause (h);
- (j) a reference to a person being present includes an individual participating in a meeting in person or through a proxy or attorney;
- (k) any heading in this Constitution is for convenience only and will not affect the interpretation or construction of this Constitution;
- (l) the number of Members and Directors in the Company shall be not less than and not more than the number allowed by the Act; and
- (m) a reference to dollars or \$ means Australian dollars.

### 1.3. **Replaceable Rules**

Each of the Replaceable Rules (save for Replaceable Rules which mandatorily apply to a public company) contained in the Act are displaced and do not apply to the Company.

## 2. **Object**

The Company has the following objects:

- 2.1. To promote the Valais Blacknose sheep breed in Australia by setting standards for breeding and maintaining a DNA verified breed registry.

## 3. **Powers**

The Company has the legal capacity and powers of an individual and also has all the powers of a body corporate under the Act.

## 4. **No profits for Members**

### 4.1. **Application of income or property**

- (a) The assets and income of the Company, however derived must be applied solely in furtherance of the Object.
- (b) No portion of the Company's assets or income can be distributed directly or indirectly to the Members, except as permitted by clause 4.2.

### 4.2. **Payment in good faith**

- (a) Nothing in clause 4.1 prevents the payment, directly or indirectly, in good faith to a Member:
  - (i) of reasonable remuneration for services to the Company;
  - (ii) for goods supplied in the ordinary course of business to the Company;
  - (iii) of reasonable and proper interest on money borrowed from any Member at a rate not exceeding that fixed for this purpose by the Company in a General Meeting;
  - (iv) reasonable and proper rent for premises let by a Member; or
  - (v) in furtherance of the Object.
- (b) Nothing in this clause 4 prevents the distribution of government grant monies to Members where the grant is expressly on the basis that the monies be used for the benefit of persons including Members.
- (c) Nothing in this clause 4 prevents the Company from providing services or information to the Members on terms which are different from the terms on which services or information are provided to person who are not Members.

## 5. **Membership**

### 5.1. **Members**

The Members of the Company are any person that the Board admits to membership in accordance with this Constitution.

## 5.2. **Membership classes**

- (a) The membership of the Company will be divided into the following classes of membership:
  - (i) Breeder Members; and
  - (ii) Associate Members.
- (b) Breeder Members:
  - (i) have the right to be nominated to the Board;
  - (ii) have the right to nominate an eligible Member to the Board; and
  - (iii) have the right to vote at Members meetings.
- (c) Associate Members:
  - (i) have the right to nominate an eligible Member to the Board;
  - (ii) cannot be nominated to the Board; and
  - (iii) do not have the right to vote at Members meetings.

## 5.3. **Admission of Members**

- (a) The Board may admit any person as a Member if the person is eligible under clause 5.5 and makes an application in accordance with clause 5.6.
- (b) An applicant will become a Member when they are entered on the Register of Members.

## 5.4. **Register of Members**

- (a) The Company must establish and maintain a Register of Members. The Register must be kept by the Secretary and must contain:
  - (i) for each current Member:
    - (1) full name (including the ACN/ABN if applicable);
    - (2) address;
    - (3) any alternative address nominated by the Member for the service of notice;
    - (4) class of membership; and
    - (5) date the Member was entered on to the Register.
  - (ii) for each person who stopped being a Member in the last seven (7) years:
    - (1) full name (including the ACN/ABN if applicable);
    - (2) address;
    - (3) any alternative address nominated by the Member for the service of notice;

- (4) the class of membership they held; and
  - (5) date the membership started and ended.
- (b) The Company must provide access to the Register in accordance with the Act.

#### 5.5. **Membership criteria**

- (a) To be eligible to be a Breeder Member, a person must:
- (i) be an individual that is at least 16 years of age (and where the individual is less than 18 years of age – they must have signed consent from a legal guardian);
  - (ii) have at least one (1) Sheep that is a registered ewe or ram and is actively breeding (as defined by the VBA Regulations);
  - (iii) be nominated by an existing Member;
  - (iv) specifically request membership as a Breeder Member;
  - (v) consent in writing to become a Member; and
  - (vi) agree to be bound by this Constitution, including paying the Guarantee Amount if required.
- (b) To be eligible to be an Associate Member, a person must:
- (i) be an individual that is at least 16 years of age (and where the individual is less than 18 years of age – they must have signed consent from a legal guardian);
  - (ii) consent in writing to become a Member; and
  - (iii) agree to be bound by this Constitution, including paying the Guarantee Amount if required.

#### 5.6. **Membership process**

- (a) The application for membership must be made:
- (i) in writing, signed by the applicant;
  - (ii) provide the details of the Member(s) nominating the applicant; and
  - (iii) in such form as the Board may from time to time prescribe.
- (b) Each application for membership must be considered by the Board within a reasonable time after the application is made.
- (c) When an application has been accepted or rejected for membership, the Secretary must notify the applicant of the decision of the Board within a reasonable period.
- (d) The Board have the discretion to refuse any person admission as a Member without giving any reason for refusing.
- (e) If the Board accept an application for membership, as soon as practicable, the Board must cause a tax invoice for the membership fee (if any) to be issued to the applicant.
- (f) Only once the membership fee (if any) is paid, will the Board enter the name of the

person in the Register as a Member.

#### 5.7. **Membership fees**

The Members must pay such membership fees (if any) as prescribed by the Board from time to time as they relate to each membership class.

### 6. **Removal and cessation of membership**

#### 6.1. **Cessation of membership**

A Member ceases to be a Member on:

- (a) resignation by written notice to the Company with immediate effect or with effect from a specified date;
- (b) death;
- (c) becoming of unsound mind or a person whose person or estate is liable to be dealt with in any way under a law related to mental health;
- (d) becoming bankrupt or insolvent or making an arrangement or composition with creditors of a person's joint or separate estate generally; or
- (e) the dissolution or deregistration of the company (for an incorporated Member);
- (f) failing to pay any fee that may be prescribed by the Board from time to time within three (3) months after the fee was due and payable;
- (g) failing to respond within three (3) months to a written request from the Secretary that they confirm in writing that they want to remain a Member;
- (h) the passing of a resolution by the Board or Members in General Meeting pursuant to clause 6.2; or
- (i) failing to meet the eligibility criteria of a Breeder Member (if they are a Breeder Member) as set out in clause 5.5(a).

#### 6.2. **Termination of membership**

- (a) Subject to this Constitution, the Board may at any time resolve to terminate the membership of a Member if the Member:
  - (i) refuses or neglects to comply with this Constitution, the VBA Regulations (as applicable) or any applicable By-laws;
  - (ii) engages or is suspected on reasonable grounds of engaging in conduct which in the opinion of the Board is unbecoming of the Member or prejudicial to the interests of the Company or is otherwise in breach of any Member code of conduct in place from time to time; or
  - (iii) fails to pay any debt due to the Company within a period of three (3) months after the date for payment (not including a fee referred to in clause 6.1(f)).
- (b) For a decision of the Board under clause (a) to be effective, at least 14 days before the Board Meeting at which the resolution will be considered, the Company must notify the Member in writing:
  - (i) that a resolution is being considered by the Board to terminate the

Member;

- (ii) that this resolution will be considered at a Board Meeting and the date of that meeting;
  - (iii) what the Member is said to have done or not done;
  - (iv) the nature of the resolution that has been proposed; and
  - (v) that the Member may provide an explanation to the Board, and details of how to do so.
- (c) Before a resolution is passed pursuant to clause (a), the Member must be given a chance to explain or defend themselves by:
- (i) sending the Board a written explanation before that meeting; and or
  - (ii) speaking at the meeting.
- (d) After considering any explanation under clause (c), the Board may:
- (i) take no further action;
  - (ii) warn the Member;
  - (iii) suspend the Member's rights as a Member for a period of no more than 12 months;
  - (iv) terminate the Member's membership;
  - (v) refer the decision to an unbiased, independent person on conditions that the Board consider appropriate (however the person can only make a decision that the Board could have made under this clause); or
  - (vi) require the matter to be determined by the Members in General Meeting.
- (e) The Board cannot fine a Member.
- (f) The Secretary must give written notice to the Member of the decision under clause (d) as soon as possible.

### 6.3. **Limited liability**

The Members have no liability as Members except as set out in clause 22.1.

## 7. **Dispute resolution**

7.1. The dispute resolution procedure in this clause applies to disputes, grievances or other disagreements, whether arising out of the application of this Constitution or otherwise between a Member and:

- (a) one or more Members;
- (b) one or more Directors; or
- (c) the Company,

**(Dispute).**

7.2. Where there is a Dispute, the following must occur:

- (a) Either party to the Dispute must, prior to the commencement of any proceedings in a Court or Tribunal or before any authority or board, notify the other in writing of the nature of the Dispute.
- (b) A Member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 6.2 until the disciplinary procedure is completed.
- (c) Those involved in the Dispute must use their best endeavours to try to resolve it between themselves within 14 days of service of the notice of the Dispute (**Initial Period**).
- (d) If those involved in the Dispute are unable to resolve it within the Initial Period, they must refer the Dispute to a mediator agreed by the parties for mediation.
- (e) If the parties are unable to agree on a mediator within 10 days of the Initial Period expiring:
  - (i) for Disputes between Members, the Chairperson will appoint a mediator; and
  - (ii) for all other Disputes, a person appointed by the President of the Law Institute of Victoria to be mediator.
- (f) The parties to the Dispute must attempt in good faith to settle the Dispute by mediation.
- (g) The costs of the mediation must be shared equally between the parties to the Dispute.
- (h) When conducting the mediation, the mediator must:
  - (i) allow those involved a reasonable chance to be heard;
  - (ii) allow those involved a reasonable chance to review any written statements;
  - (iii) ensure that those involved are given natural justice; and
  - (iv) not make a decision on the Dispute.
- (i) Where:
  - (i) the mediation has not occurred within six (6) weeks of the Initial Period expiring (or such longer period as agreed between the parties to the dispute); or
  - (ii) the mediation fails to resolve the dispute,

then either party will be entitled to commence any proceedings in a Court or Tribunal or before any authority or board in respect of the Dispute.

7.3. The procedure in clause 7.2 will not apply in respect of proceedings for urgent or interlocutory relief.

## **8. General Meetings**

### **8.1. Sole Member**

If the Company has only one Breeder Member:

- (a) The provisions of clause 8, 9 and 10 do not apply; and
- (b) The Company may pass a resolution by the Breeder Member recording it and signing the record.

### **8.2. Annual General Meetings**

- (a) AGMs are to be held in accordance with the Act.
- (b) Even if these items are not set out in the notice of AGM, the business of an AGM may include:
  - (i) a review of the Company's activities;
  - (ii) a review of the Company's finances;
  - (iii) any auditor's report;
  - (iv) election of Directors; and
  - (v) the appointment of auditors, if any.

### **8.3. Calling General Meetings**

- (a) A General Meeting may only be called:
  - (i) by a resolution of the Board; or
  - (ii) in accordance with a Member's requisition under the Corporations Act; or
  - (iii) as otherwise provided in the Corporations Act.

### **8.4. Notice of General Meeting**

- (a) A notice of a General Meeting must be given in accordance with the Act and served in accordance with clause 24.
- (b) Without limiting clause (a), notice of a General Meeting must:
  - (i) be provided in writing at least 21 days before the meeting; and
  - (ii) specify the place, date and time of meeting and if the meeting is to be held in two (2) or more places, the technology that will be used to facilitate the meeting, the general nature of the business to be transacted and any other matters as are required by the Act.
- (c) In computing the period of notice, both the day on which the notice is given or taken to be given and the day of the meeting convened by it are to be disregarded.

### **8.5. Persons entitled to notice of meeting**

- (a) Notice of General Meeting must be given to every Member, every Director and the

auditor for the time being of the Company, if any.

- (b) The accidental omission to give notice of any General Meeting to, or the non-receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the General Meeting.

#### **8.6. Cancellation or postponement of General Meetings**

- (a) The Directors may by notice whenever they think fit, cancel or postpone a General Meeting that was convened by the Board.
- (b) Clause 8.6(a) does not apply to a meeting convened in accordance with the Act by the Board on the request of Members or to a meeting convened by a Court.
- (c) Notice of cancellation, postponement or change of place of General Meeting must state the reason for cancellation or postponement and be given:
  - (i) to each Member individually; and
  - (ii) to each other person entitled to be given notice of a General Meeting under the Act.
- (d) A notice of postponement of a General Meeting must specify:
  - (i) the postponed date and time for the holding of the meeting;
  - (ii) a place for the holding of the meeting which may be either the same as or different from the place specified in the notice convening the meeting; and
  - (iii) if the meeting is to be held in two (2) or more places, the technology that will be used to facilitate the holding of the meeting in that manner.
- (e) The number of clear days from the giving of a notice postponing the holding of a General Meeting to the date specified in that notice for the holding of the postponed meeting must not be less than the number of clear days' notice of the General Meeting required to be given under the Act.
- (f) The only business that may be transacted at a General Meeting the holding of which is postponed is the business specified in the original notice convening the meeting.
- (g) Whereby the terms of an instrument appointing a proxy:
  - (i) the proxy is authorised to attend and vote at one (1) or more General Meetings to be held on or before a specified date; and
  - (ii) the date for holding the meeting is postponed to a date later than the date specified in the instrument of proxy;

then, by operation of this clause (g), that later date is substituted for and applies to the exclusion of the date specified in the instrument of proxy, unless the Member appointing the proxy gives to the Company at its registered office notice in writing to the contrary not less than 48 hours before the time to which the holding of the meeting has been postponed.

## **9. Proceedings at General Meetings**

### **9.1. Quorum at general meetings**

- (a) For a General Meeting to be held, a quorum must be present for the whole meeting. A quorum is at least seven (7) Breeder Members (but if there are less

than seven (7) Breeder Members then all of them must be present for the whole meeting).

- (b) In determining whether a quorum is present, each individual attending as a proxy appointed pursuant to this Constitution is to be counted, except that:
  - (i) where a Member has appointed more than one proxy, only one is to be counted; and
  - (ii) where a Member is attending holding more than one proxy, that Member is to be counted only once.
- (c) An item of business may not be transacted at a General Meeting unless a quorum is present.
- (d) If a quorum is not present within 30 minutes after the time appointed for the meeting or a longer period allowed by the chairperson:
  - (i) if the meeting was convened by or on the requisition of Members, it must be dissolved; or
  - (ii) otherwise, it must stand adjourned to the same day in the next week at the same time and place or to another day and at another place determined by the Board.
- (e) If a meeting has been adjourned to another time and place determined by the Board, not less than seven (7) days' notice of the adjourned meeting must be given in the same manner as in the case of the original meeting.
- (f) At the adjourned meeting a quorum is: two (2) Breeder Members present (or one Breeder Member if there are less than two (2) Breeder Members in total) but if a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

## 9.2. **Appointment of chairperson**

- (a) If the Board has elected one of their number as chairperson of their meetings (in accordance with clause 14.5), that person is entitled to preside as chairperson at every General Meeting.
- (b) If a General Meeting is held and:
  - (i) a chairperson has not been elected by the Board; or
  - (ii) the elected chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or they are unable or unwilling to act;

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

- (iii) the deputy chairperson if a Director has been so elected by the Board under clause 17; or
- (iv) a Director or Breeder Member elected by the Members present in person to preside as chairperson of the meeting.

### 9.3. **Conduct of General Meetings**

- (a) The chairperson of a General Meeting:
  - (i) has charge of the general conduct of the meeting and of the procedures to be adopted at the meeting;
  - (ii) may require the adoption of any procedure which is, in the chairperson's opinion, necessary or desirable for property and orderly debate or discussion and the proper and orderly casting or recording of votes at the General Meeting; and
  - (iii) may, having regard where necessary to the Act, terminate discussion or debate on any matter where the chairperson considers it necessary or desirable for the proper conduct at the meeting.
- (b) The chairperson, in their discretion may expel any Member or Director from a General Meeting if the chairperson reasonably considers that the Member or Director's conduct is inappropriate behaviour which conduct may include:
  - (i) the use of offensive or abusive language which is directed to any person, object or thing;
  - (ii) attendance at the meeting while under the influence of any kind of drug including but not limited to any alcoholic substance;
  - (iii) the use or consumption of any drug by a person at the meeting;
- (c) A decision by the chairperson under this clause 9.3 is final.

### 9.4. **Adjournment of General Meeting**

- (a) The chairperson of a General Meeting may, at any time during the meeting, adjourn the meeting or any business, motion, question, resolution, debate or discussion being considered or remaining to be considered by the meeting either to a later time at the same meeting or to an adjourned meeting at any time and any place but:
  - (i) in exercising the discretion to do so, the chairperson may, but need not, seek the approval of the Members present; and
  - (ii) only unfinished business is to be transacted at a meeting resumed after an adjournment took place.
- (b) Unless required by the chairperson, a vote may not be taken or demanded by the Members present in person or by proxy in respect of any adjournment.
- (c) When a meeting is adjourned for one (1) month or more, notice of the adjourned meeting must be given as in the case of an original General Meeting.
- (d) Except when a meeting is adjourned for one (1) month or more, it is not necessary to give a notice of an adjournment or of the business to be transacted at an adjourned meeting.

## 10. **Voting at General Meetings**

### 10.1. **Questions decided by majority**

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

## 10.2. **Equality of votes**

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

## 10.3. **Voting on show of hands**

- (a) At a General Meeting a resolution put to the vote of the meeting must be declared on a show of hands unless a poll is demanded (in accordance with clause 10.4):
  - (i) before that vote is taken; or
  - (ii) before the result is declared; or
  - (iii) immediately after the result is declared.
- (b) A declaration by the chairperson that a resolution has on a show of hands been carried or carried unanimously, or by a particular majority, or lost is conclusive evidence of the fact.
- (c) Neither the chairperson nor the minutes of the proceedings need state and it is not necessary to prove the number or proportion of the votes recorded in favour of or against the resolution.

## 10.4. **Demand for a poll**

- (a) A poll may be demanded by either:
  - (i) the chairperson; or
  - (ii) at least three (3) Members entitled to vote on the resolution if there are more than three (3) Members; or
  - (iii) one Member if there are less than three (3) Members entitled to vote.
- (b) The demand for a poll may be withdrawn.
- (c) The demand for a poll does not prevent the continuance of a meeting for the transaction of business other than the question on which a poll is demanded.
- (d) If a poll is duly demanded:
  - (i) it must be taken in the matter and at the date and time directed by the chairperson and the result of the poll is the resolution of the meeting at which the poll was demanded; and
  - (ii) on the election of a chairperson or on a question of adjournment, it must be taken immediately.

## 10.5. **Voting rights**

- (a) Every Breeder Member has one (1) vote.
- (b) Subject to this Constitution:
  - (i) on a show of hands each Breeder Member present in person has one vote; and
  - (ii) on a poll, each Breeder Member present in person has one vote.

- (c) Associate Members do not have a right to vote.

#### 10.6. **Objections to voter qualification**

- (a) No objection may be raised to the qualification of a voter except at the meeting or adjourned meeting at which the vote objected to is given or tendered.
- (b) An objection to the qualification of a voter must be referred to the chairperson, whose decision is final.
- (c) A vote not disallowed according to an objection as provided in this document is valid for all purposes.

#### 10.7. **Resolution of Members in writing**

- (a) Subject to the provisions of the Act and this Constitution, the Board may put a question or resolution to the vote of all Members entitled to vote at a General Meeting being held by means of a postal ballot or electronic ballot.
- (b) A resolution is passed if a majority of Members entitled to vote on the resolution sign or agree to the resolution by either:
  - (i) signing or completing a document (or copy of a document) that sets out the resolution and contains a statement that they agree to the resolution;
  - (ii) by replying to an email sent by the Company to Members including the text of the resolution in their reply; or
  - (iii) by completing a ballot in such form (whether physical or electronic) and returnable in the manner set down by the Board from time to time,and it is effective on the date that the last Member signs or agrees.
- (c) A resolution approved by the Members voting in accordance with this clause 10.7 will have the same force and effect of such a resolution would have if carried at a duly constituted General Meeting competent to pass such a resolution.

#### 10.8. **Best interests of the Company**

A Member must act and make decisions in the best interest of the Company and not in the interests of any other person or party.

### 11. **Proxies and representatives**

#### 11.1. **Representatives**

- (a) An incorporated Member (including a Member that is a partnership) may appoint as a representative:
  - (i) one of its directors (or partners, as applicable) to represent the Member at meetings and to sign any resolution under clause 10.7; and
  - (ii) the same individual or another director of that incorporated entity for the purpose of being appointed or elected as a Director.
- (b) The appointment of a representative by a Member must:
  - (i) be in writing;
  - (ii) include the name of the representative;

- (iii) be signed on behalf of the Member; and
  - (iv) be given to the Company or, for representation at a meeting, be given to the chairperson before the meeting starts.
- (c) A representative has all the rights of a Member relevant to the purposes of the appointment as a representative.
- (d) The appointment may be standing (ongoing).

#### 11.2. **Appointment of proxy**

- (a) Subject to the Act, a Member entitled to attend a General Meeting is entitled to appoint the chairperson or any other Member as the Member's proxy.
- (b) The proxy has the same right as the Member to speak and vote at the meeting and may be appointed in respect of more than one meeting.
- (c) The instrument appointing the proxy:
- (i) must be signed by the Member (or their attorney duly authorised in writing) appointing the proxy and be in the form approved by the Board from time to time or in the absence of any form, as required by the Act;
  - (ii) must be received by the Company (along with a certified copy of the power or attorney or other authority, if any, under which it is signed) no less than 48 hours before the time for holding the meeting or adjourned meeting or, in the case of a poll, not less than 24 hours before the time appointed for taking of the poll – documents received after this time will not be treated as valid;
  - (iii) will be deemed to confer authority to demand or join in demanding a poll;
  - (iv) may instruct their proxy to vote in favour of or against a particular resolution, and in that case, the proxy is not entitled to vote on the resolution except as specified in that instrument.
- (d) A proxy appointment may be standing (ongoing).
- (e) A proxy does not have authority to speak and vote for a Member at a meeting while the Member is at the meeting.

#### 11.3. **Revocation of appointment of proxy**

- (a) Unless the Company has received written notice of the matter before the start or resumption of the meeting at which a person votes as proxy or attorney, a vote cast by that person is valid even if, before the person votes:
- (i) the appointing Member dies;
  - (ii) the Member revokes the appointment or authority; or
  - (iii) the Member is mentally incapacitated.

## 12. **Directors**

### 12.1. **Number of Directors**

Subject to the Act, the Company must have at least three (3) and no more than nine (9) Directors.

## 12.2. Election of Directors

- (a) The Directors of the Company are:
  - (i) the initial Directors being those persons who have agreed to act as directors and who are named as proposed Directors in the application for registration of the Company; and
  - (ii) such other persons appointed in accordance with this Constitution.
- (b) The Breeder Members may, elect an individual to be a Director at a General Meeting at which:
  - (i) a Director retires or otherwise vacates office; or
  - (ii) a Director vacancy exists.

## 12.3. Qualification

- (a) To be eligible for the office of Director a person must:
  - (i) be a Breeder Member (or a nominated representative of an incorporated Breeder Member pursuant to clause 11.1);
  - (ii) be nominated by the Members;
  - (iii) consent in writing to act as a Director; and
  - (iv) are not ineligible to be a Director under the Act.
- (b) In the event that it is required under a law, regulation or guideline applicable to the Company, the Company must ensure that a majority of the Directors are persons who have the requisite level or degree of responsibility to the general public.

## 12.4. Tenure of Directors

- (a) Subject to clause 12.5, Directors are elected for a term of three (3) years. A retiring Director holds office until the conclusion of the meeting at which that Director retires.
- (b) At each AGM, at least one third of Directors must retire from office, but subject to clause 12.5 will be eligible for reappointment. The Directors to retire under this clause are those who:
  - (i) wish to retire and not offer themselves for re-election;
  - (ii) are required to retire based on the expiry of their term; and
  - (iii) so far as is necessary to obtain the number required, those who have been longest in office since their last election or appointment (as between Directors who were last elected or appointed on the same day, those to retire must, unless they can agree among themselves, be decided by vote of the Board having regard to the composition of the Board at the time).
- (c) The Members may by ordinary resolution increase or decrease the period of time for which a Director holds office under clause (a).
- (d) The Members may by special resolution remove any Director before the expiration of that Director's period of office and may by an ordinary resolution appoint another person in the place of that Director.

#### 12.5. **Eligibility for re-election**

Directors are entitled to seek reappointment as Directors provided that a Director's period of continuous service to the Company does not exceed a period of nine (9) years unless the Board by special resolution (excluding the retiring Director) elect to waive this requirement for a particular Director on a year-by-year basis following the expiry of nine (9) years in office.

#### 12.6. **Resignation**

A Director may resign from office by giving notice in writing to the Company of that Director's intention to resign. A notice of resignation takes effect at the time which is the later of:

- (a) the time of giving the notice to the Company; and
- (b) the expiration of the period, if any, specified in the notice.

#### 12.7. **Casual vacancies**

- (a) The Board (or a sole surviving Director) may at any time appoint a person meeting the requirements of clause 12.3 (except the requirements of clause 12.3(a)(ii)) to be a Director, either to fill a casual vacancy or as an addition to the existing Directors, provided that the total number of Directors does not exceed the maximum number set down in clause 12.1.
- (b) A Director appointed under clause 12.7(a) only holds office until the next AGM and is then, subject to this Constitution, eligible for election at that meeting.

#### 12.8. **Remuneration of Directors**

The Directors must not be paid any fees (whether as remuneration or an honorarium, or by any other description) for their services as Directors.

#### 12.9. **Expenses of Directors**

- (a) A Director is entitled to be reimbursed by the Company for such reasonable travelling, accommodation and other out-of-pocket expenses as the Director may incur as a Director or when otherwise engaged on business of the Company.
- (b) Any payment to a Director must be approved by the Board.

#### 12.10. **Vacation of office**

In addition to the circumstances in which the office of a Director becomes vacant by virtue of the Act or another provision of this Constitution, the office of a Director becomes vacant if the Director:

- (a) resigns from the office by notice in writing to the Company;
- (b) ceases to be eligible under clause 12.3;
- (c) dies;
- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (e) is absent from three (3) successive meetings of the Board without leave of absence from the Board;
- (f) becomes insolvent or bankrupt, or assigns their estate for the benefit of their

creditors; or

- (g) becomes prohibited, disqualified or removed from being a Director by reason of an order of any court of competent jurisdiction or regulator.

### 13. **Powers of the Board**

13.1. The Board are to manage the business of the Company and may exercise all those powers of the Company that are not, by the Act or by this Constitution, required to be exercised by the Members in General Meeting.

13.2. Without limiting clause 13.1 and subject to any trusts relating to the assets of the Company, the Board may exercise all the powers of the Company to:

- (a) borrow or raise money;
- (b) charge any property or business of the Company; and
- (c) give any security for a debt, liability or obligation of the Company or of any other person.

#### 13.3. **Delegation**

- (a) The Board may resolve to delegate any of their powers to:
  - (i) a committee in accordance with clause 16.1;
  - (ii) a Director;
  - (iii) an employee of the Company; or
  - (iv) any other person.
- (b) The power may be delegated for such time as determined by the Board and the Board may at any time revoke or vary the delegation.
- (c) The delegate must exercise the powers delegated in accordance with any directions of the Board, and the exercise of the power by the delegate is as effective as if the Board had exercised it.
- (d) The Board may continue to exercise any power they have delegated.

#### 13.4. **By-laws**

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

### 14. **Board meetings**

#### 14.1. **Convening of Board meetings**

- (a) The Board may meet together for conducting business, adjourn and otherwise regulate their meetings as they think fit.
- (b) A Director may at any time, and a Secretary must on the written request of a Director, convene a meeting of the Board.

#### 14.2. **Notice of Board meetings**

- (a) Notice of each Board meeting must be given to each Director at least 24 hours before the meeting or at another time determined by resolution of the Board.
- (b) Despite clause 14.2(a), all Directors may waive in writing the required period of notice for a particular meeting, and it is not necessary to give notice of a Board meeting to a Director who is out of Australia or who has given leave of absence.

#### 14.3. **Quorum at Board meetings**

- (a) At a Board meeting, the number of Directors whose presence is necessary to constitute a quorum is as determined by the Board, and, unless so determined, is a majority of Directors holding office.
- (b) The Board may act despite a vacancy in their number. If their number is reduced below the minimum set by clause 12.1, the Board may, except in an emergency, act only for the purpose of filling vacancies to the extent necessary to bring their number up to that minimum or to convene a General Meeting.
- (c) Decisions made at a Board meeting at which a quorum was not present may be ratified at a subsequent Board meeting at which a quorum is present.

#### 14.4. **Voting at Board meetings**

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

#### 14.5. **Chairperson not present**

If a Board meeting is held and:

- (a) a chairperson has not been elected pursuant to clause 17, or
- (b) the chairperson is not present within 15 minutes after the time appointed for holding the meeting or is unable or unwilling to act,

then the deputy chairperson, if elected, must be the chairperson of the meeting or, if the deputy chairperson is not present, the Board present must elect one of the Directors present to chair the meeting.

#### 14.6. **No casting vote**

In the case of an equality of votes at a Board meeting, the chairperson of the Board meeting is not entitled to a second or casting vote.

#### 14.7. **Validity of acts of Board**

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

- (a) there was a defect in the appointment or continuance of a person in office as a Director or of the person so acting; or
- (b) a person acting as a Director was disqualified or not entitled to vote.

#### 14.8. **Minutes**

- (a) The Board must cause minutes of all proceedings of General Meetings, Board meetings, and of committees formed by the Board to be entered, within one (1)

month after the relevant meeting is held, in books kept for the purpose.

- (b) The Board must cause all minutes, except resolutions in writing treated as determinations of the Board, to be signed by the chairperson of the meeting at which the proceedings took place or by the chairperson of the next succeeding meeting.

#### 14.9. Resolution in writing

- (a) The Board may pass a resolution without a Board meeting being held if at least 75% of the Directors entitled to vote on the resolution sign or agree to the resolution by either:
  - (i) signing or completing a document (or copy of a document) that sets out the resolution and contains a statement that they agree to the resolution; or
  - (ii) by replying to an email sent by the Company to Directors including the text of the resolution in their reply

and it is effective on the date that the last Director comprising at least 75% of the Board signs or agrees.

- (b) A resolution approved by the Directors voting in accordance with this clause 14.9, excluding Directors who have been given leave of absence, is to be treated as a determination of the Board passed at a meeting of the Board duly convened and held.

### 15. Duties of Directors

#### 15.1. Disclosure of conflict of interest

- (a) A Director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a Board meeting (or that is proposed in a circular resolution):
  - (i) to the Board; or
  - (ii) if all of the Directors have the same conflict of interest, to the Members at the next General Meeting, or at an earlier time if reasonable to do so.
- (b) The disclosure of conflict of interest by a Director must be recorded in the minutes of the meeting.

#### 15.2. Participation where Directors interested

- (a) Each Director who has a material personal interest in a matter that is being considered at a Board meeting (or that is proposed in a circular resolution) must not, except as provided under clause (b):
  - (i) be present at the meeting while the matter is being discussed; or
  - (ii) vote on the matter.
- (b) A Director with a material personal interest may still be present and may vote on a matter before the Board if and to the extent that they are permitted to do so under the Act:
  - (i) ASIC makes an order allowing the Director to vote on the matter; or
  - (ii) the Board who do not have a material person interest in the matter pass a

resolution that:

- (1) identifies the Director, the nature and extent of the Director's interest in the matter and how it relates to the affairs of the Company; and
  - (2) states that the Board are satisfied that the interest should not stop the Director from voting or being present.
- (c) If there are not enough Directors to form a quorum as a result of a Director having an interest which disqualifies them from voting, then one (1) or more of the Directors (including those who have the disqualifying interest in the matter) may call a General Meeting and the General Meeting may pass a resolution to deal with the matter.

### 15.3. Duties

- (a) Each Director must comply with their duties as Directors as they apply under the Act, and any other relevant legislation and common law.
- (b) Each Director must also comply with the duties described in governance standard 5 as set out in the regulations made under the ACNC Act.

## 16. Committees

### 16.1. Delegation of powers to committee

- (a) The Board may delegate any of their powers to committees consisting of Directors or other persons as they think fit to act in Australia or elsewhere.
- (b) The exercise of power by a committee in accordance with this Constitution is to be treated as the exercise of that power by the Board.
- (c) In the exercise of any powers delegated to it, a committee formed by the Board must exercise those powers in accordance with any directions of the Board.

### 16.2. Proceedings of committees

Except as provided in a direction of the Board, the meetings and proceedings of a committee formed by the Board must be governed by the provisions of this Constitution, in so far as they are applicable, as if meetings and proceedings of the committee are meetings and proceedings of the Board.

### 16.3. Chairperson of a committee

The members of a committee may elect one (1) of their number as chairperson of their meetings. If a meeting of a committee is held and:

- (a) a chairperson has not been elected; or
- (b) the chairperson is not present within 15 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act;

then the committee members involved may elect one (1) of their number to be chairperson of the meeting.

### 16.4. Determination of questions

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

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

## 17. **Appointment of chairperson and deputy chairperson**

The Board may elect from their number, a chairperson and a deputy chairperson of their meetings and may also determine the period for which the persons elected as chairperson and deputy chairperson are to hold office.

## 18. **Secretary and Public Officer**

### 18.1. **Appointment of Secretary**

- (a) The Company must have at least one (1) Secretary who may also be a Director.
- (b) A Secretary must be appointed by the Board (after giving the Company their signed consent to act as Secretary of the Company) and may be removed by the Board.
- (c) A Secretary holds office on the terms and conditions (including as to remuneration) and with the powers, duties and authorities, as determined by the Board. The exercise of those powers and authorities and the performance of those duties by a Secretary are subject at all times to the control of the Board.

### 18.2. **Public officer**

The Board must appoint a person as Public Officer of the Company in accordance with the *Income Tax Act Assessment Act 1936* (Cth).

## 19. **Operations manager**

### 19.1. **Appointment**

- (a) The Board may resolve to appoint an operations manager (or similar role) on such terms and conditions (including as to remuneration) as they think fit.
- (b) The Board may delegate any of their powers to the operations manager on the terms and subject to any restrictions they decide and so as to be concurrent with, or to the exclusion of, the powers of the Board. The Board may revoke the delegation of any power at any time.
- (c) The operation manager may be invited to attend all meetings of the Board, but may not hold the office of a director and is not entitled to vote.

### 19.2. **Operations manager as Secretary**

The Board may, but is not obliged to, appoint any operations manager as the Company's Secretary under clause 18.1.

## 20. **Indemnity and insurance**

### 20.1. **Indemnity**

- (a) The Company must indemnify any current or former Director, Secretary or executive officer of the Company out of the assets of the Company against:
  - (i) every liability incurred by that person in that capacity; and
  - (ii) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of

that capacity;

except to the extent that:

- (iii) the Company is forbidden by law (including the Act) to indemnify the person against the liability or legal costs;
  - (iv) an indemnity by the Company of the person against the liability or legal costs would, if given, be made void by any law; or
  - (v) the person is entitled to be, and is actually, indemnified by another person (including an insurer under any insurance policy).
- (b) The indemnity is a continuing obligation and is enforceable by a person even though that person is no longer a Director, Secretary or executive officer of the Company.

## 20.2. Insurance premiums

To the extent permitted by law (including the Act), and if the Board consider it appropriate, the Company may pay or agree to pay, whether directly or through an interposed entity, a premium for a contract insuring a person who is or has been a Director or Secretary or executive officer of the Company against liability arising out of conduct by the person in that capacity.

## 20.3. Contracts

The Company may enter into an agreement with a person referred to in clauses 20.1 and 20.2 with respect to the matters covered by these clauses. An agreement entered into in accordance with this clause 20 may include provisions relating to rights of access to the books of the Company conferred by the Act or otherwise by law.

# 21. Execution of documents

## 21.1. Common Seal

- (a) Unless the Board resolves otherwise, the Company will not have a seal.
- (b) If the Company has a common seal:
  - (i) the Board must provide for the safe custody of the seal; and
  - (ii) every document to which it is affixed must be signed by a Director and be countersigned by another Director, a Secretary or another person appointed by the Board to countersign the document or a class of documents in which that document is included;
  - (iii) it may be used only by the authority of the Board, or of a committee authorised by the Board to authorise the use of the seal.

## 21.2. Execution without a seal

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

- (a) two (2) Directors;
- (b) a Director and a Secretary; or
- (c) such other persons as the Board by resolution appoint from time to time.

### 21.3. **Signing**

Whereby a provision of this Constitution, a document including a notice is required to be signed, that requirement may be satisfied by:

- (a) signing a physical form of the document by hand;
- (b) in relation to an electronic communication of the document in any manner permitted by law or by any State or Commonwealth law relating to electronic transmissions; or
- (c) in any other manner approved by the Board.

### 21.4. **Execution under the Act**

This clause 21 enhances and does not limit the manner in which the Company may execute a document under the Act.

## 22. **Winding up**

### 22.1. **Guarantee by Members**

- (a) Each Member undertakes to contribute to the Company's property if the Company is wound up while they are a Member, or within one (1) year after they cease to be a Member.
- (b) The contribution is for:
  - (i) payment of the Company's debts and liabilities contracted before they ceased to be a Member;
  - (ii) the costs of winding up; and
  - (iii) adjustment of the rights of the contributories among themselves.
- (c) The amount is not to exceed the Guarantee Amount.

### 22.2. **Application of property**

- (a) If any property remains on the winding up or dissolution of the Company and after satisfaction of all its debts and liabilities, then that property will not be paid to or distributed among the Members, but must be transferred to one or more funds or institutions:
  - (i) that have charitable purposes similar to, or inclusive of, the Object; and
  - (ii) are not-for-profit entities whose governing documents prohibit the distribution to its income and property among its Members to an extent at least as great as imposed on the Company under this Constitution.
- (b) The funds or institutions will be determined by the Members at or before the time of dissolution of the Company and, in default of any determination, by the Supreme Court of Victoria.

## 23. **Accounts and records**

### 23.1. **Accounts**

- (a) The Directors must cause proper financial records to be kept.

- (b) The Directors must distribute to the Members copies of the annual accounts (which including the profit and loss account and balance sheet of the Company) accompanied by a copy of the report of the auditor or reviewer (as required) and report of Directors in accordance with the requirements of a relevant law, regulation or guideline.
- (c) A Director has a right of access to the financial records of the Company at all reasonable times.

#### 23.2. **Audit**

If required by a law, regulation or guideline applicable to the Company or otherwise considered by the Board to be appropriate, the Directors must cause the accounts of the Company to be audited or reviewed accordingly. A registered company auditor will then be appointed and may be changed by any method permitted by the Act.

#### 23.3. **Rights of inspection by Members**

- (a) Subject to the Act, the Board may determine whether and to what extent, and at what times and places and under what conditions, the financial records and other documents of the Company or any of them are open to the inspection of Members other than Directors.
- (b) A Member other than a Director does not have the right to inspect any document of the Company except as provided by law or authorised by the Board or by the Company in General Meeting.

### 24. **Notices**

#### 24.1. **Document includes notice**

In this clause 24, a reference to a document includes a notice.

#### 24.2. **Notice to the Company**

- (a) A Member may give a document to the Company by:
  - (i) delivering it to the Company's registered office;
  - (ii) posting it to the Company's registered office or other address chosen by the Company for documents to be provided;
  - (iii) sending it to an email address or other electronic address notified by the Company to the Members as the Company's email address or other electronic address.

#### 24.3. **Notice to Members**

- (a) The Company may give a document to a Member:
  - (i) personally;
  - (ii) by sending it by post to the address for the Member in the Register or an alternative address nominated by the Member; or
  - (iii) by sending it to an email address or other electronic address nominated by the Member.
- (b) If the Company does not have an address for a Member, the Company is not required to give notice in person.

- (c) A document given by the Company may be given on behalf of the Company by a solicitor, Director or Secretary of the Company.
- (d) The signature of a person on a document given by the Company may be written, printed or stamped.

#### 24.4. **When notice is given**

- (a) A document is to be taken as given, served and received at the following times:
  - (i) if delivered in writing to the street address of the addressee, at the time of delivery;
  - (ii) if sent to an address in Australia, (may be sent by ordinary post) is taken to have been received three (3) Business Days after the date of its posting;
  - (iii) if sent to an address outside Australia, (must be sent by airmail) is taken to have been received six (6) Business Days after the date of its posting;  
or
  - (iv) if sent by email, at the time determined by application of section 13 of the *Electronic Transactions (Victoria) Act 2000 (Vic)*.
- (b) A certificate in writing signed by a Director or a Secretary stating that a document was sent to a Member by post or electronic transmission on a particular date is prima facie evidence that the document was so sent on that date.

### 25. **Amendment to Constitution**

- 25.1. This Constitution can only be amended by Special Resolution of the Members.
- 25.2. The Members must not pass a Special Resolution that amends this Constitution if passing it causes the Company to no longer be a charity.
- 25.3. Any modification of this Constitution takes effect on the date the Special Resolution is passed or any later date specified, or provided for in the resolution.