

CONSTITUTION OF
GRAINS RESEARCH FOUNDATION LIMITED

History:

Adopted on: / /

Amended: / /

A COMPANY LIMITED BY GUARANTEE

CONSTITUTION

of

GRAINS RESEARCH FOUNDATION LIMITED

1. GENERAL

1.1 Name of Company

The name of the Company is Grains Research Foundation Limited.

1.2 Replaceable Rules

The Replaceable Rules do not apply to the Company.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In these rules unless it is inconsistent with the subject or context in which it is used:

‘**ASIC**’ means the Australian Securities and Investments Commission;

‘**Board**’ means the Directors for the time being of the Company;

‘**business day**’ means a day on which banks (as that term is defined in the *Banking Act 1959*) are open for business in Brisbane;

‘**Chairman**’ includes an acting Chairman under **rule 9.5**;

‘**Committee**’ means a committee to which powers have been delegated by the Board pursuant to **rule 15.7**;

‘**Company**’ means Grains Research Foundation Limited;

‘**Constitution**’ means the constitution of the Company, as amended from time to time;

‘**Grower**’ means a person who grows not less than 50 hectares for grain production per year;

‘**Grower Director**’ means a Director elected by the Members under **rule 11.2(a)**;

‘**Independent Director**’ means a Director appointed by the Grower Directors under **rule 11.2(b)**;

‘**Law**’ means the *Corporations Act 2001* and the *Corporations Regulations 2001* (as defined in the *Corporations Act 1989*);

‘**Director**’ means a person appointed or elected from time to time to the office of director of the Company in accordance with these rules and includes any alternate director duly appointed as a member of the Board;

‘**Member**’ means any person who becomes a member in accordance with the law and this Constitution being those classes of Members described in **rule 5**;

‘**Members present**’ means Members present at a general meeting of the Company in person or, if applicable, by duly appointed corporate representative, proxy or attorney;

‘**Office**’ means the registered office from time to time of the Company;

‘**person**’ and words importing persons include partnerships, associations and corporations unincorporated and incorporated by Ordinance, Act of Parliament or registration as well as individuals;

‘**Register**’ means the register of Members of the Company established pursuant to the Law;

‘**Registered address**’ means the address of a Member specified in the Register or any other address of which the Member notifies the Company as a place at which the Member will accept service of notices;

‘**Replaceable Rules**’ means all or any of the replaceable rules contained in the Law from time to time and includes any replaceable rule that was or may become, a provision of the Law;

‘**replacement entity**’ has the same meaning as replacement corporation under Part 7 of the *Primary Industries Legislation Amendment Act 2006*;

‘**rules**’ means the rules of this Constitution as altered or added to from time to time;

‘**Seal**’ means the common seal, if any, from time to time of the Company;

‘**Secretary**’ means a person appointed as secretary of the Company and includes any person appointed to perform the duties of secretary;

‘**securities**’ includes shares, rights to shares, options to acquire shares and other securities with rights of conversion to equity;

‘**writing**’ and ‘**written**’ includes printing, typing, lithography and other modes of reproducing words in a visible form.

2.2 Interpretation

- (a) Words and phrases which are given a special meaning by the Law have the same meaning in these rules, unless the contrary intention appears.
- (b) Words in the singular include the plural and vice versa.
- (c) Words importing a gender include each other gender.
- (d) A reference to the Law or any other statute or regulations is to be read as though the words ‘as modified or substituted from time to time’ were added to the reference.
- (e) The headings and sidenotes do not affect the construction of these rules.
- (f) An expression used in a particular Part, Division, Schedule or regulation of the Law that is given by that Part, Division, Schedule or regulation a special meaning for the purpose of that Part, Division Schedule or regulation has, in any of these rules that deals with a matter dealt with by that Part, Division, Schedule or regulation, unless the contrary intention appears, the same meaning as in that Part, Division, Schedule or regulation.

3. OBJECTS AND POWERS

3.1 Objects of Company

The Company is intended to be the replacement entity for the Grain Research Foundation, established under the *Grains Research Foundation Act 1976* (Queensland), and its objects are:

- (a) to conduct or encourage and assist in the conducting of scientific and economic research in connection with or that is likely to benefit the grain industries;
- (b) to train or encourage and assist in the training of persons for the purposes of the carrying out of research as referred to in paragraph (a);
- (c) to disseminate information and advice relating to technical matters in connection with the grain industries;

- (d) to publish technical reports, periodicals, books and papers in connection with the grain industries;
- (e) to conduct, according to law, public appeals for funds to assist it in the carrying out of its functions;
- (f) to make donations or gifts or allocate funds to other bodies or persons for the purpose of furthering research with respect to the grain industries; and
- (g) to do and perform such incidental or consequential acts and things as may be necessary or expedient for the promotion of research in the grain industries or otherwise for the performance of its functions.

3.2 Powers of the Company

In carrying out its objects, the Company may, without limiting its powers under the Law:

- (a) enter into contracts;
- (b) acquire, hold, dispose of and deal with property;
- (c) appoint and act through agents or attorneys; and
- (d) do anything else necessary or convenient to be done for the performance of its objects or functions.

3.3 No power to issue shares

The Company has no power to issue nor allot fully or partly paid shares to any person.

4. NON-PROFIT NATURE OF THE COMPANY

4.1 Non-profit

- (a) The income, property, profits and financial surplus of the Company, whenever derived, must be applied solely towards the promotion of the objects of the Company as set out in this Constitution.
- (b) The Company is a non-profit organisation and shall not carry on business for the purpose of profit or gain to its individual Members and no portion of its income, property, profits and financial surplus may be paid, distributed to or transferred, directly, indirectly, by way of dividend, property, bonus or otherwise by way of profit, to the Members, or the Board, or their relatives, except as provided by this Constitution.
- (c) Nothing in this Constitution prevents:
 - (i) the payment, in good faith, of reasonable and proper remuneration to any officer or servant of the Company, or to any Member or Director of the Company, in return for any services actually rendered to the Company or for goods supplied in the ordinary and usual way of business;
 - (ii) the payment of interest at a rate not exceeding interest at the rate for the time being charged by the Company's bankers for overdrawn accounts on money borrowed from a Member; or
 - (iii) reasonable and proper rent for premises demised or let by any Member to the Company.

4.2 No distribution of profits to Members on winding up

Where property remains after the winding-up or dissolution of the Company and satisfaction of all its debts and liabilities, it may not be paid to nor distributed among the Members of the Company but must be given to or transferred to another fund, authority or institution having objects similar to the objects of the Company, and whose Constitution prohibits the distribution of its or their

income and property among its or their members to an extent at least as great as is imposed on the Company under or by virtue of this Constitution, which fund, authority or institution is to be determined by the Members of the Company at or before the time of the dissolution.

4.3 Limited liability on winding up

Each Member of the Company undertakes to contribute to the assets of the Company in the event of its being wound up while he is a Member or within one year after he ceases to be a Member for the payment of the debts and liabilities of the Company contracted before he ceases to be a Member and of the costs charges and expenses of winding up and for adjustment of the rights of the contributors among themselves, such amount as may be required, not exceeding \$2.

5. MEMBERSHIP

5.1 Types of membership

Unless otherwise determined by the Members in general meeting there shall be one class of Members, known as ordinary members.

5.2 Ordinary members

- (a) The Board may from time to time in its absolute discretion admit to ordinary membership of the Company any individual, partnership, corporation or its nominee and who or which is interested in the grain industries (including, but not limited to, growers, agri-businesses and researchers).
- (b) Every application for ordinary membership must be in writing and in such form as the Board determines.
- (c) The Board shall fix the entrance fee (if any) and the subscription (if any) payable by an applicant for ordinary membership. The Board may not deal with any application for ordinary membership unless the entrance fee and subscription payable in respect of the application has been received by the Company.
- (d) Notwithstanding **rule 5.2**, the Board may in its absolute discretion admit or reject any applicant for ordinary membership without the necessity of assigning any reason therefor. If the applicant is not admitted to ordinary membership in due course, all monies paid by him or her to the Company must be returned forthwith in full.

5.3 Voting rights of Members

On a show of hands and on a poll each Member has the right to one vote.

5.4 Resignation of Member

A Member may cease membership of the Company by service of written notice to the Secretary of the Member's resignation from membership. There shall be no refund of entrance fee (if any) and/or subscription (if any) if any Member ceases membership of the Company.

6. RIGHTS AND OBLIGATIONS

6.1 Amount of fees and subscriptions payable

The entrance fees and the annual subscription fees for membership are such amounts and are due at such times as the Board from time to time determines.

6.2 Variation of rights of Members

If and whilst the membership is divided into different classes, the rights attached to any class (unless otherwise provided by the terms of application for membership of that class) may, whether or not the Company is being wound up, be varied with the consent in writing of Members with at least 75% of the votes in the class, or with the sanction of a special resolution passed at a separate meeting of the Members of that class.

7. FINANCIAL RECORDS

7.1 Keeping of financial records

- (a) The financial year of the Company commences on the first day of July and ends on the 30th day of June in the following calendar year.
- (b) Proper books and financial records must be kept and maintained showing correctly the financial affairs of the Company. The Company must ensure the relevant accounting and auditing requirements of the Law are duly complied with.
- (c) The Board must distribute to all Members at the end of each financial year, copies of the financial report including a copy of the auditor's report and any other documentation, in the form required or permitted under the Law.
- (d) The Board must cause to be made out and laid before each annual general meeting a balance sheet, profit and loss statement and cash flow statement made up to a date not more than 6 months before the date of the meeting.

7.2 Banking of monies

All the monies of the Company shall be banked in the name of the Company in a bank account at such bank as the Board may from time to time direct.

7.3 Appointment of auditor

The Company must appoint and retain a properly qualified auditor whose duties are determined in accordance with the Law. No Member may act as auditor of the Company.

7.4 Inspection of records of the Company

- (a) The Board may at its sole discretion determine whether and to what extent, and at what time and place and under what conditions the financial records and other documents of the Company or any of them will be open to the inspection of Members other than the Board.
- (b) No Member other than a Director has the right to inspect any document of the Company except as provided by Law or as authorised by the Board.

8. GENERAL MEETINGS

8.1 General meetings

- (a) General meetings of the Company may be called and held at the times and places and in the manner determined by the Board. Except as permitted by the Law, the Members may not convene a meeting of the Company. By resolution of the Board any general meeting (other than a general meeting which has been requisitioned or called by Members in accordance with the Law) may be cancelled or postponed prior to the date on which it is to be held.
- (b) The Chairman of a general meeting may refuse admission to, or require to leave and remain out of, the meeting any person:
 - (i) in possession of a pictorial-recording or sound-recording device;

- (ii) in possession of a placard or banner;
- (iii) in possession of an object considered by the Chairman to be dangerous, offensive or liable to cause disruption;
- (iv) who refuses to produce or to permit examination of any object, or the contents of any object or container, in the person's possession;
- (v) who behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
- (vi) who is not:
 - (A) a Member or a proxy, attorney or, if applicable, a corporate representative of a Member;
 - (B) a Director; or
 - (C) the auditor of the Company.
- (c) A person, whether or not a Member, who is requested by the Board or the Chairman to attend a general meeting, is entitled to be present.

8.2 Notice of general meeting

- (a) Not less than 21 days' notice of a general meeting must be given by the Board in the form and in the manner the Board thinks fit including notice of any general meeting at which the Board proposes or these rules require that an election of the Board be held. Notice of meetings shall be given to the Members and to such persons as are entitled under these rules or the Law to receive notice. The non-receipt of a notice of any general meeting by, or the accidental omission to give notice to, any person entitled to notice does not invalidate any resolution passed at that meeting.
- (b) If the meeting is to be held at 2 or more places the notice is to set out details of the technology that will be used to facilitate such a meeting and any other matters required to be stated by the Law in relation to the use of such technology.

9. PROCEEDINGS OF MEETINGS

9.1 Business of general meetings

- (a) The business of an annual general meeting is to receive and consider the financial and other reports required by the Law to be laid before each annual general meeting, to elect Directors in the place of those retiring under these rules, when relevant to appoint an auditor, and to transact any other business which, under these rules, is required to be transacted at any annual general meeting. All other business transacted at an annual general meeting and all business transacted at other general meetings is deemed to be special. Except with the approval of the Board, with the permission of the Chairman or pursuant to the Law, no person may move at any meeting either:
 - (i) in regard to any special business of which notice has been given under **rule 8.2**, any resolution or any amendment of a resolution; or
 - (ii) any other resolution which does not constitute part of special business of which notice has been given under **rule 8.2**.
- (b) The auditors and their representative are entitled to attend and be heard on any part of the business of a meeting which concerns the auditors. The auditors or their representative, if present at the meeting, may be questioned by the Members, as a whole, about the audit.

9.2 Quorum

Ten Members present in person or by proxy, attorney or duly appointed corporate representative constitute a quorum for a general meeting except if the Company at any time has only one Member

or where a class of Members is constituted by one Member. No business may be transacted at any meeting except the election of a Chairman and the adjournment of the meeting unless the requisite quorum is present at the commencement of the business.

9.3 Adjournment in absence of quorum

If within 15 minutes after the time specified for a general meeting a quorum is not present, the meeting, if convened upon a requisition or called by Members, is to be dissolved, and in any other case it is to be adjourned to the same day in the next week (or, where that day is not a business day, the business day next following that day) at the same time and place and if, at the adjourned meeting, a quorum is not present within 30 minutes after the time specified for holding the meeting, the meeting is to be dissolved.

9.4 Chairman

(a) The chairman of the Board is entitled to be Chairman at every general meeting.

(b) If at any general meeting:

(i) the chairman of the Board is not present at the specified time for holding the meeting; or

(ii) the chairman of the Board is present but is unwilling to act as Chairman of the meeting,

the deputy chairman of the Board is entitled to take the chair at the meeting.

(c) If at any general meeting:

(i) there is no chairman of the Board or deputy chairman of the Board;

(ii) the chairman of the Board and deputy chairman of the Board are not present at the specified time for holding the meeting; or

(iii) the chairman of the Board and the deputy chairman of the Board are present but each is unwilling to act as Chairman of the meeting,

the Directors present may choose another Director as Chairman of the meeting and if no Director is present or if each of the Directors present are unwilling to act as Chairman of the meeting, a Member chosen by the Members present is entitled to take the chair at the meeting.

9.5 Acting Chairman

If during any general meeting the Chairman acting pursuant to **rule 9.4** is unwilling to take the chair for any part of the proceedings, the Chairman may withdraw from the chair during the relevant part of the proceedings and may nominate any person who immediately before the general meeting was a Director or who has been nominated for election as a Director at the meeting to be acting Chairman of the meeting during the relevant part of the proceedings. Upon the conclusion of the relevant part of the proceedings the acting Chairman is to withdraw and the Chairman is to retake the chair.

9.6 General conduct of meeting

(a) Except as provided by the Law, the general conduct of each general meeting of the Company and the procedures to be adopted at the meeting are as determined by the Chairman.

(b) The Chairman may at any time the Chairman considers it necessary or desirable for the proper and orderly conduct of the meeting demand the cessation of debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the Members present.

- (c) The Chairman may require the adoption of any procedure which is in the Chairman's opinion necessary or desirable for the proper and orderly casting or recording of votes at any general meeting of the Company, whether on a show of hands or on a poll.

9.7 Adjournment

The Chairman may at any time during the course of the meeting adjourn from time to time and place to place the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting or any debate or discussion and may adjourn any business, motion, question, resolution, debate or discussion either to a later time at the same meeting or to an adjourned meeting. If the Chairman exercises a right of adjournment of a meeting pursuant to this rule, the Chairman has the sole discretion to decide whether to seek the approval of the Members present to the adjournment and, unless the Chairman exercises that discretion, no vote may be taken by the Members present in respect of the adjournment. No business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

9.8 Voting

- (a) Each question submitted to a general meeting is to be decided in the first instance by a show of hands of the Members present and entitled to vote. Subject to **rule 9.8(b)**, in the case of an equality of votes, the Chairman has, both on a show of hands and at a poll, a casting vote in addition to the vote or votes to which the Chairman may be entitled as a Member or as a proxy, attorney or, if applicable, a duly appointed corporate representative of a Member.
- (b) On a show of hands, where the Chairman has 2 or more appointments that specify different ways to vote on a resolution, the Chairman must not vote as a proxy but has a casting vote in the case of an equality of votes cast by Members entitled to vote at the meeting.

9.9 Declaration of vote on a show of hands - when poll demanded

- (a) At any meeting, unless a poll is demanded, a declaration by the Chairman that a resolution has been passed or lost, having regard to the majority required, and an entry to that effect in the book to be kept of the proceedings of the Company signed by the Chairman of that or the next succeeding meeting, is conclusive evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against the resolution. A poll may be demanded:
 - (i) before a vote is taken;
 - (ii) before the voting results on a show of hands are declared; or
 - (iii) immediately after the voting results on a show of hands are declared.
- (b) A poll may be demanded by:
 - (i) the Chairman;
 - (ii) at least 2 Members present entitled to vote on the resolution.
- (c) No poll may be demanded on the election of a Chairman of a meeting.

9.10 Taking a poll

If a poll is demanded as provided in **rule 9.9**, it is to be taken in the manner and at the time and place as the Chairman directs, and the result of the poll is deemed to be the resolution of the meeting at which the poll was demanded. The demand for a poll may be withdrawn. In the case of any dispute as to the admission or rejection of a vote, the Chairman's determination in respect of the dispute made in good faith is final.

9.11 Continuation of business

A demand for a poll does not prevent the continuance of a meeting for the transaction of any business other than the question on which a poll has been demanded. A poll demanded on any question of adjournment is to be taken at the meeting immediately and without adjournment.

9.12 Special meetings

All the provisions of these rules as to general meetings apply to any special meeting of any class of Members which may be held pursuant to the operation of these rules or the Law.

10. VOTES OF MEMBERS

10.1 Voting rights

- (a) The entitlement of Members to vote on a show of hands and on a poll is as set out in **rule 5.3**.
- (b) If a Member is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, his committee or trustee or such other person as properly has the management of his estate may exercise any rights of the Member in relation to a general meeting as if the committee, trustee or other person were the Member.
- (c) A Member whose annual subscription is more than one month in arrears at the date of the general meeting is not entitled to vote at that meeting.
- (d) Subject to **rule 10.1**, where a person is entitled to vote in more than one capacity, that person is entitled only to one vote on a show of hands.
- (e) If the person appointed as proxy has 2 or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands.

10.2 Appointment of proxies

- (a) Any Member entitled to vote at a general meeting may appoint one proxy.
- (b) A proxy need not be a Member of the Company who is entitled in their own right to vote at a general meeting of the Company.
- (c) The instrument appointing a proxy (and the power of attorney, if any, under which it is signed or proof of the power of attorney to the satisfaction of the Board) must be deposited duly stamped (if necessary) at the Office, faxed to the Office or deposited, faxed or sent by electronic mail to any other place specified in the notice of meeting, at least 48 hours (or a lesser period as the Board may determine and stipulate in the notice of meeting) before the time for holding the meeting or adjourned meeting or poll at which the person named in the instrument proposes to vote.
- (d) No instrument appointing a proxy is, except as provided in this rule, valid after the expiration of 12 months after the date of its execution. Any Member may deposit at the Office an instrument duly stamped (if necessary) appointing a proxy and the appointment is valid for all or any stipulated meetings of the Company until revocation.

10.3 Voting by corporation

Any corporation, being a Member and entitled to vote, may by resolution of its directors or other governing body or by an instrument of proxy, authorise any person, though not a Member of the Company, or any person occupying a particular office from time to time, to act as its representative, and such representative is, in accordance with their authority and until their authority is revoked by the corporation which they represent, entitled to exercise the same powers at meetings on behalf of the corporation which they represent as that corporation could exercise if

it were a natural person who was a Member and exercise any other powers permitted to be exercised by a body corporate representative under the Law.

10.4 Validity of vote

A vote given in accordance with the terms of an instrument of proxy or power of attorney is valid notwithstanding the previous death or unsoundness of mind of the principal or revocation of the instrument of proxy or power of attorney in respect of which the vote is given, provided no notice in writing of the death, unsoundness of mind or revocation has been received at the Office before the meeting or any adjourned meeting. A proxy is not revoked by the principal attending and taking part in the meeting, unless the principal actually votes at the meeting on the resolution for which the proxy is proposed to be used.

10.5 Form and execution of instrument of proxy

- (a) An instrument appointing a proxy is required to be in writing signed by the appointor or the attorney of the appointor or, if the appointor is a corporation, under its Seal or signed by a duly authorised officer and in the form which the Board may from time to time prescribe to accept.
- (b) The instrument of proxy is deemed to include the right to demand or join in demanding a poll and (except to the extent to which the proxy is specifically directed to vote for or against any proposal) the power to act generally at the meeting for the person giving the proxy.
- (c) An instrument appointing a proxy, unless the contrary is stated, is valid for any adjournment of the meeting, as well as for the meeting to which it relates. Any duly signed proxy which is incomplete may be completed by the Secretary on authority from the Board and as permitted by the Law and the Board may authorise completion of the proxy by the insertion of the name of any Director as the person in whose favour the proxy is given.

10.6 Board to issue forms of proxy

The Board may issue with any notice of general meeting of Members or any class of Members forms of proxy for use by the Members. Each form is to make provision for the Member to write in the name of the person to be appointed as proxy and may provide that, if the Member does not so write in a name, the proxy is to be a person named on the form. The form may include the names of any of the Directors or of any other person as a suggested proxy. The forms are to be worded so that a proxy may be directed to vote either for or against each or any of the resolutions to be proposed.

10.7 Attorneys of members

Any Member may, by duly executed power of attorney, appoint an attorney to act on the Member's behalf at all or certain specified meetings of the Company. Before the attorney is entitled to act under the power of attorney, the power of attorney or proof of the power of attorney to the satisfaction of the Board must be produced for inspection at the Office or any other place the Board may determine from time to time together, in each case, with evidence of the due execution of the power of attorney as required by the Board. The attorney may be authorised to appoint a proxy for the Member granting the power of attorney.

11. THE BOARD

11.1 Directors

The names of the first Directors are those persons named as directors in the application for registration of the Company.

11.2 Number of Directors

Until altered by the Company in general meeting, the number of Directors shall be 7 and shall be constituted as follows:

- (a) 4 Directors (who must be Growers) elected by the Members; and
- (b) 3 Directors (who shall possess scientific or commercial skills) appointed by the Grower Directors.

11.3 Term of Directors

- (a) Grower Directors shall hold office for no longer than 2 years and at each annual general meeting one-half of the Grower Directors shall retire but are eligible for re-election.
- (b) Independent Directors shall hold office for no longer than 2 years but are eligible for reappointment.

11.4 Casual vacancies

- (a) The Board has the power at any time and from time to time to appoint a qualified person as a Director either to fill a casual vacancy among the Board or as an addition to the existing members but so that the total number of Directors may not at any time exceed the number fixed in accordance with this Constitution.
- (b) Any person appointed under this rule holds office until the next general meeting when an election will be held to fill the vacancy but such person is not to be taken into account in determining the number of Directors who are to retire by rotation at the meeting. Any person appointed under this rule is eligible for election at that general meeting.
- (c) The Members in general meeting may by ordinary resolution elect a qualified person as a Director but so that the total number of Directors do not at any time exceed the number fixed in accordance with this Constitution.

12. VACATION OF OFFICE

12.1 Resignation

Any Director may resign at any time from membership of the Board by notice in writing delivered to the Secretary but such resignation only takes effect at the time when such notice is received by the Secretary unless some later date is specified in the notice when it shall take effect on the later date.

12.2 Removal

- (a) A Director may be removed from office by ordinary resolution of the Members at a general meeting of the Company convened for that purpose. At any such general meeting the Director must be given the opportunity to fully present their case either orally or in writing or partly by either or both of these means.
- (b) A Director who ceases to be a Director under **rule 12.2** retains office until the dissolution or adjournment of the general meeting at which the member is removed.

12.3 Disqualification

- (a) The office of a director is vacated:
 - (i) upon a Director becoming an insolvent under administration, suspending payment generally to creditors or compounding with or assigning the Director's estate for the benefit of creditors;

- (ii) upon a Director becoming a person of unsound mind or a person who is a patient under laws relating to mental health or whose estate is administered under laws relating to mental health;
 - (iii) upon a Director being absent from meetings of the Board during a period of 3 consecutive calendar months without leave of absence from the Board where the Board has not, within 14 days of having been served by the Secretary with a notice giving particulars of the absence, resolved that leave of absence be granted;
 - (iv) upon a Director resigning office by notice in writing to the Company;
 - (v) upon a Director being removed from office pursuant to the Law; or
 - (vi) upon a Director being prohibited from being a director by reason of the operation of law.
- (b) A Director who vacates office pursuant to **rule 12.3(a)** is not to be taken into account in determining the number of Directors who are to retire by rotation at any annual general meeting.

12.4 Directors who are employees of the Company

The office of director who is an employee of the Company and/or any of its subsidiaries, becomes vacant upon the Director ceasing to be employed (so that they are no longer employed by the Company or any subsidiary of the Company) but the person concerned is eligible for reappointment or re-election as a Director of the Company.

13. EXERCISE OF VOTING POWER

13.1 Exercise of voting power in other corporations

The Board may exercise the voting power conferred by the shares in any corporation held or owned by the Company as the Board thinks fit (including the exercise of the voting power in favour of any resolution appointing the Directors, or any of them, directors of that corporation) and a Director of the Company may vote in favour of the exercise of those voting rights notwithstanding that the Director is, or may be about to be appointed, a director of that other corporation and may be interested in the exercise of those voting rights.

14. ALTERNATE DIRECTORS

14.1 Director may appoint an alternate

- (a) Subject to these rules, each Director has power from time to time to appoint any person to act as their alternate in the place of that Director, whether for a stated period or periods or until the happening of a specified event or from time to time, whenever by absence or illness or otherwise the Director is unable to attend to their duties.
- (b) The Director must first seek and obtain the consent of the Board to the appointment, which consent is not to be unreasonably withheld or delayed. The appointment is to be in writing and signed by the Director and a copy of the appointment is to be given by the appointing Director to the Company by forwarding or delivering it to the Office.
- (c) The appointment takes effect immediately upon receipt of the appointment at the Office.

14.2 Conditions of office of alternate

The following provisions apply to an alternate Director:

- (a) an alternate may be removed or suspended from office upon receipt at the Office of written notice, letter, facsimile transmission or other form of visible communication from the Director by whom the alternate was appointed to the Company;

- (b) the alternate is entitled to receive notice of meetings of the Board and to attend and vote at the meetings if the Director by whom the alternate was appointed is not present;
- (c) the alternate is entitled to exercise all the powers (except the power to appoint an alternate) and perform all duties of a Director, in so far as the Director by whom the alternate was appointed had not exercised or performed them;
- (d) the office of the alternate is vacated upon vacation of office by the Director or written resignation being given to the Company by the Director, by whom the alternate was appointed;
- (e) the alternate is not to be taken into account in determining the number of Directors or rotation of Directors; and
- (f) the alternate is, while acting as a Director, responsible to the Company for the alternate's own acts and defaults and is not to be deemed to be the agent of the Director by whom the alternate was appointed.

15. PROCEEDINGS OF THE BOARD

15.1 Procedures relating to Board meetings

- (a) The Board may meet together, upon each Director being given reasonable notice, for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit.
- (b) Until otherwise determined by the Board, 4 Directors form a quorum.
- (c) Notice is deemed to have been given to a Director, and all Directors are hereby deemed to have consented to the method of giving notice, if notice is sent by mail, personal delivery, facsimile transmission or by electronic mail to the usual place of residence, fax number or electronic address of the Director (if any fax number or electronic address is notified to the Company) or at any other address given to the Secretary by the member from time to time subject to the right of the Director to withdraw such consent within a reasonable period before a meeting.

15.2 Meetings by telephone or other means of communication

The Board may meet either in person or by telephone or by other means of communication consented to by all Directors subject to the right of a Director to withdraw their consent within a reasonable period before a meeting. All persons participating in the meeting must be able to hear and be heard by all other participants. A meeting conducted by telephone or other means of communication is deemed to be held at the place agreed upon by the Directors attending the meeting, provided that at least one of the Directors present at the meeting is at that place for the duration of the meeting.

15.3 Votes at meetings

Questions arising at any meeting of the Board are decided by a majority of votes. The Chairman of the meeting of the Board shall, in addition to his deliberative vote, have a second or casting vote in the event of an equality of votes.

15.4 Convening of meetings

The Chairman or the Board may at any time, and the Secretary, upon the request of any Director, must convene a meeting of the Board.

15.5 Chairman

The Board may elect a Chairman (who shall be a Grower Director) and a deputy Chairman of its meetings and determine the period for which each is to hold office. If no Chairman or deputy

Chairman is elected or if at any meeting the Chairman and the deputy Chairman are not present at the time specified for holding the meeting (or, if being present, the relevant Directors refuse to act as Chairman or deputy Chairman), the Directors present may choose one of their number to be Chairman of the meeting.

15.6 Powers of meetings

A meeting of the Board or any adjournment of a meeting at which a quorum is present is competent to exercise any of the authorities, powers and discretions for the time being vested in or exercisable by the Board.

15.7 Delegation of powers to Committees

The Board may, subject to the constraints imposed by law, delegate any of its powers to Committees consisting of one or more Directors or any other person or persons as the Board thinks fit. Any Committee formed or person or persons appointed to the Committee must, in the exercise of the powers delegated, conform to any regulations that may from time to time be imposed by the Board. A delegate of the Board may be authorised to subdelegate any of the powers for the time being vested in the delegate.

15.8 Proceedings of Committees

- (a) The meetings and proceedings of any Committee are to be governed by the provisions of these rules for regulating the meetings and proceedings of the Board so far as they are applicable and are not superseded by any regulations made by the Board under **rule 15.7**.
- (b) A Committee in the exercise of the duties delegated or assigned to it shall conform to any regulations, directions or instructions that may be imposed or given by the Board.
- (c) A Committee appointed by the Board shall be under the control and direction of the Board and has no direct part or power in the management of the Company.

15.9 Validity of acts

- (a) All acts done at any meeting of the Board or by a Committee or by any person acting as a Director are, notwithstanding that it is afterwards discovered that there was some defect in the appointment of any of the Directors or the Committee or the person acting as a Director or that any of them were disqualified, as valid as if every person had been duly appointed and was qualified and continued to be a Director or a member of the Committee (as the case may be).
- (b) If the number of Directors is reduced below the minimum number fixed pursuant to these rules, the continuing Directors may act for the purpose of increasing the number of Directors to that number or of calling a general meeting of the Company but for no other purpose.

15.10 Resolution in writing

- (a) A resolution in writing of which notice has been given to all Directors and which is signed by all such members entitled to vote on the resolution is as valid and effectual as if it had been passed at a meeting of the Board duly called and constituted and may consist of several documents in the same form each signed by one or more of the Directors.
- (b) For the purposes of this rule the references to ‘**Director**’ include any alternate for the time being present in Australia who is appointed by a Director not for the time being present in Australia but does not include any other alternate Director.
- (c) A facsimile transmission or other document produced by mechanical or electronic means under the name of a Director with their authority is deemed to be a document in writing signed by that Director.

16. POWERS OF THE BOARD

16.1 General powers of the Board

- (a) The management and control of the business and affairs of the Company are vested in the Board, which (in addition to the powers and authorities conferred upon them by these rules) may exercise all powers and do all things as are within the power of the Company and are not by these rules or by Law directed or required to be exercised or done by the Company in general meeting.
- (b) The Board may make such regulations and by-laws not inconsistent with the Constitution, as in the opinion of the Board are necessary or desirable for the proper control, administration and management of the Company's finances, affairs and property or are necessary for the convenience, comfort and well-being of the Members (including the terms of entry of Members to the Company's premises and any event or function sponsored, promoted, facilitated or conducted by the Company) and amend or rescind from time to time any such regulations and by-laws.
- (c) A regulation or by-law of the Company made by the Board may be disallowed by the Company in a later general meeting.
- (d) A resolution or regulation made by the Company in general meeting cannot invalidate prior acts of the Board which would have been valid if that resolution or regulation had not been passed or made.

16.2 Directors may contract with Company

- (a) A Director is not disqualified by the office of director from contracting or entering into any arrangement with the Company or any other person either as vendor, purchaser or otherwise and no contract or arrangement entered into with the Company or any other person by a Director or any contract or arrangement entered into by or on behalf of the Company or any other person in which a Director is in any way interested may be avoided for that reason. A Director is not liable to account to the Company for any profit realised by any contract or arrangement, by reason of holding the office of or of the fiduciary relationship established by the office.
- (b) A Director must disclose to the Board a material personal interest in a matter which relates to the affairs of the Company if an actual or potential conflict might reasonably be thought to exist between the interests of the Director and the interests of the Company. The Director must not be counted in a quorum present at a meeting where the matter is discussed nor vote on any motion relating to the matter except where authorised by the Company in general meeting where permitted by law.
- (c) No Director may as a director vote in respect of any contract or arrangement in which the Director has directly or indirectly any material personal interest if to do so would be contrary to the Law and if the Director does vote his vote may not be counted nor shall the Director be counted in the quorum present at the meeting but either or both of these prohibitions may at any time be relaxed or suspended to any extent by ordinary resolution passed at a general meeting, if permitted by the Law.
- (d) A Director who is interested in any contract or arrangement may, notwithstanding the interest, attest the affixing of the Seal to, or otherwise execute any document evidencing or otherwise connected with the contract or arrangement.

17. COMPANY SECRETARY

The Secretary holds office on such terms and conditions as to remuneration and otherwise as the Board determines.

18. OTHER SALARIED OFFICERS

The Board may appoint such officers and employees at such salaries for such periods and on such terms as it thinks fit and may subject to conditions of the employment of such officers and employees dispense with their services and re-appoint or appoint other officers and employees as it thinks fit.

19. THE SEAL

19.1 Company Seal is optional

The Company may have a Seal.

19.2 Affixing the Seal

If the Company has a Seal, the Board is to provide for its safe custody and it should only be used by the authority of the Board. Every instrument to which the Seal is affixed is to be signed by a Director and countersigned by the Secretary or by a second Director or by another person appointed by the Board for the purpose. The Board may determine either generally or in any particular case that a signature may be affixed by a mechanical means specified in the determination.

19.3 Execution of documents without a Seal

The Company may execute a document, including a deed, by having the document signed by:

- (a) 2 Directors; or
- (b) a Director and the Secretary, and

if the Company executes a deed, the document is to be expressed to be executed as a deed and be executed in accordance with the appropriate procedures set out in **rule 19.2** or this rule.

19.4 Other ways of executing documents

Notwithstanding the provisions of **rules 19.2** and **19.3**, any document including a deed, may also be executed by the Company in any other manner permitted by law.

20. MINUTES

20.1 Contents of minutes

The Board must ensure that minutes are duly recorded in any manner it thinks fit and include:

- (a) the names of the Directors present at each meeting of the Company, the Board and of any Committees; and
- (b) details of all resolutions and proceedings of general meetings of the Company and of meetings of the Board and any Committees.

20.2 Signing of minutes

The minutes of any meeting of the Board or of any Committee or of the Company, if purporting to be signed by the Chairman of the meeting or by the Chairman of the next succeeding meeting, are prima facie evidence of the matters stated in the minutes.

21. NOTICES

21.1 Service of notices

A notice may be given by the Company to a Member, or in the case of joint Members, if applicable, holders to the Member whose name stands first in the Register, personally, by leaving it at the Member's Registered address or by sending it by prepaid post or facsimile transmission addressed to the Member's Registered address or by sending it to the electronic address (if any) nominated by the Member. All notices sent by prepaid post to persons whose Registered address is not in Australia may be sent by airmail or some other way that ensures that it will be received quickly.

21.2 When notice deemed to be served

- (a) Any notice sent by post is deemed to have been served at the expiration of 48 hours after the envelope containing the notice is posted and, in proving service, it is sufficient to prove that the envelope containing the notice was properly addressed and posted.
- (b) Any notice served on a Member personally or left at the Member's Registered address is deemed to have been served when delivered.
- (c) Any notice served on a Member by facsimile transmission is deemed to have been served when the transmission is sent. A facsimile is deemed to be duly sent when the Company's facsimile system generates a message confirming successful transmission of the total number of pages of the notice to the addressee.
- (d) Any notice served on a Member by electronic means is deemed to have been served when the electronic message is sent.

21.3 Member not known at Registered address

Where a Member does not have a Registered address or where the Company has bona fide reason to believe that a Member is not known at the Member's Registered address, all future notices are deemed to be given to the Member if the notice is exhibited in the Office, if any, for a period of 48 hours (and is deemed to be duly served at the commencement of that period) unless and until the Member informs the Company of a Registered address.

21.4 Signature to notice

The signature to any notice to be given by the Company may be written or printed.

21.5 Reckoning of period of notice

Where a given number of days' notice or notice extending over any other period is required to be given, the day of service is not to be reckoned in the number of days or other period.

21.6 Service on deceased Members

A notice delivered or sent by post to the Registered address of a Member pursuant to these rules is (notwithstanding that the Member is then dead and whether or not the Company has notice of the Member's death) deemed to have been duly served and the service is for all purposes deemed to be sufficient service of the notice or document on the Member's heirs, executors or administrators.

21.7 Persons entitled to notice of general meeting

- (a) Notice of every general meeting is to be given to:
 - (i) each Member individually who is entitled to vote at general meetings of the Company;
 - (ii) each Director; and
 - (iii) the auditor for the time being of the Company.

- (b) No other person is entitled to receive notices of general meetings.

21.8 Notification of change of address

Every Member must notify the Company of any change of his or her address and any such new address must be entered in the Register as required to be kept by the Law and upon being so entered becomes the Member's Registered address.

22. INDEMNITY AND INSURANCE

22.1 Indemnity in favour of Directors, Secretaries and executive officers

Subject to the Law and **rule 22.2**, the Company shall indemnify each Director, Secretary and executive officer to the maximum extent permitted by law, against any Liability incurred by them by virtue of their holding office as, and acting in the capacity of, director, Secretary or executive officer of the Company, other than:

- (a) a Liability owed to the Company or a related body corporate of the Company;
- (b) a Liability for a pecuniary penalty order under section 1317G of the Law or a compensation order under section 1317H of the Law; or
- (c) a Liability owed to a person other than the Company that did not arise out of conduct in good faith.

22.2 Indemnity for legal costs

The Company shall indemnify each Director, Secretary and executive officer to the maximum extent permitted by law, against any Liability for legal costs incurred by them in respect of a Liability incurred by them by virtue of their holding office as, and acting in the capacity of, director, Secretary or executive officer of the Company other than for legal costs incurred:

- (a) in defending or resisting proceedings, in which the Director, Secretary or executive officer is found to have a Liability for which they could not be indemnified under **rule 22.1**;
- (b) in defending or resisting criminal proceedings in which the Director, Secretary or executive officer is found guilty;
- (c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this **rule 22.2(c)** does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
- (d) in connection with proceedings for relief to the Director, Secretary or executive officer under the Law in which the court denies the relief.

22.3 Indemnity for employees

Subject to the Law and **rule 22.4**, the Company may indemnify an employee, who is not a Director, Secretary or executive officer of the Company, to the maximum extent permitted by law, against any Liability incurred by them by virtue of their holding office as, and acting in the capacity of, an officer of the Company, other than:

- (a) a Liability owed to the Company or a related body corporate of the Company;
- (b) a Liability for a pecuniary penalty order under section 1317G of the Law or a compensation order under section 1317H of the Law; or
- (c) a Liability owed to a person other than the Company that did not arise out of conduct in good faith.

22.4 Indemnity for legal costs of employees

The Company may indemnify an employee other than a Director, Secretary or executive officer to the maximum extent permitted by law, against any Liability for legal costs incurred in respect of a Liability as, or by virtue of their holding office as, and acting in the capacity of, an officer of the Company other than for legal costs incurred:

- (a) in defending or resisting proceedings, in which the officer is found to have a Liability for which they could not be indemnified under **rule 22.3**;
- (b) in defending or resisting criminal proceedings in which the officer is found guilty;
- (c) in defending or resisting proceedings brought by ASIC or a liquidator for a court order if the grounds for making the order are found by the court to have been established (but this **rule 22.4** does not apply to costs incurred in responding to actions taken by ASIC or a liquidator as part of an investigation before commencing proceedings for the court order); or
- (d) in connection with proceedings for relief to the officer under the Law in which the court denies the relief.

22.5 Proceedings

For the purposes of **rules 22.2** and **22.4**, ‘**proceedings**’ includes the outcomes of the proceedings and any appeal in relation to the proceedings.

22.6 Insurance for the benefit of Directors, Secretaries and executive officers

- (a) Subject to the Law, the Company may pay a premium for a contract insuring a person who is or has been a Director, Secretary or executive officer of the Company acting in that capacity against:
 - (i) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
 - (ii) a liability arising from negligence or other conduct.

22.7 Insurance for other officers

Subject to the Law, the Company may pay a premium for a contract insuring a person who is or has been an employee and also an officer of the Company, acting in that capacity, but who is not a Director, Secretary or executive officer of the Company against:

- (a) costs and expenses in defending any proceedings, whether civil or criminal, whatever their outcome; or
- (b) a Liability arising from negligence or other conduct.

22.8 When insurance may not be provided by the Company

The Company shall not pay, nor agree to pay, a premium for a contract insuring a person who is or has been a Director, Secretary or executive officer or an employee who is also an officer of the Company, against a Liability (other than one for legal costs) arising out of:

- (a) conduct involving a wilful breach of duty in relation to the Company; or
- (b) a contravention of section 182 or section 183 of the Law.

22.9 Definitions for the purposes of rule 22

In this **rule 22**, except to the extent the context otherwise requires:

‘**Liability**’ includes any claim, action, suit, proceeding, investigation, inquiry, damage, loss, cost or expense;

‘executive officer’ means a person who is concerned, or takes part in, the management of the Company (regardless of the person’s designation and whether or not the person is a director of the Company);

‘officer’ means:

- (a) a director or Secretary of the Company;
- (b) a person:
 - (i) who makes, or participates in making, decisions that affect the whole, or a substantial part, of the business of the Company;
 - (ii) who has the capacity to affect significantly the Company’s financial standing; or
 - (iii) in accordance with whose instructions or wishes the Board is accustomed to act (excluding advice given by the person in the proper performance of functions attaching to the person’s professional capacity or their business relationship with the Board or the Company).

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