

AUSTRALIAN SESAME INDUSTRY DEVELOPMENT ASSOCIATION LTD

CONSTITUTION

ACN

A public company limited by guarantee

This constitution adopted on 3 June 2022

Governology Pty Limited
An Incorporated Legal Practice

Table of Contents

I.	<u>GENERAL</u>	3
1.	<u>Name of the Company</u>	3
2.	<u>Purpose</u>	3
3.	<u>Type of Company</u>	3
4.	<u>Powers of the Company</u>	4
5.	<u>Definitions</u>	4
6.	<u>Interpretation</u>	5
II.	<u>MEMBERSHIP</u>	6
7.	<u>Classes and criteria of Membership</u>	6
8.	<u>Rights of Members</u>	7
9.	<u>Application for Membership</u>	7
10.	<u>Representative</u>	8
11.	<u>Membership Fees</u>	8
12.	<u>Register of Members</u>	8
13.	<u>Ceasing to be a Member</u>	8
14.	<u>Suspension or expulsion of a Member</u>	9
III.	<u>GENERAL MEETINGS</u>	11
15.	<u>Calling a General Meeting</u>	11
16.	<u>Notice of a General Meeting</u>	11
17.	<u>Quorum at a General Meeting</u>	13
18.	<u>Chair of a General Meeting</u>	13
19.	<u>Decisions at a General Meeting</u>	14
20.	<u>Methods of voting at a General Meeting</u>	15
21.	<u>Cancellation or postponement of a General Meeting</u>	16
IV.	<u>BOARD OF DIRECTORS</u>	16
22.	<u>Board composition</u>	16
23.	<u>Nominations Committee</u>	17
24.	<u>Term of Directors</u>	17
25.	<u>Eligibility of Directors</u>	17
26.	<u>No Alternate Directors</u>	17
27.	<u>Chair and Deputy Chair</u>	17
28.	<u>Powers of the Board</u>	18
29.	<u>Duties of Directors under common law and legislation</u>	18
30.	<u>Delegation of powers</u>	18
31.	<u>Audit Committee</u>	19
32.	<u>By-laws</u>	19
33.	<u>Remuneration and payments to Directors</u>	19
34.	<u>Conflict of interest</u>	19
35.	<u>Exceptions</u>	20

<u>36.</u>	<u>Ceasing to be a Director</u>	20
<u>37.</u>	<u>Casual vacancies on the Board</u>	21
<u>38.</u>	<u>Frequency and mode of Board meetings</u>	21
<u>39.</u>	<u>Calling a Board meeting by Chair or two Directors</u>	21
<u>40.</u>	<u>Notice of a Board meeting</u>	21
<u>41.</u>	<u>Chair of a Board meeting</u>	21
<u>42.</u>	<u>Quorum at a Board Meeting</u>	21
<u>43.</u>	<u>Decisions of the Board</u>	21
<u>44.</u>	<u>Validity of acts of Directors</u>	22
<u>V.</u>	<u>ADMINISTRATIVE MATTERS</u>	22
<u>45.</u>	<u>Secretary</u>	22
<u>46.</u>	<u>Minutes</u>	22
<u>47.</u>	<u>Inspection of records</u>	23
<u>48.</u>	<u>Time for service of notices</u>	23
<u>49.</u>	<u>Method for service of notices</u>	23
<u>50.</u>	<u>Execution of documents</u>	23
<u>51.</u>	<u>Accounts and audit</u>	23
<u>52.</u>	<u>Indemnity</u>	24
<u>53.</u>	<u>Insurance</u>	24
<u>54.</u>	<u>Changes to the constitution</u>	24
<u>55.</u>	<u>Access</u>	24
<u>56.</u>	<u>Winding Up</u>	25
<u>57.</u>	<u>Transitional arrangements</u>	25

I. GENERAL

1. Name of the Company

- 1.1 The name of the Company is Australian Sesame Industry Development Association Ltd.

2. Purpose

- 2.1 The Purpose of the Company is to support the development of a resilient, profitable and sustainable sesame industry in Australia.
- 2.2 The Company pursues its Purpose by:
- a) capitalising on Australia's agricultural resources and its strong global agricultural production credentials;
 - b) undertaking and coordinating research, development, extension and marketing activities;
 - c) advocating and working with government, semi government and statutory and other authorities or commissions in developing the sesame industry;
 - d) building on competitive advantages of environmentally sensitive, high-quality production and high-productivity agriculture;
 - e) exploiting opportunities:
 - i) in food for sesame including raw sesame seeds, oil, tahini, and ground sesame;
 - ii) in nutraceuticals, pharmaceuticals, cosmeceuticals; and
 - iii) in stock feed;
 - f) working with industry in introduction of high quality, high yielding, non-dehiscing sesame varieties;
 - g) undertake research and stakeholder consultation;
 - h) development of research, development and extension plans;
 - i) develop knowledge of the sesame value chain, including the development of domestic processing facilities;
 - j) developing an understanding of the market for the sesame seeds locally and internationally, and marketing and promoting the Australian sesame industry in Australia and overseas; and
 - k) doing anything ancillary or incidental to the Purpose.

3. Type of Company

- 3.1 The Company is a not-for-profit public company limited by guarantee.
- 3.2 The Company must not distribute any income or assets directly or indirectly to its Members as Members.
- 3.3 Clause 3.2 does not prevent payment in good faith for:

- a) reasonable and proper remuneration to any employee of the Company;
 - b) reasonable and proper amounts to any Member in return for any goods or services they provide to the Company;
 - c) reasonable and proper rent for premises leased by any Member to the Company;
 - d) interest at a rate not exceeding current bank interest rates for moneys lent to the Company;
 - e) reimbursement in good faith of out-of-pocket expenses incurred on behalf of the Company;
 - f) any other sums lawfully payable under this constitution; and
 - g) for any other bona fide reason for fulfilling its Purpose.
- 3.4 The replaceable rules set out in the Corporations Act do not apply to the Company.
- 3.5 This constitution comprises a contract between:
- a) the Company and each Member;
 - b) the Company and each Director;
 - c) the Company and the Secretary; and
 - d) a Member and each other Member.
- 3.6 Each Member must contribute an amount not more than \$1.00 to the property of the Company if the Company is wound up while the Member is a Member, or within 12 months after they stop being a Member, and this contribution is required to pay for the:
- a) debts and liabilities of the Company that exceed the Company's assets incurred before the Member stopped being a Member, and
 - b) costs of winding up.

4. Powers of the Company

- 4.1 The Company has the following powers:
- a) the powers of an individual, and
 - b) all the powers of a company limited by guarantee under the Corporations Act.
- 4.2 Even though the Corporations Act provides extensive powers to the Company, it may use its powers only to carry out its Purpose.

5. Definitions

- 5.1 In this constitution, capitalised terms have the following meanings:
- Agronomist/Researcher** means professionals qualified to the level approved by the Board with agronomic/scientific expertise that supports the growing and research of sesame crop;

Business Day means a day on which banks are open for business excluding Saturdays, Sundays and public holidays in the place where the Company's registered office is located;

Chair means Director holding the office of Chair in accordance with clause 27;

Company means Australian Sesame Industry Development Association Ltd;

Corporations Act means the Corporations Act 2001 (Cth);

General Meeting means a formal meeting of the Members and includes an annual general meeting;

Grower means farmers acceptable to the Board interested in growing sesame as a commercial crop;

Member means a member of the Company in accordance with Part II;

Member Code of Conduct means the code of conduct applicable to Members, amended as a by-law by the Board from time to time;

Nominations Committee means the committee by that name referred to in, and governed by, the by-Laws, as amended by the Board from time to time;

Non-Voting Member means a Member who meets the criteria in clause 7.3;

Producer means a person or Company engaged in production and technical improvement of sesame seed;

Processor means a person or company acceptable to the Board engaged in transformation of raw sesame seeds to value added and speciality sesame products;

Representative means an individual appointed as representative by a Member that is an entity in accordance with clause 10;

Secretary means the person appointed as the Company's secretary under clause 45;

Trader means a person the Board reasonably considers is engaged in the sesame seed supply chain (including importers and exporters);

Voting Member means a Member who meets the criteria in clause 7.2.

6. Interpretation

6.1 In this constitution:

- a) mandatory provisions of the Corporations Act override any clause in this constitution which is inconsistent with that Act;
- b) a word or expression that is defined or used in the Corporations Act and covering the same subject has the same meaning as in this constitution;
- c) reference to an act includes every amendment, re-enactment, or replacement of that act and any subordinate legislation made under that act such as regulations;
- d) a reference to a clause or sub-clause is to a clause or sub-clause of this constitution;
- e) where a word or phrase is defined, its other grammatical forms or parts of speech have corresponding meaning;
- f) reference to a person is a reference to an individual, company, any other body corporate, partnership, joint venture, association or other body whether or not incorporated;
- g) the words 'writing' and 'written' include any mode of representing or reproducing, including electronically, words, figures, drawings or symbols in a visible or communicable form;
- h) headings are for convenience only and do not affect the interpretation of this constitution;
- i) the words 'including', 'for example', or similar expressions do not limit the inclusions or examples;
- j) a gender includes all genders;
- k) singular includes plural and vice versa;
- l) a reasonable opportunity to participate includes a reasonable opportunity to exercise a right to speak;
- m) a person may elect to exercise a right to speak (including a right to ask questions) orally rather than in writing.

II. MEMBERSHIP

7. Classes and criteria of Membership

7.1 There are two classes of membership:

- a) Voting Members; and
- b) Non-Voting Members.

7.2 Voting Membership is open to individuals and entities that:

- a) have a genuine commitment to and understanding of the Purpose;
- b) if an individual, are aged 18 years or over;
- c) are either:
 - i) Growers;
 - ii) Agronomist/Researchers;

- iii) Producers;
- iv) Processors; or
- v) Traders;

and

- d) satisfy any further criteria that may be prescribed by the Board and set out in the by-laws.

7.3 Non-voting Membership is open to individuals and entities that do not qualify for Voting Membership and:

- a) have a genuine commitment to and understanding of the Purpose;
- b) if an individual, are aged 18 years or over; and
- c) satisfy any further criteria that may be prescribed by the Board and set out in the by-laws.

8. Rights of Members

8.1 Voting Members have the following rights:

- a) to receive notices of and to attend General Meetings;
- b) to appoint Directors in accordance with clause 22.2; and
- c) to vote at General Meetings and on resolutions put to the membership and on the appointment of Directors.

8.2 Non-voting Members are entitled to receive notices of and to attend General Meetings. Non-voting Members do not have any voting rights and are not entitled to appoint Directors.

8.3 The Board may extend benefits and privileges of membership that may differ between classes and categories of membership and within categories of membership, but no such benefits or privileges shall affect the rights of Members in this clause 8.

8.4 A Member who has not paid any fees payable under clause 11 by the due date will not be entitled to exercise their rights under this clause 8 while the fee remains unpaid.

8.5 The rights of a Member are not transferrable.

8.6 The rights of Members of a particular class are not to be taken as being varied by the admission of more Members to that class or the addition or deletion of other classes of membership or categories of membership within a class.

9. Application for Membership

9.1 An application for membership must be in a form prescribed by the Board.

9.2 The Board may approve or reject an application of membership.

9.3 The Board is not required to give a reason for the rejection of any application for membership.

- 9.4 The Board may delegate the consideration and determination of any membership application.
- 9.5 Once made, written notice of the Board's decision shall be sent to the applicant.
- 9.6 The acceptance of an applicant to be a Member is subject to payment of any applicable fees and is void if payment is not made in accordance with this constitution or the by-Laws.
- 9.7 If the applicant is not admitted to membership, then any moneys paid by them for membership will be returned to them in full.
- 9.8 An applicant becomes a Member and is entitled to exercise the rights and privileges of that membership when their name is entered in the register of Members.

10. Representative

- 10.1 A Member that is an entity may appoint an individual as its Representative. The appointment may be a standing one.
- 10.2 The appointment may set out restrictions on the Representative's powers.
- 10.3 The appointment may be made by reference to a position held.
- 10.4 A Member may appoint more than 1 Representative but only 1 Representative may exercise the Member's powers at any one time.
- 10.5 A Representative may exercise, on the Member's behalf, any and all of the powers that the Member could exercise as a Member, unless the appointment specifies otherwise.

11. Membership Fees

- 11.1 The Board may set any joining fee and membership fees and may determine different fees for different classes or categories or within classes or categories.
- 11.2 The Board may in its discretion waive or vary the amount of any membership fee.
- 11.3 If any membership fee remains unpaid for a period of 1 month after it becomes due, written notice will be given to the Member of that fact. If any fee remains unpaid more than 1 month after the date of the notice, the Member's membership is terminated unless the Board resolves otherwise.

12. Register of Members

- 12.1 An applicant becomes a Member when they are entered on the register of Members.
- 12.2 A Member must promptly notify the Board of any change to their details as recorded in the register of Members, including their address and electronic contact address.

13. Ceasing to be a Member

13.1 A Member ceases to be a Member:

- a) if they resign;
- b) if they die (for individuals);
- c) if they are wound up or dissolved (for entities);
- d) if their membership is terminated under clause 11.3;
- e) if a Voting Member they cease to be eligible to be a Voting Member, on the date that the Board resolves to cease the membership; or
- f) if the Member fails to provide any information required by the Board as part of the renewal process, unless the Board resolves otherwise.

13.2 The Board may waive any grounds for cessation of membership or any breach of this constitution by a Member and readmit any person as a Member as it thinks fit.

13.3 Upon ceasing to be a Member, the Member's name will be removed from the register of Members.

13.4 Any Member ceasing to be a Member:

- a) remains liable for any money owing by that Member to the Company and, if the Company is wound up within one year of the date the Member ceases to be a Member, the guarantee under clause 3.6;
- b) shall not be entitled to any refund, in full or part, of any membership fees paid; and
- c) shall not be readmitted as a Member until any unpaid moneys outstanding at the time they ceased to be a Member are paid including any interest or other charges levied on any outstanding moneys.

14. Suspension or expulsion of a Member

14.1 Without limiting any other way a Member may cease to be a Member, the Board may suspend or expel a Member from the Company if the Board considers that the Member:

- a) has failed to comply with this constitution or the by-laws;
- b) has failed to comply with the Member Code of Conduct; or
- c) has acted in a manner prejudicial to the interests of the Company.

14.2 At least 21 days before the Board takes any disciplinary action, the secretary must notify the Member in writing that:

- a) the Board is considering disciplinary action which shall be specified, and the date place and time that such proposed disciplinary action will be considered by the Board;
- b) the reason for such proposed disciplinary action; and

- c) that the Member may explain or defend themselves by:
 - i) sending the Board a written explanation; and/or
 - ii) speaking at a meeting of the Board convened for that purpose (but the Member may not be present during Board deliberations or voting on the resolution unless the Board allows).
 - d) If the Member subject to this clause 14 is a Director, the Director may not be present during any Board deliberations about, or to vote on, the disciplinary actions the Board may take;
- 14.3 After considering any explanation, the Board may:
- a) take no further action;
 - b) warn the Member;
 - c) suspend the Member's rights as a Member for a period of no more than 12 months;
 - d) expel the Member;
 - e) refer the decision to an unbiased, independent person on the condition that the person can only make a decision that the Board could have made; or
 - f) require the matter to be determined at a General Meeting.
- 14.4 The Secretary must give written notice to the Member of the decision promptly.
- 14.5 There will be no liability for any loss or injury suffered by the Member as a result of any decision made in good faith under this clause.
- 14.6 Subject to clause 14.7, a Member may request the Board to reconsider any action it takes under clause 14.3.
- 14.7 A Member to be expelled in accordance with clause 14.3d);
- a) may appeal against that resolution. Such an appeal must be made in writing and must be received within 10 Business Days after the date of the notice of expulsion or such longer time as the Board may decide in their complete discretion (Appeal Notice).
 - b) If an Appeal Notice is received by the Board within the required timeframe:
 - i) the Board must ensure that (within two months after receipt of the Appeal Notice) a special resolution to overturn the expulsion is considered by the Voting Members at a General Meeting called in accordance with the Corporations Act to consider this resolution only, with such resolution to be approved by at least 75% of Voting Members present in person, by Representative or by proxy and entitled to vote on that resolution;
 - ii) the Member must be given a reasonable opportunity to make representations in relation to the decision of the Board to expel that Member (which may include making representations in writing prior to or at the General Meeting or both, in accordance

with the policies and procedures of the Company in relation to such matters); and

- iii) the Member's membership will be taken to be suspended as at the date of the notice of expulsion, pending the outcome of the General Meeting.
- c) If the resolution to expel the Member is not overturned by the Voting Members at the General Meeting, the Member's expulsion takes effect from the date of the notice of expulsion. If the Voting Members overturn the expulsion then the Member's membership continues in full effect, with the suspension lifted from the date of the General Meeting.

III. GENERAL MEETINGS

15. Calling a General Meeting

- 15.1 A formal meeting of the Members is called a General Meeting and must be held for a proper purpose.
- 15.2 The Board may call a General Meeting.
- 15.3 If Members with at least 5% of the votes that may be cast at a General Meeting make a written request to the Company for a General Meeting to be held, the Board must:
 - a) within 21 days of the Members' request, give all Members notice of a General Meeting, and
 - b) hold the General Meeting within 2 months of the Members' request.
- 15.4 A General Meeting, called the Annual General Meeting, must be held:
 - a) within 18 months after registration of the Company, and
 - b) after the first Annual General Meeting, at least once in every calendar year and within 5 months after the end of the Company's financial year.
- 15.5 The Company may hold a General Meeting at two or more venues, or wholly or partly online or virtually, using any technology that gives the Members a reasonable opportunity to participate, including to hear and be heard.
- 15.6 Anyone using this technology is taken to be present in person at the meeting.
- 15.7 A virtual General Meeting is deemed to have been held at the Company's registered office.
- 15.8 A General Meeting that is partly held using technology, and partly in person, is deemed to have been held at the registered office of the Company.

16. Notice of a General Meeting

16.1 Except in circumstances described below, at least 21 days notice must be given of a General Meeting.

16.2 A General Meeting must be held:

- a) at a reasonable time; and
- b) if the meeting is being held at a physical location or locations and any of the Members are entitled to physically attend the meeting - at a reasonable location or locations; and
- c) if virtual meeting technology is used in holding the meeting- the technology gives the persons entitled to attend the meeting, as a whole, a reasonable opportunity to participate without being physically present in the same place.

16.3 A meeting is taken to be held at a reasonable time if any of the following applies:

- a) if there is only one location at which the Members who are entitled to physically attend the meeting may do so - the meeting is held at a time that is reasonable at the location;
- b) if there are 2 or more locations at which the Members who are entitled to physically attend the meeting may do so - the meeting is held at a time that is reasonable at the main location for the meeting as set out in the notice of the meeting;
- c) if the meeting is held using virtual meeting technology - the meeting is held at a time that is reasonable at the place where the meeting is taken to be held.

16.4 Notice of a General Meeting must be given to:

- a) each Member;
- b) each Director; and
- c) the auditor, if any.

16.5 Notice of a General Meeting must include:

- a) if there is only one location at which the Members who are entitled to physically attend the meeting may do so — the date, time and place for the meeting;
- b) if there are 2 or more locations at which the Members who are entitled to physically attend the meeting may do so—the date and time for the meeting at each location, and the main location for the meeting;
- c) if virtual meeting technology is to be used in holding the meeting— sufficient information to allow the Members to participate in the meeting by means of the technology;
- d) the general nature of the General Meeting's business;
- e) if applicable, that a Special Resolution is to be proposed and the words of the proposed resolution; and

- f) a statement that a Member has the right to appoint a proxy.
- 16.6 Notice of a General Meeting must be provided in writing at least 21 days before the meeting.
- 16.7 Notice of a General Meeting may be provided less than 21 days before the meeting if:
 - a) for an Annual General Meeting, all the Members entitled to attend and vote at the Annual General Meeting agree beforehand, or
 - b) for any other General Meeting, Members with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 16.8 Notice of a General Meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
 - a) remove a Director
 - b) appoint a Director in order to replace a Director who was removed, or
 - c) remove an auditor.
- 16.9 The accidental failure to give notice of any General Meeting to, or the non-receipt of notice of a General Meeting by, any Member entitled to receive notice will not invalidate the proceedings at or any resolution passed at the General Meeting.
- 16.10 A Member's attendance at a General Meeting waives any objection that that Member may have to a failure to give notice, or the giving of a defective notice, of the General Meeting.

17. Quorum at a General Meeting

- 17.1 A quorum for a General Meeting is 5 Voting Members present in person, by proxy or by Representative for the whole meeting.
- 17.2 When determining whether a quorum is present, a person may only be counted once even if that person is a Representative or proxy of more than one Member.
- 17.3 If a quorum is not present within 30 minutes after the time appointed for a General Meeting:
 - a) if convened by or on requisition of Members, is dissolved; and
 - b) in any other case stands adjourned to such other day, time and place as the Board appoints by notice to the Members and others entitled to notice of the meeting.

18. Chair of a General Meeting

- 18.1 Usually, the Chair will be the chair of any General Meeting.
- 18.2 If there is no Chair, or the Chair is absent from a General Meeting, prevented from acting, or not willing to act as chair of the meeting or of part of the meeting, then the Deputy Chair (if there is one) will act as chair of that meeting or part of it until such time as the Chair joins the General Meeting or can resume the role of chair (as applicable).

- 18.3 If there is no Chair and no Deputy Chair or if the Deputy Chair is absent from a General Meeting, prevented from acting, or not willing to act as chair of the meeting or of part of the meeting, then the Directors present may elect one of their number present to be chair of that meeting or part of it until such time as the Chair or Deputy Chair joins the General Meeting or can resume the role of chair.
- 18.4 If there are no Directors present at the General Meeting or the Directors present are prevented from acting or are not willing to act as chair of the meeting or part of the meeting, then the Voting Members present may elect a person present to be chair of that meeting or part of it until such time as the Chair or Deputy Chair joins the General Meeting or can resume the role of chair (as applicable).
- 18.5 The chair of a General Meeting is responsible for the conduct of the meeting. Any question arising at a General Meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chair whose decision is final.
- 18.6 The chair of a General Meeting may at any time they consider it necessary or desirable for the proper and orderly conduct of the meeting:
- a) impose a limit on the time that a person may speak on a motion or other item of business, question, motion or resolution being considered by the meeting;
 - b) terminate debate or discussion; and
 - c) adopt any procedures for casting or recording votes at the meeting whether on a show of hands, on the voices or a poll.
- 18.7 The chair may at any time during the course of a General Meeting, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.
- 18.8 When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.

19. Decisions at a General Meeting

- 19.1 Each Voting Member entitled to vote has one vote. The vote may be exercised in person, by proxy or by the Member's Representative.
- 19.2 An ordinary resolution is passed if the number of votes cast in favour of that resolution is greater than one half of the total number of votes cast.
- 19.3 Unless the Corporations Act or this constitution requires a meeting to be held, the Board may put a resolution to the Members to be passed as a written resolution (a circular resolution) without a General Meeting being held.
- 19.4 A circular resolution is passed if all the Members entitled to vote on the resolution sign or agree to the circular resolution.

- a) Members may sign:
 - b) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
 - c) separate copies of that document, as long as the wording is the same in each copy.
- 19.5 The Company may send a circular resolution by email to Members and Members may agree by sending a reply email to that effect, including the text of the resolution in their reply.
- 19.6 If;
- a) virtual meeting technology is used in holding a meeting; and
 - b) a document is required or permitted to be tabled at the meeting;
 - c) the document is taken to have been tabled at the meeting if the document is:
 - i) given to the persons entitled to attend the meeting (whether physically or using virtual meeting technology) before the meeting; or
 - ii) made accessible to the persons attending the meeting (whether physically or using virtual meeting technology) during the meeting.

20. Methods of voting at a General Meeting

- 20.1 A resolution put to the vote of a General Meeting shall be decided on a show of hands unless a poll is required under this constitution or the Corporations Act, or demanded by:
- a) the chair of the meeting;
 - b) at least 5 Members entitled to vote on the resolution; or
 - c) Members with at least 5% of the votes that may be cast on the resolution on a poll.
- 20.2 All persons participating virtually in a meeting who are entitled to vote at the meeting:
- a) must be given the opportunity to participate in the vote in real time; and
 - b) may be given the opportunity to record a vote in advance of the meeting at the election of the voter.
- 20.3 Proxies shall not be counted on a vote by a show of hands.
- 20.4 A proxy holder does not need to be a Member.
- 20.5 A proxy appointment may specify the way the proxy must vote on a particular resolution.
- 20.6 The proxy holder must vote on a proposed resolution in accordance with a direction, if any.

- 20.7 Proxy forms must be received by the Company at the address stated in the notice (which may be an electronic address) or at the Company's registered address at least 48 hours before a meeting.
- 20.8 A poll requested on a resolution at a General Meeting must be taken in the manner and at the time and place the chair of the meeting directs.
- 20.9 The result of a poll requested and taken on a resolution of a General Meeting is a resolution of that meeting.
- 20.10 Each Member entitled to vote at a General Meeting may vote by direct vote using electronic and/or postal means where such an option is offered by the Board.
- 20.11 The Board may prescribe by-laws in relation to direct voting, including specifying the form, method and timing of giving a direct vote at a meeting in order for the vote to be valid.
- 20.12 A direct vote includes a vote delivered to the Company by any means approved by the Board, which may include post or electronic means.
- 20.13 An objection to the qualification of a Member to vote at a General Meeting:
 - a) must be raised before or at the meeting at which the vote objected to is given or tendered; and
 - b) must be referred to the chair of the meeting whose decision on the qualification to vote is final.

21. Cancellation or postponement of a General Meeting

- 21.1 The Board in its discretion may cancel, postpone or change the venue of an upcoming General Meeting, by giving notice of the changes.

IV. BOARD OF DIRECTORS

22. Board composition

- 22.1 There will be up to 9 Directors.
- 22.2 Each category of the Voting Membership listed in clause 7.2c) may appoint one Director in accordance with the by-laws. These Directors will be designated **Member Directors**.
- 22.3 In addition, there may be up to 4 other Board appointed positions recommended by the Nominations Committee subject to the terms of this constitution and the by-laws. These Directors will be designated **Appointed Directors**.
- 22.4 The Company must have at least 3 Directors. At least 2 Directors must ordinarily reside in Australia.
- 22.5 Where the office of a Director becomes vacant, the continuing Directors may continue to act except where the number of Directors is reduced to fewer than 3 Directors, in which case the continuing Directors may act only:

- a) to appoint Directors for the purpose of increasing the number of Directors to 3 or higher;
- b) to convene a General Meeting; or
- c) in an emergency.

23. Nominations Committee

- 23.1 The Board must establish a committee for the purpose of, among other things, seeking, assessing and nominating candidates for Director positions (Nominations Committee).
- 23.2 The Nominations Committee should strive to ensure the Board is comprised of Directors who collectively have the skills, experience, knowledge, and diversity needed to further the Purpose.
- 23.3 The Board may establish by-laws for the governance of such committee.

24. Term of Directors

- 24.1 The term of office of a Member Director commences at the conclusion of the relevant Annual General Meeting and ends at the conclusion of the second following Annual General Meeting.
- 24.2 The term of office of an Appointed Director commences at the time of the resolution of the Board appointing the Director and ends at such time as the Board determines at the time of appointment, being no more than four years later.
- 24.3 The maximum continuous period for which a person may hold office as a Director is eight years.
- 24.4 A person who has held office as a Director for the maximum continuous period is eligible for reappointment after a period of one year from the date that the person last held office as a Director.
- 24.5 The maximum continuous period of eight years does not include any period of a person's appointment to fill a casual vacancy under clause 37.1.

25. Eligibility of Directors

- 25.1 A person is eligible for appointment as a Director of the Company if they:
 - a) are over the age of 18 years;
 - b) give the Company their signed consent to act as a Director of the Company;
 - c) are not ineligible to be a Director under law, including the Corporations Act; and
 - d) are not bankrupt and have not made any arrangement or composition with their creditors generally, unless, subject to the Corporations Act, the Board resolves otherwise.

26. No Alternate Directors

26.1 Directors are not entitled to appoint alternate directors.

27. Chair and Deputy Chair

27.1 The Board must appoint a Director as Chair and another Director as Deputy Chair.

27.2 Subject to clause 27.3, the Board may determine the period for which a Director is Chair or Deputy Chair.

27.3 The maximum continuous period for which a Director may hold office as Chair is four years.

27.4 A person who has held office as Chair for the maximum continuous period is eligible for reappointment after a period of 1 year from the date that the person last held office as Chair.

28. Powers of the Board

28.1 The Board may exercise all the powers of the Company that are not required by the Corporations Act or by this constitution to be exercised by the Company in General Meeting.

29. Duties of Directors under common law and legislation

29.1 The Directors must comply with their duties as directors under legislation and common law.

29.2 Without limiting clause 29.1 the Directors must comply with the following duties:

- a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a Director of the Company;
- b) to act in good faith in the best interests of the Company and to further the Purpose of the Company;
- c) not to misuse their position as a Director;
- d) not to misuse information they gain in their role as a Director and to maintain the confidentiality of information received in their role as a Director;
- e) to disclose any perceived or actual material conflicts of interest in the manner set out in this constitution;
- f) to ensure that the financial affairs of the Company are managed responsibly; and
- g) not to allow the Company to operate while it is insolvent.

30. Delegation of powers

30.1 The Board may delegate any of its powers to:

- a) a committee;
- b) a Director;

- c) an employee of the Company; or
- d) any other person,

and may revoke that delegation.

30.2 The delegate must exercise the powers delegated in accordance with any directions, terms and conditions as set by the Board.

31. Audit Committee

31.1 The Board shall establish an Audit Committee in accordance with the by-laws.

31.2 At least one member of the Audit Committee must have qualifications in or experience with understanding books and records required to be kept under the Corporations Act.

32. By-laws

32.1 The Board may from time to time make, amend, or repeal such by-laws as it determines are appropriate for the control, administration and management of the Company's operations, finances, interests, effects or property. Any such by-law:

- a) must not be inconsistent with any provision in this constitution; and
- b) when in force is binding on all Members.

33. Payment to Directors

33.1 Unless otherwise approved by the Voting Members in General Meeting, Directors will not be entitled to be paid a fee for acting as a Director.

33.2 Directors may be entitled:

- a) to be paid for work they do for the Company, other than as a Director, if the amount is no more than a reasonable fee for the work done; or
- b) to reimbursement for expenses properly incurred by the Director in connection with the affairs of the Company.

33.3 Any payment made under clause 33.2 must be approved by the Board.

34. Conflict of interest

34.1 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 meeting of the Board (or that is proposed in a circular resolution):

- a) to the other Directors; or
- b) 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.

- 34.2 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:
- a) be present at the meeting while the matter is being discussed; or
 - b) vote on the matter, except if the Directors who do not have a material personal interest in the matter pass a resolution that:
 - i) 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
 - ii) says that those Directors are satisfied that the interest should not stop the Director from voting or being present.
- 34.3 No contract made by a Director with the Company and no contract or arrangement entered into by or on behalf of the Company in which any Director may be in any way interested is voided or rendered voidable merely because the Director holds office as a Director or because of the fiduciary obligations arising out of that office.

35. Exceptions

- 35.1 Despite the existence of a real or perceived material personal conflict, a Director may still be present and vote if:
- a) their interest arises because they are a Member of the Company, and the other Members have the same interest;
 - b) their interest relates to an insurance contract that insures, or would insure, the Director against liabilities that the Director incurs as a Director of the Company;
 - c) their interest relates to a payment by the Company in respect of an indemnity provided for in this constitution, or any contract relating to an indemnity that is allowed under the Corporations Act; or
 - d) Australian Securities and Investments Commission (ASIC) makes an order allowing the Director to vote on the matter.
- 35.2 The disclosure of a conflict of interest by a Director must be recorded in the minutes of the meeting.

36. Ceasing to be a Director

- 36.1 In addition to any other way a Director ceases to be a Director, a Director ceases to be a Director if they:
- a) resign by giving one month's written notice to the Secretary;
 - b) are subject to any of the circumstances prescribed by the Corporations Act as resulting in the ending or vacating of the office;
 - c) become of unsound mind or an entity who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health unless (in the opinion of a majority of Directors) the Director can fully participate in the governance of the Company, despite their mental incapacity;

- d) die;
- e) become bankrupt or make any arrangement or composition with their creditors generally, unless, subject to the Corporations Act, the Board resolves otherwise;
- f) are convicted on indictment of an offence and the Board does not at the next meeting of the Board after that conviction resolve to confirm the Director's appointment to the office of Director;
- g) are absent from three consecutive meetings of the Board, with or without the consent of the Board, unless at the next meeting of the Board, the Board resolves otherwise;
- h) fail to disclose a material personal interest in breach of the law unless at its next meeting the Board resolves otherwise;
- i) are removed as a Director by ordinary resolution of the Company in General Meeting;
- j) become a paid employee of the Company; or
- k) are found guilty of engaging in derogatory or discriminatory conduct or harassment towards employees of the Company or other Members or their employees.

37. Casual vacancies on the Board

- 37.1 If a casual vacancy in the position of a Director occurs, the Board may appoint an eligible individual to fill the vacancy until the end of the predecessor's term.

38. Frequency and mode of Board meetings

- 38.1 The Board may meet together (including by technological means) for the dispatch of business and adjourn and otherwise regulate its meetings as frequently and in the manner it sees fit.

39. Calling a Board meeting by Chair or two Directors

- 39.1 The Chair or any two or more Directors may at any time request a Board meeting.
- 39.2 The Secretary, upon the request of the Chair or any two or more Directors, must convene a Board meeting.

40. Notice of a Board meeting

- 40.1 Reasonable notice must be given to every Director of the place, date and time of every Board meeting.
- 40.2 Notice of a Board meeting must be given by such means as have been agreed by the Directors.
- 40.3 Non-receipt of any notice of a Board meeting by a Director does not affect the validity of the convening of the meeting.

41. Chair of a Board meeting

- 41.1 The Chair is entitled to chair all Board meetings.

41.2 In the absence of the Chair, the Deputy Chair is entitled to chair Board meetings.

41.3 In the absence of the Chair and Deputy Chair, the Directors at a Board meeting may choose a Director to be the chair.

42. Quorum at a Board meeting

42.1 The quorum for a meeting of the Board shall be the number that is a majority of the Directors currently in office.

42.2 No business may be transacted at a Board meeting unless a quorum of Directors is present during the time the business is dealt with.

43. Decisions of the Board

43.1 A resolution of the Board must be passed by a majority of the votes cast by Directors present and entitled to vote on the resolution.

43.2 The Board may pass a resolution, without a meeting of the Board being held if the proposed resolution is sent to the Directors and a majority of Directors, assent to the resolution in writing (circular resolution).

43.3 A circular resolution is taken to have been passed on the date the resolution was assented to by the last Director who constituted the majority of Directors in favour.

44. Validity of acts of Directors

44.1 All acts done at any meeting of the Board or by any individual acting as a Director shall be valid even if it is later discovered that there was a defect in the appointment of an individual as a Director or the individual not being entitled to vote.

V. ADMINISTRATIVE MATTERS

45. Secretary

45.1 The Board must appoint at least one Secretary.

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

45.3 The Board may remove any Secretary so appointed, subject to the terms of any contract and the law.

45.4 The Secretary has such powers and duties as specified in this constitution, as required by the Corporations Act, and as determined by the Board.

45.5 The Secretary is responsible for keeping and managing access to the register of Members.

45.6 The Secretary must maintain a register of Directors' interests, noting that interests may not necessarily conflict with duties to the Company.

46. Minutes

- 46.1 The Company must keep minute books in which it records:
- a) proceedings and resolutions of General Meetings;
 - b) proceedings and resolutions of Board meetings;
 - c) proceedings of committee meetings;
 - d) resolutions passed by Members without a meeting; and
 - e) resolutions passed by the Board without a meeting
- 46.2 The Company must ensure that the minutes of a meeting are signed within a reasonable time after the meeting (usually within 1 month) by the chair of the meeting at which the proceedings were held, or by the chair of the next succeeding meeting.

47. Inspection of records

- 47.1 The Board must ensure that the minute books for General Meetings of the Company and for resolutions of Members passed without meetings, are open (available) for inspection by Members in accordance with the Corporations Act.
- 47.2 A Member other than a Director does not have the right to inspect any books, records or documents of the Company except as provided by law or authorised by the Board.

48. Time for service of notices

- 48.1 Where a notice is sent by post, service of the notice is taken to be effected three (3) days after it is posted.
- 48.2 Where a notice is sent by email or other electronic means, service of the notice is taken to be effected on the day it is sent or on the day the Member is advised via the electronic contact address that the notice is accessible electronically.

49. Method for service of notices

- 49.1 A notice may be given by the Company to a Member:
- a) by serving it on the Member personally;
 - b) by sending it by post to the Member's address as shown in the register of Members;
 - c) by sending it to an electronic contact address (such as an email address) that the Member has supplied to the Company or using which the Member has contacted the Company in the past; or
 - d) by making a copy of it accessible electronically (for example on a website of, or related to, the Company, or using a hyperlink or other technology) and advising the Member of its availability via the electronic contact address.

50. Execution of documents

- 50.1 Without limiting the way in which the Company may execute any approved contract, including as permitted under the Act, the Company may execute any agreement, deed or other document where it is signed by two Directors or one Director and one Secretary

51. Accounts and audit

- 51.1 The Board must cause:

- a) the Company to keep the accounting records and prepare the financial statements required by the Corporations Act; and
- b) the accounts and any other documents required by the Corporations Act to be sent to Members and laid before General Meetings as required by the Corporations Act.

- 51.2 The Board must cause:

- a) the accounts of the Company to be audited if required by the Corporations Act; and
- b) the auditor's report to be sent to Members and laid before General Meetings of the Company if required by the Corporations Act.

52. Indemnity

- 52.1 The Company indemnifies each officer of the Company out of the assets of the Company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Company.

- 52.2 In this clause 52 and clause 53, 'officer' means a Director or Secretary and includes a Director or Secretary after they have ceased to hold that office.

- 52.3 In this clause, 'to the relevant extent' means:

- a) to the extent that the Company is not precluded by law (including the Corporations Act) from doing so, and
- b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).

- 52.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the Company:

53. Insurance

- 53.1 To the extent permitted by law the Company may:

- a) purchase and maintain insurance; or
- b) pay or agree to pay a premium for insurance,

against any liability incurred by the officer as an officer including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal.

54. Changes to the constitution

- 54.1 The Company may modify or repeal its constitution, or a provision of its constitution, by special resolution.

55. Access

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

56. Winding Up

- 56.1 In the event of the winding up or dissolution of the Company, any remaining assets, after deduction of liabilities, must not be distributed to a Member or a former Member of the Company and must be transferred as determined by the Voting Members to a fund, authority or institution whose constitution:
- a) requires it to have objects or purposes similar to those of the Company; and
 - b) prohibits it from making distributions to its members to at least the same extent as set out in this constitution.
- 56.2 The determination as to the fund, authority or institution to be given the surplus assets must be made by a special resolution of Voting Members at or before the time of winding up. If the Voting Members do not make this determination, the Company may apply to a court of law to make this decision.

57. Transitional arrangements

- 57.1 The initial Members are those named as Members in the application for registration of the Company. The Board will classify each initial Member as either:
- a) a Voting Member, and if so as either a:
 - i) Grower;
 - ii) Agronomist/Researcher;
 - iii) Producer;
 - iv) Processor; or
 - v) Trader;
 - or
 - b) a Non-Voting Member.
- 57.2 Despite any contrary provisions in the constitution, the initial Board will comprise those Directors named in the application for registration

of the Company. The Directors on the initial Board will hold office until the conclusion of the Company's first Annual General Meeting.

- 57.3 The Board will take the necessary actions to ensure that where reasonably practicable, from the conclusion of the Company's first Annual General Meeting, the Board will be constituted in accordance with clause 22.