

Constitution of AusBiotech Ltd

ABN 87 006 509 726

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CONSTITUTION OF AUSBIOTECH LTD
ABN 87 006 509 726

1. PRELIMINARY

1.1 Company limited by guarantee

AusBiotech is limited by guarantee and the liability of members is limited as provided in this document.

1.2 Objectives of AusBiotech

It is the vision of AusBiotech to be the Australian organisation representing the biotechnology industry with the mission to foster and promote a strong and profitable biotechnology industry in Australia through advocacy and the provision of services and benefits to its members.

To achieve this AusBiotech will strengthen its leadership position in Australia, consolidate a leadership position in the Asia/Pacific Region and promote sustainability of the biotechnology industry as a key economic driver for Australia.

1.3 Application of income and property

No part of AusBiotech's income or property may be paid or transferred directly or indirectly by way of dividend bonus or otherwise to members. AusBiotech must only apply its profits (if any) or other income in promoting AusBiotech's objectives.

1.4 Replaceable rules

The replaceable rules referred to in section 141 do not apply to AusBiotech and are replaced by the rules set out in this document.

1.5 Definitions

The following definitions apply in this document.

AusBiotech means the company named at the beginning of this document whatever its name is for the time being.

Board means the Directors acting collectively under this document.

CEO or Chief Executive Officer means the chief executive office and managing director appointed under rule 6.1.

Company means AusBiotech Limited ABN 87 006 509 726.

Corporate Member means a member satisfying the requirements of rule 2.2(a) and recorded in the Register as a current corporate member.

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

Director means a person who is, for the time being, a director of AusBiotech.

Individual Member means a member satisfying the requirements of rule 2.2(b) and recorded in the Register as a current individual member.

International Corporate Member means a member satisfying the requirements of rule 2.2(e) and recorded in the Register as a current international corporate member.

International Individual Member means a member satisfying the requirements of rule 2.2(f) and recorded in the Register as a current international individual member.

Life Member means a member satisfying the requirements of rule 2.2(d) and recorded in the Register as a life member.

member means a person whose name is entered in the Register as a member of AusBiotech.

ordinary resolution means a resolution passed at a meeting of members by a majority of the votes cast by members entitled to vote on the resolution.

Register means the register of members kept as required by sections 168 and 169.

Secretary means, during the term of that appointment, a person appointed as a secretary of AusBiotech in accordance with this document.

special resolution has the meaning given by section 9.

Student Member means a member satisfying the requirements of rule 2.2(c) and recorded in the Register as a current "student member".

Voting Member means each Corporate Member and Individual Member, who has paid all amounts due and payable to AusBiotech in respect of their membership.

1.6 Interpretation

Headings and marginal notes are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) a reference to:
- (i) legislation (including subordinate legislation) is to that legislation as amended, modified in relation to AusBiotech, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;

See sections 168
and 169

-
- (iii) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (iv) anything (including a right, obligation or concept) includes each part of it.
- (b) a singular word includes the plural and vice versa;
 - (c) a word which suggests 1 gender includes other genders;
 - (d) If a word is defined, another part of speech has a corresponding meaning
 - (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
 - (f) the word **agreement** includes an undertaking or other binding arrangement or understanding, whether or not in writing;
 - (g) a power to do something includes a power, exercisable in the like circumstances, to revoke or undo it;
 - (h) a reference to a power is also a reference to an authority or discretion;
 - (i) a reference to something being **written** or **in writing** includes that thing being represented or reproduced in any mode in a visible form;
 - (j) a word (other than a word defined in rule 1.5) which is defined by the Corporations Act has the same meaning in this document where it relates to the same matters as the matters for which it is defined in the Corporations Act.
 - (k) a reference to a Chapter, Part, Division, or section is a reference to a Chapter, Part, Division or section of the Corporations Act.

2. **MEMBERSHIP**

2.1 **Membership**

Subject to rules 2.9 and 2.10, Members are:

- (a) as at a particular date, the persons that AusBiotech admits to membership in respect of a period which includes that date; and
- (b) any person that AusBiotech has admitted to membership as a Life Member.

2.2 **Classes of membership**

The membership of AusBiotech is divided into the following classes of membership:

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- (a) **Corporate Member** – being a member that is a corporation, company, business, firm, partnership, university, institute or similar body or entity (other than a natural person) which is engaged in or interested in biotechnology;
 - (b) **Individual Member** – being a member who is a natural person who is engaged in or interested in biotechnology (other than a Student Member and an International Individual Member);
 - (c) **Student Member** – being a member who is a natural person being a bona fide full time student at a secondary or tertiary institute of learning or training and who is interested in or studying biotechnology;
 - (d) **Life Member** – being a member who is a natural person who, in the opinion of the Board, has excelled in their service to biotechnology and in meritorious achievement in biotechnology;
 - (e) **International Corporate Member** – being a member that is a corporation, company, business, firm, partnership, university, institute or similar body or entity (other than a natural person) based outside Australia, which is engaged in or interested in biotechnology and is not a not-for-profit enterprise;
 - (f) **International Individual Member** – being a member who is a natural person, based outside Australia, engaged in or interested in biotechnology; and
 - (g) **Other Member** – being any member who does not meet the criteria for any other category of membership as determined by the Company.

2.3 **New members**

A person must not be admitted to membership unless:

- (a) he, she or the entity concerned applies for membership in accordance with rule 2.4; and
- (b) the application for membership is approved by the Board in accordance with rule 2.5.

2.4 **Applications for membership**

An application for membership of AusBiotech must:

- (a) be made in a form as the Board may from time to time reasonably require;
- (b) be accompanied by such proofs, information and evidence as the Board may from time to time reasonably require;
- (c) be accompanied by payment of the relevant membership fee; and
- (d) be lodged with AusBiotech.

2.5 Approval or rejection of applications

- (a) As soon as practicable after the receipt of an application AusBiotech must determine whether to approve or reject the application.
- (b) If AusBiotech approves an application for membership, AusBiotech must procure that, as soon as practicable:
 - (i) subject to receipt by AusBiotech of the relevant membership fee (in cleared funds) referred to in rule 2.4(c), the applicant's name is entered in the Register, noting the relevant class and period of membership; and
 - (ii) the applicant is notified in writing of the approval of membership, including the class and period of membership for which the applicant has been accepted.
- (c) If AusBiotech rejects an application, AusBiotech must, as soon as practicable, notify the applicant in writing that the application has been rejected and return any membership fee paid by the applicant with its application.

2.6 Rights of membership

- (a) An applicant for membership becomes a member and is entitled to exercise the rights of membership (or a class of membership) when the applicant's name is entered in the Register for the period of membership noted in the Register.
- (b) A right, privilege or obligation of a person by reason of membership of AusBiotech (or a class of membership):
 - (i) is not capable of being transferred or transmitted to another person; and
 - (ii) terminates upon the cessation of membership of AusBiotech (or a class of membership) whether by expiration of the period of membership, by death, by resignation or otherwise.

2.7 Changing classes of membership

- (a) A member must promptly notify AusBiotech of:
 - (i) in the case of a Corporate Member, any change to the number of employees involved in any aspect of biotechnology; and
 - (ii) any other change which causes the member to cease to fall within the definition of its class of membership (as set out in rule 2.2).
- (b) AusBiotech must ensure that the Register is updated to reflect any change in the status of the member and its class of membership as soon as practicable after AusBiotech becomes aware that a change has occurred.

2.8 **Limited liability of members**

If AusBiotech is wound up each member undertakes to contribute to the assets of AusBiotech up to an amount not exceeding \$4.00 for payment of the debts and liabilities of AusBiotech including the costs of the winding up. This undertaking continues for 1 year after a person ceases to be a member.

2.9 **Resigning as a member**

A member may resign from AusBiotech by giving written notice.

2.10 **Expelling a member**

(a) The Board may, by resolution, expel from AusBiotech any member:

- (i) who does not comply with this document or any by-laws, rules or regulations of AusBiotech; or
- (ii) whose conduct in the opinion of the Board is prejudicial to the interests of AusBiotech,

and remove that member's name from the Register.

(b) At least 21 days before the Board holds a meeting to expel a member, the Board must give written notice to the member which states:

- (i) the allegations against the member;
- (ii) the proposed resolution for the member's expulsion;
- (iii) that the member has an opportunity at the meeting to address the allegations either orally or in writing; and
- (iv) that if the member notifies the Secretary in writing at least 48 hours before the meeting, the member may elect to have the question of that member's expulsion dealt with by AusBiotech in general meeting.

(c) AusBiotech must expel a member and remove the member's name from the Register where:

- (i) a general meeting is held to expel a member; and
- (ii) a resolution is passed at the meeting by a majority of two-thirds of those present and voting for the member to be expelled. The vote must be taken by ballot.

(d) A member expelled from AusBiotech does not have any claim on AusBiotech, its funds or property.

3. DIRECTORS

3.1 Number of Directors

- (a) AusBiotech may by ordinary resolution passed at a general meeting increase the minimum number of Directors or increase or reduce the maximum number of Directors.
- (b) Until AusBiotech resolves otherwise in accordance with rule 3.1 (a) there will be:
 - (i) a minimum of four Directors; and
 - (ii) subject to rule 3.1 (c), a maximum of six Directors.
- (c) If the Directors appoint one or more Directors in accordance with rule 3.7, there will be a maximum of eight Directors, including the Chief Executive Officer.
- (d) If the number of Directors is reduced below the minimum number under rule 3(b)(i), the remaining Directors may act as a Board only:
 - (i) to appoint Directors up to that minimum number;
 - (ii) to convene a meeting of the members; and
 - (iii) to deal with emergencies.
- (e) Before each annual general meeting, the Directors must determine whether there will be any vacancy on the Board at the end of the annual general meeting, taking into account the minimum number of Directors required under rule 3.1(b)(i). If there will be any such vacancy, members must be notified that there will be an election and an eligible member may be elected as a Director in accordance with this document. If the Directors determine that there will be no such vacancy on the Board, there will be no requirement for an election at the annual general meeting.

3.2 Qualification

- (a) Subject to rule 3.2(b) any person who is a member of AusBiotech is eligible to be elected as a Director.
- (b) For the purpose of rule 3.2 (a) a person will be deemed to be a member of AusBiotech and eligible for election as a Director if the person:
 - (i) is an employee, director, partner, principal or owner of the business of a Corporate Member;
 - (ii) is nominated to be a Director of AusBiotech by a Corporate Member; and
 - (iii) accepts the nomination under 3.2(b)(ii) and the nominating Corporate Member leaves written notice of the nomination including the signed consent of the nominee at AusBiotech's registered office at least 21

business days (or any other period fixed by the Board) prior to the date of the meeting at which election is to occur.

- (c) Any incumbent director who does not qualify to be a director under rule 3.2(b), may, subject to being appointed to fill a vacancy in accordance with rule 3.10(f), remain in office until the time of the next annual general meeting.
- (d) In addition to the circumstances which disqualify a person from managing a corporation according to the Corporations Act, no person who has been an insolvent under administration within the previous five years is eligible to become a Director.

3.3 How Directors may be appointed:

Directors may be appointed by:

- (a) an election of members in accordance with rule 3.4; or
- (b) the Board, as an additional or casual Director under rule 3.7.

3.4 Election of Directors

- (a) Subject to this Constitution, section 201E and the number of Directors fixed for the time being under rule 3.1(b) not being exceeded, the members may elect any person who qualifies under rule 3.2 as a Director by resolution passed in general meeting.
- (b) A Director appointed or elected at a general meeting is taken to have been appointed or elected with effect immediately upon the conclusion of that general meeting unless the resolution by which the Director was appointed or elected specifies a time to the contrary.

3.5 Manner of election

- (a) Subject to rule 3.4(a), the Directors may decide, in their absolute discretion, the form, manner of voting, timing and conduct of any election of Directors and, in the absence of manifest error, the decision of the Directors on any matter pertaining to the procedure for, or the timing of, an election of Directors, is final and binding on the members.
- (b) The Directors may resolve that an appointment or election of Directors that would otherwise occur at a general meeting may take place by postal ballot conducted before that meeting.
- (c) Subject to rule 3.5(a), if the appointment or election of Directors is undertaken by postal ballot conducted before a general meeting or by other means not involving the conduct of a vote at a general meeting, each person elected (or re-elected) as a Director following the declaration of the postal or other ballot will be deemed to have been elected (or re-elected) as a Director with effect immediately upon the conclusion of that general meeting unless the resolution by which the Director was appointed or elected specifies a time to the contrary.

3.6 **Election deadlock**

Subject to rule 3.5(a), where an election of members to the Board results in the number of proposed directors receiving the same number of votes such that if the number of all of those proposed directors would exceed the number of positions available, the chairperson may determine in their absolute discretion another manner in which to decide the outcome including but not limited to:

- (a) allowing the relevant candidates to agree on the matter;
- (b) determination by drawing lots; or
- (c) the resubmission of the relevant candidates to a further vote of members.

3.7 **Additional and casual Directors**

(a) Subject to this document, section 201E and the number of Directors fixed for the time being under rule 3.1(c) not being exceeded, the Directors may appoint any person as a Director to fill a casual vacancy or as an addition to the existing Directors at any time. At no time will there be more than three appointed Directors.

(b) The Directors (or a nominated committee of the board) may establish guidelines and processes on the selection of persons to be appointed as casual or additional Directors. Without limiting the absolute discretion of the Directors to determine the guidelines, processes and persons to be appointed as Directors, the Directors must have regard to:

- (i) the objectives of AusBiotech;
- (ii) the qualification, experience and skills of the existing Directors; and
- (iii) the qualifications, experience and skills of any person proposed to be appointed as a casual or additional Director.

(c) A Director appointed under rule 3.7(a) will hold office until:

- (i) if appointed to fill a casual vacancy, the end of the next annual general meeting of AusBiotech; or
- (ii) if appointed as an addition to the existing Directors, the end of the second annual general meeting of AusBiotech after the date of the appointment,

and, in each case, at the annual general meeting at which the Director must resign, the Director may be re-elected.

(d) A Director appointed under rule 3.7(a) shall not be taken into account in determining the number of Directors who must retire by rotation in accordance with rule 3.8.

3.8 Retirement

- (a) At least one elected Director must retire at the conclusion of each annual general meeting.
- (b) Subject to rule 3.8(f) a Director must retire from office at the conclusion of the third annual general meeting after the Director was last elected (or re-elected).
- (c) Unless an elected Director opts to retire, the Director to retire at an annual general meeting is that Director who has been longest in office since their last election (or re-election).
- (d) Directors elected on the same day may agree among themselves or determine by lot which of them must retire.
- (e) A retiring Director remains in office until the conclusion of the meeting and, if eligible for re-election and subject to rule 3.2, may be re-elected at that annual general meeting.
- (f) The Chief Executive Officer (if he or she is also a Director) is not subject to retirement by rotation under rule 3.8. All other executive Directors are subject to retirement by rotation.

3.9 Power to remove Directors

- (a) If the conduct or position of any Director, whether elected or appointed, is such that continuance in office appears to the majority of the Directors to be prejudicial to the interests of AusBiotech, a majority of the Directors at a meeting of the Directors specifically called for that purpose may recommend the removal of that Director.
- (b) Within 14 days of the Directors recommending the removal of a Director, the Directors must call a general meeting, at which the Members may consider a motion to remove the Director from office.
- (c) If a motion to remove any Director from office is not carried at the general meeting called to consider the matter, the Director is not removed from his or her office.
- (d) In addition to the procedure outlined in (a) to (c) above, the members of AusBiotech may, subject to the Corporations Act, by resolution passed in general meeting remove any Director from office before the end of the Director's term of office.

3.10 Vacation of office

The office of a Director immediately becomes vacant if the Director:

- (a) is prohibited by the Corporations Act from holding office or continuing as a Director;
- (b) becomes bankrupt or makes any general arrangement or composition with his or her creditors;

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- (c) cannot fully participate in the governance of AusBiotech because of his or her mental incapacity;
 - (d) is liable to have a person appointed under a law relating to the administration of estates of persons who through mental or physical incapacity are incapable of managing their affairs, to administer it, or becomes in the opinion of the Directors incapable of performing his or her duties;
 - (e) resigns by notice in writing to AusBiotech;
 - (f) is nominated by a Corporate Member under rule 3.2(b)(ii) and any one of the following occurs:
 - (i) the Corporate Member ceases to be a Corporate Member;
 - (ii) the Corporate Member withdraws its endorsement or nomination of the nominee by notice in writing delivered to AusBiotech's registered office; or
 - (iii) the Director for any reason ceases to be an employee, director, partner, principal or owner of the business of a Corporate Member,

however where this rule 3.10(f) applies, the Board may appoint that nominee of a Corporate Member as a Director by way of casual vacancy up until the time of the next annual general meeting;

- (g) is removed by a resolution of the members of AusBiotech; or
- (h) is absent from Directors' meetings for three consecutive meetings without written approval from the Chairman of Directors.

4. POWERS OF THE BOARD

4.1 Powers generally

Replaces section
198A

Except as otherwise required by the Corporations Act, any other applicable law or this document, the Board:

- (a) has power to manage the business of AusBiotech, including deciding upon the level of fees payable on admission, subscription fees or other payments to be made by members (or classes of members); and
- (b) may exercise every right, power or capacity of AusBiotech to the exclusion of AusBiotech in general meeting and the members.

4.2 Exercise of powers

A power of the Board can be exercised only:

- (a) by resolution passed at a meeting of the Board or otherwise in accordance with rule 11; or

-
- (b) in accordance with a delegation of the power under rule 6 or 7.

5. EXECUTING NEGOTIABLE INSTRUMENTS

Replaces section
198B

The Board must decide the manner (including the use of facsimile signatures if thought appropriate) in which negotiable instruments can be executed, accepted or endorsed for and on behalf of AusBiotech. AusBiotech may execute, accept, or endorse negotiable instruments only in the manner decided by the Board.

6. CHIEF EXECUTIVE OFFICER

6.1 Appointment and power of Chief Executive Officer

Replaces section
198C and 201J

The Board may appoint 1 or more persons to be a Chief Executive Officer either for a specified term (but not for life) or without specifying a term. Subject to this document, a Chief Executive Officer has all the duties, and can exercise all the powers and rights, of a Director.

The Board may delegate any of the powers of the Board to a Chief Executive Officer:

- (a) on the terms and subject to any restrictions the Board decides; and
 - (b) so as to be concurrent with, or to the exclusion of, the powers of the Board,
- and may revoke the delegation at any time.

This rule does not limit rule 7.

6.2 Retirement and removal of Chief Executive Officer

A Chief Executive Officer is not:

- (a) subject to automatic retirement under rule 3.8; or
- (b) required to retire under rule 3.8(b),

but (subject to any contract between AusBiotech and that Chief Executive Officer) is otherwise subject to the same rules regarding resignation, removal and retirement from office as the other Directors.

6.3 Termination of appointment of Chief Executive Officer

The appointment of a Chief Executive Officer terminates if:

Replaces section
203F

- (a) the Chief Executive Officer ceases for any reason to be a Director; or
- (b) the Board removes the Chief Executive Officer from the office of Chief Executive Officer (which, without affecting the rights of the Chief Executive Officer under any contract between AusBiotech and the Chief Executive Officer, the Board has power to do),

whether or not the appointment was expressed to be for a specified term.

7. DELEGATION OF BOARD POWERS

7.1 Power to delegate

The Board may delegate any of its powers as permitted by section 198D.

7.2 Power to revoke delegation

The Board may revoke a delegation previously made whether or not the delegation is expressed to be for a specified period.

7.3 Terms of delegation

A delegation of powers under rule 7.1 may be made:

- (a) for a specified period or without specifying a period; and
- (b) on the terms (including power to further delegate) and subject to any restrictions the Board decides.

A document of delegation may contain the provisions for the protection and convenience of those who deal with the delegate that the Board thinks appropriate.

7.4 Proceedings of committees

Subject to the terms on which a power of the Board is delegated to a committee, the meetings and proceedings of committees are, to the greatest extent practical, governed by the rules of this document which regulate the meetings and proceedings of the Board.

8. DIRECTORS' DUTIES AND INTERESTS

8.1 Compliance with duties under the Corporations Act

Each Director must comply with sections 180 to 183.

8.2 Director can hold other offices etc

A Director may:

- (a) hold any office or place of profit or employment other than that of AusBiotech's auditor or any director or employee of the auditor;
- (b) be a member of any corporation (including AusBiotech) or partnership other than AusBiotech's auditor; or
- (c) be a creditor of any corporation (including AusBiotech) or partnership; or
- (d) enter into any agreement with AusBiotech.

8.3 **Disclosure of interests**

Each Director must comply with section 191.

8.4 **Director interested in a matter**

Each Director must comply with section 195 in relation to being present, and voting, at a Board meeting that considers a matter in which the Director has a material personal interest. Subject to section 195:

- (a) a Director may be counted in a quorum at a Board meeting that considers, and may vote on, any matter in which that Director has an interest;
- (b) AusBiotech may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of AusBiotech;
- (c) the Director may retain benefits under the transaction even though the Director has the interest; and
- (d) AusBiotech cannot avoid the transaction merely because of the existence of the interest.

If the interest is required to be disclosed under section 191, paragraph (c) applies only if it is disclosed before the transaction is entered into.

8.5 **Agreements with third parties**

AusBiotech cannot avoid an agreement with a third party merely because a Director:

- (a) fails to make a disclosure of an interest; or
- (b) is present at, or counted in the quorum for, a Board meeting that considers or votes on that agreement.

8.6 **Obligation of secrecy**

Every Director and Secretary must keep the transactions and affairs of AusBiotech and the state of its financial reports confidential unless required to disclose them:

- (a) in the course of duties as an officer of AusBiotech;
- (b) by the Board or AusBiotech in general meeting; or
- (c) by law.

AusBiotech may require a Director, Secretary, auditor, trustee, committee member or other person engaged by it to sign a confidentiality undertaking consistent with this rule. A Director or Secretary must do so if required by AusBiotech.

9. DIRECTORS' REMUNERATION

9.1 Restrictions on payments to Directors

The Company must not, without the approval of the members at the general meeting:

- (a) appoint a Director to any salaried office of the Company or any office of the Company paid by fees; or
- (b) pay or give a Director remuneration or other benefit in money or money's worth except, with the approval of the Board, repayment of out-of-pocket expenses and reasonable interest on money lent or reasonable rent for premises leased to the Company.

9.2 Payments to Directors with Board approval

With the approval of the Board AusBiotech may pay to a Director:

- (a) reasonable expenses (including travelling and accommodation) incurred in carrying out duties as a Director;
- (b) reasonable remuneration for any service rendered by the Director to AusBiotech;
- (c) reasonable remuneration where the Director is an employee of AusBiotech and the terms of employment have been approved by the Board;
- (d) interest on money lent by the Director to AusBiotech at a rate not exceeding the rate charged by Australian banks for overdrawn accounts;
- (e) reasonable remuneration for goods supplied by the Director to AusBiotech in the ordinary course of business; and
- (f) reasonable rent for premises leased by the Director to AusBiotech.

10. OFFICERS' INDEMNITY AND INSURANCE

10.1 Indemnity

Subject to and so far as permitted by Corporations Act, the *Trade Practices Act 1974* (Cth) and any other applicable law:

- (a) AusBiotech must, to the extent the person is not otherwise indemnified, indemnify every officer of AusBiotech and its wholly owned subsidiaries and may indemnify its auditor against a Liability incurred as such an officer or auditor to a person (other than AusBiotech or a related body corporate) including a Liability incurred as a result of appointment or nomination by AusBiotech or subsidiary as a trustee or as an officer of another corporation, unless the Liability arises out of conduct involving a lack of good faith; and
- (b) AusBiotech may make a payment (whether by way of advance, loan or otherwise) in respect of legal costs incurred by an officer or employee or auditor in defending

an action for a Liability incurred as such an officer, employee or auditor or in resisting or responding to actions taken by a government agency or a liquidator.

In this rule, **Liability** means a liability of any kind (whether actual or contingent and whether fixed or unascertained) and includes costs, damages and expenses, including costs and expenses incurred in connection with any investigation or inquiry by a government agency or a liquidator.

10.2 Insurance

Subject to the Corporations Act and any other applicable law, AusBiotech may enter into, and pay premiums on, a contract of insurance in respect of any person.

10.3 Former officers

The indemnity in favour of officers under rule 10.1 is a continuing indemnity. It applies in respect of all acts done by a person while an officer of AusBiotech or one of its wholly owned subsidiaries even though the person is not an officer at the time the claim is made.

10.4 Deeds

Subject to the Corporations Act, the *Trade Practices Act 1974* (Cth) and any other applicable law, AusBiotech may, without limiting a person's rights under this rule 10, enter into an agreement with a person who is or has been an officer of AusBiotech or any of AusBiotech's subsidiaries, to give effect to the rights of the person under this rule 10 on any terms and conditions that the Board thinks fit.

11. BOARD MEETINGS

11.1 Convening Board meetings

Replaces section
248C

A Director may at any time, and a Secretary must on request from a Director, convene a Board meeting.

11.2 Notice of Board meeting

The convenor of each Board meeting:

- (a) must give reasonable notice of the meeting (and, if it is adjourned, of its resumption) individually to each Director who is in Australia; and
- (b) may give that notice orally (including by telephone) or in writing,

but failure to give notice to, or non-receipt of notice by, a Director does not result in a Board meeting being invalid.

11.3 Use of technology

A Board meeting may be held using any means of audio or audio-visual communication by which each Director participating can hear and be heard by each other Director participating or in any other way permitted by section 248D. A Board meeting held solely

or partly by technology is treated as held at the place at which the greatest number of Directors are present at the meeting or, if an equal number of Directors is located in each of two or more places, at the place where the chairman of the meeting is located.

11.4 **Chairing Board meetings**

Replaces section
248E

The Board may elect a Director to chair its meetings and decide the period for which that Director holds that office. If there is no chairman of Directors or the chairman is not present within 15 minutes after the time for which a Board meeting is called or is unwilling to act, the Directors present must elect a Director present to chair the meeting.

11.5 **Quorum**

Replaces section
248F

- (a) Unless the Board decides otherwise, the quorum for a Board meeting is four Directors;
- (b) A quorum must be present for the whole meeting;
- (c) A Director is treated as present at a meeting held by audio or audio-visual communication if the Director is able to hear and be heard by all others attending.

If a meeting is held in another way permitted by section 248D, the Board must resolve the basis on which Directors are treated as present.

11.6 **Majority decisions**

Replaces section
248G

A resolution of the Board must be passed by a majority of the votes cast by Directors entitled to vote on the resolution. The chairman of a Board meeting does not have a casting vote. If an equal number of votes is cast for and against a resolution, the matter is decided in the negative.

11.7 **Procedural rules**

The Board may adjourn and, subject to this document, otherwise regulate its meetings as it decides.

11.8 **Written resolution**

Replaces section
248A

If all the Directors entitled to receive notice of a Board meeting and to vote on the resolution sign a document containing a statement that they are in favour of the resolution set out in the document, a Board resolution in those terms is passed at the time when the last Director signs.

11.9 **Additional provisions concerning written resolutions**

For the purpose of rule 11.8:

- (a) 2 or more separate documents in identical terms, each of which is signed by 1 or more Directors, are treated as 1 document; and

-
- (b) a telex, telegram, facsimile or electronic message containing the text of the document expressed to have been signed by a Director that is sent to AusBiotech is a document signed by that Director at the time of its receipt by AusBiotech.

11.10 **Valid proceedings**

Each resolution passed or thing done by, or with the participation of, a person acting as a Director or member of a committee is valid even if it is later discovered that:

- (a) there was a defect in the appointment of the person; or
- (b) the person was disqualified from continuing in office, voting on the resolution or doing the thing.

12. **MEETINGS OF MEMBERS**

12.1 **Annual general meeting**

AusBiotech must hold an annual general meeting as required by section 250N.

12.2 **Calling meetings of members**

A meeting of members:

- (a) may be convened at any time by the Board or a Director; and
- (b) must be convened by the Board when required by section 249D or 250N or by order made under section 249G.

Rule 13.2(a)
replaces section
249C

12.3 **Notice of meeting**

Subject to rule 12.4, at least 21 days' written notice of a meeting of members must be given individually to:

- (a) each member (whether or not the member is entitled to vote at the meeting);
- (b) each Director; and
- (c) to the auditor.

Subject to any regulation made under section 249LA, the notice of meeting must comply with section 249L and may be given in any manner permitted by section 249J(3).

12.4 **Short notice**

Subject to sections 249H(3) and (4):

- (a) if AusBiotech has elected to convene a meeting of members as the annual general meeting, if all the members entitled to attend and vote agree; or
- (b) otherwise, if members who together have power to cast at least 95% of the votes that may be cast at the meeting agree,

a resolution may be proposed and passed at a meeting of which less than 21 days' notice has been given.

12.5 **Postponement or cancellation**

Subject to sections 249D(5) and 250N, the Board may:

- (a) postpone a meeting of members;
- (b) cancel a meeting of members; or
- (c) change the place for a general meeting,

by written notice given individually to each person entitled to be given notice of the meeting under rule 12.3.

12.6 **Fresh notice**

Replaces section
249M

If a meeting of members is postponed or adjourned for one month or more, AusBiotech must give new notice of the resumed meeting.

12.7 **Technology**

See section 249S

AusBiotech may hold a meeting of members at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate.

12.8 **Accidental omission**

The accidental omission to give notice to, or the non-receipt of notice by, any of those entitled to it does not invalidate any resolution passed at a meeting of members.

13. **PROCEEDINGS AT MEETINGS OF MEMBERS**

13.1 **Member present at meeting**

If a member has appointed a proxy or attorney or (in the case of a member which is a body corporate) a representative to act at a meeting of members, that member is taken to be present at a meeting at which the proxy, attorney or representative is present.

13.2 **Quorum**

Replaces
sections 249T(1)
and (2)

The quorum for a meeting of members is 15 members. Each individual present may only be counted once towards a quorum. If a member has appointed more than one proxy or representative only one of them may be counted towards a quorum.

13.3 **Quorum not present**

Replaces sections
249T(3) and (4)

If a quorum is not present within 15 minutes after the time for which a meeting of members is called:

- (a) if called as a result of a request of members under section 249D, the meeting is dissolved; and
- (b) in any other case:
 - (i) the meeting is adjourned to the day, time and place that the Board decides and notifies members, or if no decision is notified before then, to the same time and place on the same day in the next week ; and
 - (ii) if a quorum is not present within 15 minutes after the time for which the adjourned meeting is called, the meeting is automatically dissolved.

13.4 **Chairing meetings of members**

Replaces sections
249U(1) to (3)

If the Board has appointed a Director to chair Board meetings, that Director may also chair meetings of members. If:

- (a) there is no Director whom the Board has appointed to chair Board meetings for the time being; or
- (b) the Director appointed to chair Board meetings is not present at the time for which a meeting of members is called or is not willing to chair the meeting,

the members present must elect a member or Director present to chair the meeting.

13.5 **Attendance at general meetings**

See section 249V

- (a) Every member has the right to attend all meetings of members.
- (b) Every Director has the right to attend and speak at all meetings of members.
- (c) The auditor has the right to attend any meeting of members and to speak on any part of the business of the meeting which concerns the auditor in their capacity of auditor.

13.6 **Adjournment**

Replaces section
249U(4)

Subject to rule 12.6, the chairman of a meeting of members at which a quorum is present:

- (a) may; and
- (b) if directed by ordinary resolution of the meeting, must, adjourn it to another time and place.

13.7 **Business at adjourned meetings**

Replaces section
249W(2)

The only business that may be transacted at a meeting resumed after an adjournment is the business left unfinished immediately before the adjournment.

14. **PROXIES, ATTORNEYS AND REPRESENTATIVES**

14.1 **Appointment of proxies**

A member may appoint a proxy to attend and act for the member at a meeting of members. An appointment of proxy must be made by written notice to AusBiotech:

See section 249X

- (a) that complies with section 250A(1); or
- (b) in any other form and mode that is, and is signed or otherwise authenticated by the member in a manner, satisfactory to the Board.

14.2 **Member's attorney**

A member may appoint an attorney to act, or to appoint a proxy to act, at a meeting of members. If the appointer is an individual, the power of attorney must be signed in the presence of at least one witness.

14.3 **Deposit of proxy appointment forms and powers of attorney**

An appointment of a proxy or an attorney is not effective for a particular meeting of members unless:

- (a) in the case of a proxy, the proxy appointment form and, if it is executed by an attorney, the relevant power of attorney or a certified copy of it; and
- (b) in the case of an attorney, the power of attorney or a certified copy of it,

are received by AusBiotech at its registered office or a fax number at that office (or another address specified for the purpose in the relevant notice of meeting) at least 48 hours before the time for which the meeting was called or, if the meeting has been adjourned, before the meeting is resumed.

14.4 **Corporate representatives**

A member that is a body corporate may appoint an individual to act as its representative at meetings of members as permitted by section 250D.

14.5 **Standing appointments**

A member may appoint a proxy, attorney or representative to act at a particular meeting of members or make a standing appointment and may revoke any appointment. A proxy, attorney or representative may, but need not, be a member.

14.6 **Suspension of proxy or attorney's powers if member present**

A proxy or attorney has no power to act for a member at a meeting at which the member is present:

- (a) in the case of an individual, in person; or
- (b) in the case of a body corporate, by representative.

A proxy has no power to act for a member at a meeting at which the member is present by attorney.

14.7 **Priority of conflicting appointments of attorney or representative**

If more than one attorney or representative appointed by a member is present at a meeting of members and AusBiotech has not received notice of revocation of any of the appointments:

- (a) an attorney or representative appointed to act at that particular meeting may act to the exclusion of an attorney or representative appointed under a standing appointment; and
- (b) subject to rule 14.7(a), an attorney or representative appointed under a more recent appointment may act to the exclusion of an attorney or representative appointed earlier in time.

14.8 **More than one current proxy appointment**

An appointment of proxy by a member is revoked (or, in the case of a standing appointment, suspended for that particular meeting) if AusBiotech receives a further appointment of proxy from that member which would result in there being more than one proxy of that member entitled to act at a meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this rule.

14.9 **Continuing authority**

Replaces section
250C(2)

An act done at a meeting of members by a proxy, attorney or representative is valid even if, before the act is done, the appointing member:

- (a) dies or becomes mentally incapacitated;
- (b) becomes bankrupt or an insolvent under administration or is wound up; or
- (c) revokes the appointment or the authority under which the appointment was made by a third party,

unless AusBiotech has received written notice of the matter before the start or resumption of the meeting at which the vote is cast.

15. ENTITLEMENT TO VOTE

15.1 Number of votes

Replaces section
250E(2)

Subject to section 250A(4):

- (a) each Voting Member has one vote on a show of hands or a poll; and
- (b) a Voting Member who is present and entitled to vote and is also a proxy, attorney or representative of another Voting Member has one vote on a show of hands.

15.2 Casting vote of chairman

If an equal number of votes are for and against a resolution at a meeting of members and:

Replaces
section 250E(3)

- (a) the chairman is a Voting Member, the chairman has a casting vote; or
- (b) the chairman is not a Voting Member, the matter is decided in the negative.

15.3 Voting restrictions

If:

- (a) the Corporations Act requires that some members are not to vote on a resolution, or that votes cast by some members be disregarded, in order for the resolution to have an intended effect; and
- (b) the notice of the meeting at which the resolution is proposed states that fact,

those members have no right to vote on that resolution and AusBiotech must not count any votes purported to be cast by those members. If a proxy purports to vote in a way or in circumstances that contravene section 250A(4), on a show of hands the vote is invalid and AusBiotech must not count it and on a poll rule 16.3(c) applies.

15.4 Decision on right to vote

Replaces section
250G

A member or Director may challenge a person's right to vote at a meeting of members. A challenge may only be made at the meeting. A challenge, or any other doubt as to the validity of a vote, must be decided by the chairman, whose decision is final.

16. HOW VOTING IS CARRIED OUT

16.1 Method of voting

Replaces sections
250J(1) and (2)

A resolution put to the vote at a meeting of members must be decided on a show of hands unless a poll is demanded under rule 16.2 either before or on declaration of the result of the vote on a show of hands. Unless a poll is demanded, the chairman's declaration of a decision on a show of hands is final.

16.2 Demand for a poll

See section 250L

A poll may be demanded on any resolution (except a resolution concerning the election of the chairman of a meeting) by:

- (a) at least five Voting Members entitled to vote on the resolution; or
- (b) Voting Members with at least 5% of the votes that may be cast on the resolution on a poll; or
- (c) the chairman.

The demand for a poll does not affect the continuation of the meeting for the transaction of other business and may be withdrawn.

16.3 When and how polls must be taken

Replaces section 250M

If a poll is demanded:

- (a) if the resolution is for the adjournment of the meeting, the poll must be taken immediately and, subject to rule 16.3(c), in the manner the chairman of the meeting directs;
- (b) in all other cases, the poll must be taken at the time and place and, subject to rule 16.3(c), in the manner the chairman of the meeting directs;
- (c) votes which section 250A(4) requires to be cast in a given way must be cast in that way;
- (d) a person voting who has the right to cast two or more votes need not cast all those votes and may cast those votes in different ways; and
- (e) the result of a poll is the resolution of the meeting at which the poll was demanded.

17. SECRETARY

17.1 Appointment of Secretary

See section 204D

The Board:

- (a) must appoint at least one individual; and
- (b) may appoint more than one individual,

to be a Secretary either for a specified term or without specifying a term.

17.2 Terms and conditions of office

Replaces section 204F

A Secretary holds office on the terms (including as to remuneration) that the Board decides. The Board may vary any decision previously made by it in respect of the office of Secretary.

17.3 **Cessation of Secretary's appointment**

The person automatically ceases to be a Secretary if the person:

- (a) is not permitted by the Corporations Act (or an order made under the Corporations Act) to be a secretary of a company;
- (b) becomes disqualified from managing corporations under Part 2D.6 and is not given permission or leave to manage AusBiotech under section 206F or 206G;
- (c) becomes of unsound mind or physically or mentally incapable of performing the functions of that office;
- (d) resigns by notice in writing to AusBiotech; or
- (e) is removed from office under rule 17.4.

17.4 **Removal from office**

The Board may remove a Secretary from that office whether or not the appointment was expressed to be for a specified term.

18. **MINUTES**

18.1 **Minutes must be kept**

The Board must cause minutes of:

- (a) all proceedings and resolutions of meetings of AusBiotech's members;
- (b) the names of Directors present at each Board meeting or committee meeting;
- (c) all proceedings and resolutions of Board meetings (including meetings of a committee to which Board powers are delegated under rule 7);
- (d) all resolutions passed by Directors without a meeting; and
- (e) all disclosures and notices of Directors' interests,

to be kept in accordance with sections 191, 192 and 251A.

18.2 **Minutes as evidence**

A minute recorded and signed in accordance with section 251A is evidence of the proceeding, resolution or declaration to which it relates unless the contrary is proved.

18.3 **Inspection of minute books**

AusBiotech must allow members to inspect, and provide copies of, the minute books for the meetings of members in accordance with section 251B.

19. **COMPANY SEALS**

19.1 **Common seal**

The Board:

- (a) may decide whether or not AusBiotech has a common seal; and
- (b) is responsible for the safe custody of that seal (if any) and any duplicate seal it decides to adopt under section 123(2).

19.2 **Use of seals**

The common seal and duplicate seal (if any) may only be used with the authority of the Board. The Board must not authorise the use of a seal that does not comply with section 123.

19.3 **Fixing seals to documents**

The fixing of the common seal, or any duplicate seal, to a document must be witnessed:

- (a) by two Directors;
- (b) by one Director and one Secretary; or
- (c) by any other signatories or in any other way (including the use of facsimile signatures) authorised by the Board.

20. **FINANCIAL REPORTS AND AUDIT**

20.1 **Company must keep financial records**

The Board must cause AusBiotech to keep written financial records that:

- (a) correctly record and explain its transactions (including transactions undertaken as trustee) and financial position and performance; and
- (b) would enable true and fair financial statements to be prepared and audited,

and must allow a Director and the auditor to inspect those records at all reasonable times.

20.2 **Financial reporting**

The Board must cause AusBiotech to prepare a financial report and a directors' report that comply with Part 2M.3 and must report to members in accordance with section 314 no later than the deadline set by section 315.

20.3 **Audit**

The Board must cause AusBiotech's financial report for each financial year to be audited and obtain an auditor's report. The eligibility, appointment, removal, remuneration, rights

and duties of the auditor are regulated by Division 3 of Part 2M.3, Divisions 1 to 6 of Part 2M.4 and sections 1280, 1289, 1299B and 1299C.

20.4 **Conclusive reports**

Audited financial reports laid before AusBiotech in general meetings are conclusive except as regards errors notified to AusBiotech within three months after the relevant general meeting. If AusBiotech receives notice of an error within that period, it must immediately correct the report and the report as corrected is then conclusive.

20.5 **Inspection of financial records and books**

Replaces section
247D

Subject to rule 18.3 and section 247A, a member who is not a Director does not have any right to inspect any document of AusBiotech except as authorised by the Board or by ordinary resolution.

21. **REGISTER OF MEMBERS**

21.1 **Maintenance of the Register**

AusBiotech must set up and maintain a register of members which will be available for inspection at all reasonable times free of charge to any member upon request.

21.2 **Contents of the Register**

In accordance with section 169, the Register must contain the following information:

- (a) the name and address of each member;
- (b) the class of member of each member;
- (c) the date on which the entry of the member's name in the Register is made;
- (d) the name and details of each person who stopped being a member within the last seven years;
- (e) the date on which the person stopped being a member; and
- (f) an index of members' names if AusBiotech has more than 50 members and the Register itself is not kept in a form that operates effectively as an index.

The Register must also state the member's class of membership.

21.3 **Notification of change of details**

Each member must notify the Secretary in writing of any change of name or address and each such change must be recorded in the Register.

22. **WINDING UP**

If AusBiotech is wound up any surplus property must not be paid to members, but must be paid or transferred to another corporation which complies with section 150(1).

23. **NOTICES**

23.1 **Notices by Company**

A notice is properly given by AusBiotech to a person if it is:

- (a) in writing signed on behalf of AusBiotech (by original or printed signature);
- (b) addressed to the person to whom it is to be given; and
- (c) either:
 - (i) delivered personally;
 - (ii) sent by prepaid mail (by airmail, if the addressee is overseas) to that person's address; or
 - (iii) sent by fax to the fax number (if any) nominated by that person; or
 - (iv) sent by electronic message to the electronic address (if any) nominated by that person.

23.2 **Overseas members**

A member whose registered address is not in Australia may notify AusBiotech in writing of an address in Australia to which notices may be sent.

23.3 **When notice is given**

A notice to a person by AusBiotech is regarded as given and received:

- (a) if a notice is delivered personally:
 - (i) by 5 pm (local time in the place of receipt) on a business day - on that day; or
 - (ii) after 5 pm (local time in the place of receipt) on a business day, or on a day that is not a business day - on the next business day;
- (b) if a notice is sent by fax or electronic message by properly addressing the fax or electronic message and transmitting it:
 - (i) by 5 pm (local time in the place from which it is sent or given) on a business day – on that day; or

Replaces section
249J(4)

-
- (ii) after 5 pm (local time in the place from which it is sent or given) on a business day, or on a day that is not a business day – on the next business day; and
 - (c) if a notice is sent by mail by properly addressing, prepaying and posting a letter containing the notice:
 - (i) within Australia - 1 business day after posting; or
 - (ii) to a place outside Australia - 3 business days after posting.

A certificate in writing signed by a Director or Secretary stating that a notice was sent is conclusive evidence of service.

23.4 **Business days**

For the purposes of rule 23.3, a business day is a day that is not a Saturday, Sunday or public holiday in the place to which the notice is sent.

23.5 **Counting days**

If a specified period must pass after a notice is given before an action may be taken, neither the day on which the notice is given nor the day on which the action is to be taken may be counted in reckoning the period.

23.6 **Notices to "lost" members**

If:

- (a) on two or more consecutive occasions a notice served on a member in accordance with this rule is returned unclaimed or with an indication that the member is not known at the address to which it was sent; or
- (b) the Board believes on other reasonable grounds that a member is not at the address shown in the Register or notified to AusBiotech under rule 23.2,

AusBiotech may give effective notice to that member by exhibiting the notice at AusBiotech's registered office for at least 48 hours.

This rule ceases to apply if the member gives AusBiotech notice of a new address.