



14 October 2022

Dear Shareholder

**Bio-Gene Technology Limited (ASX:BGT)  
2022 Annual General Meeting of Shareholders (2022 AGM)**

Notice is hereby given that the 2022 AGM of Bio-Gene Technology Limited (**Bio-Gene** or the **Company**) will be held as a hybrid meeting (**Meeting** or **2022 AGM**) at 11.00am (AEDT) on Friday, 18 November 2022. The Meeting will be held at Level 11, 456 Lonsdale Street, Melbourne, Victoria 3000 and as a virtual meeting.

Bio-Gene advises that no hard copy of the Notice of Annual General Meeting and Explanatory Notes (**Notice**) will be circulated other than to shareholders who have expressly requested a hard copy. These documents can be accessed on the Company's website at <http://bio-gene.com.au/investors/asx-announcements/> and via the ASX Market Announcements Platform under the Company's ASX Code (BGT).

If you have nominated an email address and elected to receive electronic communications from the Company, you will receive an email with a link to an electronic copy of the Notice of Meeting.

*Hybrid Virtual Meeting*

The Company is pleased to provide shareholders with the opportunity to attend and participate in the Meeting through an online meeting platform powered by Automic. Shareholders who have an existing account with Automic will be able to watch, listen, and vote online.

Shareholders who do not have an account with Automic are strongly encouraged to register for an account as soon as possible and well in advance of the Meeting to avoid any delays on the day of the Meeting.

An account can be created via the following link [investor.automic.com.au](http://investor.automic.com.au) and then click on "**register**" and follow the prompts. Shareholders will require their holder number (Securityholder Reference Number (SRN) or Holder Identification Number (HIN)) to create an account with Automic.

*Your Vote is Important*

The business of the 2022 AGM is important to all Shareholders and therefore it is important that Shareholders vote. Lodging a completed proxy is the simplest way to vote at the AGM.

The Company encourages shareholders to submit their votes in advance of the 2022 AGM as this will provide the Company with the best opportunity to prepare for the meeting. However, votes may also be submitted during the 2022 AGM. Proxy forms can be lodged online, by post or in person by following the proxy lodgement instructions on the proxy



form. Proxy forms must be received by the Company's share registry, Automic, by 11am (Melbourne time) on Wednesday, 16 November 2022. Proxy forms received later than this time will be invalid.

Shareholders who wish to vote virtually on the day of the Meeting can do so through the Automic Investor portal.

If it becomes necessary or appropriate to make alternative arrangements for the holding or conducting of the 2022 AGM, the Company will make further information available through the ASX Market Announcements Platform and on its website.

#### *Shareholder Communication Elections*

Recent changes to the Corporations Act provide for shareholders electing and requesting to receive documents (including notices of meeting and the annual financial report) electronically or in hard copy. You can make a standing election and/or request to receive some or all of your communications from the Company in physical or electronic form.

Shareholders can also elect not to receive certain documents, including the annual financial report.

We encourage you to provide your email address so we can communicate with you electronically and you are provided with information regarding the Company more efficiently and sustainably.

If you have made a prior election or request to receive documents in a certain manner then that election will continue to apply until such time as you notify the Company that you change your election or request. Any shareholder who has not made a prior election and/or request to receive documents in a certain form will be treated by the Company as having elected to receive all documents in electronic form.

If you wish to update your communication preference, please contact our share register, Automic below:

Telephone (within Australia): 1300 288 664  
Telephone (outside Australia): +61 2 9698 5414  
Email: [hello@automicgroup.com.au](mailto:hello@automicgroup.com.au)  
Website: <https://investor.automic.com.au/>.

Yours faithfully

A handwritten signature in blue ink, appearing to read "R McPherson", followed by a stylized flourish or underline.

**Roger McPherson**  
Company Secretary

# Bio-Gene Technology Limited

ACN 071 735 950

## Notice of 2022 Annual General Meeting

To be held as a hybrid meeting both at  
Level 11, 456 Lonsdale Street, Melbourne, Victoria and virtually on  
Friday, 18 November 2022 at 11am (Melbourne time)

*Shareholders who have an existing account with Automic will be able to watch, listen, and vote online if they choose not to attend the meeting in person.*

*Shareholders who do not have an account with Automic are strongly encouraged to register for an account as soon as possible and well in advance of the Meeting to avoid any delays on the day of the Meeting. An account can be created via the following link [investor.automic.com.au](https://investor.automic.com.au) and then click on "register" and follow the prompts. Shareholders will require their holder number (Securityholder Reference Number (SRN) or Holder Identification Number (HIN)) to create an account with Automic.*

*Shareholders will be able to ask questions at the virtual meeting. Alternatively, the Company is happy to accept and answer questions submitted at least two business days prior to the meeting by email to [bgt.shareholder@bio-gene.com.au](mailto:bgt.shareholder@bio-gene.com.au). The Company reserves the right to not respond to any unreasonable and/or offensive questions at its discretion.*

*Shareholders are strongly encouraged to lodge their completed proxy forms appointing the Chair as early as possible and in any event prior to the cut-off for proxy voting as set out in the Notice (being Wednesday, 16 November 2022 at 11am (Melbourne time)). Instructions for lodging proxies are included on your personalised proxy form.*

*Shareholders who wish to vote virtually on the day of the AGM can do so through the Automic Investor portal. For further information on the live voting process please see the Registration and Voting Guide at [automicgroup.com.au/virtual-agms/](https://automicgroup.com.au/virtual-agms/)*

*In accordance with the Corporations Act, except where required no hard copy of the Notice of Annual General Meeting and Explanatory Notes will be circulated, and shareholders have instead been notified of how to access the Notice of Annual General Meeting and Explanatory Notes.*

**Bio-Gene Technology Limited**  
**ACN 071 735 950**  
**Notice of Annual General Meeting**

Notice is hereby given that the 2022 Annual General Meeting (**AGM**) of the members of Bio-Gene Technology Limited (**Bio-Gene** or the **Company**) as a hybrid meeting (**Meeting**) on Friday, **18 November 2022** at 11am (Melbourne time) for the purpose of considering and, if thought appropriate, passing the following resolutions. The Meeting will be held at Level 11, 456 Lonsdale Street, Melbourne, Victoria 3000 and as a virtual meeting via a live webinar.

## **General Business**

### **Receipt and Consideration of 2022 Financial Statements and Reports**

To receive and consider the Financial Statements of the Company and its controlled entities for the year ended 30 June 2022, together with the Directors' Report (other than Remuneration Report) and the Independent Audit Report as set out in the Annual Report 2022.

### **Resolutions**

**1. Resolution 1 – Adoption of Remuneration Report (Non-Binding Resolution)**

To consider, and if thought fit, to pass the following resolution as an ordinary resolution\*:

"To adopt the Remuneration Report for the year ended 30 June 2022 as set out in the Annual Report 2022".

*\*Please note that Section 250R(3) of the Corporations Act 2001 (Cth) provides that the vote on this resolution is advisory only and does not bind the Directors or the Company.*

**2. Resolution 2 – Re-election of Mr. Peter May as a Director**

To consider, and if thought fit, to pass the following resolution as an ordinary resolution:

"That pursuant to clause 59(1) of the Company's Constitution, the members of the Company approve the re-appointment of Mr. Peter May as a Director of the Company who, pursuant to clause 59(1)(b) is retiring by rotation and being eligible, offers himself for re-election."

## **Special Business**

**3. Resolution 3 – Ratification of the Prior Placement of Shares Issued Under Listing Rule 7.1**

To consider, and if thought fit, pass the following resolution as an ordinary resolution:

"That, for the purposes of ASX Listing Rule 7.4 and all other purposes, the members of the Company approve and ratify the Company's allotment and issue on 21 March 2022 of 7,500,000 fully paid ordinary shares in the capital of the Company credited as fully paid to unrelated sophisticated investors at an issue price of \$0.20 per share on the terms and conditions set out in the Explanatory Notes which accompany this Notice of Meeting."

**4. Resolution 4 – Listing Rule 7.1A (Placement of Additional Securities)**

To consider, and if thought fit, pass the following resolution as a special resolution:

"That approval be given for the issue of equity securities of the Company, under and pursuant to ASX Listing Rule 7.1A, up to the maximum permitted under ASX Listing Rule 7.1A.2 over a 12 month period at an issue price which is not less than the minimum issue price calculated in accordance with the formula prescribed in ASX Listing Rule 7.1A.3 and on the terms set out in the Explanatory Notes which accompanied and formed part of the Notice of Meeting."

**5. Resolution 5 – Renewal of Proportional Bid provisions in the Constitution**

To consider and, if thought fit, to pass the following resolution as a special resolution:

"That for the purposes of Section 648G(4) of the Corporations Act 2001(Cth) and for all other purposes, the members of the Company approve the renewal of the proportional takeover approval provisions in Clause 28 of the Company's Constitution for a period of three years from the date of the Meeting."

**6. Resolution 6: Amendment of Constitution**

To consider, and if thought fit, pass the following resolution as a special resolution:

"That, for the purposes of section 136(2) of the Corporations Act 2001 (Cth) and for all other purposes, the constitution of the Company be amended as set out in Annexure A of the Explanatory Notes which accompanied and formed part of the Notice of Meeting with effect immediately upon the passing of this Resolution."

By order of the Board:

A handwritten signature in blue ink, appearing to read 'R McPherson', followed by a stylized flourish.

Roger McPherson  
Company Secretary  
14 October 2022

The accompanying Explanatory Notes and Proxy and Voting Instructions form part of this Notice.

## Proxy and Voting Instructions

### PROXY INSTRUCTIONS

A member who is entitled to vote at a meeting may appoint:

- one proxy if the member is only entitled to one vote; and
- one or two proxies if the member is entitled to more than one vote.

Where more than one proxy is appointed, each proxy may be appointed to represent a specific proportion of the member's voting rights. If the appointment does not specify the proportion or number of votes each proxy may exercise, each proxy may exercise half of the votes in which case any fraction of votes will be disregarded.

The proxy form (and the power of attorney or other authority, if any, under which the proxy form is signed) or a copy or facsimile which appears on its face to be an authentic copy of the proxy form (and the power of attorney or other authority) must be lodged not less than 48 hours before the time for holding the Meeting, or adjourned meeting as the case may be, at which the individual named in the proxy form proposes to vote.

The proxy form must be signed by the member or his/her attorney duly authorised in writing or, if the member is a corporation, in a manner permitted by the Corporations Act. A proxy given by a foreign corporation must be executed in accordance with the laws of that corporation's place of incorporation.

The proxy may be a member of the Company.

A proxy form is attached to this Notice.

If you sign the proxy form and do not appoint a proxy, you will have appointed the Chair of the meeting as your proxy.

### VOTING VIRTUALLY AT THE MEETING

Shareholders who wish to vote virtually on the day of the AGM will need to login to the Automic website ([investor.automic.com.au](http://investor.automic.com.au)) with their *username* and *password*.

Shareholders who do not have an account with Automic are encouraged to register for an account **as soon as possible** to avoid any delays on the day of the Meeting.

#### *How do I create an account with Automic?*

To create an account with Automic, please go to the Automic website ([investor.automic.com.au](http://investor.automic.com.au)), click on 'register' and follow the steps. Shareholders will require their holder number (Securityholder Reference Number (SRN) or Holder Identification Number (HIN)) to create an account with Automic.

#### *To access the virtual meeting on the day*

Shareholders who have an account with Automic should take the following steps to attend and vote virtually on the day of the AGM:

- Login to the Automic website ([investor.automic.com.au](http://investor.automic.com.au)) using your username and password.
- After logging in a banner will display at the bottom of your screen to indicate that the AGM is open for registration. Click on "**Register**" or alternatively click on "**Meetings**" on the left-hand menu bar to access registration
- If registration for the virtual meeting is open, click on "**Register**" and follow the steps.
- Click on the URL to join the webcast where you can view and listen to the virtual meeting. Note that the webcast will open in a separate window.

#### *Voting virtually at the AGM*

Shareholders who wish to vote on the day of the AGM can do so through the Automic Investor Portal. Once the Chair of the Meeting has declared the poll open for voting click on "**Refresh**" within the platform to be taken to the voting screen. Select your voting directions and click "confirm" to submit your vote. Note that you cannot amend your vote after it has been submitted. If you have been nominated as a third party proxy please contact Automic on 1300 288 664 (within Australia) or +612 9698 5414 (overseas).

### CORPORATE REPRESENTATIVES

Any corporation which is a member of the Company may appoint a proxy, as set out above, or authorise (by certificate under common seal or other form of execution authorised by the laws of that corporation's place of incorporation, or in any other manner satisfactory to the Chair of the Meeting) a natural person to act as its representative at any general meeting.

Corporate representatives are requested to bring appropriate evidence of appointment as a representative in accordance with the constitution of the Company. Attorneys are requested to bring the original or a certified copy of the power of attorney pursuant to which they were appointed. Proof of identity will also be required for corporate representatives and attorneys.

### HOW THE CHAIR WILL VOTE UNDIRECTED PROXIES

Subject to the restrictions set out below and in the Explanatory Notes, The Chair of the meeting intends to vote undirected proxies on, and in favour of, all of the proposed resolutions.

### UNDIRECTED PROXIES

The Corporations Act imposes prohibitions on Key Management Personnel (as defined in the Explanatory Notes) and their Closely Related Parties from voting undirected proxies (i.e. a proxy that does not specify how it is to be voted) on, amongst other things, remuneration matters. Resolution 1 is connected, directly or indirectly, with the remuneration of Key Management Personnel of the Company.

However, the Chair of the meeting may vote an undirected proxy, provided the shareholder who has lodged the proxy has given an express voting direction to the Chair to exercise the undirected proxy, even if the resolution is connected with the remuneration of a member of the Key Management Personnel.

If you complete a proxy form that authorises the Chair of the Meeting to vote on your behalf as proxy, and you do not mark any boxes so as to give him directions about how your vote should be cast, then you will be taken to have expressly authorised the Chair to exercise your proxy on Resolution 1. In accordance with this express authority provided by you, the Chairman will vote in favour of Resolution 1. If you wish to appoint the Chair as your proxy, and you wish to direct him how to vote, please tick the appropriate boxes on the Proxy Form attached to this Notice. Further details of the voting exclusions with respect to Resolution 1 are set out in the Explanatory Notes.

### VOTING ENTITLEMENT

For the purposes of the Corporations Act and Corporations Regulations shareholders entered on the Company's Register of Members as at 7.00 pm on Wednesday 16 November 2022 are entitled to attend and vote at the meeting.

On a poll, members have one vote for every fully paid ordinary share held. Holders of options are not entitled to vote.

### ALL RESOLUTIONS BY POLL

Pursuant to the 4<sup>th</sup> Edition of the ASX Corporate Governance Principles and Recommendations, all votes will be taken on a Poll.

### SPECIAL RESOLUTIONS

For a special resolution to be passed, at least 75% of the votes validly cast on the resolution by shareholders (by number of shares) must be in favour of the resolution. Resolutions 4, 5 and 6 are special resolutions.

**Bio-Gene Technology Limited**  
**ACN 071 735 950**

## **Explanatory Notes**

These Explanatory Notes have been prepared to provide members with information to assist their assessment of the merits of the resolutions contained in the accompanying notice of the Bio-Gene 2022 Annual General Meeting (**AGM or Meeting**) to be held as a hybrid Meeting on Friday, **18 November 2022** at 11am (Melbourne time). The Meeting will be held at Level 11, 456 Lonsdale Street, Melbourne, Victoria 3000 and as a virtual meeting via a live webinar.

Shareholders are strongly encouraged to lodge their completed proxy forms in accordance with the instructions set out therein to vote before the Meeting.

## **General Business**

### **Receipt and Consideration of 2022 Financial Statements and Reports**

Section 317 of the Corporations Act requires the Financial Report, the Directors' Report (other than Remuneration Report) and the Auditor's Report for the year ended 30 June 2022 to be laid before the AGM. There is no requirement either in the Corporations Act or in the Company's Constitution for members to approve these reports. Members will have a reasonable opportunity at the meeting to ask questions and comment on these reports and on the Company's business and operations.

The Company's Financial Statements and Reports are set out in the Company's 2022 Annual Report which can be obtained from the Company's website, <https://www.bio-gene.com.au/wp-content/uploads/2022/08/BGT-2022-Annual-Report-Final.pdf>.

Members should note that the Financial Statements and Reports will be received in the form presented. It is not the purpose of the AGM that the Financial Statements and Reports be accepted, rejected or modified in any way and accordingly there will be no formal resolution put to the AGM.

## **Resolutions**

### **1. Resolution 1 - Adoption of Remuneration Report (Non-binding Resolution)**

The 2022 Remuneration Report, which explains the Board's policies in relation to the nature and level of remuneration paid to Directors and senior management (**Key Management Personnel or KMP**) of the Company and which sets out remuneration details for each KMP, forms part of the Directors' Report on pages 17 to 26 (inclusive) of the Annual Report for the year ended 30 June 2021 which is available on the Company's website <https://www.bio-gene.com.au/wp-content/uploads/2022/08/BGT-2022-Annual-Report-Final.pdf>. A copy of the Annual Report has been sent to members who requested it with this Notice of Meeting and Explanatory Notes. A copy can also be obtained from the Company's website as outlined above.

The 2022 Remuneration Report:

- explains the Board's policies in respect of the nature and level of remuneration paid to each KMP of the Company;
- makes clear that remuneration is linked to performance of key executives and the Company overall;
- sets out the remuneration details for each KMP; and
- makes clear that the basis for remunerating Non-executive Directors is distinct from the basis for remunerating executives and Executive Directors.

As required under section 250R(2) of the Corporations Act, a resolution will be put to members to adopt the 2022 Remuneration Report. Members should note that the vote on this resolution is advisory only and is not binding on the Board or the Company. Members will be given the opportunity to ask questions about or make comments on the 2022 Remuneration Report.

Less than 25% of the votes cast on the corresponding resolution at the 2021 AGM were against adoption of the 2021 Remuneration Report and accordingly no spill resolution will be put if 25% or more of the votes cast are against adoption of the 2022 Remuneration Report.

If 25% or more of the votes cast on this Resolution are against adoption of the 2022 Remuneration Report, the Company will be required to consider, and report to members on, what action (if any) has been taken to address members' concerns at the 2023 AGM. If 25% or more of the votes cast at the 2022 AGM are against adoption of the 2022 Remuneration Report and 25% or more of the votes cast at the 2023 AGM are against adoption of the Company's 2023 Remuneration Report, members may be required to consider a resolution to call another general meeting in accordance with the Corporations Act at which the Directors who held office at the date of the Directors' Report (excluding the Managing Director) will be required to seek re-election.

As the Directors are excluded from voting, they make no recommendation to the shareholders in respect of Resolution 1.

In accordance with the Corporations Act, a member of the Company's KMP details of whose remuneration are included in the 2022 Remuneration Report and closely related parties of such a KMP will not be eligible to vote on Resolution 1, except if the person:

- (a) votes as a proxy for a person who is entitled to vote, in accordance with the directions on the proxy form; and
- (b) the vote is not cast on behalf of a person who is KMP or a closely related party of a KMP.

Even if they are a member of KMP details of whose remuneration are contained in the 2022 Remuneration Report, the Chair may also exercise undirected proxies if the vote is cast on behalf of a person entitled to vote and the proxy appointment expressly authorises the Chair to exercise the proxy even if Resolution 1 is connected directly or indirectly with the remuneration of the KMP of the Company. The Chair, in their capacity as proxy holder, intends to vote all undirected proxies in favour of this Resolution 1.

## **2. Resolution 2 – Re-election of Mr. Peter May as a Director**

Clause 59(2) of the Constitution of the Company and ASX Listing Rule 14.4 provide that no Director, except the Managing Director, may hold office for a period in excess of 3 years, or beyond the third AGM following the Director's election, whichever is the longer, without submitting himself or herself for re-election. Clause 59(1) provides that at each AGM one-third of the previously elected Directors, and if their number is not a multiple of three, then the number nearest to but not exceeding one-third, must retire from office and are eligible for re-election.

Clause 59(1)(a) provides that the Directors to retire in every year under clause 59(1) are the Directors longest in office since last being elected. Clause 59(1)(b) provides that Directors elected on the same day may agree among themselves or determine by lot which of them must retire.

Excluding the Managing Director, all other Directors except Mr. Peter May were elected by the members as Directors at the Bio-Gene 2021 AGM held on 30 November 2021. Mr Peter May was re-elected by the members as a Director at the Bio-Gene 2019 AGM held on 26 November 2019. Being eligible for re-election, Mr. May has submitted himself for re-election at the 2022 AGM.

Peter is the Executive Director, Research and Development for Bio-Gene. He has over 20 years' experience in the Australian and international crop protection markets with companies Incitec, Orica and Crop Care Australasia (now part of Nufarm). His various roles included business management of pesticide products, export sales and toll formulation operations. During this period Peter developed extensive experience in international crop protection markets.

A detailed summary of Mr. May's experience, qualifications and background is provided on page 15 of the Company's 2022 Annual Report, a copy of which is available on the ASX website ([www2.asx.com.au](http://www2.asx.com.au)) or at <https://www.bio-gene.com.au/wp-content/uploads/2022/08/BGT-2022-Annual-Report-Final.pdf>.



The Directors (in the absence of Mr. Peter May who abstains from making a recommendation) unanimously recommend that members vote in favour of the election of Mr. Peter May.

## Special Business

### 3. Resolution 3– Ratification of the Prior Placement of Shares Issued Under Listing Rule 7.1

This resolution seeks Shareholder approval for the previous issue and allotment of 7,500,000 fully paid ordinary shares in the capital of the Company to unrelated sophisticated investors under the placement capacity available to the Company under Listing Rule 7.1.

#### 3.1 Details of the Previous Issue of Shares

On 21 March 2022, the Company raised \$1,500,000 by the issue and allotment of 7,500,000 fully paid ordinary shares in the capital of the Company (**Placement Shares**) to unrelated sophisticated investors identified by the Company (**Subscribers**) at an issue price of \$0.20 per share. As announced on 15 March 2022, the Subscribers are part of a high net worth shareholder family.

Under ASX Listing Rule 7.1, the Company may in any 12-month rolling period issue up to 15% of its ordinary share capital without prior shareholder approval. The Company issued the Placement Shares pursuant to its (unused) entitlement under ASX Listing Rule 7.1 (being equivalent to an issue of approximately 15% of the Company's issued capital as at their allotment date). The issue of Placement Shares did not require prior shareholder approval.

ASX Listing Rule 7.4 permits a company to obtain ratification from its shareholders in relation to a prior share issue. Resolution 3 seeks shareholder ratification of the Placement Shares. If ratified, the Placement Shares will no longer use Bio-Gene's 15% entitlement under ASX Listing Rule 7.1.

#### 3.2 Information required under ASX Listing Rules 7.5

The ASX Listing Rules set out a number of regulatory requirements that must be satisfied in relation to the ratification of the Placement Shares. ASX Listing Rule 7.5 requires that the meeting documents concerning a proposed resolution to approve the Prior Issue in accordance with ASX Listing Rule 7.4 must include the following information:

- The number of securities allotted:  
*7,500,000 fully paid ordinary shares*
- The issue price at which the securities were allotted:  
*\$0.20 per share*
- The terms of the securities:  
*Shares issued were fully paid ordinary shares ranking equally in all respects with all other fully paid ordinary shares then on issue in the Company*
- The names of the allottees or the basis upon which the allottees were determined  
*The allottees were unrelated sophisticated investors (**Subscribers**) identified by the Company. The Subscribers are part of a high net worth shareholder family.*
- The issue date  
*The Placement Shares were issued on 21 March 2022*
- The use (or intended use) of the funds raised:  
*The funds received from issue of the Placement Shares are to be used generally for the advancement of the Company's lead products and supporting existing and potential partnering arrangements*

#### 3.3 Effect of Resolution 3

If Resolution 3 is passed, from the date of shareholder approval the Placement Shares will not be included in the calculation of its 15% entitlement under ASX Listing Rule 7.1. If Resolution 3 is not passed, the Placement Shares the subject of Resolution 3 will continue to use the 15% entitlement under ASX Listing Rule 7.1.

### 3.4 Recommendation for Resolution 3

The Company directors unanimously recommend that shareholders approve Resolution 3.

### 3.5 Voting Exclusion Statement – Resolution 3

Pursuant to ASX Listing Rules 7.5.8, the Company will disregard any votes cast in favour of Resolution 3 by or on behalf of:

- any person who participated in the issue or is a counterparty to the agreement being approved, namely the Subscribers; or
- an associate of that person (or those persons).

However, the Company need not disregard a vote if:

- it is cast by a person as proxy or attorney for a person who is entitled to vote on the resolution, in accordance with the directions given to the proxy or attorney to vote on the resolution in that way; or
- it is cast by the person chairing the meeting as proxy or attorney for a person who is entitled to vote, in accordance with a direction given to the chair to vote on the resolution as the person chairing the meeting decides; or
- it is cast by a holder acting solely as nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:
  - the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on the resolution; and
  - the holder votes on the resolution in accordance with directions given by the beneficiary to the holder to vote in that way.

## 4. Resolution 4 – Listing Rule 7.1A (Placement of Additional Securities)

### 4.1 Background

By Resolution 4 the Company is seeking member approval, by special resolution, for the purposes of ASX Listing Rule 7.1A. Presently, the Company can issue up to 15% of its issued capital in any 12 month period without needing to seek member approval. Under ASX Listing Rule 7.1A, the Company can issue up to an additional 10% of its issued capital over a 12 month period if it obtains the prior approval of members. Upon receiving member approval, the equity securities issued pursuant to ASX Listing Rule 7.1A will not be included in the calculation of the Company's 15% entitlement under ASX Listing Rule 7.1.

### 4.2 Eligibility

In order to seek member approval under ASX Listing Rule 7.1A, the Company must have a market capitalisation of \$300 million or less, and not be included in the S&P/ASX 300 Index as at the date that the AGM is held.

If the Company does not meet the eligibility criteria on the date of the AGM, the special resolution will be withdrawn and members will not be required to vote on the resolution.

### 4.3 Information required under ASX Listing Rule 7.3A

ASX Listing Rule 7.3A requires that the following information be provided to members:

- the minimum price at which equity securities issued under ASX Listing Rule 7.1A may be issued:

*no less than 75% of the volume weighted average price for the equity securities calculated over the 15 trading days on which trades in those equity securities were recorded immediately before:*

- the date on which the price at which the equity securities are to be issued is agreed by the Company and the recipient of the relevant equity securities; or*
- if the equity securities are not issued within 10 trading days of the date in paragraph (i), the date on which the equity securities are issued.*

- the final date by which the equity securities may be issued under ASX Listing Rule 7.1A:

*The earlier to occur of:*

- (i) 18 November 2023, the date being 12 months after the date of shareholder approval of Resolution 4 at the 2022 AGM;
- (ii) The date of the 2023 AGM; or
- (iii) The date of member approval of a transaction under ASX Listing Rule 11.1.2 (change of activities) or 11.2 (disposal of main undertaking)

- the purposes for which the equity securities may be issued under ASX Listing Rule 7.1A:

*At the date of the Notice of Meeting the Company has not identified any persons to whom it intends to offer securities under Listing Rule 7.1A. In the event that the Company issues any shares under Listing Rule 7.1A, the funds raised from such an issue would be used by the Company to advance its lead products, support potential partnering arrangements and provide working capital.*

- the Company's allocation policy for issues under ASX Listing Rule 7.1A:

*At the date of the Notice of Meeting the Company has not identified any persons to whom it intends to offer securities under Listing Rule 7.1A. In the event that the Company issues any securities under Listing Rule 7.1A, those securities could be offered to existing or new security holders or both.*

- members should be aware that if approval is given to the Company to issue the equity securities, existing ordinary security holders risk economic and voting dilution, including the risk that:

- (i) *the market price for the equity securities may be significantly lower on the actual issue date of the equity securities than on the date that members give approval under ASX Listing Rule 7.1A; and*
- (ii) *the equity securities may be issued at a price that is a discount to the market price for those equity securities on the issue date.*

- the table below shows the dilution of existing members on the basis of the current market price of the shares and the current number of ordinary securities.

*The table also shows:*

- (i) *two examples where the number of securities on issue has increased by 50% and 100% from the number currently on issue. The number of securities on issue may increase as a result of issue of ordinary securities that do not require member approval (for example, a pro rata entitlement issue) or future specific placements under Listing Rule 7.1 that are approved at a future meeting of members; and*
- (ii) *two examples of where the issue price of ordinary securities has decreased by 50% and increased by 50% as against the current market price.*

Number of Shares on Issue		Dilution		
		\$0.05 50% decrease in Issue Price	\$0.10 Issue Price	\$0.15 50% increase in Issue Price
177,905,995 (Current)	10% Voting Dilution	17,790,599	17,790,599	17,790,599
	Funds Raised	\$889,530	\$1,779,060	\$2,668,590
266,858,992 (50% increase)	10% Voting Dilution	26,685,899	26,685,899	26,685,899
	Funds Raised	\$1,334,295	\$2,668,590	\$4,002,885
355,811,989 (100% increase)	10% Voting Dilution	35,581,199	35,581,199	35,581,199
	Funds Raised	\$1,779,060	\$3,558,120	\$5,337,180

**The table has been prepared on the following assumptions:**

- (i) The Company issues the maximum number of equity securities available under the 10% Listing Rule 7.1A placement approval.
  - (ii) No options to acquire shares on issue in the Company are exercised into shares before the date of the issue of equity securities under ASX Listing Rule 7.1A.
  - (iii) The 10% voting dilution reflects the aggregate percentage dilution against the issued share capital at the time of issue. This is why the voting dilution is shown in each example as 10%.
  - (iv) The table does not show an example of the dilution that may be caused to a particular shareholder by reasons on placements under the 10% Listing Rule 7.1A placement approval, based on that shareholder's holding at the date of the meeting.
  - (v) The table shows only the effect of issues of equity securities under Listing Rule 7.1A, not under the 15% placement capacity under Listing Rule 7.1.
  - (vi) The issue of equity securities under the 10% Listing Rule 7.1A placement approval consists only of shares. If the issue of equity securities includes options, it is assumed that those options are exercised into shares for the purpose of calculating the voting dilution effect on existing shareholders.
  - (vii) The issue price of \$0.10 is the closing price of the Shares on the ASX on 7 October 2022.
- The Company previously obtained shareholder approval under ASX Listing Rule 7.1A at the 2021 AGM held on 30 November 2021. In the 12 months prior to the date of the 2022 AGM, the Company has issued 15,261,940 securities under the additional placement capacity under ASX Listing Rule 7.1A which was approved by shareholders at the 2021 AGM. This issue was ratified at an extraordinary general meeting held on 27 January 2022.
- As at the date of this Notice of Meeting equity securities issued pursuant to Listing Rule 7.1A within the 12 month period preceding 18 November 2022 are set out in the table below:

Date of Issue	Number and Class of Equity Securities Issued	Issue Price	Closing Price*	Discount / Premium	Issued to / basis of issue	Use of funds
17/12/21	15,261,940 BGT	\$0.17	\$0.19	10.53% discount	Issued under Share Placement	<p>Cash: \$2,594,529,80 Spent: \$2,594,529,80 Remaining: \$Nil</p> <p>Shares issued pursuant to Share Placement. Funds raised have been, or will be, allocated to continue and expand commercialisation discussions, accelerate registration enabling studies, enable additional research on product efficacy and for general working capital.</p>

#### 4.4 Voting majority

This Resolution 4 is a special resolution and, as a result, must be passed by at least 75% of all the votes cast by members entitled to vote (whether in person or by proxy, attorney or, in the case of a corporate member, by corporate representative).

#### 4.5 Recommendation for Resolution 4

The Company's Directors unanimously recommend that members approve Resolution 4.

#### 4.6 Voting Exclusion Statement

At the date of this Notice, the Company has not approached any particular existing shareholder or security holder or an identifiable class of existing security holders to participate in the issue of the equity securities. No existing shareholder's votes will therefore be excluded under the voting exclusion in the Notice.

## 5. Resolution 5 – Renewal of Proportional Bid Provisions of the Constitution

Clause 28 of the Company's Constitution contains provisions dealing with member approval requirements if there was to be any proportional takeover bids for the Company's securities (**Proportional Bid Provisions**).

A "proportional takeover bid" means an off-market bid for a specified proportion of the Company's securities held by each shareholder in a class for which a takeover bid has been made. It is not a bid for all securities held by all members of that class, only part of the securities each holds.

Part 6.5 Subdivision 5C of the Corporations Act provides that these Proportional Bid Provisions cease to apply at the end of 3 years from their adoption (or last renewal), but that they may be renewed by special resolution of the members. The Board believes it is appropriate that the Proportional Bid Provisions of the Company's Constitution (Clause 28) be renewed.

A copy of the Company's Constitution is available on the Company's website, <http://bio-gene.com.au/investors/governance/>. A soft copy can be sent via email to any shareholder upon request made to the Company Secretary.

The Resolution to renew the Proportional Bid Provisions is proposed as a special resolution. Accordingly, to be passed at least 75% of the votes validly cast on the Resolution by shareholders eligible to vote of the Resolution by number of shares must be in favour of the Resolution.

If Resolution 5 is passed, shareholders holding at least 10% of the Company's issued ordinary shares may, within 21 days after the AGM, apply to a court to have the purported renewal of the Proportional Bid Provisions set aside. The court may make an order setting aside the purported renewal of the Proportional Bid Provisions if it is satisfied that it is appropriate in the circumstances to do so.

In seeking the members' approval for the renewal of the Proportional Bid Provisions, the Corporations Act requires the below information to be provided to members.

### 5.1 Effect of provisions proposed to be renewed

Clause 28 of the Constitution provides that the Company is prohibited from registering any transfer of shares giving effect to a contract of sale pursuant to a proportional takeover bid unless and until after the proposed transfer has been approved by the members at a general meeting of the Company (**Approving Resolution**). The person making the offer for the securities (**Offeror**) (and their associates) cannot vote on the Approving Resolution and the Approving Resolution requires the approval of more than 50% of members who are entitled to vote at that meeting.

Clause 28 also provides that:

- (a) If an Approving Resolution is not voted upon within 14 days of the end of the bid period, the Approving Resolution is deemed approved, and
- (b) If the Approving Resolution is rejected, all unaccepted offers under the proportional takeover bid are deemed withdrawn and the Offeror must rescind each contract created as a result of the acceptance of an offer under that proportional takeover bid.

If shareholders pass this Resolution 5 then Clause 28 as described above will continue to have effect for a period of three years from the date of the AGM.

### 5.2 Reasons for the resolution

Section 648(G)(1) of the Corporations Act provides that Proportional Bid Provisions such as provided in Clause 28 cease to apply at the end of 3 years from their adoption (or their last renewal).

The Proportional Bid Provisions were last adopted and renewed by shareholders at the 2019 AGM on 26 September 2019. Accordingly, Clause 28 of the Constitution is required to be renewed as more than 3 years will have passed since the last renewal of the Constitution at the time of the 2022 AGM.

Section 648(G)(4) enables the members to approve a renewal of Proportional Bid Provisions.

The Directors believe that the members should continue to have the choice of considering whether to accept a bid for what might become control of the Company without the members having the opportunity to dispose of **all** of their securities (rather than just some of their securities, as would be the case under a proportional takeover bid). To preserve this choice, Clause 28 needs to be renewed. If Clause 28 is renewed and any proportional takeover bid (if any) is subsequently approved by members, each member will still have the right to make a separate decision whether that member wishes to accept the (proportional takeover) bid for their own securities.

### **5.3 Awareness of current acquisition proposals**

As at the date of these Explanatory Notes, none of the Directors is aware of any proposal for any person to acquire (or increase the extent of) a substantial interest in the Company.

### **5.4 Advantages and disadvantages of the Proportional Bid Provisions since last renewed**

As there have been no takeover bids made for any of the shares in the Company since the initial adoption or renewal of the Proportional Bid Provisions, there has been no application of Clause 28 with respect to the Company as at the date of the notice of meeting. It may be considered that the potential advantages and disadvantages described at item 5.5 below have applied for the period since renewal of Clause 28 at the 2019 AGM on 26 November 2019.

### **5.5 Potential advantages and disadvantages of the proposed resolution for both directors and members**

The potential advantages and disadvantages of renewing the Proportional Bid Provisions to directors include:

- If the Directors consider a partial bid should be opposed they will be assisted in preventing the bidder from securing control of the Company as the bidder requires a majority of votes to be cast in its favour by the independent shareholders before the bid can succeed.
- With the Proportional Bid Provisions in place, the Directors must call a meeting to seek the members' view if any partial takeover offer is made, even if the Directors believe the offer should be accepted.
- Under the Proportional Bid Provisions the most effective view on a partial bid is the view expressed by the vote of the shareholders themselves, at the meeting.
- The Proportional Bid Provisions may make it easier for Directors to discharge their fiduciary and statutory duties as Directors in the event of a partial takeover bid.
- The Directors remain free to make a recommendation on whether a proportional takeover bid should be accepted.

The potential advantages of the renewal of the Proportional Bid Provisions for members include:

- All members have an opportunity to study a proportional takeover bid, if made, and to attend or be represented by proxy at a meeting called specifically to vote on the proposal. A majority of shares voted at the meeting, excluding the shares of the bidder and its associates, will be required for the applicable resolution to be passed, following which members will be able to decide whether to accept the bid that may result in a change of the control of the Company.
- Members are able to prevent a proportional takeover bid proceeding if they believe that control of the Company should not be permitted to pass under the bid and, accordingly, the terms of any future proportional takeover bid is likely to be structured in a manner that is attractive to a majority of members.
- The Proportional Bid Provisions enable shareholders to act together to avoid the coercion of members that might otherwise arise where they believe a partial offer is inadequate, but nevertheless accept due to concerns that a significant number of shareholders may accept.

- Members are protected against being coerced into accepting a partial bid at a high premium where the bidder indicates its intention to mount a subsequent bid for the remaining shares at a much reduced price, putting members under pressure to accept the initial bid to maximise returns.
- If a partial bid is made, the Proportional Bid Provisions may make it more probable that a bidder will set its offer price at a level that is attractive to members.
- members, as a group, may more effectively advise, contribute to or guide the Directors' response to a partial bid.
- The Proportional Bid Provisions may increase the likelihood that any takeover offer will be a full bid for the whole shareholding of each member, so that member will have the opportunity to dispose of all of their shares rather than only a portion.

The potential disadvantages to members of renewing the Proportional Bid Provisions include:

- By placing obstacles in the way of partial offers, the proposal may tend to discourage partial offers, thus reducing the opportunity for members to sell a portion of their holdings.
- The continued existence of the Proportional Bid Provisions might adversely affect the market value of the Company's shares by making a partial offer less likely, thus reducing any takeover speculation element in the share price.
- An individual member that wishes to accept the partial offer will be unable to sell to the offeror unless a majority of members vote in favour of the partial takeover bid.
- If a partial takeover bid is made, the Company will incur the costs of calling a shareholders meeting.

## **5.6 Recommendation for Resolution 5**

Balancing the above advantages and disadvantages, the Directors are of the view that the advantages of renewing the Proportional Bid Provisions outweigh any disadvantages and unanimously recommend the renewal. Accordingly, Shareholder approval is sought pursuant to this Resolution 5.

The Chairman in his capacity as proxy holder intends to vote undirected proxies in favour of approving this Resolution 5.

## **6. Resolution 6: Amendment of constitution**

It is proposed that the Constitution of the Company be amended as set out in Annexure A. The Company is seeking to amend the Constitution to clarify and expand upon provisions relating to the conduct of shareholder meetings by electronic means, including without the need for a physical location, for the benefit and convenience of the shareholders of the Company. The Company also proposes amending provisions that relate to resolutions at general meetings to be determined on a show of hands to instead state that such resolutions are to be determined by a poll.

The specific amendments for which approval is sought are set out in Annexure A.

Resolution 6 is a special resolution and therefore requires approval of 75% of the votes cast by Shareholders present and eligible to vote (in person, by proxy, by attorney or, in the case of a corporate shareholder, by a corporate representative).

The Directors of the Company unanimously recommend shareholders vote in favour of Resolution 6.

**Further information**

The Directors recommend members read these Explanatory Notes in full and, if desired, seek advice from their own independent financial or legal adviser as to the effect of the proposed resolutions before making any decision in relation to the proposed resolutions.



## ANNEXURE A CONSTITUTION AMENDMENTS

References in this Annexure to amendments to clauses are to amendments proposed to the constitution of the Company and to clauses of the constitution of the Company:

Add new clause 31(4) as follows:

*“(4) Any general meeting (which includes any annual general meeting) is permitted to be held:*

- (a) at one physical location; or*
- (b) at one or more physical locations using virtual meeting technology; or*
- (c) using virtually meeting technology only without the need for a physical location.”*

Replace clause 32(3)(a) in full with the following:

*“(a) specify the date, time and, unless the meeting is to be held solely by audio/visual or other electronic means where able and/or permitted by law to be so held, the place of the meeting (and if the meeting is to be held in two (2) or more places or is to be held solely by audio, video and/or other communications technology, the technology that will be used to facilitate this);”*

Add the following text to the end of clause 35(1):

*“A Member may be present in person, by proxy, by attorney or by Representative. A Member or their proxy, attorney or Representative participating in the meeting solely by audio, video and/or other communications technology is (if the meeting is able and/or permitted by law to be so held) treated as being present for all purposes including determining that a quorum is present.”*

In clause 38(2), replace “from the initial meeting” after “venue” and before “.” with the following:

*“(or if able and/or permitted by law to be so held, solely by audio, video and/or other communications technology without requiring a physical venue), and/or by use of different technology from the initial meeting and/or at a venue instead of by communications technology”.*

Replace clauses 39(2), (3) and (4) in full with the following:

- “(2) A resolution, other than a procedural resolution (which shall include the election of a Chairperson), put to the vote of a meeting is decided by a poll in accordance with the Act unless otherwise determined by the Chairperson.*
- (3) Notwithstanding Article 39(2), a poll may be demanded at the times and in the circumstances permitted by the Act.*
- (4) If a resolution is determined by a show of hands:*
  - (a) a declaration by the Chairperson that a resolution has been carried, carried by a specified majority, or not passed; and*
  - (b) an entry to that effect in the minutes of the meeting,**is conclusive evidence of the fact without proof of the number or proportion of the votes in favour of or against the resolution.”*

Replace clause 40(4) with the following:

*“A poll cannot be demanded on any procedural resolution, including a resolution concerning the election of the Chairperson of a meeting.”*

Add new clause 48(5) as follows:

*“A proxy vote which the Listing Rules (during the Listed Period) or the Act require the Company to disregard is not valid.”*



Bio-Gene Technology Limited | ACN 071 735 950

# Proxy Voting Form

If you are attending the virtual Meeting please retain this Proxy Voting Form for online Securityholder registration.

Holder Number:

Your proxy voting instruction must be received by **11.00am (Melbourne Time) on Wednesday, 16 November 2022**, being not later than **48 hours** before the commencement of the Meeting. Any Proxy Voting instructions received after that time will not be valid for the scheduled Meeting.

## SUBMIT YOUR PROXY

Complete the form overleaf in accordance with the instructions set out below.

### YOUR NAME AND ADDRESS

The name and address shown above is as it appears on the Company's share register. If this information is incorrect, and you have an Issuer Sponsored holding, you can update your address through the investor portal: <https://investor.automic.com.au/#/home> Shareholders sponsored by a broker should advise their broker of any changes.

### STEP 1 – APPOINT A PROXY

If you wish to appoint someone other than the Chair of the Meeting as your proxy, please write the name of that Individual or body corporate. A proxy need not be a Shareholder of the Company. Otherwise, if you leave this box blank, the Chair of the Meeting will be appointed as your proxy by default.

### DEFAULT TO THE CHAIR OF THE MEETING

Any directed proxies that are not voted on a poll at the Meeting will default to the Chair of the Meeting, who is required to vote these proxies as directed. Any undirected proxies that default to the Chair of the Meeting will be voted according to the instructions set out in this Proxy Voting Form, including where the Resolutions are connected directly or indirectly with the remuneration of KMP.

### STEP 2 - VOTES ON ITEMS OF BUSINESS

You may direct your proxy how to vote by marking one of the boxes opposite each item of business. All your shares will be voted in accordance with such a direction unless you indicate only a portion of voting rights are to be voted on any item by inserting the percentage or number of shares you wish to vote in the appropriate box or boxes. If you do not mark any of the boxes on the items of business, your proxy may vote as he or she chooses. If you mark more than one box on an item your vote on that item will be invalid.

### APPOINTMENT OF SECOND PROXY

You may appoint up to two proxies. If you appoint two proxies, you should complete two separate Proxy Voting Forms and specify the percentage or number each proxy may exercise. If you do not specify a percentage or number, each proxy may exercise half the votes. You must return both Proxy Voting Forms together. If you require an additional Proxy Voting Form, contact Automic Registry Services.

### SIGNING INSTRUCTIONS

**Individual:** Where the holding is in one name, the Shareholder must sign.

**Joint holding:** Where the holding is in more than one name, all Shareholders should sign.

**Power of attorney:** If you have not already lodged the power of attorney with the registry, please attach a certified photocopy of the power of attorney to this Proxy Voting Form when you return it.

**Companies:** To be signed in accordance with your Constitution. Please sign in the appropriate box which indicates the office held by you.

**Email Address:** Please provide your email address in the space provided.

By providing your email address, you elect to receive all communications despatched by the Company electronically (where legally permissible) such as a Notice of Meeting, Proxy Voting Form and Annual Report via email.

### CORPORATE REPRESENTATIVES

If a representative of the corporation is to attend the Meeting the appropriate 'Appointment of Corporate Representative' should be produced prior to admission. A form may be obtained from the Company's share registry online at <https://automic.com.au>.

### Lodging your Proxy Voting Form:

#### Online:

Use your computer or smartphone to appoint a proxy at

<https://investor.automic.com.au/#/login>

or scan the QR code below using your smartphone

Login & Click on 'Meetings'. Use the Holder Number as shown at the top of this Proxy Voting Form.



#### BY MAIL:

Automic  
GPO Box 5193  
Sydney NSW 2001

#### IN PERSON:

Automic  
Level 5, 126 Phillip Street  
Sydney NSW 2000

#### BY EMAIL:

[meetings@automicgroup.com.au](mailto:meetings@automicgroup.com.au)

#### BY FACSIMILE:

+61 2 8583 3040

#### All enquiries to Automic:

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