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Antisense Employee Option Plan

MinterEllison

L A W Y E R S

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Antisense executive option plan

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Plan Rules

Amendment to Rules

Pursuant to Rule 13 of the Former Rules, the rules of the Plan are amended with effect on and from 2 July 2008 (**Effective Date**) by deleting all of the existing Rules and replacing them with the Rules set out in this document. The amendment does not reduce the rights of any Participant in respect of Options acquired under the Plan prior to the Effective Date and the Rules set out in this document apply to each such Participant and are to be interpreted accordingly.

1. Introduction

1.1 Name of Plan

The Plan is called the **Antisense Employee Option Plan**.

1.2 Objects of Plan

The objects of the Plan are to:

- (a) provide an incentive for Eligible Employees to remain in their employment in the long term;
- (b) recognise the ongoing ability of Eligible Employees and their expected efforts and contribution in the long term to the performance and success of the Group; and
- (c) provide Eligible Employees with the opportunity to acquire Options, and ultimately Shares, in the Company, in accordance with these Rules.

1.3 Replacement of former Plan Rules

The Plan Rules replace the former rules of the Plan (**Former Rules**) with effect on and from the Effective Date. However the Former Rules will continue to apply to Shares or beneficial interests in Shares acquired by Participants prior to the Effective Date except to the extent those Participants otherwise agree in writing.

2. Defined terms and interpretation

2.1 Defined terms

In these Rules, unless the context otherwise requires:

Accelerated Vesting Event means the occurrence of:

- (a) a Special Circumstance in respect of a Participant; and
- (b) a circumstance set out in Rule 11.3.

Applicable Law means one or more, as the context requires of:

- (a) the Corporations Act 2001 (Cth);
- (b) Corporations Regulations;

- (c) the Listing Rules;
- (d) any other applicable securities laws;
- (e) the constitution of the Company; and
- (f) any practice note, policy statement, class order, declaration, guideline, policy or procedure authorising or entitling ASIC or ASX to regulate, implement or enforce, either directly or indirectly:
 - (i) a provision of the laws, regulations, rules or constitution referred to in paragraphs (a) to (e); or
 - (ii) any agreement or deed made under the laws, regulations, rules or constitution referred to in paragraphs (a) to (e); or
 - (iii) a person's conduct or proposed conduct under the laws, regulations, rules or constitution referred to in paragraphs (a) to (e), or any agreement or deed referred to in paragraph (f)(ii).

Application Form means a duly completed and executed application for the issue of Options made by an Eligible Employee in respect of an Offer, in the form approved by the Board from time to time.

ASIC means the Australian Securities and Investments Commission.

ASX means ASX Limited ACN 008 624 691.

Board means all or some of the directors of the Company acting as a board or its delegate under section 198D of the *Corporations Act 2001* (Cth).

Certificate means, with respect to an Option:

- (a) a certificate issued under these Rules in the form approved by the Board from time to time, or if the Board determines that Options are uncertificated, then a statement issued to the Participant, disclosing:
 - (i) the number of Options entered in the register of Option holders in respect of the Participant; and
 - (ii) the information in Rule 7.3.

Company means Antisense Therapeutics Limited ACN 095 060 745.

Corporations Regulations means any and all regulations made under the *Corporations Act 2001* (Cth).

Date of Issue means, with respect to an Option, the date on which the Board issues the Option to an Eligible Employee.

Director means a director of the Company.

Eligible Employee means an Employee whom the Board determines is to receive an Offer under the Plan.

Employee means:

- (a) an individual whom the Board determines to be in the full-time or part-time employment of a body corporate in the Group (including any employee on parental leave, long service leave or other special leave as approved by the Board);

- (b) a director of a body corporate in the Group who holds a salaried employment or office in a body corporate in the Group;
- (c) a director of the Company (including a non-executive director);
- (d) an individual who provides services to a body corporate in the Group whom the Board determines to be an Employee for the purposes of the Plan;
- (e) an individual whose **associate** (as that expression is defined in section 139GE of the *Income Tax Assessment Act 1936*) provides services to a body corporate in the Group, which individual the Board determines to be an Employee for the purposes of the Plan; or
- (f) an individual otherwise in the employment of a body corporate in the Group whom the Board determines to be an Employee for the purposes of the Plan.

Exercise Conditions means the performance, vesting or other conditions (if any) determined by the Board and specified in an Offer which are, subject to these Rules, required to be satisfied, reached or met before an Option can, during the Exercise Period, be exercised.

Exercise Period means the period commencing on the First Exercise Date and ending on the Last Exercise Date.

Exercise Price means the amount payable by the holder of an Option on the exercise of the Option, being the amount fixed at the time of the issue of the Option and as determined under Rule 5.5.

First Exercise Date with respect to an Option means, unless otherwise specified in an Offer, the earlier of:

- (a) the vesting date applicable to the Option under Rule 8.3; or
- (b) the date on which a Special Circumstance arises in respect of the Participant holding the Option.

Group means the Company and its Subsidiaries.

Last Exercise Date with respect to an Option means, unless otherwise specified in an Offer:

- (a) the date 10 years after the Date of Issue;
- (b) if a Special Circumstance arises in respect of a Participant during those 10 years, then the date 60 days (or longer period as may be determined by the Board) after the Special Circumstance arises; or
- (c) the date which the date of termination or cessation of employment or office with the Group of the Participant (other than due to the occurrence of Special Circumstances).

Legal Personal Representative means the executor of the will or an administrator of the estate of a deceased person, the trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by another person.

Listing Rules means the listing rules of ASX.

Notice of Exercise means a duly completed and executed notice of exercise of an Option by a Participant, in the form approved by the Board from time to time.

Offer means an invitation to an Eligible Employee made by the Company under Rule 5.1 to apply for an issue of Options.

Option means an option issued to a Participant under the Plan to subscribe for a Share.

Participant means a person who holds Options, or Shares following the exercise of Options, issued under the Plan and includes, if a Participant dies or becomes subject to a legal disability, the Legal Personal Representative of the Participant. The person continues to be a Participant until the Board accepts their application to withdraw the Restricted Shares from the Plan under Rule 9.3 or they are deemed to have made the application to withdraw the Restricted Shares from the Plan under Rule 9.7.

Plan means the Antisense Employee Option Plan governed by these Rules.

Redundancy means the termination or cessation of a Participant's employment or office with the Group as a result of redundancy, as determined by the Board.

Restricted Shares means Shares held under the Plan and subject to the restrictions under Rule 9.

Rules means the rules governing the operation of the Plan set out in this document, as amended from time to time.

Security Interest means a mortgage, charge, pledge, lien, encumbrance or other third party interest of any nature.

Shares means fully paid ordinary shares in the capital of the Company.

Special Circumstance means with respect to a Participant:

- (a) Total and Permanent Disablement;
- (b) Redundancy;
- (c) the grant of probate following the death of the Participant;
- (d) retirement of the Participant that occurs after reaching the age determined by the Board to be normal retirement age; or
- (e) any other circumstances as the Board may at any time determine (whether in relation to the Participant, a class of Participants, particular circumstances or a class of circumstances) and whether before or after the Date of Issue.

Subsidiary means:

- (a) a body corporate of which the Company is a holding company in terms of Division 6 of Part 1.2 of the *Corporations Act 2001* (Cth) that the Board has approved for participation in the Plan; or
- (b) a body corporate in which the Company has voting power of not less than 20% (determined under section 610 of the *Corporations Act 2001* (Cth)) that the Board has approved for participation in the Plan.

Tax includes any tax, levy, impost, GST, deduction, charge, rate, contribution, duty or withholding which is assessed (or deemed to be assessed), levied, imposed or made by any government or any governmental, semi-governmental or judicial entity or authority together with any interest, penalty, fine, charge, fee or other amount assessed (or deemed to be assessed), levied, imposed or made on or in respect of any or all of the foregoing.

Total and Permanent Disablement means the termination or cessation of a Participant's employment with the Company or a Subsidiary as a result of total and permanent disablement, as determined by the Board.

2.2 Interpretation

In these Rules, unless the context otherwise requires:

- (a) headings are for convenience only and do not affect the interpretation of these Rules;
- (b) reference to any legislation or a provision of any legislation includes a modification or re-enactment of the legislation or a legislative provision substituted for, and all legislation and statutory instruments and regulations issued under, the legislation;
- (c) words denoting the singular include the plural and vice versa;
- (d) words denoting a gender include the other genders;
- (e) reference to any document or agreement includes reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;
- (f) where any word or phrase is given a defined meaning in these Rules, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (g) reference to a rule or paragraph is a reference to a rule or paragraph of these Rules, or the corresponding Rule or Rules of the Plan as amended from time to time; and
- (h) where an act or thing must be done on a particular day or within a particular period, that act or thing must be done before, and that period ends at, 5.00pm Melbourne time on the relevant day.

2.3 Primary instruments

These Rules are to be interpreted subject to the Applicable Laws.

3. Principal conditions

3.1 Plan limit

The number of Shares to be received on exercise of an Option which is the subject of an Offer when aggregated with:

- (a) the number of Shares which would be issued were each outstanding offer with respect to Shares, units of Shares and Options to acquire unissued Shares, under an employee share scheme of the Company, to be accepted or exercised (as the case may be); and
- (b) the number of Shares issued during the previous 5 years pursuant to the Plan or any other employee share scheme extended only to eligible employees of the Company or of an associated body corporate of the Company;

but disregarding any offer made, or option acquired or Share issued by way of or as a result of an offer:

- (c) to a person situated at the time of receipt of the Offer outside this jurisdiction; or
- (d) that was an excluded offer or invitation within the meaning of the Corporations Law as in force before the commencement of Schedule 1 to the *Corporate Law Economic Reform Program Act 1999*; or
- (e) that did not need disclosure to investors because of section 708 of the *Corporations Act 2001* (Cth) ; or

- (f) that did not require the giving of a product disclosure statement because of section 1012D of the *Corporations Act 2001* (Cth); or
 - (g) made under a disclosure document or product disclosure statement,
- must not exceed 5% of the total number of issued Shares as at the time of the Offer.

3.2 Options issued only to Employees

No Options may be issued to a person under the Plan unless the person remains an Employee as at the Date of Issue, or the Board determines otherwise.

3.3 Compliance with laws

No Option may be offered or issued to, or exercised by, an Eligible Employee or Participant if to do so would contravene an Applicable Law.

4. Operation of the Plan

The Plan operates according to these Rules which bind the Company, any Subsidiary and each Participant.

5. Offers

5.1 Board may make Offer

Subject to these Rules the Board may from time to time make an Offer to an Eligible Employee.

5.2 Form of Offer

An Offer must be in writing and subject to Rule 5.3, the form of the Offer and any acceptance of the invitation constituted by the Offer must be as approved by the Board from time to time.

5.3 Information contained in Offer

An Offer must state or contain:

- (a) the name and address of the Eligible Employee to whom the Offer is made;
- (b) the date of the Offer;
- (c) the period for acceptance of the invitation constituted by the Offer;
- (d) the maximum number of Options for which the Eligible Employee may make application;
- (e) the expected Date of Issue of the Options the subject of the Offer;
- (f) the expected First Exercise Date of the Options the subject of the Offer;
- (g) the expected Last Exercise Date of the Options the subject of the Offer;
- (h) the Exercise Price or the manner of determining the Exercise Price of the Options the subject of the Offer;
- (i) an undertaking to provide, on request from an Eligible Employee, information referred to in paragraph 5.3(h) as at the date of the request;

- (j) an undertaking, and an explanation of the way in which, the Company will, during the period of the Offer, within a reasonable period of an Eligible Employee requesting, make available the current market price of Shares to which the Options relate;
- (k) the Exercise Conditions (if any) attaching to the Options the subject of the Offer;
- (l) a copy of this Plan, or a summary of this Plan together with an undertaking that during the period in which an Eligible Employee can acquire or exercise Options under this Plan, the Company will, within a reasonable period of the Eligible Employee so requesting, provide the Eligible Employee without charge a copy of this Plan; and
- (m) any other specific terms and conditions applicable to the Offer.

5.4 Number of Options

Subject to Rule 3.1, the number of Options the subject of an Offer to an Eligible Employee is as determined by the Board.

5.5 Exercise Price

Subject to any adjustment under Rule 12, the Exercise Price in respect of an Option is as determined by the Board.

5.6 Exercise Price in Australian dollars

The Exercise Price in respect of an Option must be denominated and payable in Australian dollars.

5.7 Offer personal

An Offer under the Plan is personal to the Eligible Employee to whom it is made and, accordingly, the invitation constituted by an Offer may only be accepted by, and Options may only be issued to, the Eligible Employee to whom the Offer is made.

5.8 Shares to be continuously listed on ASX prior to Offer

Despite any other provision of the Plan and unless expressly permitted by the Applicable Law, no Offer may be made unless:

- (a) Shares in the Company have been quoted on ASX throughout the 12 month period immediately before the Offer without suspension for more than a total of 2 trading days during that period; and
- (b) Options for the issue or transfer of Shares referred to in paragraph (a) are offered for no more than nominal consideration.

6. Application for Options

6.1 Acceptance of Offer

An Eligible Employee may accept the invitation constituted by an Offer by giving to the Company an Application Form within the period specified in the Offer.

6.2 Failure to comply with Plan or Application Form

Failure by an Eligible Employee to comply with the Plan or any directions contained in an Application Form will, unless the Board determines otherwise, invalidate any acceptance by that Eligible Employee of the Offer.

6.3 Lapse of Offer

An Offer not accepted in accordance with Rule 6.1 lapses unless the Board determines otherwise.

7. Issue of Options

7.1 Acceptance of application and issue

The Company may, within 60 days after receiving a duly completed Application Form from an Eligible Employee but subject to the conditions of the Offer:

- (a) accept the Application Form;
- (b) issue to the Eligible Employee all of the Options the subject of the Application Form; and
- (c) notify the Eligible Employee of the Date of Issue of those Options.

7.2 Eligible Employee becomes a Participant

On the issue of an Option following receipt by the Company of an Application Form, an Eligible Employee becomes a Participant and is bound by these Rules and the terms and conditions of the Offer.

7.3 Certificates

The Company must give a Participant one or more Certificates stating:

- (a) the number of Options issued to the Participant;
- (b) the Exercise Price of those Options; and
- (c) the Date of Issue of those Options.

7.4 Consideration for Options

Options will be issued for consideration comprising the services that are expected to be provided by an Eligible Employee to or for the benefit of the Group but no further monetary or other consideration will be payable in respect of the issue of an Option.

7.5 Entitlement to underlying Shares

Subject to these Rules, each Option confers on its holder the entitlement to subscribe for and be issued one fully paid Share at the Exercise Price.

7.6 Interest in Shares

A Participant has no interest in a Share the subject of an Option held by the Participant unless and until the Share is issued to that Participant under these Rules.

8. Exercise of Options

8.1 Exercise during Exercise Period

Subject to Rules 3.3, 8.2, 8.3 and 8.4, an Option may be exercised at any time during the Exercise Period for that Option.

8.2 Exercise before Exercise Period

Subject to Rule 8.3, an Option may be exercised before the Exercise Period if permitted under Rules 11.4 or 12.5.

8.3 Vesting dates

The vesting dates (refer defined term of **First Exercise Date**) applicable to Options may be set out in the Offer as determined by the Company. Unless otherwise specified in the Offer, if no vesting date is set out in the Offer, the vesting date is the Date of Issue.

8.4 Exercise Conditions

Subject to Rule 8.5, if the Offer in respect of an Option specifies any Exercise Conditions, the Option may not be exercised unless and until those Exercise Conditions have been satisfied, reached or met.

8.5 Waiver of Exercise Conditions

The Board may, at its discretion, by notice to the Participant reduce or waive the Exercise Conditions attaching to Options in whole or in part at any time and in any particular case including due to Special Circumstance or another Accelerated Vesting Event.

8.6 Exercise of Options

Subject to these Rules, Options which have not lapsed may be exercised by the Participant giving to the Company:

- (a) a Notice of Exercise signed by the Participant;
- (b) the Certificate for those Options; and
- (c) a cheque payable to the Company (or another form of payment acceptable to the Board (if applicable)) in the amount of the product of the number of Options then being exercised by the Participant and the Exercise Price.

8.7 Issue of Shares

Subject to these Rules and the Listing Rules, on the exercise of an Option the Company must:

- (a) procure the transfer of a Share; or
- (b) issue and allot a Share.

8.8 Clearance of Exercise Price

The Company is not obliged to issue Shares on exercise of Options until any cheque received in payment of the Exercise Price has been honoured on presentation.

8.9 Exercise all or some Options

- (a) A Participant may only exercise Options in multiples of 1000 or another multiple as the Board determines unless the Participant exercises all Options covered by a Certificate able to be exercised by him or her at that time.
- (b) The exercise by a Participant of only some of the Options held by the Participant does not affect the Participant's right to exercise at a later date other Options held by the Participant (whether those other Options have the same First Exercise Date or otherwise).

8.10 Replacement Certificate

If a Participant submits a Notice of Exercise in respect of only part of the Options covered by a Certificate, the Company must issue a Certificate stating the remaining number of Options held by the Participant.

8.11 Shares rank equally

Unless otherwise provided in a Notice of Exercise, Shares issued on the exercise of Options rank equally with all existing Shares on and from the date of issue in respect of all rights issues, bonus share issues and dividends which have a record date for determining entitlements on or after the date of issue of those Shares.

8.12 Unmarketable Parcels

The minimum number of Shares which are allotted on partial exercise of Options by a Participant must not be less than a marketable parcel (as defined in the Listing Rules).

9. Restriction on disposal of Shares

9.1 Restricted Shares

Unless the Participant has already ceased employment with the Group, the Shares acquired under any exercise of Options as provided in Rule 8.6 are subject to restriction on disposal under this Rule 9.

9.2 No disposal whilst Shares in Plan

A holder of Restricted Shares must not dispose of or deal with or grant a Security Interest over (or purport to dispose of or deal with or grant a Security Interest over) any of those Restricted Shares or any interest in those Restricted Shares while those Restricted Shares are held in the Plan and subject to these Rules.

9.3 Withdrawal of Restricted Shares

A holder of Restricted Shares may at any time, by serving on the Company a written withdrawal notice in a form approved by the Board, apply to withdraw from the Plan a portion of or all Restricted Shares held by the holder.

9.4 Refusal to register transfer

Subject to the Listing Rules, the Company must refuse to register a paper-based transfer, and must apply or cause to be applied a holding lock to prevent a transfer, of any Restricted Shares.

9.5 Acceptance of withdrawal application

The Board must not:

- (a) accept an application to withdraw any Restricted Shares:
 - (i) unless arrangements satisfactory to the Board are made for the repayment of any debts owed by the holder to the Company; or
 - (ii) if any of the events in Rule 10.1(b) have occurred, arrangements satisfactory to the Board are made for the Group to be recompensed for any loss or damage suffered in those circumstances;

and for the purposes of Rules 9.5(a)(i) or 9.5(a)(ii) the Company is, if so determined by the Board, entitled to cause the Participant to forfeit some or all of those Restricted Shares or to sell all or any of those Restricted Shares for and on behalf of, and as attorney for, the holder and apply the proceeds firstly in and towards any amount payable to the Group under Rules 9.5(a)(i) or 9.5(a)(ii) and pay any balance to the holder; and

- (b) otherwise unreasonably refuse to accept an application to withdraw any Restricted Shares.

9.6 Company not liable

The Company is not liable to the holder of Restricted Shares for or in relation to any action taken by the Company under Rule 9.5.

9.7 Ceasing employment

A holder of Restricted Shares is, on ceasing employment (including through the occurrence of a Special Circumstance) with the Group, deemed to have made an application under Rule 9.3 to withdraw all Restricted Shares then held.

9.8 Removal of holding lock

Acceptance of an application for withdrawal served under Rule 9.3 or deemed made under Rule 9.7 is constituted by the lifting of any holding lock on the relevant Restricted Shares.

9.9 Cease to be in Plan

On acceptance under Rule 9.8:

- (a) the relevant Restricted Shares cease to be held in the Plan and subject to these Rules;
- (b) the relevant Restricted Shares cease to be subject to restriction on disposal under Rules 9.2 to 9.9;
- (c) the Board must immediately notify the holder of the Shares that the holding lock has been lifted.

9.10 Notification upon request by Participant

The Company must, if requested, notify the holder of the Shares of the particular time when the holding lock was lifted under Rule 9.8.

10. Lapse of Options

10.1 Lapse of Options

An Option lapses on the earlier of:

- (a) the Last Exercise Date;
- (b) a determination of the Board that the Option should lapse because the Participant, in the Board's opinion:
 - (i) has been dismissed or removed from office for a reason which entitles a body corporate in the Group to dismiss the Participant without notice;
 - (ii) has committed an act of fraud, defalcation or gross misconduct in relation to the affairs of that body corporate (whether or not charged with an offence); or
 - (iii) has done an act which brings the Group or any body corporate in the Group into disrepute; and
- (c) unless otherwise specified in the Offer or as determined by the Board, the date which is the date of termination or cessation of employment of the Participant with the Group (other than due to the occurrence of a Special Circumstance).

10.2 Rights cease

Unless otherwise determined by the Company, if a Participant fails for any reason to exercise all the Options registered in the Participant's name before the occurrence of a circumstance set out in Rule 10.1, those Options that the Participant:

- (a) would have been entitled to exercise and that have not been exercised; and
 - (b) may have had a right or entitlement to have vested in the Participant,
- lapse and all rights of a Participant under the Plan in respect of those Options cease.

11. Dealings with Options

11.1 Options personal

Except where Options have been transferred under Rule 11.3 or 11.4, Options held by a Participant are personal to the Participant and may not be exercised by another person.

11.2 No unauthorised disposal

Except as permitted under Rule 11.3 or 11.4, a Participant must not dispose of or grant a Security Interest over or otherwise deal with an Option or an interest in an Option, and the Security Interest or disposal or dealing is not recognised in any manner by the Company.

11.3 Permitted transfer of Options and Accelerated Vesting Events

Options may be transferred, by an instrument of transfer, in the following circumstances and those set out in clause 11.4 only:

- (a) a transfer constituting the necessary transfer documents following an acceptance of an offer made under an off-market bid relating to Options;
- (b) a transfer to a bidder on the sale of the Options under Division 3 of Part 6A.1 of the *Corporations Act 2001* (Cth);
- (c) a transfer to a 100% holder on the sale of the Options under Division 2 of Part 6A.2 of the *Corporations Act 2001* (Cth);
- (d) a transfer under Part 6A.3 of the *Corporations Act 2001* (Cth) to a person entitled to acquire the Options under section 661A or 664A of the *Corporations Act 2001* (Cth); or
- (e) a transfer approved by the Board in those circumstances as may be determined by the Board.

11.4 Covenant to be exercised on Transfer

Prior to an Option being transferred under this clause 11.4:

- (a) on the death of an Eligible Employee to the Legal Personal Representative of the deceased Eligible Employee; or
- (b) to an approved nominee, a family member or a company or trust associated with and controlled by the Eligible Employee;

the transferee must obtain approval from the Board and execute a covenant with the Company that the transferee agrees to be bound by the Offer (modified as necessary to reflect the nature and identity of the transferee) and the Plan.

11.5 First Exercise Date brought forward

If an Accelerated Vesting Event occurs while a Participant is employed with the Group, the Board may, at its discretion:

- (a) bring forward the First Exercise Date of all Options held by the Participant to a date determined by the Board; and
- (b) waive or vary any Exercise Conditions in regard to an Option held by the Participant in accordance with Rule 8.5.

11.6 Notice to Participants of change

If the Board determines to alter the First Exercise Date and Exercise Conditions under Rule 11.5, the Company:

- (a) must within 14 days of the alteration give notice to each Participant affected by the Accelerated Vesting Event in respect of any Options held by the Participant; and
- (b) may have to issue a replacement Certificate for the Options.

12. Participation rights, bonus issues, rights issues, reorganisations of capital and winding up

12.1 New issues

- (a) Participants are not entitled to participate in any new issue to existing Share holders of securities in the Company unless:
 - (i) they have exercised their Options under the Plan; and
 - (ii) they do so before the record date for the determination of entitlements to the new issue of securities and participate as a result of being holders of Shares.
- (b) The Company must give Participants, in accordance with the Listing Rules, notice of any new issue of securities before the record date for determining entitlements to the new issue.

12.2 Bonus issues

If the Company makes (whether before or during the Exercise Period) a bonus issue of Shares or other securities to existing holders of Shares (other than an issue in lieu or in satisfaction of dividends or by way of dividend reinvestment) and no Share has been issued in respect of an Option before the record date for determining entitlements to the bonus issue, then the number of underlying Shares over which the Option is exercisable is increased by the number of Shares which the Participant would have received if the Participant had exercised the Option prior to such record date.

12.3 Pro-rata issues

If the Company makes (whether before or during the Exercise Period) a pro-rata issue of Shares (except a bonus issue) to existing holders of Shares (other than an issue in lieu or in satisfaction of dividends or by way of dividend reinvestment) and no Share has been issued in respect of an Option before the record date for determining entitlements to the issue, the Exercise Price of the Option is reduced in accordance with the Listing Rules.

12.4 Reorganisation of capital

If there is a reorganisation of capital of the Company (whether before or during the Exercise Period) then the rights of a Participant (including the number of Options to which each Participant is entitled and the Exercise Price) is changed to the extent necessary to comply with the Listing Rules applying to a reorganisation of capital at the time of the reorganisation.

12.5 Winding up

If (whether before or during the Exercise Period) a resolution for a members' voluntary winding up of the Company is proposed (other than for the purpose of a reconstruction or amalgamation) the Board may, in its absolute discretion, give written notice to Participants of the proposed resolution. Subject to the Exercise Conditions, the Participants may, during the period referred to in the notice, exercise their Options if the Last Exercise Date for the Options has not expired.

12.6 Takeovers

- (a) Subject only to the Offer expressly providing to the contrary, if:
- (i) a takeover offer or a takeover announcement is made in respect of the Shares; and
 - (ii) the takeover offer or offer pursuant to the announcement (as the case may be) is accepted by the holders of not less than 50% in number of the Shares,

each Participant will be entitled to immediately exercise all Options currently held by him or her within the period notified by the Company.

- (b) Subject only to the Offer expressly providing to the contrary, if:
- (i) a takeover offer or a takeover announcement is made in respect of the Shares; and
 - (ii) the takeover offer or offer pursuant to the announcement (as the case may be) is accepted by the holders of not less than 50% in number of the Shares; and
 - (iii) there is a takeover offer or other offer also made for the Options,

each Participant will be entitled to immediately accept the offer for his or her Options.

- (c) Subject only to the Offer expressly providing to the contrary, if an offer for Shares is made to shareholders of the Company pursuant to a scheme of arrangement or compromise which has been approved in accordance with the *Corporations Act*, Participants will be entitled to immediately exercise Options held by them within the period notified by the Company.
- (d) Subject only to the Offer expressly providing to the contrary, if the Shareholders of the Company approve the disposal by the Company of its main undertaking, the Board may give written notice to each Participant of this approval ('**Approval Notice**') and, on receipt, each Participant will be entitled on issue of the Approval Notice and conditional upon the disposal contemplated thereunder occurring to immediately exercise his or her Options within the period notified by the Company.

12.7 Fractions of Shares

For the purposes of this Rule 12, if Options are exercised simultaneously, then the Participant may aggregate the number of Shares or fractions of Shares for which the Participant is entitled to subscribe. Fractions in the aggregate number only will be disregarded in determining the total entitlement of a Participant.

12.8 Calculations and adjustments

Any calculations or adjustments which are required to be made under this Rule 12 will be made by the Board and, in the absence of manifest error, are final and conclusive and binding on the Company and the Participant.

12.9 Notice of change

The Company must within a reasonable period give to each Participant notice of any change under Rule 12 to the Exercise Price of any Options held by the Participant or to the number of Shares which the Participant is entitled to subscribe for on exercise of an Option.

13. Quotation of Shares

13.1 No Quotation of Options

The Company will not seek official quotation of any Options.

13.2 Quotation of Shares

The Company must apply to ASX for quotation of Shares issued on exercise of Options if other Shares of the Company are officially quoted by ASX at that time.

14. Administration of the Plan

14.1 Administration

The Plan is administered by the Board.

14.2 Powers of the Board in relation to the Plan

The Board has power to:

- (a) determine appropriate procedures and make regulations for the administration of the Plan which are consistent with these Rules;
- (b) resolve conclusively all questions of fact or interpretation arising in connection with the Plan;
- (c) terminate or suspend the operation of the Plan at any time, provided that the termination or suspension does not adversely affect or prejudice the rights of Participants holding Options at that time;
- (d) delegate those functions and powers it considers appropriate, for the efficient administration of the Plan, to any person or persons whom the Board reasonably believes to be capable of performing those functions and exercising those powers;
- (e) take and rely upon independent professional or expert advice in or in relation to the exercise of any of their powers or discretions under these Rules;
- (f) administer the Plan in accordance with these Rules as and to the extent provided in these Rules; and
- (g) make regulations for the operation of the Plan consistent with these Rules.

14.3 Exercise of powers or discretion

Any power or discretion which is conferred on the Board by these Rules may be exercised by the Board in the interests or for the benefit of the Company, and the Board is not, in exercising that power or discretion, under any fiduciary or other obligation to another person.

14.4 Determinations

Where these Rules provide for a determination, decision, approval or opinion of the Board, that determination, decision, approval or opinion may be made or given by the Board in its absolute discretion.

14.5 Expenses and costs

Subject to these Rules, the Company and its Subsidiaries must pay all expenses, costs and charges incurred in the administration of the Plan in the amounts and proportions as they shall agree.

14.6 Tax

The Company is not responsible for any Tax which may become payable by a Participant in connection with the issue of Shares pursuant to an exercise of Options or another dealing by a Participant with the Options or Shares.

15. Amendment to Rules

15.1 Board may amend Rules

Subject to the Applicable Law, the Board may at any time amend any of these Rules, or waive or modify the application of any of these Rules in relation to a Participant without the consent of any Eligible Employee or Participant.

15.2 Eligible Employees outside Australia

The Board may make any additions, variations or modifications to the Rules, in relation to the implementation of the Plan and the specific application of the Rules to Eligible Employees residing outside Australia.

15.3 Termination of Plan

The Plan may be terminated at any time by resolution of the Board, but such termination will not affect or prejudice accrued rights of Participants holding Options at that time.

16. Rights of Participants

16.1 No conferred rights

These Rules:

- (a) do not confer on an Employee the right to receive an Offer;
- (b) do not confer on a Participant the right to continue as an Employee;
- (c) do not affect any rights which the Company or a Subsidiary may have to terminate the employment of a Participant; and
- (d) may not be used to increase damages in an action brought against the Company or a Subsidiary in respect of that termination.

16.2 Voting at general meetings

Participants do not, as Participants, have any right to attend or vote at general meetings of holders of Shares.

17. Notices

Notices may be given by the Company to Participants in any manner that the Board may from time to time determine.

18. Governing law

These Rules and the rights and obligations of Participants under the Plan are governed by the law of Victoria, Australia, and each Participant irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria, Australia.

19. Advice

Eligible Employees should obtain their own independent advice at their own expense on the financial, taxation and other consequences to them of or relating to participation in the Plan.