

**Benitec**

LEADER IN GENE SILENCING TECHNOLOGY

**BENITEC LIMITED**

**ABN 64 086 943 662**

**NOTICE OF ANNUAL GENERAL MEETING,**

**EXPLANATORY MEMORANDUM  
TO SHAREHOLDERS**

**&**

**PROXY FORM**

**For the Annual General Meeting to be held on  
Thursday 30 November 2006 at 2.00pm (AEDST)  
at the Mezzanine Room,  
Morgans @ 401  
401 Collins Street,  
Melbourne Victoria**

**BENITEC LIMITED**  
ABN 64 086 943 662

**NOTICE OF ANNUAL GENERAL MEETING**

Notice is hereby given that the Annual General Meeting of Benitec Limited (“Benitec” or “Company”) will be held at the Mezzanine Room, Morgans @ 401, 401 Collins Street, Melbourne, Victoria on Thursday 30 November 2006 at 2.00pm (AEDST).

The Explanatory Memorandum that accompanies and forms part of this Notice of Annual General Meeting describes the various matters to be considered.

**AGENDA**

**ORDINARY BUSINESS**

**1. Financial Statements & Reports**

To receive and consider the Financial Statements and the Reports of the Directors and of the Auditors of the Company in respect of the year ended 30 June 2006.

**Resolutions**

**2. Re-election of Director – Mr Peter Francis**

The Company, having received the requisite consents, consider and, if thought fit, to pass with or without amendment, the following resolution as an ordinary resolution:

“That Mr Peter Francis be and is re-appointed as a Director of the Company”

**3. Re-election of Director – Dr Michael Dalling**

The Company, having received the requisite consents, consider and, if thought fit, to pass with or without amendment, the following resolution as an ordinary resolution:

“That Dr Michael Dalling be and is re-appointed as a Director of the Company”

**4. Re-election of Director – Dr Ken Reed**

The Company, having received the requisite consents, consider and, if thought fit, to pass with or without amendment, the following resolution as an ordinary resolution:

“That Ken Reed, who retires in accordance with Article 12.9(a)(i) of the Constitution of the Company, being eligible, is re-elected a Director of the Company.”

**5. Ratification of Share Option Issue – Cappello Capital Corporation**

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

“That for the purpose of ASX Listing Rules 7.1 and 7.4 and for all other purposes, shareholders ratify the allotment and issue of 1,953,125 options to acquire ordinary shares in the Company with an exercise price of

\$0.17 and 1,001,164 options to acquire ordinary shares in the Company with an exercise price of \$0.32 to Cappello Capital Corporation as detailed in the accompanying explanatory memorandum”.

#### **6. Ratification of Share Issue – Promega Corporation**

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

“That for the purpose of ASX Listing Rules 7.1 and 7.4 and for all other purposes, shareholders ratify the allotment and issue of 15,944,504 fully paid ordinary shares in the capital of the Company at an issue price of \$.015 to Promega Corporation and the issue of a convertible promissory note to purchase a further US\$158,333 shares on 10 October 2007, as detailed in the accompanying explanatory memorandum”.

#### **7. Re-Approval of Employee Share Option Plan**

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

“That re-approval is given for the purposes of the Listing Rules for the issue of options under the Company’s existing Employee Share Option Plan (“ESOP”) in accordance with the rules of the ESOP as set out in the Explanatory Memorandum and forming part of this Notice of Meeting.”

#### **8. Adoption of the Remuneration Report**

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

“That the Remuneration Report, included in the Directors’ Report, for the year ended 30 June 2006 be adopted.”

BY ORDER OF THE BOARD



PAUL A. McMAHON  
Company Secretary

Dated: 25 October 2006

#### **ADMISSION TO 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.

## EXPLANATORY MEMORANDUM

### 1. Financial Statements and Reports

The Corporations Act requires the financial report (which includes the financial statements and directors' declaration), the directors' report and the auditor's report (the "Reports") to be laid before the Annual General Meeting. The Corporations Act does not require the shareholders to approve the Reports, however a reasonable opportunity will be given to ask questions of the management of the Company in relation to the Reports and make comments on the Reports.

### 2. Re-Election of Director – Mr Peter Francis LLB Grad Dip (Intellectual Property)

Listing Rule 14.4 and clause 12.5 of the Constitution of the Company states that a director appointed to fill a casual vacancy will not hold office (without re-election) past the next Annual General Meeting of the entity.

Peter Francis was appointed a Director of the Company on 23 February 2006. This appointment was after the previous AGM and as such he is required to be re-elected to the Board at this AGM.

Mr. Francis is a partner at Francis Abourizk Lightowlers (FAL), a firm of commercial and technology lawyers with offices in Melbourne and Brisbane, Australia. He is a legal specialist in the areas of intellectual property and licensing and provides legal advice to a large number of corporations and research bodies. Mr. Francis has extensive experience in technology commercialisation and is a founder and Non-executive Director of Boron Molecular Pty Ltd. and a Non-executive Director of Xceed Biotechnology Ltd and PolyNovo Pty Ltd.

### 3. Re-Election of Director – Dr Michael Dalling AM MAgrSc PhD

Listing Rule 14.4 and clause 12.5 of the Constitution of the Company states that a director appointed to fill a casual vacancy will not hold office (without re-election) past the next Annual General Meeting of the entity.

Dr Michael Dalling was appointed a Director of the Company on 24 March 2006. This appointment was after the previous AGM and as such he is required to be re-elected to the Board at this AGM.

Dr Dalling has wide ranging experience in technology development, intellectual property management, and commercialisation. He has been involved in several biotechnology start ups, mergers, and acquisitions. Dr Dalling is currently Chairman of the Biomedical Imaging Development CRC, Chairman of Biomass Conversion Technologies Pty Ltd, a Director of Neural Diagnostics Pty Ltd, and a Board member of the Innovative Dairy Products CRC and the Birchip Cropping Group. Dr Dalling was appointed a Member in the General Division of the Order of Australia on 26 January 2006 for service to the biotechnology industry through contributions to research and development organizations and commercialisation efforts to benefit Australian companies, producers, and consumers.

### 4. Re-Election of Director – Dr Ken Reed BSc MSc PhD

Article 12.9(a)(i) of the Constitution of the Company requires that at each Annual General Meeting one third of the directors automatically retire from office and are eligible for re-appointment. Article 12.10(a) provides that the directors who retire by reason of this rule are those who have been in office the longest. Therefore, Dr Ken Reed will retire by rotation at this meeting, is eligible for re-election and is seeking re-election as a director at this meeting.

Dr Ken Reed was appointed a Director of the Company on 19 May 2000.

Dr Reed was the scientific founder of Benitec, whose gene silencing technology came from research conducted at the Queensland Agricultural Biotechnology Centre (QABC) and CSIRO. Dr Reed was the founding director of QABC and previously a co-founder of Advanced Breeding Technology Pty. Ltd, the first company to commercialize the use of PCR. He was Deputy Chair of the inaugural Australian Biotechnology Advisory Council and served for many years on the Australian Government's Genetic Manipulation Advisory Committee and the board of the Australian Genome Research Facility. Dr Reed is a Fellow of the Academy of Technological Sciences and Engineering.

5. **Ratification of Share Option Issue – Cappello Capital Corporation**

Further to an agreement between the Company and Cappello Capital Corporation dated 4 August 2004, for the provision of corporate finance advisory services, the Company has issued the following ordinary share options:

- 1,953,125 options to acquire ordinary shares exercisable at \$0.17 on or before 23 October 2015; and
- 1,001,164 options to acquire ordinary shares exercisable at \$0.32 on or before 6 April 2008.

This issue of options was announced to the ASX by lodgement of an Appendix 3B on 10 May 2006.

6. **Ratification of Share Issue – Promega Corporation**

As announced to the ASX on 9 October 2006, the Company has entered into an agreement with Promega Corporation (“Promega”) in which the parties agreed to convert debt of US\$333,333 owing by Benitec to Promega into equity in the Company. The agreement is structured such that US\$175,000 of debt was converted on 10 October 2006 (15,944,604 shares at \$.015 – exchange rate .7317). Promega has also been issued a convertible promissory note to purchase a further US\$158,333 in shares on 10 October 2007 (the price per share will be the average trading price of Benitec shares sixty days prior to that date, less a discount of 20 percent).

7. **Re-Approval of Employee Share Option Plan**

Shareholder approval was previously given for the implementation and issue of options under the Company’s Employee Share Option Plan (“ESOP”) in accordance with the Listing Rules at a General Meeting of Shareholders held prior to the Company relisting on 26 July 2002. The Company wishes to renew shareholder approval for the ESOP so that it can continue to issue options to employees under the same terms and conditions.

Grants under the ESOP are made as medium to long term incentives that are designed to allow employees to be compensated for their role in the sustained growth in shareholder value. The size of such grants correlates with Company performance and the individual’s level of responsibility, performance and potential.

ASX Listing Rule 7.1 provides that the Company must not issue more than 15% of its issued capital in any 12 month period without shareholder approval. Listing Rule 7.2 allows for a number of exceptions to Listing Rule 7.1 including where shareholders have, in the previous 3 years, approved issues under an employee share or option scheme. The 3 year time period has now expired and approval is sought to renew it for a further 3 year period.

The terms and conditions of the ESOP are included in this Explanatory Memorandum as Annexure B.

***Voting Exclusion:***

For the purposes of Resolutions 5 & 6, the Company will disregard any votes cast by any person who participated in an issue and any person who might obtain a benefit, except a benefit solely in the capacity of the security holder, if Resolutions 5 & 6 are passed and any person associated with those persons. The Company will also disregard any votes cast by a director of the Company. However, the Company need not disregard a vote if it is cast by a person as proxy for a person who is entitled to vote, in accordance with the directions on the proxy form or it is cast by the person chairing the meeting as proxy for a person who is entitled to vote, in accordance with a direction on the proxy form to vote as the proxy decides.

8. **Adoption of the Remuneration Report**

The Corporations Act now requires listed companies to put to shareholders at the AGM a resolution concerning the Remuneration Report which is contained in the Directors’ Report section of the Annual Report. The vote on the resolution is advisory and is not binding on the Directors or the Company. However Directors have indicated that they will take account of the shareholders’ views when considering future remunerations matters.

A reasonable opportunity will be allowed to the shareholders as a whole for questions and comments on the Remuneration Report.

## Glossary

In the Notice of Meeting and Explanatory Memorandum, the following terms have the following meaning unless the context otherwise requires:

<b>ASX</b>	Australian Stock Exchange
<b>Board</b>	board of Directors
<b>Company</b>	Benitec Limited ABN 64 068 943 662
<b>Constitution</b>	constitution of the Company
<b>Corporations Act</b>	Corporations Act 2001 (Cth)
<b>Director</b>	director of the Company
<b>Listing Rules</b>	Listing Rules of the ASX
<b>Related Party</b>	has the same meaning as that term in the Listing Rules and <b>Related Parties</b> has a corresponding meaning
<b>Share</b>	fully paid ordinary share in the capital of the Company
<b>Shareholder</b>	shareholder of the Company
<b>AEDST</b>	Australian Eastern Daylight Standard Time

**BENITEC LIMITED**  
ABN 64 086 943 662

**PROXY FORM**

Registered Office: c/- Francis Abourizk Lightowlers  
Level 16, 356 Collins Street,  
Melbourne VIC 3000.

Phone: (03) 9642-2252  
Fax: (03) 9642-2272

I/We \_\_\_\_\_

Of \_\_\_\_\_

Being a member/members of Benitec Limited hereby appoint

\_\_\_\_\_

Of \_\_\_\_\_

Or in his/her absence, the Chairman of the Meeting as my/our general/special proxy to vote on my/our behalf at the Annual General Meeting of the Company to be held on 30 November 2006 or at any adjournment of that meeting.

Signature of Shareholder: \_\_\_\_\_

Signed this \_\_\_\_\_ day of \_\_\_\_\_ 2006

The Chairman proposes to vote undirected proxies in favour of resolutions 2 – 8

If you do not wish to direct your proxy how to vote, please place a mark in the box.

By marking this box you acknowledge that the Chairman may exercise your proxy even if he has an interest in the outcome of the resolution and votes cast by him other than as proxy holder will be disregarded as an outcome of that interest.

Unless otherwise instructed, the proxy will vote as he or she thinks fit, or abstain from voting. Should the member wish to direct the proxy how to vote, the following should be completed.

<b>Resolutions</b>	<b>For</b>	<b>Against</b>	<b>Abstain</b>
2 Re-Election of Director – Mr Peter Francis	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3 Re-Election of Director – Dr Michael Dalling	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4 Re-Election of Director – Dr Ken Reed	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5 Ratification of Share Option Issue – Cappello Capital Corporation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6 Ratification of Share Issue – Promega Corporation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7 Re-Approval of Employee Share Option Plan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8 Adoption of Remuneration Report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

## ANNEXURE A

### BENITEC EMPLOYEE SHARE OPTION PLAN RULES

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#### 1 Definitions and Interpretation

##### 1.1 Definitions

In these Rules, unless the context otherwise requires;

**Board** means the board of directors of the Company or a committee appointed by the board of directors;

**Change in Control** means a situation where a person obtains control (as defined in the Accounting Standards) over the Company on a particular day and that person did not have control immediately prior to that day;

**Company** means Benitec Ltd (ABN 64 086 943 662);

**Eligible Employee** means an employee (including a director employed in an executive capacity, a part-time employee and a consultant to the Company) of any Group Company who is declared by the Board to be an Eligible Employee for the purposes of these Rules;

**Exchange** means any Stock Exchange upon which the Company's Shares are quoted;

**Exercise Condition** means one or more conditions which must be satisfied, or circumstances which must exist before the Options, or any of them, may be exercised, as determined by the Board;

**Fair Value** means a value for a Share determined by the Board.

**Grant Date** in relation to an Option means the date from which the Board determines that an Option takes effect;

**Group Company** means the Company, and its Subsidiaries;

**Listing Rules** means the official Listing Rules of the Exchange;

**Market Value** has the meaning given to that term in Division 13A of the Income Tax Assessment Act 1936;

**Option** means a right to acquire a Share, whether by subscription or by purchase;

**Participant** means a person who has been granted an Option under these Rules (whether or not that person continues to hold options at the relevant time) and any transferee of Shares from a Participant;

**Plan** means the Benitec Employee Share Option Plan as set out in these rules, subject to any amendments or additions made under rule 11;

**Retirement** means a termination of an Eligible Employee's employment with a Group Company by reason of attaining the age the Board from time to time accepts as the normal retirement age for the Eligible Employee, or because the Board forms the opinion that the Eligible Employee is not able to perform the Eligible Employee's duties as a result of illness or incapacity;

**Share** means a fully paid ordinary share in the capital of the Company;

**Subsidiary** has the same meaning as in section 9 of the Corporations Act; and

**Takeover Bid** has the same meaning as in section 9 of the Corporations Act.

##### 1.2 Interpretation

- (a) Words importing the singular include the plural and vice versa.
- (b) Words importing a gender include any gender.
- (c) Other parts of speech and grammatical forms of a word or phrase defined in these Rules have a corresponding meaning.
- (d) Any reference in these Rules to any enactment or the Listing Rules includes a reference to that enactment or those Listing Rules as from time to time amended, consolidated, re-enacted or replaced and, in the case of an enactment, all regulations and statutory instruments issued under it.

## **2 Invitation to Participate**

### **2.1 Invitation**

The Board may, from time to time, at its absolute discretion, issue written invitations (in such form as the Board decides from time to time) to Eligible Employees to apply for up to a specified number of Options.

### **2.2 Amount payable on grant**

Options will be granted for no consideration, unless the Board determines otherwise.

### **2.3 Information to be provided to employees**

The Board will, together with the invitation referred to in Rule 2.1, advise each Eligible Employee of the following regarding the Options:

- (a) the method of calculation of the exercise price, failing the Board determining a specific value the exercise price of the Options will be Market Value on the Grant Date;
- (b) the period or periods during which all or any of the Options may be exercised;
- (c) the number of Shares over which Options may be granted;
- (d) the dates and times when the Options expire;
- (e) any Exercise Conditions applying to the Options; and
- (f) the date and time by which the application for Options must be received by the Company.

## **3 Application for Options**

### **3.1 Application**

- (a) Following receipt of an invitation, the Eligible Employee may apply for the Options specified in the invitation by sending to the person nominated by the Company an application (in the form attached to the invitation) duly completed and signed (together with a cheque for any amount payable in respect of the grant of the Options).
- (b) The application must be received by the Company within the period for acceptance specified in the invitation.

### **3.2 Number of options applied for**

The Eligible Employee may apply for the number of Options specified in the invitation or part thereof (but only in multiples of 1000 Options).

### **3.3 Personal nature**

An invitation is not transferable and an Eligible Employee may only apply for the Options in his or her name and not on behalf of another person or entity.

## **4 Grant of Options**

### **4.1 Grant**

Once the Company has received and accepted a duly signed and completed application for Options (together with any moneys payable in respect of the grant), the Company may:

- (a) grant Options to the Eligible Employee, with effect from the Grant Date; or
- (b) procure their grant by a third party,

upon the terms set out in the Plan and upon such additional terms and Exercise Conditions as the Board determines.

### **4.2 Advice to participants**

The Company must advise each Participant in writing that Options have been granted to him or her.

## **5 Transfer of Options**

An Option granted under the Plan is not capable of being transferred or encumbered by the Participant, and will immediately lapse if it is transferred or encumbered, unless it is transferred or encumbered:

- (a) by force of law upon death to the Participant's legal personal representative;
- (b) upon bankruptcy to the Participant's trustee in bankruptcy; or
- (c) with the prior written approval of the Board.

## **6 Exercise of Options**

### **6.1 Exercise preconditions**

- (a) The exercise of any Option granted under the Plan will be effected in the form and manner determined by the Board.
- (b) Subject to these Rules, an Option may not be exercised unless the Exercise Conditions (if any) advised to the Participant by the Board pursuant to Rule 2.3 have been met.

### **6.2 Death or retirement**

- (a) If a Participant:
  - (1) dies before an Option has been exercised and at that time the Participant was an employee of a Group Company; or
  - (2) ceases to be an employee of any Group Company by reason of Retirement, notwithstanding that any Exercise Condition has not been met, at the Board's discretion the Option may (and must, if at all) be exercised by the Participant or his or her personal representative (as the case may be) within a period determined by the Board or otherwise within 6 months.
- (b) If, after any Exercise Condition has been met but before an Option has been exercised, a Participant:
  - (1) dies, and at that time the Participant was an employee of a Group Company;
  - (2) ceases to be an employee of any Group Company by reason of Retirement; or
  - (3) ceases to be an employee of any Group Company for any reason other than as set out in paragraphs (1) and (2) and the Board deems that this rule applies,the Option may (and must, if at all) be exercised by the Participant or his or her personal representative (as the case may be) within a period determined by the Board or otherwise within 12 months.
- (c) A Participant will not be treated for the purposes of paragraphs (a) and (b) as ceasing to be an employee of a Group Company until such time as the Participant is no longer an employee of any Group Company, and a Participant who ceases to be such an employee by reason of approved leave of absence and who exercises his or her right to return to work under any applicable award, enterprise agreement, other agreement, statute or regulation before the exercise of an Option will be treated for those purposes as not having ceased to be such an employee.

### **6.3 Other Cessations**

Where:

- (a) a Participant ceases to be employed by a Group Company for a reason other than death or Retirement; and
- (b) any Exercise Condition has not been met;

all Options held by that Participant will lapse unless the Board determines otherwise. Where the Board so determines the Option may be exercised to the extent permitted by the Board within the period of 3 months following the notification of the Board's determination.

### **6.4 Fraudulent and dishonest actions**

If in the opinion of the Board a Participant acts fraudulently or dishonestly or is in breach of his or her obligations to any Group Company, then the Board may deem any unexercised Options held by the Participant to have lapsed.

### **6.5 Maximum exercise period**

Notwithstanding any other provision of these Rules, an Option granted over unissued Shares may be exercised within any period determined by the Board that is permitted by law, but not exceeding seven years from Grant Date.

### **6.6 Lapse of Option**

Unless exercised, an Option will expire:

- (a) at 5.00 pm Brisbane time on the last day permitted for its exercise; or

- (b) if the exercise of an Option is subject to an Exercise Condition and the condition is not met, is not able to be met, or can no longer be met, at 5.00 pm Melbourne time on the day when the condition is not met, is not able to be met or can no longer be met.

## **6.7 Entitlement**

Upon an Option expiring, the Company will repay to the Participant the price paid for the issue of the Option (if any), but the Participant will have no further entitlement or claim against the Company in respect of the Option. For the avoidance of doubt, an undertaking by an Eligible Employee to accept the value of an Option as a component of his or her remuneration package will not be regarded as a price paid for the issue of the Option.

## **7 Issue of Shares**

- (a) Subject to paragraph (b), within 15 days after an Option has been exercised by a Participant or his or her personal representative, the grantor of the Option must issue to or procure the transfer to the Participant or his or her personal representative (as the case may be) of the number of Shares in respect of which the Option has been exercised.
- (b) All Shares allotted upon exercise of an Option will rank equally in all respects with the Shares of the same class for the time being on issue except as regards any rights attaching to such Shares by reference to a record date prior to the date of their allotment.
- (c) If Shares of the same class as those allotted upon exercise of an Option are listed on an Exchange the Company will apply for quotation of those Shares within any period prescribed by the Exchange.

## **8 Takeover, Scheme of Arrangement and Winding-up**

- (a) If a Takeover Bid is made or a Change in Control occurs, the Board may (unless, in the opinion of the Board, an intention to make an equivalent offer to the Participants to acquire all or a substantial portion of their Options is given) give written notice to each Participant of the Takeover Bid or Change in Control.
- (b) If a Takeover Bid is made or Change in Control occurs after any Exercise Condition has been met, but before an Option has been exercised, the Options will then be exercisable within the period of 30 days from the date of the notice, in addition to any other period during which the Options may be exercised.
- (c) If a Takeover Bid is made or Change in Control occurs before any Exercise Condition has been met, the Board may determine that all or part of those Options will be exercisable within the period of 30 days from the date of the notice, in addition to any other period during which the Options may be exercised.
- (d) The Board may also, in its absolute discretion, permit the exercise of Options during such period as the Board determines where:
  - (1) a Court orders a meeting to be held in relation to a proposed compromise or arrangement for the purposes of or in connection with a scheme for the reconstruction of the Company or its amalgamation with any other company or companies;
  - (2) any person becomes bound or entitled to acquire shares in the Company under:
    - (A) section 414 of the Corporations Act; or
    - (B) Chapter 6A of the Corporations Act; or
  - (3) the Company passes a resolution for voluntary winding up; or
  - (4) an order is made for the compulsory winding up of the Company.
- (e) If a company (Acquiring Company) obtains control of the Company as a result of:
  - (1) a Takeover Bid or Change in Control; or
  - (2) a proposed scheme of arrangement between the Company and its Shareholders,and both the Company and the Acquiring Company agree, a Participant may upon exercise of his or her Options elect to acquire and the Company may provide shares of the Acquiring Company or its parent in lieu of Shares, on substantially the same terms and subject to substantially the same conditions as the Participant may exercise Options to acquire Shares, but with appropriate adjustments to the number and kind of shares subject to the Options, as well as to the exercise price.

## **9 Bonus Issues, Rights Issues, Reconstruction**

### **9.1 Adjustment for Bonus Issue**

- (a) If Shares are issued pro rata to the Company's shareholders by way of bonus issue (other than an issue in lieu of dividends or by way of dividend reinvestment), the Participant is entitled, upon exercise of the Options, to receive in addition to the Shares in respect of which the Options are exercised and without the payment of any further consideration an allotment of as many additional Shares as would have been issued to a shareholder who, on the date for determining entitlements under the bonus issue, held Shares equal in number to the Shares in respect of which the Options are exercised.
- (b) Additional Shares to which the Participant becomes so entitled will as from the time Shares are issued pursuant to the bonus issue be regarded as Shares comprised in the relevant Options and in respect of which the Options are exercised for the purposes of subsequent applications of Rule 9.1(a).

### **9.2 Adjustment for Rights Issue**

If Shares are offered pro rata for subscription by the Company's shareholders generally by way of a rights issue during the currency of and prior to exercise of any Options the exercise price of each Option will be adjusted, if the Company is listed on the Exchange, in the manner provided for in the Listing Rules, and otherwise as the Board directs.

### **9.3 Adjustment for reorganisation**

In the event of any reorganisation of the issued capital of the Company, the number of Options to which each Participant is entitled or the exercise price of the Options or both as appropriate will be adjusted, if the Company is listed on the Exchange, in the manner provided for in the Listing Rules, and otherwise as the Board directs.

### **9.4 No other participation**

Subject to this Rule 9, during the currency of any Options and prior to their exercise, Participants are not entitled to participate in any new issue of securities of the Company as a result of their holding Options.

## **10 Post Vesting**

- (a) This rule ceases to apply once the Company lists on an Exchange.
- (b) A Participant may not transfer any Share issued on exercise of an Option without the Board's prior written approval, and where the Board approves the transfer of any Share, the transfer shall be subject to a condition precedent that the transferee executes an appropriate Assumption Deed agreeing to be bound by the provisions of this rule 10 as if they were the original Participant, such deed to be in a form approved by the Board.
- (c) If:
  - (1) an Option becomes exercisable prior to Retirement, Separation or the Participant ceasing to be employed by a Group Company for another reason (each a "termination" for the purposes of this rule); and
  - (2) the Participant has exercised the Options and holds Shares on the date the termination takes effect, then the Board may, whether on the date the termination takes effect or at any time after the date the termination takes effect, require the Participant to sell the Shares into a capital raising or to an existing Shareholder, or to another investor.
- (d) Any sale of Shares required in accordance with this Rule must be at Fair Value.
- (e) Each Participant is deemed to have irrevocably appointed the Company as the Participant's attorney and agent to do all things necessary to effect a sale in accordance with this rule, including, but not limited to, authorizing the Company to execute a share transfer in the name of the relevant shareholder as transferee for this purpose.

## **11 Amendments**

### **11.1 Board Power**

Subject to Rule 11.2 and the Listing Rules, the Board may at any time by resolution amend or add to ("amend") all or any of the provisions of the Plan, or the terms or conditions of any Option granted under these Rules.

## **11.2 Restrictions on amendments**

No amendment to these Rules, or the terms of any Option, may be made which reduces the rights of Participants in respect of Options granted to them prior to the date of the amendment, other than an amendment introduced primarily:

- (a) for the purpose of complying with or conforming to present or future State or Commonwealth legislation governing or regulating the maintenance or operation of plans;
- (b) to correct any manifest error or mistake; or
- (c) to take into consideration possible adverse tax implications arising from, amongst others, adverse rulings from the Commissioner of Taxation, changes to tax legislation (including an official announcement by the Commonwealth of Australia) changes in the interpretation of tax legislation by a court of competent jurisdiction.

## **11.3 Notice of amendment**

As soon as reasonably practicable making any amendment under Rule 11.1, the Board will give notice in writing of that amendment to any Option holder affected by the amendment.

## **12 Miscellaneous**

### **12.1 Terms of employment not affected**

The terms of employment of any Participant with a Group Company are not affected by his or her applying for Options and these Rules will not form part of and are not incorporated into any contract of employment of any employee with a Group Company and no Participant will have any rights to compensation or damages in consequence of the termination of his or her office or employment for any reason whatsoever in so far as those rights arise or may arise from his or her ceasing to have rights under these Rules as a result of such termination.

### **12.2 Board powers and administration**

- (a) These Rules will be administered by the Board which has power to:
  - (1) determine appropriate procedures for administration consistent with these Rules; and
  - (2) delegate to any one or more persons for such period and on such conditions as it may the exercise of any of its powers or discretions arising under these Rules.
- (b) Except as otherwise expressly provided, the Board has absolute and unfettered discretion to act or refrain acting under or in with these Rules or any Options and in the exercise of any power or discretion under these Rules.
- (c) Notwithstanding any other provision, the Board may at any time waive in whole or in part any terms or conditions (including any Exercise Condition) in relation to any Options granted to any Participant.
- (d) In the event of any dispute or disagreement as to the interpretation, or as to any question or right arising from or related to these Rules or to any Options granted under them, the decision of the Board is final and binding.

### **12.3 Non-residents of Australia**

When an Option is granted to a person who is not a resident of Australia the provisions of these Rules apply subject to such alterations or additions as the Board determines having regard to any securities, exchange control or taxation laws or regulations or similar factors which may have application to the Participant or to any Group Company in relation to the Option.

### **12.4 Notices**

Any notice under these Rules may be given by personal delivery, by post or facsimile, in the case of a company to its registered office, and in the case of an individual to the individual's last known address, or, where a Participant is a director or employee of a Group Company, either to the Participant's last known address or to the address of the place of business at which the Participant performs the whole or substantially the whole of the duties of the Participant's office or employment.

### **12.5 Governing law**

These Rules and any Options issued under them are governed by the laws of Queensland and the Commonwealth of Australia.

### **12.6 References to listing rules**

Except as otherwise provided, any provisions containing a reference to the Listing Rules, or to a particular Listing Rule, will only apply once the Company is listed on an Exchange.