

Bio-Gene Technology Limited
ACN 071 735 950

Loan Share Plan Rules

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1 Definitions and Interpretation

1.1 Definitions

In these Rules the following words and expressions have the meanings indicated unless the contrary intention appears:

“Acquisition Price” means the acquisition price of a Share as determined by the Board under clause 5.

“After-tax Amount” means in respect of financial year the dividend amount paid in cash by the Company multiplied by the After-tax Rate.

“After-tax Rate” means in respect of a financial year during which a Company dividend is paid on a Loan Share will be calculated as $[1 - \text{the top marginal income tax rate for resident individuals for that year inclusive of Medicare Levy but exclusive of any Medicare Levy Surcharge}]$.

“ASX” means the Australian Securities Exchange Limited ACN 008 624 691.

“Board” means all or some of the directors of the Company acting as a board or a person or committee delegated by the board in accordance with subclause 19.2.

“Bonus Share” means a Share issued as a part of a pro rata bonus issue to shareholders of the Company.

“Buy-back” means the procedure by which the Company may Buy-back Shares held by Participants as specified under clause 13.

“Change of Control” means, in relation to the Company, the first to occur of any of the following events:

- (a) the merger or consolidation of the Company into another company;
- (b) any person, either alone or together with any associate (as defined in the *Corporations Act*) acquires all or substantially all of the Company's assets or acquires a relevant interest (as defined in the *Corporations Act*) in more than 50% of the issued Shares in the Company;
- (c) any similar event which the Board determines is a Change of Control.

“Company” means Bio-Gene Technology Limited ACN 071 735 950.

“Conditions” means any or all of the Vesting Conditions, Disposal Restrictions and Forfeiture Conditions.

“Constitution” means the constitution of the Company.

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

“Disposal Restrictions” means any conditions or restrictions determined in accordance with clause 10 that must be satisfied before an Eligible Employee is entitled to dispose of the Share or any interest in the Share.

“Eligible Employee” means an employee or director (as defined in section 9 of the Corporations Act) of the Company or any of its Subsidiaries, who resides in Australia and who is determined to be eligible to participate in the Plan in accordance with subclause 4.1.

“Equity Plan Trust Deed” means a deed between the Company and the Trustee which sets out the terms and conditions on which the Trustee undertakes its role under this Plan. For the avoidance of doubt, the Company is not required to operate or administer the Plan by way of such a deed or by appointing a Trustee.

“Forfeiture Conditions” means any conditions determined in accordance with clause 9 that could or may result in a Participant forfeiting the Share or any interest in the Share.

“Indicative Market Value” means the indicative market value of a Share determined in accordance with Clause 5.2.

“Listing Rules” means the official listing rules of the ASX.

“Loan” means a loan made or to be made by the Company or a Subsidiary to an Eligible Employee under clause 7 for the purpose of acquiring a Share.

“Loan Agreement” means any loan agreement between the Company and the Eligible Employee evidencing the terms and conditions of the Loan.

“Loan Period” means in respect of each Loan the period determined under paragraph 7.3.

“Loan Share” means a Share acquired with a Loan which has not been repaid in full in respect of that Share.

“Market Value” means the value of a Share determined in accordance with clause 16.

“Offer” means an offer of Shares to Eligible Employees made in accordance with clauses 4 and 5.

“Participant” means an Eligible Employee who has accepted an Offer to acquire Shares under this Plan.

“Plan” means the Bio-Gene Technology Limited Loan Share Plan constituted by the Rules.

“Restricted Shares” means Shares, including Loan Shares, which are subject to Conditions and all the Conditions have not been removed, satisfied or lifted.

“Rules” means the rules contained in this document known as the Bio-Gene Technology Limited Loan Share Plan.

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

“Security Trading Policies” means the Company’s security trading policies.

“Share” means an ordinary share in the capital of the Company.

“Share Registry” means the share registry of the Company.

“Subsidiary” means a subsidiary of the Company as defined in section 9 of the *Corporations Act*.

“Trustee” means the entity which the Board appoints as trustee (if any) pursuant to the Equity Plan Trust Deed.

“Unrestricted Shares” means Shares, including Loan Shares, which are not or are no longer Restricted Shares.

“Vesting Conditions” means any conditions determined in accordance with clause 8.

1.2 Interpretation

In this Plan, unless a contrary intention appears, or context otherwise requires:

- (a) singular includes the plural and vice versa;
- (b) a gender includes all genders;
- (c) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (d) a reference to the Constitution, an agreement or document (including, without limitation, a reference to these Rules) is to the Constitution, agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by these Rules or that other agreement or document;
- (e) a reference to legislation, ordinance, code, Listing Rules or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (f) law means common law, principles of equity, and laws made by a State, Territory and Commonwealth parliament;
- (g) a reference to a person in these Rules includes that person’s administrators, successors, permitted substitutes and permitted assignees (and, where applicable, the party's legal personal representatives);
- (h) references to the exercise of a power or discretion include a decision not to exercise the power or discretion;
- (i) headings are for convenience only and do not affect the interpretation of these Rules;
- (j) words or phrases that have a defined meaning are identified by the use of a capital letter;
- (k) where a word or phrase is defined, cognate words and phrases have corresponding meanings;
- (l) the word “includes” in any form is not used as or interpreted as a word of limitation;
- (m) to the extent that there is any inconsistency between the Plan and the Constitution, the Company and the Eligible Employee agree that the Plan prevails;
- (n) if any provision of these Rules is invalid, unenforceable or otherwise ineffective, that invalidity, unenforceability or ineffectiveness does not affect the validity, enforceability, operation, construction or interpretation of any other provision of these Rules, with the intent that the invalid or unenforceable provision will be read down or, if it is not capable of being read down, will be treated for all purposes as severable from these Rules; and
- (o) a reference to “\$” or “dollar” is a reference to Australian currency.

2 Purpose of Plan

The purpose of the Plan is to enable Eligible Employees of the Company or its Subsidiaries to acquire Shares for purposes including:

- (a) motivating and retaining Eligible Employees; and
 - (b) attracting high quality persons as Eligible Employees
- by enabling them to share the rewards of any capital growth in the Company.

3 Commencement of Plan

The Plan will commence on the date determined by the Board.

4 Eligibility and Offer

4.1 Participation by Eligible Employees

The Board may determine that an Eligible Employee may participate in the Plan.

4.2 Selection

Following determination that an Eligible Employee may participate in the Plan the Board may make Offers to Eligible Employees.

4.3 Offer

- (a) The manner, form and content of an Offer will be determined by the Board in accordance with these Rules.
- (b) Notwithstanding these Rules or the terms and conditions of any Offer, no Share may be offered, issued or transferred if to do so would contravene the Corporations Act.
- (c) An Offer is not transferable and an Eligible Employee may only apply for the Shares in his or her name and not on behalf of another person.

5 Offer terms and conditions

5.1 Offer documentation

The terms of the Offer:

- (a) will be determined by the Board and include as a minimum:
 - (i) the name of the Eligible Employee;
 - (ii) the number of Shares;
 - (iii) the Acquisition Price;
 - (iv) whether Shares will be subject to Conditions and the terms thereof;
 - (v) where a Loan is provided, a Loan Agreement containing the terms and conditions of the Loan in accordance with clause 7;
 - (vi) the closing date for accepting the Offer; and
 - (vii) any other terms and conditions the Board considers appropriate; and
 - (viii) must be set out in the document evidencing the Offer delivered to the Participant.

5.2 Acquisition Price

The Acquisition Price must not be less than the Indicative Market Value of a Share determined in accordance with Division 13A of the *Income Tax Assessment Act 1936*. For the avoidance of doubt, reference to Division 13 includes a reference to any re-enactment of that Division in the *Income Tax Assessment Act 1997*.

6 Acquisition of Shares

6.1 Application for Shares

- (a) An Eligible Employee who wishes to apply for Shares specified in an Offer must on or before the closing date for applications stated in the Offer (or any other date that the Company may allow either generally or in a particular case) do what is specified in the Offer in order to accept the Shares.
- (b) Where the Eligible Employee wishes to apply for Shares in accordance with paragraph 6.1(a), the Company may accept the application from the Eligible Employee and the Board may determine that the number of Shares for which the Participant applied or such lesser number of Shares for which the Participant was entitled to are allotted and issued or transferred to the Participant or to the Trustee on behalf of the Participant.

6.2 Purchase Price – Method of Giving Consideration

The Board may determine the form of consideration acceptable to the Company for purchasing Shares, including acceptable methods of payment. Subject to the method of consideration being determined as acceptable by the Board, the choice of method used to purchase Shares will be cash, electronic funds transfer or Loan or any combination of those methods.

6.3 Transaction costs

The Company may but is not required to bear all brokerage, commission or other transaction costs payable in relation to the acquisition of Shares by Participants or the Trustee under the Plan.

6.4 Security Trading Policies

If at the time the Eligible Employee accepts the Offer the Eligible Employee is prevented from buying or selling Shares under the Security Trading Policies the Participant may not acquire Shares.

6.5 Ranking of Shares

Shares acquired under the Plan rank equally with all existing Shares from the date of acquisition in respect of all rights issues, dividends and other distributions to, or entitlements of, holders of existing Shares made or declared after acquisition.

7 Loans

7.1 Offer of Loan

The Company may, when making an Offer, also offer a Participant a Loan on terms and conditions in accordance with this clause 7 and as determined by the Board.

7.2 Loans by Subsidiaries

Where a Participant is employed by a Subsidiary, at the request of the Board, the Subsidiary may offer the Participant a Loan on terms and conditions in accordance with this clause 7 and as determined by the Board.

7.3 Loan terms

- (a) The Board may determine that the amount of the Loan will be up to but not more than the sum of the Acquisition Price of that number of Shares subscribed in respect of which the Loan is offered together with any transaction costs payable by the Participant in respect of the Loan.
- (b) A Participant who accepts a Loan irrevocably authorises the Company or a Subsidiary (as the case may be) to apply the Loan on behalf of the Participant by way of payment of the Acquisition Price of the Shares to which the Loan relates and the payment of any transaction costs payable by the Participant in respect of the Loan.
- (c) Unless otherwise determined by the Board, Loans will be interest-free.
- (d) Unless otherwise determined by the Board, the Loan Period is the period commencing when the Loan is made and ending on the first to occur of the following:
 - (i) the date on which the Participant ceases to be employed by the Company or a Subsidiary;
 - (ii) the Loan Shares are disposed of in accordance with clause 12 or Bought-back in accordance with clause 13;
 - (iii) the date of a Change of Control;
 - (iv) ten years from the date the Loan is provided to the Participant; or
 - (v) the date the parties to the relevant Loan Agreement otherwise agree in writing.

7.4 Repayment

- (a) A Participant may repay all or part of a Loan at any time before the expiration of the Loan Period.
- (b) Unless otherwise determined by the Board, the Company will apply and each Participant irrevocably directs the Company to so apply the After-tax Amount of dividends paid in cash for the Loan Shares towards repayment of the Loan.
- (c) In the event of a capital distribution, unless otherwise determined by the Board, any capital distribution in respect of a Participants Loan Shares must first be applied in payment against the outstanding balance of the Loan.
- (d) In the event a Participant forfeits his or her interest in Loan Shares to the Company, the Participant will be taken to have repaid the Loan in full and is discharged from any further

liability or obligation in respect of the Loan.

- (e) Unless otherwise determined by the Board, at the expiration of the Loan Period and not before, the Loan amount to be repaid will be the lesser of the following amounts:
 - (i) the Loan less any amounts already paid in reduction thereof; and
 - (ii) the Market Value of the Loan Shares as at the end of the Loan Period.

7.5 Security Interest

The Participant acknowledges that the Loan gives rise to a Security Interest in favour of the Company over the Loan Shares and that the Company may, in its absolute discretion, register the Security Interest on the Personal Property Securities Register.

8 Vesting Conditions

8.1 Determination of Vesting Conditions

The Board may, when an Offer is made, determine that the Shares offered will be subject to the Vesting Conditions of this clause 8.

8.2 Vesting Conditions detailed in the Offer

Where the Board makes a determination under subclause 8.1, the Offer will specify that the Shares offered are subject to the Vesting Conditions.

8.3 Scope of Vesting Conditions

The nature and content of the Vesting Conditions will be determined by the Board and may include conditions relating to continuing employment, performance of the Participant or the Company or the occurrence of specific events.

8.4 Effect of Vesting Conditions

- (a) Shares that are subject to Vesting Conditions that have not been satisfied will be Restricted Shares until such time as the Vesting Conditions are removed, satisfied or lifted.
- (b) For the avoidance of doubt, if in the opinion of the Board any of the Vesting Conditions cannot be satisfied for any reason, the Participant will forfeit the Shares in accordance with clause 9.

8.5 Removal of Vesting Conditions by Board

The Board may determine that any Restricted Shares are no longer subject to the Vesting Conditions and will notify the Participant of such a determination in writing. Following this notification, but subject to any other Conditions, these Shares will become Unrestricted Shares and may be dealt with in accordance with these Rules and the Security Trading Policies.

9 Forfeiture Conditions

9.1 Forfeiture conditions

The Board may, when an Offer is made, determine that the Shares offered will be subject to the Forfeiture Conditions of this clause 9.

9.2 Forfeiture Conditions detailed in the Offer

Where the Board makes a determination under subclause 9.1, the Offer will specify that the Shares offered are subject to the Forfeiture Conditions.

9.3 Scope of Forfeiture Conditions

The Forfeiture Conditions will include:

- (a) While Shares are held by a Participant, if the Board determines that the Participant has acted unlawfully or dishonestly, or committed any act of fraud, defalcation, gross misconduct, or is in serious breach of the Participants obligations in relation to the affairs of the Company or a Subsidiary, the Participant will forfeit any right or interest in the Shares and in respect of any entitlements in respect of those Shares.
- (b) If in the opinion of the Board any of the Vesting Conditions cannot be satisfied for any reason, the Participant forfeits any right or interest in the Shares and in respect of any entitlements in respect of those Shares.
- (c) Other Forfeiture Conditions determined by the Board.

9.4 Effect of Forfeiture Conditions

Shares that are subject to Forfeiture Conditions that have not been satisfied will be Restricted Shares until such time as the Forfeiture Conditions are removed, satisfied or lifted in respect of those Shares.

9.5 Participant may request removal of Forfeiture Condition

- (a) The Board may determine that any Restricted Shares are no longer subject to the Forfeiture Conditions and will notify the Participant of such a determination in writing. Following this notification, but subject to any other Conditions, these Shares will become Unrestricted Shares and may be dealt with in accordance with these Rules and the Security Trading Policies.
- (b) A Participant may request the Board to make a determination to lift or remove the Forfeiture Conditions in accordance with paragraph 9.5(a) and the Board may determine whether to accept such a request.

9.6 Participant has no right to proceeds

Subject to clauses 12 and 13, a Participant will have no right to the proceeds from any Shares forfeited under subclause 9.3 and releases and holds harmless the Company in respect of any claim in respect thereof.

10 Disposal Restrictions

10.1 Board may impose Disposal Restrictions

The Board may, when an Offer is made, determine that the Shares offered may not be disposed of or dealt with in any way whatsoever for a period the shorter of:

- (a) a period as determined by the Board at the time of the Offer, commencing at the time of acquisition of the Shares by the Participant; and
- (b) the time when the Participant is no longer employed by the Company or any of its Subsidiaries.

10.2 Disposal Restrictions

Where the Board makes a determination under subclause 10.1, the Offer will specify that the Shares offered are subject to the Disposal Restrictions.

10.3 Effect of Disposal Restrictions

Shares that are subject to Disposal Restrictions that have not been satisfied will be Restricted Shares until such time as the Disposal Restrictions are removed, satisfied or lifted.

10.4 Participant's undertaking

For so long as Disposal Restrictions apply with respect to a Restricted Share, the participant will not, other than in respect of the Loan Agreement:

- (a) transfer, encumber, deal with or otherwise dispose of, or have a Security Interest granted over that Restricted Share; or
- (b) take any action or permit another person to take any action to remove the Disposal Restrictions without the express written consent of the Company; or
- (c) take any action or permit another person to circumvent the Disposal Restrictions.

10.5 Ending of Disposal Restrictions

Once the period over which the Disposal Restrictions have been imposed under subclause 10.1 has ended, but subject to any other Conditions, the Shares will become Unrestricted Shares and may be dealt with in accordance with these Rules and the Security Trading Policies.

10.6 Removal of Disposal Restrictions by the Board

The Board may determine that any Restricted Shares are no longer subject to the Disposal Restrictions and will notify the Participant of such a determination in writing. Following this notification, but subject to any other Conditions, these Shares will become Unrestricted Shares and may be dealt with in accordance with these Rules and the Security Trading Policies.

11 No dealing

11.1 General

A Participant must not sell, transfer, encumber or otherwise deal with a Share unless otherwise permitted under this Plan or determined by the Board.

11.2 Restricted Shares

Shares that are Restricted Shares cannot be sold, transferred, encumbered or dealt with under any circumstances except as permitted by this Plan or as determined by the Board.

11.3 Loan Shares

A Participant must not sell, transfer, encumber or otherwise deal with Loan Shares prior to the repayment of the Loan used to acquire that Loan Share unless otherwise permitted by this Plan or determined by the Board.

11.4 Death

Notwithstanding subclauses 11.1 to 11.3, if a Participant dies, with the written approval of the Board and on terms and conditions determined by the Board, Shares may be transferred to the Participant's legal personal representative.

11.5 Enforcement of no dealing

The Company may implement any procedure it considers appropriate to prevent Participants from dealing with any Shares acquired by Participants for as long as those Shares are either or both Restricted Shares or Loan Shares, including determine that Restricted Shares will be subject to a holding lock or held on trust by the Trustee.

12 Disposal of Shares

12.1 General

As applicable, Shares may only be disposed of in accordance with this clause 12 or clause 13.

12.2 Disposal trigger events

The Company or Trustee may sell or Buy-back some or all of a Participant's Shares if any of the following events occur:

- (a) the Participant ceases to be employed by the Company or a Subsidiary;
- (b) a Change of Control Event occurs; or
- (c) the Loan Period ends; or
- (d) the Board determines there will be a Buy-back of the Participant's Shares.

12.3 Unrestricted Shares

In the case of Unrestricted Shares that are not or are no longer Loan Shares, unless the Board determines otherwise, a Participant will dispose those Unrestricted Shares on his or her own behalf.

12.4 Restricted Shares

In the case of Restricted Shares, the Share must be Bought-back in accordance with clause 13 or disposed of by way of sale by the Company or Trustee.

12.5 Loan Shares

If the Participant has not repaid the outstanding amount of a Loan or if the Board determines the Participant will be unable to repay the outstanding amount of a Loan at the end of the Loan Period, Loan Shares must be disposed Bought-back in accordance with clause 13 or disposed of by way of sale by the Company or Trustee on behalf of the Participant.

12.6 Forfeited Shares

Shares that are forfeited pursuant to clause 9 must be Bought-back in accordance with clause 13 or disposed of by way of sale by the Company or Trustee.

12.7 Application of Part 2D.2 Division 2 of the Corporations Act

- (a) Clause 12.7 applies to all termination payments to which Part 2D.2 Division 2 of the Corporations Act applies.
- (b) Notwithstanding any other provision of these Rules, in the absence of shareholder approval, the Company is not required to provide, or procure the provision, of any benefit under these Rules which is not permitted by Part 2D.2 Division 2 of the Corporations Act.
- (c) Any benefits required to be provided to a Participant in accordance with these Rules will, by operation of this clause, be reduced to ensure compliance with Part 2D.2 of the Corporations Act and the provision of such reduced benefit shall constitute full satisfaction of the obligations of the Company. In the event of overpayment to a Participant, the Participant must, on receiving written notice from the Board, immediately repay any monies or benefits specified in such notice to ensure compliance with Part 2D.2 of the Corporations Act.
- (d) Where clause 12.7(b) applies the Company may seek or not seek shareholder approval in its discretion.

13 Share Buy-back

13.1 Disposal by Buy-back

The disposal of Shares by Buy-back will be conducted in accordance with this clause 13.

13.2 Buy-back trigger events

- (a) The Company must Buy-back the Shares if:
 - (i) the Shares are forfeited in accordance with paragraph 7.4; or
 - (ii) the Shares are forfeited in accordance with clause 9.
- (b) The Company may Buy-back some or all of a Participant's Shares if any event in clause 12.2 occurs.

13.3 Buy-back Procedure

- (a) Where Shares are Bought-back by the Company, the Company, or a third party acting at the direction of, or under power delegated to them, will:
 - (i) prepare all necessary transfer documents and arrange for the Participant or the attorney of the Participant to complete the transfer documents on their behalf;
 - (ii) pay all relevant taxes, duties or other imposts in respect of the transfer other than any taxes, duties or imposts which are for the account of the Participant which shall be deducted from any proceeds of the Buy-back; and
 - (iii) cancel the Shares which are Bought-back.
- (b) In the event the Company conducts a Buy-back of the Shares, the Board may make:
 - (i) an adjustment to the amount payable to a Participant under clause 14 or 15 (as the case may be); or
 - (ii) any other payment

in order to compensate the Participant in respect of any adverse tax consequences that arise to the extent that any part of the price payable is taken to be a dividend for the purposes of Division 16K of Part III of the *Income Tax Assessment Act 1936*.
- (c) The Participant will do all acts reasonably required to effect the Buy-back.

13.4 Relevant approvals

- (a) The right of the Company to Buy-back the Shares is subject to the Company obtaining all relevant shareholder approvals, satisfying applicable regulatory requirements and payment to the Participant of the consideration in clause 14 or clause 15.
- (b) The Company's right to Buy-back the Shares as acknowledged by the Participant, does not limit the ability of the Participant to transfer the Shares prior to the Company issuing a Buy-back notice to Participants, nor does the Company have any rights as against any third party in respect of the Buy-back of such Shares.

14 Sale or Buy-back Price

14.1 Price of Unrestricted Shares

Subject to clauses 12 and 13, Shares that are Unrestricted Shares at the time of sale may be:

- (a) sold by the Participant;
 - (b) sold by the Company or Trustee on behalf of the Participant; or
 - (c) Bought-back by the Company,
- at a price equal to Market Value.

14.2 Price of Restricted Shares

- (a) Shares that are Restricted Shares subject to either Disposal Restrictions or Forfeiture Conditions at the time of sale but are not or no longer Loan Shares may be sold by the Company on behalf of the Participant at a price equal to Market Value or Bought-back by the Company at a price equal to Market Value.
- (b) Shares that are Restricted Shares subject to Vesting Conditions may at the time of sale be either:
 - (i) sold by the Company with the Participant's entitlement to sale proceeds limited to Acquisition Price less any repayments of the Loan (if any) in accordance with subclause 7.4. Any excess proceeds will be retained by the Company or Trustee and applied for the purposes, and for the benefit, of the Plan as determined by the Board; or
 - (ii) Bought-back by the Company at a price equal to Acquisition Price less any repayments of the Loan (if any) in accordance with subclause 7.4.

14.3 Price of Forfeited Shares

Shares that have been forfeited:

- (a) in accordance with clause 13, will be Bought-back at a price equal to Market Value; or
- (b) in accordance with clause 9, will be:
 - (i) sold by the Company with the Participant's entitlement to sale proceeds limited to Acquisition Price less any repayments of the Loan (if any) in accordance with subclause 7.4. Any excess proceeds will be retained by the Company or Trustee and applied for the purposes, and for the benefit, of the Plan as determined by the Board; or
 - (ii) Bought-back by the Company at a price equal to Acquisition Price less any repayments of the Loan (if any) in accordance with subclause 7.4.

15 Proceeds of disposal by Company or Buy-back

If the Company or Trustee sells Shares on behalf of the Participant or there is a Buy-back of Loan Shares, the proceeds of sale or Buy-back will be applied in the following order:

- (a) in reduction of any outstanding amount of the Loan (if any) in accordance with clause 7.4;
- (b) in payment of any costs and expenses of the sale or Buy-back incurred by the Company or Trustee; and
- (c) the remainder, if any, either:
 - (i) in payment to the Participant; or
 - (ii) if applicable, for retention by the Trustee to be applied for the purposes, and for the benefit, of the Plan as determined by the Board.

16 Market Value

16.1 Shares listed on the ASX

- (a) In relation to Shares sold on the ASX, Market Value is the price at which the Shares are sold by the Company on the ASX less selling costs of the Company. The Company is not required or obligated to obtain the best possible price on behalf of the Participant.
- (b) In relation to Shares Bought-back by the Company pursuant to clause 13, Market Value is the 5 day weighted average price of Shares traded on the ASX on the 5 trading days prior to the day of the Buy-back.

16.2 Shares not listed on the ASX

In relation to Shares not listed on the ASX, the Board may determine the manner and basis on which a valuation of a Share is made for the purposes of these Rules including the choice of methodology and the underlying assumptions in applying that methodology.

17 Rights attaching to Shares

17.1 Rights generally

A Participant is entitled to any rights which accrue to Shares held by the Participant and may accept the rights and sell or otherwise deal with those rights in accordance with these Rules and the Offer.

17.2 Trustee rights

The Trustee on behalf of each and all of the Participants is entitled to any rights specified in this clause 17 which accrue to Shares held for the benefit of those Participants.

17.3 Dividends

Subject to the Loan Rules in clause 7, a Participant is entitled to all dividends declared or paid on the Shares held by the Participant.

17.4 Capital distributions

Subject to the Loan Rules in clause 7, a Participant is entitled to any distributions of capital made in respect of the Shares held by the Participant.

17.5 Voting rights

Participants are entitled to exercise voting rights in respect of their Shares.

17.6 Dividend Reinvestment Plans

Unless otherwise determined by the Board, Shares that are not Loan Shares will be entitled to participate in a dividend reinvestment plan of the Company.

17.7 Bonus Shares

- (a) A Participant is entitled to any Bonus Shares which accrue to Shares held by the Participant.
- (b) Upon allotment of Bonus Shares to a Participant, the Bonus Shares are deemed, for the purposes of the Plan, to be Shares which were allotted to the Participant at the time the Shares to which the Bonus Shares accrued were allotted to the Participant.

17.8 Cessation of rights if forfeited

If Shares are forfeited in accordance with clause 9, then those Shares cease to carry any of the rights, benefits or entitlements described in clause 17.

18 Rights of Participants

18.1 No effect on contract of employment

Nothing in these Rules:

- (a) confers on a Participant the right to receive any Shares;
- (b) confers on a Participant the right to continue as an Eligible Employee of the Company or a Subsidiary;
- (c) affects any rights which the Company or a Subsidiary may have to terminate the employment of any Eligible Employee; or
- (d) may be used to increase damages in any action brought against the Company or Subsidiary in respect of any such termination.

18.2 Enforcement of rights

These Rules, any determination of the Board made pursuant to these Rules, and the terms of any Shares granted under the Plan will be deemed to form a contract between the Company and the Participant in a Court of competent jurisdiction. Each party will in addition to damages be able to seek specific performance of the contract between them as far as specific performance is applicable under a Court of competent jurisdiction.

18.3 Attorney

- (a) The Participant irrevocably appoints the person who from time to time occupies the position of secretary of the Company (or the secretary's authorised delegate) as his or her attorney to complete and execute any documents, including share transfers, and to do all acts or things in his or her name on his or her behalf which may be convenient or necessary for the purpose of giving effect to the Rules.
- (b) The Participant covenants that the Participant will ratify and confirm any act or thing done by pursuant to power granted to the attorney (or the attorney's duly authorised delegate) under paragraph 18.3(a) and will indemnify the attorney (or his or her duly authorised delegate) in respect thereof.

19 Administration of the plan

19.1 Management by Board

- (a) The Plan will be administered by the Board in accordance with these Rules, the Constitution and any applicable laws including, where the Company is listed, the Listing Rules.
- (b) No act will be done or determination made in accordance with these Rules where to do so would be a breach of any applicable laws, Listing Rules or the constituent documents of the Company and where any such act is done or determination made it will be considered voidable and to the extent possible be unwound and of no effect in respect of the Shares.
- (c) Every exercise of a power or discretion by the Company or the Board and any decision by the Company or the Board regarding the interpretation, effect or application of these Rules:
 - (i) is made at its absolute and sole discretion;
 - (ii) may be made at any time; and
 - (iii) is final, conclusive and binding.
- (d) The Board may exercise any power or discretion conferred on them by these Rules in the interest or for the benefit of the Company, and in so doing the Board are not required to act in the interests of another person or as requested by another person and will not be under any fiduciary obligation to another person.

19.2 Delegation of power by Board

- (a) The Board may delegate some or all of its powers and functions under the Plan to a person or to a committee of two or more persons.
- (b) Where the Board has delegated a power or function pursuant to paragraph 19.2(a) to a person or to a committee, references in this Plan to the Board in relation to that power or function will be read as references to that person or committee, as the case may be.

19.3 Enforcement of Conditions

For the purposes of clauses 8, 9, 10 and where otherwise applicable:

- (a) Unless otherwise provided for under this Plan or as determined by the Board, the Company must not register or permit the Share Registry to register a transfer of a Share until the Board determines, that the Conditions no longer apply to that Share.
- (b) The Company may do such things and enter into such arrangements with the Share Registry or otherwise as it considers necessary to enforce the terms of the Conditions.

20 Listing Rules

20.1 Listing of Plan Shares

Where the Company becomes or is listed on the ASX, the Board may determine that Shares issued under the Plan may be listed on that Stock Exchange.

20.2 Application of Listing Rules

On the Company being admitted to the official list of companies admitted on the ASX:

- (a) the provisions of the ASX Listing Rules apply to the Plan, and to the extent that the Plan and the Rules are inconsistent with the Listing Rules, the Listing Rules apply; and
- (b) without limiting the above, any discretion of the Company or the Board provided for in these Rules must be read and applied as being subject to and to be exercised in accordance with the Listing Rules.

20.3 Holding lock on Shares

Unless otherwise determined by the Board, no Participant may dispose of Shares within a period one month prior to the release of the Company's half-yearly financial report and annual financial report or in any other period required by the Listing Rules or such other period apply pursuant to any published policy of the Company or as determined by the Board.

The Board may also implement any process it deems appropriate to ensure compliance by the Participant with any Disposal Restrictions, including the imposition of a Holding Lock as defined in Chapter 19 of the Listing Rules or refusing to register a transfer of Shares.

21 Amendment of Plan

21.1 Amendments

Subject to subclause 21.2, the Board may add to, repeal, amend, alter or vary these terms and conditions in any respect whatsoever, including the rights or obligations of the Participant.

21.2 No reduction of rights

No addition, repeal, amendment, alteration or variation of these terms and conditions will:

- (a) without the Participant's consent in writing, materially reduce the Participant's accrued benefits or entitlements as they existed before the date of an amendment;
- (b) without the Participant's consent in writing, impose additional obligations on the Participant in respect of Shares that have already been issued; or
- (c) repeal, amend, alter or vary this subclause 21.2.

unless the addition, repeal, amendment, alteration or variation is introduced primarily:

- (d) for the purpose of complying with or conforming to present or future laws or regulating the maintenance or operation of the plan or like plans;
- (e) to correct any manifest error or mistake; or
- (f) to enable the Plan or the Company or a Subsidiary to comply with the Corporations Act, the Listing Rules or its Constitution.

21.3 Retrospective effect

Any amendment made pursuant to subclause 21.1 may be given such retrospective effect as is specified in the written instrument or resolution by which the amendment is made.

22 Application of the Plan

22.1 Application general

Where the operation of any clauses of this Plan requires shareholder or other regulatory approval under the law (including under the Corporations Act and/or the Listing Rules) then those clauses are not in operation, and shall not be relied on by the Company for the purposes of this Plan, until such time as the required shareholder or regulatory approval is obtained.

22.2 Non-salaried Participants

Participation by non-salaried Participants (such as non-salaried Directors) in this Plan is distinct from, and does not affect the application of this Plan to, salaried Participants.

23 Notices

23.1 Address for notices

Any notice given under or for the purposes of these terms and conditions will be given in writing, signed, and addressed to:

- (a) in the case of the Company – “The Secretary, c/- Bio-Gene Technology Limited, Level 7, 420 Collins Street, Melbourne VIC 3000” (or such other address nominated by the Company); or
- (b) in the case of an Eligible Employee – the Eligible Employee or the Participant at the address nominated by the Eligible Employee or the Participant.

24 Duration and termination of the Plan

- (a) The Plan continues in operation until the Board determines the Plan is terminated or discontinued.
- (b) The Board may decide to terminate or suspend the operation of the Plan either for a fixed period or indefinitely and may also decide to end any period of suspension.
- (c) If the Plan terminates or is discontinued under paragraphs 23(a) or (b) for any reason, that does not prejudice the accrued rights of the Participants.

25 Governing law

These terms and conditions will be governed by, and construed in accordance with, the laws of Victoria and the Eligible Employee or Participant and the Company agree to submit to the non-exclusive jurisdiction of the courts of Victoria and any courts hearing appeals from those courts.

26 Irrevocable Power of Attorney

In order to facilitate these Rules, each Participant grants an irrevocable power of attorney to any person nominated from time to time by the Company.

27 Rounding

Where any calculation or adjustment to be made pursuant to these Rules produces a fraction of a cent or a fraction of a Share, the fraction will be eliminated by rounding down to the nearest whole number.