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LAWYERS

Atomo Diagnostics Exempt Employee Share Plan

Plan Rules

Atomo Diagnostics Limited
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Ref JR:SK: 959235

Doc ID 710620993/v1

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Atomo Diagnostics Exempt Employee Share Plan
Plan Rules

1. Definitions and interpretation

1.1 Definitions

In these Rules, unless something else is clearly intended:

Acquisition Date	means the date that an Employee acquires Plan Shares as recorded by the Company.
Acquisition Price	means the price for the acquisition of Shares under the Plan as specified by the Company pursuant to Rule 3.4(c).
Applicable Law	means any one or more or all, as the context requires of: (a) the laws of New South Wales; (b) the Corporations Act; (c) the Listing Rules; (d) the Tax Act; (e) any practice note, policy statement, class order, declaration, guideline, policy, procedure, ruling, judicial interpretation or other guidance note made to clarify, expand or amend paragraphs (a), (c), (d) or (d) above; (f) the constitution of the Company; and (g) any other legal requirement that applies to the Plan.
Application Form	means an offer to acquire Shares under the Plan in the form approved by the Board.
Associated Company	means a body that: (a) is a related body corporate of the Company in terms of section 50 of the Corporations Act; (b) the Board determines will participate in the Plan; and (c) agrees to be bound by these Rules.
ASX	means ASX Limited ACN 008 624 691, trading as the Australian Securities Exchange or the securities exchange operated by that entity, as applicable.

Board	means the board of directors of the Company or a committee appointed by the board of directors of the Company or any delegate of the board of directors of the Company or such committee.
Business Day	means a day that is not a Saturday, Sunday or a public holiday in Sydney, New South Wales.
Company	means Atomo Diagnostics Limited ABN 37 142 925 684.
Corporations Act	means the *Corporations Act 2001* (Cth).
Eligible Employee	means an Employee who the Board determines to be eligible to participate in the Plan.
Employee	means a person (not being a company, a local or public authority or an unincorporated body of persons) resident in Australia who is a: (a) full-time or part-time employee (including an executive director); (b) non-executive director; (c) contractor; or (d) casual employee, of an Employing Company.
Employing Company	means the Company and any Associated Company.
Government Agency	means any governmental or semi-governmental body, department, commission, authority, tribunal, agency or other similar entity.
Holding Lock	means a mechanism arranged or approved by the Board (including through its share registry or any plan administrator or trustee) that prevents Shares being disposed of by a Participant.
Invitation	means an invitation to participate in the Plan referred to in Rule 3.1(a).
Listing Rules	means the listing rules of ASX and any other rules of the ASX which are applicable while the Company is admitted to the official list of ASX, except to the extent of any express written waiver by ASX.
Offer	has the meaning given to that term in Rule 3.2(a).

Participant	means an Eligible Employee who: (a) has received an Invitation; (b) makes an Offer which is accepted by the Board; and (c) is, or will be, the owner of Plan Shares.
Plan	means the Atomo Diagnostics Exempt Employee Share Plan established and operated in accordance with these Rules.
Plan Shares	means Shares held by Participants under the Plan.
Restrictive Period	means the period commencing on the Acquisition Date and ending on the earliest of the date that: (a) is 3 years after the Acquisition Date; and (b) the Participant ceases to be an Employee.
Rules	means these rules of the Plan.
Security Interest	means a mortgage, charge, pledge, lien, encumbrance or other third party interest of any nature.
Share	means a fully paid ordinary share in the capital of the Company.
Tax	means any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding of any nature, including stamp and transaction duty or any goods and services tax, value added tax or consumption tax, which is assessed, levied, imposed or collected by any Government Agency and includes any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any of the above.
Tax Act	means the: (a) *Income Tax Assessment Act 1936* (Cth); (b) *Income Tax Assessment Act 1997* (Cth); or (c) *Tax Administration Act 1953* (Cth), or any or all of the above, as the context requires.
Tax Guidance	means public or private rulings, determinations, interpretative decisions or other statement of the Commissioner of Taxation or any other relevant taxation authority, changes or proposed changes to tax legislation and/or changes in the interpretation of tax legislation by a competent court or tribunal.

1.2 Interpretation

In these Rules, unless something else is clearly intended:

(a) the transfer by a Participant from one Employing Company to another does not constitute cessation of employment;

(b) if an Employing Company which is the employer of a Participant ceases to be an Employing Company and the Participant does not contemporaneously become an Employee of another Employing Company, that Participant ceases to be an Employee;

(c) a reference to these Rules is a reference to these Rules as amended, varied, novated, supplemented or replaced from time to time;

(d) a reference to any document is a reference to that document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time;

(e) a reference to any legislation or any provision of any legislation includes:

(i) all regulations, orders or instruments issued under the legislation or provision; and

(ii) any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision;

(f) words or expressions:

(i) importing the singular include the plural and vice versa;

(ii) importing a gender include the other genders; and

(iii) denoting individuals include corporations, firms, unincorporated bodies, authorities and instrumentalities;

(g) a reference to a party to these Rules includes that party's executors, administrators, successors and permitted assigns;

(h) where a word or phrase is defined or given meaning, any other part of speech or grammatical form has a corresponding meaning;

(i) a reference to a rule number is a reference to a rule of these Rules;

(j) any heading, index, or table of contents is for convenience only and does not affect the interpretation of these Rules;

(k) where an act would be required to be done, or a time limit or period would expire, on a day which is not a Business Day, the act may be done, or the limit or period will expire, on the following Business Day;

(l) a reference to any thing (including to any right) includes a part of that thing;

(m) a right includes any remedy, privilege, authority or power;

(n) where a consent or approval is required under these Rules, the requirement will, unless something else is clearly intended, mean the prior written consent or approval;

(o) wherever used in these Rules, the expressions 'including', 'such as' and similar expressions shall not imply any limitation; and

(p) a reference to notice means written notice given in the manner provided in these Rules for service of notices.

1.3 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.

2. Operation of the Plan

2.1 Purpose

The Plan provides Eligible Employees with an opportunity to acquire Shares, which will align their interests more closely with the Company's shareholders and provide greater incentive for them to focus on the Company's longer-term goals.

2.2 Commencement

The Plan commences on a date to be determined by the Board.

2.3 Operation

(a) These Rules set out the terms and conditions of the operation of the Plan.

(b) The Plan must be operated in accordance with these Rules, which bind the each Employing Company and each Participant.

2.4 Plan expenses

The Company must pay all expenses, outgoings, costs and charges incurred in establishing and operating the Plan excluding the costs related to selling or transferring Plan Shares.

2.5 Security Interest

The Company must not grant a Security Interest over any of the Plan Shares.

2.6 Tax exempt

Subject to the requirements of the Tax Act, Division 83A of the Tax Act applies to the Plan.

3. How the Plan works

3.1 Invitation

(a) The Board may from time to time invite an Eligible Employee to participate in the Plan and make an Offer (**Invitation**).

(b) Each Invitation must be in writing and specify:

(i) the name and address of the Eligible Employee to whom the Invitation is made;

(ii) the date of the Invitation;

(iii) the maximum number of Shares that can be acquired by an Eligible Employee under the Plan or, if applicable, the maximum amount (or formula for calculating the maximum amount) of potential salary or wages that an Eligible Employee can nominate to sacrifice towards the acquisition of Shares and any contribution the Company will make towards the acquisition of Shares;

(iv) the time period in which an Eligible Employee may make an Offer to the Company;

(v) the proposed Acquisition Date; and

(vi) anything else that the Board considers relevant.

(c) Each Invitation must be accompanied by any other information and documents required by the Applicable Law.

(d) Invitations are personal to an Eligible Employee and may not be transferred to another person.

3.2 Offer

(a) Following receipt by an Eligible Employee of an Invitation, the Eligible Employee may make an offer by delivering to the Company a duly completed and executed Application Form within the closing time specified in the Invitation or in accordance with any other procedure set out in the Invitation (**Offer**).

(b) By making the Offer, the Eligible Employee is deemed to have agreed to be bound by these Rules and the constitution of the Company.

3.3 Acceptance

(a) The Board may decide to accept or reject an Offer. An Offer is accepted by the Company by the allocation of Shares referred to in the Offer to the Eligible Employee (which must occur within a reasonable period of time).

(b) The Board may require that the Shares to be allocated to a Participant on acceptance of an Offer under Rule 3.3(a) be issued or transferred to a trustee appointed by the Board under Rule 6.3, in which case those Shares will be held by the trustee of the trust subject to the terms of the trust deed relating to that trust.

(c) An Eligible Employee is not liable to make any payment on acceptance of the Offer.

3.4 Notification to Participants

As soon as reasonably practicable after the Acquisition Date, the Company must ensure that the Participant is given written notice specifying the:

(a) number of Plan Shares allocated to the Participant;

(b) Acquisition Date of those Plan Shares; and

(c) Acquisition Price of those Plan Shares.

3.5 Gift

(a) The Board may from time to time in its absolute discretion provide Eligible Employees Shares in the Plan for no monetary consideration (**Gift**).

(b) The Gift is to be conditional upon the Eligible Employees agreeing to be bound by these Rules and the constitution of the Company.

3.6 Ownership

Subject to any trust arrangements, as contemplated by clause 6.3, Participants will have full legal and beneficial ownership of their Plan Shares provided that any dealings with those Plan Shares shall be restricted as provided in Rule 4.

3.7 Share rights

(a) A Participant is not conferred with the rights of a shareholder until such time as Shares are allocated to the Participant pursuant to Rule 3.3(a).

(b) All Plan Shares rank equally for all purposes with the Shares then on issue.

4. Restrictions on dealing with Shares

4.1 Restrictive Period

During the Restrictive Period:

(a) a Participant must not assign, transfer, sell, grant a Security Interest over or otherwise deal with a Plan Share; and

(b) the Company is entitled to retain possession of the documents of title of a Participant's Plan Shares.

4.2 Takeover or restructure

Notwithstanding Rule 4.1, a Participant may transfer or sell their Plan Shares in the event of a takeover or restructure of the Company in accordance with section 83A-130(1) of the Tax Act.

4.3 Arrangements

The Company may adopt procedures and enter into such arrangements as it considers necessary to enforce the restrictions in Rule 4.1(a) and Participants are deemed to agree to such procedures and arrangements including:

(a) placing a Holding Lock on the Plan Shares; or

(b) having the Plan Shares held on behalf of the Participants by the trustee of a trust established by the Company pursuant to Rule 6.3 to assist with the operation of the Plan.

4.4 After the Restrictive Period

(a) After the Restrictive Period, all restrictions on dealing with the Plan Shares pursuant to these Rules will no longer apply.

(b) As soon as practicable after the Restrictive Period, the Company must give any documents of title that it holds in respect of Plan Shares to the relevant Participant or other person as directed by the Participant.

5. No forfeiture

For the avoidance of doubt, nothing under these Rules or otherwise shall require a Participant to forfeit ownership of their Plan Shares or rights acquired under the Plan.

6. Administration of the Plan

6.1 Board to administer

The Board will administer the Plan in accordance with these Rules and may:

(a) make regulations and policies and determine appropriate procedures for operating and administering the Plan consistent with these Rules; and

(b) delegate all or any of its functions, powers and discretions under these Rules to any person or persons for any period and on such conditions as it determines, including a plan administrator, and may authorise that person or persons to sub-delegate the functions or powers delegated to them.

6.2 Plan administrator

If a plan administrator is appointed under Rule 6.1(b) that plan administrator will administer the Plan in accordance with these Rules and any procedures determined by the Board, consistent with these Rules.

6.3 Trust

The Board may at any time establish a trust for the purpose of acquiring and holding Shares to allow for the allocation of Shares to Participants on the Board's acceptance of an Offer under Rule 3.3(a), including for the purpose of enforcing any disposal restrictions and appoint a trustee to act as trustee of the trust.

6.4 Discretion

Except as expressly provided in these Rules, where these Rules provide for a determination, interpretation, decision, approval or opinion of the Company or the Board, such determination, interpretation, decision, approval or opinion will be in the Company's or the Board's absolute and unfettered discretion (as they case may be) and will be final.

6.5 Company and the Board

Subject to the Applicable Law:

(a) any power or discretion which is conferred on the Company or the Board by these Rules may be exercised in the interests, or for the benefit, of the Company; and

(b) the Company or the Board (as the case may be) is not, in exercising such power or discretion, under any fiduciary or other obligation to any other person.

6.6 Decision of the Board

Any decision of the Board as to the interpretation, effect or application of these Rules will be final (in the absence of manifest error). Any dispute or difference of any nature relating to the Plan will be referred to the Board and its decision will be final and binding.

6.7 Independent advice

The Board and any plan administrator or trustee may obtain and rely upon independent professional or expert advice in relation to the exercise of any of its powers or discretions under these Rules and act on that advice in any manner it thinks fit without being liable in respect of any act done or omitted to be done by it in accordance with such advice.

6.8 Other documents

The Company and any plan administrator or trustee may require a Participant to complete and return such other documents:

(a) as may be required by the Applicable Law to be completed by the Participant; or

(b) that the Company or any plan administrator or trustee considers should, for legal or taxation reasons, be completed by the Participant.

7. Amending these Rules

7.1 Board may amend

Subject to Rule 7.2, the Board may at any time:

(a) amend these Rules; and

(b) waive or amend the application of any of these Rules in relation to a Participant (including for the purposes of a takeover bid, as defined in section 9 of the Corporations Act).

7.2 Rights of Participants

(a) Subject to Rule 7.2(b), if any amendment to these Rules under Rule 7.1 reduces any of the Participants' rights in respect of their Plan Shares, the Board must obtain the prior written consent of at least 75% of the Participants affected by the proposed change.

(b) The Board may amend these Rules without the written consent of Participants under Rule 7.2(a):

(i) for the purpose of complying with, or conforming to, the Applicable Law or present or future laws governing or regulating the maintenance or operation of the Plan or like plans, in any jurisdiction in which offers, grants or invitations under the Plan have been made;

(ii) to take into consideration possible adverse tax implications in respect of the Plan arising from the Tax Guidance; or

(iii) to correct a manifest error or mistake.

7.3 Retrospective effect

Subject to this Rule 6, any change made pursuant to Rule 7.1 may be given such retrospective effect as is specified by the Board.

7.4 Written notice

(a) As soon as reasonably practicable after the Company makes any material amendment under Rule 7.1(a), the Company must notify the Participants of the amendment.

(b) As soon as reasonably practicable after the Company waives the application of any of the provisions in these Rules or makes an amendment under Rule 7.1(a), the Company must notify the affected Participants of the waiver or the amendment, respectively.

8. Termination or suspension of the Plan

8.1 Change to Applicable Law

The Company must terminate or suspend the Plan if changes to the Applicable Law require that it do so.

8.2 Company may terminate

The Board may from time to time suspend the operation of the Plan and may at any time terminate the Plan provided that no Plan Shares remain subject to the restrictions under Rule 4 at that time.

8.3 Winding up

The Plan must be immediately terminated if an order is made or an effective resolution is passed for the winding up of the Company, other than for the purposes of amalgamation or reconstruction.

8.4 Effect of termination

(a) The termination or suspension of the Plan will not prejudice the existing rights of Participants.

(b) Where the Plan is terminated or suspended, a Participant may not claim any compensation as a result of termination or suspension of the Plan.

9. Connection with other schemes

(a) An Employing Company is not restricted to using the Plan as the only method of providing incentive rewards to employees and may approve and introduce other incentive schemes.

(b) Participation in the Plan does not affect participation in any other incentive or other scheme of the Employing Companies unless that other scheme provides otherwise.

10. Employment with Employing Company

10.1 General

Nothing in these Rules:

(a) confers on any Employee the right to become or remain an Eligible Employee or to participate in the Plan;

(b) confers on any Eligible Employee or Participant the right to continue as an employee of an Employing Company;

(c) affects any rights which an Employing Company may have to terminate the employment of an Employee;

(d) may be used to increase damages in any action brought against an Employing Company in respect of such termination of employment; or

(e) confers on an Employee any expectation to become a Participant.

10.2 Control

The Participants will not have any control over the operation of the Plan irrespective of any rights they may have under these Rules or as a legal and/or beneficial owner of Plan Shares.

11. Liability

The Employing Companies, any plan administrator or trustee and their respective directors, employees and professional advisers are not liable for anything done or omitted to be done by such person or any other person with respect to:

(a) the price, time, quantity or other conditions and circumstances of the acquisition, allocation, custody or sale of Shares or Plan Shares;

(b) any fluctuations in the price of Shares; and

(c) anything done in connection with the Plan,

except for the gross negligence, dishonesty, fraud or wilful default of such person.

12. Breach by a Participant

Subject to the Applicable Law, if a Participant breaches any of their obligations under these Rules, an Employing Company may set-off the value of any benefit derived or held by that Participant and any loss incurred by any Employing Company as a result of such breach, against any amounts payable by any Employing Company to the Participant, whether such amounts are payable on termination of employment or otherwise.

13. Advice

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

14. Applicable Law

14.1 Contravention of Applicable Law

(a) Notwithstanding any other Rules:

(i) no Share may be offered under the Plan if to do so would contravene the Applicable Law; and

(ii) Shares must not be issued, assigned, transferred, sold, purchased or otherwise dealt with under the Plan if to do so would contravene the Applicable Law.

(b) These Rules and the Participant's entitlements under the Plan are subject to the Applicable Law.

14.2 Deemed provisions

Notwithstanding any other Rule, every provision set out in an exemption from, or modification to, the Applicable Law in respect of the Plan that is required to be included in these Rules in order for the exemption or modification to have effect is deemed to be contained in these Rules.

14.3 Inconsistency

To the extent that any provision deemed by Rule 14.2 to be contained in these Rules is inconsistent with any other provision in these Rules, the deemed provision will prevail.

15. Tax reimbursement

(a) The Board may, at the time of an Invitation, provide that the Participant is required to reimburse the Company in the event that any Employing Company is obliged to account for Tax in connection with, or as a result of, the allocation or transfer of Shares to the Participant.

(b) The Board may determine the manner in which reimbursement under Rule 15(a) is to occur, including by sale of the Participant's allocated Plan Shares.

16. Notices

16.1 Valid delivery

(a) A notice or direction given under these Rules is validly given to an Eligible Employee or Participant if it is handed to the person concerned, posted by ordinary prepaid post to the person's last known address or given in such other manner as the Company determines.

(b) A notice or direction given under these Rules to the Company is validly given if it is delivered by hand, posted by ordinary prepaid post or emailed to the address set out below:

Address: Level 2, 701-703 Parramatta Road
LEICHHARDT NSW 2040
Attention: Gillian Nairn, Company Secretary
Email: Nairn@companymatters.com.au

or such other address as the Company may notify.

16.2 **Deemed delivery**

(a) A notice will be deemed to be duly given and received:

(i) if delivered by hand, on delivery;

(ii) if sent from and to a place within Australia by prepaid registered post, at 9.00am on the sixth Business Day after the date of posting (or at 9.00am on the tenth Business Day after the date of posting if posted to or from outside Australia); or

(iii) if sent by email, when the email (including any attachment) is sent to the receiving party, unless the sending party receives a notification of delivery failure within 24 hours of the email being sent,

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00 pm on a Business Day, the Notice is taken to be received at 9.00 am on the next Business Day after that delivery, receipt or transmission.

(b) This Rule 16 is in addition to any other mode of service permitted by law.

17. Governing law

(a) These Rules must be governed by and construed in accordance with the laws applicable in New South Wales.

(b) The parties bound by these Rules irrevocably submit to the non-exclusive jurisdiction of the courts of New South Wales.