

**AFT PHARMACEUTICALS LIMITED**

**CAPITAL ROYALTY PARTNERS II L.P., CAPITAL ROYALTY PARTNERS II - PARALLEL FUND "A"  
L.P. and CAPITAL ROYALTY PARTNERS II - PARALLEL FUND "B" (CAYMAN) L.P., CAPITAL  
ROYALTY PARTNERS II (CAYMAN) L.P.**

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**ESCROW DEED**

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**HARMOS • HORTON • LUSK**

**CORPORATE LAWYERS**

DEED dated 26 November 2015

## PARTIES

**AFT PHARMACEUTICALS LIMITED ("AFT")**

**CAPITAL ROYALTY PARTNERS II L.P., CAPITAL ROYALTY PARTNERS II - PARALLEL FUND "A" L.P., CAPITAL ROYALTY PARTNERS II - PARALLEL FUND "B" (CAYMAN) L.P. and CAPITAL ROYALTY PARTNERS II (CAYMAN) L.P. (each a "Shareholder")**

## INTRODUCTION

- A. Each Shareholder is the registered holder of the number of Series A Preferred Shares and Series B Preferred Shares set out next to its name in the Schedule.
- B. AFT intends to raise capital through the IPO and has applied to NZX and ASX to list and to have the Ordinary Shares quoted on the NZX Main Board and the ASX.
- C. Prior to the Date of Quotation:
  - (a) the Series A Preferred Shares and Series B Preferred Shares will convert into Ordinary Shares (in a ratio of 1:1); and
  - (b) the Ordinary Shares will be split in the ratio set out in the product disclosure statement relating to the IPO.
- D. Each Shareholder has agreed that it will retain the legal and beneficial ownership of its Shares for the Restricted Period in accordance with the terms of this deed.

## THIS DEED RECORDS

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions: In this deed, unless the context otherwise requires:

**"Affiliate"** means in relation to any person, a person that directly or indirectly, through one or more intermediaries, owns or controls or is owned or controlled by or is under common ownership or control with the person and, in relation to a family trust means any beneficiary (ascertained or discretionary) of that trust.

**"ASX"** means ASX Limited, or the financial market operated by ASX Limited, as the context requires, also known as the Australian Stock Exchange.

**"Business Day"** means a day on which the NZX Main Board is open for trading.

**"Date of Quotation"** means the first day on which the Ordinary Shares are quoted on the NZX Main Board.

**"IPO"** means the initial public offering of Ordinary Shares pursuant to a product disclosure statement to be dated on or about the date of this deed.

**"Non-Interested Directors"** means, in relation to any decision, directors of AFT who are not "interested" for the purposes of the Companies Act 1993.

**"NZX"** means NZX Limited and includes its successors and assigns and as the context permits includes any duly authorised delegate of NZX.

**"NZX Main Board"** means the main board equity securities market operated by NZX.

**"Ordinary Shares"** means ordinary shares in AFT.

**"Restricted Period"** means the period from the Date of Quotation and ending on the first Business Day after the date on which AFT releases to NZX its preliminary results for the financial year ending 31 March 2017 (in accordance with the NZX Main Board/Debt Market Listing Rules).

**"Series A Preferred Shares"** means Series A preferred shares in AFT.

**"Series B Preferred Shares"** means Series B preferred shares in AFT.

**"Shares"** means all of the Ordinary Shares in AFT of which a Shareholder is the registered holder at the Date of Quotation, other than those Ordinary Shares that are acquired by that Shareholder under the IPO (including under any private placement undertaken concurrently with the IPO).

**"Takeovers Code"** means the takeovers code approved under the Takeovers Code Approval Order 2000.

1.2 **Interpretation:** In this deed, unless the context otherwise requires, or specifically stated otherwise:

- (a) headings are to be ignored in construing this deed;
- (b) the singular includes the plural and vice versa;
- (c) references to time of day or dates are to New Zealand times and dates;
- (d) each schedule or other attachment forms part of this deed;
- (e) a right or power may be exercised from time to time and at any time;
- (f) any word or expression cognate with a definition in this deed has a meaning corresponding or construed to the definition;
- (g) reference to a section, clause, sub-clause, schedule or a party is a reference to that section, clause, sub-clause, schedule or party in this deed; and
- (h) reference to a party, person or entity includes:
  - (i) an individual, partnership, firm, company, body corporate, corporation, association, trust, estate, state, government or any agency thereof, municipal or local authority and any other entity, whether incorporated or not (in each case whether or not having a separate legal personality); and
  - (ii) an employee, agent, successor, permitted assign, executor, administrator and other representative of such party, person or entity.

## **2. ESCROW**

**2.1 Undertaking:** Each Shareholder unconditionally and irrevocably undertakes to the Non-Interested Directors, AFT and NZX that (subject to clauses 2.2 and 3) it will not:

- (a) sell, transfer, assign or otherwise dispose of, or offer or agree to sell, transfer assign or otherwise dispose of, its right and title to, and beneficial interest in, any of its Shares in the Restricted Period; or
- (b) do, or omit to do, any act if the act or omission would have the effect of transferring effective ownership or control of any of its Shares in the Restricted Period,

without first giving not less than 5 Business Days' written notice to, and obtaining the prior written approval (at their respective discretions but subject to clause 3) of, each of the Non-Interested Directors, AFT and NZX.

**2.2 Security interests:** Notwithstanding clause 2.1, the Shareholder may grant a security interest over or in respect of its Shares in favour of any bona fide lender to the Shareholder from time to time.

**2.3 Other restrictions may apply:** The right of a Shareholder to deal with Shares is also subject to any other restrictions which may be applicable, including under the NZX Main Board/Debt Market Listing Rules and the Financial Markets Conduct Act 2013.

## **3. EXCEPTIONS**

**3.1 Exceptions:** Notwithstanding the restrictions set out in clause 2.1 of this deed, a Shareholder may transfer all or part of its Shares to an Affiliate or Affiliates, provided that the Affiliate(s) must enter into a deed with AFT in relation to the Shares transferred on the same terms as this deed for the remainder of the Restricted Period (with such deed to also require and permit such person to transfer the applicable part of the Shares back to the Shareholder if it ceases to be an Affiliate of the Shareholder).

**3.2 Takeovers:** Clause 2.1 of this deed will not apply in relation to any full or partial takeover offer made under the Takeovers Code or similar scheme or arrangement, provided that any such takeover offer or similar scheme or arrangement is not made, whether directly or indirectly, by the relevant Shareholder or an Affiliate of it. For clarity, if a full or partial takeover offer is made or proposed to be made during the Restricted Period, directly or indirectly by a person who is not the relevant Shareholder or an Affiliate of it, then the Shareholder may sell, or agree, or offer to sell all or any part of its Shares to the offeror under that offer.

## **4. GENERAL**

**4.1 Equitable relief:** Each Shareholder acknowledges that damages alone would be an inadequate remedy for breach of its obligations under this deed and the appropriate remedies for such a breach will include orders for specific performance, injunctive relief, any other equitable relief and/or damages.

**4.2 Contracts (Privity) Act 1982:** The provisions of this deed are for the benefit of, and are intended to be enforceable by, any of the Non-Interested Directors, the other shareholders of AFT and NZX under the Contracts (Privity) Act 1982.

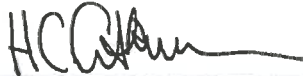
**4.3 Severability:** If a Court or administrative body decides that part of this deed is illegal, void or cannot be enforced, that decision will not make the rest of this deed invalid.

- 4.4 **De-listing:** This deed will be void and of no effect if AFT is not listed, and the Ordinary Shares are not quoted, on the NZX Main Board before 31 December 2015 or if AFT is de-listed by NZX.
- 4.5 **Amendment or termination:** Any variation to, or termination of, this deed requires the written agreement of all parties to this deed and AFT shall not agree to any amendment or termination without prior written approval of NZX. AFT will provide NZX with notice immediately in the event that it becomes aware of a breach or a likely breach of this deed.
- 4.6 **Governing law:** This deed is governed by and construed in accordance with New Zealand law and the parties agree to submit to the jurisdiction of the New Zealand courts.
- 4.7 **Notices:**
- (a) Any notice or other communication given under this deed to a party will be in writing addressed to that party at the address from time to time notified by that party in writing to the other party. Until any other address of a party is notified, they will be as specified in the Schedule.
  - (b) Delivery may be effected by hand, by post with postage prepaid, or by email.
  - (c) A notice or other communication delivered by hand will be deemed to have been received at the time of delivery. However, if the delivery is not made on a Business Day or is made after 4.30 pm on a Business Day, then the notice or other communication will be deemed to have been delivered on the next Business Day.
  - (d) A notice or other communication delivered by pre-paid post will be deemed to have been received on the second Business Day after posting.
  - (e) A notice or other communication sent by email will be deemed to have been received on the date and time at which it enters the addressee's information system (as shown in a confirmation of delivery report from the sender's information system, which indicates that the email was sent to the email address of the addressee notified for the purpose of this clause). However, if that date is not a Business Day or the email is sent after 4.30 pm on a Business Day then the notice or other communication will be deemed to have been given on the next Business Day after the date of the email was sent.
- 4.8 **Counterparts:** This deed may be signed in any number of counterparts, including facsimile or scanned copies, all of which will together constitute one and the same instrument and a binding and enforceable deed between the parties. Any party may execute this deed by signing any such counterpart.

**SIGNED AS A DEED**

**AFT PHARMACEUTICALS LIMITED**

by:



Signature of director

**HARRIET ATKINSON**

Name of director

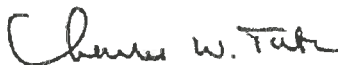


Signature of director

**Marree Atkinson**


Name of director

**CAPITAL ROYALTY PARTNERS II  
L.P. by CAPITAL ROYALTY  
PARTNERS II GP L.P., its General  
Partner by CAPITAL ROYALTY  
PARTNERS II GP LLC, its General  
Partner by:**



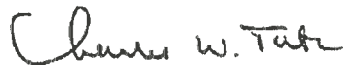
Charles Tate  
Sole Member

**CAPITAL ROYALTY PARTNERS II -  
PARALLEL FUND "A" L.P. by  
CAPITAL ROYALTY PARTNERS II -  
PARALLEL FUND "A" GP L.P., its  
General Partner by CAPITAL  
ROYALTY PARTNERS II - PARALLEL  
FUND "A" GP LLC, its General Partner  
by:**



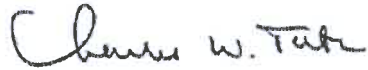
Charles Tate  
Sole Member

**CAPITAL ROYALTY PARTNERS II  
(CAYMAN) L.P. by CAPITAL  
ROYALTY PARTNERS II (CAYMAN)  
GP L.P., its General Partner by  
CAPITAL ROYALTY PARTNERS II  
(CAYMAN) GP LLC, its General  
Partner by:**



Charles Tate  
Sole Member

CAPITAL ROYALTY PARTNERS II –  
PARALLEL FUND "B" (CAYMAN) L.P.  
by CAPITAL ROYALTY PARTNERS II  
(CAYMAN) GP LP, its General Partner  
by CAPITAL ROYALTY PARTNERS II  
(CAYMAN) GP LLC, its General  
Partner by:



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Charles Tate  
Sole Member



**SCHEDULE****Shareholders**

<b>Shareholder</b>	<b>Address</b>	<b>Number of Series A Preferred Shares</b>	<b>Number of Series B Preferred Shares</b>
Capital Royalty Partners II L.P.	1000 Main Street, Suite 2500, Houston, TX 77002, United States of America	18,668	4,341
Capital Royalty Partners II – Parallel Fund "A" L.P.	1000 Main Street, Suite 2500, Houston, TX 77002, United States of America	25,469	5,923
Capital Royalty Partners II – Parallel Fund "B" (Cayman) L.P.	1000 Main Street, Suite 2500, Houston, TX 77002, United States of America	50,000	11,628
Capital Royalty Partners II (Cayman) L.P.	1000 Main Street, Suite 2500, Houston, TX 77002, United States of America	5,863	1,364