



Fortescue
The New Force in Iron Ore

Policy

Performance Rights Plan

Fortescue Metals Group Limited

ABN 57 002 594 872

As approved by the shareholders of Fortescue Metals Group Limited on 11 November 2015.

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Rules of the Fortescue Metals Group Limited Performance Rights Plan

1. Interpretation and construction

1.1 Definitions

In these Rules, unless the context otherwise requires, the following terms and expressions will have the following meanings:

Ancillary Documentation means all documentation which the Board specifies in an Invitation that an Eligible Employee must enter into and/or provide in connection with acceptance of that Invitation.

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

- (a) the Corporations Act;
- (b) the Listing Rules;
- (c) the Constitution;
- (d) the *Income Tax Assessment Act 1997* (Cth) and the *Income Tax Assessment Act 1936* (Cth);
- (e) any practice note, policy statement, regulatory guide, class order, declaration, guideline, policy, procedure, ruling, judicial interpretation or other guidance note made to clarify, expand or amend (a), (b) or (d) above;
- (f) any other legal requirement (including, without limitation, the rules of the general law, including common law and equity, and any judgment, order, decree, declaration or ruling of a court of competent jurisdiction or Government Agency binding on a person or the assets of that person) that applies to the Plan; and
- (g) in respect of acquisition or disposals of any Shares, any formal policy relating to dealings in Shares adopted by the Board from time to time, including the Securities Trading Policy.

ASIC means the Australian Securities and Investments Commission.

Associate has the same meaning given to that term in section 12 of the Corporations Act.

ASX means ASX Limited ABN 98 008 624 691 trading as the Australian Securities Exchange or the securities exchange operated by that entity, as appropriate.

Board means the Directors acting as the board of the Company or a duly appointed committee of the Board with delegated authority and responsibility for operation of the Plan or a particular aspect of the Plan.

Casual Employee means an individual who is, or might reasonably be expected to be, engaged to work the number of hours that are the pro-rata equivalent of 40% or more of a comparable full-time position with a member of the Group.

Change of Control Event means:

- (a) a person (together with its Associates), who does not as at the date of adoption of this Plan by the Board have such a Relevant Interest, obtaining a Relevant Interest in sufficient Shares to give it or them the ability, in a general meeting, to replace all or a majority of the Board;
- (b) where a Takeover Bid is made to acquire more than 50% of Issued Capital (or such lesser number of Shares that when combined with the Shares that the bidder (together with its Associates) already owns will amount to more than 50% of Issued Capital);
- (c) a person becomes bound or entitled to acquire shares in the Company under section 414 of the Corporations Act (upon a scheme of arrangement being approved by Shareholders), Chapter 6A of the Corporations Act, or section 444GA of the Corporations Act;
- (d) a Court orders a meeting to be held in relation to, or members of the Company approve, a 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 (other than a scheme that does not involve a change in the ultimate beneficial ownership of the Company) which will, upon becoming effective, result in any person (either alone or together with its Associates) owning more than 50% of Issued Capital, where such a person (either alone or together with its Associates) does not as at the date of adoption of this Plan by the Board own more than 50% of Issued Capital;
- (e) the Company passes a resolution for the voluntary winding up of the Company;
- (f) an order is made for the compulsory winding up of the Company; or
- (g) the sale of all or substantially all of the business and assets of the Group,

but, for the avoidance of doubt, does not include any internal reorganisation of the structure, business and/or assets of the Group.

Company means Fortescue Metals Group Limited (ACN 002 594 872).

Constitution means the constitution of the Company.

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

Deal or **Dealing** in relation to a Performance Right or Participant Share (as the case may be), any dealing, including but not limited to:

- (a) a sale, transfer, assignment, grant of a Security Interest or option or swap, or any other alienation of all or any part of the rights attaching to the Performance Right or Participant Share;
- (b) any attempt to do any of the actions set out in paragraph (a) above; and
- (c) any hedging (including any dealing with a derivative instrument intended to “lock in” a profit relating to a Performance Right, and any other transactions in financial products that operate to limit the economic risk associated with holding a Performance Right).

Director means a director of the Company from time to time.

Eligible Contractor means:

- (a) an individual with whom a member of the Group has entered into a contract for the provision of services under which the individual performs work for a member of the Group; or
- (b) a body corporate with whom a member of the Group has entered into a contract for the provision of services under which an individual (who is a director of the body corporate) or his or her spouse, performs work for a member of the Group,

where, the individual who performs the work under or in relation to the contract is, or might reasonably be expected to be, engaged to work the number of hours that are the pro-rata equivalent of 40% or more of a comparable full-time position a member of the Group.

Eligible Employee means:

- (a) an Employee;
- (b) an Eligible Contractor;
- (c) a Casual Employee; or
- (d) a person who has entered into an arrangement that will result in the person becoming an Employee, Eligible Contractor or Casual Employee.

Employee means:

- (a) a full-time or part-time employee of any member of the Group; or
- (b) a director of any member of the Group who holds a salaried employment or office with a member of the Group.

Expiry Date means the earlier of:

- (c) a date subsequent to the Grant Date as determined by the Board in its discretion but subject to Applicable Law and specified in the Invitation; and
- (d) 15 years after the Grant Date,

following which the Performance Rights lapse and may no longer Vest or be exercised (if so required).

Financial Misstatement Event means a material misstatement or omission in the financial statements of a member of the Group or any other circumstances or events which, in the opinion of the Board, may, or are likely to, affect the Group's financial soundness or require re-statement of the Group's financial accounts, including, without limitation, as a result of misrepresentations, errors, omissions, or negligence.

Government Agency means any government or governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity whether foreign, federal, state, territorial or local.

Grant Date means the date on which the Performance Rights are granted.

Group means the Company and its Subsidiaries.

ITAA 1997 means *Income Tax Assessment Act 1997* (Cth).

Invitation means an invitation to an Eligible Employee to apply for the grant of one or more Performance Rights made in accordance with Rule 3.2 and includes all relevant documentation provided to an Eligible Employee in connection with that invitation.

Issued Capital means the aggregate number of issued Shares from time to time.

Leaver means a Participant who, as the case may be:

- (a) ceases to be an Employee;
- (b) in the case of a Casual Employee, ceases to be engaged as a Casual Employee and is not otherwise employed as an Employee or engaged as an Eligible Contractor; or
- (c) in the case of an Eligible Contractor, the relevant individual ceases to work under a contract for a member of the Group,

but does not include a Participant in respect of whom the employing or contracting entity is changed from one member of the Group to another member of the Group.

Listing Rules means the listing rules, market rules and operating rules of a financial market in respect of which the Company's shares are quoted or are the subject of an application for quotation, including, but not limited to, the official listing rules of the ASX.

Participant means an Eligible Employee who has been granted a Performance Right under this Plan.

Participant Share means a Share issued, transferred or allocated to a Participant upon the Vesting and exercise (if required) of a Performance Right.

Performance Period means the period set out in an Invitation as determined by the Board in its discretion for the purpose of determining the extent (if any) to which the Vesting Conditions have been satisfied.

Performance Right means the right of a Participant to acquire one Share by issue, transfer or allocation, in the discretion of the Board, subject to any Vesting Conditions and/or other conditions (including any exercise required of that Performance Right) being determined by the Board (acting reasonably) to be satisfied, waived by the Board, or deemed to have been satisfied under these Rules.

Plan means the Fortescue Metals Group Limited Performance Rights Plan.

Relevant Interest has the meaning given to that term in the Corporations Act.

Restricted Participant Share means a Participant Share subject to the restrictions under Rule 14.1.

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

Securities Trading Policy means the securities trading policy of the Company from time to time.

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

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

Shareholder means a holder of a Share.

Subsidiary has the meaning given to it by section 46 of the Corporations Act.

Takeover Bid has the meaning given to it in the Corporations Act.

Tax includes any tax, levy, impost, value-added tax, deduction, charge, rate, contribution, duty or withholding which is assessed (or deemed to be assessed), levied, imposed or made by any Government Agency together any interest, penalty, fine, charge, fee or other amount assessed (or deemed to be assessed), levied, imposed or made on or in respect of any or all of the foregoing.

Trust means the employee share trust established by the Company for the sole purpose of subscribing for or acquiring, delivering, allocating and holding Shares for the benefit of Participants and participants in other employee equity plans established by any member of the Group from time to time.

Trust Deed means:

- (a) the trust deed dated 31 May 2011 entered into between the Company and Pacific Custodians Pty Limited ABN 66 009 682 866, as amended from time to time ; or
- (b) any other trust deed nominated by the Company as the Trust Deed for the purposes of the Invitation, as amended from time to time.

Trustee means the trustee under the Trust Deed from time to time.

Vest or Vesting means the process by which the holder a Performance Right becomes entitled to be issued, transferred, or allocated a Share in accordance with Rule 7, following the satisfaction, deemed satisfaction or waiver of the Vesting Conditions that apply to that Performance Right.

Vesting Conditions means any time based and/or performance based criteria, requirements or conditions (as specified in the Invitation and determined by the Board in its discretion) which must be met prior to the Vesting of a Performance Right under these Rules.

1.2 Interpretation

In these Rules, unless otherwise stated or the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all genders;
- (c) a reference to a document or agreement includes that document or agreement as novated, altered, supplemented or replaced;
- (d) headings are for convenience only and do not affect the interpretation of these Rules;
- (e) a reference to any thing (including any amount) includes any part of that thing and a reference to a group of things or persons includes each thing or person in that group;
- (f) a reference to any legislation includes any modification or replacement of it and all regulations and statutory instruments issued under it and a reference to any provision of any legislation includes any modification or substitution of it;
- (g) a reference to these Rules means these Rules as amended from time to time and includes all recitals, annexures, addendums and schedules to these Rules;
- (h) a reference to a person includes a reference to the person's executors, administrators, substitutes (including any person taking by way of novation) and:
 - (i) in the case of a trustee, includes any substituted or additional trustee; and

- (ii) in the case of a Participant, includes any person to whom that Participant transfers a Performance Right or Participant Share in accordance with the terms of an Australian court order or an injunction granted by an Australian court;
- (i) a reference to a person includes a reference to the person's executors, administrators and successors or a body corporate including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (j) any reference to include means to include without limitation;
- (k) where any word is given a defined meaning, any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
- (l) a reference to a clause, party, annexure, exhibit or schedule is a reference to a clause of, and a party, annexure, exhibit and schedule to, these Rules and a reference to these Rules includes any annexure, exhibit and schedule;
- (m) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day; and
- (n) a term or expression starting with a capital letter which is defined in Rule 1.1 has the meaning given to it in that clause.

1.3 **Governing Law**

- (a) This Plan and any Performance Right granted under it is governed by, and is to be construed in accordance with, the laws of Western Australia.
- (b) Each Participant submits to the non-exclusive jurisdiction of the courts of Western Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought in connection with this Plan.

1.4 **Applicable Law**

The Board will ensure that the Plan is at all times operated in accordance with Applicable Law.

1.5 **Inconsistencies**

Notwithstanding anything to the contrary in any employment agreement or contract between a Participant and any member of the Group, but subject at all times to these Rules, if there is any inconsistency between these Rules and that agreement or contract, these Rules prevail.

1.6 **Rounding**

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

1.7 Constitution

The entitlements of Eligible Employees and Participants under these Rules are subject to the Constitution. In the event of any inconsistency between these Rules and the Constitution, the terms of the Constitution will prevail.

2. Introduction

2.1 Purpose

The purpose of the Plan is to:

- (a) align the interests of Eligible Employees and Shareholders;
- (b) provide targeted but competitive remuneration and long-term incentive for the retention of key Eligible Employees;
- (c) support a culture of share ownership by Eligible Employees;
- (d) provide the Company with the ability to attract employees of a high calibre; and
- (e) assist with remuneration planning for Eligible Employees.

2.2 Commencement

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

2.3 Rules are binding

The Company and each Participant are bound by these Rules.

3. Eligibility and Invitations

3.1 Board to determine eligibility of Eligible Employees

The Board may determine the Eligible Employees who are eligible to participate in the Plan from time to time.

3.2 Invitations

- (a) From time to time, the Company may make an Invitation to participate in the Plan to an Eligible Employee.
- (b) An Invitation to an Eligible Employee to apply for Performance Rights may be made on such terms and conditions as the Board decides from time to time, including as to:
 - (i) the number of Performance Rights (or the method by which the number will be calculated) for which that Eligible Employee may apply;

- (ii) the manner in which the Eligible Employee must apply for the Performance Rights;
- (iii) the amount (if any) that will be payable for the grant of the Performance Rights;
- (iv) the Expiry Date;
- (v) the Performance Period (if any);
- (vi) the Vesting Conditions (if any);
- (vii) the procedure for exercising a Performance Right (including any exercise price that will be payable), if the Performance Right must be exercised by the Participant, and the period(s) during which it may be exercised;
- (viii) the circumstances in which a Performance Right will lapse;
- (ix) the circumstances in which Restricted Participant Shares issued, transferred or allocated to a Participant may be forfeited;
- (x) how Performance Rights may be treated on a Change of Control Event or the likely occurrence of a Change of Control Event, and any discretions retained by the Board;
- (xi) how Performance Rights may be treated in the event that the Eligible Employee becomes a Leaver, and any discretions retained by the Board;
- (xii) any restrictions (including the period of restriction) on Dealing attaching to a Participant Share;
- (xiii) any circumstances in which a Participant's entitlement to Performance Rights may be reduced or extinguished;
- (xiv) where subdivision 83A-C of the ITAA 1997 requires a statement that deferred taxation applies (subject to the conditions of the ITAA 1997), such wording as appropriate; and
- (xv) any other supplementary terms and conditions.

3.3 **Invitations non-transferable**

An Invitation is not transferable or capable of being acted upon by a person other than the Eligible Employee to whom it is addressed.

3.4 **Non-executive directors unable to participate in the Plan**

Invitations may not be made and Performance Rights may not be granted to non-executive Directors.

4. Acceptance of Invitation

4.1 Acceptance of Invitation

- (a) An Eligible Employee must only accept an Invitation in accordance with the instructions that accompany the Invitation, unless the Board determines otherwise.
- (b) The Board may, at its discretion:
 - (i) treat the Eligible Employee's acceptance of the Invitation as being for such lesser number of Performance Rights as the Board determines;
 - (ii) refuse to allow the participation of an Eligible Employee where that Eligible Employee:
 - (A) ceases to be an Eligible Employee;
 - (B) has provided notice to the Company or been provided with notice by the Company that will result in the Eligible Employee ceasing to be an Eligible Employee;
 - (C) has not complied with the instructions relating to acceptance in the Invitation, including a failure to enter into and/or provide any specific Ancillary Documentation;
 - (D) ceases to satisfy any other conditions imposed by the Board, before the grant is made; and
 - (iii) treat the conduct of an Eligible Employee in respect of an Invitation (including the failure to lodge an election not to participate within the specified in the instructions accompanying the Invitation) as valid acceptance of that Invitation under these Rules.

4.2 Participant agrees to be bound

Upon acceptance of an Invitation, each Participant is deemed to have agreed to be bound by:

- (a) the terms of the Invitation;
- (b) the Ancillary Documentation (if any);
- (c) these Rules;
- (d) the Constitution; and
- (e) the Securities Trading Policy.

4.3 Terms and conditions of Invitation prevail

To the extent of any inconsistency, the terms and conditions advised to an Eligible Employee by the Board in an Invitation will prevail over any other provision of these Rules.

5. *Grant of Performance Rights*

5.1 Grant of Performance Rights

- (a) Upon acceptance of an Invitation, the Board will, subject to its discretion under Rule 4.1(b), grant the Performance Rights to the Eligible Employee.
- (b) Unless the Board determines otherwise, Performance Rights granted under the Plan:
 - (i) will be granted free of charge; and
 - (ii) may not be registered in any name other than that of the Eligible Employee.

5.2 Participant's rights

Prior to the Vesting and exercise (if required) of a Performance Right and the allotment and issue, transfer or allocation of Participant Share(s) to the Participant in accordance with these Rules:

- (a) a Participant does not have any interest (legal, equitable or otherwise) in any Share the subject of the Performance Right other than those expressly set out in these Rules; and
- (b) a Participant is not entitled to:
 - (i) notice of, or to vote or attend at, a meeting of Shareholders; or
 - (ii) receive any dividends declared by the Company,

by virtue of holding that Performance Right.

5.3 Non-transferable without consent

- (a) A Participant must not Deal in respect of any Performance Rights unless:
 - (i) the Board exercises its discretion in the circumstances set out in, and in accordance with, clause 11.1(a) to permit Dealing (or a limited form of Dealing) in respect of some or all of the Participant's Performance Rights; or
 - (ii) such assignment or transfer occurs by force of law upon the death of a Participant to the Participant's legal personal representative.
- (b) Where, in the opinion of the Board, a Participant Deals with a Performance Right in contravention of 5.3(a), the Performance Right will immediately lapse.

6. *Satisfaction of Vesting Conditions*

In respect of a Participant, at the end of a Performance Period or from time to time (as determined by the Board), the Board will:

- (a) determine whether and, if so, the extent to which, the Vesting Conditions applicable to that Performance Period have been satisfied and the proportion (if any) of the Performance Rights held by the Participant that Vest; and
- (b) advise the Participant in writing:
 - (i) whether and the extent to which the Vesting Conditions have been satisfied or are deemed to be satisfied under these Rules or waived by the Board in its discretion;
 - (ii) of the proportion (if any) of the Performance Rights held by the Participant which Vest and may be exercised (if required) by the Participant; and
 - (iii) of the corresponding number of Participant Shares (if any) to be issued, transferred or allocated to the Trustee to be held on behalf of the Participant,

however the failure to advise the Participant in writing of the matters set out in Rules 6(b)(i) to (iii) will not affect the satisfaction, deemed satisfaction or waiver of any Vesting Condition.

7. *Vesting of a Performance Right*

7.1 **Vesting**

A Performance Right will only Vest:

- (a) where each Vesting Condition and each other condition set out in the Invitation has been satisfied, deemed to be satisfied under these Rules, or waived by the Board in its discretion; or
- (b) a written notice is given to the Participant informing the Participant that the Performance Right has Vested.

7.2 **Exercise**

- (a) In respect of Performance Rights that must be exercised, the exercise of any Vested Performance Right must be effected in accordance with the terms set out in the Invitation and must be accompanied by the payment of the relevant exercise price (if any) before the Participant will become entitled to be issued, transferred or allocated a Share in respect of that Performance Right under these Rules.
- (b) In the event a Vested Performance Right is required to be exercised by the Participant in accordance with the terms set out in the Invitation but is not exercised prior to the Expiry Date, provided no exercise price is payable in respect of that Performance Right, the

Performance Right will be deemed to have been validly exercised by the Participant immediately before the Expiry Date.

7.3 Allotment and issue, transfer or allocation of Participant Shares

As soon as practicable following Vesting and exercise (if required) of a Performance Right, the Board must, subject to:

- (a) any necessary consents or approvals as may be required by any competent authority having first been obtained; and
- (b) the Participant having complied with the terms of the Performance Rights,

issue to, procure the transfer, or procure the allocation to the Participant of the number of Shares in respect of which Performance Rights have Vested and been exercised (if required).

7.4 Role of Trustee

- (a) Where the terms of the Invitation provide that the Trustee will hold Participant Shares issued, transferred or allocated under Rule 7.3 on behalf of a Participant:
 - (i) those Shares will be issued, transferred or allocated and held by the Trustee in accordance with these Rules and the terms of the Trust Deed; and
 - (ii) the Company will, or the Company will instruct the Trustee to, notify the Participant that the Trustee holds Participant Shares on the Participant's behalf.
- (b) Subject to the Trustee receiving from the Company sufficient funds to subscribe for or acquire the Shares, the Board may, in its absolute discretion, instruct the Trustee to either subscribe for new Shares or acquire Shares on-market to be held on a Participant's behalf or instruct the Trustee to use a combination of both alternatives.

7.5 Rights of new Shares issued, transferred or allocated

Any new Shares issued, transferred or allocated on the Vesting and exercise (if required) of a Performance Right rank *pari passu* in all respects with other Shares then on issue, subject to any restrictions on transfer applicable under these Rules or the Invitation.

7.6 Quotation

The Company must apply for quotation of any new Shares issued under the Plan within the period required by the Listing Rules.

8. Withholding and other taxes

- (a) Unless otherwise required by law, no member of the Group is responsible for any Tax that may become payable by a Participant as a consequence of or in connection with the grant of

any Performance Right, the issue, transfer or allocation of any Shares or any Dealing with any Performance Right or any Shares.

- (b) If a member of the Group is obliged, or reasonably believes it may have an obligation, as a result of or in connection with any Performance Rights granted or Shares issued, transferred or allocated under this Plan, to account for:
- (i) income tax or employment taxes under any wage, withholding or other arrangements; or
 - (ii) any other tax, social security contributions or levy or charge of a similar nature, that is a liability of the Participant, then the relevant member of the Group is entitled to be reimbursed by the Participant for the amount or amounts so paid or payable.
- (c) Where Rule 8(b) applies, the relevant member of the Group is not obliged to grant any Performance Rights or issue, transfer or allocate Shares unless the Company is satisfied that arrangements for payment or reimbursement of the amounts referred to in Rule 8(b) have been made. Those arrangements may include, without limitation:
- (i) the provision by the Participant of sufficient funds to reimburse the relevant member of the Group for the amount (by salary deduction, reduction of any amount owed by the Group to the Participant or otherwise);
 - (ii) the sale on behalf of the Participant of Shares allocated pursuant to these Rules for payment or reimbursement of these amounts, as well as the costs of any such sale;
 - (iii) a reduction in any amount payable to the Participant in lieu of an allocation of Shares under these Rules; or
 - (iv) lapse of a sufficient number of Performance Rights to satisfy the debt the Participant owes to the relevant member of the Group.
- (d) Unless the relevant member of the Group and the Participant agree to use a different valuation, any Performance Rights lapsed under Rule 8(c) will be valued using the method of calculation as determined by the Board.

9. Lapse of a Performance Right

9.1 Lapsing events

Unless the Board otherwise determines in its discretion, a Performance Right will lapse on the earlier of:

- (a) the Performance Right lapsing in accordance with a provision of these Rules (including in accordance with a term of an Invitation);

- (b) the receipt by the Company of a notice in writing from a Participant to the effect that the Participant has elected to surrender the Performance Right;
- (c) if the applicable Vesting Conditions or any other condition applicable to the Performance Right (including any exercise required of that Performance Right) within the Vesting Period are not satisfied or waived in accordance with these Rules within the Vesting Period;
- (d) if the Board determines in its reasonable opinion that a Participant has acted:
 - (i) fraudulently
 - (ii) dishonestly; or
 - (iii) wilfully breached the Participant's duties; and
- (f) the Expiry Date.

9.2 What happens on lapsing

Where a Participant's Performance Rights have lapsed under Rule 9, the Company will:

- (a) notify the Participant that the Performance Rights held by them have lapsed;
- (b) arrange for the Participant or the Participant's agent or attorney to sign any transfer documents required to transfer or otherwise deal with the lapsed Performance Rights; and
- (c) not be liable for any damages or other amounts to the Participant in respect of the lapsed Performance Rights.

10. Leavers

- (a) Where a Participant becomes a Leaver, the Board, in its discretion, may determine that some or all of a Participant's Performance Rights or Restricted Participant Shares:
 - (i) lapse;
 - (ii) are forfeited;
 - (iii) Vest (immediately or subject to conditions);
 - (iv) are only exercisable for a prescribed period and will otherwise lapse; and/or
 - (v) are no longer subject to some of the restrictions (including any Vesting Condition) that previously applied.

- (b) The Board may specify in the Invitation how the Participant's Performance Rights and/or Restricted Participant Shares will be treated on the Participant becoming a Leaver, which may:
 - (i) vary depending upon circumstances in which the Participant becomes a Leaver; and
 - (ii) preserve some or all of the Board's discretion under Rule 10(a).

11. Change of Control Event

11.1 Effect of Change of Control Event

- (a) Notwithstanding any other provisions of the Rules, if a Change of Control Event occurs, or the Board determines such event is likely to occur, the Board may in its discretion determine the manner in which any or all of the Participant's Performance Rights or Restricted Participant Shares will be dealt with including, without limitation, in a manner that allows the Participant to participate in and/or benefit from any transaction arising from or in connection with the Change of Control Event.
- (b) The Board may specify in the Invitation how the Participant's Performance Rights and/or Restricted Participant Shares will be treated on a Change of Control Event occurring, or the Board determining that such event is likely to occur, which may:
 - (i) vary depending upon circumstances in which the Participant becomes a Leaver; and
 - (ii) preserve some or all of the Board's discretion under Rule 11.1.

11.2 Acquisition of securities in Acquirer

If:

- (a) an entity (**Acquirer**) obtains Control of the Company as a result of a Change of Control Event; and
- (b) the Company, Acquirer and the Participant agree,

subject to Applicable Laws, a Participant may, upon Vesting and exercise (if required) of Performance Rights be provided with securities in the Acquirer or its parent in lieu of Shares in such manner as the parties may agree (including by a replacement security or exchange of Shares issued, transferred or allocated on Vesting and exercise (if required)) and on substantially the same terms and conditions but with any necessary or appropriate adjustments to the number of kind of securities.

12. Variation of capital

12.1 Adjustment of Performance Rights

If, prior to the Vesting and exercise (if required) of a Performance Right, there is a reorganisation of the issued share capital of the Company (including a consolidation, subdivision or reduction of capital or return of capital to Shareholders), the number of Shares the subject of Performance Rights will be adjusted in the manner determined by the Board in accordance with the Listing Rules.

12.2 Restrictions on adjustment

Before making the adjustment, the Board must obtain the written confirmation of the Company's auditors (acting as experts and not as arbitrators) that the adjustment is, in their opinion, fair and reasonable.

12.3 Notification of adjustments

The Board must notify each Participant of any adjustment to Performance Rights as soon as practicable after its decision.

13. Dividends and voting rights

13.1 Dividends

Subject to the terms of the Trust Deed and Invitation, where the Trustee holds Shares (including a Participant Share) on behalf of a Participant, the dividends payable on those Shares will be paid by the Company to the Trustee, and the Trustee will pay any such dividends to the Participant as soon as reasonably practicable after those dividends are paid by the Company to the Trustee.

13.2 Voting rights

Subject to the terms of the Trust Deed and Invitation, where the Trustee holds Shares (including a Participant Share) on behalf of a Participant, a Participant may direct the Trustee by notice in writing as to how to exercise the voting rights attaching to those Shares held on the Participant's behalf by the Trustee, either generally or in respect of a particular resolution, by way of proxy. In the absence of any such direction, the Trustee must not exercise the voting rights attaching to the Shares held on behalf of the Participant by the Trustee. The Trustee must not vote in respect of any Shares it holds on behalf of a Participant if the vote occurs by show of hands.

14. Restrictions on dealing with Participant Shares

14.1 Restriction on dealing

Subject to Rule 14.2, a Participant must not Deal with a Participant Share until the earlier of:

- (a) the end of any period specified by the Board in the Invitation; and

(b) the end of any other period determined by the Board in accordance with Applicable Law.

14.2 **Dealing required by Applicable Law**

Subject to the Securities Dealing Policy, a Participant may Deal in respect of a Restricted Participant Share if required by Applicable Law provided the Participant has provided satisfactory evidence to the Company of that fact.

14.3 **Arrangements to enforce restriction**

The Company is entitled to make any arrangements it considers necessary to enforce the restriction in Rule 14.1 and Participants are bound by those arrangements and must take any steps reasonably required by the Company. Without limiting this Rule 14.2, the Company may require that Restricted Participant Shares to be acquired for a Participant under the Plan are to be registered in the name of the Trustee, and are to be held by that Trustee on behalf of that Participant in accordance with the terms of the Trust Deed. The Company must ensure that a Participant is notified when Restricted Participant Shares are acquired and registered in the name of the Trustee on behalf of that Participant pursuant to an arrangement under this Rule 14.2.

14.4 **Participant's agreement**

By applying for Performance Rights under these Rules, each Participant undertakes that it will not take any action or permit another person to take any action to remove the arrangements made under Rule 14.3 in respect of Restricted Participant Shares.

14.5 **Expiry of restriction**

Upon the expiry of any restriction over a Participant Share, the Company will take all actions necessary to ensure that the Participant can Deal with that Participant Share.

14.6 **Breach of restriction**

Where, in the opinion of the Board, the Participant (or the Trustee at the Participant's direction) Deals with a Participant Share in contravention of Rule 14.1 or Rule 14.2, the Restricted Participant Share is deemed to immediately be forfeited.

15. Clawback policy

(a) Where, in the opinion of the Board:

(i) a Participant:

(A) has acted fraudulently or dishonestly;

(B) has engaged in gross misconduct;

- (C) has done an act which has brought the Company, the Group or any member of the Group into disrepute;
 - (D) has breached his or her duties or obligations to the Group or a member of the Group; or
 - (E) is convicted of an offence or has a judgment entered against them in connection with the affairs of the Group;
- (ii) there is a Financial Misstatement Event;
 - (iii) a Participant's Performance Rights Vest or may Vest as a result of the fraud, dishonesty or breach of duties or obligations of any other person and, in the opinion of the Board, the Performance Rights would not have otherwise Vested; or
 - (iv) the Company is required by or entitled under Applicable Law or Company policy to reclaim remuneration from a Participant,

the Board may determine that:

- (v) any:
 - (A) unvested Performance Rights held by the Participant;
 - (B) Vested but unexercised Performance Rights (if exercise is required) held by the Participant;
 - (C) Restricted Participant Shares held on behalf of the Participant pursuant to the Plan,

will lapse or be deemed to be forfeited (as the case may be); and/or
- (vi) a Participant must pay or repay (as the case may be) to the Company as a debt:
 - (A) all or part of the net proceeds of sale where Participant Shares have been sold;
 - (B) any dividends received in respect of Participant Shares.
- (b) The Board may specify in an Invitation additional circumstances in which a Participant's entitlement to Performance Rights may be reduced or extinguished.

16. Forfeiture of Shares

- (a) Where Restricted Participant Shares are forfeited in accordance with these Rules and the Restricted Participant Shares are held by the Participant, the Participant is deemed to have agreed to dispose of his or her legal and/or beneficial interest (as appropriate) in such Restricted Participant Shares for nominal or nil consideration (at the Board's discretion) and the Restricted Participant Shares will be transferred into the name of the Company's

nominee who will then hold full legal and beneficial title to those Restricted Participant Shares.

- (b) Where Restricted Participant Shares are forfeited in accordance with these Rules and the Restricted Participant Shares are held by the Trustee, the Participant's rights in the Restricted Participant Shares will be extinguished for nil consideration and the Restricted Participant Shares will be held as general trust property in accordance with the terms of the Trust Deed. The Board may, at any time in the future, direct the Trustee to hold the Restricted Participant Shares for the benefit of a different or new Participant.
- (c) Where a Participant forfeits Restricted Participant Shares issued, transferred or allocated to them on exercise of Performance Rights (if so required), the Company may, but need not, repay to the Participant any exercise price paid by the Participant in respect of those forfeited Restricted Participant Shares.

17. Trustee

17.1 Rights and obligations

The Board may determine and conclude agreements with the Trustee, and enforce or prosecute any rights and obligations against the Trustee under such agreements, without reference or recourse to the Participants under this Plan. Subject to the terms of the Trust Deed and without limiting the Company's rights in this regard, the Company may, pursuant to and in accordance with any such agreements:

- (a) provide funds to the Trustee in order to allow the Trustee to subscribe for and/or acquire Shares to be held on behalf of Participants under this Plan;
- (b) pay the Trustee for services provided in connection with this Plan and the Trust;
- (c) remove the Trustee and appoint a new trustee (and make any necessary arrangements or provisions for the transfer of Shares held by the Trustee for Participants to a new trustee); and
- (d) otherwise exercise any rights, responsibilities or powers afforded to it under the Trust Deed.

17.2 Administration and holding of Shares

The Trustee must administer the Trust and hold Shares under the Plan in accordance with this Plan, the Trust Deed and any procedures determined by the Company and as agreed to between the Board and the Trustee.

17.3 Registration of Shares

Where Shares are held by the Trustee on behalf of a Participant, those Shares will be registered in the name of the Trustee.

18. Amendment

18.1 Power of amendment - general

Subject to the limitations in Rule 18.2, the Board may from time to time amend the Plan in any respect.

18.2 Power of amendment - limitations

- (a) Subject to Rule 18.3, no amendment may be made to the advantage of Participants to the provisions of the Plan relating to:
 - (i) the persons to whom, or for whom, securities, cash or other benefits are provided under the Plan;
 - (ii) limitations on the number or amount of the securities, cash or other benefits subject to the Plan;
 - (iii) the maximum entitlement for any one Participant; or
 - (iv) the basis for determining a Participant's entitlement to, and the terms of, securities, cash or other benefit to be provided and for the adjustment thereof (if any) in the event of a capitalisation issue, rights issue, sub-division or consolidation of shares, reduction of capital or any other variation of capital, without the prior approval of the Company in general meeting.
- (b) No amendment may be made which would affect adversely any of the subsisting rights of a Participant except either with his consent in writing or with the consent of the majority of Participants affected by the amendment or addition.

18.3 Power of amendment - exceptions

The Board may make minor amendments to the Plan in order to:

- (a) take account of any change in Applicable Law;
- (b) comply with present or future State, Territory or Commonwealth legislation or the Listing Rules governing or regulating the maintenance or operation of the Plan or like plans;
- (c) correct any manifest error or mistake;
- (d) enable the Plan or a member of the Group to comply with Applicable Law; and/or
- (e) obtain or maintain favourable tax, exchange control or regulatory treatment for Participants, for the Company or any member of the Group, or to benefit the administration of the Plan.

18.4 Notification of amendments

The Board must give written notice to all Participants of any amendment which affects their rights.

19. Restrictions on the Plan

19.1 Company Limit

For so long as the Company relies upon the exemptions and declarations set out in any ASIC class order in relation to this Plan, the Board must ensure that the Company complies with any conditions imposed on the Plan under that class order (including any limit on the number of Performance Rights that may be issued).

19.2 Compliance with Applicable Laws

Despite any other provision of these Rules or any term or condition of the participation of any Participant in the Plan, no Performance Rights or Shares may be acquired by or on behalf of a Participant or other person:

- (a) if to do so would contravene Applicable Law; or
- (b) where compliance with any Applicable Law would in the opinion of the Board be unduly onerous.

20. Administration of the Plan

20.1 Board administration

The Plan will be administered by the Board. For the avoidance of doubt, the Board may make further provisions for the operation of the Plan which are consistent with these Rules.

20.2 Waiver of terms and conditions

Notwithstanding anything in these Rules, the Board may at any time waive in whole or in part any terms or conditions (including any Vesting Condition) in relation to any Performance Rights granted or Participant Shares issued, transferred or allocated to a Participant.

20.3 Board powers and discretions

- (a) Any power, right or discretion which is conferred on the Board by these Rules may be exercised in its sole and absolute discretion.
- (b) Subject to Applicable Law, the Board does not, in exercising any power or discretion under these Rules, owe any fiduciary or other obligations to any Eligible Employee or Participant.

20.4 Delegation of Board powers and discretions

Any power or discretion which is conferred on the Board by these Rules (including, without limitation, the power to invite Eligible Employees to participate in the Plan and to determine the terms and conditions of Performance Rights) may be delegated by the Board to:

- (a) a committee consisting of such directors, other officers or employees of the Group, or any combination of such persons as the Board thinks fit;
- (b) a member of the Group; or
- (c) a third party,

for such periods and on such conditions as the Board thinks fit.

20.5 Documents

The Company may, from time to time, require an Eligible Employee invited to participate in the Plan or a Participant, to complete and return such other documents as may be required by law to be completed by that person or entity, or such other documents which the Company considers should, for legal, taxation and/or administrative reasons, be completed by that Eligible Employee, Participant or person in order to give effect to the intent of the Plan.

20.6 Decisions final

Every exercise of a discretion by the Board (or its delegates) and any decision by the Board (or its delegates) regarding the interpretation, effect or application of these Rules and all calculations and determinations made by the Board under these Rules are final, conclusive and binding in the absence of manifest error.

20.7 Suspension of Plan

The Board may from time to time suspend the operation of the Plan and may at any time cancel the Plan. The suspension or cancellation of the Plan must not prejudice the existing rights (if any) of Participants.

21. Termination of the Plan

The Plan terminates and is to be wound up (as provided below) on the occurrence of any of the following events:

- (a) if an order is made or an effective resolution is passed for the winding up of the Company other than for the purpose of amalgamation or reconstruction; or
- (b) if the Board determines that the Plan is to be wound up.

22. Miscellaneous provisions

22.1 Application of subdivision 83A-C of the ITAA 1997

Subdivision 83A-C of the ITAA 1997 applies to this plan subject to the requirements of the ITAA 1997.

22.2 Rights of Participants

Nothing in these Rules:

- (a) confers on any person any expectation to become a Participant;
- (b) confers on any Eligible Employee the right to be invited to apply for, to be offered or to receive any Performance Rights;
- (c) confers on any Participant the right to continue as an Eligible Employee;
- (d) affects any rights which any member of the Group may have to terminate the employment or contract of any Eligible Employee; or
- (e) may be used to increase damages in any action brought against any member of the Group in respect of any termination of employment or contract of an Eligible Employee.

No person, whether a Participant or otherwise, has any claim, right or interest in respect of the Plan or any Performance Rights, Shares or other property of the Plan, whether against the Company or any other person, as a consequence of termination of the Eligible Employee's employment or contract or appointment or otherwise, except under and in accordance with these Rules.

22.3 Instructions by Participants

For the purposes of these Rules, the Board and the Company is entitled to regard any notice, direction or other communication given or purported to be given by or on behalf of a Participant (or a legal personal representative of a Participant) as valid, whether given orally or in writing. Any notice, direction or other communication given or purported to be given by or on behalf of a Participant (or a legal personal representative of a Participant) or any other person under these Rules to the Company is duly given only if actually received by the Company (as the case may be).

22.4 Attorney

Each Participant, in consideration of an Invitation, shall be deemed to irrevocably appoint the Company, and any person nominated from time to time by the Company (each an "**Attorney**"), severally, as the Participant's attorney to complete and execute any documents including applications for Shares and Share transfers and to do all acts or things on behalf of and in the name of the Participant which may be convenient or necessary for the purpose of giving effect to the provisions of these Rules and the Participant shall be deemed to covenant that the Participant shall ratify and confirm any act or thing done pursuant to this power and shall release the

Company, each member of the Board, each member of the Group and the Attorney (where applicable) from any liability whatsoever arising from the exercise of the powers conferred by this rule and shall indemnify and hold harmless the Company, each member of the Board, each member of the Group and the Attorney (where applicable) in respect thereof.

22.5 Notices

Any notice, certificate, consent, approval, waiver or other communications given by the Board, the Company or a member of the Group is deemed to have been duly given if:

- (a) sent by electronic mail or delivered by hand; or
- (b) sent by ordinary prepaid mail,

and is deemed to have been served:

- (c) if sent by electronic mail or delivered by hand, at the time of sending or delivery; or
- (d) if posted, three Business Days (or, if posted to a Participant's address outside Australia, seven Business Days) after the date of posting.

Delivery, transmission and postage is to the address as the Board or any Participant may notify to the other or in the case of a Participant who is an Employee, the address of the place of business at which the Participant performs the whole or substantially the whole of the duties of his or her office or employment.

22.6 Data protection

By participating in the Plan, the Participant consents to the holding and processing of personal data provided by the Participant to the Company for all purposes relating to the operation of the Plan. These include, but are not limited to:

- (a) administering and maintaining Participant records;
- (b) providing information to trustees of any employee benefit trust, registrars, brokers or third party administrators of the Plan; and
- (c) providing information to any regulatory authority (including the Australian Tax Office) where required under law; and
- (d) providing information to future purchasers of the Group or a member of the Group or the business in which the Participant works.