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# Viva Energy Group Limited Short Term Incentive Plan

Date: 18 June 2018

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## 1 Defined terms and interpretation

### 1.1 Definitions in the Dictionary

A term or expression starting with a capital letter:

- (a) which is defined in the dictionary in Schedule 1 (**Dictionary**), has the meaning given to it in the Dictionary; and
- (b) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.

### 1.2 Interpretation

Schedule 1 sets out rules of interpretation for this document.

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## 2 Purpose

The purpose of the Plan is to reward Eligible Employees for strong performance levels and contributions to the Group over a specified Performance Period.

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## 3 Commencement

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

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## 4 Governing rules

- (a) The terms and conditions of the Plan are set out in these Rules.
- (b) The Company, each of its Related Bodies Corporate and each Participant are bound by these Rules.

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## 5 Tax deferred plan

This Plan is a tax deferred plan to which Subdivision 83A-C of the *Income Tax Assessment Act 1997* (Cth) applies (subject to the requirements of that Act).

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## 6 Plan limit

- (a) Where an Invitation is made under the Plan in reliance on the Class Order, the Board must, at the time of making the Invitation, have reasonable grounds to believe that the number of Shares that may be issued on the grant of an Award the subject of the Invitation, or the vesting of a Right issued on the grant of an Award, will not exceed 5% of the total number of Shares on issue when aggregated with the number of Shares issued or that may be issued (including under all outstanding Rights) as a result of offers made at any time during the previous 3 year period under:
  - (i) the Plan or any other employee incentive scheme covered by the Class Order; or

- (ii) an ASIC exempt arrangement of a similar kind to an employee incentive scheme,

**(Plan Limit).** For the avoidance of doubt, offers under the Plan that are not made in reliance on the Class Order or other ASIC class order or case-by-case relief are not included in the Plan Limit calculation, for example:

- (i) an offer to a person situated at the time of receipt of the offer outside Australia;
  - (ii) an offer that did not need disclosure to investors because of section 708 of the Corporations Act;
  - (iii) an offer that did not require the giving of a product disclosure statement because of section 1012D of the Corporations Act; or
  - (iv) an offer made under a disclosure document or product disclosure statement.
- (b) The Plan Limit shall be subject to adjustment or increase pursuant to Rule 18 or as may otherwise be permitted by Applicable Law.
  - (c) Where a Right lapses without being exercised, the Share which would otherwise have been received on the exercise of the Right is ignored when calculating the Plan Limit.

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## 7 Operation of the Plan

### 7.1 Selection of Eligible Employees

The Board may, from time to time, select from among the Eligible Employees those Eligible Employees to whom participation in the Plan will be offered.

### 7.2 Award

- (a) Under the Plan, subject to these Rules, Participants may receive an Award following the end of a specified Performance Period depending on the extent of achievement of designated Performance Conditions, or otherwise in accordance with Rule 7.2(d).
- (b) The Maximum Award to which a Participant may become entitled at the end of a specified Performance Period (if applicable) will be determined by the Board. Subject to these Rules, depending on the extent of achievement of designated Performance Conditions in respect of a Performance Period, a Participant may:
  - (i) be entitled to an Award that is equal to but not greater than the Maximum Award;
  - (ii) be entitled to an Award that is less than the Maximum Award; or
  - (iii) not be entitled to any Award,in respect of the relevant Performance Period.
- (c) Prior to an Invitation being made, the Board will determine and specify in the Invitation the form of Award to which a Participant may become entitled under the Plan. An Award may be made to a Participant in the form of:

- (i) a cash payment in accordance with Rule 7.6;
  - (ii) an issue of Rights subject to, and in accordance with, Rule 9; or
  - (iii) any combination of (i) and (ii),
- subject to these Rules and the terms of the Invitation.
- (d) Notwithstanding any other provision of these Rules, the Board may in its absolute discretion determine that a Participant receive an Award under the Plan at any time other than in respect of a particular Performance Period (including, without limitation, in relation to a particular project or circumstance).

### **7.3 Performance Conditions**

The Performance Conditions applicable to the grant of an Award against which performance during a Performance Period will be assessed and determined by the board and may include:

- (a) any gateway conditions required to be achieved before a Participant will become entitled to be assessed for, or receive, an Award;
- (b) any measures or indicators used to assess performance, their relative weightings and any level of performance relative to a measure or indicator required to be achieved in order to receive all or a portion of the Maximum Award; and
- (c) any other criteria by which an Award will be assessed.

### **7.4 Assessment of performance and calculation of Award**

- (a) Where Performance Conditions apply to the grant of an Award, the Board will:
  - (i) assess performance during the Performance Period applicable to the Award against the applicable Performance Conditions; and
  - (ii) determine the amount of the Award (if any) payable to the relevant Participant based on the extent of achievement of the designated Performance Conditions,

following a review of the Company's audited financial statements and performance review processes for the relevant Performance Period.

- (b) Notwithstanding any other provision of these Rules, the Board may at any time, in its absolute discretion, prior to the grant of an Award:
  - (i) vary or waive one or more Performance Conditions applicable to the assessment of an Award;
  - (ii) adjust the amount of an Award; and/or
  - (iii) vary the form(s) in which an Award will be made,

to take into account any unbudgeted extraordinary items or other circumstances that the Board determines warrant such treatment.

## **7.5 Eligibility for grant of Award**

- (a) Subject to Rule 7.5(b), a Participant will not be eligible to receive an Award in respect of a particular Performance Period if, during the Performance Period:
  - (i) the relevant Eligible Employee ceased to be an Employee;
  - (ii) the relevant Eligible Employee gave notice of his or her resignation as an Employee; or
  - (iii) the relevant Eligible Employee was given notice of termination of employment or engagement as an Employee or if, in the opinion of the Board, the relevant Eligible Employee tendered his or her resignation to avoid such dismissal.
- (b) Notwithstanding Rule 7.5(a), the Board may, subject to compliance with Applicable Law (which may require shareholder approval), determine that a Participant to whom Rule 7.5(a) would otherwise apply will continue to be eligible to receive an Award (either in part or in whole) in respect of the relevant Performance Period, subject to these Rules and the terms of the Invitation.

## **7.6 Grant of Award in the form of cash**

- (a) Where an Award is granted to a Participant wholly or partly in the form of a cash payment, the Company will use reasonable endeavours to pay such amount to the Participant as soon as reasonably practicable after the Board determines that the Participant is entitled to receive the Award.
- (b) The amount in Rule 7.6(a) will be paid in cleared funds to or on behalf of the Participant less any Tax required to be withheld and inclusive of any Super Amount.

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# **8 Invitation**

## **8.1 Invitation**

- (a) The offer to participate in the Plan must be evidenced in the form of an Invitation which must comply with these Rules.
- (b) Each Invitation must:
  - (i) be set out in writing;
  - (ii) be delivered to the relevant Eligible Employee; and
  - (iii) specify:
    - (A) the name and address of the Eligible Employee to whom the Invitation is made;
    - (B) the date of the Invitation;
    - (C) the Maximum Award that the Eligible Employee may be entitled to receive subject to the achievement of applicable Performance Conditions and the operation of these Rules (if applicable);

- (D) any Performance Conditions applicable to the grant of the Award the subject of the Invitation;
  - (E) any Performance Period applicable to the Award the subject of the Invitation;
  - (F) the form(s) in which the Award the subject of the Invitation will be made if the Eligible Employee becomes entitled to receive it;
  - (G) if the Award the subject of the Invitation will be made wholly or partly in the form of Rights, any Vesting Conditions and disposal or other restrictions, and any rights, attaching to the Rights (which may be as set out in these Rules or in addition to these Rules);
  - (H) any disposal or other restrictions on any Shares received upon the exercise of Rights (which may be as set out in these Rules or in addition to these Rules);
  - (I) the method and form of acceptance of the Invitation;
  - (J) any other specific terms and conditions applicable to the Invitation which are not inconsistent with these Rules, as determined by the Board (including in relation to the cash settlement of Rights); and
  - (K) any other terms and conditions required by any Applicable Law.
- (c) Subject to these Rules:
- (i) Invitations may be made by the Board on a differential basis to Eligible Employees; and
  - (ii) the timing and frequency of Invitations will be as determined by the Board.

## **8.2 Invitation personal**

An Invitation made under the Plan is personal to the Eligible Employee to whom it is made and, accordingly, the offer constituted by an Invitation may only be accepted by, and Award may only be made to, the Eligible Employee to whom the Invitation is made or, in the case of Rights issued under the Award only, a proposed Nominated Party of the Eligible Employee if that proposed Nominated Party is approved by the Board.

## **8.3 Invitation to take precedence**

To the extent of any inconsistency, any terms and conditions attaching to the grant of an Award set out in an Invitation will prevail over any other provision of these Rules.

## **8.4 Application**

- (a) The method and form of acceptance of an Invitation will be determined by the Board from time to time and set out in the Invitation.
- (b) Following receipt by the Company of notice an Eligible Employee wishes to nominate a Nominated Party to be granted any Rights an Eligible Employee is entitled to receive under an Award, the Board will determine whether or not it approves the proposed Nominated Party and notify the Eligible Employee of that determination.



- (c) By submitting a duly completed and executed Application or otherwise accepting an Invitation in accordance with Rule 8.4(d), the Eligible Employee and the Nominated Party (if the Eligible Employee has given notice in accordance with Rule 8.4(b) and the Board has approved that Nominated Party) agree to:
  - (i) be bound by the terms of the Invitation and Application and the provisions of these Rules; and
  - (ii) become a member of the Company and be bound by the Constitution upon the issue of Shares on the vesting and exercise of a Right.
- (d) Subject to Rule 8.4(e), if the Board includes a mechanism for deemed acceptance in the Invitation, an Eligible Employee who receives an Invitation will be deemed to have accepted the Invitation as specified in the Invitation unless the Eligible Employee has elected not to participate in the Plan in the manner and within the timeframe set out in the Invitation.
- (e) Acceptance of an Invitation will not be deemed under Rule 8.4(d) if the provisions of Rule 8.5 apply at the date the Invitation would otherwise have been deemed to have been accepted or if the Board otherwise determines that the Invitation should not be deemed to be accepted prior to that date.

#### **8.5 When applications will not be accepted**

- (a) For the avoidance of doubt, the Board can refuse to allow an Eligible Employee to participate in the Plan notwithstanding that a duly completed and executed Application has been received from the Eligible Employee.
- (b) Without limiting Rule 8.5(a), an Application will not be accepted if, at the date the Application would otherwise be accepted:
  - (i) the Eligible Employee is not an Employee;
  - (ii) the Eligible Employee has given notice of his or her resignation as an Employee; or
  - (iii) the Eligible Employee has been given notice of termination of employment or engagement as an Employee or if, in the opinion of the Board, the Eligible Employee has tendered his or her resignation to avoid such dismissal.

#### **8.6 Change in Nominated Party**

If a Nominated Party is granted Rights which are subject to Vesting Conditions and then ceases to be eligible to be a Nominated Party (due to a change in control of the Nominated Party, a change in family circumstances or otherwise, as determined by the Board), the Eligible Employee must:

- (a) promptly notify the Company in writing; and
- (b) arrange for the transfer of the Rights to the Eligible Employee or to another Nominated Party approved by the Board.

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## 9 Terms of Rights

### 9.1 Grant of Award in the form of Rights

- (a) Where an Award is granted to a Participant wholly or partly in the form of Rights, the Company will issue such number of Rights to the Participant equal to the value of the portion of the Award to be granted in the form of Rights divided by the Market Value of a Share (rounded to the nearest whole number).
- (b) The Company must issue to a Participant a Certificate in respect of the Rights granted to them.

### 9.2 Entitlement

- (a) Subject to these Rules, and unless otherwise determined by the Board and specified in the Invitation, each Right entitles the Participant, on vesting of the Right, to receive one Share by way of issue or transfer (at the discretion of the Board) or a cash payment in lieu of the issue or transfer of a Share.
- (b) Shares issued or transferred to a Participant on the exercise of Rights will rank equally in all respects with existing Shares from the date of issue or transfer (as applicable) except for any Rights attaching to the Shares by reference to a record date prior to the date of their issue or transfer (as applicable).

### 9.3 Vesting Conditions

- (a) Prior to an Invitation being made, the Board will determine and specify in the Invitation any Vesting Conditions attaching to Rights that may be issued on the grant of an Award.
- (b) The Board may at its discretion reduce or waive the Vesting Conditions attaching to Rights in whole or in part at any time and in any particular case, subject to any requirements under Applicable Law (including shareholder approval).

### 9.4 Confirmation

The Company must give or procure that a Participant is given written confirmation in respect of Rights issued to the Participant, in such form as the Board may approve from time to time.

### 9.5 Interest in Shares

A Participant has no right or interest in a Share the subject of a Right held by the Participant unless and until the Right is exercised and a Share is issued or transferred, nor does the holder of a Right have any rights to dividends, rights to vote or rights to the capital of the Company as a shareholder as a result of holding a Right. Subject to Applicable Law, a Participant will not, as a holder of a Right, have any right to attend a vote at general meetings of holders of Shares.

### 9.6 Listing of Rights

Rights will not be listed on ASX.

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## 10 Vesting and exercise

### 10.1 Vesting

- (a) The Board will from time to time determine whether the Company will with respect to each Vested Right:
  - (i) allot and issue, or transfer, one Share to the Participant (**Equity Settled**); or
  - (ii) pay a cash amount to the Participant equivalent to the Market Value of a Share as at the date of vesting of the Right in accordance with the calculation in Rule 10.4 (**Cash Settled**) in exercise of the discretion (if any) conferred on the Board in the Invitation with respect to cash settlement of the Vested Rights.
- (b) Subject to these Rules, a Right which has not lapsed shall only vest if and when all Vesting Conditions applicable to the Right have been satisfied or waived by the Board.
- (c) The Board may make a decision for the purposes of Rule 10.1(a) upon or in advance of any vesting and in relation to some or all of the Rights which may vest from time to time or within a specified period (and, for the avoidance of doubt, on a per Right basis).

### 10.2 Automatic exercise

- (a) A Right may only be exercised if:
  - (i) it is a Vested Right; and
  - (ii) the Right has not lapsed.
- (b) On the first date the conditions in Rule 10.2(a) are satisfied in respect of a Right, that Right will be automatically exercised.

### 10.3 Issue of Shares

Within 30 Business Days of exercise of a Right, the Company will, in accordance with the terms of the Invitation and these Rules (including Rule 21):

- (a) allot and issue, or cause to be transferred, to the Participant the number of Shares which the Participant is entitled to subscribe for or acquire in respect of Vested Rights which the Board determines will be Equity Settled in accordance with Rule 10.1(a)(i) and issue a holding statement to the Participant in respect of those Shares; or
- (b) subject to the discretion conferred on the Board in the Invitation, make the cash payment to the Participant in respect of the Vested Rights which the Board determines will be Cash Settled in accordance with Rule 10.1(a)(ii),

at which time the Vested Rights will automatically lapse and the Company will cancel the Certificate for the Vested Rights which were exercised and issue a substitute Certificate for any remaining Unvested Rights held by the Participant.

#### **10.4 Cash Settled**

- (a) Where the Board determines that any Rights will be Cash Settled in accordance with Rule 10.1(a)(ii), the cash payment to be made to a Participant will be equal to the aggregate Market Value of the Shares which would otherwise have been allotted and issued or transferred to the Participant if the Rights had been Equity Settled, as at the date of vesting of the Rights.
- (b) The amount in Rule 10.4(a) will be paid in cleared funds to or on behalf of the Participant less any Tax required to be withheld and inclusive of any Super Amount.

#### **10.5 Equity Settled**

Where Vested Rights which have been exercised are to be Equity Settled, the Company may either:

- (a) require the Participant to reimburse the Company for any Tax which the Company is required to withhold or any Super Amount which the Company is required to withhold;
- (b) Cash Settle the number of Vested Rights required to provide the funds required to be withheld on account of Tax or a Super Amount;
- (c) sell on behalf of the Participant that number of Shares required to provide the funds required to be withheld on account of Tax or a Super Amount which would otherwise have been issued or transferred to the Participant on the exercise of the Rights if the Rights had been Equity Settled; or
- (d) raise the amount required to be withheld on account of Tax or a Super Amount through any combination of the methods in paragraphs (a) to (c).

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## **11 Lapse of Rights**

### **11.1 Lapse of a Right**

Unless the Board determines otherwise, a Right will lapse and become unable to be exercised on the earliest of:

- (a) the date that the Board determines that any Vesting Condition in respect of the Right cannot be satisfied;
- (b) the date that the Board determines that the Right will lapse in accordance with Rule 13;
- (c) the Right lapsing in accordance with Rule 12;
- (d) the Right lapsing in accordance with Rule 15.4;
- (e) the Participant failing to arrange for the transfer of the Right to the Eligible Employee or to another Nominated Party approved by the Board within 10 Business Days of the Participant ceasing to be eligible to be a Nominated Party of the relevant Eligible Employee; and
- (f) the Right lapsing in accordance with Rule 17.

## 11.2 On lapsing

Where a Participant's Rights have lapsed under Rule 11.1:

- (a) all rights of a Participant under the Plan in respect of those Rights are forfeited; and
  - (b) the Company will:
    - (i) notify the Participant that the Rights have lapsed;
    - (ii) cancel the Rights;
    - (iii) if only some of the Rights covered by a Certificate have lapsed, issue a replacement Certificate stating the remaining number of Rights held by the Participant that have not lapsed; and
    - (iv) not be liable for any damages or other amounts to the Participant in respect of the Rights.
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## 12 Cessation of employment

### 12.1 Good Leavers

Subject to Rule 12.3, if an Eligible Employee who is a Participant or has nominated a Nominated Party to receive Rights on the grant of an Award under the Plan, ceases to be an Employee due to a Special Circumstance after the end of the applicable Performance Period or after the Board determining that the Participant is entitled to receive an Award in accordance with Rule 7.2(d):

- (a) if the Participant has not yet been granted the Award (in whole or in part), the Participant will continue to be entitled to be granted the Award, subject to and in accordance with these Rules and the Invitation;
- (b) the relevant Participant will be entitled to retain all Awards granted to the Participant, subject to these Rules, with any Unvested Rights continuing to be subject to any Vesting Dates and any Vesting Conditions set out in the Invitation, other than any Vesting Condition which relates to the relevant Eligible Employee remaining an Employee, which will be waived by the Board.

### 12.2 Other Leavers

Subject to Rule 12.3, if an Eligible Employee who is a Participant or has nominated a Nominated Party to receive Rights under the Plan ceases to be an Employee after the end of the applicable Performance Period or after the Board determining that the Participant is entitled to receive an Award in accordance with Rule 7.2(d), other than due to a Special Circumstance, then, subject to compliance with Applicable Law:

- (a) if the Participant has not yet been granted the Award (in whole or in part), the Participant will cease to be entitled to receive the Award; and
- (b) any Unvested Rights held by the relevant Participant will immediately lapse in accordance with Rule 11.

### 12.3 Board discretion

- (a) Notwithstanding the provisions of Rule 12.1 or 12.2, the Board may, subject to compliance with Applicable Law (which may require shareholder approval), determine to treat any Rights held by the relevant Participant other than in the manner set out in Rule 12.1 or 12.2 if the Board determines that the relevant circumstances warrant such treatment (including to accelerate the vesting of any Unvested Rights).
- (b) The Company must, within 14 days of the Board making a determination as to how to treat any Rights in accordance with Rule 12.3(a):
  - (i) give notice to the Participant affected by the determination of the effect of the determination on the Award; and
  - (ii) issue a replacement Certificate for the Rights to the extent that the details set out in the Certificate require amendment as a result of the determination.

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## 13 Clawback and malus

Where, in the opinion of the Board:

- (a) a Participant at any time:
  - (i) acts, or has acted, fraudulently or dishonestly or made a material misstatement on behalf of any Group Company;
  - (ii) is in material breach of any of his or her duties or obligations to any Group Company;
  - (iii) has engaged in negligence or gross misconduct;
  - (iv) has done an act which could reasonably be regarded to have brought any Group Company into disrepute; or
  - (v) is convicted of an offence or has a judgment entered against them in connection with the affairs of any Group Company;
- (b) there is a Financial Misstatement Circumstance which results in a Participant obtaining an Award or a restriction in relation to Rights being lifted, where, in the opinion of the Board, such right would not have been obtained or such restriction would not have been lifted (as applicable) but for that Financial Misstatement Circumstance;
- (c) a Participant's Rights vest or may vest as a result of the fraud, dishonesty, negligence or breach of obligations of any other person and, in the opinion of the Board, the Rights would not have otherwise vested;
- (d) the Company is required by, or entitled under, law or Company policy to reclaim remuneration from a Participant; or
- (e) other adverse events or outcomes arise that the Board considers should impact on a Participant's Awards under this Plan (including the Participant ceasing employment or engagement with the Group in order to commence employment or engagement with a direct competitor of the Group or otherwise breaching a restraint under the terms of their employment or engagement with the Group),

the Board may, if it determines that such action is warranted to ensure no unfair benefit is derived by the Participant:

- (f) adjust the Performance Conditions applicable to the assessment of an Award;
- (g) reduce or extinguish a Participant's entitlement to an Award;
- (h) require that the Participant repay to the Company as a debt the value of all or some of an Award received under the Plan;
- (i) where Shares have been allocated to the Participant following the exercise of Rights, appoint an officer of the Company as the Participant's agent and attorney to sell the Shares and/or transfer those Shares into the name of the Company's nominee, in each case for total aggregate consideration of \$1.00 (or such other amount determined by the Board);
- (j) where any Shares already allocated to the Participant following the exercise of Rights have been sold by the Participant, require the Participant to pay to the Company all or part of the proceeds realised on that sale; and/or
- (k) subject to Applicable Law, take any other action the Board determines necessary.

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## 14 Consent to cancellation of Rights

Notwithstanding any other provision of these Rules, if a Participant and the Board agree in writing that some or all of the Unvested Rights granted to that Participant may be cancelled on a specified date or on the occurrence of a particular event, then the Board may cancel those Rights on the relevant date or on the occurrence of the particular event (as the case may be) for no consideration.

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## 15 Disposal restrictions for Rights

### 15.1 Restrictions on disposal

Subject to Rules 8.6 and 15.2, a Participant must not Dispose of a Right unless:

- (a) the Board determines otherwise; or
- (b) the Disposal is required by law and the Participant has provided evidence satisfactory to the Board of that fact.

### 15.2 Permitted dealings

Rights attaching to Rights may be exercised in accordance with these Rules:

- (a) on the death of a Participant, by the Participant's legal personal representative;
- (b) in the event that an order is made for the Participant's estate to be administered under the laws relating to mental health, by the person who is appointed to administer such estate; and
- (c) in the event that the Participant becomes bankrupt, by the Participant's trustee in bankruptcy.

### 15.3 No hedging

A Participant may not enter into any arrangement for the purpose of hedging or which otherwise affects their economic exposure to their Rights.

### 15.4 Lapse of Rights

Where a Participant attempts or purports to:

- (a) Dispose of a Right other than in accordance with Rule 8.6, 15.1 or 15.2; or
  - (b) enter into an arrangement in respect of a Right in breach of Rule 15.3,
- the Right immediately lapses.

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## 16 Voting and dividend rights

A Right (regardless of whether it is an Unvested Right or a Vested Right) does not attach any right or entitlement to:

- (a) receive notice of, or to attend or vote at, meetings of members of the Company; or
- (b) receive any dividends, returns of capital or other distributions declared by the Company.

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## 17 Takeover, scheme of arrangement and winding-up

### 17.1 Takeover events

- (a) For the purpose of this Rule 17.1, an **Offer** will be made when:
  - (i) an offer is made, or a series of related offers are made, to acquire all or a majority of Shares, which the Board determines in its absolute discretion should be considered an Offer for the purposes of these Rules having regard to (among other things) the degree of certainty that the transaction(s) contemplated by the offer(s) will be completed; or
  - (ii) a bidder serves its bidder's statement on the Company,(each an **Offer Event**).
- (b) In the event that an Offer is made for Shares, the Board may determine the treatment of Unvested Rights in its absolute discretion, including determining that all or a specified number or proportion of a Participant's Unvested Rights vest, having regard to all relevant circumstances (including the extent to which any applicable Vesting Conditions have been met).
- (c) Where, pursuant to Rule 17.1(b), the Board determines that all or some of a Participant's Unvested Rights vest, the Board must, as soon as practicable, give written notice to each Participant of the number of Rights that have vested.
- (d) Where, pursuant to Rule 17.1(b), the Board determines that some of a Participant's Unvested Rights will vest, all Rights that remain unvested will remain on foot or be treated as otherwise determined by the Board in its absolute discretion (including being deemed to lapse).



## 17.2 Compromise, arrangement or winding-up

- (a) The Board may determine the treatment of Unvested Rights in its absolute discretion, including determining that all or a specified number of a Participant's Unvested Rights vest having regard to all relevant circumstances (including the extent to which any applicable Vesting Conditions have been met), if any of the following events occur:
  - (i) a court orders a meeting to be convened in relation to a proposed compromise or arrangement for the purposes of, or in connection with:
    - (A) a scheme which would, if it becomes effective, result in any person (either alone or together with its associates) owning all or a majority of the Shares; or
    - (B) a scheme for the reconstruction of the Company or its amalgamation with any other company, companies, trust or trusts;
  - (ii) securityholders of the Company approve any compromise or arrangement referred to in Rule 17.2(a)(i);
  - (iii) securityholder approval being given by a resolution duly passed at a general meeting of the Company for an acquisition of Shares that would result in any person (either alone or together with its associates) owning all or a majority of the Shares);
  - (iv) any person (either alone or together with its associates) becomes bound or entitled to:
    - (A) own all or a majority of the Shares under any compromise or arrangement referred to in Rule 17.2(a)(i) which has been approved by a court;
    - (B) acquire Shares under section 414 of the Corporations Act; or
    - (C) acquire Shares under Part 6A.1 or Part 6A.2 of the Corporations Act;
  - (v) any of the following occur:
    - (A) a Controller is appointed, or steps are taken to appoint a Controller; or
    - (B) a resolution to appoint a Controller is passed, or any steps are taken to pass a resolution to appoint a Controller,to the Company or over an asset of the Company;
  - (vi) a resolution is proposed or any steps are taken to pass a resolution for the appointment of an administrator or for the winding-up or dissolution of the Company;
  - (vii) an order is sought for the compulsory winding up of the Company or the Company enters into or resolves to enter into any arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them, including a deed of company arrangement; or

- (viii) the Board determines that any other transaction, event or state of affairs is likely to result in a change in the Control of the Company.
- (b) Where, pursuant to Rule 17.2(a), the Board determines that all or some of a Participant's Unvested Rights vest, the Board must, as soon as practicable, give written notice to each Participant of the number of Rights that have vested.
- (c) Where, pursuant to Rule 17.2(a), the Board determines that all or some of a Participant's Unvested Rights vest, all Rights that remain unvested will remain on foot or be treated as otherwise determined by the Board in its absolute discretion (including being deemed to lapse).

### **17.3 Effect on Shares held by Trustee**

- (a) Subject to Rule 17.3(b), unless the Board determines otherwise in its absolute discretion, in the event that Shares are held by the Trustee on behalf of a Participant as contemplated by Rule 21 and:
    - (i) an Offer is made for Shares and:
      - (A) where the Offer is made by way of a takeover bid under Chapter 6 of the Corporations Act:
        - (1) that Offer has become unconditional; and
        - (2) the bidder and its associates collectively have Relevant Interests in at least 50.1% of the total Shares on issue; or
      - (B) where the Offer is not made by way of a takeover bid under Chapter 6 of the Corporations Act, the Board determines (in its absolute discretion) that this Rule 17.3 will apply to such Offer; or
    - (ii) an event described in Rule 17.2(a) occurs and the Board determines in its absolute discretion that there is a sufficient degree of certainty the relevant transaction(s) will be consummated,
- the Company will require the Trustee to arrange for the Shares to be transferred into the name of the Participant or as directed by the Participant.
- (b) For the avoidance of doubt, nothing in Rule 17.3(a) limits the discretion of the Board to determine that the thing referred to in Rule 17.3(a)(ii) will happen at any time following the occurrence of an Offer Event or an event described in Rule 17.2(a).

### **17.4 Acquisition of shares in Acquiring Company**

If a company (**Acquiring Company**) obtains Control of the Company, the Company, the Acquiring Company and the Participant may agree that upon vesting and exercise of Rights the Participant will be provided with shares of the Acquiring Company or its parent in lieu of Shares, on substantially the same terms and subject to substantially the same conditions as the Shares, but with appropriate adjustments to the number and kind of shares.

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## 18 Reconstruction

In the event of any reorganisation (including consolidation, sub-division, reduction, issue of bonus shares, buy back or cancellation) of the issued share capital of the Company, the Board may make appropriate adjustments in:

- (a) the number and kind of Shares over which Rights may thereafter be granted; and
- (b) the number of Rights or the number and kind of Shares subject to each Right at the time of such change,

so as to maintain the purpose of the Plan and so that the percentage of the fully diluted share capital of the Company into which a Right is exercisable is the same before and after such reorganisation, provided that any such adjustment must be made in accordance with the ASX Listing Rules where they apply to the Company.

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## 19 New issues

A Right does not confer on a Participant the right to participate in new issues of Shares by the Company, or any adjustment to the number of Shares that the Participant is entitled to under any Rights as a result of the issue of Shares by the Company.

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## 20 Rights attaching to Shares

### 20.1 Shares to rank equally

Any Shares allotted and issued, or transferred, by the Company to a Participant will rank equally with all existing Shares on and from the date of issue or transfer, including in respect of all rights issues, dividends and other distributions to holders of existing Shares made or declared after issue or transfer, except for any rights attaching to the Shares by reference to a record date prior to the date of their issue or transfer.

### 20.2 Dividends

A Participant will have a vested and indefeasible entitlement to any dividends declared and distributed by the Company on the Shares which, at the books closing date for determining entitlement to those dividends, are standing to the account of the Participant.

### 20.3 Voting rights

A Participant may exercise any voting rights attaching to Shares registered in the Participant's name.

### 20.4 Listing of Shares

If Shares of the same class as those issued under the Plan are listed on ASX, the Company will apply to the ASX as soon as practicable after they are issued or transferred.

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## 21 Appointment of trustee

- (a) The Board may at any time:

- (i) appoint a trustee (**Trustee**) on any terms and conditions which it considers appropriate to do all such things and perform all such functions as it considers appropriate to operate and administer the Plan, including to acquire Shares on-market or by way of subscription for the purpose of delivering Shares to Participants upon the exercise of any Vested Rights; and
  - (ii) establish a trust (**Trust**) for the purposes set out in Rule 21(a)(i).
- (b) If the Board appoints a Trustee to hold Shares that are to be delivered to a Participant under this Plan:
  - (i) the Shares will be registered in the name of the Trustee and held by the Trustee on trust for that Participant and subject to the trust deed establishing the Trust (**Trust Deed**);
  - (ii) for the avoidance of doubt, to the extent there is any inconsistency between these Rules and any provision of the Trust Deed, the Trust Deed will prevail to the extent of the inconsistency;
  - (iii) where any provision of this Plan refers to granting, issuing, transferring or allotting Shares to, or holding, acquiring, receiving, subscribing for or disposing of Shares by the Participant, it will mean granting, issuing, transferring or allotting Shares to, or holding, acquiring, receiving, subscribing for or disposing of Shares by, the Trustee on behalf of that Participant;
  - (iv) unless the context requires otherwise, any other Rule of this Plan that refers to the Participant (other than with respect to the Rights) will mean the Trustee on behalf of that Participant; and
  - (v) the Trustee on behalf of each Participant will be entitled to any rights which accrue to Shares held for the benefit of that Participant and will exercise those rights in accordance with the Trust Deed.

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## 22 Compliance with law

- (a) Notwithstanding the Rules or the terms of any Invitation, no Invitation may be made to an Eligible Employee, and no Awards may be made to a Participant under the Plan, if to do so:
  - (i) would contravene the Corporations Act or any other Applicable Law; or
  - (ii) would contravene the local laws or customs of an Eligible Employee's country of residence or in the opinion of the Board would require actions to comply with those local laws or customs which are impractical.

Notwithstanding anything to the contrary in the Plan, the Company has no obligation or liability to offer or invite any Eligible Employee or other person to participate in the Plan (or to issue or transfer any Rights or Shares) if to do so would require the Company to issue a disclosure document or a product disclosure statement under Chapter 6D or Chapter 7 (respectively) of the Corporations Act or any other applicable laws in any jurisdiction other than Australia.

- (b) This Plan, all Invitations and all grants of Awards are subject to and are conditional on any resolutions being passed which are required under any Applicable Law.

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## 23 Calculations

- (a) Any calculations or adjustments which are required to be made in connection with any Rights or Shares will be made by the Board and will, in the absence of manifest error, be final and conclusive and binding on the Participant.
- (b) The Company must notify each affected Participant of the amount of any adjustments made in accordance with Rule 23(a).

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## 24 Administration

### 24.1 Administration

The Plan will be administered by the Board. The Board has the power to:

- (a) determine procedures from time to time for administration of this Plan consistent with these Rules;
- (b) resolve conclusively all questions of fact or interpretation arising in connection with this Plan;
- (c) delegate to any one or more persons, for any period and on any conditions determined by the Board, the exercise of any of the Board's powers and discretions arising under this Plan;
- (d) take and rely upon independent professional or expert advice in or in relation to the exercise of any of its powers or discretions under these Rules; and
- (e) appoint or engage specialist service providers for the operation and administration of the Plan.

### 24.2 Decisions

- (a) All decisions to be made by the Board under this Plan may be made by the Board in its sole and absolute discretion, unless otherwise specified.
- (b) If there is any dispute or disagreement as to the interpretation of these Rules, the Board's decision is final and binding on all persons.

### 24.3 Rights to be registered

Rights will be registered in the appropriate register of the Company to facilitate the efficient management and administration of the Plan and to comply with regulatory reporting requirements.

### 24.4 Discretion of the Board to continue or amend operation of the Plan

- (a) The Plan may operate for as long and for as many or as few Performance Periods (if applicable) as the Board determines, at its absolute discretion.
- (b) The Plan may from time to time be reviewed by the Board to ensure its alignment with the Company's strategy and goals for any given year.

- (c) Any Invitation or Award under the Plan does not in any way commit the Company to make any similar kinds of Invitations or Awards under the Plan or any other process in the future.
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## 25 Notices

### 25.1 Service of notices

A notice, demand, consent, approval or communication under the Rules (**Notice**) must be:

- (a) in writing, in English and signed by a person duly authorised by the sender; and
- (b) hand delivered, sent by prepaid post or email to the recipient's address or email address for Notices specified in Rule 25.3, as varied by any Notice given by the recipient to the sender.

### 25.2 Effective on receipt

A Notice given in accordance with Rule 25.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, two Business Days after the date of posting (or seven Business Days after the date of posting if posted to or from a place outside Australia);
- (c) if sent by email:
  - (i) when the sender receives an automated message confirming delivery; or
  - (ii) 5 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,

whichever happens first,

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

### 25.3 Address

The address of the Eligible Employee or Participant and the Company for the purposes of giving a Notice is:

- (a) in the case of the Company:
  - (i) at the address of its registered office from time to time, which at the date of this Plan is Level 16, 720 Bourke St, Docklands Vic 3008; or
  - (ii) at the email address of its company secretary from time to time, which at the date of the Plan is Lachlan.Pfeiffer@vivaenergy.com.au; and

- (b) in the case of the Eligible Employee or Participant, the address or email address of the Eligible Employee or Participant as specified in the relevant register maintained by the Company.
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## **26 Amendment**

### **26.1 Board may amend**

Subject to Rule 26.2, the Board may at any time:

- (a) amend these Rules;
- (b) waive or amend the application of any of these Rules in relation to a Participant; or
- (c) amend the terms on which any Awards have been granted under the Plan,

provided that any such amendment or waiver is carried out in accordance with the ASX Listing Rules for so long as the Company is admitted to the official list of the ASX.

### **26.2 Rights of Participants**

- (a) Subject to Rule 26.2(b), if any amendment to these Rules under Rule 26.1 materially reduces any Participant's rights in relation to their participant in the Plan or in respect of their Awards granted before the date of the amendment, the Board must obtain the prior written consent of the Participant.
- (b) The Board may amend these Rules without the written consent of Participants under Rule 26.2(a):
  - (i) for the purposes of complying with or conforming to present or future legislation governing or regulating the Plan or like plans;
  - (ii) to correct any manifest error or mistake;
  - (iii) to allow the implementation of a trust arrangement in relation to the holding of Shares granted under the Plan;
  - (iv) for the purpose of complying with Applicable Laws; and/or
  - (v) to take into consideration possible adverse taxation implications (including, without limitation, on account of fringe benefits tax) for the Company in respect of the Plan or the Rights granted, including as a result of changes to applicable taxation legislation or the interpretation of that legislation by any taxation authority or a court of competent jurisdiction or any rulings from taxation authorities administering such legislation.

### **26.3 Effect**

- (a) Subject to any shareholder approval (if required), the Board may determine that any amendment to these Rules or the terms of Rights granted under the Plan be given retrospective effect.
- (b) Amendment of these Rules or the terms upon which Rights are granted under the Plan by the Board will be of immediate effect unless otherwise determined by the Board.

#### **26.4 Written notice**

As soon as reasonably practicable after making any amendment to these Rules or the terms of Rights granted under the Plan, the Board will give notice of the amendment to any Participant affected by the amendment. Failure by the Board to notify a Participant of any amendment will not invalidate the amendment as it applies to that Participant.

#### **26.5 Amendment by addendum**

Subject to any other provision of these Rules, the Board may from time to time amend the terms of this Plan as they will apply in particular jurisdictions or circumstances by means of an addendum to these Rules.

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## **27 Termination or suspension**

#### **27.1 Termination or suspension**

Subject to Rule 27.2, the Board may at any time terminate the Plan or suspend the operation of the Plan for such period or periods as it thinks fit.

#### **27.2 Resolution to terminate or suspend**

In passing a resolution to terminate or suspend the operation of the Plan, the Board must consider and endeavour to ensure that there is fair and equitable treatment of all Participants.

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## **28 Rights and obligations of Participants**

#### **28.1 Rights of Participants**

- (a) Nothing in these Rules, the terms of any Invitation, participation in the Plan or the grant of any Award:
  - (i) confers on an Eligible Employee or a Participant the right to continue as an employee, consultant or officer of any Group Company;
  - (ii) affects the rights of the Company or any Related Body Corporate to terminate the employment, engagement or office of an Eligible Employee, consultant or a Participant (as the case may be);
  - (iii) affects the rights and obligations of any Eligible Employee or Participant under the terms of their employment, engagement or office with any Group Company;
  - (iv) confers any legal or equitable right on an Eligible Employee or a Participant whatsoever to take action against any Group Company in respect of their employment, engagement or office;
  - (v) confers on an Eligible Employee or a Participant any rights to compensation or damages in consequence of the termination of their employment, engagement or office by any Group Company for any reason whatsoever including ceasing to have rights under the Plan as a result of such termination; or



- (vi) confers any responsibility or liability on any Group Company or their respective directors, officers, employees, representatives or agents in respect of any taxation liabilities of the Eligible Employee or Participant.
- (b) An Invitation to participate in the Plan and the grant of an Award on a particular basis in respect of any Performance Period (if applicable) does not create any right or expectation of an Invitation to participate in the Plan or the grant of an Award on the same basis, or at all, in respect of any future Performance Period.

## **28.2 Power of attorney**

Each Participant irrevocably appoints each company secretary of the Company (or any other officer of the Company authorised by the Board for this purpose) as his or her attorney to do anything necessary to:

- (a) allocate Shares to the Participant in accordance with, or otherwise give effect to or enforce, these Rules (including Rule 13);
- (b) effect a forfeiture of Rights or sale of Shares in accordance with these Rules or the terms of an Invitation; and
- (c) execute transfers of Shares in accordance with these Rules,

and covenants that the Participant will ratify and confirm any act or thing done pursuant to this power.

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# **29 General**

## **29.1 Costs and Expenses**

The Company will pay all expenses, costs and charges in relation to the establishment, implementation and administration of the Plan, including all costs incurred in or associated with the issue or purchase of Shares (except for taxes, which are payable by Participants) for the purposes of the Plan. Each Related Body Corporate of the Company will, if required by the Board, reimburse the Company for any such costs and charges to the extent that they relate to its employees, officers or consultants, or former employees or officers or consultants.

## **29.2 Duties and taxes**

- (a) Neither the Company nor any adviser to the Company or the Board represents or warrants that the Plan will have any particular taxation or financial consequences or that any Eligible Employee or Participant will gain any taxation or financial advantage by participating in the Plan.
- (b) Each Participant is responsible for the income tax (including any levies, charges and surcharges imposed or collected with income tax) and superannuation liabilities arising in connection with any grant of or dealing in an Award. A Group Company may account for such liabilities, including by withholding or deducting such liabilities from any entitlements of a Participant or as otherwise set out in these Rules.

### 29.3 Advice

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

### 29.4 Data protection

By providing an Application in accordance with Rule 8.2, each Participant consents to the holding and processing of personal data provided by the Participant to the Company and any Related Body Corporate for all purposes relating to the operation of the Plan. These include, but are not limited to:

- (a) administering and maintaining Participants' records;
- (b) providing information to trustees of any employee benefit trust, registrars, brokers or third party administrators of the Plan;
- (c) providing information to future purchasers of the Company or the business in which the Participant works; and
- (d) transferring information about the Participant to a country or territory outside Australia.

### 29.5 TFN transfer

- (a) Each Participant, by accepting an Invitation, acknowledges that it may be desirable for the Participant to provide the Participant's TFN to a person in connection with the grant of Awards and the operation and administration of the Plan, including:
  - (i) where Rule 21 operates, the Trustee;
  - (ii) where the Company appoints a plan administrator to administer the Plan (including the grant of Awards), the plan administrator; or
  - (iii) where the Company appoints a share registry service provider to administer the Company's share register, the share registry service provider.
- (b) Each Participant, by accepting an Invitation, agrees that the Company, on behalf of the Participant in connection with the Participant's affairs, may disclose the Participant's TFN to the such a person.
- (c) A Participant may, in writing to the Company, revoke the agreement in Rule 29.5(b) at any time.
- (d) The Company must use reasonable endeavours to procure that the recipient of a Participant's TFN uses the TFN for the purposes of the Participant's affairs only, and limit the use or disclosure of the TFN in accordance with Applicable Law and the privacy law as if the TFN had been provided to the recipient by the Participant.

### 29.6 Error in allocation

If any Right is provided under this Plan in error or by mistake to a person (**Mistaken Recipient**) who is not the intended recipient, the Mistaken Recipient shall have no right or interest, and shall be taken never to have had any right or interest, in that Right and any such Right will immediately lapse.

### **29.7 Dispute**

Any disputes or differences of any nature arising under the Plan will be referred to the Board for determination.

### **29.8 No fiduciary capacity**

The Board may exercise any power or discretion conferred on it by these Rules in the interest or for the benefit of the Company, and in so doing the Board is 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.

### **29.9 Enforcement**

These Rules, any determination of the Board made pursuant to the Rules, and the terms of any Rights granted under the Plan, will be deemed to form a contract between the Company and the Participant.

### **29.10 Governing law**

This Plan and any Awards granted under it will be governed by, and must be construed according to, the laws of New South Wales and the Commonwealth of Australia.

## 1 Dictionary

In this document:

**Acquiring Company** has the meaning given in Rule 17.4.

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

- (a) the Corporations Act;
- (b) for so long as the Company is admitted to the official list of the ASX, the ASX Listing Rules;
- (c) the Constitution;
- (d) the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth);
- (e) any practice note, policy statement, regulatory guide, class order, declaration, modification, determination, waiver, guideline, policy, procedure, ruling, judicial interpretation or other guidance note made to clarify, expand, amend or waive any provision of the legislation referred to in paragraph (a) or (d) above or the ASX Listing Rules; and
- (f) any other legal requirement that applies to the Plan.

**Application** means an application by an Eligible Employee to participate in the Plan made in response to an Invitation in the form attached to the Invitation.

**ASX** means the ASX Limited ABN 98 008 624 691 or the Australian Securities Exchange, as the context requires.

**ASX Listing Rules** means the official listing rules of the ASX as they apply to the Company from time to time.

**ASX Operating Rules** means the ASX rules that govern the ASX and its clearing and settlement facilities.

**Award** means an award made to a Participant under the Plan in the form of:

- (a) a cash payment;
- (b) Rights; or
- (c) any combination of (a) and (b),

as specified in an Invitation.

**Board** means the board of directors of the Company, any committee of the Board or a duly authorised person or body to which the Board has delegated its powers under the Plan.

**Business Day** means a day on which banks are open for business in Sydney, excluding a Saturday, Sunday or public holiday.

**Cash Settled** has the meaning given in Rule 10.1(a)(ii).

**Certificate** means a certificate or holding statement issued by the Company to a Participant in respect of a grant of Rights, in such form as the Board may approve from time to time.

**Class Order** means ASIC Class Order 14/1000 (or any amendment or replacement of that class order).

**Company** means Viva Energy Group Limited (ACN 626 661 032).

**Constitution** means the constitution of the Company (as amended from time to time).

**Control** has the meaning given in section 50AA of the Corporations Act.

**Contractor** means:

- (a) an individual with whom a Group Company has entered into a contract for the provision of services under which the individual performs work for the Group Company; or
- (b) a company with whom the Group Company has entered into a contract for the provision of services under which an individual performs work for the Group Company,

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 with a Group Company.

**Controller** has the meaning given in the Corporations Act.

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

**Director** means a member of the Board or the board of directors of any Related Body Corporate of the Company.

**Dispose** means, in relation to an Right or Share, to sell, transfer, assign, novate, swap, declare a trust over, grant a Security Interest over, dispose of or otherwise deal with any legal or equitable interest in the Right or Share (as applicable), and includes taking any steps or attempting to dispose or otherwise deal with the Right or Share (as applicable).

**Eligible Employee** means an Employee who is declared by the Board to be eligible to receive a grant of Rights under the Plan.

**Employee** means any person who is:

- (a) a full-time or part-time employee of a Group Company (including an executive director);
- (b) a non-executive director of a Group Company;
- (c) a Contractor; or
- (d) a Prospective Participant.

**Equity Settled** has the meaning given in Rule 10.1(a)(i).

**Financial Misstatement Circumstance** means a material misstatement or omission in the financial statements of the Group or any other circumstances or events which, in the opinion of the Board, affect or are reasonably likely to affect the Group's financial soundness or require restatement of the Group's financial accounts (including as a result of misrepresentations, errors, omissions or negligence).

**Group** means the Company and its Related Bodies Corporate, collectively.

**Group Company** means the Company and any of its Related Bodies Corporate.

**Invitation** means an invitation to an Eligible Employee to apply for the grant of Rights under these Rules.

**Market Value** of a Share means:

- (e) where it is necessary to determine the Market Value of a Share in order to determine the number of Rights to be granted to a Participant for the purposes of Rule 9.1, the volume weighted average of the prices of Shares traded on ASX during the trading days determined by the Board and specified in the Invitation; or
- (f) where it is necessary to determine the Market Value of a Share in order to determine the cash amount to be paid if a Right is to be Cash Settled following vesting, the volume weighted average of the prices of Shares traded on ASX during the trading days determined by the Board.

**Marketable Parcel** has the meaning given to that term in the ASX Operating Rules, as amended from time to time.

**Maximum Award** means, in respect of a Performance Period, the maximum Award (expressed as a dollar amount or a percentage of a Participant's fixed annual remuneration) that a Participant may become entitled to receive if all Performance Conditions are achieved to the maximum extent.

**Mistaken Recipient** has the meaning given in Rule 29.5.

**Nominated Party** means, in respect of an Eligible Employee:

- (a) an immediate family member of the Eligible Employee;
- (b) a corporate trustee of a self-managed superannuation fund (within the meaning of the *Superannuation Industry (Supervision) Act 1993*) where the Eligible Employee is a director of the trustee; or
- (c) a company whose members comprise no persons other than the Eligible Employee or immediate family members of the Eligible Employee.

**Notice** has the meaning given in Rule 25.1.

**Offer** has the meaning given in Rule 17.1.

**Offer Event** has the meaning given in Rule 17.1.

**Participant** means an Eligible Employee who has accepted an offer to participate, or has been granted participation, in the Plan, or his or her Nominated Party.

**Performance Conditions** means the conditions as determined by the Board in accordance with Rule 7.3 and specified in an Invitation, which must be satisfied or against which performance will be assessed to determine the grant of an Award, as reduced or waived in whole or in part at any time by the Board in its absolute discretion.

**Performance Period** means a period in respect of which a Participant is eligible to be granted Award, with performance during the Performance Period to be assessed against applicable Performance Conditions to determine the amount of the Award (if any) to be granted to the Participant.

**Plan** means the Viva Energy Group Limited Rights Plan established and operated in accordance with these Rules.

**Plan Limit** has the meaning given in Rule 6(a).

**Prospective Participant** means a person to whom an offer to participate in the Plan is made but who can only accept the offer if an arrangement has been entered into that will result in the person becoming an Employee.

**Related Body Corporate** has the meaning set out in the Corporations Act.

**Right** means a conditional right granted to a Participant pursuant to these Rules to receive (by way of issue or transfer) one Share (or, subject to any discretion conferred on the Board in the Invitation, to receive a cash amount equivalent to the value of a Share as at the date of exercise of the Right (determined in accordance with the Invitation) in lieu of a Share), subject to the terms of these Rules and the terms of the Invitation.

**Rules** means these rules in respect of the establishment and operation of the Plan, as amended from time to time.

**Security Interest** means any mortgage, pledge, charge, lien, encumbrance, assignment, security, interest, preferential right, set-off or any other security arrangement.

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

**Special Circumstance** means:

- (a) with respect to a Participant:
  - (i) Total and Permanent Disablement; or
  - (ii) the death, or Terminal Illness, of the Participant (or, if an Eligible Employee has nominated a Nominated Party to receive Rights under the Plan, the death, or terminal illness, of the Eligible Employee); or
- (b) a circumstance the Board has otherwise determined, in its absolute discretion, should be considered a Special Circumstance.

**Super Amount** means any Tax required to be withheld and inclusive of any superannuation contribution required to at least meet the minimum amount required to be contributed by a Group Company under Applicable Law to avoid the imposition of a superannuation guarantee charge.

**Tax** means any tax, levy, charge, franchise, impost, duty, fee, rate, deduction, compulsory loan or withholding, which is assessed, levied, imposed or collected by any Government Agency and includes, for the avoidance of doubt, capital gains tax, fringe benefits tax, income tax, value added tax, goods and services tax, sales or use tax,

training guarantee levy, profits tax, undistributed profits tax, payroll or employment tax, group tax, PAYG or PAYE withholding tax, land tax, import or customs duty, excise, municipal rates, and any interest, fine, penalty, charge, fee or any other amount imposed on or in respect of any of the above.

**Terminal Illness** means, in relation to a Participant, where a medical practitioner certifies in writing that despite reasonable medical treatment an illness is likely to lead to the Participant's death within 18 months of the date of certification, or such other condition which the Board determines acting reasonably should constitute a Terminal Illness.

**TFN** has the same meaning as "tax file number" in section 202A of the *Income Tax Assessment Act 1936* (Cth).

**Total and Permanent Disablement** means, in relation to a Participant, the termination or cessation of the Participant's employment or engagement with a Group Company (or, if an Eligible Employee has nominated a Nominated Party to receive Rights under the Plan, the Eligible Employee's employment or engagement with a Group Company) as a result of total and permanent disablement, as determined by the Board.

**Trust** has the meaning given in Rule 21(a)(ii).

**Trust Deed** has the meaning given in Rule 21(b)(i).

**Trustee** has the meaning given in Rule 21(a)(i).

**Unvested Right** means a Right that is not a Vested Right.

**Vesting Conditions** means one or more conditions as determined by the Board and specified in an Invitation, which must be satisfied prior to a Right becoming vested in a Participant, as reduced or waived in whole or in part at any time by the Board and notified to the Participant.

**Vesting Date** means, in respect of a Right, the date on which the Vesting Conditions in relation to that Right must be satisfied, or such earlier date on which the Right vests in accordance with Rule 17.

**Vesting Notice** means a notice to a holder of a Right that, to the extent specified in the vesting notice, the Vesting Conditions applicable to the Right have been satisfied, or waived by the Board.

**Vested Right** means a Right in respect of which the Board has determined that all of the Vesting Conditions applicable to the Right (if any) have been satisfied or waived.

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## 2 Interpretation

In this document the following rules of interpretation apply unless the contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of this document;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;



- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
  - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
  - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
  - (iii) a party includes its successors and permitted assigns;
  - (iv) a document includes all amendments or supplements to that document;
  - (v) a Rule, clause, term, party, schedule or attachment is a reference to a Rule, clause or term of, or party, schedule or attachment to this document;
  - (vi) this documents includes all schedules and attachments to them;
  - (vii) a law includes a constitutional provision, treaty, decree, convention, statute, regulation, ordinance, by-law, judgment, rule of common law or equity or a rule of an applicable Financial Market and is a reference to that law as amended, consolidated or replaced; and
  - (viii) a monetary amount is in Australian dollars;
- (g) 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
- (h) in determining the time of day, where relevant to this document, the relevant time of day is:
  - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
  - (ii) for any other purpose under this document, the time of day in the place where the party required to perform an obligation is located.

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### 3 Ownership restrictions

No act will be done or determination made in accordance with these Rules where to do so would be a breach of:

- (a) any provision of the *Foreign Acquisitions and Takeovers Act 1975* (Cth) as amended or modified or replaced by another act from time to time;
- (b) any foreign investment policy or guidance notes issued by the Foreign Investment Review Board as amended or modified or replaced from time to time; or
- (c) any undertaking given by the Company to the Foreign Investment Review Board at the request of the Foreign Investment Review Board from time to time,

and where any such act is done or determination made it will be considered void and to the extent possible be unwound and of no effect in respect of Unvested Rights, or Shares received on the exercise of the Rights.

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## **4 Rounding**

Where any calculation or adjustment to be made pursuant to these Rules produces a fraction of a cent or a fraction of a Right or Share, the fraction will be eliminated by rounding to the nearest whole number. For the avoidance of doubt, where the rounding of a Right or Share results in a residual balance, the Company will not be liable to pay any person the residual balance.

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## **5 ASX Listing Rules**

While the Company is admitted to the official list of the ASX, the provisions of the ASX Listing Rules will apply to the Plan, and to the extent that the Plan and the ASX Listing Rules are inconsistent, the provisions of the ASX Listing Rules will prevail.

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## **6 Constitution**

To the extent of that the Plan and the Constitution are inconsistent, the terms of the Constitution will prevail.