

# Medibank Private Limited Performance Rights Plan

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# Performance Rights Plan

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# Performance Rights Plan

## General terms

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### 1 Definitions and interpretation

#### 1.1 Definitions

In the Plan, the following words and expressions have the meanings indicated unless the contrary intention appears:

**ASIC** means the Australian Securities and Investments Commission.

**ASX** means ASX Limited (ABN 98 008 624 691) or the market conducted by it, as the context requires.

**Board** means all or some of the Directors acting as a board, a committee of Directors or other authorised delegate of the board.

**Business Day** means a day other than Saturday, Sunday or a public holiday in Victoria.

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

**Director** means a director of Medibank.

**Employee** means a permanent full time or part time employee of a body corporate which is in the Group (including a director of a body corporate in the Group who holds on a permanent full time or part time basis salaried employment in a body corporate which is in the Group).

**Group** means Medibank and each body corporate that is a subsidiary of Medibank under Division 6 of Part 1.2 of the Corporations Act.

**Invitation** means an invitation to apply for Performance Rights under the Plan in accordance with clause 2.1.

**Listing Rules** means the Listing Rules of ASX.

**Medibank** means Medibank Private Limited (ABN 47 080 890 259).

**Participant** means the holder of a Performance Right.

**Performance Right** means a right granted under clause 2 to acquire Shares.

**Plan** means the Medibank Private Limited Performance Rights Plan.

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

**Tax** means any tax, levy, impost, charge or duty (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them.

**Terms of Grant** means, in relation to a Performance Right, the terms and conditions upon which that Performance Right is granted, and includes:

- (a) the terms and conditions for the Performance Rights set out in the Schedule, to the extent they apply to the Performance Right as granted; and
- (b) other terms and conditions as determined by the Board under these rules and set out in the Invitation.

**Trust Deed** means the deed by which any trust established by Medibank to assist in the administration of the Plan is constituted.

## 1.2 Interpretation

- (a) In the Plan unless the contrary intention appears:
  - (i) the singular includes the plural and vice versa;
  - (ii) reference to a rule, a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (iii) reference to a clause is a reference to a clause of these rules; and
  - (iv) a reference to a person includes a reference to the person's legal personal representatives, executors, administrators and successors, a firm or a body corporate.
- (b) Headings are inserted for convenience and do not affect the interpretation of the Plan.

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## 2 Grant of Performance Rights

### 2.1 Invitation

- (a) The Board may invite any Employee to participate in the Plan in a manner determined by the Board (**Invitation**), subject to any approvals of holders of Shares required by law or the Listing Rules.
- (b) If an Employee makes an application for Performance Rights following receipt of an Invitation, the application constitutes an offer by the Employee to participate in the Plan on the terms set out in the Invitation.

### 2.2 Board discretion

The Board may determine that an application by an Employee who would otherwise be eligible to participate under these rules will not be accepted.

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## 3 Maximum number of Performance Rights

Performance Rights may not be offered under the Plan where, together with all other relevant employee equity plans operated by Medibank, the Shares underlying those Performance Rights would result in Medibank exceeding the 5% capital limit (or any equivalent limit) set out in ASIC Class Order 03/184 (or equivalent instrument, including any individual instrument granted to Medibank by ASIC).

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## **4 Performance Rights terms**

### **4.1 Terms**

Subject to the Listing Rules, Performance Rights will be granted on:

- (a) the terms set out in the Schedule, to the extent that the Board determines that those terms apply to the grant of any particular Performance Rights; and
- (b) any other terms determined by the Board in its absolute discretion and as set out in the Terms of Grant.

### **4.2 Board may impose conditions**

Without limiting clause 4.1, the Board may impose such conditions on the vesting or exercise of Performance Rights as it considers appropriate and these conditions must be notified to the Employee in the Terms of Grant. The conditions may include conditions relating to:

- (a) the performance or profitability of Medibank;
- (b) the price at which Medibank's shares are traded on a stock market of the ASX or any other recognised stock exchange; and
- (c) limits on the number or proportion of the Performance Rights that may be exercised in any one or more time periods.

### **4.3 Participant agrees to be bound**

By submitting a duly completed application, a Participant is deemed to have agreed to be bound by:

- (a) the terms of any application form;
- (b) the constitution of Medibank, as amended from time to time;
- (c) the Trust Deed, as amended from time to time; and
- (d) the Terms of Grant for the relevant Performance Rights, as amended from time to time.

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## **5 Overriding restrictions on grant and exercise**

Notwithstanding the Plan or the Terms of Grant for any particular Performance Right, no Performance Right may be granted or exercised if to do so:

- (a) would contravene the Corporations Act or the Listing Rules; or
- (b) would contravene the local laws or customs of the 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.

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## **6 Administration of the Plan**

### **6.1 Board to administer Plan**

The Plan will be administered by the Board in accordance with the terms of the Plan. The Board may make further rules for the operation of the Plan which are consistent with the Plan.

### **6.2 Board powers and discretions**

Any power or discretion which is conferred on the Board by the Plan must be exercised by the Board in the interests or for the benefit of Medibank, and the Board is not, in exercising any such power or discretion, under any fiduciary or other obligation to any other person.

### **6.3 Delegation of Board powers and discretions**

Any power or discretion which is conferred on the Board by the Plan may be exercised by the Board or any person or persons appointed by the Board to act on its behalf, for such periods and on such conditions as the Board thinks fit.

### **6.4 Board decision final and conclusive**

The decision of the Board as to the interpretation, effect or application of the Plan, the exercise by the Board of any power or discretion under the Plan or the giving of any consent or approval by the Board in connection with the Plan will be final and conclusive.

### **6.5 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 will not prejudice the existing rights of Participants.

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## **7 Rights of Participants**

Except as expressly provided in the Plan, nothing in the Plan:

- (a) confers on any Employee the right to be granted any Performance Rights;
- (b) confers on any Employee the right to continue as an employee of Medibank or any member of the Group;
- (c) affects any rights which Medibank or any member of the Group may have to terminate the employment of any employee;
- (d) may be used to increase damages in any action brought against Medibank or a subsidiary in respect of any termination described in clause 7(c); or
- (e) confers on an Employee any expectation to become a Participant.

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## **8 Amendment of the Plan**

### **8.1 Amendment**

Subject to clauses 8.2 and 8.3, Medibank may at any time by written instrument or by resolution of the Board, amend all or any of the provisions of the Plan (including this clause 8) or the Terms of Grant of any particular Performance Rights.

### **8.2 Restrictions on amendments**

No amendment of the provisions of the Plan is to reduce the rights of any Participant in respect of Performance Rights granted under the Plan prior to the date of the amendment, other than an amendment introduced primarily:

- (a) for the purpose of complying with or conforming to present or future State, Territory or Commonwealth legal requirements governing or regulating the maintenance or operation of the Plan or like plans;
- (b) to correct any manifest error or mistake;
- (c) to enable contributions or other amounts paid by any body corporate in the Group in respect of the Plan to qualify as income tax deductions for that body corporate, Medibank or any other body corporate within the Group; or
- (d) to enable any body corporate in the Group to comply with the Corporations Act, the Listing Rules or relevant instruments of relief issued by ASIC from time to time,

or with the consent of the Participants.

### **8.3 Amendment in accordance with Listing Rules**

No amendment may be made except in accordance with and in the manner stipulated (if any) by the Listing Rules.

### **8.4 No extension of exercise period**

No amendment may be made to extend the period during which a Performance Right may be exercised.

### **8.5 Retrospective effect**

Subject to this clause 8, any amendment made pursuant to clause 8.1 may be given such retrospective effect as is specified in the written instrument or resolution by which the amendment is made and, if so stated, amendments to the Plan, including the Terms of Grant of Performance Rights, have the effect of automatically amending the terms of granted but unexercised Performance Rights.

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## **9 Notices**

### **9.1 Time of receipt**

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

- (a) sent by electronic mail or delivered by hand; or
  - (b) sent by ordinary mail,
- and is deemed to have been received at the earlier of:
- (c) the time it is received; or
  - (d) if:
    - (i) sent by electronic mail or delivered by hand, at the time of sending or delivery; or
    - (ii) posted, three days (or, if posted to a Participant's address outside Australia, seven days) after the date of posting, excluding Saturdays, Sundays and public holidays.

Delivery, transmission and postage is to the address of any Participant as indicated on any application form, any other address as the Board or any Participant may notify to the other.

## **9.2 Receipt outside business hours**

Despite clause 9.1, if any communication is, under clause 9.1, deemed to have been served after 5.00pm in the place of receipt or on a non-Business Day, the communication will be taken to have been served at 9.00am on the next Business Day and take effect from that time unless a later time is specified.

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## **10 Governing Law and jurisdiction**

- (a) The Plan is governed by and will be construed and take effect in accordance with the laws of Victoria.
- (b) All disputes arising in connection with or under the Plan will be submitted to the non-exclusive jurisdiction of the courts of Victoria.



# Performance Rights Plan

## Schedule - Sample Performance Rights Terms

### Performance Rights Terms

This document contains the terms of Performance Rights to be granted on **[insert date]** under the Plan.

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#### 1 Entitlement

- (a) Subject to term 9, each Performance Right that vests in accordance with these terms entitles the Holder to be allotted, credited as fully paid, or transferred, either from Medibank or the Trustee, the number of Medibank Shares calculated in accordance with the rules set out in Part A of Schedule 1 upon exercise of the Performance Right.
- (b) A Holder need not pay any exercise price upon exercise of a Performance Right.
- (c) Subject to the Listing Rules, Medibank must allot, transfer or procure the transfer by the Trustee of, Medibank Shares on exercise of a Performance Right in accordance with the Plan.
- (d) Any Medibank Shares issued on the exercise of Performance Rights will rank pari passu with all existing Medibank Shares from the date of issue and will be entitled in full to those dividends which have a record date for determining entitlements after the date of issue.

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#### 2 Vesting of Performance Rights

##### 2.1 Eligibility of a Performance Right to vest

A Performance Right becomes eligible to vest if the applicable performance conditions specified in these terms are satisfied or the Performance Right otherwise vests in accordance with these terms. If the applicable performance condition is not satisfied during the Performance Period and the Performance Right does not otherwise vest, the Performance Right will lapse.

##### 2.2 How Performance Rights vest

A Performance Right vests:

- (a) if it becomes eligible to vest in accordance with the rules set out in Part B of Schedule 1 and Medibank has notified the Holder that it has vested in accordance with these terms; or
- (b) if the Medibank Board gives notice to a Holder under term 4; or
- (c) if the Medibank Board so determines.

## 2.3 Automatic exercise

Unless the Board determines otherwise, if a Performance Right becomes a Vested Performance Right then it will be automatically exercised at the time and in a manner determined by the Medibank Board in its absolute discretion. A Performance Right cannot be exercised in any other way.

## 2.4 When Performance Rights will lapse

Subject to term 13 and unless the Board determines otherwise, a Performance Right that is not exercised will lapse on the first to occur of:

- (a) the day a Holder ceases to be employed by the Medibank Group provided this occurs prior to the end of the Performance Period, unless the Holder is a Good Leaver with respect to the Performance Right;
- (b) a time determined by the Medibank Board at the time of grant of the Performance Right;
- (c) the Medibank Board providing the Holder with a notice in accordance with term 11(a);
- (d) the receipt by Medibank of a notice from the Holder that the Holder wishes the Performance Right to lapse; and
- (e) the Performance Right not becoming a Vested Performance Right following the applicable testing date and upon Medibank providing the Holder with a notice that the applicable performance condition has not been satisfied during the Performance Period.

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## 3 Cessation of employment by Good Leavers

- (a) Subject to term 13, where a Holder ceases to be employed by the Medibank Group and is a Good Leaver, a number of Performance Rights held by the Holder that have not been exercised will lapse in accordance with the formula below:

$$\text{UPR} \times \frac{\text{E}}{\text{F}}$$

Where:

**UPR** is the number of Performance Rights that have not been exercised held by the Holder at the time the Holder ceases to be employed by the Medibank Group.

**E** is the number of whole months between cessation of employment with the Medibank Group and the end of the Performance Period (rounded to the nearest month).

**F** is the number of months in the Performance Period (rounded to the nearest month).

- (b) Any Performance Right that does not lapse remain eligible to vest in accordance with the rules set out in Part B of Schedule 1.

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## **4 Notice to Holder**

The Medibank Board may give a notice to a Holder for the purposes of term 2.2(b) that a Performance Right which has not lapsed has vested if:

- (a) a takeover bid is made to the holders of Medibank Shares, where the bidder obtains a relevant interest in more than 50% of Medibank Shares and the takeover bid becomes or is declared unconditional;
- (b) a statement is lodged with the ASX to the effect that a person has become entitled to not less than 50% of the Medibank Shares (other than as a result of an allotment approved by the Medibank Board);
- (c) the Court sanctions a compromise or arrangement for the purpose of or in connection with a scheme for the reconstruction of Medibank or its amalgamation with any other companies under Part 5.1 of the Corporations Act;
- (d) Medibank passes a resolution for voluntary winding up; or
- (e) an order is made for the compulsory winding up of Medibank.

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## **5 Constitution of Medibank and Trust Deed**

Each Holder agrees to be a shareholder of Medibank, to be bound by Medibank's constitution and to be bound by the terms of the Trust Deed, each as in force from time to time.

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## **6 No Transfers**

Performance Rights may not be transferred.

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## **7 Restricted transactions:**

A Holder must not enter into any transaction, scheme or arrangement:

- (a) that is prohibited or restricted under Medibank's securities trading policy or similar policy in place from time to time; or
- (b) which hedges or otherwise affects the Holder's economic exposure to the Performance Rights before they become Vested Performance Rights.

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## **8 Quotation of Performance Rights and Medibank Shares**

- (a) Performance Rights will not be quoted on the ASX.
- (b) Medibank will make application to the ASX for official quotation of Medibank Shares issued on the exercise of Performance Rights, if other Medibank Shares are listed at that time, as soon as practicable after the Medibank Shares are issued.

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## **9 Participation in future issues**

### **9.1 Participation generally**

A Holder may only participate in new issues of securities to holders of Medibank Shares if the Performance Right has been exercised, if participation is permitted by its terms and the Medibank Shares in respect of the Performance Right have been allotted or transferred to the Holder before the record date for determining entitlements to the new issue.

### **9.2 Bonus issues**

If Medibank makes a bonus issue of shares or other securities pro rata to holders of Medibank Shares (other than an issue in lieu or in satisfaction of dividends or by way of dividend reinvestment) and no Medibank Shares have been allotted or transferred to the Holder in respect of a Performance Right before the record date for determining entitlements to the bonus issue then the rights attaching to that Performance Right will be altered as follows:

- (a) the number of Medibank Shares which the Holder is entitled to be provided with on exercise of the Performance Right (S) is determined by the formula:

$$S = N + (N \times R)$$

where:

**N** = The number of Medibank Shares per Performance Right which the Holder is entitled to be provided with on the record date to determine entitlements to the bonus issue; and

**R** = The number of Medibank Shares (including fractions) offered under the bonus issue for each Medibank Share held; and

- (b) the zero exercise price per Performance Right will not be changed.

### **9.3 Rights issues**

If Medibank makes an offer of ordinary shares pro rata to all or substantially all holders of Medibank Shares (whether or not an issue in lieu or in satisfaction of dividends or by way of dividend reinvestment) then the number of Medibank Shares which the Holder is entitled to be provided with on exercise of the Performance Right will be changed in a manner determined by the Board consistent with the Listing Rules.

### **9.4 Aggregation**

If Performance Rights are exercised simultaneously then the Holder may aggregate the number of Medibank Shares or fractions of Medibank Shares or other securities to which the Holder is entitled to be provided with under those Performance Rights. Fractions in the aggregate number only will be disregarded in determining the total entitlement to subscribe.

### **9.5 Reorganisation**

In the event of any reorganisation of the issued ordinary capital of Medibank before the exercise of a Performance Right, the number of Medibank Shares attaching to each Performance Right will be reorganised in the manner specified below or otherwise to the extent necessary to comply with the Listing Rules applying to a reorganisation of capital at the time of the reorganisation.

If the manner is not specified then the Medibank Board will determine the reorganisation. In any event, the reorganisation will not result in any additional benefits being conferred on Holders which are not conferred on shareholders of Medibank (subject to the same provisions with respect to rounding of entitlements as sanctioned by the meeting of shareholders approving the reorganisation of capital) and in all other respects the terms for the exercise of Performance Right will remain unchanged.

In the case of any reorganisation of Medibank's issued capital, the zero exercise price Performance Right will not be changed.

In the event of any consolidation or sub-division of shares or reduction or cancellation of capital then the reorganisation will be determined by the following formulae:

(a) Consolidation; and

(b) Subdivision:

$$S = C \times \frac{B}{A};$$

(c) Reduction of capital by return of share capital:

$$S = C;$$

(d) Reduction of capital by cancellation of ordinary shares that is either lost or not represented by available assets:

$$S = C;$$

(e) Pro rata cancellation of fully paid ordinary shares (not within (c) or (d)):

$$S = C \times \frac{B}{A};$$

where:

**A** = The total number of Medibank Shares in issue before the capital reorganisation;

**B** = The total number of Medibank Shares in issue after the capital reorganisation;

**C** = The number of Medibank Shares which the Holder is entitled to be provided with on exercise of an Performance Right before the reorganisation;

**S** = The number of Medibank Shares which the Holder is entitled to be provided with on exercise of a Performance Right after the reorganisation.

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## 10 Lapse

A Holder may request that some or all of the Performance Rights held by that Holder lapse.

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## 11 Claw-back

If the Medibank Board determines that a Claw-Back Event has occurred, the Medibank Board may, in its absolute discretion and subject to applicable law including the Listing Rules, take any steps that it determines necessary to ensure that no unfair benefit is or has obtained by the Holder. Those steps may include any of the following:

- (a) determining that some or all of the Holder's Performance Rights should lapse and providing the Holder with notice of that determination;
- (b) a reduction in the Holder's future pay;
- (c) a repayment of the overpaid amount granted under these terms or any other overpaid remuneration that was paid to the Holder by Medibank; or
- (d) another form of alteration of the Holder's remuneration.

If this term applies and the Medibank Board determines, in its absolute discretion and subject to applicable law, to implement any claw-back by a reduction in the Holder's future pay, the Holder's cash salary will be reduced to the extent necessary over the period determined by the Medibank Board to accommodate the amount to be clawed back under this term 11.

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## 12 Indemnity

If a company in the Medibank Group is required to pay an amount or account to an authority for Tax in relation to or as a result of a grant of a Performance Right, then:

- (a) the company may recover an amount in regard to the Tax from the Holder in such manner as the Medibank Board thinks fit; and
- (b) the Holder may be required as a condition of either or both the grant, transfer, vesting or exercise of the Performance Right to do any or all of the following:
  - (i) indemnify the company in respect of the Tax;
  - (ii) make a payment to the company of an amount in respect of the Tax; or
  - (iii) enter into an arrangement with the company to secure a payment of an amount in respect of the Tax to the company including, without limitation, by providing authority that a person may procure the sale on behalf of the Holder of some or all of any Medibank Shares acquired by the Holder in connection with the Performance Right and authorising the payment of the relevant amount to the company.

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## 13 Performance Rights conditional on complying with indemnity

If the Holder fails to comply with an obligation arising under term 12 in relation to a Performance Right then any interest of the Holder in the Performance Right or any Medibank Shares acquired by the Holder in connection with the vesting or exercise of the Performance Right will lapse.

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## 14 Benefits on cessation

In all cases, the treatment of a Performance Right on cessation of employment is subject to applicable law, including in relation to the provision of termination benefits under Part 2D.2 Division 2 of the Corporations Act. Medibank is not bound to exercise any discretion in connection with a Performance Right or provide any associated benefit in connection with a Holder's termination of employment to the extent that the amount of the benefit (together with all other relevant termination benefits) exceeds the amount that is permitted to be paid or given under the Corporations Act without member approval, if such relevant approval has not been obtained. Nothing in these terms requires or will be deemed to require Medibank or any related body corporate to seek the approval of their respective members to enable them to perform an action in connection with the Performance Rights.

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## 15 Advice

Medibank must give notice to each Holder of any adjustment to the number of Medibank Shares which the Holder is entitled to be provided with on exercise of a Performance Right in accordance with the Listing Rules.

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## 16 Notices

Notices may be given by Medibank to the Holder in the manner prescribed by Medibank's Constitution for the giving of notices to members of Medibank and the relevant provisions of the Medibank's Constitution apply with all necessary modification to notices to Holders. In addition, where the Medibank Board considers it appropriate, electronic notices may be given by Medibank to a Holder.

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## 17 Additional terms

- (a) All Performance Rights are granted subject to the terms of the Plan.
- (b) By applying for Performance Rights, the Holder agrees that and authorises Medibank and its subsidiaries to:
  - (i) collect, use, process and transfer personal data of the Holder, including the Tax File Number of the Holder, amongst themselves; and
  - (ii) transfer personal data to any third parties, including any registry company engaged by Medibank to help administer the Plan,for the purposes of implementation, administration and management of a Holder's participation in the Plan or assisting in the implementation, administration and management of the Plan more generally.

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## 18 Definitions and interpretation

### 18.1 Definitions

In these Performance Rights terms, the following words and expressions have the meanings indicated unless the contrary intention appears:

**ASX** means ASX Limited (ABN 98 008 624 691) or the market conducted by it, as the context requires.

**Claw-Back Event** means any of the following:

- (a) the Holder engages or has engaged in fraud, dishonesty or gross misconduct or in any behaviour that may impact on the Medibank Group's reputation or long-term financial soundness;
- (b) the financial results that led to the Performance Rights being granted are subsequently shown to be materially misstated;
- (c) the Holder materially breaches their obligations to any member of the Medibank Group; or
- (d) an event occurs that results in Medibank being required or entitled under law to reclaim remuneration from a Holder; or
- (e) there is a significant and unintended deterioration in the financial performance of the Medibank Group or any member of the Medibank Group resulting directly or indirectly from an act or omission of the Holder.

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

**Good Leaver** means, in respect of a Performance Right held by a Holder who ceases to be employed by the Medibank Group, where the Medibank Board determines that the Holder of the Performance Right ceased to be employed by the Medibank Group as a result of death, serious disability, permanent incapacity or redundancy.

**Holder** means the holder of a Performance Right.

**Listing Rules** means the Listing Rules of ASX.

**Medibank** means Medibank Private Limited (ABN 47 080 890 259).

**Medibank Board** means all or some of the directors of Medibank acting as a board or a committee or authorised delegate of those directors.

**Medibank Group** means Medibank and each body corporate that is a subsidiary of Medibank under Division 6 of Part 1.2 of the Corporations Act.

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

**Performance Period** means the period commencing [●] and ending [●].

**Performance Right** means a right granted under the Plan to acquire Medibank Shares.

**Plan** means the Medibank Private Limited Performance Rights Plan.



**Tax** means any tax, levy, impost, charge or duty (including stamp and transaction duties) imposed by any authority together with any related interest, penalties, fines and expenses in connection with them.

**Trust Deed** means the deed by which any trust established by Medibank to assist in the administration of the Plan is constituted.

**Trustee** means the trustee from time to time of any trust established by Medibank to assist in the administration of the Plan.

**Vested Performance Right** means a Performance Right that has vested in accordance with term 2.2.

## **18.2 Interpretation**

In these terms unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) reference to a rule, a statute or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (c) a reference to a person includes a reference to the person's legal personal representatives, executors, administrators and successors, a firm or a body corporate.

## **18.3 Headings**

Headings are inserted for convenience and do not affect the interpretation of these terms.

# SCHEDULE 1

## Part A

- 1 Mechanism for calculating the number of Shares to be provided on exercise of a Performance Right

***[To be inserted]***

## Part B

- 1 Performance Conditions

***[To be inserted as applicable]***