
***Covata Limited Loan Share Plan
For Former Executive Directors
Rules***

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Covata Limited Loan Share Plan For Former Executive Directors Rules

1. Definitions and interpretation

1.1 Definitions

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

Acquisition Price means, in respect of a Performance Share, the amount payable (if any) for that Performance Share.

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

Application means, in respect of a Performance Share, an application for the grant of that Performance Share made by an Eligible Employee in response to an Invitation.

Application Form means an application form attached to, or enclosed with, an Invitation.

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

ASX Holding Lock has the same meaning as “Holding Lock” in Chapter 19 of the Listing Rules.

Bad Leaver means a Participant who ceases to be an Eligible Employee in any of the following circumstances:

- (a) the Participant’s employment is terminated or the Participant is dismissed from office, due to:
 - (i) serious and wilful misconduct (including, without limitation, fraud or dishonesty);
 - (ii) material breach of the terms of any contract of employment or office entered into by the relevant member of the Company and the Participant;
 - (iii) gross negligence; or
 - (iv) other conduct justifying termination of employment or office without notice either under the Participant’s contract of employment or office, or at common law;
- (b) the Participant resigns from his or her employment or office; or
- (c) the Participant is ineligible to hold his or her office for the purposes of Part 2D.6 of the Corporations Act.

Board means the board of directors of the Company, a committee appointed by the board of directors of the Company as constituted from time to time, or, in respect of a particular matter, any person who is provided with delegated authority by the board of directors of the Company in respect of that particular matter from time to time.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in New South Wales, Australia.

CAPL means Covata Australia Pty Limited (ACN 156 175 245).

Change of Control Event means:

- (a) a Takeover Bid is made;
- (b) the Company passes a resolution for the voluntary winding-up of the Company;
- (c) an order is made for the compulsory winding up of the Company; or
- (d) the sale of all or substantially all of the business and assets of the Group,

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

Company means Covata Limited (ACN 120 658 497).

Consideration Share means a Share issued to a Participant by the Company under the terms of the Takeover in consideration for a share in Cocoon Data Holdings Limited (ACN 127 993 300) that was granted under the terms of the Cocoon Data Holdings Limited loan share plan, as adopted in or around October 2013

Constitution means the constitution of the Company.

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

Eligible Employee means a director or proposed executive or non-executive director of any member of the Group who holds or previously held a share in Cocoon Data Holdings Limited (ACN 127 993 300) that was granted under the terms of the Cocoon Data Holdings Limited loan share plan, as adopted in or around October 2013 (or on whose behalf such a share is or was held by a nominee under that plan). For the avoidance of doubt, if there is a change in the employing entity of a Participant from one member of the Group to another member of the Group or if the Participant ceases holding office as a director of one entity within the Group but remains or becomes a director of another entity in the Group (whether as an executive or non-executive director), the Participant will be considered, for the purposes of this Plan, to have continued to be an Eligible Employee at all relevant times.

Good Leaver means a Participant who ceases to be an Eligible Employee and:

- (a) does not meet the Bad Leaver criteria; or
- (b) who meets the Bad Leaver criteria but the Board has determined in writing that they be treated as a Good Leaver.

Grant Date means, in relation to a Performance Share, the date on which that Performance Share is issued or transferred to a Participant under these Rules.

Group means the Company and its Subsidiaries.

Invitation means an invitation to an Eligible Employee to apply for the grant of one or more Performance Share made in accordance with clause 3.2 of these Rules. In relation to Consideration Shares, the terms of a Participant's invitation for those Consideration Shares will include all terms agreed between the Participant and the Company in respect of their Consideration Shares on or around the date of the Takeover.

Liquidity Event means:

- (a) a Change of Control Event; or
- (b) any other event determined by the Board in its absolute discretion to constitute a "Liquidity Event" for the purposes of these Rules.

Listing Rules means the listing rules, market rules and operating rules of a financial market in respect of which the Company's shares are quoted or are the subject of an application for quotation.

Loan means any loan made by CAPL (or any other entity nominated by the Company) to a Participant to enable the Participant to fund the aggregate Acquisition Price for the relevant Performance Shares in accordance with the Loan Agreement.

Loan Agreement means any agreement between CAPL (or any other entity nominated by the Company) and a Participant under which CAPL (or the other entity nominated by the Company) will make a Loan to the Participant.

Loan Balance means, in respect of a Participant at a given time, the amount of their Loan less any Repayments made by or on behalf of the Participant in accordance with the Loan Agreement before that time.

Market Value has the meaning given to that term in the Invitation for the relevant Participant.

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

Performance Share means a Share granted to a Participant pursuant to this Plan (for the avoidance of doubt, a Consideration Share is a Performance Share).

Plan means the "Covata Limited Loan Share Plan".

Repayments means the total of all amounts paid in reduction of a Loan.

Rules means the rules of the Plan which are set out in this document.

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

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

Share Trading Policy means any share trading policy of the Company, as amended from time to time.

Subsidiary has the same meaning as in Division 6 of Part 1.2 of the Corporations Act and for the purposes of these Rules includes Cocoon Data Holdings Limited [ACN 127 993 300] and its subsidiaries.

Takeover means the Company's takeover of Cocoon Data Holdings Limited (ACN 127 993 300) under the Corporations Act in or around August 2014.

Takeover Bid has the meaning given to that term in the Corporations Act

Vesting Condition means, in relation to a Performance Share, any conditions to vesting of that Performance Share that are set out in the Invitation for that Performance Share.

Vesting Notice means, in relation to a Performance Share, the notice given by or on behalf of the Company to a Participant informing him or her that all Vesting Conditions in relation to that Performance Share have been satisfied or waived in accordance with these Rules.

1.2 Interpretation

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

- (a) the singular includes the plural and vice versa;
- (b) a gender includes all genders;
- (c) a reference to a document, agreement, plan or rules includes that document, agreement, plan or rules as novated, altered, supplemented, replaced or amended from time to time;
- (d) headings are for convenience only and do not affect the interpretation of these Rules;
- (e) a reference to any thing (including any amount) includes any part of that thing and a reference to a group of things or persons includes each thing or person in that group;
- (f) a reference to any legislation includes any modification or replacement of it and all regulations and statutory instruments issued under it and a reference to any provision of any legislation includes any modification or substitution of it;
- (g) a reference to these Rules includes all recitals, annexures, addendums and schedules to these Rules;
- (h) a reference to a person includes a reference to the person's executors, administrators and successors or a body corporate including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (i) the expression "person" includes an individual, the estate of an individual, the legal personal representative of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (j) a monetary amount is a reference to Australian Dollars;
- (k) in these Rules any reference to include means to include without limitation; and
- (l) where any word is given a defined meaning, any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning.

1.3 **Inconsistencies**

Notwithstanding anything to the contrary in any employment or services agreement of the Participant with any member of the Group (**Engagement Agreement**), but subject at all times to these Rules, if there is any inconsistency between these Rules and an Engagement Agreement, these Rules prevail.

2. *Introduction*

2.1 **Purpose**

The purpose of the Plan is to:

- (a) assist in the reward, retention and motivation of Eligible Employees; and
- (b) align the interests of Eligible Employees with shareholders of the Group.

2.2 **Commencement**

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

2.3 **Rules are binding**

The Company and each Participant are bound by these Rules.

3. *Eligibility and grant*

3.1 **Eligibility**

The Board may from time to time determine that an Eligible Employee may participate in the Plan.

3.2 **Invitation**

- (a) Following determination that an Eligible Employee may participate in the Plan, the Board may make an Invitation to the Eligible Employee on any number of occasions.
- (b) An Invitation to an Eligible Employee to apply for Performance Shares may be made on such terms and conditions as the Board decides from time to time, including as to:
 - (i) the number of Performance Shares for which that Eligible Employee may apply;
 - (ii) the Grant Date;
 - (iii) the Acquisition Price or how it is calculated, and how it is to be paid by that Eligible Employee;
 - (iv) any Vesting Conditions; and
 - (v) any other supplementary terms and conditions.

3.3 **Loans**

- (a) The Board may, at the time an Eligible Employee is invited to participate in the Plan, invite the Eligible Employee to apply for a Loan to fund the Acquisition Price of the relevant Performance Shares.
- (b) The application for a Loan by an Eligible Employee must be in the form prescribed by the Board from time to time and must, unless expressly provided otherwise in the Invitation, be made solely by the Eligible Employee and in the name of the Eligible Employee.

3.4 **Form of Application**

The Invitation to an Eligible Employee must be accompanied by an Application Form and the Ancillary Documentation (if any).

3.5 **Eligible Employee agrees to be bound**

Each Eligible Employee is, by submitting a completed Application Form, deemed to have agreed to be bound by:

- (a) the terms of the Invitation and the Application Form;
- (b) the Ancillary Documentation (if any);
- (c) these Rules; and
- (d) the Constitution.

3.6 **Who may apply**

On receipt of an Invitation, an Eligible Employee may apply for the Performance Shares the subject of the Invitation by sending the completed Application Form to the Company (or its designated officer as set out in the Application Form) by the time and date specified in the Invitation, unless otherwise determined by the Board.

3.7 **Acceptance of Application**

The Board may accept an Application from an Eligible Employee in whole or in part. The Company may not grant a Performance Share to an Eligible Employee unless it has received a duly signed and completed Application Form together with all applicable Ancillary Documentation from that Eligible Employee. The Application Form and, where applicable, the Ancillary Documentation must be in the form included with the Invitation, and may not be made on the basis that it is subject to any terms and conditions other than those specified in the Invitation.

3.8 **When applications will not be accepted**

An Application will not be accepted, unless otherwise determined by the Board, if at the time the Company received the duly signed and completed Application Form together with all Ancillary Documentation:

- (a) the applicant is not an Eligible Employee;

- (b) the applicant has given all relevant members of the Group notice of his or her resignation as an employee or officer;
- (c) the applicant has been given notice of termination of employment or office from all relevant members of the Group, or if, in the opinion of the Board, the applicant has tendered his or her resignation(s) to avoid such termination of employment or office; or
- (d) the Board has determined that the applicant is no longer eligible to participate in the Plan.

3.9 **Right to nominate**

- (a) Unless otherwise expressly permitted in the Invitation, an Eligible Employee may only submit an Application in the Eligible Employee's name and not on behalf of any other person. If an Eligible Employee is permitted in the Invitation, the Eligible Employee may nominate another person to be issued or transferred the Performance Shares the subject of the Invitation. The nominee must execute any documents required by the Company in order to receive the grant.
- (b) If Performance Shares are granted to a person nominated by an Eligible Employee, then to the extent necessary to give effect to the intent of these Rules and any Loan associated with those Performance Shares, the Eligible Employee will be continue to be treated as the Participant.

3.10 **Multiple Invitations**

The Board may invite an Eligible Employee to apply for any number of Performance Shares, notwithstanding that the Eligible Employee has previously been invited to apply for Performance Shares.

4. Delivery of Shares

4.1 **Company to grant Shares**

- (a) Following receipt of both the relevant documentation under clause 3.7 and the Acquisition Price for the relevant Performance Shares, the Company will, to the extent that it has accepted such Application, procure that the relevant number of Performance Shares are:
 - (i) acquired for and on behalf of the Eligible Employee;
 - (ii) subscribed for and on behalf of the Eligible Employee and issued to that Eligible Employee; or
 - (iii) a combination of (i) and (ii) as determined by the Board.
- (b) The Company will:
 - (i) if clause 4.1(a)(i) is applicable, arrange for the transfer to that Eligible Employee of the relevant number of Performance Shares; or
 - (ii) if clause 4.1(a)(ii) is applicable, allocate and issue to that Eligible Employee the relevant number of Performance Shares,

subject at all times to the terms and conditions set out in the Invitation, these Rules and (where applicable) the Ancillary Documentation.

4.2 Performance Shares to rank pari passu

All Performance Shares granted to a Participant in accordance with clause 4.1 will rank pari passu in all respects with the shares of the same class of the Company for the time being on issue except to the extent that rights attach to shares of that class by reference to a record date prior to the date of issue or transfer of the Performance Shares.

4.3 Listing

If Performance Shares granted under the Plan are in the same class as those shares of the Company which are listed on the ASX, the Company will apply for quotation of the Performance Shares issued (or any unquoted Performance Shares transferred) within the time required by the Listing Rules after the Grant Date.

5. Vesting

5.1 Vesting

A Performance Share will vest when a Vesting Notice in respect of that Performance Share is given to the Participant.

5.2 Waiver of Vesting Condition

A Vesting Condition for a Performance Share may, subject to any applicable laws and regulations, be waived by the Board by express written notice to the relevant Participant and on such terms and conditions as determined by the Board and set out in that notice.

5.3 Re-designation of Performance Shares as ordinary shares

- (a) If instructed to do so in writing by the Board, each Participant will take all necessary actions and enter into all necessary documentation to give effect to the re-designation of a vested Performance Share (whether held by that Participant or any other Participant) that has vested in accordance with this clause 5 to be an ordinary share in the capital of the Company.
- (b) For the avoidance of doubt, this re-designation shall not constitute a variation of class rights of any Performance Share or any ordinary share in the capital of the Company as the Performance Shares have the same rights and rank pari passu with such ordinary shares.

6. Disposal Restrictions on Shares

6.1 Disposal restrictions

Subject to clause 6.3, unless otherwise permitted by the Board by express written notice or by these Rules, a Performance Share held by or on behalf of a Participant must not be disposed of or otherwise dealt with by the Participant, until:

- (a) that Performance Share has vested in accordance with clause 5;
- (b) the Loan Balance relating to that Performance Share has been repaid or discharged in accordance with the terms of the Loan Agreement or arrangements for such repayment or discharge have been made to the satisfaction of the Board; and

- (c) any disposal restriction relating to that Performance Share which is set out in the Invitation or these Rules has expired,

and the Board may implement any procedure it deems appropriate to ensure the compliance by the Participant with this clause, including imposing an ASX Holding Lock on the Performance Shares, using an employee share trust to hold the Performance Share, or refusing to register a transfer of the Performance Share.

6.2 Participant's undertaking

For so long as a Performance Share is subject to any disposal restrictions under these Rules, the Participant will not, other than in respect of the Loan Agreement:

- (a) transfer, encumber, deal with or otherwise dispose of, or have a Security Interest granted over that Performance Share; or
- (b) take any action or permit another person to take any action to remove or circumvent the disposal restrictions without the express written consent of the Company.

6.3 Expiry of disposal restrictions

- (a) Subject at clause 6.3(b), upon the expiry of all disposal restrictions over a Performance Share under the Rules, the Company will take all action necessary to ensure that the Participant may deal with that Performance Share.
- (b) Notwithstanding the expiry of all disposal restrictions, the Participant must continue to comply with the Constitution and the Share Trading Policy at all times.

6.4 Share entitlements

For the avoidance of doubt, but subject at all times to any applicable Loan Agreement, the imposition of disposal restrictions on a Performance Share held by a Participant will not affect or limit the rights attaching to that Performance Share during the relevant disposal restriction period. If an employee share trust arrangement is implemented in respect of this Plan, the Board may implement such procedures it deems appropriate to give effect to the intent of this clause 6.4.

7. *Good Leavers and compulsory divestiture*

7.1 Good Leaver

- (a) If a Participant becomes a Good Leaver:
 - (i) the Participant will retain all of their vested Performance Shares; and
 - (ii) all of their unvested Performance Shares will be compulsorily divested on a date determined by the Board, unless the Board provides express written consent that the Participant may retain any or all of their unvested Performance Shares. If the Board determines that a Participant may retain any or all of their unvested Performance Shares, those shares will be subject to the terms and conditions that the Participant held those shares prior to becoming a Good Leaver, or such other terms and conditions as the Board sees fit.

- (b) Subject to the Corporations Act and any other applicable laws and regulations, the Board may determine that some or all of the Performance Shares retained by a Good Leaver are deemed to have vested.

7.2 **Bad Leaver**

If the Participant becomes a Bad Leaver:

- (a) the Participant will retain all of their vested Performance Shares; and
- (b) all of their unvested Performance Shares will be compulsorily divested on a date determined by the Board.

7.3 **Failure to satisfy Vesting Conditions**

Unless otherwise stated in the Invitation or determined by the Board, all of the Participant's Performance Shares will be compulsorily divested on a date that the Board determines (acting reasonably) that one or more of the applicable Vesting Conditions have not been met or cannot be met by the relevant date.

7.4 **Fraudulent or dishonest actions**

- (a) Unless varied by prior written agreement with the Board, where, in the opinion of the Board, a Participant

- (i) acts fraudulently or dishonestly; or
- (ii) has wilfully breached his or her obligations to any member of the Group,

then the Board may:

- (iii) deem a Performance Share held by a Participant to be compulsorily divested – in which event the Participant is deemed to have agreed to sell that Performance Share to the Company pursuant to an Employee Share Scheme Buy-Back (as defined in the Corporations Act) for such consideration as determined by the Board or be deemed to have appointed any officer of the Company as their agent to sell that Performance Share on market; or

- (iv) where one or more Performance Shares have been sold by the Participant, require the Participant to pay all or part of the net proceeds of that sale to the Company.

- (b) Unless varied by prior agreement with the Board, where, in the opinion of the Board, a Participant's Performance Share has vested as a result of the fraud, dishonesty, or breach of obligations of another person and, in the opinion of the Board, the Performance Share would not otherwise have vested, the Board may determine that the Performance Share has not vested and, subject to applicable laws and regulations, determine:

- (i) that the relevant Performance Share has not yet vested and that the Vesting Conditions applicable to that Performance Share will be reset in the manner determined by the Board;
- (ii) that the Performance Share be compulsorily divested by the Participant (in the manner set out in clause 7.4(a)(iii) and, at the discretion of the Board, the relevant Performance

Shares are reissued to the Participant subject to new Vesting Conditions in place of the compulsorily divested Performance Shares; or

- (iii) any other treatment in relation to Performance Shares to ensure no unfair benefit is obtained by a Participant as a result of such actions of another person.

7.5 Insolvency

Unless otherwise stated in the Invitation or determined by the Board, a Performance Share held by a Participant in accordance with these Rules will be compulsorily divested immediately on the date that the Participant becomes insolvent under administration (as defined in section 9 of the Corporations Act).

7.6 Failure to repay Loan Balance

Unless otherwise determined by the Board, if a Participant has not paid some or all of the Loan Balance on the due date for repayment, all of the Participant's Performance Shares acquired with that Loan will be compulsorily divested on a date that the Board determines.

7.7 Breach of voting restrictions

In the event that a Participant votes any of its Performance Shares in a manner that is inconsistent with the irrevocable power of attorney and proxy (in the form set out in the Invitation in respect of that Participant or such other form as agreed by the Company), all of that Participant's Performance Shares will be compulsorily divested in accordance with clause 8 on a date determined by the Board on such other terms and conditions as the Board sees fit.

7.8 Discretion to determine that the Performance Shares are not compulsorily divested

Notwithstanding clauses 7.1 to 7.7 (inclusive), the Board may decide (on any conditions which it thinks fit) that some or all of the Participant's Performance Shares will not be compulsorily divested under the relevant clauses, but rather, such Performance Shares may be retained by the Participant or compulsorily divested by the Company at a later time and subject to the conditions it may specify by notice to the Participant.

7.9 Application of Part 2D.2 Division 2 of the Corporations Act

- (a) This clause 7.9 applies to all termination payments to which Part 2D.2 Division 2 of the Corporations Act applies.
- (b) Notwithstanding any other provision of these Rules, in the absence of shareholder approval, the Company is not required to provide, or procure the provision, of any benefit under these Rules which is not permitted by Part 2D.2 Division 2 of the Corporations Act.
- (c) Any benefits required to be provided to a Participant in accordance with these Rules will, by operation of this clause, be reduced to ensure compliance with Part 2D.2 of the Corporations Act and the provision of such reduced benefit shall constitute full satisfaction of the obligations of each member of the Group. In the event of overpayment to a Participant, the Participant must, on receiving written notice from the Board, immediately repay any monies or benefits specified in such notice to ensure compliance with Part 2D.2 of the Corporations Act.
- (d) Where clause 7.9(b) applies the Company may seek or not seek shareholder approval in its

discretion.

8. *Effect of Compulsory Divestiture*

8.1 Compulsory Divestiture of Performance Shares

In order to effect a compulsory divestiture of a Participant's Performance Shares under clause 7, the Participant is deemed to have undertaken one or several of the following methods of compulsory divestiture at the discretion of the Board:

- (a) agreed to a buy-back of the relevant Performance Shares by the Company for an amount equal to that part of the Participant's Loan Balance attributable to those Performance Shares (**Compulsory Divestiture Value**);
- (b) appointed an officer of the Company as their agent to sell those Performance Shares for an amount in aggregate equal to the Compulsory Divestiture Value; and
- (c) otherwise agreed to deal with those Performance Shares in the manner required by the Board in its discretion provided that the consideration for the relevant Performance Shares shall be an amount in aggregate equal to the Compulsory Divestiture Value,

and the Participant must take all necessary steps (and sign all necessary documents) to give effect to the relevant method(s) of compulsory divestiture.

8.2 Application of proceeds on the compulsory divestiture of Performance Shares

If a Participant compulsorily divests Performance Shares pursuant to clause 7, the proceeds of such compulsory divestiture must be used to repay that part of the Participant's Loan Balance attributable to those Performance Shares. Following such repayment, the Participant will have no further obligations with respect to that part of the Loan relating to the divested Performance Shares.

9. *Liquidity Event*

If a Liquidity Event occurs, or the Board determines such event is likely to occur:

- (a) notwithstanding any other provision of these Rules, the Board may in its absolute discretion determine the manner in which any or all of the Participant's Performance Shares (whether vested or unvested) will be dealt with which may include, without limitation, in a manner that allows the Participant to participate in and/or benefit from any transaction arising from or in connection with the Liquidity Event and/or the re-designation of any or all of the Participant's Performance Shares in accordance with clause 5.3; and
- (b) if required, the Participants must do and procure all things the Board considers necessary or appropriate to facilitate the variation of the rights of their Performance Shares such that, following such variation, they are ordinary shares in the capital of the Parent.

10. *Bonus issue and rights issue*

10.1 Bonus issue

- (a) If Shares are issued by the Company pro rata to shareholders generally by way of bonus issue

(other than an issue in lieu of dividends or by way of dividend reinvestment) the number of Performance Shares held by a Participant will be increased in the same ratio as Shares.

- (b) Bonus shares issued to a Participant will be subject to the same Vesting Conditions as the Performance Shares in respect of which the bonus shares were issued and will be subject to these Rules.

10.2 **Rights Issue**

If the Company announces a rights issue:

- (a) the Company will notify each Participant of the rights issue, and offer each Participant an opportunity to exercise those rights in respect of Performance Shares;
- (b) if the Participant wants to exercise the relevant rights, they must give written direction to the Company to this effect and pay the price to the Company to acquire the rights by the time and in the manner specified in the notice referred to in clause 10.2(a);
- (c) unless the Participant agrees otherwise, any Shares allotted to the Participant as a result of the Participant exercising such rights in accordance with this clause 10.2 are not subject to Vesting Conditions and will not be subject to these Rules; and
- (d) if the rights are renounceable and a Participant declines, or does not respond to, the offer made by the Company under clause 10.2(a), the Company may sell or otherwise deal with the Participant's rights.

10.3 **Fairness in application**

In the application of this clause 10, the Board may as far as possible (subject to the Corporations Act, the Listing Rules and any other applicable laws and regulations) make whatever adjustments it deems necessary or desirable to ensure that the consequences of that application are fair as between the Participants and the holders of other securities in the Company.

11. **Buy-Back**

11.1 **General buy-back**

The Company may undertake a buy-back of Performance Shares in the following circumstances:

- (a) as provided for in these Rules (including, without limitation, pursuant to clause 8);
- (b) as provided for in the Invitation;
- (c) as provided for in the rights attaching to the Performance Shares; and
- (d) as otherwise agreed from time to time by the Company and the Participant,

provided that at all times the buy back is undertaken in accordance with applicable laws and regulations.

11.2 **Buy-Back following vesting**

If a Performance Share has vested in accordance with clause 5, the Company may at any time buy-back

that Performance Share for Market Value.

11.3 Further actions

- (a) The Company may do such things and enter such arrangements with the Company's share registry or otherwise as it considers necessary to implement any buy-back under this clause 11.
- (b) Each Participant agrees to do and procure all things the Company considers necessary in order to fully implement a buy-back under this clause 11, insofar as it relates to Performance Shares held by that Participant.

12. Cancellation

- (a) Where the Performance Shares are to be cancelled by the Company, the Company may do such things and enter such arrangements with the Company's share registry or otherwise as it considers necessary to implement any such cancellation.
- (b) Each Participant agrees to do and procure all things as the Company considers necessary in order to fully effect a cancellation under this clause 12, insofar as it relates to Performance Shares held by that Participant.

13. Administration of the Plan

13.1 Board administration

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

13.2 Board powers and discretions

Any power or discretion which is conferred on the Board by these Rules may be exercised in its sole and absolute discretion. The Board does not, in exercising any power or discretion under these Rules, owe any fiduciary or other obligations to any Eligible Employee or Participant.

13.3 Delegation of Board powers and discretions

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

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

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

13.4 Documents

The Company may from time to time require an Eligible Employee invited to participate in the Plan or

a Participant or a person nominated by an Eligible Employees under clause 3.9 (where applicable) to complete and return such other documents as may be required by law to be completed by that Eligible Employee or Participant, or such other documents which the Company considers should, for legal, taxation and/or administrative reasons, be completed by that Eligible Employee, Participant or person in order to give effect to the intent of the Plan.

13.5 Decisions final

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

14. Trust

The Board may, in its discretion, use an employee share trust or other mechanism for the purposes of holding and/or delivering any Performance Shares under these Rules on such terms and conditions as determined by the Board in its absolute discretion. For the avoidance of doubt, the Board may do all things necessary for the establishment, administration, operation and funding of an employee share trust.

15. Irrevocable Power of Attorney

In order to ensure compliance with these Rules, each Participant must grant an irrevocable power of attorney (in the form set out in the Invitation or such other form as agreed by the Company) to any person nominated from time to time by the Board.

16. Restrictions on and amendments to the Plan

16.1 Compliance with applicable laws and regulations

Notwithstanding these Rules or any terms of a Performance Share, no Performance Share may be offered, issued, transferred or vested if to do so would contravene any applicable laws or regulations.

16.2 Amendment of Plan

- (a) Subject to clause 16.2(b), the Board may:
 - (i) at any time amend any provisions of these Rules, including (without limitation) the terms and conditions upon which any Performance Shares have been granted under the Plan; and
 - (ii) determine that any amendments to these Rules be given retrospective effect, immediate effect or future effect.
- (b) No amendment to any provision of these Rules may be made if the amendment materially reduces the rights of any Participant as they existed before the date of the amendment, other than an amendment:
 - (i) introduced primarily:

- (A) for the purposes of complying with or conforming to present or future legislation governing or regulating the Plan or like plans;
 - (B) to correct any manifest error or mistake;
 - (C) to allow the implementation of an employee share trust arrangement pursuant to clause 14;
 - (D) to enable the Plan or any member of the Group to comply with its constituent documents or any other applicable laws and regulations; and/or
 - (E) to take into consideration possible adverse taxation implications in respect of the Plan including changes to applicable taxation legislation or the interpretation of that legislation by a court of competent jurisdiction or any rulings from taxation authorities administering such legislation; or
- (ii) agreed to in writing by all Participant(s).
- (c) As soon as reasonably practicable after making any amendments to any provisions of these Rules, the Board will give notice of the amendment to each 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.

17. Duration

17.1 Termination

The Plan continues in operation until the Board decides to end it.

17.2 Suspension

The Board may from time to time suspend the operation of the Plan for a fixed period or indefinitely, and may end any suspension.

17.3 Effect of Termination / Suspension

If the Plan is terminated or suspended for any reason, that termination or suspension must not prejudice the accrued rights of the Participants.

18. Miscellaneous

18.1 Rights of Participants

Nothing in these Rules:

- (a) confers on any person any right or expectation to become a Participant, or the right to be invited to apply for, or be offered or to receive any Performance Shares;
- (b) confers on any person the right to continue as an employee or officer of any member of the Group (as the case may be);
- (c) affects the rights of any member of the Group to terminate the employment or office of an

Eligible Employee;

- (d) forms part of any contract of service between an Eligible Employee and any member of the Group;
- (e) may be used to increase rights of compensation or damages in any action brought against a member of the Group in respect of any termination of employment or office;
- (f) confers any legal or equitable right on an Eligible Employee whatsoever to take action against any member of the Group in respect of their employment or office; or
- (g) confers on an Eligible Employee any rights to compensation or damages in consequence of the termination of their employment or office by any member of the Group for any reason whatsoever including ceasing to have rights under the Plan as a result of such termination.

18.2 Non-exclusivity

- (a) This Plan is not the sole means by which all members of the Group intend to provide incentives to Eligible Employees. Nothing in this Plan is intended to restrict any member of the Group from remunerating or otherwise rewarding employees or officers of any member of the Group outside the Plan.
- (b) Participation in the Plan does not affect, and is not affected by, participation in any other incentive or other scheme operated by any member of the Group unless the terms of that other scheme provide otherwise.

18.3 Notice

- (a) Any notice or other communication under or concerning the Plan is validly given:
 - (i) to a Participant, if delivered personally to the addressee or sent by prepaid post to the Participant's last known residential address, or sent to the Participant by facsimile or email at the Participant's place of work; and
 - (ii) to the Company, if delivered or sent by prepaid post addressed to the company secretary at the Company's registered office (or any other address the Board specifies), or as otherwise notified by the Company from time to time.

- (b) Delivery of notices

Subject to clause 18.3(a), a notice or other communication will be deemed to have been served:

- (i) if delivered by hand, at the time of delivery;
- (ii) if sent by facsimile or electronic mail, on receipt of a successful transmission notice, return receipt or such other confirmation by which the sender can reasonably verify delivery; or
- (iii) if posted, and provided it is properly addressed and stamped, 48 hours after mailing in Australia and 7 days after mailing outside Australia.

18.4 Further assurances

Each party must do all things reasonably necessary to give full effect to this Plan and the transactions contemplated by this Plan.

18.5 Duties and taxes

The Company:

- (a) is not responsible for any duties, taxes or other government levy or impost which are or may become payable by any person other than the Company on the acquisition, issue, vesting or transfer of a Performance Share, or any other dealing with a Performance Share; and
- (b) may make any withholding or payment which it is required by law to make in connection with the Plan or the grant, issue, or transfer of a Performance Share, or in connection with the vesting of a Performance Share; and
- (c) when transferring, issuing or vesting a Performance Share to a Participant under the Plan, may require the Participant to provide the Company with an amount of money which the Board estimates is necessary to meet the Participant's liability (if any) to pay stamp duty or other taxes in respect of the transfer. Where the Company is provided with funds for that purpose, it must apply the funds in payment of the stamp duty or other tax, arrange for registration of the transfer on the Participant's behalf and return any excess funds to the Participant.

18.6 No representation or warranty

- (a) The Company makes no representation or warranty as to the value of Performance Shares, or with respect to any tax, legal or financial matters affecting any Eligible Employee or Participant in connection with the Plan.
- (b) Neither the Company, nor any of its directors, officers or employees are liable for anything done or omitted to be done by such person or any other person with respect to price, time, quantity or other conditions and circumstances of the issue or acquisition of Performance Shares hereunder, with respect of any fluctuations in the market price of Performance Shares or Shares, or in any other manner related to the Plan.

18.7 Data protection

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

- (a) administering and maintaining employee and Participant records;
- (b) providing information to members of the Group, registrars, brokers or third party administrators of the Plan (if any) or advisers of the Board; and
- (c) providing information to corporate advisers or potential future third party purchasers in connection with a sale of shares in a member of the Group, or the business and assets of a member of the Group.

18.8 Construed against a party

No provision or expression in these Rules is to be construed against a party on the basis that the party

(or its advisers) was responsible for the drafting of these Rules.

18.9 Rounding

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

18.10 Governing law

- (a) This Plan is governed by the laws of New South Wales, Australia.
- (b) Each Participant submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought in connection with these Rules.

18.11 Waiver of rights

- (a) A waiver of any right, power, authority, discretion or remedy arising upon a breach of or default under these Rules must be in writing and signed by the party granting the waiver, and may be subject to such terms and conditions as determined by the party granting the waiver.
- (b) A failure or delay in the exercise, or partial exercise, of a right, power, authority, discretion or remedy arising from a breach of or default under these Rules, does not prevent the exercise of or result in a waiver of that right, power, authority, discretion or remedy.
- (c) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of these Rules or default under these Rules as constituting a waiver of that right, power, authority, discretion or remedy.
- (d) A party may not rely on any conduct of another party as a defence to the exercise of a right, power, authority, discretion or remedy by that other party.
- (e) A waiver is only effective in the specific instance and for the specific purpose for which it is given and subject to any specific terms and conditions as specified in the waiver.
- (f) This clause may not itself be waived except in writing.