



# Performance Rights Plan Rules

July 2015



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## 1. Definitions and interpretation

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### 1.1 Definitions

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

**Ancillary Documentation** means all documentation which the Board specifies in an Invitation that an Eligible Participant must enter into and/or provide in connection with an Application for a Performance Right.

**Application** means, in respect of a Performance Right, an application for that Performance Right made by an Eligible Participant in response to an Invitation.

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

**Associated Body Corporate** has the meaning given to that term in ASIC Class Order 14/1000.

**ASX** means the 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 Participant in any of the following circumstances:

- (a) the Participant’s Engagement Arrangement is terminated due to:
  - (i) the Participant’s serious and wilful misconduct (including, without limitation, fraud or dishonesty);
  - (ii) the Participant’s material breach of their Engagement Arrangement; or
  - (iii) other conduct justifying termination of the Participant’s Engagement Arrangement without notice, or at common law;
- (b) the Participant terminates their Engagement Arrangement of their own volition; 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 Brisbane, Australia.

**Cash Settled** has the meaning given in clause 8.1(b) and **Cash Settlement** shall be construed accordingly.

**Certificate** means a certificate evidencing the grant of a Performance Right.

**Change of Control Event** means:

- (a) a change in Control of the Company;
- (b) where members of the Company approve any compromise or arrangement for the purpose of, or in connection with, a scheme for the reconstruction of the Company or its amalgamation with any other body corporate or bodies corporate (other than a scheme that does not involve a change in the ultimate beneficial ownership of the Company), which will, upon becoming effective, result in any person (either alone or together with its associates) owning more than fifty per cent (50%) of the issued capital of the Company;
- (c) where a person becomes the legal or the beneficial owner of, or has a relevant interest in, more than fifty per cent (50%) of the issued capital of the Company;
- (d) where a person becomes entitled to acquire, hold or has an equitable interest in more than fifty per cent (50%) of the issued capital of the Company;
- (e) where a takeover bid is made to acquire more than fifty per cent (50%) of the issued capital (or such lesser number of shares that when combined with the shares that the bidder (together with its associates) already owns will amount to more than 50% of the issued capital of the Company) and the takeover bid becomes unconditional and the bidder (together with its associates) has a relevant interest in more than 50% of the issued capital of the Company;
- (f) a resolution is passed for the voluntary winding-up of the Company;
- (g) an order is made for the compulsory winding up of the Company; or
- (h) any other event determined by the Board in good faith to constitute a "Change of Control Event" for the purposes of these Rules,

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

**Company** means Kina Securities Limited (ARBN 606 168 594).

**Constitution** means the constitution of the Company.

**Control** has the meaning given to that term in the *Corporations Act 2001* (Cth).

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

**Eligible Participant** means a person that:

- (a) is a permanent full time or part time employee or executive director of a member of the Group; and
- (b) has been determined by the Board to be eligible to participate in the Plan from time to time.

**Employee Share Scheme** has the meaning given in the *Corporations Act*.

**Engagement Arrangement** means in respect of an employee or executive director of a member of the Group, the terms under which the relevant member of the Group has employed that person.

**Equity Settled** has the meaning given in clause 3.2(b)(viii).

**Expiry Date** means, in relation to a Performance Right, the 'expiry date' which is specified in the Invitation (if any).

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

- (a) who 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 Right, the date on which that Performance Right is granted to a Participant, as set out on the relevant Certificate.

**Group** means the Company and each of its Subsidiaries from time to time.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it has had a controller appointed or is in liquidation, in provisional liquidation, under administration, wound up or has had a receiver appointed to any part of its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Company);
- (d) an application or order has been made (and in the case of the application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is likely to result in any of (a), (b) or (c) above);
- (e) it is taken (under s.459F(1) of the Corporations Act) to have failed to comply with a statutory demand);
- (f) it is subject to an event described in section 459C(2)(b) or section 585 of the Corporations Act;
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

**Invitation** means an invitation to an Eligible Participant to apply for the grant of one or more Performance Rights made in accordance with clause 3.2 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.

**Market Value** means, at a given date, the volume weighted average share price of the Shares on the Australian Stock Exchange over the 10 trading day period (or such other period determined by the Board) up to and including the trading day immediately preceding the relevant date.

**Performance Right** means a performance right granted under these Rules to acquire one or more Shares by transfer, allocation allotment or issue in the absolute discretion of the Board.

**Performance Right Exercise Price** means, in respect of a Performance Right, the price to be paid by the Participant when exercising that Performance Right as specified in the relevant Invitation. For the avoidance of doubt, the Performance Right Exercise Price for a Performance Right may be nil.

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

**Plan** means the “Kina Securities Limited Performance Rights Plan”.

**Resulting Shares** means all Shares issued, transferred or allocated to a Participant upon the valid exercise of a Performance Right.

**Retention Notice** has the meaning given to that term in clause 9.1(a).

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

**Securities Trading Policy** means the securities trading policy of the Company.

**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.

**Subsidiary** has the meaning given to that term in the Corporations Act but also includes an entity that would be a subsidiary (within the meaning given in the Corporations Act) of another entity were both bodies corporate.

**Super Amount** has the meaning given in clause 8.4(b).

**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.

**Vesting Condition** means, in relation to a Performance Right, any condition to vesting of that Performance Right that is set out in the Invitation for that Performance Right.

**Vesting Notice** means, in relation to a Performance Right, the notice given by or on behalf of the Company to a Participant informing him or her that the Performance Right may be exercised in accordance with the terms of 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, amended, varied, supplemented or replaced 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, legal personal representatives, 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) in these Rules any reference to include means to include without limitation;
- (k) a reference to "including" (or any similar term) is not to be construed as implying any limitation;
- (l) a monetary amount is a reference to Australian Dollars;
- (m) 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; and
- (n) any capitalised terms in these Rules that are not defined in clause 1.1 have the meaning given to them in the Corporations Act.

## 1.3 Inconsistencies

Notwithstanding anything to the contrary in any Engagement Arrangement with a Participant, but subject at all times to these Rules, if there is any inconsistency between these Rules and an Engagement Arrangement, these Rules prevail.

#### 1.4 **Income Tax Assessment Act**

This Plan is a plan to which Subdivision 83A-C of the Income Tax Assessment Act 1997 (Cth) applies (subject to the conditions in that act).

## **2. Introduction**

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### 2.1 **Purpose**

The purpose of the Plan is to:

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

### 2.2 **Commencement**

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

### 2.3 **Rules are binding**

The Company and each Participant are bound by these Rules.

## **3. Eligibility and grant**

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### 3.1 **Eligibility**

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

### 3.2 **Invitation**

- (a) Following determination that an Eligible Participant may participate in the Plan, the Board may make an Invitation to the Eligible Participant on any number of occasions.
- (b) An Invitation to an Eligible Participant to apply for Performance Rights may be made on such terms and conditions as the Board decides from time to time and may include:
  - (i) the number of Performance Rights for which that Eligible Participant may apply;
  - (ii) the Grant Date;
  - (iii) the amount payable (if any) for the grant of each Performance Right or how such amount is calculated;
  - (iv) any Vesting Conditions;
  - (v) whether each Performance Right, upon vesting, needs to be exercised by or on behalf of the Participant or whether it will, upon vesting, be immediately deemed to have been exercised;
  - (vi) the Performance Right Exercise Price;

- (vii) the period during which each Performance Right may be exercised;
- (viii) whether each Performance Right, upon exercise under these Rules, must be equity settled by the Company under clause 8.1(a) (**Equity Settled**) or may, at the discretion of the Board, be Equity Settled or Cash Settled; and
- (ix) any other supplementary terms and conditions.

### 3.3 **Application Form and Ancillary Documentation**

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

### 3.4 **Eligible Participant agrees to be bound**

Each Eligible Participant is, by submitting a duly signed and 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.

### 3.5 **Who may apply**

On receipt of an Invitation, an Eligible Participant may apply for the Performance Rights 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.

### 3.6 **Acceptance of Application**

The Board may accept an Application from an Eligible Participant in whole or in part. The Company may not grant a Performance Right to an Eligible Participant unless it has received a duly signed and completed Application Form together with all applicable Ancillary Documentation from that Eligible Participant. 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.

### 3.7 **When Applications will not be accepted**

Unless otherwise determined by the Board, an Application will not be accepted 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 Participant;
- (b) notice of termination of the applicant's Engagement Arrangement has been given (whether by the applicant or by one or more members of the Group); or

- (c) the Board has determined that the applicant is no longer eligible to participate in the Plan.

### **3.8 Right to nominate**

- (a) Unless otherwise expressly permitted in the Invitation, an Eligible Participant may only submit an Application in the Eligible Participant's name and not on behalf of any other person. If an Eligible Participant is permitted in the Invitation, the Eligible Participant may nominate another person to be granted the Performance Rights the subject of their Invitation and/or the Resulting Shares in relation to such Performance Rights.
- (b) If Performance Rights and/or Resulting Shares (as the case may be) are granted to a person nominated by an Eligible Participant, then the Eligible Participant and their nominee must execute any documents required by the Company in order to receive the grant and, to the extent necessary to give effect to the intent of these Rules, the Company may continue to treat the Eligible Participant as the Participant.

### **3.9 Multiple Invitations**

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

## ***4. Grant of Performance Rights***

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### **4.1 Company to grant Performance Rights**

Following receipt of a duly completed and signed Application Form together with all applicable Ancillary Documentation, the Company will, to the extent that it has accepted such Application, grant the Participant the relevant number of Performance Rights, subject to the terms and conditions set out in the Invitation, the Application Form these Rules and the Ancillary Documentation.

### **4.2 Certificate of Performance Right**

Following the grant of a Performance Right, the Company will issue to the Participant a Certificate.

## ***5. Terms of Performance Rights***

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### **5.1 Participant's rights**

Prior to a Performance Right being exercised a Participant is not entitled to:

- (a) notice of, or to vote or attend at, a meeting of the shareholders of the Company; and
- (b) receive any dividends declared by the Company,

by virtue of holding a Performance Right.

### **5.2 Restriction of dealing**

Unless the Board in its absolute discretion so approves or the relevant dealing is effected by force of law on death or legal incapacity to the Participant's legal personal representative, a Participant may

not sell, assign, transfer, grant a Security Interest over or otherwise deal with a Performance Right that has been granted to them. The Company may require that a Performance Right be forfeited if a sale, assignment, transfer, dealing or grant of a Security Interest occurs or is purported to occur other than in accordance with these Rules.

### 5.3 Prohibition on hedging

A Participant must not enter into any arrangement for the purpose of hedging their economic exposure to a Performance Right that has been granted to them.

### 5.4 Register of Performance Rights

Each Performance Right granted under these Rules will be registered in the appropriate register of the Company.

### 5.5 Listing

Unless determined otherwise by the Board in its absolute discretion, a Performance Right granted under the Plan will not be quoted on the ASX or any other recognised exchange.

## 6. *Vesting*

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### 6.1 Vesting

A Performance Right will vest when a Vesting Notice in respect of that Performance Right is given or is deemed to be given to the Participant.

### 6.2 Waiver of Vesting Condition

A Vesting Condition for a Performance Right may, subject to the Corporations Act, the Listing Rules (where applicable) and any other applicable laws and regulations, be waived in whole or part by the Board by written notice to the relevant Participant and on such terms and conditions as determined by the Board and set out in that notice.

## 7. *Exercise of Performance Rights*

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A Performance Right may only be exercised in accordance with the relevant Participant's Invitation. If the relevant Participant's Invitation provides for the deemed exercise of the Performance Right, no further action is required from the Participant upon vesting of a Performance Right in order to exercise that Performance Right.

## 8. *Delivery of Shares on Exercise of Performance Rights or cash settlement*

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### 8.1 Issue or transfer

As soon as practicable, after the valid exercise or deemed exercise of a Performance Right by a Participant in accordance with clause 7, the Company will:

- (a) **(equity settlement)** issue, allocate or cause to be transferred to that Participant the number of Shares to which the Participant is entitled under these Rules; and/or

- (b) **(cash settlement)** where permitted in the relevant Invitation letter, pay a cash amount to that Participant equivalent to the value of a Share as at the date of vesting of the Performance Right in accordance with the calculation in clause 8.4 (**Cash Settled**).

In either case, the Company will also issue a substitute Certificate for any remaining unexercised Performance Rights of that Participant.

## 8.2 Shares to rank pari passu

All Resulting Shares will rank pari passu in all respects with the Shares of the same class for the time being on issue except for any rights attaching to the Shares by reference to a record date prior to the date of the allotment or transfer of the Resulting Shares.

## 8.3 Listing

If Resulting Shares are in the same class as Shares which are listed on the ASX, the Company will apply for quotation of the Resulting Shares issued (or any unquoted Resulting Shares transferred) within the time required by the Listing Rules after the date of allotment.

## 8.4 Cash Settled

- (a) Where the Board determines that any Performance Rights will be Cash Settled in accordance with clause 8.1(b), 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 Performance Rights had been equity settled in accordance with clause 8.1(a), as at the date of vesting of the Performance Rights.
- (b) That amount will be paid in cash to or on behalf of the Participant less any Tax required to be withheld and inclusive of any superannuation contribution required to meet the minimum amount required to be contributed by the Company or any Related Body Corporate under applicable laws and regulations to avoid the imposition of a superannuation guarantee charge (**Super Amount**). Any superannuation contributions deducted from all or part of any cash payment will be paid into an eligible choice fund of a Participant's choice or the Company's default fund where a Participant has not nominated an eligible choice fund.

## 8.5 Equity settled

Where vested and exercised Performance Rights are to be Equity Settled in accordance with clause 8.1(a), 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) where permitted in the relevant Invitation letter, Cash Settle that number of the Performance 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 Performance Rights if the Performance 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).

## **9. Forfeiture of Performance Rights**

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### **9.1 Good Leaver**

- (a) Unless the Invitation provides otherwise, within 20 Business Days of the Participant becoming a Good Leaver, the Board shall issue a written notice (**Retention Notice**) to the Participant confirming to them which of their Performance Rights may, subject to clause 9.1(c), be retained, being:
  - (i) all vested but unexercised Performance Rights held by the Participant; and
  - (ii) to the extent expressly determined by the Board only, those unvested Performance Rights held by the Participant.
- (b) Those Performance Rights that the Participant is not permitted to retain in accordance with the Retention Notice will be forfeited with immediate effect on the date that the Retention Notice is issued by the Company.
- (c) Those Performance Rights that:
  - (i) may be retained in accordance with the Retention Notice and have vested (whether pursuant to a determination under clause 9.1(d) or otherwise);
  - (ii) but have not been exercised prior to the earlier of the Expiry Date and the 3 month anniversary of the date that the Retention Notice being issued,will be forfeited.
- (d) Subject to the Corporations Act, the Listing Rules (where applicable) and any other applicable laws and regulations, the Board may at any time determine that some or all of the Performance Rights retained by a Good Leaver are deemed to have vested.

### **9.2 Bad Leaver**

Unless otherwise stated in the Invitation or determined by the Board in its absolute discretion, a Performance Right held by a Bad Leaver (whether it is unvested or vested but unexercised) will be forfeited on the date determined by the Board.

### **9.3 Failure to satisfy Vesting Conditions**

Unless otherwise stated in the Invitation or determined by the Board in its absolute discretion, a Performance Right which has not yet vested will be forfeited immediately on the date that the Board determines (acting reasonably and in good faith) that any applicable Vesting Conditions have not been met or cannot be met by the relevant date.

### **9.4 Fraudulent or dishonest actions**

- (a) Unless varied by prior 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; or
- (iii) has committed an act of gross misconduct relating to any member of the Group; or
- (iv) has wilfully breached any dealing restrictions relating to a Performance Right or a Resulting Share contained in these Rules (including the restrictions in clauses 6.3 and 13.1) or the Participant's Invitation,

then the Board may deal with, or take any other actions, in relation to the Participant's Performance Rights or relevant Resulting Shares (or, if applicable, the amount received upon being Cash Settled) so as to ensure that no unfair benefit is obtained by the Participant as a result of such actions, including (without limitation):

- (v) deem any Performance Rights of the Participant to have been forfeited;
  - (vi) deem all or any Resulting Shares to be forfeited – in which event the Participant is deemed:
    - (A) where applicable laws permit, to have agreed to sell such shares to the Company pursuant to an Employee Share Scheme Buy-Back (as defined in the Corporations Act) for an amount as determined by the Board; or
    - (B) to have appointed any officer of the Company as his or her agent to sell such shares for an amount as determined by the Board; or
  - (vii) where any Resulting Shares held by the Participant as a result of the exercise of one or more Performance Rights have been sold by the Participant, or the Performance Rights have been Cash Settled, require the Participant to pay all or part of the net proceeds of that sale (or the amount received upon Cash Settlement) to the Company.
- (b) Unless varied by prior agreement with the Board, where, in the opinion of the Board, a Participant's Performance Right vests as a result of the fraud, dishonesty or breach of obligations of another person and, in the opinion of the Board, the Performance Right would not otherwise have vested, the Board may determine that the Performance Right has not vested and may, subject to applicable laws, deal with, or take any other actions, in relation to the Participant's Performance Rights or relevant Resulting Shares (or, if applicable) the amount received upon Cash Settlement) so as to ensure that no unfair benefit is obtained by the Participant as a result of such actions of another person, including (without limitation):
- (i) where the Participant does not yet hold Resulting Shares, that the relevant Performance Right has not vested and that the Vesting Conditions applicable to that Performance Right will be reset in the manner determined by the Board acting reasonably; or
  - (ii) where the Participant holds the Resulting Shares, that those shares are forfeited by the Participant (in the manner set out in clause 9.4(a)(iv)) or the amount received upon Cash Settlement be repaid to the Company and, in either case, at the discretion of the Board,

the relevant Performance Rights are reissued to the Participant subject to new Vesting Conditions in place of those forfeited shares.

#### 9.5 **Insolvency**

Unless otherwise stated in the Invitation, a Participant must on request from the Board forfeit a Performance Right if the Participant becomes Insolvent.

#### 9.6 **Other forfeiture events**

Unless the Board otherwise determines, or as otherwise set out in these Rules;

- (a) a Performance Right which has not yet vested will be automatically forfeited on the Expiry Date; and
- (b) a Performance Right held by a Participant in accordance with this Rules will also be forfeited in any other circumstances expressly set out in the Participant's Invitation Letter.

#### 9.7 **Discretion**

- (a) Notwithstanding clauses 9.1 to 9.6 (inclusive), the Board may decide (on any conditions which it thinks fit) that some or all of the Participant's Performance Rights will not be forfeited at that time.
- (b) The Board may elect to disapply any of clauses 9.1 to 9.6 (inclusive), or add any further forfeiture terms, to a particular grant of Performance Rights provided that such election is expressly set out in the Invitation relating to that grant.

#### 9.8 **Voluntary forfeiture**

A Participant may by written notice to the Company voluntarily forfeit their Performance Rights for no consideration.

#### 9.9 **Application of Part 2D.2 Division 2 of the Corporations Act**

- (a) This clause 9.9 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 9.9(b) applies, the Company may seek or not seek shareholder approval in its discretion.

## **10. Effect of Forfeiture of Performance Rights**

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Where a Performance Right has been forfeited in accordance with these Rules:

- (a) the Performance Right will automatically lapse;
- (b) the Participant must sign any documents required by the Company to effect the forfeiture of that Performance Right; and
- (c) the Company will not be liable for any damages or other amounts to the Participant in respect of that Performance Right.

## **11. Change of Control Event**

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Notwithstanding any other provisions of the Rules but subject to applicable laws, if a Change of Control Event occurs, or the Board determines such event is likely to occur, the Board may in its absolute discretion determine (having regard to, amongst other factors, the performance of the Company against targets in the Vesting Conditions at that time, the period of time that has elapsed between the Grant Date and the date of the Change of Control Event, and the circumstances of the Change of Control) the manner in which any or all of the Participant's Performance Rights will be dealt with (including without limitation in a manner that allows the Participants to benefit from the Change of Control Event).

## **12. Disposal Restrictions**

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### **12.1 Disposal restrictions and compliance with the Securities Trading Policy**

If the Invitation provides that any Resulting Shares are subject to any restrictions as to the disposal or other dealing by a Participant for the period, the Board may implement any procedure it deems appropriate to ensure the compliance by the Participant with this restriction, including but not limited to imposing an ASX Holding Lock (where applicable) on the Resulting Shares or using an employee share trust to hold the Resulting Shares during the relevant restriction period. Regardless of whether any restrictions have been imposed under this clause 12.1, all Participants must comply with the Securities Trading Policy at all times.

### **12.2 Participant's undertaking**

For so long as a Resulting Share is subject to any disposal restrictions under this Plan, the Participant will not without the prior express written consent of the Board:

- (a) transfer, encumber or otherwise dispose of, or have a Security Interest granted over that Resulting Share; or
- (b) take any action or permit another person to take any action to remove or circumvent the disposal restrictions.

### **12.3 Expiry of restriction**

Upon the expiry of any disposal restriction over a Resulting Share, the Company will take all action necessary to ensure that the Participant can deal with that Resulting Share.

## 12.4 Share entitlements

For the avoidance of doubt, the imposition of a disposal restriction on a Resulting Share held by a Participant will not affect the Participant's entitlement to receive a notice of, or to vote or attend at, a meeting of the members of the Company, and to receive any dividends declared by the Company during the relevant disposal restriction period on that Resulting Share. 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 12.4.

## 13. Irrevocable Power of Attorney

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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 determined by the Board) to any person nominated from time to time by the Board.

## 14. Adjustment of Performance Rights

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### 14.1 Reorganisation

If there is a reorganisation of the issued share capital of the Company (including any subdivision, consolidation, reduction, return or cancellation of such issued capital), the number of Performance Rights to which each Participant is entitled or the Performance Right Exercise Price, or both as appropriate, will be adjusted in the manner specified by the Listing Rules.

### 14.2 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 holder of Performance Rights is entitled, upon exercise of the Performance Rights, to receive, in addition to the Shares in respect of which the Performance Rights are exercised and without the payment of any further consideration, an allotment of as many additional Shares as would have been issued to a shareholder who, on the date for determining entitlements under the bonus issue, held Shares equal in number to the Shares in respect of which the Performance Rights are exercised.
- (b) Additional Shares to which the holder of Performance Rights becomes so entitled will, as from the time Shares are issued pursuant to the bonus issue and until those additional Shares are allotted, be regarded as Shares in respect of which the Performance Rights are exercised for the purposes of subsequent applications of clause 14.2(b), and any adjustments which, after the time just mentioned, are made under clause 14.1 to the number of Shares will also be made to the additional Shares.

### 14.3 Rights Issue

Unless otherwise determined by the Board, a holder of Performance Rights does not have the right to participate in a pro rata issue of Shares made by the Company or to receive or sell renounceable rights.

### 14.4 No other participation

Subject to clauses 14.1 to 14.3 (inclusive), during the currency of any Performance Rights and prior to their exercise, the holders of Performance Rights are not entitled to participate in any new issue of Shares of the Company as a result of their holding of Performance Rights.

#### **14.5 Rounding**

Until a Performance Right vests, all calculations adjusting the number of Shares must be carried out to include all fractions, but when a Performance Right vests and is settled the number of Resulting Shares must be rounded down to the next lowest whole number.

#### **14.6 Fairness in application**

In the application of this clause 14, 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 at that time.

### ***15. Administration of the Plan***

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#### **15.1 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.

#### **15.2 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 Participant or Participant.

#### **15.3 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 Participants to participate in the Plan and to determine the terms and conditions of the Performance Rights) may be delegated by the Board to:

- (a) a committee consisting of such directors, other officers, employees of or contractors or consultants to 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.

#### **15.4 Documents**

The Company may from time to time require an Eligible Participant invited to participate in the Plan or a Participant or a person nominated by an Eligible Participant under clause 3.8 to complete and return such other documents as may be required by law to be completed by that person or entity, or such other documents which the Company considers should, for legal, taxation and/or administrative

reasons, be completed by that Eligible Participant, Participant or person in order to give effect to the intent of the Plan.

#### 15.5 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.

### 16. Trust

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

### 17. Restrictions on and amendments to the Plan

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#### 17.1 Compliance with applicable laws and regulations

Notwithstanding these Rules or any terms of a Performance Right, no Performance Right may be offered, granted, vested or exercised, and no Resulting Share may be issued, allocated or transferred, if to do so would contravene any applicable laws, regulations or regulatory instruments (including ASIC Class order 14/1000 or its successor instrument if applicable).

#### 17.2 Amendment of Plan

- (a) Subject to clause 17.2(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 Rights 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 adversely affect 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 16;

- (D) to enable the Plan or any member of the Group to comply with its constituent documents, and 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 Participants.
- (c) As soon as reasonably practicable after making any amendment to any provision 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.

## **18. Duration**

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### **18.1 Termination**

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

### **18.2 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.

### **18.3 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.

### **18.4 Cancellation of Performance Rights**

Notwithstanding any other provisions of these Rules, but subject at all times to any applicable laws and regulations, if a Participant and the Company (acting by the Board) agree in writing that some or all of the Performance Rights granted to that Participant are to be cancelled on a specified date or on the occurrence of a particular event, then those Performance Rights may be cancelled in the manner agreed between the Company and the Participant.

## **19. Miscellaneous**

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### **19.1 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 Rights;
- (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 Engagement Arrangement of an Eligible Participant;
- (d) forms part of any contract of service between an Eligible Participant 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 an Engagement Arrangement;
- (f) confers any legal or equitable right on an Eligible Participant whatsoever to take action against any member of the Group in respect of their Engagement Arrangement; or
- (g) confers on an Eligible Participant any rights to compensation or damages in consequence of the termination of their Engagement Arrangement by any member of the Group for any reason whatsoever including ceasing to have rights under the Plan as a result of such termination.

## 19.2 Non-exclusivity

- (a) This Plan is not the sole means by which all members of the Group intend to provide incentives to Eligible Participants. Nothing in this Plan is intended to restrict any member of the Group from remunerating or otherwise rewarding employees or directors 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.

## 19.3 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 19.3(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.

#### 19.4 Further assurances

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

#### 19.5 Duties and taxes

- (a) The Company will be responsible for all brokerage costs payable in relation to the issue or transfer of a Resulting Share to a Participant following the exercise of a Performance Right. Each Participant will be responsible for all costs associated with the disposal of a Resulting Share by that Participant.
- (b) Subject to clause 19.5(a), the Company:
  - (i) 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:
    - (A) the acquisition and issue of a Performance Right;
    - (B) the acquisition, issue or transfer of a Resulting Share or the payment of any cash on the exercise of a Performance Right; or
    - (C) acquisition, transfer or any other dealings with a Resulting Share; and
  - (ii) 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 Right and/or a Resulting Share.

#### 19.6 No representation or warranty

- (a) The Company makes no representation or warranty as to the value of Performance Right or any Resulting Shares or with respect to any tax matters affecting any Eligible Participant or Participant in connection with the Plan.
- (b) Neither the Company, nor any of its directors, officers, employees, contractors or consultants 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 Shares hereunder, with respect of any fluctuations in the market price of Shares, or in any other manner related to the Plan.

#### 19.7 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 records held in respect to the Participant;
- (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.

#### **19.8 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.

#### **19.9 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 Right or Share, the fraction will be eliminated by rounding down to the nearest whole number.

#### **19.10 Governing law**

- (a) This Plan is governed by the laws of Queensland, Australia.
- (b) Each Participant submits to the non-exclusive jurisdiction of the courts of Queensland, 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.

#### **19.11 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.