

# Loan Funded Share Plan Rules

Bendigo and Adelaide Bank Limited

ACN 068 049 178

Adopted by the Board on 25 August 2020

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# Plan Rules

## 1. Definition and interpretation

### 1.1 Definitions

**Acquisition Price** means the amount payable by an Eligible Employee for the issue or transfer of Shares under the Plan as determined in accordance with the Invitation for those Shares.

**Allocate** means:

- (a) the issue of a Share for the benefit of; or
- (b) procuring the transfer of a Share (pursuant to a purchase on-market or an off-market transfer) to, or for the benefit of,

a Participant (or his or her Personal Representative).

**Allocation Date** means the date that Shares are Allocated to a Participant under the Plan.

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

- (a) the Corporations Act;
- (b) the Listing Rules;
- (c) the Constitution;
- (d) the *Income Tax Assessment Act 1936* (Cth);
- (e) the *Income Tax Assessment Act 1997* (Cth);
- (f) any practice note, policy statement, regulatory guide, class order, declaration, guideline, policy, procedure, ruling, judicial interpretation or other guidance note made to clarify, expand or amend (a), (b), (c), (d) or (e) above; and
- (g) any other legal requirement that applies to the Plan.

**Application** means an application for Shares to be Allocated to the Eligible Employee pursuant to the Plan in accordance with clause 3.3.

**ASIC** means Australian Securities and Investment Commission.

**ASX** means ASX Limited ACN 008 624 691 or the financial market operated by it, as the context requires.

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

**Business Day** means a day that is not a Saturday, Sunday or public holiday in Victoria, Australia.

**Change of Control Event** occurs where:

- (a) a takeover bid is made for the Company and the Board recommends acceptance of the bid by the Company's shareholders;
- (b) a Court orders that a meeting of shareholders of the Company be held to consider a scheme of arrangement between the Company and its shareholders;
- (c) an administrator, liquidator, provisional liquidator, receiver or receiver and manager is appointed in respect of the Company or substantially all of the assets of the Company;
- (d) a resolution is proposed to be put to shareholders proposing a voluntary winding up;
- (e) an order is sought for the compulsory winding up of the Company; or
- (f) the Board determines that some other transaction or event has occurred, or is likely to occur, which is likely to result in a change of control of the Company.

**Clawback Policy** means the Company's clawback policy as amended from time to time.

**Company** means Bendigo and Adelaide Bank Limited ACN 068 049 178.

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

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

**Dealing** means in relation to a Share, any dealing, including but not limited to:

- (a) a sale, transfer, assignment, trust, encumbrance, option, swap, any alienation of all or any part of the rights attaching to the Share;
- (b) any attempt to do any of the actions set out in paragraph (a); and
- (c) any hedging or dealing with a derivative instrument intended to limit the economic risk associated with holding a Share.

**Dealing Restriction** means, in relation to a Share, the restrictions imposed by clause **Error! Reference source not found.**

**Distribution** means any dividend or other distribution (including any return or distribution of income or capital), or other amount determined by the Board, to which the Participant may become entitled in respect of Shares Allocated under the Plan.

**Eligible Employee** means an employee of the Group (including a director employed in an executive capacity) or any other person determined by the Board as eligible to participate in the Plan.

**Forfeited Shares** means Shares forfeited pursuant to clause 15.1.

**Forgiveness Amount** means the amount of the Loan determined by the Board and notified to the Participant pursuant to clause 3.2(b)(v), expressed as:

- (a) a dollar figure; or
- (b) a percentage of the initial Loan,

that may, upon satisfaction of the Vesting Conditions referred to in clause 5.6, be forgiven.

**Group** means the Company and each Group Company.

**Group Company** means the Company and each of its Subsidiaries.

**Invitation** means an invitation to an Eligible Employee made by the Board under clause 3.1 to subscribe for or acquire Shares.

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

**Lender** means the Company or a Subsidiary.

**Loan** means, in relation to each Allocation of Shares made pursuant to these Rules, the lower of:

- (a) the amount of money lent by the Lender pursuant to clause 5.1 in relation to that Allocation, on the terms of the Plan, including any interest payable on the Loan pursuant to clause 5.3, but less:
  - (i) any amount repaid pursuant to these Rules; or
  - (ii) any Forgiveness Amount determined by the Board pursuant to clause 5.6; and
- (b) the aggregate market value of the Shares acquired with the Loan that are held by the Participant.

**Participant** means a person who holds a Share under the terms of this Plan from time to time.

**Period** means any period or periods over which the Vesting Conditions are measured or tested as specified by the Board for the purposes of particular Shares, including any period or periods over which any re-testing of Vesting Conditions occurs.

**Personal Representative** means the legal personal representative, executor or administrator of the estate of a deceased person.

**Plan** means the Bendigo and Adelaide Bank Limited Loan Funded Share Plan as set out in these Rules.

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

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

**Subsidiary** means a body corporate which is a subsidiary of the Company within the meaning of section 9 of the Corporations Act.

**Tax** means any tax, levy, excise, duty, charge, surcharge, contribution, withholding tax, impost or withholding obligation of whatever nature, whether direct or indirect, by whatever method collected or recovered, together with any fees, penalties, fines, interest or statutory charge.

**Trading Policy** means the Company's securities trading policy as amended from time to time.

**Trust** has the meaning given in clause 17(a).

**Trustee** has the meaning given in clause 17(a).

**Trust Deed** has the meaning given in clause 17(a).

**Vesting Condition** means one or more conditions which must be satisfied or circumstances which must exist before a Share vests under these Rules.

## 1.2 Interpretation

Headings are for convenience only and do not affect the interpretation of these Rules. The following rules of interpretation apply to these Rules unless the context requires otherwise:

- (a) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (b) where any word or phrase is given a definite meaning in this Plan, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (c) "includes" in any form is not a word of limitation;
- (d) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements; and
- (e) a reference to:
  - (i) a clause is to a clause of these Rules;
  - (ii) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
  - (iii) a party includes its successors and permitted assigns;
  - (iv) a document includes all amendments or supplements to that document;
  - (v) a monetary amount is in Australian dollars;
- (f) where the Board appoints a Trustee to hold Shares under the Plan in accordance with clause 17, any reference to a Participant in any rule of this Plan will mean the Trustee on behalf of that Participant.
- (g) when the day on which something must be done is not a Business Day, that thing must be done on the following Business Day; and
- (h) in determining the time of day, where relevant to these Rules, the relevant time of day is:
  - (i) for the purposes of giving or receiving notices, the time of day where a party receiving a notice is located; or
  - (ii) for any other purpose under this document, the time of day in the place where the party required to perform an obligation is located.

## **2. Governing rules**

- (a) The Plan operates according to these Rules which bind the Company, the Lender and each Participant.
- (b) These Rules should be read in conjunction with the relevant Invitation, the Trust Deed (if applicable), the Constitution, Trading Policy and the Clawback Policy. In the event of any inconsistency between these documents, the following order of priority shall apply:
  - (i) the Constitution;
  - (ii) the Trading Policy;
  - (iii) the Clawback Policy;
  - (iv) the relevant Invitation;
  - (v) these Rules; and
  - (vi) the Trust Deed (if applicable).

## **3. Invitation**

### **3.1 Board may make Invitations**

The Board may, from time to time, in its discretion invite Eligible Employees to subscribe for or acquire Shares upon the terms set out in the Plan and upon such additional terms, including Vesting Conditions (if any), as the Board determines.

### **3.2 Form of Invitation**

- (a) An Invitation may take any form, and be upon the terms and subject to any restrictions, determined by the Board.
- (b) Without in any way limiting the Board's discretion, an Invitation may include the following information:
  - (i) the number of Shares being offered or the method by which the number will be calculated;
  - (ii) any applicable Vesting Conditions and Period;
  - (iii) the Acquisition Price of the Shares or the method by which that Acquisition Price will be calculated;
  - (iv) the amount and terms of any Loan which is to be applied on behalf of the Eligible Employee as payment in whole or part of the Acquisition Price;
  - (v) the Forgiveness Amount (if any) relevant to any Loan;
  - (vi) any restrictions (including the period of restriction) on Dealing in a Share Allocated to the Participant; and



- (vii) any other terms or conditions to be attached to Shares Allocated to the Participant or any Loan.

### **3.3 Application**

- (a) Following receipt by an Eligible Employee of an Invitation, the Eligible Employee may apply for Shares to be Allocated, and for a Loan to be made, to him or her pursuant to the Plan in accordance with the instructions that accompany the Invitation, or in any other way the Board determines.
- (b) The Board may only allow the participation of an Eligible Employee in the Plan where that Eligible Employee continues to satisfy any relevant conditions imposed by the Board, which may include that the Eligible Employee continues to be an employee of the Group at the Allocation Date.
- (c) The Board may in its absolute discretion accept or reject an Eligible Employee's Application.
- (d) Nothing limits the Board's ability to treat the conduct of an Eligible Employee in respect of an Invitation as a valid Application under these Rules.
- (e) By making an Application pursuant to an Invitation the Eligible Employee is deemed to have agreed to:
  - (i) participate in the Plan and be bound by these Rules and the terms of the Invitation (including the terms of any Loan);
  - (ii) become a member of the Company and be bound by the Constitution; and
  - (iii) comply with the Trading Policy, Clawback Policy and any other relevant Group or Company policies.

## **4. Allocation of Shares**

### **4.1 Issue or transfer of Shares**

- (a) Where:
  - (i) the Board accepts a valid Application; and
  - (ii) the Invitation permits a Loan to be applied for, and the Board accepts an application for the Loan in accordance with clause 5.1:then, on the Allocation Date:
  - (iii) the Lender will make a Loan to the Eligible Employee and apply the Loan proceeds to subscribe for or acquire Shares on behalf of the Participant in accordance with clause 5.2; and
  - (iv) the Company will issue to the Participant, or procure the transfer to the Participant of, the number of Shares applied for by the Participant in accordance with the Invitation.
- (b) Unless the Board determines otherwise, Shares Allocated under the Plan may not be registered in any name other than that of the Participant.

- (c) Shares allocated under the Plan will be held subject to the Rules and the terms of the Invitation.

## **4.2 Rights and entitlements**

- (a) Any Shares Allocated under the Plan will rank equally in all respects with other Shares for the time being on issue by the Company except as regards any rights attaching to such Shares by reference to a record date prior to the date of their issue.
- (b) A Participant will, from the Allocation Date, be entitled to:
  - (i) receive notice of a meeting of the shareholders of the Company and may exercise any voting rights attaching to Shares Allocated to the Participant under the Plan; and
  - (ii) subject to clause 6.2, all dividends or other distributions declared or paid on Shares Allocated to the Participant under the Plan.
- (c) Until the Loan is repaid in full, the rights and entitlements attaching to Shares of a Participant acquired pursuant to the Plan must be exercised in accordance with the Rules and any other relevant conditions specified in the Invitation.

## **4.3 Listing of Shares on ASX**

The Company will apply for quotation of Shares issued under the Plan within the period required by ASX if the Company's Shares are quoted on ASX at that time.

## **5. Loan**

### **5.1 Acceptance of an application for a Loan**

If the Board accepts an application by an Eligible Employee for a Loan pursuant to an Invitation, the Company will procure that the Lender lends to the Eligible Employee the amount of the Loan and the Eligible Employee agrees to borrow the amount of the Loan in accordance with these Rules.

### **5.2 Use of Loan proceeds**

Each Eligible Employee irrevocably directs the Lender to apply the amount of the Loan towards payment of the Acquisition Price payable by the Eligible Employee for the subscription or acquisition of the Shares for which the Eligible Employee has applied and the payment of any transaction costs payable by the Eligible Employee in respect of the Loan.

### **5.3 Interest**

Unless otherwise specified in the Invitation, interest will not be payable on any Loan.

### **5.4 Limited recourse**

- (a) Notwithstanding any other clause in these Rules, the Lender will accept in full and complete satisfaction of the Participant's indebtedness and obligations to it under the Loan:
  - (i) if all Shares to which the Loan relates have been forfeited pursuant to these Rules, those Forfeited Shares; or

- (ii) if all Shares to which the Loan relates are sold, the proceeds of sale of the Shares paid to the Lender in accordance with clause 16.3(a) or otherwise as directed by the Board.
- (b) If the Loan is satisfied in accordance with clause 5.4(a) then:
  - (i) no further amount will be repayable by the Participant to the Lender under the Loan in respect of the Shares; and
  - (ii) no further amount will at any time be recoverable by the Lender from the Participant in respect of the Loan.

## **5.5 Notification of amount outstanding**

The Lender will, on the request of the Participant, notify the Participant of the outstanding balance of the Loan which is to be repaid by the Participant.

## **5.6 Debt Forgiveness Condition**

The Board may, in its discretion, include one or more Vesting Conditions as a term of the Loan which, if satisfied, will result in the Forgiveness Amount or a proportion of the Forgiveness Amount being written off the balance of the Loan.

# **6. Repayment of the Loan**

## **6.1 Repayment events**

Subject to clauses 5.4 and 6.2, and unless the terms of an Invitation specify otherwise, to the extent that Shares have not been forfeited pursuant to these Rules, the Participant must repay the relevant portion of the Loan immediately upon the earliest of:

- (a) the date or dates for repayment specified in the terms of the Loan notified pursuant to clause 3.2(b)(iv) or, if no such date or dates for repayment are specified, immediately after the Participant has been notified that some or all of the Shares to which the Loan relates are vested Shares;
- (b) if the Participant sells some or all vested Shares to which the Loan relates, the date on which the Participant is entitled to receive the proceeds of the sale of those vested Shares;
- (c) the date specified in a determination being made under clause 9 (Cessation of employment) or the terms of the relevant Invitation relating to the repayment of the Loan on the cessation of employment;
- (d) the date specified in a determination being made under clause 11.1(a) (Change of Control).

## **6.2 Repayment out of Distributions**

- (a) Unless the Board determines otherwise, the Participant must apply any Distributions in respect of Shares Allocated under the Plan and in respect of which there is a balance outstanding on the Loan made to the Participant to acquire those Shares, in making part repayment of the Loan in accordance with this clause 6.2. For this purpose, the Participant irrevocably authorises and directs the Company (and irrevocably authorises the Company to instruct (as agent for the Participant) any person who would otherwise pay such Distribution directly to the

Company) to pay or apply that part of the Distribution not specified in clause 6.2(b) first towards the payment of interest (if any) on the Loan and then towards the part repayment of the balance outstanding on the Loan.

- (b) Where Distributions are paid or applied in part repayment of the Loan under clause 6.2(a), then the Participant is entitled to receive (or retain) that part of the Distribution that represents the estimate of the Participant's net tax liability in relation to the Distribution determined in accordance with clause 6.2(c).
- (c) For the purposes of clause 6.2(b), the estimate of the Participant's net tax liability in relation to a dividend is as determined by the Board and notified to the Participant.
- (d) Unless the Board determines otherwise, a Participant may not participate in any dividend reinvestment plan (or similar plan) established by the Company until the Loan in respect of his or her Shares has been fully repaid.

### **6.3 Early repayment**

Unless the Board determines otherwise, a Participant may repay all of the balance outstanding under a Loan at any time in respect of vested Shares.

## **7. Vesting Conditions**

### **7.1 Vesting Conditions**

- (a) Subject to these Rules, a Share will only vest where and to the extent that the Vesting Conditions and any additional terms specified in the Invitation have been satisfied.
- (b) If any Vesting Conditions applicable to a Share have not been satisfied by the last date for their satisfaction (if applicable) or have otherwise failed to be satisfied, the Share is forfeited.

### **7.2 Board discretion**

Subject to these Rules and any requirements under Applicable Law, the Board may in its discretion determine to vest at any time an unvested Share Allocated under the Plan which has not been forfeited.

### **7.3 Variation or waiver**

The Board may, at its discretion, by notice to the relevant Participant, amend, reduce or waive any Vesting Conditions and/or Periods applicable to Shares Allocated under the Plan in whole or in part or add one or more Vesting Conditions to Shares Allocated under the Plan at any time and in any particular case, subject to any requirements under Applicable Law.

## **8. Restrictions on Dealing with Shares**

### **8.1 Restrictions**

- (a) The Board may, at its discretion, impose restrictions on Dealing with Shares Allocated under the Plan and must provide details of any such restrictions in the Invitation.

- (b) The Board may, at its discretion, by notice to the relevant Participant, amend, reduce, lift or waive the Dealing Restrictions applying to Shares Allocated under the Plan in whole or in part at any time and in any particular case, subject to any requirements under Applicable Law.

## **8.2 Participant not to dispose**

Subject to the terms of an Invitation or the Board agreeing otherwise, a Participant must not Deal with any Shares Allocated under the Plan until:

- (a) the Loan in respect of those Shares has been repaid in full; and
- (b) any further period of restriction imposed by the Board under the terms of the Invitation has ended.

## **8.3 Enforcement of restrictions**

- (a) The Company may implement any procedure it considers appropriate to restrict a Participant from Dealing in Shares in accordance with any Dealing Restrictions or to prevent a breach of clause 8.2, including through the imposition of a holding lock or arranging for the Shares to be held in the Trust.
- (b) By accepting an Invitation, each Participant irrevocably authorises the Board on behalf of the Company to implement any restriction procedure imposed by the Company under clause 8.3(a) and undertakes not to take any action or permit another person to take any action to remove any such restriction procedure.

## **9. Cessation of employment**

The Board has discretion to determine, subject to compliance with Applicable Law, that a particular treatment will apply to Shares Allocated to a Participant under the Plan and any Loan provided to a Participant, where the Participant ceases to be employed within the Group prior to the Shares vesting or ceasing to be subject to any Dealing Restrictions, or the Loan being repaid in full, as a term of the Invitation or at the time of cessation, including that:

- (a) some or all of the Shares:
  - (i) are forfeited;
  - (ii) remain on foot and may be retained by the Participant (whether or not subject to any existing, varied or substitute Vesting Conditions, Periods and/or Dealing Restrictions);
  - (iii) vest (immediately or subject to existing, varied or substitute Vesting Conditions, Periods and/or Dealing Restrictions); and/or
- (b) all or a portion of the Loan becomes payable immediately or within any other period determined by the Board or that the Loan becomes repayable in accordance with substituted or varied terms.

## **10. Clawback and malus**

These Rules incorporate the terms of the Clawback Policy by reference, with the same force and effect as if the terms of the Clawback Policy were set out in these Rules.

## 11. Change of Control

### 11.1 Change of Control Event

- (a) If a Change of Control Event occurs, the Board may, in its discretion, determine that a particular treatment will apply to Shares Allocated, and any Loan provided, under the Plan, including that:
- (i) some or all of the Shares:
    - A. vest (immediately or subject to any existing, varied or substitute Vesting Conditions, Periods and/or Dealing Restrictions);
    - B. are forfeited;
    - C. remain on foot (whether or not subject to any existing, varied or substitute Vesting Conditions, Periods and/or Dealing Restrictions); or
  - (ii) all or a portion of the Loan becomes payable immediately or within any other period determined by the Board or that the Loan becomes repayable in accordance with substituted or varied terms,
- having regard to any matter the Board considers relevant, including, without limitation, the circumstances of the Change of Control Event, the extent to which the applicable Vesting Conditions have been satisfied and/or the proportion of any applicable Period that has passed at that time.
- (b) Where the Board does not exercise its discretion pursuant to clause 11.1(a) and a Change of Control Event occurs then, unless the Board determines otherwise:
- (i) all Shares vest;
  - (ii) the Loan becomes immediately repayable in full; and
  - (iii) where the Loan is not repaid within 30 days of the Change of Control Event, the Shares will be sold and the proceeds of sale will be applied in accordance with clause 16.
- (c) Notwithstanding the default treatment set out in these Rules, the Board may specify in the Invitation to the Participant a particular treatment that will apply to Shares Allocated, and any Loan provided, under the Plan in the context of a Change of Control Event.

### 11.2 Acquisition of securities in another entity

If an entity (**Acquiring Company**) obtains control of the Company and the Acquiring Company, the Company and the Participant agree, a Participant may be provided with awards or securities in, and a loan (as relevant) from, the Acquiring Company (or its parent or its subsidiary) in substitution for Allocation of Shares and provision of the Loan, on substantially the same terms and conditions as the Shares and the Loan, but with appropriate adjustments as to the number and kind of awards or securities.

## 12. Business divestments

Where a Group Company acquires or divests a business designated by the Board for this purpose as 'material', the Board may make special rules that apply to Participants in relation to the Shares held pursuant to the Plan (and any other entitlements that may arise in relation to those Shares). Without limiting the Board's discretion, such rules may include:

- (a) varying of Vesting Conditions and/or Periods applying to a Participant's Shares or Loan to take into account the acquisition or divestment of the business; and
- (b) deeming the Participant to remain an employee of a Group Company for a specific period (such that the Participant's Loan does not become repayable until the end of that period).

## 13. Bonus and rights issues

Unless otherwise specified in an Invitation, a Participant who holds Shares Allocated under the Plan has the same entitlement as any other holder of Shares to participate in any bonus or rights issue, provided however, unless the Board determines otherwise, if:

- (a) a Loan is still outstanding on the Shares, any shares issued to a Participant under the bonus or rights issue will be subject to the provisions of the Plan as if they were Shares Allocated under the Plan; and
- (b) if the Shares are subject to any Vesting Conditions and/or any Dealing Restrictions, any shares issued to a Participant under the bonus or rights issue will be subject to the same Vesting Conditions and Dealing Restrictions.

## 14. Reorganisations of capital

In the event of any reorganisation (including consolidation, sub-division, reduction, buy back or cancellation) of the issued share capital of the Company, subject to any provision in the Listing Rules, the Board may adjust any or all of the number of Shares Allocated to a Participant under the Plan (including Shares allocated in respect of Awards) as the Board deems appropriate.

## 15. Forfeiture

### 15.1 Forfeiture events

Where:

- (a) the Board determines that any Vesting Condition in respect of any Shares cannot be satisfied;
- (b) unless the Board determines otherwise, a Participant defaults in the repayment of any Loan in respect of any Shares or, without the consent of the Board, attempts to Deal with any Shares in respect of which a Loan remains outstanding;
- (c) Shares are forfeited in accordance with clause 9 (Cessation of employment) or the terms of the relevant Invitation relating to the treatment of Shares on the cessation of employment;

- (d) the Board determines that Shares are forfeited in accordance with the Clawback Policy;
- (e) Shares are forfeited in accordance with clause 11 (Change of Control); or
- (f) Shares are otherwise forfeited pursuant to these Rules or the Invitation,

the Participant forfeits and surrenders to the Company (or otherwise as directed by the Board) all interest in the Shares.

## **15.2 Forfeited Shares**

- (a) Unless the Board determines otherwise, a Participant will have no entitlement to the proceeds from any sale or transfer of Forfeited Shares or any compensation, damages or other amounts in respect of Forfeited Shares and the Participant releases the Company in respect of any claim regarding those proceeds or other amounts.
- (b) Subject to Applicable Law and the Constitution, the Company may deal with Forfeited Shares in any manner determined by the Board, and the Participant must do anything (including execute any document) reasonably required by the Board to give effect to the forfeiture of Shares under these Rules and any such dealing.

## **15.3 Appointment of attorney**

Each Participant irrevocably appoints the company secretary of the Company (or any other officer of a Group Company authorised by the Board for this purpose) severally as the attorney of the Participant:

- (a) to transfer title to Forfeited Shares into the name of the Company's nominee;
- (b) if the Board so determines, in its discretion, to sell or otherwise realise the value of Forfeited Shares; and
- (c) to pay to the Company (for the sole benefit of the Company) all proceeds of the sale or transfer of Forfeited Shares.

## **16. Sale of Shares**

### **16.1 Sale on default by a Participant**

If:

- (a) a Participant defaults in the repayment of any Loan in respect of any Shares or, without the consent of the Board, attempts to Deal with any Shares in respect of which a Loan remains outstanding; and
- (b) the Board exercises its discretion under clause 15.1(b) and determines that the Shares will not be forfeited,

the Company, acting on behalf of the Participant, may sell all of the Shares to which the Loan relates held by the Participant at the time in accordance with clause 16.2.



## 16.2 Discretion in effecting a sale

If the Company, acting on behalf of the Participant, is permitted to sell Shares under the Plan the Company has absolute discretion in relation to the sale of the Shares. The Company will be entitled to sell the Shares on the ASX or in any other manner as the Board may determine, either in one parcel or in any parcels and at any price or prices as the Board in its absolute discretion determines. Neither the Company nor the Lender will be liable to the Participant in relation to the timing of, or the price obtained on, the sale of the Shares or in respect of any other circumstance relating to the sale.

## 16.3 Application of proceeds of sale

- (a) Following a sale of Shares by the Company under clause 16.1, the Company will apply the proceeds of the sale of the Shares:
  - (i) first, in satisfying any costs and expenses incurred by the Company in selling the Shares;
  - (ii) next, in reduction of the then outstanding balance of the Loan and any interest on the Loan on behalf of the Participant; and
  - (iii) in relation to any surplus funds, to the Participant.
- (b) Each Participant unconditionally and irrevocably directs the Company to pay the proceeds of the sale of the Shares referred to in clause 16.3(a) to the Lender for the purposes of clause 16.3(a)(ii) for so long as there is an outstanding balance of the Loan and any interest on the Loan.
- (c) For the avoidance of doubt, in the event of any shortfall in repaying the Loan as provided for under clause 16.3(a), the Lender will not have any further recourse against the Participant.

## 16.4 Appointment of attorney

Each Participant irrevocably appoints the company secretary of the Company (or any other officer of a Group Company authorised by the Board for this purpose) severally as the attorney of the Participant to sell the Shares on behalf of the Participant under this clause 16 and to do all things necessary to effect the sale and transfer of the Shares.

## 17. Appointment of Trustee

- (a) The Board may at any time:
  - (i) appoint a trustee (**Trustee**) on any terms and conditions which it considers appropriate to do all such things and perform all such functions as it considers appropriate to operate the Plan, including to acquire and hold Shares or other securities of the Company, on behalf of Participants, for transfer to future Participants or otherwise for the purposes of the Plan; and
  - (ii) establish a trust (**Trust**) governed by a trust deed (**Trust Deed**) for the purposes set out in rule 17(a)(i).
- (b) The Board may determine that Shares allocated to or on behalf of or for the benefit of, a Participant under the Plan are to be held by the Trustee on behalf of the Participant in accordance with these Rules.

- (c) Each Participant has a beneficial interest in the Shares allocated to him or her and is at all times absolutely entitled to those Shares as against the Trustee upon the terms set out in these Rules, except that any Dealing with the Shares by the Participant will be restricted as provided in these Rules.

## **18. Administration of the Plan**

### **18.1 Powers of the Board**

- (a) The Plan will be administered by the Board.
- (b) Except as otherwise expressly provided in the Plan, the Board has absolute and unfettered discretion to act or refrain from acting under or in connection with the Plan and in the exercise of any power or discretion under the Plan.
- (c) In administering the Plan, the Board will have the power to:
  - (i) determine appropriate procedures for administration of the Plan consistent with these Rules, including the forms and notices to be issued under the Plan;
  - (ii) determine finally and conclusively all questions of fact or interpretation arising in connection with the Plan (including whether any Shares Allocated under the Plan have vested and whether any Vesting Conditions have been satisfied), and any dispute of any kind that arises under the Plan;
  - (iii) make all other determinations which the Board considers necessary or desirable for the administration of the Plan.
- (d) The only restrictions on the Board's power are set out in these Rules, the Invitation and under Applicable Law.
- (e) Any power or discretion which is conferred on the Board by these Rules including the power to issue an Invitation to an Eligible Employee may be delegated by the Board to any person on such terms it determines at its absolute discretion.
- (f) The Board may from time to time require a Participant to complete and return any documents that are required by law to be completed by the Participant and any other documents which the Company considers should, for legal or taxation reasons, be completed by the Participant.

### **18.2 Waiver**

Notwithstanding any other provisions of the Plan, the Board may at any time, in its discretion, reduce or waive in whole or in part any provision of the Plan, or any terms or conditions (including any Vesting Condition or any Dealing Restriction) in relation to any Shares acquired by any Participant or any Loan, subject to any requirements under Applicable Law.

### **18.3 Variations and adjustments**

Notwithstanding any other provision of these Rules, the Board may at any time and in any particular case, in its discretion:

- (a) adjust the number of Shares that will vest to a Participant; and/or

- (b) vary any of the terms and conditions applicable to Shares Allocated under the Plan and/or the Loan,

to protect the financial soundness of the Company, or to respond to significant unexpected or unintended consequences that were not foreseen by the Board or other circumstances that the Board determines warrant such treatment.

## **18.4 Calculations and adjustments**

- (a) Any calculations or adjustments which are required to be made in connection with any Shares Allocated, or Loans provided, under the Plan will be made by the Board and will, in the absence of manifest error, be final and conclusive and binding on the Participant.
- (b) Where any calculation or adjustment to be made pursuant to these Rules produces a fraction of a cent or a fraction of a Share, the fraction will be eliminated by rounding down to the nearest whole number.

## **18.5 Connection with other plans**

- (a) A Group Company is not restricted to using the Plan as the only method of providing incentive rewards to employees and may approve and introduce other incentive plans.
- (b) Participation in the Plan does not affect, and is not affected by, participation in any other incentive or other plan operated by the Group Companies unless the terms of that other plan provides otherwise or unless otherwise stated in the Invitation.

## **18.6 Amounts owing by a Participant**

Where a Participant owes any amount or amounts to a Group Company, including any overpayment of leave or wages or salary, or any loss suffered by a Group Company as a result of any breach of contract, statutory duty or tort committed by the Participant, the Board may, in respect of any Shares Allocated to the Participant:

- (a) determine that some or all of the Shares are forfeited; or
- (b) reduce the number of Shares which vest,

to take into account of and in settlement of any such amounts.

## **19. Amendments**

### **19.1 Power to make amendments**

Subject to clause 19.2, the Board may at any time:

- (a) amend, vary, add to, delete or modify all or any of the provisions of these Rules, including this clause 19.1; or
- (b) amend the terms of an Invitation.

## 19.2 Rights of Participants

Any amendment under clause 19.1 that materially reduces any Participant's rights in respect of Shares granted before the date of the amendment requires the written consent of the Participant, other than:

- (a) an amendment introduced primarily:
  - (i) for the purposes of clause 12;
  - (ii) for the purposes of complying with or conforming to present or future legislation governing or regulating the Plan or like plans;
  - (iii) to correct any manifest error or mistake;
  - (iv) to allow the implementation of a trust arrangement in relation to the holding of Shares granted under the Plan;
  - (v) for the purpose of complying with Applicable Law; and/or
  - (vi) to take into consideration possible adverse taxation implications (including, without limitation, on account of fringe benefits tax) for the Company in respect of the Plan, or the Shares or Loans granted, including as a result of a changes to applicable taxation legislation or the interpretation of that legislation by any taxation authority or a court of competent jurisdiction or any rulings from taxation authorities administering such legislation;
- (b) an amendment to any Vesting Conditions, Periods and/or Disposal Restrictions applicable to Shares Allocated under the Plan, adjustment to the number of Shares that will vest to a Participant or variation of the terms and conditions applicable to Shares Allocated under the Plan and/or the Loan made in accordance with these Rules; or
- (c) an amendment resulting from any amendments to the Clawback Policy.

## 19.3 Amendment by addendum

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

## 19.4 Effect

- (a) Subject to any shareholder approval (if required), the Board may determine that any amendment to these Rules or the terms of an Invitation made pursuant to rule 19.1 be given retrospective effect.
- (b) Amendment of these Rules or the terms of an Invitation by the Board will be of immediate effect unless otherwise determined by the Board.

## 19.5 Notice of amendment

As soon as reasonably practicable after making any amendment under rule 19.1, the Company must give notice in writing of that amendment to any Participant affected by the

amendment. Failure by the Board to notify a Participant of any amendment will not invalidate the amendment as it applies to that Participant.

## **19.6 Termination or suspension of the Plan**

- (a) The Board may, at any time, terminate or suspend the Plan.
- (b) The termination or suspension of the Plan will not affect any Shares Allocated under the Plan and the terms of the Plan will continue to apply to such Shares provided unless the Board determines otherwise.
- (c) A Participant may not claim any compensation as a result of termination or suspension of the Plan.

## **20. Rights and obligations of Participant**

- (a) Unless the subject of an express provision in an employment contract, the rights and obligations of any Eligible Employee under the terms of their office, employment or contract with the Group are not affected by their participation in the Plan.
- (b) Nothing in these Rules:
  - (i) confers on any Eligible Employee any expectation to become a Participant or a Shareholder;
  - (ii) confers on any person the right to be invited to apply for, to be offered or to receive any Shares;
  - (iii) confers on any Eligible Employee the right to become or remain an Eligible Employee or to participate in the Plan;
  - (iv) forms part of, or is incorporated into, any contract of an Eligible Employee;
  - (v) affects any rights which a Group Company may have to terminate the employment of an Eligible Employee or will be taken into account in determining an Eligible Employee's or Participant's termination or severance pay; or
  - (vi) may be used to increase damages in any action brought against a Group Company in respect of such termination of employment.
- (c) The Allocation of Shares or the making of a Loan on a particular basis in any year does not create any right or expectation of the Allocation of Shares or the making of a Loan on the same basis, or at all, in any future year.
- (d) No Participant has any right to compensation for any loss in relation to the Plan, including:
  - (i) any loss or reduction of any rights or expectations under the Plan in any circumstances or for any reason (including lawful or unlawful termination of employment or the employment relationship);

- (ii) any exercise of a discretion or a decision taken in relation to an Allocation of Shares or in relation to the Plan, or any failure to exercise a discretion under these Rules; or
- (iii) the operation, suspension, termination or amendments of the Plan.

## **21. General provisions**

### **21.1 Notices**

- (a) Any notice, consent, approval, waiver or other communications given under the Plan is deemed to have been duly given if:
  - (i) sent by electronic mail or delivered by hand; or
  - (ii) sent by ordinary registered prepaid mail,and is deemed to have been served:
  - (iii) if sent by electronic mail or delivered by hand, at the time of sending or delivery; or
  - (iv) if posted by registered prepaid mail, three Business Days (or, if posted to an address outside Australia, seven Business Days) after the date of posting.
- (b) Delivery, transmission and postage:
  - (i) if not given personally, is to the last known address of an Eligible Employee or Participant; or
  - (ii) is to the address of the Company.

### **21.2 Costs**

Except as provided in these Rules, the Company will meet the ongoing administration expenses of the Plan.

### **21.3 Withholding**

- (a) No Group Company is responsible for any Taxes which may become payable by a Participant in connection with the issue or transfer of Shares or any other Dealing by a Participant with such Shares including the payment of any cash amount, or the Loan. Participants are solely responsible for all such amounts.
- (b) Where any Taxes referred to paragraph (a) are required to be withheld and remitted to the relevant taxation authority by a Group Company, the Company may either:
  - (i) require the Participant to reimburse the Group Company for any Taxes which the Group Company is required to withhold;
  - (ii) sell on behalf of the Participant that number of Shares required to provide the funds required to be withheld on account of Taxes; or

- (iii) raise the amount required to be withheld on account of Taxes through any combination of the methods in paragraphs (i) and (ii).

and by participating in the Plan, each Participant authorises the relevant Group Company to make any such deduction or withholding through any combination of the above methods.

## **21.4 Data protection**

By accepting an Invitation, and agreeing to become a Participant and be bound by these Rules, each Participant consents to:

- (a) the collection, holding, use, processing and disclosure of personal data provided by the Participant to the Company and any Group Company for all purposes relating to the operation of the Plan (including, but not limited to, providing information to trustees of any employee benefit trust, registrars, brokers or third party administrators of the Plan and providing information to future purchasers of the Company or the business in which the Participant works); and
- (b) the disclosure of information about the Plan and themselves to the Australian Taxation Office (or relevant tax authority in any other jurisdiction) which is required to be provided in accordance with the Company's reporting obligation under Australian tax legislation or relevant tax legislation in any other jurisdiction.

## **21.5 Enforcement**

If the whole or any part of a provision of this Plan or an Invitation is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remaining provisions have full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This rule has no effect if the severance alters the basic nature of this Plan, or is contrary to public policy.

## **22. Governing Law**

The Rules, all Invitations and any Awards granted under this Plan are governed by and are to be construed in accordance with the laws of the Victoria, Australia. Any person referred to in the Plan submits to the non-exclusive jurisdiction of the courts of the Victoria, Australia.