

Rules of the CMI Limited Performance Rights Plan

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1. Purpose

The purpose of the CMI Limited Performance Rights Plan is to:

- (a) attract, motivate and retain Eligible Employees;
- (b) provide an incentive to Eligible Employees to drive continuing improvement in the Company's performance;
- (c) provide market competitive reward mechanisms;
- (d) provide Eligible Employees with the opportunity to acquire an ownership interest in the Company; and
- (e) further align the financial interests of the Eligible Employees with those of the Company's shareholders.

2. Definitions and interpretations

2.1 Definitions

In these Rules, the following terms have the following meanings:

Acceptance means the acceptance by an Eligible Employee of an Invitation to acquire Share Rights under the Plan, and **Accept** has a corresponding meaning.

Acceptance Form means the acceptance form referred to in clause 4.1, which may be in such form as the Board may approve from time to time.

ASIC means the Australian Securities and Investments Commission.

ASIC Act means the *Australian Securities and Investments Commission Act 2001* (Cth).

Associate of a Participant means an associate for the purposes of section 83A-305 of the Income Tax Assessment Act 1997 (Cth).

Associate Company means a body corporate in which the Company has voting power of not less than 20% of 'voting power' as defined in section 610 of the Corporations Act.

ASX means Australian Securities Exchange Limited (ABN 98 008 624 691).

Award means, in relation to a Participant, the number of Performance Rights or Conditional Rights created in favour of that Participant pursuant to clause 5, having the same Issue Date and issued on the same terms.

Board means the board of directors of the Company from time to time, or any committee formed by the board of directors from time to time to administer the Plan.

Business Day means any day other than a Saturday, Sunday or other day on which commercial banking institutions in Brisbane, Queensland are authorised or required by law to be closed.

Capital Event means any of the following:

- (a) any event affecting the number or type of securities on issue in the capital of the Company, including a subdivision, consolidation, reduction, redemption or further issue of securities whether by way of rights issue, bonus issue or otherwise; and
- (b) any other event which the Board in its discretion considers should be a Capital Event.

Class Order means an instrument made by ASIC that exempts each person in a class of persons from the Corporations Act, the ASIC Act or any part of either or both, or that modifies the application of the Corporations Act, the ASIC Act or any part of either or both in particular circumstances.

Company means CMI Limited (ACN 050 542 553).

Company Employee Equity Plans means all of the employee shares plans, employee option plans, other similar employee incentive plans or arrangements for the remuneration of employees of Group Companies (excluding non-executive officers), in each case involving the issue of Ordinary Shares, options over Ordinary Shares or performance rights relating to Ordinary Shares, but excluding this Plan.

Conditional Right means a right, upon Vesting, to receive Performance Shares on the terms specified in the Plan without any further action being required by the Participant.

Conditional Right Holder means the holder of a Conditional Right.

Constitution means the Company's constitution as amended from time to time.

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

Determination Date means the Trading Day immediately preceding the date of an Invitation.

Eligible Employee means an Employee (including an Executive Director) whom the Board determines is to receive an Invitation under the Plan and may include employees of the Company not resident of, residing in or citizens of Australia. For the avoidance of doubt, an 'Eligible Employee' does not include a Non-Executive Director.

Employee means any person who is in full-time or part-time employment of a Group Company.

Employee Share Scheme Buy-Back has the meaning given in the Corporations Act.

Executive Director means a director of the Company who is also an Employee.

Exercise Price means the amount payable per Performance Share, if any, on the exercise of a Vested Performance Right calculated as follows:

- (a) the Market Price; or
 - (b) any other amount (which may be nil) specified by the Board in the Invitation,
- in each case making appropriate adjustment, if any, in respect of Capital Events in accordance with clause 11.

Expiry Date means the day ending at 5.00 pm Queensland time on the date 5 years after the Issue Date or such other earlier date as is determined by the Board and specified in an Invitation to an Eligible Employee.

Forfeiture Condition means any condition determined by the Board, and specified in the Invitation, under which Share Rights may be forfeited including (but not limited to) a transfer of a Performance Right otherwise than in accordance with clause 12.

Group means all of the Group Companies.

Group Company means:

- (a) the Company;
- (b) each of the Company's related bodies corporate; and
- (c) any Associate Company nominated by the Board from time to time for the purposes of these Rules.

Holding Lock means a mechanism to prevent, in accordance with clause 18.2, dealings with Performance Shares held by a Participant during a Holding Lock Period, or by the Trustee for the benefit of a Participant, with respect to those Performance Shares.

Holding Lock Period means, in relation to Performance Shares acquired upon the exercise of Performance Rights, such period or periods (not to exceed 7 years following the Issue Date) as the Board may determine and specified in the Invitation, during which a Participant or the Trustee cannot deal with the Performance Shares and, in the absence of such determination shall mean the earlier of:

- (a) the date 12 months after the acquisition of the Performance Shares; or
- (b) the date on which the Participant ceases to be an Employee.

Invitation means an invitation made in accordance with clause 3 to acquire Share Rights under the Plan, subject always to compliance with any Law.

Issue Date means the date on which a Share Right is created under clause 5.1 by being inscribed on the Register.

Law means the laws applicable to the operation of the Plan from time to time, including any applicable securities laws of the jurisdiction in which an Eligible Employee is located at the time of receipt of an Invitation.

Listing Rules means the listing rules of the ASX as amended from time to time.

Market Price means the volume weighted average market price per Ordinary Share of all Ordinary Shares traded on the ASX during the 30 trading days prior to and including the Determination Date. The Board may exercise discretion to include or exclude particular transactions from this calculation (e.g. 'specials') as it thinks fit. If no Ordinary Shares are traded on the ASX during that period, the price as determined by the Board.

Minimum Parcel means the minimum number of Performance Shares determined by the Board from time to time, which need not be the same number for all purposes of the Plan.

Nominated Associate means an Associate nominated by an Eligible Employee under clause 4.1(b)(ii) to acquire Performance Rights under the Plan in circumstances where nomination of such an Associate is permitted by the Invitation received by the Eligible Employee.

Non-Executive Director means a non-executive director of the Company.

Notice of Exercise means a duly completed notice of exercise of a Vested Performance Right signed by the Participant, in a form approved by the Board from time to time, and lodged in accordance with clause 7.3.

Ordinary Shares means fully paid ordinary shares in the capital of the Company.

Participant means:

- (a) an Eligible Employee who returns a duly completed Acceptance Form in accordance with clause 4.1(a);
- (b) the legal personal representative of that Eligible Employee where that legal personal representative's name has been entered on the Register as the holder of the Performance Rights; or
- (c) if, because of the *Bankruptcy Act 1966* (Cth) or equivalent legislation in any other jurisdiction, Performance Rights (or the rights under those Performance Rights) held under the Plan that form part of the property of an Eligible Employee, vest in the trustee of that Eligible Employee's estate, that trustee, whether or not the name of that trustee has been entered in the Register.

Performance Hurdles means the performance criteria determined by the Board, and specified in the relevant Invitation, against which performance is measured to determine the extent to which Performance Rights become Vested Performance Rights, or, in the case of Conditional Rights, the date of Vesting.

Performance Period means the period commencing and ending on dates as determined by the Board, and specified in the relevant Invitation, during which performance against the Performance Hurdles will be measured to determine the extent to which Performance Rights become Vested Performance Rights, or, in the case of Conditional Rights, the date of Vesting.

Performance Right means the right to subscribe for or acquire one Performance Share, or such other number of Performance Shares as determined under clause 11, for either nil consideration or such other amount as determined by the Board from time to time, but does not include Conditional Rights.

Performance Right Holder means the holder of a Performance Right.

Performance Shares means fully paid Ordinary Shares in the capital of the Company.

Plan means the CMI Limited Performance Rights Plan.

Product Disclosure Statement has the meaning given in the Corporations Act.

Qualifying Reason means, in relation to a Participant:

- (a) the death, Total and Permanent Disablement, Retirement or redundancy of the Participant as determined by the Board in its absolute discretion;
- (b) the Participant ceasing to be an Employee as a result of a company ceasing to be a member of the Group, or a Group Company selling a business it conducts other than to another company in the Group; or
- (c) any other reason as determined by the Board in its absolute discretion.

Register means the register created and maintained by or on behalf of the Company under and in accordance with section 170 of the Corporations Act.

Retirement means the voluntary cessation of employment of a Participant with a Group Company where:

- (d) the cessation occurs on a date which is at least 6 months after the relevant Issue Date; and
- (e) the Board is satisfied that the cessation is solely by reason of that Participant intending to permanently leave the paid workforce, taking into account such evidence or information as the Board thinks fit including (without limitation) the age of the Participant.

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

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

Share Rights means Conditional Rights and Performance Rights.

Tax includes any tax, levy, impost, deduction, charge, rate, contribution, duty or withholding which is assessed (or deemed to be assessed), levied, imposed or made by any government or any governmental, semi-governmental or judicial entity or authority together with any interest, penalty, fine, charge, fee or other amount assessed (or deemed to be assessed), levied, imposed or made on or in respect of any or all of the foregoing.

Test Date means such date as determined by the Board, and specified in the relevant Invitation, on which the Company's performance will be measured against the Performance Hurdles to determine the extent to which the Performance Rights become Vested Performance Rights, and in the case of Conditional Rights, the date of Vesting of the Conditional Right.

Total and Permanent Disablement, in relation to a Participant, means that that Participant has, in the opinion of the Board, after considering such medical and other evidence as it sees fit, become incapacitated to such an extent as to render the Participant unlikely ever to engage in any occupation with the Company or any other Group Company for which he or she is reasonably qualified by education, training or experience.

Total Exercise Price means the number of Vested Performance Rights to be exercised in a particular case multiplied by the Exercise Price.

Trading Day means a day on which Ordinary Shares are traded on the ASX.

Trust means an employee share trust established by the Company under a Trust Deed.

Trustee means the trustee appointed from time to time under the terms of a Trust Deed.

Trust Deed means any deed entered into between the Company and the first Trustee, under the terms of which a Trust is constituted and the Trustee is appointed to act as trustee for the purposes of obtaining shares or rights in the Company and holding shares, money and other property on trust for Participants in accordance with the Rules, the Rules of any other Company Employee Equity Plan and the Trust Deed.

Unvested Performance Right means a Performance Right that is neither a Vested Performance Right nor a Performance Right that has lapsed under clause 6.

Vest, Vested or Vesting means in relation to a Conditional Right, the point at which a Participant becomes absolutely entitled to all or some of the Performance Shares which are the subject of the Conditional Right, in accordance with clause 8.

Vested Performance Right means a Performance Right that has, on any Test Date, satisfied the Performance Hurdles.

2.2 Interpretation

Headings are for convenience only and do not affect the interpretation of these Rules. In these Rules, unless the contrary intention appears:

- (a) a gender includes all genders;
- (b) the singular includes the plural and vice versa;
- (c) a reference to any legislation or to a provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and all regulations and statutory instruments issued under it;
- (d) reference to a clause or paragraph is a reference to a clause or paragraph of these Rules, or the corresponding Rule or Rules of this Plan as amended from time to time;
- (e) reference to a person includes the person's executors, administrators and successors, a firm or a body corporate;
- (f) where any word or phrase is given a definite meaning in these Rules, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;
- (g) where the time for doing any act, matter or thing under these Rules falls on a day which is not a Business Day, it shall be done on the next succeeding Business Day; and
- (h) terms which are defined in the Corporations Act bear the same meaning when used in this document.

2.3 Board discretion

If the doing of any act, matter or thing under these Rules is dependent on the consent or approval of the Board or is within the discretion of the Board, the consent or approval may be given or the discretion may be exercised conditionally or unconditionally or withheld by the Board in its absolute discretion unless express provision to the contrary has been made.

3. Invitation to acquire Performance Rights

3.1 Issue

In its absolute discretion and subject to these Rules, the Board may from time to time:

- (a) issue or cause to be issued Invitations on behalf of the Company to Eligible Employees in respect of that number of Performance Rights as the Board in its discretion determines;
- (b) develop and amend any policies in relation to whether Invitations will be issued to Eligible Employees, which may include, without limitation, the Board's assessment of the strategic importance of the Eligible Employee to the Company and the Eligible Employee's performance under the Company's performance management programs; and
- (c) develop and amend any policies in relation to determining the number of Performance Rights to be the subject of individual Invitations, and, in doing so, the Board may determine that those Invitations be made on a differential basis to Eligible Employees.

3.2 Form of Invitation

An Invitation may take any form determined by the Board from time to time and:

- (a) will specify or include (but need not be limited to) the following information:
 - (i) the date of the Invitation;
 - (ii) the name of the Eligible Employee to whom the Invitation is made;
 - (iii) the maximum number of Performance Rights in respect of which the Eligible Employee is being invited to apply;
 - (iv) the Performance Hurdles and Performance Period;
 - (v) the Test Dates;
 - (vi) the Expiry Date of the Performance Rights or the Conditional Rights;
 - (vii) the Exercise Price;
 - (viii) the time period in which an Eligible Employee may Accept an Invitation;
 - (ix) where applicable, that the Eligible Employee may nominate an Associate to receive the grant of the Performance Rights in respect of which the Eligible Employee is being invited to apply;
 - (x) any Holding Lock Period which would apply to the Performance Shares issued upon the exercise of the Performance Rights, or the manner in which any such Holding Lock Period will be determined;
 - (xi) any Forfeiture Conditions;
 - (xii) any other material terms and conditions required by any Law and any relevant Class Order;
- (b) may include any terms or conditions (not being inconsistent with these Rules) that may be determined by the Board from time to time in respect of the rights or obligations of the Participants or (where applicable) their Nominated Associates, or any Group Company, under the Plan, including whether and how the arrangements under the Trust Deed will apply to any Performance Shares issued or acquired upon the exercise of the Performance Rights; and

- (c) will be issued with an Acceptance Form and such explanatory or other material in respect of the Plan as the Board considers appropriate, or as is required by Law and any relevant Class Order.

3.3 Price for Performance Right

Performance Rights granted by the Company under the Plan will be granted for no consideration unless otherwise determined by the Board.

4. Acceptance of Performance Rights

4.1 Acceptance procedure

- (a) An Eligible Employee who receives an Invitation may only Accept the Invitation by returning the duly completed Acceptance Form within the time period and as otherwise specified in the Invitation.
- (b) If, on returning the duly completed Acceptance Form in accordance with paragraph (a) of this clause 4.1, the Eligible Employee's employment or appointment with a Group Company has not ceased, he or she:
 - (i) becomes a Participant;
 - (ii) irrevocably offers to acquire, or (where applicable) for his or her Nominated Associate to acquire, Performance Rights under the Plan in accordance with the terms of the Invitation; and
 - (iii) agrees to be bound by the terms of the Invitation and by these Rules or any modification of these Rules, including any modification as set out in any relevant schedule to these Rules.

4.2 Acceptance in whole or in part

An Eligible Employee who receives an Invitation may Accept the Invitation in respect of all or part of the maximum number of Performance Rights specified in the Invitation. If an Eligible Employee Accepts only part of the Performance Rights, then the Eligible Employee may only do so in respect of that number of Performance Rights which, if exercised, would result in the Eligible Employee, or (where applicable) his or her Nominated Associate, acquiring a number of Performance Shares that is not less than the Minimum Parcel. No further Acceptance may be given in respect of that Invitation.

5. Grant of Performance Rights

5.1 Creation of Performance Rights

- (a) Performance Rights granted under the Plan shall be created, and a Participant's, or (where applicable) his or her Nominated Associate's, title to those Performance Rights will, subject to clause 26.9, conclusively be evidenced for all purposes of the Plan by being inscribed on the Register. No certificate or other evidence of title to

a Performance Right will be issued unless required under any applicable law or the Board in its sole discretion determines otherwise.

- (b) Within 28 days after the end of the period for Accepting an Invitation, as specified in the Invitation, and except as provided in clause 5.2, the Board will, in respect of each Eligible Employee who has become a Participant in accordance with clause 4.1(b):
 - (i) inscribe or cause to be inscribed in the Register the name of that Participant, or (where applicable) the name of his or her Nominated Associate, and the number of Performance Rights applied for by that Participant; and
 - (ii) notify that Participant of the Issue Date and that the Performance Rights have been so inscribed.

5.2 Board's right to reject Acceptance

- (a) The Board reserves the right not to accept an Acceptance Form submitted by any Participant. In the event that the Board does not accept an Acceptance Form submitted by any Participant, the Board shall:
 - (i) provide notification to that Participant that it does not wish to accept that Participant's Acceptance;
 - (ii) refund the moneys (if any) provided by that Participant as consideration to apply for Performance Rights under the Plan; and
 - (iii) undertake any other action as it sees fit.
- (b) If paragraph (a) of this clause 5.2 applies to a Participant, the Invitation to that Participant, and the Acceptance by that Participant in relation to that Invitation, shall be deemed never to have been made.

6. Lapse of Performance Rights

6.1 Time of lapse

A Performance Right lapses, to the extent it has not been exercised, on the earlier to occur of:

- (a) the Expiry Date;
- (b) the date on which a Forfeiture Condition has occurred, as determined by the Board;
- (c) in the case of an Unvested Performance Right, the earlier of:
 - (i) the date of termination of employment of the Performance Right Holder where such termination is for any reason other than a Qualifying Reason;
 - (ii) 5 days after the last Test Date applicable to the Performance Right; and
 - (iii) the date of lapse under clause 16; and
- (d) in the case of a Vested Performance Right, the earlier of:

- (i) 10 days after the date of termination of employment of the Performance Right Holder, if such termination has occurred because of a Qualifying Reason; and
- (ii) 5 day after the date of termination of employment of the Performance Right Holder, if such termination has occurred for any reason other than a Qualifying Reason.

6.2 Rights following lapse

Upon the lapse of a Performance Right, all rights of the Participant, and (where applicable) his or her Nominated Associate, in respect of that Performance Right cease.

6.3 Refund

Subject to clause 16, upon the lapse of a Performance Right the Company will repay the Participant the price paid (if any) for the grant of that Performance Right.

7. Exercise of Performance Rights

7.1 Vested Performance Rights

Vested Performance Rights can be exercised at any time from the date the Performance Rights become Vested Performance Rights until such Performance Rights lapse in accordance with clause 6.1.

7.2 Exercise of Performance Rights in part

If a Participant, or (where applicable) his or her Nominated Associate, elects to exercise part of the Performance Rights comprised in an Award, the Notice of Exercise must be in respect of:

- (a) that number of Performance Shares which is not less than the Minimum Parcel;
- (b) multiples of a Minimum Parcel; and
- (c) that number of Performance Shares which will not leave any unexercised Performance Rights comprised in that Award to that Participant, or (where applicable) to that Participant's Nominated Associate, totalling less than a Minimum Parcel.

7.3 Exercise procedure

A Participant, or (where applicable) his or her Nominated Associate, may exercise any of their Performance Rights by lodging a Notice of Exercise and a cheque payable to the Company for the Total Exercise Price (if any) applicable to those Performance Rights, or by such other means of payment as may be approved by the Board, at the head office of the Company for the time being or other place nominated by the Board for this purpose.

7.4 Trust Arrangements

If, in accordance with the terms of the Invitation or as otherwise determined by the Board, the arrangements under a Trust Deed apply to the Performance Rights being exercised under clause 7.3, then the Board:

- (a) may pay or cause to be paid to the Trustee an amount equal to the costs and expenses of the acquisition of the Shares to be acquired for the benefit of the Participant, or (where applicable) his or her Nominated Associate, pursuant to the Notice of Exercise; and
- (b) will instruct the Trustee, in accordance with the terms of the Trust Deed, to either:
 - (i) subscribe for or purchase the Shares on behalf of the Participant, or (where applicable) on behalf of his or her Nominated Associate; or
 - (ii) allocate the Shares to the Participant, or (where applicable) to his or her Nominated Associate.

8. Performance Hurdles and Vested Performance Rights

8.1 Performance criteria

In its absolute discretion, and subject to these Rules, the Board may from time to time determine the Performance Periods and Performance Hurdles that will apply to Performance Rights comprised in an Award.

8.2 Amendment or variations of Performance Hurdle

The Board reserves the right to amend or vary the Performance Hurdle applied under this Plan.

8.3 Test Dates

In its absolute discretion, and subject to these Rules, the Board may from time to time determine and, if so, specify in an Invitation:

- (a) the number and frequency of the Test Dates applicable to Performance Rights comprised in an Award; and
- (b) the extent to which Performance Rights comprised in an Award will become Vested Performance Rights on any Test Date upon the satisfaction of the Performance Hurdles during a Performance Period.

8.4 Determination of Vested Performance Rights

- (a) As soon as practicable after each Test Date applicable to any Performance Rights comprised in an Award, the Board shall determine:
 - (i) whether and to what extent the Performance Hurdles have been satisfied by the Company during the Performance Period; and
 - (ii) if so, the proportion of the Performance Rights (if any) that became Vested Performance Rights on the Test Date.

- (b) Performance Rights that have become Vested Performance Rights on a Test Date will remain Vested Performance Rights, irrespective of whether, on any subsequent Test Date, the Performance Hurdles are satisfied in relation to a Performance Period.

8.5 Rounding of fractions

If any determination made under clause 8.4 results in there being a fraction of a Vested Performance Right, the aggregate number of Vested Performance Rights shall be rounded, as follows:

- (a) upwards to the nearest whole number, if the fraction is a value of 0.5 or more; and
- (b) downwards to the nearest whole number, if the fraction is a value less than 0.5.

9. Allocation of Performance Shares

9.1 Allotment of Performance Shares

Subject to clause 9.2 and to clause 9.3, the Company must within 30 days after receipt of a Notice of Exercise and the Total Exercise Price (if any) in respect of Performance Rights, allot and issue to :

- (a) the Participant ; or
- (b) (where applicable) the Nominated Associate of the Participant; or
- (c) (where applicable) to the Trustee for the benefit of:
 - (i) the Participant; or
 - (ii) (where applicable) the Nominated Associate of the Participant;

that number of Performance Shares nominated by the Participant, or (where applicable) by his or her Nominated Associate, in the Notice of Exercise under these Rules.

9.2 Purchase of Performance Shares

- (a) The Company may, at the Board's discretion, determine to apply, or to instruct and procure the Trustee to apply, the Total Exercise Price together with, to the extent permitted by Law, moneys provided by the Company, in purchasing or subscribing for Performance Shares instead of making an allotment and issue of Performance Shares for the purpose of the Notice of Exercise. The relevant Performance Shares will be purchased in the name of:
 - (i) the Participant, or
 - (ii) (where applicable) the Nominated Associate of the Participant; or
 - (iii) (where applicable) in the name of the Trustee for the benefit of:
 - (A) the Participant; or
 - (B) (where applicable) the Nominated Associate of the Participant;

within 30 days after receipt of the Notice of Exercise and Total Exercise Price (if any).

- (b) Each Participant acknowledges and agrees that any obligation of the Company to deliver Shares to the Participant, or (where applicable) to his or her Nominated Associate, under the Plan will be discharged by the Trustee:
 - (i) delivering those Shares to:
 - (A) the Participant; or
 - (B) (where applicable) the Nominated Associate of the Participant; or
 - (ii) by the registration of those Shares in the name of:
 - (A) the Participant; or
 - (B) (where applicable) the Nominated Associate of the Participant
 at the direction of the Trustee.

9.3 Allocation of Performance Shares to Nominated Associates

The Trustee may only allocate Performance Shares to the Nominated Associate of a Participant under:

- (a) clause 9.1(b);
- (b) clause 9.1(c)(ii);
- (c) clause 9.2(a)(ii); or
- (d) clause 9.2(a)(iii)(B)

if the Nominated Associate has title, pursuant to clause 5.1(a), to the Performance Rights that are the subject of the Notice of Exercise. Nothing in this clause should be read as authorising the transfer of Performance Rights from a Participant to an Associate of the Participant after the grant of those Performance Rights under clause 5.1(a).

9.4 Appointment of Entity

- (a) If the Board so determines, the Board shall at the time of that determination appoint an entity (other than the Trustee) that is unrelated to any Group Company (**Entity**) for the sole purpose of purchasing the relevant number of Performance Shares and, for that purpose, the Company shall pay or cause to be paid to that Entity an amount equal to the costs and expenses of the acquisition of those Performance Shares.
- (b) The Entity so appointed shall acquire the number of Performance Shares as directed by the Board and immediately allocate and cause those Performance Shares to immediately be registered in the name of:
 - (i) the relevant Participant,
 - (ii) (where applicable) the Nominated Associate of the relevant Participant; or
 - (iii) (where applicable) in the name of, the Trustee for the benefit of:
 - (A) the Participant; or
 - (B) (where applicable) the Nominated Associate of the Participant,
 as directed by the Board.

- (c) In acquiring those Performance Shares, but not otherwise, the Entity acts as trustee for:
- (i) the relevant Participant; or
 - (ii) the Nominated Associate of the Participant; or
 - (iii) the Trustee for the benefit of:
 - (A) the Participant; or
 - (B) the Nominated Associate of the Participant;
- (as the case may be) until such time as those Performance Shares have been acquired, allocated and registered in the name of that Participant, his or her Nominated Associate or the Trustee for the benefit of the Participant or the Nominated Associate, as applicable. All other fiduciary obligations and duties of that Entity to that Participant, Nominated Associate or the Trustee that might otherwise be implied or imposed by law or equity are expressly excluded to the extent permitted by law, including without limitation any such obligation or duty arising under any statute.
- (d) The Entity is not an agent or trustee for the Company or, except as provided by paragraph (c) of this clause 9.4, for any Participant, any Nominated Associate or the Trustee.

10. Change of Control

10.1 Change of Control Event

For the purposes of this clause 10, a **Change of Control Event** occurs if:

- (a) the Company becomes a subsidiary of another company;
- (b) the Company sells its principle business to a person other than to a Group Company;
- (c) a company which is a subsidiary of the Company and which carries on the principle business of the Group ceases to be a subsidiary of the Company;
- (d) there is any other reorganisation of the Company and the other Group Companies which results in a Participant ceasing to be an Eligible Employee; or
- (e) the Company passes a resolution for voluntary winding up or if an order is made for the compulsory winding up of the Company.

10.2 Effect of a Change of Control

- (a) Where a Change of Control Event has or in the opinion of the Board will occur the Share Rights granted will vest where, in the Board's absolute discretion, pro rata performance is in line with the performance criteria applicable to those Share Rights (as determined in accordance with clause 8 of this Agreement) over the period from the date of grant to the date of the Change of Control Event.

- (b) Any Performance Right referred to in clause 10.2(a) which the Board determines does not vest will lapse automatically, unless the Board determines otherwise.

11. Capital Event

- (a) If a Capital Event occurs before the lodgment of a Notice of Exercise, the Board shall determine in respect of each Share Right:
 - (i) the number of underlying Performance Shares; and
 - (ii) the Exercise Price,by taking into account the Capital Event in a manner which is fair and equitable to the Participants and which is consistent with the relevant provisions of the Listing Rules. Share Rights shall be reconstructed in a manner which will not result in any additional benefits being conferred on Participants which are not conferred on persons holding Performance Shares or vice versa.
- (b) The Board may inform each Participant of these decisions or shall otherwise inform each Participant on request.

12. Share Rights not transferable

Share Rights may not be transferred, assigned or novated without the approval of the Board, except that a legal personal representative of a Participant, or (where applicable) a Nominated Associate, who has died or whose estate is liable to be dealt with under laws relating to mental health or bankruptcy will be entitled to be registered as the holder of those Share Rights after the production to the Board of such documents or other evidence as the Board may reasonably require to establish that entitlement.

13. Security Interest

Participants, and (where applicable) their Nominated Associates, shall not grant any Security Interest in or over or otherwise dispose of or deal with any Share Rights or any interest therein, and any such Security Interest or disposal or dealing will not be recognised in any manner by the Company.

14. Ranking and listing

- (a) Performance Shares issued as a consequence of the exercise of Performance Rights will, from the date of allotment, rank equally with all other issued Performance Shares, and will be entitled in full to those dividends which have a record date for determining entitlements after the date of issue.
- (b) The Company will apply for official quotation of those Performance Shares on the ASX.
- (c) The Performance Rights will not be listed for quotation on any stock exchange.

15. Issue limitations

- (a) Notwithstanding any Rule, Performance Shares may not be issued, transferred or dealt with under the Plan if to do so would contravene or prevent compliance with the Corporations Act, the Listing Rules or any other applicable laws or where the compliance would, in the opinion of the Board, be unduly onerous or impractical.
- (b) Share Rights may not be granted under this Plan if, immediately following the grant (in this paragraph (b), the **Relevant Grant**), the aggregate of the total number of Performance Shares:
 - (i) issued pursuant to the exercise of Share Rights granted under this Plan, and issued under or in connection with all Company Employee Equity Plans, which remain subject to these Rules or the applicable rules of the Company Employee Equity Plan (as the case may be) (including, without limitation, Performance Shares which remain subject to any restrictions on transfer); and
 - (ii) which would be issued upon the exercise of all outstanding options to subscribe for Performance Shares and all outstanding performance rights granted under all Company Employee Equity Plans and this Plan,
 but disregarding any offer made, or option acquired or share issued, by way of or as a result of:
 - (iii) an offer to a person situated outside Australia at the time of receipt of the offer; or
 - (iv) an offer that was an excluded offer or invitation within the meaning of the Corporations Law as in force before the commencement of Schedule 1 to the *Corporate Law Economic Reform Program Act 1999* (Cth);
 - (v) an offer that did not require disclosure to investors because of section 708 of the Corporations Act,
 - (vi) an offer that did not require the giving of a Product Disclosure Statement because of section 1012D of the Corporations Act; or
 - (vii) an offer made under a disclosure document or Product Disclosure Statement,
 would exceed 5% of the total number of Ordinary Shares.

16. Breach, fraud or dishonesty

16.1 Breach, fraud or dishonesty committed by Participant

If in the reasonable opinion of the Board a Participant acts fraudulently or dishonestly or is in material breach of his or her obligations to the Company or any other Group Company then the Board may in its absolute discretion:

- (a) determine that any Unvested Performance Rights of the Participant, or (where applicable) the Participant's Nominated Associate, have lapsed; or

- (b) deem all or any Performance Shares held by the Participant, or (where applicable) the Participant's Nominated Associate, to be forfeited, in which event the Participant is deemed to have agreed to sell his Performance Shares, or (where applicable) those held by his Nominated Associate to the Company pursuant to an Employee Share Scheme Buy-Back for no consideration or be deemed to have appointed any officer of the Company as his or her agent to sell the Performance Shares on market; or
- (c) where any Performance Shares have been sold by the Participant, or (where applicable) his or her Nominated Associate, require the Participant to pay all or part of any of the net proceeds of that sale to the Company.

16.2 Breach, fraud or dishonesty committed by other person

If in the reasonable opinion of the Board:

- (a) a Participant's, or (where applicable) his or her Nominated Associate's, Share Rights vest as a result of the fraud, dishonesty or material breach of a person other than the Participant; and
- (b) the relevant Share Rights would not have otherwise vested but for the activities of the person or entity identified in clause 16.2(a),

the Board may, subject to any applicable Laws, determine:

- (i) where Performance Shares have not been issued or transferred upon the vesting of a Performance Right, that the Performance Rights have not vested; or
- (ii) where Performance Shares have been issued or transferred, that the Performance Shares are forfeited

17. No interest in Performance Shares until exercise

In the case of Performance Rights, a Participant, and (where applicable) his or her Nominated Associate, has no interest in any Performance Share unless and until the related Performance Right is exercised and Performance Shares are either allotted and issued to, or purchased in the name of:

- (a) that Participant ; or
- (b) (where applicable) his or her Nominated Associate; or
- (c) (where applicable) the Trustee for the benefit of:
 - (i) the Participant; or
 - (ii) (where applicable) his or her Nominated Associate,

as a result of that exercise.

18. Restriction on dealing with Performance Shares

18.1 Application of Holding Lock

The Board may, in its discretion, and by prior notice in accordance with clause 3.2(a) to the Participant apply a Holding Lock to some or all Performance Shares subsequently acquired by

- (a) that Participant ; or
- (b) (where applicable) his or her Nominated Associate; or
- (c) (where applicable) the Trustee for the benefit of:
 - (i) the Participant; or
 - (ii) (where applicable) his or her Nominated Associate,

under the Plan for the duration of the Holding Lock Period or Holding Lock Periods, and the Participant, or the Nominated Associate or Trustee (as applicable), agrees that the Performance Shares so held by the Participant, the Nominated Associate or the Trustee (as applicable), will be subject to any such Holding Lock for the duration of the Holding Lock Period or Holding Lock Periods. For this purpose, the Board may (in such prior notice) specify a particular Holding Lock Period or particular Holding Lock Periods, or the manner in which the Holding Lock Period is to be determined. Such prior notice must be given in accordance with clause 3.2(a).

18.2 Holding Lock restrictions

- (a) While subject to a Holding Lock, Performance Shares acquired and held under the Plan by or for the benefit of a Participant cannot be transferred by the Participant, or by the Trustee other than to the relevant Participant, and the Participant or the Trustee (as applicable) must not grant (or purport to grant) any Security Interest in or over or otherwise dispose of or deal with (or purport to otherwise dispose of or deal with) any such Performance Shares acquired under the Plan or any interest in any such Performance Shares acquired under the Plan held by the Participant or the Trustee (other than a transfer of the legal title to such Shares by the Trustee to the relevant Participant).
- (b) While subject to a Holding Lock, Performance Shares acquired and held under the Plan by or for the benefit of a Participant's Nominated Associate cannot be transferred by the Nominated Associate, or by the Trustee other than to the relevant Nominated Associate, and the Nominated Associate or the Trustee (as applicable) must not grant (or purport to grant) any Security Interest in or over or otherwise dispose of or deal with (or purport to otherwise dispose of or deal with) any such Performance Shares acquired under the Plan or any interest in any such Performance Shares acquired under the Plan held by the Nominated Associate or the Trustee (other than a transfer of the legal title to such Shares by the Trustee to the relevant Nominated Associate).

18.3 Enforcement by Board

The Board will be entitled to prescribe, take and enforce such action, steps or arrangements as it considers necessary, desirable or appropriate to enforce or give further effect to the provisions of clauses 18.1 and 18.2 so as to ensure that the Holding Lock restrictions are satisfied.

18.4 Early termination of Holding Lock Period

Any Holding Lock Period will automatically end:

- (a) on the date on which, as a result of a takeover bid or scheme of arrangement, a person's voting power in the Company increases to more than 50%; or
- (b) in respect of any one or more Participants and in respect of some or all of the Performance Shares held by :
 - (i) those Participants ; or
 - (ii) (where applicable) their Nominated Associates; or
 - (iii) by the Trustee for the benefit of:
 - (A) those Participants; or
 - (B) (where applicable) their Nominated Associates

(in each case as specified by the Board in its discretion), on the date (if any) determined by the Board in its discretion.

19. Commencement and termination

19.1 Commencement

The Plan takes effect from the date of resolution by the Board adopting the Plan or such later date as may be specified by the Board in that resolution.

19.2 Termination and Suspension

The Board may terminate or suspend the operation of the Plan at any time by resolution of the Board. For the avoidance of doubt, any termination of the Plan pursuant to this clause will not affect any Share Rights that are outstanding.

20. Administration of the Plan

- (a) The Board will manage and administer the Plan for the Company, including exercising any discretion or power conferred on the Company or the Board under the Plan and the Trust Deed.
- (b) The Board will have power to:
 - (i) determine appropriate procedures and regulations for administration of the Plan consistent with the provisions of these Rules; and

- (ii) resolve conclusively all questions of fact or interpretation and all calculations arising in connection with the Plan.
- (c) Any power or discretion which is conferred on the Board by these Rules may be exercised by the Board in the interests or for the benefit of the Company, and the Board is not, in exercising any such power or discretion, under any fiduciary or other obligation to any other person.
- (d) Any power or discretion which is conferred on the Board by these Rules (including the powers conferred in clause 20(b)) may be delegated by the Board for such period and upon such conditions as the Board may determine to:
 - (i) a committee consisting of such directors of the Company as the Board thinks fit; or
 - (ii) any one or more persons selected by the Board.
- (e) The Board may at any time appoint or engage specialist service providers for the management and administration of the Plan.
- (f) The Board must ensure a complete register of Participants is maintained to facilitate the efficient management and administration of the Plan and to comply with regulatory reporting requirements.
- (g) Despite any other clause in these Rules, in administering the Plan, the Board may apply any exchange rate it sees fit in respect of any conversion of currencies which occur (or, in the opinion of the Board, should occur) during the course of managing and administering the Plan.

21. Amendment of the Plan

21.1 By the Board

Subject to clause 21.3, the Board may at any time and from time to time by resolution:

- (a) amend or supplement, including by way of schedule, all or any of these Rules or all or any of the rights or obligations of the Participants or any of them; and
- (b) formulate (and subsequently amend) special terms and conditions, in addition to those set out in these Rules, to apply to Eligible Employees employed in, resident in, or who are citizens of, countries other than Australia. Each of such sets of special terms and conditions shall be restricted in its application to those Eligible Employees employed in, resident in, or who are citizens of the foreign country or countries specified by the Board, and may be revoked, added to or varied in accordance with paragraph (a) of this clause 21.1.

21.2 Amendments which reduce rights

Despite clause 21.1, no amendment of these Rules and no special terms and conditions may reduce the rights of any Participant in respect of Performance Rights issued under the Plan prior to the date of the amendment or formulation, unless the amendment is made primarily for the purpose of complying with present or future Laws applicable to the Plan or

a Group Company, to correct any manifest error or mistake, or with the consent of the relevant Participants.

21.3 Listing Rules

The exercise of any powers under these Rules by the Board is subject to any restrictions or procedural requirements relating to the amendment of the rules of an employee incentive scheme or of issued options imposed by any Law or by the Listing Rules and applicable to the Plan or the Share Rights, as the case may be, unless those restrictions, conditions or requirements are relaxed or waived by the ASX or any of its delegates either generally or in a particular case or class of cases and either expressly or by implication.

21.4 Retrospective effect

Subject to the above provisions of this clause 21, any amendment made pursuant to clause 21.1 may be given such retrospective effect as is specified in the resolution by which the amendment is made.

22. Law, Listing Rules and the Constitution

The Rules and all offers and issues of Share Rights and Performance Shares under the Plan are subject to any Law, the Listing Rules and the Company's Constitution, each as in force from time to time.

23. Rights of Participants

Nothing in these Rules:

- (a) forms part of any contract of employment of any Eligible Employee;
- (b) confers on any Eligible Employee or Participant the right to continue as an Employee of any Group Company;
- (c) confers on any Employee the right to become or remain an Eligible Employee or to participate under the Plan;
- (d) affects any rights which a Group Company may have to terminate the employment of an Eligible Employee or Participant;
- (e) may be used to increase damages in any action brought against any Group Company in respect of any such termination and a Participant shall waive any and all rights to compensation or damages in consequence of any such termination insofar as those rights arise or may arise from that Participant ceasing to have rights under or entitled to exercise any Share Right under the Plan as a result of such termination; or
- (f) confers any responsibility or liability on any Group Company or its directors, officers, employees, representatives or agents in respect of any taxation liabilities of the Eligible Employees or Participants.

24. Conditional Rights

24.1 Issue

In its absolute discretion and subject to these Rules, the Board may from time to time:

- (a) specify that a Performance Right is a Conditional Right;
- (b) develop and amend any policies in relation to determining the number of Conditional Rights to be the subject of individual Invitations, and, in doing so, the Board may determine that those Invitations be made on a differential basis to Eligible Employees; and
- (c) develop and make rules that are not inconsistent with the rules contained in this Plan to deal with Conditional Rights and/or the issue of Invitations to Employees who are not residing in, resident of or citizens of Australia.

24.2 Applicable Provisions

The provisions of clauses 4 , 5 and 8 shall apply in the same way.

25. Vesting of Conditional Rights

25.1 Automatic Exercise to cover Tax Liability on Vesting

- (a) Where any Group Company must (or would suffer a disadvantage if it did not) pay or account for any tax, social security contributions or other levies (in any jurisdiction) (together, the **Tax Liability**) in connection with the Vesting of a Conditional Right, the Board has a discretion to deem the Conditional Right to be exercised to the extent necessary in order to satisfy that Tax Liability in accordance with sub-rule 25.1(b).
- (b) Where the Board exercises its discretion pursuant to 25.1(a), the Participant is deemed to have:
 - (i) submitted an exercise notice to the Company in respect of a number of Performance Shares whose sale proceeds (less the Exercise Price, if any) are expected to be equal to the Tax Liability plus the costs of the sale of such Performance Shares on the Vesting Date;
 - (ii) authorised the sale of the Performance Shares which are the subject of the deemed notice; and
 - (iii) authorised the payment to or to the order of the relevant company of the required amount (including costs of sale) from the sale proceeds.

25.2 Issue or Transfer of Shares

Subject to the Listing Rules, up to and including the date which is 60 days after a Conditional Right has Vested, the Board on behalf of the Company will arrange for the issue or transfer to the Participant (or a nominee for them, or, if applicable, their personal representative) of the Performance Shares which are the subject of the Conditional Right.

However, Performance Shares may only be issued or transferred subject to clause 16 and if:

- (a) the Board considers that the issue or transfer of the Performance Shares would be lawful in the relevant jurisdiction; and
- (b) in a case where any Group Company must (or would suffer a disadvantage if it did not) pay or account for any Tax Liability in connection with the Vesting or exercise of any Award or the issue or transfer of Shares:
 - (i) in respect of a Tax Liability arising on the Vesting of any Performance Right or Conditional Right, the Board is satisfied that either Automatic Exercise has occurred; or
 - (ii) in respect of a Tax Liability arising on the Vesting of any Performance Right or Conditional Right or in any other circumstances, the Board is satisfied that the Participant (or, if applicable, their personal representative):
 - (A) has paid an amount equal to the Tax Liability to the relevant Group Company; or
 - (B) has made acceptable arrangements with the relevant company for the payment to be made (whether by authorising the sale of some or all of the Shares and the payment to that company of the required amount (including costs of sale) from the sale proceeds or otherwise).

25.3 Applicable Regulation

The exercise of a Share Right and the issue or transfer of any Performance Shares under a Conditional Right or following exercise of a Performance Right is subject to the provisions of any applicable regulation or enactment. Where:

- (a) the exercise of a Performance Right is prohibited under those provisions, the lapse of the Performance Right will be delayed accordingly; or
- (b) the issue or transfer of Shares is prohibited under those provisions, the issue or transfer will take place as soon as reasonably practicable after it is no longer prohibited.

26. General

26.1 Advice

Eligible Employees should obtain their own independent advice on the financial, taxation and other consequences to them of or relating to participation in the Plan including in relation to exercising Share Rights and disposing of any or all Performance Shares acquired, either directly or through the Trustee, as a result of exercising Share Rights.

26.2 Connection with other schemes

Participation in the Plan does not affect, and is not affected by, participation in any other employee incentive scheme of the Company unless the rules of that scheme provide otherwise.

26.3 Costs and Expenses

With the exception of Taxes (excluding any Taxes payable on brokerage) which are payable by a Participant, or (where applicable) his or her Nominated Associate, a Participant will not be liable for any costs associated with the implementation and administration of the Plan unless the Board in its discretion determines otherwise. If the Board so determines, the Board must inform the Participant prior to allocating any such expense to a Participant.

Subject to the preceding paragraph, the Company will pay all expenses, costs and charges in relation to the establishment, implementation and administration of the Plan, including all costs incurred in or associated with the allotment and issue or purchase of Performance Shares (except for Taxes which are payable by Participants) for the purposes of the Plan.

26.4 Attorney and agent

- (a) Each Participant, and (where applicable) each Nominated Associate of a Participant, authorises and appoints each member of the Board and the secretary (if any) of the Company (or their delegate) as their agent and attorney with power to do all things necessary in the name of and on behalf of the Participant or Nominated Associate (as applicable) to give effect to these Rules, including and without limitation, signing all instruments and other documents.
- (b) Each Participant, and (where applicable) each Nominated Associate of a Participant, agrees to indemnify and hold harmless any person acting as their agent or attorney in accordance with these Rules in respect of all costs, damages or losses of whatever nature arising from so acting.

26.5 Privacy consents

The Board and each Group Company is authorised to use and disclose personal information relating to Participants for all purposes which relate to the management and administration of the Plan including, without limitation:

- (a) disclosure of personal information to the Trustee;
- (b) disclosure of personal information between Group Companies; and
- (c) disclosure of personal information by Group Companies to external service providers including share registries, professional advisers and mail houses,

in each case whether or not the personal information is transferred from one country to another country.

26.6 Disputes

Any disputes or differences of any nature arising under the Plan must be referred to the Board and its decision shall be final and binding in all respects.

26.7 Waiver

Notwithstanding any other provisions of these Rules, the Board may, in its absolute discretion, waive in whole or in part any terms or conditions in relation to any Performance Rights granted to any Participant, or (where applicable) to any Nominated Associate of a Participant.

26.8 Notices

Any notice, instruction or direction given under or pursuant to these Rules:

- (a) is validly given if it is handed to the addressee, faxed to the addressee at the fax number last notified by that person or posted ordinary prepaid post (first class air-mail if to an overseas address) to the last known address of the addressee;
- (b) must be signed by the sending or a person duly authorised by the sender;
- (c) except as provided in paragraph (d), will be taken to have been given:
 - (i) in the case of personal delivery, when personally received;
 - (ii) in the case of post to a domestic address, two Business Days after posting;
 - (iii) in the case of post to an overseas address, seven Business Days after posting; or
 - (iv) in the case of a fax, on production of a transmission report by the machine from which the fax was sent that indicates that the fax was transmitted in its entirety to the fax number of the addressee,unless it is personally received or faxed after 5.00 pm on the day, in which case it shall be deemed to be received or faxed on the next succeeding Business Day;
- (d) in the case of an Acceptance Form or a Notice of Exercise, that election, Acceptance or notice will not be taken to have been received by or on behalf of the Company until it is actually received by the Company at the address nominated from time to time by the Board.

26.9 Error Correction

- (a) In the event that any error or mistake has been made in relation to the number of Share Rights the subject of:
 - (i) an Invitation under clause 3.1; or
 - (ii) an inscription in the Register pursuant to clause 5.1that Invitation or inscription, as the case may be, shall be null and void and of no effect to the extent of any such error or mistake and the Board may in its absolute discretion, correct such error or mistake, without the need to obtain consent from the relevant Eligible Employee or relevant Participant or their Nominated Associate, by notice to the Eligible Employee or that Participant and, where appropriate, may issue an amended Invitation or correct the Register.
- (b) The Board will notify the relevant Participant within a reasonable period after discovering and correcting the error or mistake.

26.10 Withholding or Collection of Taxes and other liabilities

The Company or the Trustee will have the right to withhold or collect from a Participant such Taxes, social security liabilities or other liabilities as may be required by Law in connection with the Plan, or to otherwise require the Participant to pay such Taxes, social security liabilities or other liabilities.

26.11 Governing Law

This Plan and the rights of Participants under its Rules are governed by the laws in force in the State of Queensland, Australia, and each Participant agrees to submit to the non-exclusive jurisdiction of the courts of Queensland (and any courts competent to hear appeals from such courts).