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Orbital Corporation Limited

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# Employee Incentive Plan

Approved on 27 October 2017

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# Employee Incentive Plan

Date: 27/10/2017

## 1 Definitions and Interpretation

### 1.1 Definitions

**ASX** means ASX Limited ACN 008 624 691;

**Black-out Period** means any period during which trading in the Company's securities, or financial products issued or created over or in respect of the Company's securities, by the relevant Eligible Participant is prohibited in accordance with the Company's corporate governance policies on share trading activities as they apply from time to time.

**Board** means the board of directors of the Company or a committee appointed by the Board (including the Remuneration Committee) for the purposes of the Plan;

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Western Australia;

**Change of Control** means:

- (a) in the case of a Takeover Bid, an offeror who previously had voting power of less than 50% in the Company obtains voting power of more than 50%;
- (b) shareholders of the Company approve a proposed compromise or arrangement for reconstruction of the Company or its amalgamation with any other company or companies at a meeting convened by the Court pursuant to section 411(4)(a) of the Corporations Act;
- (c) any person becomes bound or entitled to acquire shares in the Company under:
  - (i) section 414 of the Corporations Act (compulsory acquisition following a scheme or contract); or
  - (ii) Chapter 6A of the Corporations Act (compulsory acquisition of securities);
- (d) a selective capital reduction is approved by shareholders of the Company pursuant to section 256C(2) of the Corporations Act which results in a person who previously had voting power of less than 50% in the Company obtaining voting power of more than 50%; or
- (e) in any other case, a person obtains voting power in the Company which the Board (which for the avoidance of doubt will comprise those directors immediately prior to the person acquiring that voting power) determines, acting in good faith and in accordance with their fiduciary duties, is sufficient to control the composition of the Board;

**Company** means Orbital Corporation Limited ACN 009 344 058;

**Corporations Act** means the *Corporations Act 2001* (Cth), as amended from time to time;

**Eligible Participant** means:

- (a) a full time or part time employee of a Group Company;
- (b) a director or company secretary of a Group Company;

- (c) a contractor engaged by a Group Company, who is determined by the Board to be eligible to receive Incentives under the Plan; or
- (d) any other person determined by the Board to be an Eligible Participant for the purposes of the Plan;

**Exercise Price** means the amount (if any) determined by the Board as being payable by an Incentiveholder to acquire a Share upon exercise of an Incentive. If no determination is made, the applicable Exercise Price is zero;

**Expiry Date** means the date and time in respect of an Incentive referred to in **rule 2.2(d)**;

**Grant Date** in relation to an Incentive means the date from which the Board determines that an Incentive takes effect;

**Group** means the Company and its Subsidiaries and any other entity declared by the Board to be a member of the group for the purposes of the Plan and any member of the Group is a **Group Company**;

**Incentive** means a right to acquire a Share whether by purchase or subscription, and the corresponding obligation of the Company to provide the Share, pursuant to a binding contract made by the Company and an Eligible Participant in the manner set out in these rules, the performance of which is subject to exercise of the Incentive in accordance with **rule 5**;

**Incentiveholder** means an Eligible Participant or their nominee to whom Incentives have been granted under this Plan.

**Invitation** means an invitation referred to in **rule 2.1(a)**;

**Invitation Terms and Conditions** means the terms and conditions advised in writing to the Eligible Participant by the Board pursuant to **rule 2.2**;

**Listing Rules** means the Official Listing Rules of the ASX and, for so long as the Shares are listed or quoted on any other stock exchange where such stock exchange requires compliance with its listing rules, the listing rules applicable to that stock exchange, each as they apply to the Company from time to time;

**Minimum Term of Employment** means 12 months of continuous employment or engagement with a Group Company by the Eligible Participant from the Grant Date, unless the Board determines otherwise;

**Performance Right** means an Incentive granted under this Plan for which the Exercise Price is zero;

**Plan** means the Orbital Corporation Limited Employee Incentive Plan as set out in these rules, subject to any amendments or additions made under **rule 12**;

**Redundant** means any situation where the requirements of the relevant Group Company for an Incentiveholder (or the relevant Eligible Participant, where the Incentiveholder is the nominee of the Eligible Participant) to carry out a particular kind of work (given his or her particular skills) or to carry out certain work in a particular place, have ceased or diminished (or are likely to do so), but does not extend to the dismissal of an Incentiveholder (or the relevant Eligible Participant, as applicable) for personal or disciplinary reasons, including for reasons of misconduct or unsatisfactory performance, or where an Incentiveholder (or the relevant Eligible Participant, as applicable) leaves of his or her own accord or Termination by Consent;

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

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

**Subsidiary** has the meaning given to that term in section 9 of the Corporations Act;

**Takeover Bid** has the meaning given to that term in section 9 of the Corporations Act;

**Termination by Consent** means the termination of an Eligible Participant's employment or engagement with a Group Company by the volition of the Eligible Participant and with the written consent of the Board expressly given for the purposes of the Plan;

**Termination for Cause** means termination of an Eligible Participant's employment or engagement with a Group Company due to:

- (e) fraud or dishonesty on the part of the Incentiveholder (or the relevant Eligible Participant, where the Incentiveholder is the nominee of the Eligible Participant);
- (f) the Incentiveholder (or the relevant Eligible Participant, where the Incentiveholder is the nominee of the Eligible Participant) being in material breach of their obligations to any Group Company;
- (g) intentional and material misapplication of the funds of any Group Company;
- (h) any conviction of a criminal offence;
- (i) any act of wilful and material malfeasance or gross negligence in the performance of duties; or
- (j) the on-going refusal to perform the lawful and reasonable business directives of the Board.

**Vesting Condition** means one or more conditions which must be satisfied or circumstances which must exist before the relevant Incentives issued under this Plan may be exercised, as determined by the Board and which may include a requirement in relation to a Minimum Term of Employment;

**Vesting Notice** means, in relation to an Incentive, the notice (whether physical or electronic) given by or on behalf of the Company to an Incentiveholder informing him or her that all of the Vesting Conditions have been satisfied or waived; and

**voting power** has the meaning given to that term in Section 9 of the Corporations Act.

## 1.2 Interpretation

In this Plan, the following rules of interpretation apply unless a contrary intention appears:

- (a) headings are for convenience only and do not affect the interpretation of the Plan unless the context requires otherwise;
- (b) any reference in the Plan to any enactment or the Listing Rules includes a reference to that enactment or those Listing Rules as from time to time amended, consolidated, re-enacted or replaced and to all regulations or instructions issued under it;
- (c) any words denoting the singular include the plural and words denoting the plural include the singular;
- (d) any words denoting one gender include the other gender;

- (e) where any word or phrase is given a definite meaning in the Plan, any part of speech or other grammatical form of that word or phrase has a corresponding meaning; and
- (f) a reference to a power, right or discretion being exercisable by the Board is taken to be a reference to that power, right or discretion being exercisable by a delegate of the Board.

### **1.3 Deferred Tax**

Incentives acquired under the terms of this Plan will be under a scheme to which Subdivision 83A-C of the Income Tax Assessment Act 1997 (Cth) applies (subject to the conditions in that Act). Subdivision 83A-C of the Income Tax Assessment Act 1997 (Cth) provides for deferred taxation.

## **2 Invitation to participate**

### **2.1 Invitation**

- (a) The Board may, from time to time, at its absolute discretion, issue written invitations (in such form as the Board decides from time to time) to Eligible Participants to apply for up to a specified number of Incentives.
- (b) Unless the Board otherwise determines, no payment is required for a grant of Incentives.

### **2.2 Information to be provided to Eligible Participants**

The Board will, together with the Invitation, advise each Eligible Participant of the following regarding the Incentives:

- (a) the method of calculation of the Exercise Price (if the Exercise Price is zero, then a statement to that effect);
- (b) the number of Incentives which the Eligible Participant is eligible to apply for and the maximum number of Shares over which each Incentive is granted;
- (c) the period or periods during which any of the Incentives may be exercised;
- (d) the dates and times when the Incentives lapse, which unless the Board determines otherwise, must be no later than the fifteen year anniversary of the Grant Date (**Expiry Date**);
- (e) the date and time by which the application for Incentives must be received by the Company; and
- (f) any applicable Vesting Conditions.

### **2.3 Use of the term “Performance Right”**

If the Board grants Incentives with an exercise price of zero, it is acknowledged that those Incentives may be referred to in all correspondence as “Performance Rights”.

## **3 Application for Incentives**

### **3.1 Application**

Following receipt of an Invitation, an Eligible Participant or their nominee may apply for all or part (in multiples of 1000 Incentives) of the number of Incentives specified in the Invitation. The application will be made by sending to the person nominated by the

Company an application in the form attached to the Invitation duly completed and signed together with a cheque for any amount payable in respect of the grant of the Incentives.

### **3.2 Acceptance period**

The Company must receive the application within the period for acceptance specified in the Invitation.

### **3.3 Conditional contract**

An application for Incentives constitutes an offer by the Eligible Participant or their nominee to enter into conditional contracts with the Company in the nature of Incentives.

## **4 Grant of Incentives**

### **4.1 Grant**

- (a) Once the Company has received and accepted a duly signed and completed application for Incentives (together with any moneys payable in respect of the grant), the Board may, in its complete discretion and only where the Eligible Participant remains an Eligible Participant:
- (i) grant Incentives to the Eligible Participant or his or her nominee, with effect from the Grant Date; or
  - (ii) procure the grant of the Incentives by a third party,
- upon the terms set out in the Plan and upon such additional terms and Vesting Conditions as the Board determines. The Company will, within a reasonable period after the Grant Date of the Incentives, issue the Eligible Participant or his or her nominee with a certificate evidencing the grant of the Incentives.
- (b) A grant of Incentives by the Board constitutes an acceptance of the Eligible Participant's offer to enter into conditional contracts with the Company in the nature of Incentives.

### **4.2 Transfer of Incentives**

- (a) An Incentive (other than a Performance Right) granted under the Plan is only transferable:
- (i) where a Takeover Bid is made to acquire all or some of the Shares in the Company in circumstances where:
    - (A) the offer is for all Shares;
    - (B) the offer is declared unconditional; and
    - (C) holders of at least half of the Shares the subject of the Takeover Bid have accepted that offer,and the Incentives are transferred by the Incentiveholder to the party making the Takeover Bid for the Company;
  - (ii) where a scheme of arrangement pursuant to Part 5.1 of the Corporations Act between the Company and the holders of Shares becomes effective in accordance with section 411(10) of the Corporations Act and the Incentives are transferred by the Incentiveholder to the party acquiring all of the Shares pursuant to the scheme of arrangement; or

- (iii) by force of law upon death to the Incentiveholder's legal personal representative or upon bankruptcy to the Incentiveholder's trustee in bankruptcy,

or otherwise with the prior written consent of the Board (which may be withheld in its sole discretion).<sup>1</sup>

- (b) Where the Incentiveholder purports to transfer, assign, mortgage, charge or otherwise dispose of or encumber (in whole or in part) an Incentive other than in accordance with **rule 4.2(a)**, the Incentive immediately lapses.
- (c) An Incentive granted under the Plan may not be used to secure the payment of any monies.
- (d) Upon a Change of Control, at the sole discretion of the Board vested Incentives may be cancelled by agreement with the Incentiveholder for consideration.

### **4.3 Approvals**

The Board must ensure that:

- (a) every issue of Incentives under the Plan complies with any applicable legislation; and
- (b) all necessary approvals required under any applicable legislation are obtained prior to the issue of Incentives under the Plan.

## **5 Vesting**

### **5.1 Vesting**

- (a) An Incentive will vest when a Vesting Notice in respect of that Incentive is given or is deemed to be given to the Incentiveholder;
- (b) Subject to **rules 6.2, 6.3, 6.4, 6.5, 6.8, 8 and 13.3**, an Incentive can only be exercised when all Vesting Conditions applicable to that Incentive are satisfied or have been waived by the Company under **rule 5.2** and the Company has provided a Vesting Notice to the Incentiveholder.
- (c) For the avoidance of doubt, a Vesting Notice is deemed to be given on the Grant Date if there are no Vesting Conditions relevant to that Incentive,

### **5.2 Waiver of Vesting Condition**

A Vesting Condition for an Incentive may, subject to the Corporations Act, the Listing Rules and any other applicable laws and regulations, be waived by the Board by written notice to the relevant Incentiveholder and on such terms and conditions as determined by the Board and set out in that notice.

## **6 Exercise of Incentives**

### **6.1 Exercise pre-conditions**

Subject to any restrictions on exercise of an Incentive whilst there is a Black-out Period in place, where a Vesting Notice has been given or deemed to be given by the Company to the Incentiveholder in relation to an Incentive, to exercise that Incentive, the Incentiveholder must deliver to the Company:

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<sup>1</sup> Performance Rights granted by the Company are not transferrable on Change of Control. Where the conditions for transfer under rules 4.2(a)(i) and 4.2(a)(ii) have been met the Performance Rights will vest.

- (a) an exercise notice which specifies the number of vested Incentives being exercised and, unless otherwise determined by the Board, the exercise notice must be accompanied by payment of the Exercise Price (if any) by such means and in such manner approved by the Board. The exercise notice is only effective (and only becomes effective) when the Company has received value for the full amount of the Exercise Price (for example, if the full amount of the Exercise Price is paid by cheque, clearance of that cheque); and
- (b) the certificate for those vested Incentives, for cancellation by the Company.

## **6.2 Cessation due to death or ill health**

Subject to any Invitation Terms and Conditions and to **rules 6.8** and **6.9**, if before an Incentive has been exercised:

- (a) an Incentiveholder's employment or engagement (or the relevant Eligible Participant's employment or engagement, where the Incentiveholder is the nominee of the Eligible Participant) with a Group Company is terminated as a result of ill health; or
- (b) an Incentiveholder (or the relevant Eligible Participant, where the Incentiveholder is the nominee of the Eligible Participant) dies and at that time the Incentiveholder (or the relevant Eligible Participant, as applicable) was employed or engaged by a Group Company,

then:

- (c) if all relevant Vesting Conditions have been met or if no Vesting Condition is imposed, the Incentive may be exercised (in the case of ill health) by the Incentiveholder, or (in the case of death) by the Incentiveholder's personal representative, until the Incentive lapses in accordance with **rule 6.10**; or
- (d) if any relevant Vesting Condition has not been met, then the Incentive will automatically lapse immediately upon the termination of employment or engagement (in the case of ill health) or death (in the case of the death of the Incentiveholder), unless the Board determines otherwise.

## **6.3 Cessation due to Termination for Cause**

Subject to any Invitation Terms and Conditions and **rules 6.8** and **6.9**, if an Incentiveholder (or the relevant Eligible Participant, where the Incentiveholder is the nominee of the Eligible Participant) ceases to be employed or engaged by any Group Company before an Incentive has been exercised in circumstances where the cessation or termination of employment or engagement is because of Termination for Cause, then the Incentive will, regardless of whether any relevant Vesting Conditions have been met, automatically lapse on the date of cessation of employment or engagement, unless the Board determines otherwise.

## **6.4 Cessation due to Termination by Consent**

Subject to any Invitation Terms and Conditions and to **rules 6.8** and **6.9**, if an Incentiveholder (or the relevant Eligible Participant, where the Incentiveholder is the nominee of the Eligible Participant) ceases to be employed or engaged by any Group Company before an Incentive has been exercised in circumstances where the cessation or termination of employment or engagement is due to Termination by Consent, then:

- (a) if all relevant Vesting Conditions have been met or if no Vesting Condition is imposed, the Incentive continues and may be exercised by the Incentiveholder during the period ending 30 days after cessation of employment or engagement or

any longer period permitted by the Board, after which time the Incentive will automatically lapse; or

- (b) if any relevant Vesting Condition has not been met, the Incentive will automatically lapse on the date of cessation of employment or engagement, unless the Board determines otherwise.

## **6.5 Cessation of employment/ engagement due to other reasons**

Subject to any Invitation Terms and Conditions and to **rules 6.8** and **6.9**, if an Incentiveholder (or the relevant Eligible Participant, where the Incentiveholder is the nominee of the Eligible Participant) ceases to be employed or engaged by any Group Company before an Incentive has been exercised in circumstances where:

- (a) the Incentiveholder's employment or engagement (or the relevant Eligible Participant's employment or engagement, where the Incentiveholder is the nominee of the Eligible Participant) has been terminated by the relevant Group Company for reasons other than a reason set out in **rules 6.2, 6.3, 6.4** above; or
- (b) the Incentiveholder (or the relevant Eligible Participant, where the Incentiveholder is the nominee of the Eligible Participant) being made Redundant or otherwise constructively dismissed by the relevant Group Company,

then

- (c) any unvested Incentives automatically vest; and
- (d) the Incentive (including those that automatically vest by the operation of **rule 6.5(c)**) continues and may be exercised by the Incentiveholder until the date which is 30 days after cessation of employment or engagement or any longer period permitted by the Board, after which time the Incentive will automatically lapse;

## **6.6 When employment/ engagement ceases**

- (a) An Eligible Participant will not be treated for the purposes of **rules 6.2, 6.3, 6.4** or **6.5** as ceasing to be employed or engaged by a Group Company until such time as the Eligible Participant is no longer employed or engaged by any of the relevant Group Company.
- (b) Subject to applicable laws, at the discretion of the Board, an Eligible Participant who is granted an approved leave of absence and who exercises their right to return to work under any applicable award, enterprise agreement, other agreement, statute or regulation before the exercise of an Incentive under the Plan will be treated for those purposes as not having ceased to be such an employee.

## **6.7 Fraudulent or dishonest actions**

If, in the opinion of the Board, an Incentiveholder (or the relevant Eligible Participant, where the Incentiveholder is the nominee of the Eligible Participant) acts fraudulently or dishonestly or is in breach of his or her obligations to any Group Company, then the Board may deem any unexercised Incentives of the Incentiveholder to have lapsed (whether or not that Incentiveholder's employment or engagement with a Group Company has terminated).

## **6.8 Discretion**

- (a) Notwithstanding **rules 6.1** to **6.7** (inclusive), the Board may decide (on any conditions which it thinks fit) that some or all of the Incentiveholder's Incentives will not be forfeited at that time.

- (b) The Board may elect to disapply any of clauses **rules 6.1 to 6.7** (inclusive), or add any further forfeiture terms, to a particular grant of Incentives provided that such election is expressly set out in the Invitation relating to that grant.

## **6.9 Termination payments**

If the vesting of Incentive in accordance with this **rule 5**, when aggregated with any other benefits paid or payable to the Incentiveholder (or the relevant Eligible Participant, where the Incentiveholder is the nominee of the Eligible Participant) in connection with the cessation of their employment or engagement with any Group Company:

- (a) has not been approved by shareholders pursuant to Part 2D.2 of the Corporations Act or
- (b) is not otherwise permitted by law,

then the number of Incentives that vest under the relevant rule is automatically reduced to the maximum number of Incentives permitted to vest at law upon cessation of employment or engagement.

## **6.10 Lapse of an Incentive**

Unless the Board determines otherwise in its absolute discretion, an unexercised Incentive will lapse upon the earliest to occur of:

- (a) the Incentive lapsing in accordance with **rule 4.2(b)**;
- (b) the Incentive lapsing in accordance with a provision of this **rule 6**;
- (c) the Incentive lapsing in accordance with a provision of **rule 8**;
- (d) (subject always to any automatic vesting of unvested Incentives in accordance with this **rule 6**) failure to meet the Incentives Vesting Condition in the prescribed period; or
- (e) the Expiry Date.

## **6.11 Lapse of Incentive terminates conditional contract**

The lapse of an Incentive is the end of the conditional contract constituted by the Incentive.

# **7 Issue of Shares**

## **7.1 Issue of Shares**

- (a) Subject to **rules 7.1(c)** and **7.3** below, within 10 Business Days after an Incentive under the Plan that is capable of being exercised has been exercised by the Incentiveholder or his or her personal representative in accordance with **rule 6.1**, the Company must issue to or procure the transfer (at its election) to the Incentiveholder or his or her personal representative (as the case may be) of the number of Shares in respect of which the Incentive has been exercised.
- (b) The issue or transfer of a Share to the Incentiveholder or his or her personal representative (as the case may be) pursuant to the exercise of an Incentive constitutes performance by the Company of its obligations pursuant to the conditional contract constituted by the Incentive.
- (c) In the event that the issue of Shares on exercise of an Incentive would require the Company to prepare a disclosure document (as that term is defined in the Corporations Act) in the absence of appropriate arrangements with the Incentiveholder, then the Company may require the Incentiveholder (as a pre-

condition to the issue of the underlying Shares on exercise of the Incentives) to enter into such arrangements with the Company as the Board considers appropriate to ensure that the issue of such Shares without disclosure does not contravene the fundraising provisions of the Corporations Act.

## **7.2 Share ranking**

All Shares allotted under the Plan will rank equally in all respects with the Shares of the same class for the time being on issue except as regards any rights attaching to such Shares by reference to a record date prior to the date of their allotment.

## **7.3 Listing of Shares on ASX**

- (a) If Shares of the same class as those allotted under the Plan are listed on the ASX the Company will apply to the ASX within a reasonable time after they are allotted for those Shares to be listed.
- (b) If the Incentiveholder has not entered into the appropriate arrangements referred to in **rule 7.1(c)** above, then the Company may delay applying for listing of any Shares issued upon exercise of the Incentives for the period that it is unable to issue a notice under section 708A(5) of the Corporations Act.

## **7.4 Sale of Shares**

- (a) Subject to **rule 7.4(c)**, there will be no transfer restrictions on Shares allotted upon exercise of Incentives granted under the Plan unless the sale, transfer or disposal by the Incentiveholder of the Shares issued to them on exercise of the Incentive (or any interest in them) would require the preparation of a disclosure document (as that term is defined in the Corporations Act).
- (b) If a disclosure document is required, the Incentiveholder agrees to enter into such arrangements with the Company as the Board considers appropriate to prevent the sale, transfer or disposal of the relevant Shares in a manner that would require a disclosure document to be prepared.
- (c) Unless the Board determines otherwise in its absolute discretion, Shares allotted upon exercise of Incentives granted under the Plan must not be sold, transferred or disposed of by the holder at any time whilst there is a Black-out Period in place. For these purposes, the Company Secretary will notify the Incentiveholder:
  - (i) when a Black-out Period commences; and
  - (ii) when a Black-out Period has been lifted or, where the Black-out Period relates to a periodic reporting requirement (such as the release of the quarterly, half-yearly or annual reports), when such Black-out Period will be lifted.

# **8 Takeover, Scheme of Arrangement and Winding-up**

## **8.1 Change of Control**

- (a) Notwithstanding any other provisions of the Plan but subject to applicable law, if a Change of Control occurs, then the Board must (unless any Takeover Bid to which the Change of Control relates also includes an equivalent offer to the holder to acquire all or a substantial portion of the Incentives) notify the holder of the Change of Control.

- (b) The notice will also inform the holder that any Incentives held which remain subject to a Vesting Condition will immediately vest and may be exercised by the holder until the Incentive lapses in accordance with **rule 6.10**.

## **8.2 Winding up and change of main undertaking**

The Board may also, in its absolute discretion, permit the exercise of Incentives (irrespective of whether the relevant Vesting Conditions have been met) during such period as the Board determines where:

- (a) the Company passes a resolution for voluntary winding up;
- (b) an order is made for the compulsory winding up of the Company; or
- (c) the Company passes a resolution in accordance with Listing Rule 11.2 to dispose of its main undertaking.

## **8.3 Exercise of Incentives**

If a company (**Acquiring Company**) obtains control of the Company as a result of:

- (a) a Takeover Bid;
- (b) a proposed scheme of arrangement between the Company and its shareholders; or
- (c) a selective capital reduction,

and both the Company and the Acquiring Company agree, an Incentiveholder may, upon exercise of his or her Incentives, elect to acquire and the Company may provide shares of the Acquiring Company or its parent in lieu of Shares, on substantially the same terms and subject to substantially the same conditions as the Incentiveholder may exercise Incentives to acquire Shares, but with appropriate adjustments to the number and kind of shares subject to the Incentives, as well as to the Exercise Price.

# **9 Disposal Restrictions**

## **9.1 Disposal restrictions**

If the Invitation provides that any Shares issued, allocated or transferred on exercise of Incentives are subject to any restrictions as to the disposal or other dealing by a Incentiveholder for the period, the Board may implement any procedure it deems appropriate to ensure the compliance by the Incentiveholder with this restriction, including but not limited to imposing an ASX Holding Lock (where applicable) on the Shares or using an employee share trust to hold the Shares during the relevant restriction period. Regardless of whether any restrictions have been imposed under this **rule 9.1**, all Incentiveholders must comply with the securities trading policy of the Company at all times.

## **9.2 Participant's undertaking**

For so long as a Share issued, allocated or transferred on exercise of an Incentive is subject to any disposal restrictions under this Plan, the Incentiveholder will not without the prior express written consent of the Board:

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

### **9.3 Expiry of restriction**

Upon the expiry of any disposal restriction over a Share issued, allocated or transferred on exercise of an Incentive, the Company will take all action necessary to ensure that the Incentiveholder can deal with that Share.

### **9.4 Share entitlements**

For the avoidance of doubt, the imposition of a disposal restriction on a Share held by an Incentiveholder will not affect the Incentiveholder's entitlement to receive a notice of, or to vote or attend at, a meeting of the members of the Company, and to receive any dividends declared by the Company during the relevant disposal restriction period on that Share. If an employee share trust arrangement is implemented in respect of this Plan, the Board may implement such procedures it deems appropriate to give effect to the intent of this **rule 9.4**.

## **10 Bonus Issues, Rights Issues, Reconstruction**

### **10.1 Adjustment for Bonus Issue**

- (a) If Shares are issued pro rata to the Company's shareholders generally by way of bonus issue (other than an issue in lieu of dividends or by way of dividend reinvestment) involving capitalisation of reserves or distributable profits, the Incentiveholder is entitled, upon exercise of the Incentives, to receive, in addition to the Shares in respect of which the Incentives are exercised and without the payment of any further consideration, an allotment of as many additional Shares as would have been issued to a shareholder who, on the date for determining entitlements under the bonus issue, held Shares equal in number to the Shares in respect of which the Incentives are exercised.
- (b) Additional Shares to which the Incentiveholder becomes so entitled will, as from the time Shares are issued pursuant to the bonus issue and until those additional Shares are allotted, be regarded as Shares comprised in the relevant Incentives and in respect of which the Incentives are exercised for the purposes of subsequent applications of **rule 10.1(a)**, and any adjustments which, after the time just mentioned, are made under **rule 10.3** to the number of Shares will also be made to the additional Shares.

### **10.2 Rights Issue**

If Shares are offered pro rata for subscription by the Company's shareholders generally by way of a rights issue during the currency of and prior to exercise of any Incentives, the Exercise Price of each Incentive (if applicable) will be adjusted in the manner determined by the Board having regard to the Listing Rules and the general principle that the Incentiveholder is not to be materially disadvantaged as a result of a corporate action (such as a capital raising or capital reconstruction).

### **10.3 Adjustment for reorganisation**

In the event of any reorganisation (including consolidation, subdivision, reduction or return) of the issued capital of the Company, the number of Incentives to which each Incentiveholder is entitled or the Exercise Price of the Incentives (if applicable), or both as appropriate, will be adjusted in the manner as determined by the Board having regards to the Listing Rules and the general principle that the Incentiveholder is not to be materially disadvantaged as a result of a corporate action (such as a capital raising or capital reconstruction).

#### **10.4 No other participation**

Subject to **rules 10.1, 10.2 and 10.3**, during the currency of any Incentives and prior to their exercise, Incentiveholder's are not entitled to participate in any new issue of securities of the Company as a result of their holding Incentives.

### **11 Trust**

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

## **12 Amendments**

### **12.1 Power to amend Plan**

Subject to **rule 12.2** and the Listing Rules, the Board may at any time by resolution amend or add to (amend) all or any of the provisions of the Plan (including this **rule 12**), or the terms or conditions of any Incentive granted under the Plan, including Vesting Conditions.

### **12.2 Restrictions on amendments**

Without the consent of the Incentiveholder no amendment may be made to the terms of any granted Incentive which reduces the rights of the Incentiveholder in respect of that Incentive, other than an amendment introduced primarily:

- (a) for the purpose of complying with or conforming to present or future State or Commonwealth legislation or a requirement, policy or practice of ASIC or other regulatory body governing or regulating the maintenance or operation of the Plan or like plans;
- (b) to correct any manifest error or mistake;
- (c) to allow the implementation of an employee share trust arrangement pursuant to **rule 12** ; or
- (d) to take into consideration possible adverse tax implications in respect of the Plan arising from, amongst others, adverse rulings from the Commissioner of Taxation, changes to tax legislation (including an official announcement by the Commonwealth of Australia) or changes in the interpretation of tax legislation by a court of competent jurisdiction.

### **12.3 Company may provide compensation**

Notwithstanding anything else in this Plan, the Company may amend all or any of the provisions of this Plan, provided that the Company provides to any affected Incentiveholder appropriate compensation, such that the Incentiveholder remains no worse off as a result of any such amendment.

### **12.4 Retrospective Effect**

Subject to **rules 12.1 to 12.3**, any amendment made pursuant to **rule 12** may be given such retrospective effect as is specified in the written instrument or resolution by which the amendment is made.

## **12.5 Notice of amendment**

As soon as reasonably practicable after making any amendment under **rule 12.1**, the Board will give notice in writing of that amendment to any Incentiveholder affected by the amendment.

# **13 Miscellaneous**

## **13.1 Rights and obligations of Incentiveholder**

- (a) The rights and obligations of any Eligible Participant under the terms of their office, employment or contract with a Group Company are not affected by their participation in, or the participation of their nominee in, the Plan. These rules will not form part of, and are not incorporated into, any contract of any Eligible Participant (whether or not they are an employee of a Group Company). No Incentiveholder or Eligible Participant will have any rights to compensation or damages in consequence of the termination of their office, employment or other contract with a Group Company for any reason whatsoever in so far as those rights arise or may arise from their ceasing to have rights under the Plan as a result of such termination.
- (b) Nothing in the Plan will give any Eligible Participant any right to participate in the Plan and the grant of an Incentive to an Eligible Participant or their nominee does not give that Eligible Participant any right to the grant of a subsequent Incentive.

## **13.2 Power of the Board**

- (a) The Plan is administered by the Board which has power to:
  - (i) determine appropriate procedures for administration of the Plan consistent with these rules; and
  - (ii) delegate to any one or more persons for such period and on such conditions as it may determine the exercise of any of its powers or discretions arising under the Plan.
- (b) Except as otherwise expressly provided in this Plan, the Board has absolute and unfettered discretion to act or refrain from acting under or in connection with the Plan or any Incentives under the Plan and in the exercise of any power or discretion under the Plan.

## **13.3 Waiver of terms and conditions**

Notwithstanding any other provisions of the Plan, the Board may at any time waive in whole or in part any terms or conditions (including any Vesting Condition) in relation to any Incentives granted to any Incentiveholder.

## **13.4 Dispute or disagreement**

In the event of any dispute or disagreement as to the interpretation of the Plan, or as to any question or right arising from or related to the Plan or to any Incentives granted under it, the decision of the Board is final and binding.

## **13.5 Non-Australian residents**

When an Incentive is granted under the Plan to a person who is not a resident of Australia the provisions of the Plan apply subject to such alterations or additions as the Board determines having regard to any applicable or relevant laws, matters of convenience and desirability and similar factors which may have application to the Incentiveholder or to any Group Company in relation to the Incentive.

### **13.6 Communication**

- (a) Any notice or other communication under or in connection with the Plan may be given by personal delivery or by sending the same by post or facsimile or electronic means, in the case of a company to its registered office, and in the case of an individual to the individual's last notified address, or, where an Incentiveholder is a director or employee of a Group Company, either to the Incentiveholder's last known address or to the address of the place of business at which the Incentiveholder performs the whole or substantially the whole of the duties of the Incentiveholder's office or employment.
- (b) Where a notice or other communication is given by post, it is deemed to have been received 24 hours after it was put into the post properly addressed and stamped. Where a notice or other communication is given by facsimile, it is deemed to have been received on completion of transmission. Where a notice is given by electronic transmission, the notice is taken to have been served at the time the electronic transmission is sent.

### **13.7 Attorney**

Each Incentiveholder, in consideration of an Invitation:

- (a) irrevocably appoints the Company and any person nominated from time to time by the Company (each an **attorney**), severally, as the Incentiveholder attorney to complete and execute any documents including applications for Shares and Share transfers and to do all acts or things on behalf of and in the name of the Incentiveholder which may be convenient or necessary for the purpose of giving effect to the provisions of this Plan;
- (b) covenants that the Incentiveholder will ratify and confirm any act or thing done pursuant to this power;
- (c) releases each Group Company and the attorney from any liability whatsoever arising from the exercise of the powers conferred by this rule; and
- (d) indemnifies and holds harmless each Group Company and the attorney in respect thereof.

### **13.8 ASIC relief**

- (a) Notwithstanding any other provisions of the Plan, every covenant or other provisions set out in an exemption or modification granted from time to time by ASIC in respect of the Plan pursuant to its power to exempt and modify the Corporations Act and required to be included in the Plan in order for that exemption or modification to have full effect, is deemed to be contained in the Plan.
- (b) To the extent that any covenant or other provision deemed by this rule to be contained in the Plan is inconsistent with any other provision in the Plan, the deemed covenant or other provision shall prevail.

### **13.9 Laws governing Plan**

- (a) This Plan and any Incentives issued under it are governed by the laws of Western Australia and the Commonwealth of Australia.
- (b) The Company and the Incentiveholders submit to the non-exclusive jurisdiction of the courts of Western Australia.