# Employee Share Plan

#### [*insert company name*]

#### ACN [*insert ACN*]

#### Date: [*insert date*]

# Disclaimer

This Employee share plan is produced for general information only. It is not intended to be, and does not represent a statement of the policy of the Commonwealth of Australia.

The Employee share plan is provided on the basis that it does not represent professional advice given by the Commonwealth or any person acting for the Commonwealth for any particular purpose. Because the circumstances of users may vary greatly, the material in the Employee share plan is not intended to provide specific guidance for particular circumstances and it should not be relied on as the basis for any decision to take action or not take action on any matter which it covers. Users should make their own further enquiries (including as to the accuracy, currency, reliability or completeness of any information contained in the Employee share plan) and obtain professional advice where appropriate, before making any such decision. To the maximum extent permitted by law the Commonwealth and all persons acting for the Commonwealth, in preparing the Employee share plan, disclaim all responsibility and liability to any person, arising directly or indirectly from any person taking or not taking action based upon the information in the Employee share plan.

The guidance notes in this document, the Application Form and the Instructions for using the standard documentation (the *Instructions*) are not exhaustive and users of this document should consider obtaining legal advice in relation to this document and the Application Form (including in relation to obligations under the *Corporations Act 2001* and the availability of the start-up concession).

# General Instructions

Please see the Instructions for information about how to establish an Employee share plan and when and how to use this document. Below is a summary of some aspects of the Instructions as well as some more detailed guidance about this document. The Instructions can be accessed at ato.gov.au/ess.

Who is this document designed for?

The Employee share plan has been developed by the Australian Taxation Office (ATO) as a pro forma Employee share plan to be used by any unlisted company offering ordinary shares to their current or prospective employees, directors or contractors (*Eligible Persons*).

What is this document designed to do?

The Employee share plan establishes a basic employee share plan (also referred to as an employee share scheme) for companies. It sets out the rules relating to the operation of the Employee share plan. To make an offer to an Eligible Person under the Employee share plan, the company must make an offer in an Application Form. The Eligible Person can accept that offer and agree to be bound by the terms of the Employee share plan. The ATO has developed a model Application Form that is to be used together with this Employee share plan. This can also be accessed at ato.gov.au/ess.

How do companies use this document?

Guidance notes have been included throughout this Employee share plan and the Application Form and are highlighted in instruction boxes. These notes are designed to assist companies to use this Employee share plan and Application Form and should be deleted from the final versions of these documents.

Terms and details that can be decided by, or are specific to the company are denoted by square brackets and yellow highlighting. Once they are completed by the Company the brackets and highlighting should be removed.

## Eligibility for start-up concession

Does the offer of Shares meet the criteria to qualify for the ‘start-up’ concession?

In summary, the company must be a ‘start-up’ (as defined below) and the offer of Shares must meet the specified requirements set out below:

To be a start-up:

* the employer must be an Australian company;
* the issuer and any subsidiaries or its holding company and any subsidiaries:
  + must have been incorporated less than 10 years at the end of its most recent income year before the year of acquisition of the share by the Eligible Person; and
  + must not be listed on a stock exchange;
* the issuer must not have an ‘aggregate group turnover’ of greater than $50m in its most recent income year before the acquisition.

For the Shares to qualify for the concessional tax treatment:

* at least 75% of Eligible Persons are, or at some earlier time had been, entitled to acquire Shares under the Employee share plan or options or shares under another employee share scheme offered by the company;
* the discount on the share is no more than 15% of its market value at the date of acquisition by the Eligible Person;
* immediately after the acquisition the Eligible Person must not hold a beneficial interest in more than 10% of the shares in the issuer, including shares that you can acquire under an ESS interest that is a right the Eligible Person holds; and
* the shares must not be able to be sold within 3 years – [rule 4(d)](#rule4d) addresses this.

The company should obtain advice if there is any uncertainty as to whether it meets the qualifying criteria or if it redrafts provisions of the Employee share plan.

This Employee share plan is not designed to meet all the requirements of every company and may need to be tailored to individual circumstances (for example, where the discount on the purchase price payable by Eligible Persons is more than 15% of the share’s market value). (Note the comments made at rule 1(c)(2)(B) below regarding contribution plans.)

If this Employee share plan is changed, the offer may no longer be eligible for the start-up concession and there is no guarantee that it will comply with the relevant laws, including *the Income Tax Assessment Act 1997* (the *Tax Act*) and the *Corporations Act 2001* (the *Corporations Act*). Again, advice should be sought.

## Additional Corporations Act obligations

Disclosure and other obligations relating to offers of Shares

In offering to employees, companies are primarily responsible for ensuring that they comply with any applicable requirements under the Corporations Act. Any offer made under the Employee share plan must comply with disclosure, licensing, advertising and hawking, managed investment scheme registration and other relevant provisions in the Corporations Act. Please refer to the Instructions for the Employee share plan for more information about these provisions of the Corporations Act. Companies should consider obtaining professional advice when establishing their Employee share plan.

In addition to using the Application Form referred to above, unless a disclosure exemption under the Corporations Act applies, an offer under the Employee share plan must also be accompanied by either:

* a disclosure document (usually an Offer Information Statement (**OIS**)); or
* an offer document if the Company is able to rely on the relief in ASIC Class Order 14/1001 relating to employee incentive schemes for unlisted bodies **(ASIC CO 14/1001).**

The Instructions provide limited information about these documents, when a company can rely on the relief in ASIC CO 14/1001 and when a disclosure exemption may apply. It also guides you to where you can find more information about the contents of these documents and other requirements.

However, note that an OIS must contain, among other things, the company's audited financial report and an offer document must contain the audited financial report where the company has a statutory obligation to, or has, prepared this, or otherwise, a special purpose financial statement.

For more information and guidance, see the following documents which are available at www.asic.gov.au:

* ASIC Regulatory Guide 49: Employee incentive schemes
* ASIC CO 14/1001
* ASIC Regulatory Guide 218: Prospectuses: Effective disclosure for retail investors (which also covers OISs)

Obligations relating to the number of shareholders in a Company

Companies should also take care in relation to how many shareholders exist as a result of the operation of the Employee share plan (including the Exit Event provisions in rule 5) or otherwise. This is because proprietary companies must have no more than 50 shareholders (excluding employee shareholders). A company having more than 50 shareholders (including employee shareholders) will be subject to the takeover provisions of the Corporations Act. This can add to the costs of running the company and change the regulatory requirements upon sale of the company.

Other Corporations Act obligations

The operation of the Employee Share Plan may give rise to other obligations under the Corporations Act or may limit a company's ability to rely on the relief in ASIC CO 14/1001. This document includes additional notes boxes in relation to some of these more likely scenarios.

# Employee Share Plan Rules

The Rules of the Employee share plan are set out in this document.

An offer of Shares is made in an Application provided by the Company. This document should be read with that Application. In this document:

* Section 1 sets out how the Employee share plan is administered. Essentially the Board administers the Employee share plan and is responsible for the terms of the Application.
* Section 2 addresses the issue of Shares.
* Section 3 addresses what happens if a Shareholder leaves employment or ceases to be engaged by the Company.
* Section 4 addresses the restrictions that can be placed on the Disposal of Shares.
* Sections 5 and 6 relate to a sale of the Company or a Listing.

The remainder of the document contains procedural provisions in relation to the Employee share plan. Definitions are set out at the end of the document.

# Administration

## Administration of Employee share plan and delegation

Companies relying on ASIC CO 14/1001 relief that offer Shares on terms that include trustee or nominee holding arrangements as referred to in rule 1(c)(2)(C) below, may only allow for the specific trustee or nominee holding arrangements permitted under paragraph 20 of Class Order [CO 14/1001].

1. The Employee share plan is to be administered by the Board.
2. The Board may delegate some or all of its powers in administering this Employee share plan to a sub‑committee of the Board.
3. Subject to these Rules, the Board or any sub-committee appointed to administer this Employee share plan shall have the power, in its sole discretion:
4. to select the persons to participate in the Employee share plan (these are referred to as **Eligible Persons**)
5. to determine the terms and conditions set out in any Application, including:
6. the number of Shares the subject of the Application
7. the purchase price for those Shares

Class Order [CO 14/1001] does not permit offers to require the payment of more than nominal monetary consideration.

1. any trustee or nominee holding arrangements required to be entered into in connection with those Shares
2. the disposal restrictions applying to those Shares, and
3. the manner in which the Application may be returned to the Company and accepted.
4. to amend any offer related to any Share before Shares are issued
5. to determine appropriate procedures, regulations and guidelines for the administration of the Employee share plan, and
6. to take advice in relation to the exercise of any of its powers or discretions under these Rules.

## Calculations and adjustments

(d) Any calculations or adjustments which are required to be made by the Board or any sub‑committee of the Board, in connection with this Employee share plan will, in the absence of manifest error, be final and conclusive and binding on all Eligible Persons and Shareholders.

## Absolute discretion

(e) Where these Rules provide for a determination, decision, declaration or approval of the Board or any sub-committee of the Board, such determination, decision, declaration or approval may be made or given by the body in its absolute discretion.

## Powers to be exercised by the Board

(f) 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 under any fiduciary or other obligation to any other person.

# Issue of Ordinary Shares in respect of the Employee share plan

## Rights attaching to Shares issued to Eligible Persons

* 1. Subject to rule 2(c), if an Eligible Person returns a duly completed Application together with the purchase price, the Company must:

(1) issue the number of Ordinary Shares which corresponds with the number of Shares the Eligible Person is entitled to apply for, free from any Security Interest;

(2) issue to the Eligible Person or a trustee or nominee to hold on bare trust for that Eligible Person (if determined by the Board or nominated by the Eligible Person) a share certificate for those Shares and enter the Eligible Person into the Company’s share register; and

(3) lodge with the Australian Securities & Investments Commission the relevant forms to reflect the issue of the relevant number of Shares.

(b) All Shares issued to Eligible Persons in accordance with this rule 2 will:

(1) be issued as fully paid;

(2) be free of any Security Interests; and

(3) rank equally in all respects with the other Ordinary Shares on issue in the Company as at the date of issue and be subject to the terms of the Constitution and Shareholders Agreement (if any).

In many cases, the Shareholders Agreement will be the principal source of regulation for Shareholders (other than the Constitution). Often the Shareholders Agreement will be drafted to take precedence over the terms of the Constitution, to the extent of any inconsistency. Its purpose is to regulate the management of the Company, the relationship between Shareholders and the process for Shareholders exiting the Company (either via a Share Sale, Business Sale or Listing).

Shareholders Agreement

(c) Despite anything else in this Employee share plan, where there is a Shareholders Agreement in place, unless the Board otherwise determines, no Eligible Person may receive any Shares unless:

(1) the Eligible Person (or any nominee or trustee to whom the Shares are to be issued (**Nominee Shareholder**)) first executes and delivers to the Company a document (in the form prescribed by the Board) pursuant to which the Eligible Person or Nominee (as applicable) accedes to, and becomes bound by, the terms of the Shareholders Agreement; or

(2) the Eligible Person or Nominee Shareholder (as applicable) is already a party to the Shareholders Agreement.

(d) Where there is not a Shareholders Agreement in place, an Eligible Person agrees to enter into (or procure that its Nominee Shareholder enters into) a Shareholders Agreement if the Company subsequently adopts one, provided that such Shareholders Agreement is broadly consistent with the provisions in this Employee share plan covering Disposal and the procedures on an Exit Event. By returning a duly completed Application to the Company, an Eligible Person will be taken to have agreed to this requirement.

(e) At all times that the Company does not have a Shareholders Agreement in place, rules 3 (Treatment of Shares for Leavers), 4 (Disposal), 5(c)-5(j) (Drag along) and 6 (Listings) and related definitions will be deemed to apply to Plan Shares.

# Treatment of Shares for Leavers

The Employee share plan has been drafted without distinguishing between ‘good leavers’ and ‘bad leavers’. If any Shareholder ceases to be employed by a Company Group Member (irrespective of the circumstances surrounding the termination of employment) then, if determined by the Board, the Company may require Shares to be transferred at Fair Market Value.

## When a person becomes a Leaver and what the Board can do

1. For the purposes of this rule 3, a Shareholder is a “**Leaver**” if the Shareholder ceases to be employed or contracted by a Company Group Member. If a Shareholder is a trust company or nominee for the person who was first offered Shares then this rule applies when that person ceases to be employed or contracted by a Company Group Member.
2. Where a Shareholder becomes a Leaver (**Trigger Event**), the Board may, in its absolute discretion, exercise the rights below in relation to the Shares.
3. If a Trigger Event occurs in relation to a Shareholder, the Board may in its absolute discretion:
4. serve a notice in writing on the Leaver (**Transfer Notice**), requiring the Leaver sell some or all of his or her Shares (**Transfer Shares**) to any person nominated by the Board, including to:
5. any other Eligible Person or their nominee
6. an entity approved by the Board for the purpose of holding the Transfer Shares temporarily with the purpose of transferring such Transfer Shares to Eligible Persons or their nominees in the future, or
7. any other entity approved by the Board,

(such person (or persons) for the purposes of this rule 3 refers to the **Transferee** on the terms of sale set out in this rule 3. The Leaver must transfer the Transfer Shares in accordance with the Transfer Notice and is deemed to appoint the directors of the Company as its attorney for this purpose. For the avoidance of doubt, the provisions of the power of attorney contained in an Application signed by the Shareholder or Eligible Person (as applicable), apply for the purposes of this rule), or

1. allow the Leaver to retain some or all of his or her Shares

or any combination of the above, as the Board determines in its absolute discretion.

1. The price for the Transfer Shares pursuant to rule 3(C)(1) will be their Fair Market Value as at the date of the Trigger Event.
2. Completion of the sale of the Transfer Shares must occur on the date determined by the Board in its absolute discretion and notified to the Leaver.

# Disposal

## What restrictions can be placed on a sale of Shares?

1. In addition to the restrictions set out in this Employee share plan, an Application may specify restrictions on the Disposal of any Shares. For the avoidance of doubt, restrictions on Disposal specified in an Application do not limit the operation of rule 4(b).

## Permitted Disposals

Companies relying on ASIC CO 14/1001 relief that offer Shares on terms that include trustee or nominee holding arrangements as referred to in rules 3(b)(1) and 3(b)(2) below, may only allow for the specific trustee or nominee holding arrangements permitted under sub-paragraph 29(b) of CO 14/1001.

1. Subject to the restriction on Disposal in rule 4(d), a legal or beneficial interest in a Share may be Disposed of pursuant to:
2. a transfer by a Shareholder of any of its Shares to a nominee or trustee for that person, and any such nominee or trustee may transfer Shares to any other nominee or trustee or to the beneficiary provided that no beneficial interest in the Shares passes as a result of the transfer
3. a transfer of Shares by a Shareholder who is a natural person to the trustee or trustees of a family trust set up for the benefit of that person’s family provided that a person acquiring Shares pursuant to this rule 4(b)(2) is not entitled to transfer any Shares except for a transfer to the person from whom the transferee acquired the Shares
4. in the event of the death of a Shareholder, a transfer or transmission of the deceased Shareholder’s Shares to the deceased Shareholder’s estate
5. a buy-back or transfer by a Shareholder of any of its Shares where such transfer has been consented to in writing by the Board, or
6. a sale or transfer by a Shareholder of any of its Shares where such sale or transfer is otherwise permitted or required by these Rules.

## No Disposal before Exit Event

1. Unless otherwise consented to by the Board in writing and notwithstanding any other provision in this Employee share plan or an Application, a legal or a beneficial interest in a Share may not be Disposed of until after:
2. where a Listing occurs, the earlier of:
3. the date that is one hundred and eighty (180) days following the Listing; and
4. the expiration of any underwriter imposed lock-up in connection with the Listing; and
5. in the case of any other Exit Event, the occurrence of that Exit Event.

Rule 4(d) is required to ensure that the Employee share plan complies with the requirements in section 83A-45(4) of the Tax Act.

## Overriding restriction on Disposal in first 3 years

* 1. Unless a Shareholder disposes of a Plan Share under an arrangement which meets the requirements in section 83A-130 of the Tax Act, a legal or a beneficial interest in a Plan Share may not be Disposed of until the earlier of:

1. 3 years after the acquisition of the Plan Share or such earlier time as the Commissioner of Taxation allows in accordance with section 83A-45(5) of the Tax Act; and
2. where the Shareholder becomes a Leaver (as defined in rule 3(a)).

# Procedure on Exit Event

What happens if there is a listing or sale of the Company or its business?

(a) On or prior to an Exit Event, the Board may, in its absolute discretion:

(1) where there is a Reconstruction as part of the Exit Event:

(A) provide for the issue of new shares in substitution of some or all of the Shares on a like for like basis, by the New Holding Entity or any Related Body Corporate of the New Holding Entity;

(B) arrange for some or all of the Shares to be acquired by the New Holding Entity or any Related Body Corporate of the New Holding Entity in exchange for their Fair Market Value on the date of completion of the Reconstruction;

(2) buyback and cancel some or all of the Shares in exchange for their Fair Market Value

or take any combination of the above steps.

## What happens if Majority Shareholders want to sell their shares?

(b) In connection with an Exit Event, on or prior to the Exit Event, the Board must if requested to do so by the Majority Shareholders (**Dragging Shareholders**) issue a notice (**Drag-along Notice**) to the Company and to each Shareholder (such Shareholders each referred to as the “**Dragged Holder**”) stating that they want the Dragged Holder to sell all of its Shares to:

(1) a third party buyer in connection with a Share Sale;

(2) an IPO Entity in connection with a Listing; or

(3) a New Holding Entity in connection with a Share Sale or Asset Sale.

(c) The Drag-along Notice must specify:

(1) the number of Shares which the Dragging Shareholders propose to sell (**Sale Shares**), which must be all of the Shares held by those Dragging Shareholders;

(2) the name of the proposed buyer of the Sale Shares (**Third Party Buyer**), and the material terms on which the Dragging Shareholders propose to sell the Sale Shares;

(3) that the Third Party Buyer is either:

(A) a prospective third party purchaser who has made an offer to purchase the Sale Shares at the price and on the terms set out in the Drag-along Notice;

(B) an IPO Entity; or

(C) a New Holding Entity;

(4) the sale price per Share (which may be cash consideration, scrip consideration or a combination of both cash and scrip); and

(5) that the Dragging Shareholders require the Dragged Holder to sell all of the Dragged Holder’s Shares to the Third Party Buyer in accordance with this rule 5(c)-(j).

(d) A Drag-along Notice is irrevocable.

(e) If the Dragging Shareholders serve a Drag-along Notice, then subject to rule 3(d), a Dragged Holder must as part of the sale of the Sale Shares to the Third Party Buyer, sell all of its Shares to the Third Party Buyer on terms which comply with rules 5(g) and 5(h) and each Shareholder is deemed to appoint the directors of the Company as its attorney for this purpose (and for the avoidance of doubt, the provisions of the power of attorney contained in an Application signed by the Shareholder or the Eligible Person (as applicable) apply for the purposes of this rule).

(f) If the Dragged Holder is prevented from Disposing of their Shares under rule 4(d), then this rule 5(c)-(j) (excluding this rule 5(g)) will not apply to the Dragged Holder in respect of those Shares.

(g) The sale of the Dragged Holder’s Shares to the Third Party Buyer under this rule 5(b)-(i) must be for the same sale price per Share as those applicable to the sale by the Dragging Shareholders of the Sale Shares to the Third Party Buyer.

(h) The Dragging Shareholders must procure that the purchase price payable for the Dragged Holder’s Shares is paid on the closing of the purchase and sale, which must take place at the same time as the closing of the sale of the Sale Shares by the Dragging Shareholders to the Third Party Buyer.

(i) Without limiting rule 5(e), at least 7 days before the closing of the purchase and sale of the Dragged Holder’s Shares, the Dragged Holder must deliver to the Third Party Buyer:

(1) the share certificates and an executed transfer for the Dragged Holder’s Shares; and

(2) a duly executed notice irrevocably appointing the Third Party Buyer as the Dragged Holder’s proxy in respect of the Dragged Holder’s Shares until such time as those Shares are registered in the name of the Third Party Buyer.

# Listings

Each Eligible Person and Shareholder agrees and represents that:

(a) in the event that a Listing is proposed by the Board, it will do all things and provide all assistance as is reasonably required by the Company in connection with the actual or proposed Listing, including, if required by the Company, entering into an underwriting, escrow or offer management agreement or similar agreement on market terms; and

(b) if, as part of the Listing, the Eligible Person’s or Shareholder’s Shares or the shares such person holds in the IPO Entity (as applicable) (together, the **Listing Shares**) are subject to the Listing Rules (including, without limitation, if the Eligible Person’s or Shareholder’s Listing Shares are “restricted securities” for the purpose of the Listing Rules), each Eligible Person or Shareholder(as applicable) will hold and deal with its Listing Shares in accordance with the Listing Rules.

# No effect

## Employee share plan does not impact on employment relationship

(a) This Employee share plan does not form any part of any contract of employment, consultancy or directorship between a Company Group Member and an Eligible Person.

(b) Nothing in this Employee share plan:

(1) confers on an Eligible Person any right to continue as an employee, contractor or director of a Company Group Member;

(2) affects the rights which a Company Group Member or any other person may have to terminate the employment, consultancy or office of an Eligible Person; or

(3) may be used to increase any compensation or damages in any action brought against a Company Group Member or any other person in connection with the termination of employment or consultancy or removal from office of an Eligible Person.

## Share does not give the right to new issues of shares

(c) An offer will be in respect of a single issue of Shares and does not entitle an Eligible Person to participate in any subsequent offers.

# General

(a) The Company is not responsible for any duties or taxes which may become payable by the Shareholder or Eligible Person (as applicable) in connection with the issue of Shares or any other dealing with the Shares.

(b) Subject to rule 1, the Employee share plan and these Rules may be amended from time to time by resolution of the Board subject to the requirements from time to time of the Corporations Act. Any such amendment however, must not adversely affect the rights of Eligible Persons or Shareholders in respect of Shares issued prior to such amendment without the consent of those Eligible Persons and Shareholders (as applicable), unless such amendment is required by, or necessitated by, law.

(c) Each Eligible Person and Shareholder agrees that it will complete and return to the Company such other documents as may be required by law to be completed by the Eligible Person or Shareholder from time to time in respect of the transactions contemplated by the Employee share plan, or such other documents which the Company reasonably considers should, for legal, taxation or administrative reasons, be completed by the Eligible Person or Shareholder in respect of the transactions contemplated by the Employee share plan.

(d) The Company may, in its sole discretion:

(1) make offers to Eligible Persons who reside outside of Australia; and

(2) make regulations for the operation of the Employee share plan which are not inconsistent with these Rules to apply to Eligible Persons who reside outside of Australia.

(e) Any notice regarding the Shares will be sent to the registered address of the referable Shareholder as recorded in the register of Shareholders maintained by the Company.

(f) This Employee share plan is governed by and shall be construed in accordance with the laws of the state where the Company is incorporated.

# Definitions and interpretation

## Definitions

The meanings of the terms used in these Rules are set out below.

| Term | Meaning |
| --- | --- |
| **Application** | A document substantially in the form of Schedule 1 whereby an Eligible Person offered participation in the Share Plan by or on behalf of the Board makes application to purchase the shares on the terms offered. |
| **Board** | the board of directors of the Company. |
| **Business Sale** | a sale to a third party purchaser of all (or substantially all) of the assets and business undertaking of the Company Group (including by way of a sale of shares of the Company’s directly or indirectly owned Subsidiaries) provided that no sale or transfer undertaken to effect a corporate reorganisation of any of the Company Group will constitute a Business Sale. |
| **Commissioner of Taxation** | the person for the time being occupying the office of Commissioner of Taxation created by section 4 of the *Taxation Administration Act 1953* (Cth). |
| **Company** | [***insert company name***] ACN [***insert ACN***]. |
| **Company Group** | the Company and each Subsidiary (if any) from time to time. |
| **Company Group Member** | any member of the Company Group. |
| **Constitution** | the constitution of the Company from time to time. |
| **Corporations Act** | the *Corporations Act 2001* (Cth). |
| **Dispose** | in relation to a Share:   1. sell, assign, buy-back, redeem, transfer, convey, grant an option over, grant or allow a Security Interest over;   2 enter into any swap arrangement, any derivative arrangements or other similar arrangement; or   1. otherwise directly or indirectly dispose of a legal, beneficial or economic interest in the Share,   (and **Disposal** has a corresponding meaning). |
| **Drag-along Notice** | has the meaning provided in rule 5(c). |
| **Eligible Person** | any employee, contractor or director (or prospective employee[[1]](#footnote-1), contractor or director) of one or more Company Group Members selected by the Board to participate in the Employee share plan. |
| **Employee share plan** | the Employee Share Plan constituted by these Rules, as amended from time to time. |
| **Exit Event** | each of:   1. a Listing; 2. a Business Sale; or 3. a Share Sale. |
| **Fair Market Value** | as of any date, the fair market value of a Share, as determined by the Board in good faith on such basis as it deems appropriate and applied consistently with respect to all Shares. |
| **IPO Entity** | a member of the Company Group or a special purpose vehicle formed for the purpose of a Listing which directly or indirectly (including through one or more interposed entities) owns at least 50% per cent (based on earnings) of the business of the Company Group. |
| **Listing** | an initial public offering of an IPO Entity to the official list of ASX Limited or any other recognised stock exchange. |
| **Listing Rules** | the ASX Listing Rules and any other rules of ASX Limited which apply to an entity while it is a listed entity (or the rules of any other recognised stock exchange (if applicable)), each as amended or replaced from time to time, except to the extent of any express written waiver by ASX Limited (or any other recognised stock exchange (if applicable)). |
| **Majority Shareholders** | Shareholders holding more than 50% of the Ordinary Shares on issue or where there is a Shareholders Agreement, the number of Shareholders specified in the Shareholders Agreement as being ‘majority shareholders’ (or a similar expression). |
| **New Holding Entity** | an entity in which equity securities are issued in exchange for Shares as part of a Reconstruction. |
| **Ordinary Shares** | fully paid ordinary shares in the capital of the Company with such rights and obligations as set out in the Constitution. |
| **Plan Share** | an Ordinary Share issued as a result of the acceptance of an Offer by an Eligible Person. |
| **Reconstruction** | the reconstruction of the Company involving holders of Shares exchanging those Shares for equity securities in a New Holding Entity such that the equity security holders of the New Holding Entity are, or after the reconstruction become, the same or substantially the same as the former holders of Shares. |
| **Related Body Corporate** | has the meaning given in the Corporations Act. |
| **Rules** | these terms and conditions, as amended from time to time. |
| **Security Interest** | an interest or power:   1. reserved in or over an interest in any asset including any retention of title; or   2 created or otherwise arising in or over any interest in any asset under a security agreement, a bill of sale, mortgage, charge, lien, pledge, trust or power,  by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance of any other obligation, and includes, but is not limited to:  3 any agreement to grant or create any of the above; and  4 a security interest within the meaning of section 12 of the *Personal Property Securities Act 2009* (Cth). |
| **Share Sale** | the sale by Shareholders (in one transaction or a series of connected transactions) to a third party purchaser of all of the issued Shares provided that no sale or transfer undertaken to effect a corporate reorganisation of any of the Company Group will constitute a Share Sale. |
| **Shareholder** | a person who is the registered holder of a Share. |
| **Shareholders Agreement** | the shareholders agreement in respect of the Company (if any). |
| **Shares** | shares in the capital of the Company with such rights and obligations as set out in the Constitution. |
| **Subsidiary** | has the meaning given in the Corporations Act. |
| **Tax Act** | the *Income Tax Assessment Act 1997* (Cth). |
|  |  |

## Interpretation

In these Rules, unless the context otherwise requires:

(a) headings and guidance notes are for convenience only and do not affect the interpretation of these Rules;

(b) the singular includes the plural and vice versa;

(c) the word person includes a firm, a body corporate, an unincorporated association and an authority;

(d) a reference to any statute, ordinance, code or other law includes regulations and other instruments under, and consolidations, amendments, re-enactments or replacements of, any of them;

(e) a reference to a document includes an amendment or supplement to, or replacement or novation of, that document;

(f) a reference to a person includes a reference to the person’s executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns;

(g) an agreement, representation or warranty on the part of or in favour of two or more persons binds or is for the benefit of them jointly and severally;

(h) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;

(i) a reference to a currency is a reference to Australian currency unless otherwise indicated;

(j) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;

(k) specifying anything after the words ‘including’ or ‘for example’ or similar expressions does not limit what else is included; and

(l) a reference to time is a reference to the time in the capital city of the state where the Company is incorporated.

1. Although this plan can be used for prospective employees, there are a range of criteria that need to be satisfied in order to receive concessional tax treatment, and being a current employee at the time the ESS Interests are granted, is one of them. [↑](#footnote-ref-1)