



# Performance Share Plan

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## Rules

**Fortescue Metals Group Limited**  
ABN 57 002 594 872

As approved by the Board of directors of Fortescue Metals Group Limited on 22 August 2012.

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# RULES OF THE FORTESCUE METALS GROUP LTD PERFORMANCE SHARE PLAN

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## 1. Interpretation and construction

### 1.1 Definitions

In this Plan, the following expressions have the meanings given to them.

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

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

**"ASX"** means ASX Limited ABN 98 008 624 691 trading as the Australian Securities Exchange.

**"ASX Listing Rules"** means the official listing rules of ASX.

**"Board"** means the Directors acting as the board of the Company or a duly appointed Committee of the Board with responsibility for operation of the Plan.

**"Change of Control Event"** means a person, or a group of associated persons, becoming entitled to sufficient Shares to give that person or persons the ability, in general meeting, to replace all or a majority of the Board.

**"Committee"** means the Remuneration Committee of the Board.

**"Company"** is Fortescue Metals Group Ltd ABN 57 002 594 872.

**"Corporations Act"** means the *Corporations Act 2001* (Cth) as amended from time to time.

**"Director"** means a director of the Company from time to time.

**"Eligible Employee"** means a person who is in the full-time or part-time employment of, or is an executive director of, or is a consultant to, the Group.

**"Grant Date"** means the date on which the Company issues a certificate to a Participant in accordance with Rule 5.3.

**"Group"** means the Company and its Subsidiaries.

**"Invitation Date"** means the date on which the Company issued an invitation to an Eligible Employee in accordance with Rule 3.3.

**"Last Withdrawal Date"** means:

- (a) in relation to a Performance Right granted prior to 1 July 2009, the ten (10) year anniversary of the date of grant of the Performance Right; and
- (b) in relation to a Performance Right granted on or after 1 July 2009, the seven (7) year anniversary of the date of grant of the Performance Right.

**"Participant"** is an Eligible Employee to whom a Performance Right has been granted or, following the death of an Eligible Employee, his personal representative.

**"Performance Period"** means a period as determined by the Board, upon recommendations from the Committee, commencing on the Invitation Date, and being a period not less than three months and not more than three years from the Grant Date.

**"Performance Condition"** has the meaning as set out in Rule 7.

**"Plan"** is this plan as amended from time to time.

**"Performance Right"** means an entitlement to one Share, subject to vesting and satisfaction of the Performance Condition.

**"Retirement"** means the termination of an Eligible Employee's employment or employment relationship with the Group by reason of:

- (a) reaching the normal retirement age of the Group as determined by the Directors from time to time;
- (b) participation in an early retirement plan or a voluntary redundancy plan of the Group;
- (c) the illness or incapacity of the Eligible Employee necessitating the permanent withdrawal of the Eligible Employee from the work force; or
- (d) circumstances which the Directors consider should be treated as a Retirement for the Purposes of the Plan.

**"Retrenchment"** means the compulsory termination of the employment or employment relationship of an Eligible Employee with the Group where the termination is expressed to be on the ground that:

- (a) the employment of the Eligible Employee is not necessary and his or her position is not to be filled;
- (b) the work for which the Eligible Employee was engaged is finished; or
- (c) the quantity of work required by the Group to be undertaken has diminished and has rendered a reduction in the number of employees necessary.

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

**"Share"** is a share in the capital of the Company.

**"Subsidiary"** has the meaning given to it by section 46 of the Corporations Act.

**"Trust"** means the "Fortescue Metals Group Limited Employee Share Trust", being an employee share trust established by the Company for the sole purpose of subscribing for or acquiring, delivering, allocating and holding Shares for the benefit of Participants and participants in other employee equity plans established by any member of the Group from time to time.

**"Trust Deed"** means the trust deed entered into between the Company and the Trustee on or around 31 May 2011.

**"Trustee"** means Pacific Custodians Pty Limited (ABN 66 009 682 866) which has been appointed by the Company, and which agrees to act, as the initial trustee of the Trust on the terms and conditions set out in the Trust Deed.

**"Withdrawal Notice"** means a written notice given by a Participant to the Company requesting that some or all of the Participant's Shares held by the Trustee on behalf of the Participant be sold or transferred to the Participant or as that Participant directs, which notice must:

- (a) be signed by the relevant Participant;
- (b) specify the number of Shares to be sold or transferred; and
- (c) be in the form set out in the Schedule or as otherwise approved by the Board.

## 1.2 Construction

- (a) Where the context so admits, any reference in the Plan:
  - (i) to the singular includes the plural and vice versa; and
  - (ii) to the masculine includes the feminine.
- (b) Any reference in the Plan to an enactment includes the enactment as for the time being amended or re-enacted.

- (c) The headings to the Rules are for reference purposes only and are not to affect the meaning or construction of the Rules.

### **1.3 Governing Law**

This Plan and any Performance Right granted under it is governed by, and is to be construed in accordance with, the laws of Western Australia.

### **1.4 Applicable Laws**

The Board will ensure that the Plan is at all times operated in accordance with Applicable Laws.

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## **2. Purpose**

The purpose of the Plan is to:

- (a) align the interests of employees and shareholders;
- (b) provide targeted but competitive remuneration and long-term incentive for the retention of key employees; and
- (c) support a culture of employee share ownership.

Further, the Directors consider that the Plan will provide the Company with the ability to attract employees of a high calibre. The Plan will be used as part of the remuneration planning for employees and consultants.

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## **3. Eligibility and invitations**

### **3.1 Administration**

- (a) Subject to, and unless otherwise provided in, these Rules, the Committee shall administer the Plan.
- (b) The Committee's decision on the construction of the Rules and on any disputes arising under the Plan is final and binding on all persons.
- (c) The Board, upon recommendations from the Committee, shall consider the grant of Performance Rights annually, unless otherwise determined by the Committee.

### **3.2 Board to determine eligibility of Eligible Employees**

The Board, upon recommendations from the Committee, will determine the eligibility of Eligible Employees on an annual basis. In making that determination, the Board must consider:

- (a) the seniority of the Eligible Employee and the position the Eligible Employee occupies within the Group;
- (b) the length of service of the Eligible Employee with the Group;
- (c) the record of employment of the Eligible Employee with the Group;
- (d) the potential contribution of the Eligible Employee to the growth and profitability of the Group;
- (e) the extent (if any) of the existing participation of the Eligible Employee in the Plan; and
- (f) any other matters which the Board considers relevant.

### **3.3 Invitations**

The Board, upon recommendations from the Committee, may at such times as are determined by the Board from time to time, issue invitations (in such form as the

Board decides from time to time) to one or more Eligible Employees, inviting applications for a grant of Performance Rights, as specified in the invitation. Subject to the limits set out in Rule 17, the number of Performance Rights offered to an Eligible Employee shall be determined by the Board, upon recommendations from the Committee.

### **3.4 Performance Condition**

The invitation shall set out the Performance Condition applicable to a Performance Right as set by the Board, upon recommendations from the Committee, in accordance with Rule 7.

### **3.5 Invitations non-transferable**

An invitation given under Rule 3.3 is not transferable or capable of being acted upon by a person other than the Eligible Employee to whom it is addressed.

### **3.6 No limit on number of invitations**

Subject to the limits set out in Rule 17, the Board may exercise its powers in relation to the participation of any Eligible Employee in the Plan on any number of occasions.

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## **4. Applications**

### **4.1 Application**

Following receipt of an invitation, application for the Performance Rights may be made by the Eligible Employee by sending to the Company Secretary of the Company a duly signed and completed application (in the form attached to the invitation).

### **4.2 Acceptance period**

The application must be received by the Company within the acceptance period specified in the invitation, which must be not less than 7 days long.

### **4.3 Provision of additional information**

The Committee shall be entitled to receive from the Eligible Employee any information that the Committee regards as necessary concerning the Eligible Employee and the Eligible Employee's entitlement to lodge an application and may reject any application in its absolute discretion.

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## **5. Grant of Performance Rights**

### **5.1 Grant of Performance Rights**

Upon acceptance of a duly signed and completed application for Performance Rights, the Company may grant the Performance Rights applied for to the Eligible Employee.

### **5.2 Grant Price**

Performance Rights granted under the Plan will be granted free of charge.

### **5.3 Evidence of Grant**

The Company must issue a certificate to each Participant to whom Performance Rights have been granted, which certificate must take effect as a deed, unless the Eligible Employee has given valuable consideration for the Performance Right, in which event it need not take effect as a deed.

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## **6. Waiver of Performance Rights**

A Participant may at any time give up Performance Rights in whole or in part by deed.

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## **7. Determination of Performance Condition**

### **7.1 Performance Condition**

The Board, upon recommendations from the Committee shall, set the Performance Condition applicable to a Performance Right. The satisfaction of the Performance Condition shall determine the proportion of Performance Rights held by the Participant which will vest to that Participant.

### **7.2 Satisfaction of Performance Condition**

At the end of each Performance Period for a Participant the Board, upon recommendations from the Committee, will:

- (a) determine whether and, if so, the extent to which, the Performance Condition applicable to that Performance Period has been satisfied and the proportion (if any) of the Performance Rights that vest; and
  - (b) advise the Participant in writing:
    - (i) whether and the extent to which the Performance Condition for the Performance Period has been met; and
    - (ii) of the proportion (if any) of the Performance Rights held by the Participant which vest to the Participant; and
    - (iii) of the corresponding number of Shares (if any) to be issued, transferred or allocated to the Trustee to be held on behalf of the Participant.
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## **8. Vesting of a Performance Right**

### **8.1 Vesting**

- (a) Unless otherwise designated by the Company, the Performance Rights granted under the Plan will vest at the end of the Performance Period, subject to and upon satisfaction of the Performance Condition.
- (b) Notwithstanding Rule 8.1(a) above, Performance Rights will vest immediately:
  - (i) if there is a Change of Control Event;
  - (ii) upon the Retirement or Retrenchment of the Participant; or
  - (iii) upon the death of the Participant,to the extent that the Performance Condition has been met.

### **8.2 Allotment and issue, transfer or allocation of Shares**

- (a) The Board must, subject to:



- (i) any necessary consents or approvals as may be required by any competent authority having first been obtained; and
- (ii) the Participant having complied with the terms of the Performance Rights,

instruct the Trustee to subscribe for, acquire and/or allocate the number of Shares specified in the notice referred to in Rule 7.2(b), and the Trustee will hold those Shares on behalf of that Participant in accordance with the terms of the Trust Deed.

- (b) The Company will, or the Company will instruct the Trustee to, notify the Participant that the Trustee holds Shares on the Participant's behalf.
- (c) Subject to the Trustee receiving from the Company sufficient funds to subscribe for or acquire the Shares, the Board may, in its absolute discretion instruct the Trustee to either subscribe for new Shares or acquire Shares on market to be held on a Participant's behalf, or instruct the Trustee to use a combination of both alternatives.

### **8.3 Withholding**

- (a) This Rule 8.3 applies if a Participant is liable to tax, duties or other amounts on the vesting of his Performance Right and the Company is liable to make a payment to the appropriate authorities on account of that liability.
- (b) The Board must issue and sell sufficient number of the Shares which would otherwise be issued to or on behalf of the Participant so that the net proceeds of sale equal the payment which the Company is required to pay to the appropriate authorities. The Board must account to the Company for the net proceeds of sale.
- (c) Rule 8.3(b) shall not apply, however, if the Participant makes alternative arrangements to the satisfaction of the Company.

### **8.4 Rights of new Shares issued, transferred or allocated**

Any new Shares issued, transferred or allocated on the vesting of a Performance Right rank pari passu in all respects with other Shares then on issue, subject to the restrictions on transfer set out in Rule 8.5.

### **8.5 Transfer restrictions**

Any new Shares issued, transferred or allocated on the vesting of a Performance Right may not be transferred to a third party, disposed of or otherwise dealt with by the Participant until the earlier of the following:

- (a) the Participant ceasing to be an Eligible Employee;
- (b) the Participant requests the restriction on transfer to be lifted and the Board agrees to lift the restriction on transfer; and
- (c) the Last Withdrawal Date.

### **8.6 Listing**

The Company must apply to the ASX for any new Shares issued on the vesting of Performance Rights to be admitted to trading on ASX. However, the Shares will be subject to the transfer restrictions set out in Rule 8.5 and may not be traded on ASX while those transfer restrictions apply.

## **9. Lapse of a Performance Right**

### **9.1 Lapse**

Those Performance Rights which do not vest pursuant to Rule 8 lapse.

### **9.2 Lapse upon ceasing to be an Eligible Employee**

Subject only to Rule 8.1(b), if at any time a Participant ceases to be an Eligible Employee, all Performance Rights held by that Participant will lapse immediately unless the Board, upon recommendations from the Committee, otherwise determines within 30 days of the Participant ceasing to be an Eligible Employee.

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## **10. Restriction on transfer**

Performance Rights may not be assigned or transferred, except on the death of the Participant or with the written approval of the Board.

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## **11. Variation of capital**

### **11.1 Adjustment of Performance Rights**

If, prior to the vesting of a Performance Right, there is a reorganisation of the issued share capital of the Company (including a consolidation, subdivision or reduction of capital or return of capital to shareholders), the number of Shares the subject of Performance Rights will be adjusted in the manner required by the ASX Listing Rules.

### **11.2 Restrictions on adjustment**

Before making the adjustment, the Board must obtain the written confirmation of the Company's auditors (acting as experts and not as arbitrators) that the adjustment is, in their opinion, fair and reasonable.

### **11.3 Notification of adjustments**

The Committee must notify each Participant of any adjustment to Performance Rights as soon as practicable after its decision.

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## **12. Dividends and voting rights**

### **12.1 Dividends**

Where the Trustee holds Shares on behalf of a Participant, the dividends payable on those Shares will be paid by the Company to the Trustee, and the Trustee will pay any such dividends to the Participant as soon as reasonably practicable after those dividends are paid by the Company to the Trustee.

### **12.2 Voting rights**

Where the Trustee holds Shares on behalf of a Participant, a Participant may direct the Trustee by notice in writing as to how to exercise the voting rights attaching to those Shares held on the Participant's behalf by the Trustee, either generally or in respect of a particular resolution, by way of proxy. In the absence of any such direction, the Trustee must not exercise the voting rights attaching to the Shares held

on behalf of the Participant by the Trustee. The Trustee must not vote in respect of any Shares it holds on behalf of a Participant if the vote occurs by show of hands.

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## **13. Withdrawal of Shares and transfer of Shares to Participants**

### **13.1 Withdrawal of Shares generally**

Any Shares held by the Trustee in the Trust for the benefit of a Participant pursuant to this Plan, will remain held in the Trust for the benefit of the relevant Participant and subject to this Rule 13, unless and until the Shares are withdrawn from the Trust by:

- (a) the relevant Participant submitting (or being deemed to have submitted) to the Company a Withdrawal Notice;
- (b) the Board approving that Withdrawal Notice under this Rule 13; and
- (c) the Trustee acting in accordance with any such approval by the Board by transferring the legal title in those Shares, or by selling those Shares, in accordance with the direction of the Participant,

provided at all times that they are not restricted Shares pursuant to Rule 8.5.

### **13.2 Withdrawal Notice**

A Participant may submit a Withdrawal Notice to the Company in respect of some or all of the Shares, which are not restricted Shares pursuant to Rule 8.5, held by the Trustee on behalf of the Participant.

### **13.3 Board approval**

The Board may approve the withdrawal from the Trust of all or a specified number of Shares held by the Trustee on behalf of a Participant if any of the following applies:

- (a) the Participant has submitted a Withdrawal Notice to the Company in respect of the relevant number of Shares;
- (b) the Participant ceases to be an Eligible Employee (in which case the Participant will be deemed to have submitted a Withdrawal Notice in respect of all of the Shares held by the Trustee on behalf of that Participant and to have directed the Trustee to transfer the legal title in those Shares to the Participant); or
- (c) the Last Withdrawal Date has been reached (in which case, the Participant will be deemed to have submitted a Withdrawal Notice in respect of all of the Shares held by the Trustee on behalf of that Participant and to have directed the Trustee to transfer the legal title in those Shares to the Participant).

### **13.4 Specified time, interval or periods for approval**

The Board may adopt procedures for the consideration of a Withdrawal Notice, which may (amongst other things) specify times, intervals or periods at or during which the Board will consider whether or not to approve a Withdrawal Notice submitted by a Participant from time to time.

### **13.5 Approval must not be unreasonably withheld**

The Board must not unreasonably withhold their approval of the withdrawal of Shares from the Trust that are the subject of a Withdrawal Notice validly submitted by a Participant under this Rule 13. For the avoidance of doubt, nothing in this Rule 13 requires the Board to:

- (a) deal with a Withdrawal Notice at an earlier time than the next time specified under any procedure adopted by the Board under Rule 13.4; or

- (b) approve a Withdrawal Notice where the Board is permitted by Rule 13.6 to decline to act on that Withdrawal Notice.

## **13.6 Board may decline approval**

If a Participant owes money to any member of the Group, the Board may decline to act on a Withdrawal Notice submitted, or deemed to have been submitted, by the Participant until arrangements (which are satisfactory to the Board) have been made for the payment of the money.

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## **14. Trustee**

### **14.1 Rights and obligations**

The Board may determine and conclude agreements with the Trustee, and enforce or prosecute any rights and obligations against the Trustee under such agreements, without reference or recourse to the Participants under this Plan. Subject to the terms of the Trust Deed and without limiting the Company's rights in this regard, the Company may, pursuant to and in accordance with any such agreements:

- (a) provide funds to the Trustee in order to allow the Trustee to subscribe for and/or acquire Shares to be held on behalf of Participants under this Plan;
- (b) pay the Trustee for services provided in connection with this Plan and the Trust;
- (c) remove the Trustee and appoint a new trustee (and make any necessary arrangements or provisions for the transfer of Shares held by the Trustee for Participants to a new trustee); and
- (d) otherwise exercise any rights, responsibilities or powers afforded to it under the Trust Deed.

### **14.2 Costs**

The Board may determine the manner in which any costs associated with the Trust and the costs incurred in the course of the performance by the Trustee of its role and duties under this Plan and the Trust Deed are to be borne.

### **14.3 Administration and holding of Shares**

The Trustee must administer the Trust and hold Shares under the Plan in accordance with this Plan, the Trust Deed and any procedures determined by the Company and as agreed to between the Board and the Trustee.

### **14.4 Registration of Shares**

Where Shares are held by the Trustee on behalf of a Participant, those Shares will be registered in the name of the Trustee.

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## **15. General**

### **15.1 Notices and circulars to shareholders**

- (a) The Company is not obliged to give a Participant copies of any notices, circulars and other documents sent by the Company to its shareholders until that Participant becomes a shareholder by the vesting of any Performance Rights.
- (b) Where the Trustee holds Shares on behalf of a Participant, the Company must, or by direction of the Board the Trustee must, forward to a Participant

a copy of any notices of meetings of members of the Company received by the Trustee, unless the Participant has notified the Trustee in writing that the Participant does not wish to receive such notices.

## **15.2 Costs and expenses**

The Company will pay the cost of the preparation and operation of the Plan.

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## **16. Amendment and termination**

### **16.1 Power of amendment - general**

Subject to the limitations in Rule 16.2, the Committee may from time to time amend the Plan in any respect.

### **16.2 Power of amendment - limitations**

- (a) Subject to Rule 16.3, no amendment may be made to the advantage of Participants to the provisions of the Plan relating to:
  - (i) the persons to whom, or for whom, securities, cash or other benefits are provided under the Plan;
  - (ii) limitations on the number or amount of the securities, cash or other benefits subject to the Plan;
  - (iii) the maximum entitlement for any one Participant; or
  - (iv) the basis for determining a Participant's entitlement to, and the terms of, securities, cash or other benefit to be provided and for the adjustment thereof (if any) in the event of a capitalisation issue, rights issue, sub-division or consolidation of shares, reduction of capital or any other variation of capital, without the prior approval of the Company in general meeting.
- (b) No amendment may be made which would affect adversely any of the subsisting rights of a Participant except either with his consent in writing or with the consent of the majority of Participants affected by the amendment or addition.

### **16.3 Power of amendment - exceptions**

The Committee may make minor amendments to the Plan in order to:

- (a) take account of any change in Applicable Laws;
- (b) comply with present or future State, Territory or Commonwealth legislation or the ASX Listing Rules governing or regulating the maintenance or operation of the Plan or like plans;
- (c) correct any manifest error or mistake;
- (d) enable the Plan or a member of the Group to comply with Applicable Laws; and/or
- (e) obtain or maintain favourable tax, exchange control or regulatory treatment for Participants, for the Company or any member of the Group, or to benefit the administration of the Plan.

### **16.4 Notification of amendments**

The Committee must give written notice to all Participants of any amendment which affects their rights.

## **16.5 Termination**

The Committee may at any time terminate the Plan and in which case no further Performance Rights will be granted. In all other respects the provisions of the Plan shall remain in force.

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## **17. Plan limit**

### **17.1 General**

The Board must ensure that the limit imposed by Rule 17.2 is not exceeded.

### **17.2 Company Limit**

The Board must ensure that it does not grant Performance Rights under the Plan if the number of Performance Rights, when added together with the number of options granted under the Company's Employee Share Option Plan, would exceed 5% of the issued capital of the Company.

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## **18. Notices**

### **18.1 To Eligible Employees and Participants**

- (a) The Committee or the Board may give notice to the person entitled to it either personally or through the internal post or by sending it by post to the address supplied by him for that purpose.
- (b) Where a notice or document is sent by post it shall be deemed to have been received 7 days after it was put into the post. All notices and documents sent by post will be sent at the risk of the addressee.

### **18.2 To the Company**

An Eligible Employee or a Participant may give notice to the Company, the Committee or the Board by delivering it to, or sending it to, the Company at its registered office marked for the attention of the Company Secretary. The Board may make other arrangements for the receipt of notices.

## Schedule – Notice of withdrawal of Shares from the Trust

To the Trustee of the “Fortescue Metals Group Limited Employee Share Trust”

Where Fortescue Metals Group Limited (ACN 002 594 872) ("**Company**") has instructed the Trustee of the “Fortescue Metals Group Limited Employee Share Trust” ("**Trust**") to subscribe for, transfer and/or allocate shares and hold those shares on my behalf, in accordance with Rule 13 of the Fortescue Metals Group Ltd Performance Share Plan ("**Plan**"), I request the Trustee to release from the Trust the following number of shares held by the Trustee on my behalf:

\_\_\_\_\_ shares

and provide the Trustee with the following instructions:

### PLEASE TICK ONE BOX ONLY

1. Please transfer the legal title in the shares to me [  ]
2. Please transfer the legal title in the shares to my nominee [  ]

\_\_\_\_\_  
Insert full name

3. Please arrange for the sale of the shares on my behalf and provide me with the proceeds from the sale of those shares (less any brokerage fees or other costs incurred by the Trustee resulting from that sale) [  ]

I acknowledge that this request is subject to, and must be read in conjunction with, the Plan, and I and/or my nominee agree to be bound by the constitution of the Company.

Date: \_\_\_\_\_

Signature: \_\_\_\_\_