

# Performance rights plan rules

OptiComm Ltd ACN 117 414 776

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# Performance rights plan rules

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## 1. Defined terms and interpretation

### 1.1 Defined terms

In this document:

Term	Definition
<b>Acceptance Form</b>	means a completed and executed acceptance of an Offer in the form approved by the Board and provided to an Eligible Participant with an Offer Document.
<b>Applicable Laws</b>	means one or more, as the context requires, of: <ul style="list-style-type: none"> <li>(a) the Corporations Act;</li> <li>(b) the Corporations Regulations;</li> <li>(c) the Listing Rules;</li> <li>(d) the operating rules of ASX Settlement Pty Ltd ACN 008 504 532;</li> <li>(e) the Tax Act;</li> <li>(f) the Tax Administration Act;</li> <li>(g) any other applicable practice note, policy statement, class order, declaration, guideline, policy, procedure, ruling or guidance note made to clarify or expand any of (a) to (f) above; and</li> <li>(h) the Constitution.</li> </ul>
<b>ASIC</b>	means the Australian Securities and Investments Commission.
<b>ASX</b>	means ASX Limited ACN 008 624 691 or the financial market operated by it (as the context requires).
<b>Board</b>	means the Company's board of Directors, or a committee of the Board appointed for, or the functions of which are determined to include, the purposes of this Plan or these Rules.
<b>Business Day</b>	means a day that is not a Saturday, Sunday or public holiday in Melbourne, Victoria.
<b>Change of Control</b>	means: <ul style="list-style-type: none"> <li>(a) a person acquires voting power (within the meaning of section 610 Corporations Act) in more than 50% of the ordinary shares of the Company;</li> <li>(b) an order of the Court made for the purpose of section 411(4)(b), in connection with a members' scheme of arrangement to effect a change of Control, is lodged with ASIC under section 411(10) of the Corporations Act; or</li> </ul>

Term	Definition
	(c) the Company disposes of the whole or a substantial part of its assets or undertaking.
<b>Company</b>	means OptiComm Ltd ACN 117 414 776.
<b>Constitution</b>	means the constitution of the Company, as amended from time to time.
<b>Control</b>	has the meaning given to that term in section 50AA Corporations Act and <b>Controlled</b> has a corresponding meaning.
<b>Corporations Act</b>	means <i>Corporations Act 2001</i> (Cth).
<b>Corporations Regulations</b>	means any and all regulations made under the Corporations Act.
<b>Director</b>	means a director of the Company.
<b>Disposal Restriction</b>	means a restriction on the creation of a Security Interest in, or the transfer, assignment, disposal or other dealing in, a Right or a Share to be delivered upon the exercise of a Right as determined by the Board in its discretion and notified to a Participant in the Offer.
<b>Eligible Participant</b>	means: <ul style="list-style-type: none"> <li>(a) a permanent full-time or part-time employee of the Company or a Related Company, including any person who is a director of a Related Company whom the Board determines to be eligible to participate in the Plan at any time; or</li> <li>(b) any other person as the Board, in its discretion, determines to be eligible to participate in the Plan at any time.</li> </ul>
<b>Entitlements</b>	means any rights to acquire shares, options or other securities granted or issued by the Company or by any other company to shareholders of the Company.
<b>Exercise Period</b>	means the period (if any) during which the Vested Rights may be exercised as determined by the Board in its discretion and notified to a Participant at the Time of Grant.
<b>Holding Lock</b>	means a holding lock as defined in the Listing Rules.
<b>Listing Rules</b>	means the official listing rules of ASX as amended or waived from time to time.
<b>Nominated Party</b>	means, in respect of an Eligible Participant: <ul style="list-style-type: none"> <li>(a) an immediate family member of the Eligible Participant (other than in the capacity of trustee);</li> <li>(b) a corporate trustee of a self-managed superannuation fund (within the meaning of the <i>Superannuation Industry (Supervision) Act 1993</i>) where the Eligible Participant is a beneficiary of the fund; or</li> </ul>

Term	Definition
	(c) a company whose members comprise no persons other than the Eligible Participant or immediate family members of the Eligible Participant.
<b>Notice of Exercise</b>	means a duly completed and signed notice of exercise of a Right by a Participant as referred to in Rule 4.2(b) in the form approved by the Board from time to time.
<b>Offer</b>	means an offer to an Eligible Participant to participate in the Plan, given under Rule 3 in an Offer Document.
<b>Offer Document</b>	means a document containing the details of the Offer substantially in the form approved by the Board.
<b>Participant</b>	means an Eligible Participant who has been granted a Right, held either by the Eligible Participant personally, or on its behalf by a Nominated Party who has been approved by the Board pursuant to these Rules.
<b>Plan</b>	means the plan established in accordance with these Rules.
<b>Related Company</b>	means a company which is related body corporate (as defined in the Corporations Act) of the Company.
<b>Right</b>	means a right granted under Rule 3 to acquire a Share.
<b>Rules</b>	means the rules of the Plan.
<b>Security Interest</b>	means a mortgage, charge, pledge, lien or other encumbrance of any nature.
<b>Share</b>	means a fully paid ordinary share in the capital of the Company.
<b>Tax</b>	includes any tax (direct or indirect), levy, impost, GST, deduction, charge, contribution, duty or withholding which is assessed (or deemed to be assessed), levied, imposed or made by any government or any governmental, semi-governmental or judicial entity or authority together with any interest, penalty, fine, charge, fee or other amount assessed (or deemed to be assessed), levied, imposed or made on or in respect of any or all of the foregoing.
<b>Tax Act</b>	means the <i>Income Tax Assessment Act 1936</i> (Cth) or the <i>Income Tax Assessment Act 1997</i> (Cth) or both, as the context requires.
<b>Tax Administration Act</b>	means the <i>Taxation Administration Act 1953</i> (Cth).
<b>Time of Grant</b>	means the time of grant of a Right under Rule 3.
<b>Unvested Rights</b>	means Rights which have Vesting Conditions attached and in respect of which a Vesting Notice has not been given to a Participant.
<b>Vested Rights</b>	means Rights in respect of which a Vesting Notice has been given to a Participant or Rights which have no Vesting Conditions attached.

Term	Definition
<b>Vesting Conditions</b>	means one or more conditions, including time or performance conditions, as determined by the Board in its discretion and advised to a Participant in the Offer.
<b>Vesting Notice</b>	means a notice to a holder of a Right that, to the extent specified in the Vesting Notice, the Vesting Conditions applicable to the Right have been satisfied, or waived by the Board at its discretion
<b>Vesting Period</b>	means the period referred to in the Offer during which Vesting Conditions must be satisfied, or waived by the Board at its discretion.

## 1.2 Interpretation

In this document:

- (a) reference to a rule or paragraph is a reference to a rule or paragraph of these Rules, or the corresponding rule or Rules of the Plan as amended from time to time;
- (b) words importing the singular include the plural and vice versa, words importing any gender include other genders and 'person' includes a corporation, trust, partnership or other entity whether or not it comprises a separate legal entity;
- (c) words defined in the Corporations Act have the same meaning when used in this document;
- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (f) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (g) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day;
- (h) where an act or thing must be done on a particular day or within a particular period, that act or thing must be done before, and that period ends at, 5:00pm on the relevant day; and
- (i) the meaning of any general language is not restricted by any accompanying example, and the words 'includes', 'including', 'such as', or 'for example' (or similar phrases) do not limit what else might be included.

## 1.3 Applicable Law

These Rules are to be interpreted subject to the Applicable Laws.

## 2. Commencement of Plan

The Plan will commence on a date determined by the Board.

### 3. Rights

#### 3.1 Offer of Rights

The Company may offer Rights to an Eligible Participant by giving the Eligible Participant an Offer.

#### 3.2 Form of Offer

An Offer shall be in such form and content and with such terms and conditions as the Board determines, including:

- (a) the total number of Rights offered to an Eligible Participant;
- (b) Vesting Conditions (if any);
- (c) whether the Rights are required to be exercised by the Eligible Participant in accordance with Rule 4.2 or whether the Rights will be exercised automatically on vesting of the Rights;
- (d) the Exercise Period (if any);
- (e) Disposal Restrictions (if any);
- (f) any extra terms and conditions attaching to the Rights; and
- (g) any matters required to be specified by the Applicable Law.

#### 3.3 Required documents for Offer

The Company will send the Offer to an Eligible Participant together with:

- (a) an Acceptance Form;
- (b) a copy of this document or a summary of the rules set out in this document (in which case this document will be made available on request, free of charge);
- (c) any other explanatory material which the Company wishes to distribute; and
- (d) any other documents and information required by the Applicable Law.

#### 3.4 Acceptance and grant

- (a) An Eligible Participant may accept an Offer by completing, signing and returning the Acceptance Form in accordance with the Offer, and on acceptance by the Board of the Acceptance Form, a contract is formed between the Company and the Eligible Participant on the terms and conditions of:
  - (i) these Rules; and
  - (ii) the Offer.
- (b) As soon as practicable after receipt of a duly completion Acceptance Form, the Company will grant to each Participant the number of Rights as set out in the Offer.
- (c) A Participant will not pay any consideration for the grant of Rights.
- (d) A Participant, by submitting an Acceptance Form, agrees to be bound by the terms and conditions of the Offer, the Plan and the Rules, as amended from time to time.



- (e) One Right is exercisable into one Share.

### **3.5 Offer personal**

Offers made to an Eligible Participant are personal to the Eligible Participant to whom it is made, and may only be accepted by, and Rights (and Shares issued on exercise of the Rights) may only be issued or transferred to, the Eligible Participant to whom the Offer is made or a Nominated Party of the Eligible Participant (if approved by the Board).

### **3.6 Compliance with Applicable Law**

Notwithstanding anything to the contrary in these Rules, the Company will not issue Rights if to do so would contravene an Applicable Law (including, for the avoidance of doubt, the Listing Rules, the Corporations Act or any class order, instrument or other relief from the Corporations Act that applies to the Company or the issue of Rights under the Plan).

## **4. Exercise of Rights**

### **4.1 Vesting**

- (a) The Board shall give a Participant a Vesting Notice upon any Vesting Conditions relating to Rights granted to the Participant having been satisfied or waived by the Board.
- (b) The Board's determination as to whether a Vesting Condition has been satisfied will be at the Board's discretion and binding on the Participant.
- (c) The Board may, but has no obligation to, give a Participant notice if any Vesting Condition relating to Rights granted to the Participant have not been satisfied or waived.

### **4.2 Exercise**

Where a grant of Rights requires the Performance Rights to be exercised by the Participant:

- (a) A Participant may exercise Vested Rights which have not expired under Rule 4.5 or forfeited under Rule 6.
- (b) Vested Rights may be exercised by the Participant lodging with the Company a Notice of Exercise within the Exercise Period and complying with such other requirements as are specified at the Time of the Grant or subsequently by the Board.
- (c) A Participant must exercise Rights in multiples of 100 or such other multiple as the Board determines and notifies the Participant, unless the Participant exercises all Rights able to be exercised by the Participant at that time.
- (d) If a Participant validly exercises Rights, a Share in respect of which a Right has been exercised may, at the discretion of the Company, be delivered to the Participant by being issued to the Participant or by the Company procuring its transfer to the Participant.
- (e) Unless otherwise determined by the Board at its discretion when making a grant of Rights, no amount shall be payable by a Participant in respect of Rights exercised by a Participant.

### **4.3 Automatic exercise**

Where a grant of Rights specifies the Rights will be exercised automatically on vesting of the Rights:

- (a) Vested Rights which have not expired under Rule 4.5 or been forfeited under Rule 6 are automatically exercised upon vesting.
- (b) The Company will treat the Rights as having been validly exercised on the date the Board provides a Participant a Vesting Notice in accordance with Rule 4.1.
- (c) A Share in respect of which a Right has been exercised may, at the discretion of the Company, be delivered to the Participant by being issued to the Participant or by the Company procuring its transfer to the Participant.
- (d) Unless otherwise determined by the Board at its discretion when making a grant of Rights, no amount shall be payable by a Participant in respect of Shares delivered to a Participant upon the exercise of Rights.

#### **4.4 Application for quotation**

If the Company's Shares are officially quoted on the ASX at the time Shares are issued under the Plan, the Company will apply to ASX for official quotation of the Shares issued to a Participant after exercise of a Right within the time prescribed by the Listing Rules.

#### **4.5 Expiry of Rights**

Unless otherwise determined by the Board at its discretion, Rights which have not been exercised will expire and cease to exist on the first to occur of:

- (a) the relevant Participant ceasing to be employed by the Company or a Related Company;
- (b) the Rights being forfeited under Rule 6; and
- (c) the fifth anniversary of the Time of Grant, unless the Board in its discretion has determined at the Time of Grant that another expiry date is to apply to the Right.

### **5. Terms**

#### **5.1 Adjustment for reconstruction**

If there is a reconstruction of the issued capital of the Company (including consolidation, sub-division, reduction or return), the number of Shares to be delivered in respect of each Right, the amount payable (if any) by a Participant in respect of Shares to be delivered, or both, will be adjusted to the extent necessary to comply with the Listing Rules applying to a reorganisation of capital.

#### **5.2 Participation in further issues**

- (a) A Participant cannot participate in a new issue of Shares or other securities to holders of Shares unless the Shares in respect of the Rights held by the Participant have been issued or transferred to and registered in the name of the Participant before the record date for determining entitlements to the new issue.
- (b) If the Company makes a pro rata bonus issue of Shares or other securities to holders of Shares and Shares in respect of Rights held by a Participant have not been issued or purchased and transferred to and registered in the name of, the Participant before the record date for determining entitlements to the bonus issue, then the number of Shares subject of the Rights held by the Participant shall be increased by the number of Shares

that the Participant would have received if the Shares subject of the Rights had been registered in the name of the Participant before the record date for the bonus issue.

- (c) If the Company makes a pro rata issue of securities (except a bonus issue) to the holders of Shares the number of Rights (or other terms and conditions, if any, applicable to the Rights) held by a Participant will be adjusted in accordance with the requirements of the Listing Rules, the Corporations Act and any other applicable law.

### **5.3 Dividends**

A Participant shall not participate in dividends on Shares unless the Shares in respect of the Rights held by the Participant have been issued or transferred to and registered in the name of the Participant before the record date for determining entitlements to the relevant dividend.

### **5.4 Voting rights**

A Participant does not have the right to vote in respect of any Rights.

### **5.5 Transfers and Security Interests**

Participants may only grant Security Interests or otherwise assign, transfer, dispose of or deal with Rights, or any interest in Rights, with the prior written consent of the Board which it may grant or withhold in its absolute discretion.

## **6. Forfeiture**

### **6.1 Forfeiture**

While Rights held by a Participant are subject to Vesting Conditions which have not been satisfied or waived, if:

- (a) those Rights have not become Vested Rights by the end of the applicable Vesting Period or the Board determines that the Vesting Conditions are incapable of being satisfied by the end of the Vesting Period, the Participant shall forfeit any right or interest in the Rights; or
- (b) the Board determines that the Participant has committed any act of fraud or gross misconduct, or such other circumstances occur as may be specified in the Offer, in relation to the affairs of the Company or a Related Company, the Participant shall forfeit any right or interest in the Rights or other entitlements of the Participant under the Plan.

### **6.2 Consequence of forfeiture**

Forfeited Rights shall cease to exist.

## **7. No interest in Shares**

A grant of Rights does not confer any right or interest, whether legal or equitable, in Shares until all Vesting Conditions in respect of such Rights have been satisfied or waived by the Board.

## 8. Change of Control

### 8.1 Board to notify Participants of Change of Control

The Board must, as soon as reasonably practicable, notify each Participant if a Change of Control occurs.

### 8.2 Vesting Conditions waived on Change of Control

Unless the Board decides otherwise, if a Change of Control occurs, all Vesting Conditions applicable to Unvested Rights will be waived.

## 9. Disposal Restriction

- (a) If an Offer contains a Disposal Restriction, the Participant must comply with that Disposal Restriction in relation to all Shares issued on exercise of the Rights for the period specified in the Offer.
- (b) For the purpose of enforcing any Disposal Restriction, the Company may do all things and enter into arrangements with the share registry or otherwise that it considers necessary, including the application of a Holding Lock, to enforce such Disposal Restriction. Participants will be bound by such arrangements and upon request by the Company will do all things necessary to give effect to those arrangements.
- (c) Without limiting Rule 8, the Board may at its discretion determine at any time that a Disposal Restriction will no longer apply and shall notify Participants of such a determination in writing.

## 10. Change in Nominated Party

If a Nominated Party is granted Rights (or Shares) under this Plan which remain subject to Disposal Restrictions and then ceases to be eligible to be a Nominated Party (due to a change in control of the Nominated Party, a change in family circumstances or otherwise, as determined by the Board), the Eligible Participant must:

- (a) promptly notify the Company in writing; and
- (b) arrange for the transfer of the Shares to the Eligible Participant or to another Nominated Party approved by the Board.

## 11. Notices

Any notice or direction given under this Plan is validly given if it is:

- (a) handed to the person concerned;
- (b) sent by ordinary prepaid post to the person's last known address; or
- (c) sent by email to an Eligible Participant's Company email address.

## 12. Amendment of the Plan

### 12.1 Amendment

- (a) Subject to Rules 12.1(b) and 12.2, the Company may at any time by written instrument or by resolution of the Board, amend all or any of the provisions of these Rules (including this Rule 12).
- (b) No amendment may be made except in accordance with and in the manner stipulated (if any) by the Listing Rules.
- (c) Where the Board determines that the laws of a particular jurisdiction require the grant of Rights to be made subject to certain terms and conditions, the Board may direct that for the purpose of that jurisdiction these Rules will be read subject to such provisions as shall be specified in an addendum to be appended hereto for that purpose.

### 12.2 Restriction on amendment

No amendment of these Rules is to reduce in a material way the rights of any Participant in respect of Rights granted under the Plan to or on behalf of a Participant prior to the date of the amendment, other than:

- (a) an amendment introduced primarily;
  - (i) for the purpose of complying with or conforming to present or future State, Territory or Commonwealth or foreign legal requirement or legislation governing or regulating the maintenance or operation of the Plan or like plans; or
  - (ii) to correct any manifest error or mistake;
  - (iii) to enable the Company or a Related Company to comply with any Applicable Law, any other Australian laws, applicable foreign laws, or a requirement, policy or practice of ASIC or other foreign or Australian regulatory body; or
  - (iv) for the purposes of enabling Participants generally (but not necessarily each Participant) to receive a more favourable taxation treatment in respect of their participation in the Plan; or
- (b) an amendment agreed in writing by a Participant.

### 12.3 Retrospectivity

Subject to this Rule 12, any amendment made under Rule 12.1 may be given such retrospective effect as is specified in the resolution by which the amendment is made, and, if so stated, any amendments to these Rules, including the terms applicable to Rights and Shares issued on exercise of those Rights under this Plan, will have the effect of automatically amending the terms of Rights and Shares issued on the exercise of Rights and still subject to these Rules.

## 13. Termination of the Plan

The Plan may be terminated or suspended at any time by the Board without any effect on or prejudice to the rights of any Participant holding Rights at that time.

## 14. Administration of the Plan

### 14.1 Authority to form policy

The Board may form policy and make regulations for the operations of the Plan which are consistent with this Plan and may delegate necessary functions to an appropriate service provider or employee capable of performing those functions and implementing those policies.

### 14.2 Obligations of Board

The Board in exercising a power or discretion conferred on it by the Plan or these Rules is not under a fiduciary or other obligation to any other person.

### 14.3 Board decisions

The decision of the Board as to the interpretation, effect or application of the Plan or these Rules (including calculations or adjustments made in accordance with these Rules or Applicable Law) will be final and binding.

### 14.4 Delegation by Board

The Board may delegate such functions and powers under this Plan as it considers appropriate, for the efficient administration of the Plan, to a committee made up of a person or persons capable of performing those functions and exercising those powers.

### 14.5 Independent advice by Board

The Board or a committee may take and rely upon independent professional or expert advice on the exercise of any of their powers or discretions under this Plan or these Rules.

### 14.6 Board, Company and delegates may act in its absolute discretion

Where the Board, the Company or their delegates may exercise any right or discretion or make any decision under these Rules, it may do so in its absolute discretion, conditionally or unconditionally, and without being required to give reasons or act reasonably. This rule applies unless these Rules expressly require otherwise.

## 15. Rights of Eligible Participants and Participants

Nothing in this Plan:

- (a) confers on any Eligible Participant the right to:
  - (i) participate in the Plan or be granted Rights or any subsequent Rights; or
  - (ii) continue as a Director of the Company or an employee of, or consultant to, the Company or a Related Company;
- (b) affects any rights which the Company or a Related Company may have to terminate the employment of any employee or any agreement with a Director or consultant; or
- (c) gives or confers on any Eligible Participant any rights to compensation or damages in consequence of the termination of their office, employment or other contract with the Company or a Related Company for any reason whatsoever (including redundancy) 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; or

- (d) may be used to increase damages in any action brought against the Company or any Related Company, other than an action arising solely out of a Participant's rights under the Plan (but subject at all times to clauses 15(a), 15(b) and 15(c).

## 16. General

### 16.1 Listing Rules and Constitution

- (a) The provisions of the Plan, these Rules, the entitlements of Eligible Participants and Participants, and any obligations of the Company, under this Plan are subject to Applicable Law.
- (b) No Right may be granted nor will any Right be capable of exercise if it would, or in the opinion of the Board having taken appropriate legal advice, is likely to, contravene any Applicable Law or any securities trading policy which applies to the Company.
- (c) Despite any other provision of these Rules, every covenant or other provision set out in an exemption from, or modification to, the provisions of the Corporations Act granted from time to time by ASIC in respect of the Plan, and required to be included in these Rules in order for the exemption or modification to have effect, is deemed to be contained in these Rules. To the extent that any covenant, or other provision deemed to be contained in these Rules is inconsistent with any other rule of the Plan, the deemed covenant or other provision will prevail.

### 16.2 Tax

Neither the Company nor any Related Company, nor any adviser to the Company or a Related Company, is liable for any Tax which may become payable by a Participant and none of them represent or warrant that any person will gain any taxation advantage by participating in the Plan.

### 16.3 Tax treatment

This Plan is a scheme to which Subdivision 83A-C of the *Income Tax Assessment Act 1997* (Cth) applies except to the extent an Offer provides otherwise.

### 16.4 Tax reimbursement

The Company may, at the time of an Offer, provide that the Participant is required to reimburse the Company in the event that the Company or any Related Company is obliged to account for Tax in connection with, or as a result of, the allocation or transfer of Rights to the Participant.

### 16.5 Costs

- (a) The Company will pay all costs and expenses in relation to the establishment and operation of the Plan including all costs and expenses in relation to an issue, or purchase and transfer of Shares to a Participant (including any brokerage, commission, stamp duty or other transaction costs).
- (b) The Company is not responsible for any duties or Taxes which may become payable by a Participant or any other person in connection with the grant of a Right, the issue or transfer of Shares on exercise of a Right or any other dealing with Rights.

- (c) Any brokerage, commission, stamp duty or other transaction costs in connection with the disposal of a Participant's Shares acquired under the Plan will be paid for by the Participant.

#### **16.6 Advice**

Eligible Participants should obtain their own independent advice at their own expense on the financial, taxation and other consequences to them of, or relating to, participating in the Plan.

#### **16.7 Governing law and jurisdiction**

- (a) Victorian law governs this document and the rights of Eligible Participants and Participants under the Plan.
- (b) Each Eligible Participant, Participant, the Company and the Board (and their delegates) irrevocably submits to the non-exclusive jurisdiction of the Victorian courts and courts competent to hear appeals from those courts.