

# Tower Long-Term Incentive Plan Rules



Date: 1 September 2022

## 1. Name of the Plan

This Plan is called the "**Tower Long-Term Incentive Plan**".

## 2. Interpretation

In this Plan, except where the context otherwise requires:

**ASX** means ASX Limited;

**ASX Listing Rules** means the Listing Rules of the ASX;

**Board** means the board of directors of the Company;

**Business Day** means a day on which the NZX Main Board is open for trading;

**Change of Control Event** means:

- (a) a full takeover offer made under the Takeovers Code and the Board recommends acceptance by the Shareholders;
- (b) a scheme of arrangement, made under Part 15 of the Companies Act 1993, under which the Company is to be acquired whether by way of the transfer of all or substantially all of the Group's assets, share purchase, amalgamation or other merger or consolidation;
- (c) the sale of all of the shares in, or all or substantially all of the assets of, the Subsidiary of the Company by which the Participant is employed or for whose business they are primarily engaged in; or
- (d) any similar transaction (as determined by the Board);

**Commencement Date** means, in respect of a Share Right, the date from which performance against a Performance Hurdle is measured as set out in a Participant's Grant Letter;

**Company** means Tower Limited;

**Director** means a member of the Board;

**Employee** means any person who is employed by the Company or any Subsidiary, and includes any director of the Company or any Subsidiary holding salaried office or employment with the Company or any Subsidiary;

**Financial Misstatement Circumstance** means a material misstatement or omission in the financial statements of a member of the Group or any other circumstances or events which, in the opinion of the Board may, or are likely to, affect the Group's financial soundness or require re-statement of the Group's financial statements, including, without limitation, as a result of misrepresentations, errors, omissions or negligence;

**Fundamental Change** means a material change to the terms and conditions of employment of the Participant so that there is a substantial diminution of the Participant's role, status and responsibility without the Participant's consent including

where the Participant is no longer the Chief Executive Officer of a listed company in New Zealand or Australia;

**Grant Date** means, in respect of a Share Right, the date on which the Share Right is granted to a Participant in accordance with clause 3;

**Grant Letter** means a letter given to a Participant advising of the Share Rights granted to that Participant in accordance with clause 3;

**Group** means the Company and its Subsidiaries;

**Issue Date** means the day on which Shares are issued or transferred to a Participant in exchange for vested Share Rights in accordance with these rules;

**Leaving Date** means the date on which an Employee ceases to be employed by the Company or any Subsidiary;

**Listing Rules** means the ASX Listing Rules and the NZX Main Board Listing Rules as amended or substituted from time to time;

**NZX** means NZX Limited;

**NZX Main Board** means the main board equity security market operated by NZX Limited or such other stock exchange on which Shares have a primary quotation, as determined by the Board;

**NZX Main Board Listing Rules** means the Listing Rules of NZX applying to issuers with securities quoted on the NZX Main Board;

**Participant** means the holder of a Share Right;

**PAYE** has the meaning set out in section YA 1 of the Income Tax Act 2007;

**Performance Hurdle** has the meaning given to that term in clause 5;

**Plan** means this plan, called the "Tower Long-Term Incentive Plan";

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

**Shareholder** means the holder of a Share;

**Share Right** means a performance share right granted under the Plan representing a contractual right to be delivered a Share, conditional upon that performance share right vesting in accordance with the terms of this Plan and a Grant Letter;

**Subsidiary** means a subsidiary of the Company within the meaning given to the term subsidiary in the Companies Act 1993;

**Takeovers Code** means the Takeovers Code set out in the schedule to the Takeovers Regulations 2000;

**Vesting Notice** means the notice delivered by the Company and containing the information set out in clause 6.1; and

**Vesting Period** means, in respect of a Share Right, the period set out in a Grant Letter.

In this Plan:

- (a) unless the context otherwise requires, words denoting the singular shall include the plural and vice versa;
- (b) references to currency, times and dates are references to New Zealand currency, times and dates;
- (c) where any matter is to be determined, decided, approved or opined on by the Board or the Company under this Plan or a Grant Letter (including determining the components and the manner of application of the formulae under a Grant Letter, as well as how any calculation under a Grant Letter is carried out), the matter will be determined, decided, approved or opined on in the sole discretion of the Board or the Company (as the case may be) whose determination will be final and binding in all respects.

### **3. Grant of Share Rights**

- 3.1. The Board may, from time to time, and at its absolute discretion, determine the Employee(s) to be invited to receive a grant and the value and number of Share Rights to be granted to the Employee, together with the terms of the grant.
- 3.2. The Company will, as soon as reasonably practicable after any determination under clause 3.1, send to each Participant a Grant Letter that contains the following minimum information:
  - (a) the number and value of the Share Rights;
  - (b) the Grant Date;
  - (c) the method and form of accepting or rejecting an allocation of Share Rights as applicable;
  - (d) details of any applicable Performance Hurdles and the applicable Vesting Period;
  - (e) any information or document required to be provided under applicable law; and
  - (f) any other relevant terms and Performance Hurdles to be attached to the Share Rights or Shares allocated under the Plan which in the opinion of the Board are fair and reasonable but not inconsistent with the terms of the Plan.
- 3.3. The Company will not apply, or be required to apply, for quotation of any Share Rights on the NZX Main Board or any other market.
- 3.4. The Company will maintain a register of Share Rights and, if requested by a Participant for their holding, issue annual holding statements.
- 3.5. An Employee is not required to pay for an allocation of Share Rights.

### **4. Limitations on Grant**

- 4.1. No grant shall be made to a person who is not an Employee.
- 4.2. Notwithstanding any other provision of this Plan, no grant will be made unless permitted by or pursuant to any applicable Listing Rules and all other applicable laws



(and such grant will not cause the Company or any of its Directors or Employees to contravene any such Listing Rule or laws).

## 5. Performance Hurdles

A Grant Letter may specify conditions to the vesting of Share Rights and the period for, and the manner in which, any such conditions are to be assessed (a *Performance Hurdle*). Vesting occurs when all such conditions are determined by the Board to be satisfied.

## 6. Vesting of Share Rights

- 6.1. As soon as reasonably practicable for the Board after completion of the Vesting Period (but no later than thirty Business Days after the Board has formally approved the Company's audited annual financial statements for the relevant financial year that the Vesting Period expires on or about), the Company must deliver to each Participant a Vesting Notice setting out:
  - (a) the Board's assessment of the extent to which each Performance Hurdle has been achieved;
  - (b) the number (if any) of a Participant's Share Rights that have vested as a result of satisfaction of any Performance Hurdle; and
  - (c) the process and timing determined by the Company for the issuance or transfer of Shares to the Participant in exchange for their vested Share Rights.
- 6.2. On or about the date indicated in the Vesting Notice given under clause 6.1, the Company will (subject to clause 6.3) issue, transfer, or procure the transfer, to the Participant of the relevant number of Shares to which the vested Share Rights relate.
- 6.3. The Company will not be required under clause 6.2 to issue, transfer or procure the transfer of any Shares if the issue or transfer of such Shares would result in a breach of any law (including, without limitation, any laws relating to insider trading) or Listing Rules by the Company, a Participant or any of their respective related parties. In such event, the Company will be relieved from the obligation to issue, transfer or procure the transfer of Shares under clause 6.2 until such time as the issue or transfer would not result in a breach of any law or Listing Rule.
- 6.4. No payment is required from the Participant for the delivery of Shares under the Plan.
- 6.5. No Participant may dispose of any Shares delivered under the Plan on the ASX within 12 months of the Issue Date.

## 7. Rights of Participants holding Share Rights

- 7.1. Share Rights granted to a Participant are not transferable (legally or beneficially) to any other person and no Participant may in any way transfer, assign, charge, encumber or otherwise dispose of or create any interest in favour of any third party over or in relation to any Share Right. Any attempt to do so will cause the relevant Share Rights to immediately lapse, unless the Board determines otherwise (in its sole discretion) prior to the event.
- 7.2. Share Rights, whether vested or not, do not confer any voting or distribution rights, rights of ownership (beneficial or legal) in any existing Shares, nor any other right incidental to or arising out of the ownership of Shares, and their terms are solely as set out in this Plan, and any determination of the Board made under this Plan. For the

avoidance of doubt, Share Rights do not entitle the Participant to receive dividends or distributions from, or to vote in respect of, any number of Shares which are delivered to the Participant on the vesting of Share Rights prior to their delivery.

7.3. Each Participant holding Share Rights:

- (a) agrees to participate and take delivery of Shares in accordance with the terms of the Plan and Grant Letter;
- (b) agrees to be bound by the terms of the grant as set out in the Plan and Grant Letter, and all applicable laws;
- (c) consents to the collection, holding, processing and exchange of their personal data by the Company and its share registry for any purpose related to the proper administration of their participation in the Plan; and
- (d) acknowledges that the Company may from time to time require any Participant to provide information or complete and return any documents as may be required to administer this Plan under any applicable law or otherwise, and the Participant agrees that they will promptly comply.

## **8. Rights upon vesting, adjustments and change of control**

- 8.1. Any Shares issued or transferred following the vesting of a Share Right shall be fully paid and rank equally in all respects with the relevant Shares on issue at the Issue Date, except for any dividend or other entitlement in respect of which the record date occurred prior to the Issue Date.
- 8.2. If any distribution (whether in the form of cash, Shares, other securities, or other property) or adjustment of the Company's share capital (e.g. bonus issue, share consolidation or subdivision, buy back, issuance of a new class of shares) or other corporate transaction or event affects the Shares, then the Board shall, in such manner as it may deem equitable and appropriate in its sole discretion in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the Plan, adjust the number and type of Shares subject to outstanding Share Rights, the Vesting Period, any Performance Hurdle or otherwise amend the terms of a grant made to any Employee.
- 8.3. If, between the Grant Date and the Issue Date, a Change of Control Event occurs or there is a proposal that would result in a Change of Control Event, the Board shall give consideration to, but without creating any obligation in respect to:
  - (a) permitting the continuation, substitution or assumption of Share Rights in connection with any Change of Control Event;
  - (b) the accelerated vesting and delivery of Shares under any or all Share Rights; and/or
  - (c) the cancellation of any Share Rights (whether vested or not vested) on the completion of such Change of Control Event or any other date that the Board considers appropriate whether in exchange for the Participant being paid the price per Share associated with the Change of Control Event or for a lesser or nil consideration. Any cancelled Share Rights immediately lapse.
- 8.4. When giving the consideration noted in clause 8.3, the Board shall have regard to, among other things it may consider appropriate:

- (a) the proportion of any Vesting Period(s) which have occurred and the extent to which Performance Hurdles have been achieved over any such Vesting Period(s) or proportions thereof, and the extent to which they may be reasonably forecasted to be met or exceeded at vesting;
- (b) the impact that the consideration implicit in the Change of Control Event would have if it was part of the calculation of the Performance Hurdles or any other vesting methodology in a Grant Letter;
- (c) the orderly administration of the Change of Control Event and the change of control that might occur; and
- (d) such other factors as the Board determines, but not solely consideration of the period of time until vesting (so far as that would result in only a pro-rata portion of Share Rights under a grant becoming vested).

## **9. Termination of Employment**

- 9.1. If a Participant ceases to be employed by the Company or any Subsidiary for any reason, his or her Share Rights (other than vested Share Rights where the cessation of employment is not the result of any of the circumstances in clause 10.1(a)) will lapse immediately, subject to clause 9.2.
- 9.2. If a Participant ceases to be employed by the Company or any Subsidiary because of serious illness, accident, permanent disablement, redundancy, Fundamental Change or death or such other circumstance determined by the Board, then the Board may (at its discretion):
  - (a) assess the extent to which the Performance Hurdles are achieved as at the Leaving Date and notify the Participant that a pro-rata proportion (reflecting the proportion of the Vesting Period that was complete as at the Leaving Date) of the Share Rights for which the Performance Hurdles have been achieved are deemed to have vested; or
  - (b) determine and notify the Participant that a pro-rata proportion (reflecting the proportion of the Vesting Period that was complete as at the Leaving Date) of the Share Rights remain held by the Participant for the remainder of the Vesting Period and vest to the Participant at the end of the Vesting Period, subject to the achievement of any Performance Hurdles.
- 9.3. Where the Board provides a notice under clause 9.2, clauses 6.2 to 6.5 will apply (with all necessary changes).

## **10. Malus and Clawback**

- 10.1. Where, in the opinion of the Board at its absolute discretion:
  - (a) a Participant at any time:
    - (i) acts, or has acted, fraudulently or dishonestly or made a material misstatement on behalf of the Company or any Subsidiary;
    - (ii) is in material breach of any of their duties or obligations to the Company or any Subsidiary (including, for the avoidance of doubt, a breach of their obligations under their employment agreement);
    - (iii) has engaged in gross negligence or gross misconduct;

- (iv) has done an act which could reasonably be regarded to have contributed to material reputational damage to the Company or any Subsidiary;
  - (v) has committed an act which has the effect of delivering strong Group performance in a manner which is unsustainable or involves unacceptably high risk; or
  - (vi) is convicted of an offence or has a judgment entered against them in connection with the affairs of the Company or any Subsidiary;
- (b) there is a Financial Misstatement Circumstance which results in a benefit to a Participant under the Plan (including vesting) where, in the opinion of the Board, such benefit would not have been obtained but for that Financial Misstatement Circumstance; or
  - (c) a Participant's grant of Share Rights vests (in full or in part), or may vest, as a result of the fraud, dishonesty, negligence or breach of duties or obligations of any other person and, in the opinion of the Board, the grant would not have otherwise so vested,

the Board may exercise its discretion under clause 10.2.

10.2. In the circumstances set out in clause 10.1, the Board may, in its absolute discretion, and subject to applicable laws, determine any treatment in relation to a Share Right, including, without limitation, to:

- (a) amend and/or add new Performance Hurdles and/or alter the Vesting Period applying to the Share Right;
- (b) deem all or any Share Rights (whether vested or not) to have lapsed;
- (c) deem all or any Shares issued or transferred following vesting to be subject to any further restrictions under this Plan, or require the Participant to transfer to, or to the order of, the Company those Shares; and/or
- (d) where Shares that have been issued or transferred to a Participant under the Plan have been subsequently sold, require the Participant to pay to the Company as a debt the higher of the value of the Shares on the Issue Date or the net proceeds of such a sale.

## **11. Lapse of Share Rights**

11.1. Unless otherwise determined by the Board, a Participant's Share Rights shall lapse on the first to occur of the following events:

- (a) to the extent that any Performance Hurdle is not achieved at the Board's determination in accordance with this Plan;
- (b) in respect of a vested Share Right, on the issuance or transfer to the Participant of the number of Shares to which such vested Share Right relates, including pursuant to clause 8.3; and
- (c) the Share Rights lapse in accordance with clauses 7.1, 9 or 10.2.

11.2. Where the Board makes a determination in terms of the opening words of clause 11.1, the Board may in its sole discretion impose conditions on the future vesting of any Share Right.



## **12. Disputes**

Any query, dispute or difference arising under the Plan (including a Grant Letter) will be determined by the Board, having regard to the applicable Listing Rules and law, the intent of the Plan and the overall objective of ensuring fairness to both the Company and Participants. Any determination of the Board is final and binding in all respects.

## **13. Correspondence**

- 13.1. Any correspondence from a Participant to the Company must be delivered or posted to the registered office of the Company, or to such other address or email address as may be notified by the Company in writing.
- 13.2. Any correspondence from the Company to the Participant must be delivered to the Participant or posted to his or her home address or emailed to their email address held by the Company.

## **14. Employment Rights**

- 14.1. The Participant acknowledges and understands that the Plan does not form part of his or her employment agreement. A Participant waives all rights to compensation or damages in consequence of the termination of employment or engagement with the Company or any Subsidiary for any reason whatsoever insofar as those rights arise, or may arise, from ceasing to have rights under the Plan or under any grant of Share Rights as a result of such termination.
- 14.2. Nothing in the terms of the Plan:
  - (a) confers on any Employee the right to receive any Share Rights under the Plan;
  - (b) confers a future right of participation in the Plan or entitlement to receive future Share Rights because a Participant has previously been granted Share Rights;
  - (c) confers on any Participant the right to continue as an Employee nor does it guarantee the Participant a minimum level of income;
  - (d) affects any rights which the Company or any Subsidiary may have to terminate the Participant's employment or office with the Company or a Subsidiary; or
  - (e) may be used to increase damages in any action brought against the Company or any Subsidiary in respect of termination of the Participant's employment or office with the Company or a Subsidiary.

## **15. Amendment of Plan**

- 15.1. The Board may amend the provisions of the Plan (or a Grant Letter) in such manner as it thinks fit provided that in respect of any Share Rights issued prior to the effective date of any amendment, no such amendment that would adversely affect the position of any Participant may be made without the written consent of that Participant, except an amendment introduced primarily:
  - (a) for the purpose of complying with, or conforming to, or as a response to, any present or future applicable law;
  - (b) to correct any manifest error or mistake; or

- (c) as otherwise provided for under the terms of the Plan.
- 15.2. Notwithstanding clause 15.1, any amendment may be made to the Plan or a Grant Letter where Participants holding 75% of total Share Rights agree in writing to the amendment.

## 16. Overseas Participants

- 16.1. The Company, at the Board's discretion, may:
  - (a) offer Share Rights, subject to the law in the jurisdiction in which the offer is made, under the Plan to Participants who are resident outside of New Zealand; and
  - (b) make rules for the operation of the Plan which are not inconsistent with the terms of the Plan to apply to Participants who are resident outside of New Zealand.

## 17. Tax

- 17.1. The Company will not be responsible for any taxes which may become payable by a Participant in connection with the issue or transfer of any Shares under this Plan.
- 17.2. None of the Company, any Subsidiary, any adviser to the Company or the Board represents or warrants that:
  - (a) the Plan will have any particular taxation or financial consequences;
  - (b) any Participant will gain any taxation or financial advantage by participating in the Plan; or
  - (c) they are liable for, or as a consequence of, any PAYE and/or taxes imposed upon or duties assessed against a Participant.
- 17.3. The Company will provide to the Inland Revenue information about any benefit received by a Participant pursuant to the Plan in the approved form and within the timeframe prescribed by law.
- 17.4. The Company will consult with Participants prior to the vesting of any Share Rights in relation to whether they wish the Company to elect to pay PAYE to the Inland Revenue in relation to Shares they become entitled to under the Plan (**PAYE Election**), and, if it is agreed by the Company that a PAYE Election will be made, how the resulting tax liability will be funded by Participants. If the Company agrees to make a PAYE Election, Participants agree:
  - (a) to reimburse the Company for any such tax payment on demand, and that the Company may withhold delivery of Shares until such payment has been made or appropriate arrangements have been put in place for reimbursement of such tax payment; and
  - (b) that the Company may in its discretion decline to make such PAYE Election or any tax payment if the Company has not received the appropriate payment from a Participant prior to the due date for any such election or tax payment being made.

## 18. Governing Law

New Zealand law shall apply to the Share Rights and this Plan and the parties submit to the exclusive jurisdiction of the New Zealand Courts.