

**Audio Pixels Holdings Limited**  
**ACN 094 384 273**

**EMPLOYEE INCENTIVE PLAN RULES**  
**2010**

**Part I – INTERPRETATION**

**DICTIONARY**

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In these Rules, and in the Terms of Grant of each Right, unless the context otherwise requires:

**Associate** has the meaning given by section 318 of the Income Tax Assessment Act 1936, being also a person who has been approved by the Board as an Associate for the purposes of the Plan

**ASX** means the ASX Limited which operates under the brand of ASX / Australian Securities Exchange together with any other stock exchange with which ASX is merged or jointly operated

**Board** means the Board of Directors of the Company or a committee appointed by the Board of Directors

**Business Day** has the meaning given in the Listing Rules

**Ceasing to be Employed by a Group Company** means ceasing to be employed by a Group Company and not being employed by any other Group Company

**Company** means Audio Pixels Holdings Limited (ACN 094 384 273)

**Corporations Act** means the Corporations Act 2001 (Commonwealth)

**Demerger** means a transfer, direct or indirect, by the Company or a Subsidiary to the shareholders of the Company, of shares in a Subsidiary, so that that Subsidiary ceases to be a Group Company

**Eligible Person** means both an employee (including a Director employed in an executive capacity) of a Participating Company and a person who falls within the scope of section 83A-325 of the Tax Act, invited to apply for a grant of Rights in accordance with Rule 3 (“Grant of Rights”) and an Associate of either person who is declared by the Board to be an Eligible Person for the purposes of the Plan

**Employee Share** means a Share resulting from the exercise of a Right

**Employee Share Plan** means the Plan and any other plan or similar arrangement the purpose of which is to provide to Eligible Persons, Shares or Rights to acquire Shares

**Employment** means employment or appointment (in the sense of holding office) of a person by a Group Company and a relationship, a holding of office or an arrangement that falls within the scope of section 83A-325 of the Tax Act

**Exercise Price** means the amount payable on exercise of a Right (if any)

**Expiry Date** means the date on which a Right lapses, being the date stated in the Invitation as the Expiry Date, or fixed by a method of calculation prescribed in the Invitation

**Grant Date** means the date on which a Right is, or is deemed to be, granted

**Group Company** means each of the Company and any Subsidiary

**Incapacity** means a Participant's inability, in the opinion of the Board after considering such medical and other evidence as it sees fit, to perform his or her duties because of his or her illness or incapacity

**Invitation** means an invitation that is issued to an Eligible Person under Rule 2 ("Invitation to apply for Rights")

**Listing Rules** means the Listing Rules of the ASX (including the terms of any waiver or condition given or imposed under those rules) as they apply to the Company or any Eligible Person from time to time

**Market Value** means the market value of a Share determined under the Tax Act

**Participant** means:

- (a) an Eligible Person to whom a Right is granted, and
- (b) for the purposes of exercising the Rights of that Eligible Person on death or legal incapacity, his or her duly appointed legal personal representative

**Participating Company** means each Group Company to which the Board resolves that the Plan extends

**Performance Condition** means a condition prescribed by the Board as a condition that must be Satisfied before a Right may be exercised

**Performance Measurement Date** means, in relation to a Right, the date referred to in the Terms of Grant or fixed by a method of calculation prescribed in the Terms of Grant, on which date, provided any Performance Condition is Satisfied and to the extent to which it is Satisfied (where applicable), the Right becomes Vested

**Plan** means the Audio Pixels Employee Incentive Plan under these Rules (as amended from time to time)

**Plan Share** means, in relation to a Right, each Share that a Participant is entitled to acquire under the Right on compliance with the Terms of Grant

**Redundancy** means termination of Employment of a Participant by a Participating Company due to economic, technological, structural or other organisational change where,

through no act or default of the Participant:

- (a) the Participating Company no longer requires the duties and responsibilities carried out by the Participant to be carried out by anyone
- (b) the Participating Company no longer requires the position held by the Participant to be held by anyone, or
- (c) the Participating Company has materially changed the duties and responsibilities or some other fundamental feature of the position held by the Participant

**Retirement** means voluntary resignation of a Participant from Employment by a Participating Company in circumstances where the Participant provides, in good faith, a written statutory declaration to the Board that the Participant intends:

- (a) to leave the work force permanently, or
- (b) to pursue an occupation or undertake activities agreed to by the Board in its absolute discretion

**Right** means each right under the Plan to acquire (in the case of an option that has an Exercise Price, by subscription or purchase):

- (a) a Share, and
- (b) each additional Share that the Participant is entitled to acquire under the Right by operation of Rule 13 ("Adjustment to Rights")

**Rules** means these rules (as amended from time to time)

**Satisfied** means, in relation to a Performance Condition, that the Performance Condition is in the opinion of the Board satisfied wholly or partially (where applicable)

**Separation** means the termination of a Participant's Employment with a Participating Company by the volition of the Participant and with the written consent of the Board expressly given for the purposes of the Plan

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

**Subsidiary** means, in relation to a company, a body corporate that is a subsidiary of the Company in terms of Division 6 of Part 1.2 of the Corporations Act

**Takeover Bid** has the meaning given in section 9 of the Corporations Act

**Tax Act** means the Commonwealth tax legislation and in particular but without limitation, the Tax Laws Amendment (2009 Budget Measures No 2) Act 2009, Income Tax (TFN Withholding Tax (ESS)) Act 2009 and any legislation amended or repealed thereby

**Termination** means summary termination of Employment of a Participant by a Participating Company for misconduct, or termination by a Participating Company or by a Participant in circumstances where the Participating Company otherwise had the right to summarily terminate the Employment of the Participant for misconduct. Misconduct means conduct amounting to repudiation of the contract of Employment by the Participant

**Terms of Grant** means, in relation to a Right or a Plan Share:

- (a) these Rules
- (b) the Invitation to apply for the Right
- (c) the application for the Right
- (d) each Performance Condition and each other term or condition prescribed by the Board, that applies to the Right, and
- (e) each certificate or statement issued with respect to the grant of the Right under Rule 3 ("Grant of Rights")

**Tranche** means a number of Rights, each having the same Grant Date, Performance Measurement Date and Expiry Date

**Vested** means, in relation to a Right, a Right that a Participant is entitled to exercise in accordance with the Terms of Grant

## **OTHER INTERPRETATION**

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In these Rules, and in the Terms of Grant of each Right or Plan Share, unless the context otherwise requires:

- (a) a reference to any legislation includes an amendment, consolidation, re-enactment or replacement of it, and any subordinate legislation
- (b) a reference to rules or to an agreement or document is to the rules, agreement or document as amended or replaced
- (c) the singular includes the plural and vice versa
- (d) a reference to any gender includes all genders
- (e) if an expression is defined, another part of speech and grammatical form of the expression have a corresponding meaning
- (f) a reference to a person is a reference to a natural person or company or other legal entity
- (g) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day
- (h) where the time for doing any act, matter or thing falls on a day which is not a Business Day, it shall be done on the next succeeding Business Day
- (i) a reference to the exercise of a power or a discretion includes a failure or a decision not to exercise the power or discretion
- (j) headings and references to headings are for ease of reference only and do not affect interpretation, and
- (k) terms which are defined in the Corporations Act bear the same meaning when used in the Terms of Grant.

## Part II – RULES

### 1. Rights

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#### 1.1. Company may grant Rights whenever the Board determines

At times determined by the Board, the Company may grant Rights in favour of an Eligible Person or procure their grant by a third party.

#### 1.2. Rights to acquire new or existing Shares

The Rights may be rights to acquire Shares:

- (a) that are issued by the Company to the Participant, or
- (b) that are transferred by a third party to the Participant, or both.

#### 1.3. Rights may be subject to any Performance Condition or other condition

The Company may, at the Board's discretion, grant a Right subject to any Performance Condition and any other term or condition that the Board prescribes.

#### 1.4. No payment for the grant of a Right

No payment is required for the grant of a Right unless the Board determines otherwise.

#### 1.5. Exercise Price for a Right

The Exercise Price (if any) for a Right is an amount determined by the Board or by the application of a method of calculating the Exercise Price that is prescribed by the Board.

#### 1.6. Financial assistance

A Participating Company may financially assist a person to acquire Shares legally and/or beneficially, under or for the purposes of the Plan.

### 2. Invitation to Apply for Rights

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#### 2.1. Board may issue Invitations

The Board may issue to an Eligible Person a written invitation, in such form as the Board determines to apply for Rights.

## **2.2. Information to be stated in an Invitation**

The Board will determine, and state in the Invitation to the following effect:

- (a) whether the Rights are to be granted in a single Tranche or in several Tranches
- (b) the number of Rights for which the Eligible Person may apply in each Tranche, or how the number is calculated
- (c) if there is an amount payable for the grant of a Right, the amount, or how it is calculated
- (d) if there is an Exercise Price for a Right, the amount, or how it is calculated
- (e) the Performance Measurement Date for each Tranche, or how it is fixed
- (f) the Expiry Date for each Tranche or other number of Rights within a Tranche, or how it is fixed
- (g) each Performance Condition
- (h) any restriction on the numbers of Rights that may be exercised, or that may be exercised at one time
- (i) such other terms or conditions that the Board decides to include, and
- (j) how to apply for the Rights including:
  - (1) the name or title of the person designated by the Board as the person to whom the application must be sent, and
  - (2) the time and date by which the application must be received by the person referred to in paragraph (j) (1).

## **2.3. How to apply for Rights**

An Eligible Person may apply for Rights by:

- (a) duly completing and signing an application (in the form provided by the Company)
- (b) sending the completed and signed form of application to the person designated by the Board, so that that person receives it by the time and date stated in the Invitation (unless the Board determines otherwise), and
- (c) complying with any other instructions in the Invitation.

**2.4. Eligible Person undertakes to be bound**

By applying for Rights the Eligible Person agrees to be bound by their Terms of Grant and by the constitution of the Company both as a Participant and, in respect of any Employee Share, as a shareholder in the Company.

**2.5. Independent advice**

Eligible Persons must obtain their own independent advice on the financial, tax and other consequences to them of or relating to actual or proposed participation in the Plan, the acquisition of Rights under the Plan, the exercise of those Rights and the subsequent disposal of the resultant Employee Shares.

**3. Grant of Rights**

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**3.1. Company to grant or procure grant of Rights**

On or after receipt of an application for Rights the Company may, at the Board's discretion, grant or procure the grant by a third party of Rights to the Eligible Person, subject to the Terms of Grant.

**3.2. Certificate or statement**

Following the grant of Rights, the Company will issue or procure the issue to the Participant of a certificate or statement (or both) setting out with respect to the grant, as applicable:

- (a) the name of the Participant
- (b) the Grant Date
- (c) the number of Rights granted in each Tranche
- (d) If any Rights have an Exercise Price, the Exercise Price for each Right or how it is calculated
- (e) the Performance Measurement Date for each Tranche, or how it is fixed
- (f) the Expiry Date for each Tranche or other number of Rights within a Tranche
- (g) a reference to each Performance Condition
- (h) any restriction on the numbers of Rights that may be exercised or that may be exercised at one time, and



- (i) such other terms or conditions that the Board decides to include.

### **3.3. Rights may not be transferred or encumbered**

A Right held by a Participant may not be transferred or otherwise dealt with (meaning for the purposes of this Rule, disposed of, encumbered or made subject by the Participant to any interest in favour of any other person or made the subject of a hedging arrangement with any party to reduce the exposure of the Participant to any price risk in respect of the Right or any underlying Share) and lapses immediately on purported transfer or dealing unless the Board, in its absolute discretion, approves the transfer or dealing or the transfer is effected by operation of law on death or legal incapacity to the Participant's legal personal representative.

## **4. Register of Rights**

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Rights granted under the Plan (and Shares issued or transferred on their exercise) will be registered in the appropriate register of the Company.

## **5. Exercise of Rights**

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### **5.1. Manner of exercise**

When permitted to do so under this Rule 5 and the other Terms of Grant, a Participant may exercise a Vested Right in the way required by the Company, and where applicable, by paying the Exercise Price to or as directed or permitted by the Company.

### **5.2. Date of exercise**

A Participant may only exercise a Vested Right on or after:

- (a) the Performance Measurement Date at which it becomes Vested, or
- (b) any earlier date on which the Participant becomes entitled to exercise the Right under:
  - (1) Rule 6 ("Exercise following death or other cessation of Employment")
  - (2) Rule 10 ("Change of control, proposed scheme of arrangement or demerger"), or
  - (3) Rule 11 ("Takeover, reconstruction, amalgamation, winding

### **5.3. Performance Condition**

If Rights in a Tranche are subject to a Performance Condition, the Rights become Vested only to the extent that the Performance Condition is Satisfied in accordance with and subject to the Terms of Grant of those Rights:

- (a) as at the relevant Performance Measurement Date, or
- (b) as at any earlier date permitted under or pursuant to the Rules referred to in Rule 5.2(b)

and to the extent the Performance Condition is not Satisfied, Rights in the Tranche that do not become Vested lapse as provided in the Terms of Grant.

### **5.4. Limit on period when Right may be exercised**

A Right lapses on and may not be exercised after:

- (a) the Expiry Date, or
- (b) any earlier date on which the Right lapses under the Terms of Grant.

### **5.5. Board may extend period for exercise by Participant**

The Board may, in writing, extend the period during which a Participant may exercise a Right to a later date, but no later than the Expiry Date.

### **5.6. No exercise on bankruptcy or winding up**

It is a condition precedent to the exercise of a Right:

- (a) that at the time of exercise the Participant is not bankrupt and has not committed an act of bankruptcy or if a company has not caused an act that may result in the process of winding up company or an act that may result in the process of winding up, or
- (b) if the Participant is deceased, the Participant's estate is not bankrupt except if the Board permits a Participant to exercise in these circumstances.

## **6. Exercise following death or other Cessation of Employment**

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### **6.1. Exercise of Rights on death of Participant**

If, before a Right is exercised, the Participant dies at a time when:

- (a) the Participant has not Ceased to be Employed by a Group Company, or
- (b) the Participant has Ceased to be Employed by a Group Company and the Participant is entitled to exercise the Right under Rule 6.2,

then (subject to the provisions of Rule 5 ("Exercise of Rights") and Rule **Error! Reference source not found.** ("All Rights may be exercised")) the Participant may exercise Rights that are already Vested together with Rights contained in a Tranche of which the Performance Measurement Date has not yet occurred, (but which are hereby deemed to Vest as at the date of death, on and from the date of death until the expiry of twelve months after that date.

**6.2. Exercise of Rights if Participant otherwise ceases to be Employed by a Group Company**

If, before a Right is exercised, the Participant Ceases to be Employed by a Group Company for any reason other than death, then (subject to the provisions of Rule 5 ("Exercise of Rights") and Rule 8 ("All Rights may be exercised")):

(a) **Incapacity, Redundancy, Retirement or Separation**

if in the opinion of the Board, the Employment ceases because of the Incapacity, Redundancy, Retirement or Separation of the Participant, the Participant may exercise Rights that are already Vested together with Rights contained in a Tranche of which the Performance Measurement Date has not occurred (but which are hereby deemed to Vest as at the date of cessation, on and from the date of cessation until the expiry of six months after that date

(b) **Termination**

if, in the opinion of the Board, the Employment ceases because of Termination, all Rights granted hereunder and remaining unexercised lapse as at the date of Termination

(c) **Resignation**

if, in the opinion of the Board, the Employment ceases by virtue of the Participant's resigning in circumstances that do not fall within paragraphs (a) or (b) of this Rule 6.2, the Participant may exercise

- (1) Rights in a Tranche in respect of which the Performance Measurement Date has occurred that are Vested as at the date of cessation, on and from the date of cessation until the expiry of six months after that date, however

- (2) in the case of Rights in a Tranche in respect of which the Performance Measurement Date has not occurred by or at the date of cessation, only if and to the extent permitted by the Board

(d) **Sale of company or business**

if the Employment ceases because:

- (1) the company that employs the Participant ceases to be a Group Company whether or not, after the cessation, the Participant remains an employee of that company, or
- (2) the Participant is employed in a business that is acquired by a person that is not a Group Company,

then the Participant may exercise Rights that are already Vested together with Rights contained in a Tranche of which the Performance Measurement Date has not occurred (but which are hereby deemed to Vest as at the date of cessation), on and from the date of cessation until the expiry of six months after that date, and

(e) **Other causes**

if, in the opinion of the Board, the Employment ceases for any reason other than

- (1) death, Incapacity, Redundancy, Retirement, Separation, Termination, or resignation as referred to above, or
- (2) a reason given in paragraph (d) above,

the Participant may exercise Rights only if and to the extent permitted by the Board in writing, on and from the date of cessation until the expiry of whatever term the Board may determine.

## **7. A Right lapses following death or other cessation of Employment**

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If a Participant becomes entitled to exercise a Right under Rule 6 ("Exercise following death or other cessation of Employment"), the Right lapses on the later of:

- (a) the expiry of the period during which it may be exercised under that Rule, and
- (b) if, pursuant to Rule 5.5, the Board extends the period during which the Participant may exercise the Right to a later date, the expiry of that extended period,

but no later than the Expiry Date.

## **8. All Rights may be exercised if early Vesting is permitted**

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If, under Rule 6 (“Exercise following death or other cessation of Employment”), Rule 10 (“Change of control, proposed scheme of arrangement or demerger”) or Rule 11 (“Takeover, reconstruction, amalgamation or winding up”) a Participant may exercise Rights in a Tranche, the Performance Measurement Date of which has not occurred by or at the date of the event as a result of which early Vesting is allowed, the total number of those Rights may be exercised.

## **9. Delivery of Shares on exercise of Rights**

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### **9.1. How Rights are satisfied**

The Company satisfies a Participant's Right in accordance with the provisions of this Rule and the other Terms of Grant.

### **9.2. Issue or transfer of Shares**

After a Right is exercised, the Company, within the period applicable under the Listing Rules, issues or procures the transfer to the Participant of each Plan Share to which the Participant is entitled under the Right.

### **9.3. The Company may satisfy the Rights by paying net value in Shares**

Instead of issuing or procuring the transfer of Shares under Rule 9.2 (and in full satisfaction of its obligations to do so), the Company may within 7 Business Days after the Rights are exercised, refund or otherwise account for any amount received in respect of the Exercise Price (if any) for any or all Rights and issue or procure the transfer of Shares to the Participant, being Shares that together have a total Market Value at the date of exercise equal to the difference between the Market Value of all Plan Shares relating to the last mentioned Rights and the total Exercise Price (if any) for the Rights included in those exercised Rights or as near as may be, and if there is fractional Share, this is rounded up or down to the nearest whole number with 0.5 being rounded up.

### **9.4. Shares issued by a Company to rank pari pas**

All Shares issued under the Plan will rank pari passu in all respects with the Shares of the same class for the time being on issue, except for any rights already attaching to the Shares then on issue by reference to a record date before the date of the allotment to the Participant under the Plan.

**9.5. Shares to be quoted on the ASX**

If Shares of the same class as Shares issued under the Plan are quoted on the ASX and/or other approved stock exchange, the Company will apply to the appropriate authority within the period applicable under the Listing Rules, if any, for the Shares granted under the Plan to be quoted.

**9.6. Restriction as to dealing**

If, under the Terms of Grant of a Right, an Employee Share is subject to a restriction as to disposal or other dealing (which includes transferring, encumbering or making subject to any interest in favour of any other person), the Board may implement any procedure that it considers appropriate and that complies with the Listing Rules, to ensure compliance with the restriction.

**9.7. Participant's agreement as to restriction**

Each Participant undertakes that while an Employee Share is subject to any restriction procedure applied under Rule 9.6, the Participant will not take any action or permit another person to take any action to remove the restriction procedure.

**9.8. Expiry of restriction**

On the expiry of a restriction over an Employee Share, the Company will, within the period (if any) applicable under the Listing Rules, give whatever notice or instruction it sees fit to enable the Participant to deal with the Share.

**10. Change of control, proposed scheme of arrangement or demerger**

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**10.1. Rights may be exercised before the Performance Measurement Date**

If, under any of the provisions of this Rule 10:

- (a) the Board gives notice that a Participant may exercise Rights within a particular period, or
- (b) a Participant otherwise becomes entitled to exercise Rights within a particular period,

then, subject to Rule 5 ("Exercise of Rights") but whether or not any Performance Condition has been Satisfied, the Participant may exercise the Rights within that period in addition to any other period during which the Rights may be exercised.

**10.2. Takeover Bid**

If a Takeover Bid is made to acquire any Shares, while any offers under the Takeover Bid remain open for acceptance the Board shall give written notice of the bid to each Participant, stating that the Participant's Rights may be exercised by a prescribed date.

**10.3. Change of control**

If, pursuant to a Takeover Bid or otherwise, any person together with the person's associates (associate here having the meaning given for the purposes of Chapter 6 of the Corporations Act ("Takeovers")) acquires Shares which, when aggregated with Shares already acquired by any of those persons and their associates, comprise more than 50% of the issued and outstanding Shares of the Company, a Participant may exercise the Participant's Rights within a stated period. The Board will notify the Participant of that period.

**10.4. Application to the court for meeting to be held - compromise or arrangement**

Subject to the provisions of Rule 10.6, if the Board determines that an application is to be made to the court under section 411 of the Corporations Act, for a meeting to be held as described in Rule 10.5, the Board will give written notice of the application to each Participant, stating that the Participant's Rights may be exercised up to a prescribed number of Business Days before the hearing of the application.

**10.5. Court order for meeting to be held - compromise or arrangement**

Subject to the provisions of Rule 10.6, if pursuant to an application made to the court under section 411 of the Corporations Act, the court orders a meeting to be held in relation to a proposed compromise or arrangement for the purposes of or in connection with a scheme for the reconstruction of the Company or its amalgamation with any other company, the Board will give written notice of the application to each Participant, stating that the Participant's Rights may be exercised up to a prescribed number of Business Days before the date of the meeting.

**10.6. Board approval**

The provisions of Rules 10.4 or 10.5 do not apply where the Board approves in writing the application being made to the court or the meeting being ordered by the court for the purposes of or in connection with a scheme for reconstruction or amalgamation as aforesaid.

### **10.7. Demerger**

If:

- (a) the Company gives notice to shareholders of a proposed Demerger, and
- (b) the Company's auditors confirm in writing to the Company that (disregarding the requirements or implications of any Performance Condition) the interests of Right holders would or might be substantially prejudiced if, before the proposed Demerger had effect, the Right holders could not exercise their Rights and be registered holders of the relevant Plan Shares,

the Board, in its discretion, may give written notice to each Participant, stating that the Participant's Rights may be exercised by a date prescribed by the Board.

## **11. Takeover, reconstruction, amalgamation, winding up**

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If:

- (a) a person becomes bound or entitled to acquire Shares under section 414 or Chapter 6A of the Corporations Act ("Compulsory Acquisitions and Buy-outs")
- (b) under section 411 of the Corporations Act, the court sanctions a compromise or arrangement proposed for the purposes of or in connection with a scheme for the reconstruction of the Company or its amalgamation with any other company, except where the Board approves in writing the compromise or arrangement or,
- (c) the Company passes or is deemed to have passed a resolution for voluntary winding up or an order is made for the compulsory winding up of the Company,

then, subject to Rule 5 ("Exercise of Rights") but whether or not any Performance Condition has been Satisfied, a Participant may exercise the Participant's Rights within one month after the occurrence of the relevant event.

## **12. Right lapses in case of takeover, reconstruction, amalgamation, winding up**

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If a Participant becomes entitled to exercise a Right under Rule 11 ("Takeover, reconstruction, amalgamation, winding up"), the Right lapses on the later of:

- (a) the expiry of the period allowed for exercise under that Rule, and



- (b) if, pursuant to Rule 5.5, the Board extends the period during which the Participant may exercise the Right under Rule 11 to a later date, the expiry of that extended period,

but no later than the Expiry Date.

### **13. Adjustment to Rights**

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#### **13.1. Bonus Issue**

If Shares are issued pro rata to the Company's shareholders generally by way of bonus issue (other than in place of dividends or by way of dividend reinvestment) involving capitalisation:

- (a) a Participant is entitled, on exercise of a Right, to an issue of Shares, in addition to the Plan Shares that relate to the Right immediately before the bonus issue
- (b) the number of additional Shares that the Participant has a right to acquire under paragraph (a) is the number that would have been issued to a shareholder who, at the date for determining entitlements under the bonus issue, held Shares equal in number to the Plan Shares mentioned in paragraph (a)
- (c) no consideration is payable for the additional bonus Shares, and
- (d) the additional Shares are issued out of the same account as that from which the Shares were issued to the Company's shareholders.

#### **13.2. Rights Issue – Implications for Rights with an Exercise Price**

If:

- (a) Shares are offered pro rata for subscription by the Company's shareholders generally by way of a rights issue, and
- (b) the price at which each Share is offered is less than the market price calculated in accordance with the formula for "P" below,

the Exercise Price of each Right (where there is an Exercise Price) is reduced according to the following formula:

$$O' = O - \frac{E(P-(S+D))}{N+1}$$

Where:

- O' = the new Exercise Price of the Right
- O = the old Exercise Price of the Right

E	=	the number of underlying Plan Shares into which one Right is exercisable
P	=	the average market price per Share (weighted by reference to volume) in the ordinary course of trading on the ASX during the 5 trading days ending on the day before the ex rights or ex entitlements date
S	=	the subscription price for a Share under the pro rata issue
D	=	the dividend due but not yet paid on Shares of the same class as the Plan Shares (except those to be issued under the pro rata issue referred to paragraph (a))
N	=	the number of Shares with rights or entitlements that must be held to receive a right to one new Share.

### **13.3. Rights Issue – Implications for Rights with no Exercise Price**

In the circumstances referred to in Rule 13.2 (a) and (b) and subject to the Listing Rules, where the Right has no Exercise Price the Board shall make such adjustment to the number of Shares relating to a Right, when exercised, as it considers appropriate, subject to the prior confirmation in writing by the auditors of the Company that the adjustment is, in their opinion fair and reasonable.

### **13.4. Sub-division, consolidation, reduction or return**

If there is any reorganisation, including any subdivision, consolidation, reduction, or return of the issued capital of the Company, the number of Rights to which each Participant is entitled or the Exercise Price or both, is adjusted in the way specified by the Listing Rules in force from time to time. Provided, however, that where the Right has no Exercise Price, the Board shall make appropriate adjustments as provided in Rule 13.3.

### **13.5. Limited right to participate in new issues**

Subject to the preceding Rules a Right does not entitle a Participant to participate in any new issue of securities of the Company.

### **13.6. Fractions of Shares rounded**

If application (or cumulative successive applications, where applicable) of any of the provisions of this Rule 13 to a Participant's Rights results, by reference to the total number of Rights that are affected, in a number of Shares that includes a fractional Share, the Board may round it up or down to the nearest whole number with 0.5 being rounded up.

### **13.7. Adjustments to Exercise Price of Rights rounded**

If application (or cumulative successive applications, where applicable) of any of the provisions of this Rule 13 to the Exercise Price of Rights results, by reference to the total number of Rights whose Exercise Price is affected, in a number that includes a fraction, the fraction is expressed to four decimal places, as cents.

## **14. Administration of Plan**

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### **14.1. Board to administer**

The Board administers the Plan and may:

- (a) determine appropriate documentation and procedures for administration of the Plan consistent with the Rules, and
- (b) delegate to any one or more persons, including a trustee established for the purposes of this or any other Employee Share Plan established by the Company, for such period and on such conditions as it may determine, the exercise of any of its powers or discretions under the Rules or appoint one or more persons, including such a trustee, to perform any of the functions provided for in, or contemplated by, the Rules.

### **14.2. Board has unfettered discretion**

Except as otherwise expressly provided in the Rules, the Board has absolute and unfettered discretion in the exercise of any of its powers or discretions under the Rules and to act or refrain from acting under the Rules or in connection with the Plan.

### **14.3. Share buy-back**

If:

- (a) a Participant is required or wishes to dispose of Employee Shares, or
- (b) a trustee or other person holds Shares for the purposes of the Plan or any other Employee Share Plan and determines they are no longer required,

the Company may enter into an employee share scheme buy-back arrangement with the Participant, trustee or other person, as the case may be, in respect of those Shares under the Corporations Act Chapter 2J Pt 2J.1 Div 2.

**14.4. Payments net of tax**

If, when the Board makes or is deemed to make a payment to a Participant or in any other circumstances, it is obliged to deduct or withhold any amount of tax or other government levy or impost from a Participant, the payment to the Participant is to be made net of the deduction or withholding.

**14.5. Board's decision is final**

If there is any dispute or disagreement as to the interpretation of the Rules or as to any right, obligation, Right or Share under or in relation to the Terms of Grant, the decision of the Board is final and binding on all persons.

**14.6. Board's power to determine that a Right lapses in case of fraud**

If, in the Board's opinion, a Participant acts (whether by commission or omission) fraudulently or dishonestly in regard to, or is in breach of duty (under a contract or otherwise) to, a Group Company, is convicted of a criminal offence (other than a minor motor traffic offence or other trivial offence which does not impact on the Employee's good fame and character or the ability of the Employee to perform his or her duties), or otherwise brings a Group Company into disrepute, then the Board may determine that the Participant's Rights lapse and the Rights lapse at the time determined by the Board.

**14.7. Board's power to review circumstances of Retirement**

Where the Board has accepted that a Participant was Ceasing to be Employed by a Group Company because of Retirement before the Vesting Date, if subsequent to the date of cessation the Participant is employed by or is engaged as an independent contractor with a third party in an occupation and/or a type of business, or undertakes activities, which employment or engagement or undertaking is inconsistent with the term Retirement for the purposes of these Rules in the opinion of the Board, the Board retains the discretion to determine that the Participant Ceased to be Employed by a Group Company by virtue of the Participant resigning in the circumstances referred to in Rule 6.2(c) and to apply Rule 6.2 (c) (2) insofar as it is then applicable.

**14.8. Adjustments to Plan in case of foreign resident Participant**

If, in relation to a Right, the Participant is not a resident of Australia, the Rules apply to the Right subject to whatever alterations or additions the Board may determine, having regard to any securities, exchange control or taxation laws or regulations or any other matter that the Board considers directly or indirectly relevant.

**14.9. Limitation on issue of Shares**

The aggregate of the number of Shares which would be acquired from new issues by the Company, under all Employee Share Plans established by the Company, if all outstanding options or other Rights to acquire unissued Shares (granted pursuant to such plans) were to be exercised, must not at any time exceed 5% of the total number of issued Shares.

**14.10. Attorney**

Each Participant, in consideration of the grant of Rights, shall be deemed to irrevocably appoint the Secretary together with any one Director of the Company, both from time to time as the Participant's attorneys, jointly and severally. The attorneys shall be empowered to complete and execute any documents, including applications for Shares and Share transfers, and to do all acts or things on behalf of and in the name of the Participant which may be convenient or necessary for the purpose of giving effect to these Rules. The Participant shall be deemed to covenant that the Participant shall ratify and confirm any act or thing done pursuant to this power and shall release the Company from any liability whatsoever arising from the exercise of the powers conferred by this Rule and shall indemnify and hold harmless the attorneys in respect hereof.

**14.11. Data Protection**

By applying for Rights, each Participant consents to the holding and processing of personal data provided by the Participant to any Group Company for all purposes relating to the operation of the Plan. These include, but are not limited to:

- (a) administering and maintaining Participant's records
- (b) providing information to the trustee of any shares subscribed for or acquired on any stock exchange for the purposes of this Plan and where applicable, of any other Employee Share Plan, and to registrars, brokers or third party administrators of the Plan
- (c) providing information to future purchasers of the Company or the business in which the Employee works
- (d) transferring information about the Participant to a country or territory outside Australia.

**14.12. Suspension or termination of Plan**

The Board may, at any time, suspend the granting of any Rights under, or terminate the Plan, but without prejudice to the rights of a Participant in respect of any Rights or Shares acquired or to be acquired under a Right.

## **15. Amendments to the Plan**

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### **15.1. Board may amend the Rules**

Subject to Rules 15.2 and 15.3, the Listing Rules and the Company's constitution, the Board may by resolution amend (meaning, for the purposes of this Rule 15, amend, add to, revoke, substitute or replace) the Rules or any of them, including this Rule.

### **15.2. Certain rights of Participants may not be reduced**

The Board may not amend the Rules if, in its opinion, the amendment would materially reduce the rights of a Participant in respect of a Right granted before the date of the amendment, or a Share to be issued or transferred under the Right, unless the amendment is introduced primarily:

- (a) for the purpose of complying with any State or Commonwealth legislation that affects the Plan
- (b) to correct a manifest error
- (c) to address possible adverse tax implications for Participants generally or any Group Company arising from:
  - (1) a ruling of any relevant taxation authority
  - (2) a change to tax legislation (including an official announcement by any relevant taxation authority), or
  - (3) the interpretation or a change in interpretation of tax legislation by a court of competent jurisdiction or by any relevant taxation authority, or
- (d) to enable a Participating Company to comply with its constitution, any State or Commonwealth legislation or the Listing Rules.

### **15.3. Board notifies Participants who are affected**

As soon as reasonably practicable after making an amendment under this Rule, the Board, by written notice, will inform each Participant affected.

## **16. Terms of employment or appointment not affected**

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### **16.1. Terms of Employment not affected**

The Rules do not:

- (a) form part of any contract of Employment or any arrangement in respect of any such Employment, between a Participant and a Group Company, or
- (b) constitute a related condition or collateral arrangement to any such contract of Employment or arrangement,

and participation in the Plan does not in any way affect the rights and obligations of the Participant under the terms of his or her Employment or arrangement.

**16.2. Rights and obligations under Plan not affected**

The terms of a Participant's Employment or arrangement with a Group Company do not in any way affect the rights and obligations of the Participant under the Plan.

**16.3. No claim as a consequence of termination of Employment or arrangement**

A Participant has no right to compensation or damages from any Group Company in respect of any loss of future rights under the Plan, as a consequence of termination of the Participant's Employment or arrangement in respect of such Employment.

**17. Correction of errors**

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- (a) In the event that any error or mistake has been made in relation to the number of Rights the subject of:
  - (i) an Invitation under Rule 2
  - (ii) any certificate or statement regarding Rights issued under Rule 3.2, or
  - (iii) any advice as to the extent that a Performance Condition is Satisfied,

that Invitation, certificate, statement or advice, as the case may be, shall be null and void and of no legal effect to the extent of any such error or mistake and the Board may in its absolute discretion, correct such error or mistake, without the need to obtain consent from the relevant Eligible Person or Participant, by notice to that person and, where appropriate, may issue an amended Invitation, certificate, statement or advice.

- (b) The Board will notify the relevant person within a reasonable period after discovering and correcting the error or mistake.

## **18. Notices**

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### **18.1. How notices are given**

A notice (meaning for the purposes of this Rule 18, notice, application, permission or other communication) under the Rules or in connection with the Plan may be given in writing, addressed to the person to whom it is given, and is taken to be given and received if sent in accordance with Rule 18.2, 18.3 or 18.4.

### **18.2. How a notice may be given to the Company or another Group Company**

For the purposes of Rule 18.1 a notice is duly given and received by the Company or another Group Company if sent to the company by pre-paid mail or by facsimile or other electronic communication, to an address at which it is actually received by:

- (a) the person who is, from time to time, designated by the Board as the person to whom the notice should be sent or by whom it should be received, and whose name or title and address are notified to the sender, or
- (b) if no other person is designated by the Board for this purpose, the secretary of the company.

### **18.3. How a notice may be given to any other company**

For the purposes of Rule 18.1 a notice is duly given and received by a company other than a Group Company if sent to the company:

- (a) by pre-paid mail to its registered office, or
- (b) by facsimile or other electronic communication to the last known facsimile or other electronic communication address of its registered office.

### **18.4. How a notice may be given to a natural person**

For the purposes of Rule 18.1 a notice is duly given and received by a natural person (other than a person referred to in Rule 18.2) if sent to:

- (a) the person's last known mailing address or the person's last known facsimile or other electronic communication address, or
- (b) in the case of a Participant, to the last known mailing, facsimile or other electronic communication address of the place of business at which the person performs the whole or substantially the whole of his or her Employment.



**18.5. Notice treated as given even if person deceased**

A notice given under Rule 18.1 to a person being a natural person (referred to in Rule 18.4), is duly given even if the person is then deceased (and whether or not any Group Company has notice of his or her death), unless the legal personal representative of the person has established title to this position to the satisfaction of the Company and supplied to the Company an address to which documents should be sent.

**18.6. Time when notices are treated as given**

A notice sent in accordance with Rule 18.1 is treated as given and received:

- (a) in the case of a notice sent to the Company or another Group Company, at the time it is actually received by the appropriate person referred to in Rule 18.2
- (b) in the case of any other notice sent by prepaid mail, 48 hours after it was put into the post properly stamped, and
- (c) in the case of any other notice sent by facsimile or other electronic communication, at the time of transmission.

**19. Constitution, listing rules and governing law**

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**19.1. Constitution and Listing Rules**

The Rules are subject to the Company's constitution and applicable Listing Rules in force from time to time.

**19.2. Governing Law**

The Rules are governed by the laws in force in New South Wales and the Commonwealth of Australia.

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# **Audio Pixels Holdings Limited**

## **Employee Incentive Plan Rules**

**2010**

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