



MEMO

To: Board of Directors
From: Company Secretary
Subject: **SALE BONUS PLAN**

You have been considering ways to provide a benefit to key staff should the Company be sold at some future time, to incentivise and reward them for their loyalty and contribution towards the growth and success of the Company resulting in an attractive acquisition price for shareholders.

A common way to do this is to provide staff with share options, so that at the time of acquisition they can exercise the options and sell the resultant shares at a higher price, thus making a profit. However, depending on many aspects/issues, an options scheme can have downsides such as the general complexity/lack of understanding of such a scheme, the possible tax implications – in some schemes, in the year of granting of options – and the need to fund the exercise price (for some time prior to being able to realise the resultant shares).

An alternative I have come across is a “Sale Bonus Plan”, which appears to be easier to understand and superior in outcome.

Outline of Plan

Selected staff approved by the Board and advised in writing by the Company Secretary will be offered to participate in the “Selected Staff Sale Bonus Plan”. The purpose of the Sale Bonus Plan is to reward loyal key staff by providing a mechanism for them to participate in the proceeds derived from the sale of the Company by way of a cash bonus payable at that time.

The bonus on sale of the Company is calculated subject to the below detailed formula and rules:

$$\text{Sale Bonus Payable} = [(SP \div TSU) - EP] \times BU$$

Total Shares & Bonus Units (TSU) – the sum total of shares and ‘in the money’ options on issue in the Company and the total of all Bonus Units outstanding.

Bonus Unit (BU) – a unit in the Selected Staff Sale Bonus Plan.

Selected Staff – those staff approved by the Board and written to by the Company Secretary and advised they are “Selected Staff”.



Sale Price (SP) – sale price of the Company, which shall be based on what is actually received by shareholders as a direct result of any final sales contract (rather than the headline value of the sale), and shall therefore take into account any adjustments and distributions due to excess or shortfalls of working capital or net tangible assets as recognized by the contract. In the event of a stock exchange listing, the sale price shall be the value of the Company based on the price per share detailed in the prospectus.

Exercise Price (EP) – 20 cents.

Date of Payment – any bonus payment shall be made on the date the shareholders receive their payment in the same proportion that they are paid; ie, if any portion owing to a shareholder is subject to a deferred payment arrangement, the payment to the Selected Staff will be subject to the same deferral.

Selected Staff retain the Bonus Units for as long as they are employed by the Company.

Date of Sale shall be deemed to be the date at which a sale contract becomes unconditional or a stock exchange listing occurs.

Any statutory payments arising as a result of any bonus payment, eg if superannuation is required to be paid on the bonus, then the amount applicable shall reduce the amount paid to the Selected Staff.

Any amounts payable to the Selected Staff shall also be reduced by any income tax/capital gain tax/fringe benefit tax or any other tax that may be relevant at the time of payment of any bonus.

Selected Staff must be employees of the Company at the time of any bonus payment with the exception of those circumstances listed below under the heading 'Cancellation of Bonus Units' or where the acquiring company no longer requires the services of the Selected Staff.

Calculation of the Sale Bonus Payable shall be prepared by the Directors of the Company at the time of a sale taking into account the conversion of any outstanding options that are exercised or expected to be exercised (ie, 'in the money' options) and in the event of dispute, the auditor that audited the Company's accounts immediately prior to the sale becoming unconditional/listing occurring shall attend to the calculation.

Cancellation of Bonus Units

The Bonus Units are cancellable in whole at any time prior to a sale becoming unconditional if:

- The Selected Staff member is terminated for Misconduct (as defined below); or



- The Company otherwise terminates the Selected Staff member's employment prior to the signing of a Memorandum of Understanding (MOU) or Letter of Intent (LOI), the Sale Bonus Payable will cease to be payable from the earlier of 90 days after the Selected Staff member receives notice of that termination or 90 days after the termination becomes effective. If the Company otherwise terminates the employment after an MOU or LOI has been signed then the Bonus Units are not cancellable; or
- The Selected Staff member voluntarily terminates his/her employment, the bonus will cease to be payable upon the Company's receipt of the Selected Staff member's notice of termination; or
- The Selected Staff member ceases employment because of total and permanent disability or dies, the Sale Bonus Payable is cancellable 90 days after the date of such event.

'Misconduct' has its ordinary meaning at law, and includes any conduct which the Company indicates is misconduct or will result in summary dismissal.

DISCLAIMER

The comments in this memo reflect some commercial aspects and observations on the matter experienced or observed by the writer in practice as he understands them. The information is given as a guide only and does not represent a definitive or legal view of any of the issues raised, covered or referred to and the reader is urged to seek his own professional advice on all aspects of, or pertaining to, this and any related matter.