

K&L GATES

**Rules of the Dicker Data 40th  
Anniversary Celebration Employee  
Share Plan**

for

**Dicker Data Limited**

**K&L Gates**  
Sydney office

## Table of Contents

<b>1.</b>	<b>Definitions and interpretation</b>	<b>3</b>
1.1	Definitions	3
1.2	Interpretation	4
<b>2.</b>	<b>Introduction</b>	<b>5</b>
2.1	Purpose	5
2.2	Commencement of Plan	6
2.3	Advice	6
2.4	Operation of the Plan	6
<b>3.</b>	<b>Administration</b>	<b>6</b>
3.1	Administration of Plan and delegation	6
3.2	Calculations and adjustments	6
3.3	Absolute discretion	6
3.4	Powers to be exercised by the Board	7
<b>4.</b>	<b>Purchase price of Plan Shares</b>	<b>7</b>
4.1	No consideration payable for Plan Shares	7
<b>5.</b>	<b>The number of Plan Shares</b>	<b>7</b>
<b>6.</b>	<b>Disposal</b>	<b>7</b>
6.1	Overriding restriction on Disposal in first 3 years	7
<b>7.</b>	<b>Issue of Ordinary Shares under the Plan</b>	<b>7</b>
7.1	Rights attaching to Plan Shares issued to Plan Shareholders	7
<b>8.</b>	<b>Power of attorney</b>	<b>8</b>
8.1	Appointment	8
8.2	Ratification	8
8.3	Indemnity	8
<b>9.</b>	<b>Employment rights</b>	<b>8</b>
9.1	Acknowledgement by Eligible Person	8
9.2	No claims	9
9.3	Termination and suspension of Plan	9
9.4	Calculation of employee benefits	9
9.5	No right to future employment	9
<b>10.</b>	<b>Amendment to Rules</b>	<b>9</b>
10.1	Amendment	9
10.2	Accrued rights	9
<b>11.</b>	<b>No warranty</b>	<b>10</b>
11.1	Financial benefits	10
11.2	Tax	10
<b>12.</b>	<b>Confidentiality</b>	<b>10</b>
12.1	Confidential information	10
12.2	Exceptions	10

<b>13.</b>	<b>Data protection</b>	<b>11</b>
13.1	Collection and purpose	11
13.2	Consent	11
13.3	Access to personal information	11
<b>14.</b>	<b>General</b>	<b>11</b>
14.1	Further assurances	11
14.2	Relationship between parties	11
14.3	Time for doing acts	12
14.4	Invalidity	12
14.5	Applicable laws	12
14.6	Plan costs	12
14.7	Connection with other plans	13
14.8	Governing law and jurisdiction	13

# Rules

**Date** 2 March 2018

## 1. Definitions and interpretation

### 1.1 Definitions

In these Rules, unless the contrary intention appears:

**ASIC** means the Australian Securities and Investments Commission.

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

**Business Day** means a day on which banks are open for general banking business in Sydney, excluding Saturdays, Sundays and public holidays.

**Commissioner of Taxation** means the office of Commissioner of Taxation created by section 4 of the *Taxation Administration Act 1953 (Cth)*.

**Company** means Dicker Data Limited.

**Constitution** means the constitution of the Company from time to time.

**Corporations Act** means the *Corporations Act 2001 (Cth)*.

**Dispose** means, in relation to a Share:

- (a) sell, assign, buy-back, redeem, transfer, convey, grant an option over, grant or allow a Security Interest over;
- (b) enter into any swap arrangement, any derivative arrangements or other similar arrangement; or
- (c) otherwise directly or indirectly dispose of a legal, beneficial or economic interest in the Share,

and **Disposal** has a corresponding meaning.

**Eligible Person** means any employee of one or more Group Companies selected by the Board to participate in the Plan and who continues to be an employee of the Company at the time the Plan Shares are issued. However, Eligible Persons must be selected in such a manner that the Plan is operated on a non-discriminatory basis in relation to at least 75% of Australian resident permanent employees of the employer Group Company who have completed three years of service, including non-continuous service.

**Group** means the Company and each Subsidiary (if any) from time to time.

**Group Company** means any member of the Group.

**Nominee** means any nominee or trustee of an Eligible Person.

**Offer** means an offer made to an Eligible Person by or on behalf of the Board to participate in the Plan.

**Ordinary Shares** means fully paid ordinary shares in the capital of the Company with such rights and obligations as set out in the Constitution.

**Plan** means the Dicker Data 40th Anniversary Celebration Employee Share Plan constituted by these Rules, as amended from time to time.

**Plan Share** means an Ordinary Share issued under the Plan in accordance with these Rules.

**Plan Shareholder** means a person to whom Plan Shares have been issued in accordance with the Plan.

**Purpose** means any of the following purposes:

- (a) the assessment of an Eligible Person's offer to participate under the Plan; or
- (b) if an Eligible Employee's offer to participate under the Plan is accepted, the facilitation of the operation and the administration of the Plan.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Rules** means these terms and conditions, as amended from time to time.

**Security Interest** means an interest or power:

- (a) reserved in or over an interest in any asset including any retention of title; or
- (b) created or otherwise arising in or over any interest in any asset under a security agreement, a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance of any other obligation, and includes, but is not limited to:

- (c) any agreement to grant or create any of the above; and
- (d) a security interest within the meaning of section 12 of the *Personal Property Securities Act 2009 (Cth)*.

**Shareholder** means a person who is the registered holder of a Share.

**Shares** means shares in the capital of the Company with such rights and obligations as set out in the Constitution.

**Subsidiary** has the meaning given in the Corporations Act.

**Tax Act** means the Income Tax Assessment Act 1997 (Cth).

## 1.2 Interpretation

In these Rules, unless the context otherwise requires:

- (a) **(documents)** a reference to an agreement or document is to the agreement or document as varied, amended, supplemented, novated or replaced from time to time.
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of these Rules.
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect the interpretation of these Rules.

- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, government agency, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns.
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns.
- (f) **(including)** including and includes (and any other similar expressions) are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind.
- (g) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning.
- (h) **(singular)** the singular includes the plural and the converse.
- (i) **(gender)** words importing one gender include all other genders.
- (j) **(rules of construction)** neither these Rules nor any part of them are to be construed against a party on the basis that a party or its lawyers were responsible for its drafting.
- (k) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it.
- (l) **(time and date)** a reference to a time or date is a reference to the time and date in Sydney, Australia.
- (m) **(joint and several)** an agreement, representation, covenant, right or obligation:
  - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
  - (ii) on the part of two or more persons binds them jointly and severally.
- (n) **(writing)** a reference to a notice, consent, request, approval or other communication under these Rules or an agreement between the parties means a written notice, request, consent, approval or agreement.
- (o) **(replacement bodies)** a reference to a body (including an institute, association or authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions.
- (p) **(Australian currency)** a reference to dollars or \$ is to Australian currency.

## 2. Introduction

### 2.1 Purpose

The purpose of the Plan is to provide Eligible Persons with an opportunity to share in the growth in value of the Shares and to encourage them to improve the performance of the Group's return to shareholders. It is intended that the Plan will enable the Group to retain and

attract skilled and experienced employees and provide them with the motivation to make the Group more successful.

## **2.2 Commencement of Plan**

The Plan will take effect on and from such date as the Board may resolve.

## **2.3 Advice**

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

## **2.4 Operation of the Plan**

The Plan operates according to these Rules which bind each Group Company and each Eligible Person.

# **3. Administration**

## **3.1 Administration of Plan and delegation**

- (a) The Plan is to be administered by the Board.
- (b) The Board may delegate some or all of its powers in administering the Plan to a sub committee of the Board.
- (c) Subject to these Rules, the Board or any sub-committee appointed to administer the Plan shall have the power:
  - (i) to select the Eligible Persons, provided that any selection is made so that the Plan is operated on a non-discriminatory basis in relation to at least 75% of the permanent employees of the employer Group Company who are Australian residents for tax purposes and who have completed at least 3 years of service with the employer Group Company (whether continuous or non-continuous);
  - (ii) to determine appropriate procedures, regulations and guidelines for the administration of the Plan; and
  - (iii) to take advice in relation to the exercise of any of its powers or discretions under these Rules.

## **3.2 Calculations and adjustments**

Any calculations or adjustments which are required to be made by the Board or any sub committee of the Board, in connection with the Plan or these Rules will, in the absence of manifest error, be final and conclusive and binding on all Eligible Persons and Plan Shareholders.

## **3.3 Absolute discretion**

Where these Rules provide for a determination, decision, declaration or approval of the Board or any sub-committee of the Board, such determination, decision, declaration or approval may be made or given by the body in its absolute discretion.

### **3.4 Powers to be exercised by the Board**

Any power or discretion which is conferred on the Board by these Rules may be exercised by the Board in the interests, or for the benefit, of the Company and the Board is not under any fiduciary or other obligation to any other person.

## **4. Purchase price of Plan Shares**

### **4.1 No consideration payable for Plan Shares**

No consideration shall be payable by an Eligible Person for the Plan Shares.

## **5. The number of Plan Shares**

- (a) If an Eligible Person has accepted an Offer, the number of Plan Shares to be issued to that Eligible Person in the income year is to be determined as follows:

$$\frac{\$1,000}{X}$$

where X is the closing price on the day prior to the date of issue of the Plan Shares to the Eligible Person.

- (b) The number of Plan Shares calculated according to the formula in rule 5(a) above is to be rounded down to the nearest whole number.

## **6. Disposal**

### **6.1 Restriction on Disposal in first 3 years**

Unless a Plan Shareholder disposes of a Plan Share under an arrangement which meets the requirements in section 83A-130 of the Tax Act, a legal or a beneficial interest in a Plan Share may not be Disposed of until the earlier of:

- (a) 3 years after the issue of the Plan Share or such earlier time as the Commissioner of Taxation allows in accordance with section 83A-45(5) of the Tax Act; and
- (b) the date that the Plan Shareholder ceases to be employed or engaged by the Group Company.

## **7. Issue of Ordinary Shares under the Plan**

### **7.1 Rights attaching to Plan Shares issued to Plan Shareholders**

- (a) If an Eligible Person has accepted the Offer, the Company must:
- (i) issue the number of Ordinary Shares specified in the Offer free from any Security Interest;
- (ii) issue to the Plan Shareholder or its Nominee a share certificate for those Ordinary Shares and enter the Plan Shareholder into the Company's share register; and



- (iii) lodge with ASIC the relevant forms to reflect the issue of the relevant number of Plan Shares.
- (b) All Plan Shares issued in accordance with this rule 7 will:
  - (i) be issued as fully paid;
  - (ii) be free of any Security Interest; and
  - (iii) rank equally in all respects with the other Ordinary Shares on issue in the Company as at the date of issue and be subject to the terms of these Rules, and the Constitution.

## **8. Power of attorney**

### **8.1 Appointment**

Each Eligible Person irrevocably appoints the Company as that Eligible Person's attorney to do any one or more of the following things on behalf of that Eligible Person and in the name of that Eligible Person:

- (a) to execute under hand or seal and (if appropriate) deliver, or otherwise effect the entry by that Eligible Person into, any documents that the Board determines are necessary or desirable to give effect to, or evidence participation by that Eligible Person under, the Plan or to complete any transaction contemplated by these Rules;
- (b) to perform any act, matter or thing which, in the opinion of the Board, is contemplated by, incidental to or necessary or desirable to give effect to, or evidence participation by that Eligible Person under, the Plan or to complete any transaction contemplated by these Rules; and
- (c) to appoint any one or more substitute attorneys to exercise any of the powers under rules 8.1(a) or 8.1(b) and to revoke any of those appointments.

### **8.2 Ratification**

- (a) Each Eligible Person ratifies and confirms whatever the Company or any other attorney does in exercising powers under rule 8.1.
- (b) Each Eligible Person declares that all acts, matters and things done by the Company or any other attorney in exercising powers under rule 8.1 will be as good and valid as if they had been done by that Eligible Person.

### **8.3 Indemnity**

Each Eligible Person indemnifies the Company and each other person who exercises powers under rule 8.1 against all liability and loss arising from and all costs incurred in connection with an exercise of powers under rule 8.1.

## **9. Employment rights**

### **9.1 Acknowledgement by Eligible Person**

It is acknowledged and accepted by each Eligible Person that:

- (a) neither these Rules nor any contract formed between the Company and that Eligible Person under the Plan form part of any contract or terms and conditions of employment or appointment, or any arrangement in respect of any such employment or appointment, between an Eligible Person and a Group Company, nor do they constitute a related condition or collateral arrangement to any such contract or arrangement;
- (b) participation in the Plan will not in any way affect the rights and obligations of an Eligible Person under the terms under which he or she is employed or appointed; and
- (c) the terms of an Eligible Person's employment or appointment with a Group Company will not in any way affect the rights and obligations of an Eligible Person under this Plan.

## **9.2 No claims**

An Eligible Person 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 that Eligible Person's employment or appointment for any reason.

## **9.3 Termination and suspension of Plan**

If the Board terminates or suspends the Plan, no compensation under any employment contract will be payable to any Eligible Person.

## **9.4 Calculation of employee benefits**

The value of Plan Shares does not increase an Eligible Person's income or remuneration for the purpose of calculating any employee benefits, including any payment in lieu of notice or redundancy or severance payments.

## **9.5 No right to future employment**

Participation under the Plan does not confer on any Eligible Person any right to future employment and does not affect any rights which the Group Company may have to terminate the employment of any Eligible Person.

# **10. Amendment to Rules**

## **10.1 Amendment**

Subject to rule 10.2, 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 10).

## **10.2 Accrued rights**

No amendment of the provisions of these Rules may reduce the accrued rights of any Eligible Person in respect of Plan Shares issued 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 legal requirements governing or regulating the maintenance or operation of the Plan or like plans;

- (ii) to correct any manifest error or mistake;
  - (iii) to enable contributions or other amounts paid by the Company in respect of the Plan to qualify for any tax concession available under the Tax Act;
  - (iv) to enable an Eligible Person or the Company to qualify for a fringe benefits tax concession or exemption under the Fringe Benefits Tax Assessment Act 1986, or to qualify for a tax concession available under the Tax Act; or
  - (v) to enable the Company to comply with the Corporations Act or any other applicable laws; or
- (b) an amendment made with the consent of Eligible Persons who between them hold not less than 75% of the total number of all issued Plan Shares before making the amendment.

## **11. No warranty**

### **11.1 Financial benefits**

The Company gives no warranty, representation or undertaking that participation in the Plan will result in any financial benefits for Eligible Persons.

### **11.2 Tax**

No Group Company or any adviser to a Group Company or the Board is liable for any tax which may become payable by an Eligible Person and none of them represent or warrant that any person will gain any taxation advantage by participating in the Plan.

## **12. Confidentiality**

### **12.1 Confidential information**

Subject to rule 12.2, each Eligible Person must keep confidential all information and documents disclosed to that Eligible Person in connection with the Plan, including:

- (a) these Rules and the Offer;
- (b) the Constitution; and
- (c) information and documents of every kind concerning or in any way connected with the Group, its trade secrets or its financial or business affairs, including financial reports, performance reports, business plans and marketing plans.

### **12.2 Exceptions**

Rule 12.1 does not impose obligations on a Eligible Person concerning information and documents which that Eligible Person proves to the reasonable satisfaction of the Company:

- (a) was or were disclosed by that Eligible Person to its tax, financial or legal advisors;
- (b) became publicly available without breach of an obligation of confidence; or

- (c) was or were disclosed by that Eligible Person with the Company's prior authorisation, or in the proper performance of that Eligible Person's duties for the Group or as obliged by law.

## **13. Data protection**

### **13.1 Collection and purpose**

The Company needs to collect personal information about Eligible Persons for the Purpose. If this personal information is not provided to the Company, the Company may not be able to achieve the Purpose.

### **13.2 Consent**

By completing, countersigning and returning an Offer, an Eligible Person authorises and instructs each Group Company and any agent of any Group Company:

- (a) to collect, disclose and transfer between each other (including those located outside Australia) any personal information as the Company may request;
- (b) to disclose any personal information to the Australian Taxation Office, ASIC or any governmental agency or authority as may be required in connection with the administration of the Plan; and
- (c) to store and process personal information,

in accordance with the Purpose. An Eligible Person may withdraw this authorisation.

### **13.3 Access to personal information**

An Eligible Person may access any personal information held by the Company for the Purpose by contacting the Company secretary and may require any personal information to be corrected if that personal information is inaccurate or incomplete.

## **14. General**

### **14.1 Further assurances**

Each Eligible Person and Plan Shareholder agrees that it will complete and return to the Company such other documents as may be required by law to be completed by the Eligible Person or Plan Shareholder from time to time in respect of the transactions contemplated by these Rules or such other documents which the Company reasonably considers should, for legal, taxation or administrative reasons, be completed by the Eligible Person or Plan Shareholder in respect of the transactions contemplated by these Rules.

### **14.2 Relationship between parties**

- (a) Nothing in these Rules:
  - (i) constitutes a partnership between the parties; or
  - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:

- (i) bind another party; or
  - (ii) contract in the name of another party.
- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

### **14.3 Time for doing acts**

- (a) If the time for doing any act or thing required to be done or a notice period specified in these Rules expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

### **14.4 Invalidity**

- (a) A word or provision must be read down if:
- (i) these Rules is void, voidable, or unenforceable if it is not read down;
  - (ii) these Rules will not be void, voidable or unenforceable if it is read down; and
  - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
- (i) despite the operation of rule 14.4(a), the provision is void, voidable or unenforceable if it is not severed; and
  - (ii) these Rules will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of these Rules has full effect even if rules 14.4(b)(i) or (ii) applies.

### **14.5 Applicable laws**

Notwithstanding any provision of these Rules, Plan Shares may not be allocated, allotted, issued, acquired, held, transferred, delivered or otherwise dealt with if to do so would contravene the Corporations Act or any other applicable laws or cause a breach of or default under the Constitution.

### **14.6 Plan costs**

- (a) Unless otherwise determined by the Board, the Company must pay all costs relating to the establishment and operation of the Plan.
- (b) Each Eligible Person must pay their own costs in connection with their participation under the Plan, including all costs to review the documents and information provided to that Eligible Person in connection with the Plan and all taxes for which that Eligible Person may be liable as a result of their participation under the Plan, the issue of Plan Shares or any other dealing with the Plan Shares.

#### **14.7 Connection with other plans**

Unless otherwise determined by the Board, participation under the Plan does not affect and is not affected by, participation in any other incentive or other plan operated by the Company unless the terms of that other plan provide otherwise.

#### **14.8 Governing law and jurisdiction**

The laws applicable in New South Wales govern these Rules.