

**PHOENIX COPPER LIMITED**  
ACN 127 446 271

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**RULES OF THE PHOENIX COPPER LIMITED  
EMPLOYEE SHARE OPTION PLAN**

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Plan adopted by resolution of directors

on ..12../...11../...07..

per:



Graham Spurling  
Chairman

For personal use only




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## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In these Rules, unless the contrary intention appears:

**"Associated Company"** means at any time any body corporate that at that time is a related body corporate of the Company within the meaning of section 50 of the Corporations Act;

**"ASX"** means ASX Limited ACN 008 624 691 and includes any body corporate which may hereafter succeed to the powers, functions and duties of ASX Limited;

**"Board"** means the directors acting as the board of directors of the Company;

**"Business Day"** means a day on which the stock market of ASX is open for trading in securities;

**"Certificate"** means the certificate issued by the Company to an Option Holder in respect of an Option;

**"Cessation Date"** means the date on which the Option Holder dies or otherwise ceases to be an Eligible Person;

**"Company"** means Phoenix Copper Limited (ACN 127 446 271);

**"Corporations Act"** means *Corporation Act 2001* (Cth);

**"Director"** means a director of a Group Company from time to time;

**"Eligible Person"** means at any time a person who then is an employee of, or a contractor or an employee of a contractor to, a Group Company (whether full-time or part-time)<sup>1</sup>;

**"Exercise Date"** means, in relation to an Option, the date on which that Option is exercised in accordance with these Rules.

**"Exercise Price"** means, in respect of an Option, the subscription price per Share, determined in accordance with clause 6.4, payable by a Option Holder on exercise of the Option;

**"Expiry Date"** means, in relation to an Option, the period of 5 years from and including the Issue Date of the Option;

**"Group"** means, collectively the Company and each of the Associated Companies;

**"Group Company"** means the Company or any Associated Company;

**"Issue Date"** means, in relation to an Option, the date on which the Company grants that Option;

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<sup>1</sup> Offers should only be made to contractors, or employees of contractors, to a Group Company where ASIC has extended its relief provided by Class Order 03/184 to such contractors or employees of contractors or otherwise granted the Group Company relief from the disclosure provisions of the Corporations Act for the purposes of the offer.

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**“Listing Rules”** means the Listing Rules of ASX and any other rules of ASX which are applicable while an entity is admitted to the Official List, each as amended or replaced from time to time, except to the extent of any express written waiver by ASX;

**“Market Value”** means:

- (a) the average closing sale price per Share (weighted by reference to volume) recorded on the stock market of ASX during the five trading days immediately preceding the day on which the Board resolves to offer an Option (excluding special crossings and overnight sales); or
- (b) in circumstances where there has been no trading in the Shares during the five trading days immediately preceding the day on which the Board resolves to offer an Option, the last sale price recorded on the stock market of ASX (excluding special crossings and overnight sales);

**“Official List”** means the official list of entities that ASX has admitted and not removed;

**“Option”** means a right, issued under the Plan, to subscribe for a Share;

**“Option Holder”** means a person who holds Options in accordance with the Plan;

**“Permanent Disablement”** means, in relation to an Eligible Person, that the Eligible Person has, in the opinion of the Board, after considering such medical and other evidence as it sees fit, become incapacitated to such an extent as to render the Eligible Person unlikely ever to engage in any occupation for which he is reasonably qualified by education, training or experience;

**“Permitted Nominee”** has the meaning given to it by clause 5.2(2)(b);

**“Plan”** means The Phoenix Copper Limited Employee Share Option Plan established in accordance with these Rules;

**“Redundancy”** means, in relation to an Eligible Person, a determination by the Board that the relevant Group Company’s need to employ a person for the particular kind of work carried out by that Eligible Person has ceased (but, for the avoidance of any doubt, does not include the dismissal of an Eligible Person for personal or disciplinary reasons or where the Eligible Person leaves the employ of any Group Company of his own accord);

**“Retirement”** means, in relation to an Eligible Person, retirement by that Eligible Person from any Group Company at age 60 or over or such earlier age as considered appropriate by the Board;

**“Rules”** means these rules, as amended from time to time;

**“Share”** means a fully paid ordinary share in the capital of the Company; and

**“Shareholder”** means a holder of a Share.



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## **1.2 Interpretation**

In these Rules, unless the contrary intention appears:

- (1) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (2) the singular includes the plural and vice versa;
- (3) a reference to a gender includes all genders;
- (4) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (5) an expression defined in, or given a meaning for the purposes of, the Corporations Act or the Listing Rules has the same meaning where used in these Rules.

## **2. MANAGEMENT OF THE PLAN**

### **2.1 Establishment of the Plan**

Subject to obtaining the approval of Shareholders (if required), the Plan will commence on a date determined by the Board.

### **2.2 Application of Plan**

The Plan shall only apply to Options.

### **2.3 Management of the Plan**

- (1) The Board may appoint for the proper administration and management of the Plan, such persons as it considers desirable and may delegate such authorities as may be necessary or desirable for the administration and management of the Plan.
- (2) Subject to the provisions of these Rules, the Board may administer the Plan and make such regulations and establish such procedures for the administration and management of the Plan as the Board considers appropriate.
- (3) Every exercise of discretion may be made by the Board in its absolute discretion and every decision of the Board as to the interpretation, effect or application of these Rules is final, conclusive and binding.

## **3. ENTITLEMENT TO PARTICIPATE**

### **3.1 Eligible Persons**

Subject to clause 4, the Board may from time to time determine, in its absolute and uncontrolled discretion, Eligible Persons entitled to participate in the Plan and the number of Options to be granted to each Eligible Person under the Plan. The determination of the Board



shall be binding and neither the Board nor any director of the Company shall be obliged to give any reason for a determination.

### **3.2 Discretion of Board**

The Board may exercise its powers in relation to the participation of any Eligible Person on any number of occasions.

### **3.3 Length of service**

Unless otherwise determined by the Board in its absolute and uncontrolled discretion, no Eligible Person shall be entitled to participate in the Plan unless that Eligible Person has been in continuous employment with, or a contractor to, a Group Company for at least 12 months prior to the Issue Date or an employee of such a contractor for at least 12 months prior to the Issue Date.

## **4. NUMBER OF OPTIONS TO BE ISSUED**

### **4.1 Entitlement**

Subject to clause 4.2, the formula by which entitlements of Eligible Persons shall be determined shall be at the absolute discretion of the Directors and shall take into account skills, experience, length of service with the Company, remuneration level and such other criteria as the Board considers appropriate in the circumstances.

### **4.2 Maximum number of Options to be issued**

Subject to clause 4.3, the Company shall not offer or issue Options to any Eligible Person in accordance with the Plan, if the total number of Shares the subject of Options, when aggregated with:

- (1) the number of Options to be granted;
- (2) the number of Shares which would be issued if all the current Options granted under any Group Company employee incentive scheme (including the Plan) were exercised;
- (3) the number of Shares which have been issued as a result of the exercise of Options granted under any Group Company employee incentive scheme (including the Plan), where the Options were granted during the preceding five years; and
- (4) all other Shares issued pursuant to any Group Company employee incentive scheme (including the Plan) during the preceding five years,

would exceed 5% of the total number of issued Shares as at the time of the proposed offer.

### **4.3 Exclusions**

For the purposes of the 5% limit in clause 4.2, the Company shall exclude Options acquired or Shares issued by way of or as a result of:

- (1) an offer to a person situated at the time of the receipt of the offer outside Australia;



- (2) an offer that did not need disclosure to investors because of section 708 of the Corporations Act; or
- (3) an offer made pursuant to a disclosure document under Chapter 6D of the Corporations Act.

## 5. OFFER OF OPTIONS

### 5.1 Offer

Subject to these Rules and to the Listing Rules, the Company (acting through the Board) may offer Options to any Eligible Persons at such times and on such terms as the Board considers appropriate in its absolute and uncontrolled discretion ("Offer"). Each Offer must state:

- (1) the maximum number of Options available to the Eligible Person;
- (2) that the Eligible Person to whom it is addressed may accept the whole or any lesser number of Options offered. The Offer may stipulate a minimum number of Options and any multiple of such minimum or any other number which may be accepted;
- (3) the Exercise Price and Expiry Date of those Options;
- (4) the period within which the Offer may be accepted;
- (5) the fact that the Options may not be exercised until the Shares have been listed on ASX or an approved foreign exchange for a period of 12 months; and
- (6) any other matters which the Board may determine.

### 5.2 Acceptance of Offer by Eligible Person

- (1) Upon receipt of an Offer, an Eligible Person may, within the period specified in the Offer:
  - (a) accept, by notice in writing to the Board, the whole or any lesser number of Options specified in the Offer; or
  - (b) nominate a nominee in whose favour the Eligible Person wishes to renounce the offer by notice in writing to the Board. The Board may, in its absolute and uncontrolled discretion, resolve not to allow such renunciation of an offer in favour of a nominee without giving any reason for such decision.
- (2) Upon:
  - (a) receipt of the acceptance referred to in paragraph 5.2(1); or
  - (b) the Board resolving to allow a renunciation of an offer in favour of a nominee ("Permitted Nominee") and the Permitted Nominee accepting the whole or any lesser number of Options offered by notice in writing to the Board,



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the Eligible Person or the Permitted Nominee, as the case may be, will be taken to have agreed to be bound by these Rules and will be issued Options subject to these Rules.

### **5.3 Permitted Nominee**

If Options are issued to a Permitted Nominee of an Eligible Person, the Eligible Person must, without limiting any provision in these Rules, ensure that the Permitted Nominee complies with these Rules.

### **5.4 Option Certificates**

Certificates for Options will be dispatched within 10 Business Days after their Issue Date (or within such lesser period (if any) as may be required by the Listing Rules).

## **6. OPTION TERMS**

### **6.1 Options to be granted for no consideration**

Options issued under the Plan will be issued for no consideration.

### **6.2 Quotation**

The Company will not apply for official quotation by ASX of any Options.

### **6.3 Transfer of Options**

Subject to clause 7.3, Options are not transferable unless the Board in its absolute and uncontrolled discretion determines otherwise. The determination of the Board shall be binding and neither the Board nor any director of the Company shall be obliged to give any reason for a determination.

### **6.4 Exercise Price of Options**

The Exercise Price of each Option will be determined by the Board when it resolves to offer the Option and will be not less than the Market Value of a Share at that time.

## **7. LAPSING OF OPTIONS**

### **7.1 Options to lapse**

Unless the Board in its absolute discretion determines otherwise, Options held by an Eligible Person or a Permitted Nominee (as the case may be) shall lapse upon the earlier of:

- (1) the Expiry Date;
  - (2) a determination by the Board that the Eligible Person or Option Holder has acted fraudulently, dishonestly or the Eligible Person is in breach of their obligations to a Group Company; and
  - (3) 30 days after an Eligible Person ceases to be an Eligible Person for any reason other than Retirement, Permanent Disability, Redundancy or death.
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## 7.2 Certificate

A certificate signed by the company secretary of a Group Company stating that a person ceased for any reason to be an Eligible Person shall (in the absence of manifest error) be conclusive for the purposes of the Plan, both as to such occurrence and the date of such occurrence.

## 7.3 Retirement, Permanent Disability, Retrenchment or Death

- (1) Unless the Board in its absolute discretion determines otherwise, notwithstanding any relevant Expiry Date, if an Option Holder ceases to be an Eligible Person by reason of Retirement, Permanent Disability or Retrenchment, that person must, should that person wish to exercise any Options that are exercisable by him or her, exercise those Options on or before the date that is 3 months after the Cessation Date. Any Options that are not exercised by the end of that period will lapse.
- (2) Unless the Board in its absolute discretion determines otherwise, notwithstanding any relevant Expiry Date, if an Option Holder ceases to be an Eligible Person by reason of death, that person's legal personal representative must, should that representative wish to exercise any Options that would have been exercisable by the deceased, exercise those Options on or before the date that is 6 months after the Cessation Date. Any Options that are not exercised by the end of that period will lapse.

## 8. EXERCISE OF OPTIONS

### 8.1 Exercise

- (1) Options may only be exercised by notice in writing to the Board delivered to the registered office of the Company. The notice must specify the number of Options being exercised and must be accompanied by:
  - (a) an amount of money equal to the Exercise Price multiplied by the number of Options specified in the notice; and
  - (b) the Certificate for those Options, for cancellation by the Company.
- (2) A notice given under clause 8.1(1) is only effective (and only becomes effective) when the Company has received the notice and the amount calculated under clause 8.1(1)(b) in cleared funds.
- (3) If an Eligible Person intends to sell Shares issued as a result of the Eligible Person exercising Options immediately following the exercise and so informs the Company, the Company will endeavour to assist the Eligible Person to exercise Options and sell Shares simultaneously without the need to comply with clause 8.1(1)(a).

### 8.2 Information by Company

The Company will provide to an Eligible Person upon request, within a reasonable time, either verbally or in writing, details of the current market price (in Australian dollars) of the Shares in the Company and details of the Exercise Price in relation to Options held by that Eligible Person.



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## **9. SHARES ALLOTTED ON EXERCISE OF OPTIONS**

### **9.1 Number of Shares to be allotted**

Subject to clauses 10.3 and 10.5, each Option entitles the Option Holder to subscribe for and be allotted one Share.

### **9.2 Allotment by Company**

Subject to clauses 7.1 and 7.3, within 10 Business Days after the notice referred to in clause 8.1(1) becomes effective (or within such lesser period (if any) as may be required by the Listing Rules), the Board must:

- (1) allot and issue the number of Shares specified in the notice to the Option Holder;
- (2) cancel the Certificate for the Options being exercised; and
- (3) if applicable, issue a new Certificate for any remaining Options covered by the Certificate accompanying the notice.

### **9.3 Shares to rank equally**

All Shares allotted upon exercise of Options will rank equally in all respects with Shares on issue at the Exercise Date and, in particular, entitle the Option Holder to participate fully in:

- (1) dividends declared by the Company after the date the Shares are allotted; and
- (2) all issues of securities made or offered pro rata to Shareholders.

### **9.4 Quotation of Shares**

If the Shares have been granted official quotation by ASX or another exchange, then the Group Company must apply for official quotation of all Shares allotted pursuant to the exercise of Options not later than 10 Business Days after the date of allotment (or within such lesser period (if any) as may be required by the listing rules of the relevant exchange).

## **10. ENTITLEMENT TO PARTICIPATE IN FUTURE ISSUES**

### **10.1 No entitlement**

There are no participating rights or entitlements inherent in the Options and Option Holders will not be entitled to participate in new issues of securities offered to Shareholders during the currency of the Options.

### **10.2 New Issues**

- (1) Option Holders may only participate in new issues of securities to Shareholders if an Option has been exercised and Shares allotted in respect of the Option before the record date for determining entitlements to the issue.



- (2) The Company must give at least 7 Business Days' notice (or such greater period of notice (if any) as may be required by the Listing Rules) to Option Holders, of any new issue before the record date for determining entitlements to the issue in accordance with the Listing Rules.

### 10.3 Bonus Issues

If there is a bonus Share issue ("**Bonus Issue**") to Shareholders (other than an issue in lieu, or satisfaction, of dividends or by way of dividend reinvestment), the number of Shares over which an Option is exercisable will be increased by the number of Shares which the Option Holder would have received if the Option had been exercised before the record date for the Bonus Issue.

### 10.4 Pro Rata Issue

If there is a pro rata issue of securities to Shareholders (other than a Bonus Issue or an issue in lieu, or satisfaction, of dividends or by way of dividend reinvestment), the Exercise Price of an Option will be reduced according to the following formula:

$$A = O - \frac{E \cdot [P - (S + D)]}{N + 1}$$

A = the new exercise price of the Option.

O = the old exercise price of the Option.

E = the number of Shares into which one Option is exercisable.

P = the average closing sale price per Share (weighted by reference to volume) recorded on the stock market of ASX during the 5 trading days immediately preceding the ex rights date or ex entitlements date (excluding special crossings and overnight sales and exchange traded option exercises).

S = the subscription price for a security under the pro rata issue.

D = the dividend due but not yet paid on the existing underlying securities (except those to be issued under the pro rata issue).

N = the number of securities with rights or entitlements that must be held to receive a right to one new security.

### 10.5 Reorganisation of Capital

If, prior to the expiry or lapse of any Options, there is a reorganisation of the issued capital of the Company, those Options will be reorganised to the extent necessary to comply with the Listing Rules.



## 10.6 Advice

In accordance with the Listing Rules, the Company must give notice to each Option Holder of any adjustment to the number of Shares for which the Option Holder is entitled to subscribe or to the Exercise Price pursuant to the provisions of clauses 11.2, 11.3 or 11.4.

## 11. CONNECTION WITH OTHER PLANS

- (1) The Company is not restricted to using this Plan as the only method of providing incentive rewards to Eligible Persons. The Board may approve other incentive schemes.
- (2) Participation in the Plan does not affect, and is not affected by, participation in any other incentive or other plan operated by the Group unless the terms of that other plan provide otherwise.

## 12. AMENDMENT AND TERMINATION OF PLAN

### 12.1 Amendment

- (1) Subject to clause 12.1(2), the Board may alter, delete or add to these Rules at any time (save for the provisions of clauses 4, 5.1(5), 6.1 and 9.4), but, where the Company is admitted to the Official List, its resolution to do so has no effect unless the requirements of the Listing Rules in relation to the modification of the Rules have been complied with.
- (2) Amendments to these Rules are not to affect the accrued rights or entitlements of an Option Holder without the written consent of the Option Holder.

### 12.2 Termination

- (1) The Board may terminate the Plan, or suspend its operation for any period it considers desirable, at any time that it considers appropriate.
- (2) The Board may not issue any further Options after the Plan has been terminated. However, these Rules will continue to apply to Options on issue at the date of such termination until the last of those Options lapses or is exercised.

## 13. NOTICES

- (1) Notices may be given by the Company to any Option Holder either personally or by sending by post to the address as noted in the Company's records or to the address (if any) within the Commonwealth of Australia supplied by the Option Holder to the Company for the giving of notices.
- (2) Notices of any overseas Option Holders shall be forwarded and posted by air. Where a notice is sent by post the notice shall be deemed to be served on the day after posting. The signature of any notice may be given by any Director or secretary of the Company.
- (3) A notice of exercise of Options shall not be deemed to be served on the Company until actually received.



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#### **14. RIGHTS OF ELIGIBLE PERSONS**

Nothing in these Rules:

- (1) confers on any Eligible Person the right to receive any Options until a determination is made under clause 3.1;
- (2) confers on any Eligible Person the right to continue as an employee of, or a contractor or an employee of a contractor to, the Group;
- (3) forms part of any contract of employment between any Group Company and any of their respective employees;
- (4) affects any rights which any Group Company may have to terminate the employment of any Eligible Person; or
- (5) may be used to increase damages in any action brought against any Group Company in respect of the termination of the employment of any Eligible Person by any Group Company.

#### **15. GENERAL**

- (1) The entitlement of Eligible Persons under the Plan and these Rules are subject to the Company's constitution, the Listing Rules and the Corporations Act.
- (2) Notwithstanding any provisions of these Rules no Shares may be acquired, allocated, assigned, or dealt with if to do so would contravene the Corporations Act, the Listing Rules or any other applicable laws.

#### **16. GOVERNING LAW**

This Plan, and the rights of an Eligible Person under the terms and conditions of this Plan are governed by the laws of the state of South Australia.