



Employee Share Option Plan

FIFTH ELEMENT RESOURCES LIMITED
ACN 166 025 047

Rules of the Fifth Element Resources Ltd Employee Share Option Plan

1. Defined meanings

Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation Rule at the back of this document.

2. Purpose

The Purpose of this Plan is to provide incentives to senior staff to achieve the Company's long term objectives and improve the long term performance of the Company.

The Plan is a key part of the longer term retention and incentive strategy of the Company.

The Plan recognises that the growth and profitability of the Company is heavily dependant on the retention of key senior staff.

3. Rules

This document sets out the Rules of the Company's Employee Share Option Plan.

4. Commencement of the Plan

The Plan commences on the day that approval for introduction of the Plan is first given by the Board, such date being 26 February 2014.

5. The Plan

5.1 Options

- (a) Subject to Rule 7, the Company may issue such number of Options as the Board determines and on such terms as the Board considers appropriate, until such time as the Plan is terminated.
- (b) The Options are issued for nil consideration, unless the Board resolves otherwise.
- (c) The Options are non-transferable.
- (d) There is no obligation on the Company to apply for quotation of the Options on the ASX.
- (e) Holders have no rights or entitlements to participate in dividends declared by the Company or rights to vote at meetings of the Company until that Option is exercised.
- (f) Shares allotted upon exercise of the Options will rank equally with Shares previously issued by the Company.
- (g) If shares of the same class as those allotted pursuant to the exercise of the Options granted under the Plan are listed on the ASX, the Company must apply for Official Quotation of those Shares allotted pursuant to the exercise of the Options within the time required by the Listing Rules.
- (h) The Options cannot be mortgaged, charged or otherwise dealt with or encumbered without the Board's consent.

5.2 Exercise Price

- (a) The Board will specify the proposed Exercise Price of each Option at the time of making an Offer to an Eligible Employee.
- (b) Without limiting the ways in which the Exercise Price may be specified in paragraph (a) above, the Exercise Price may include:
 - (i) a fixed amount;
 - (ii) the Market Price of a Share on the date the Offer is made under Rule 6.1;
 - (iii) the Market Price of a Share on the date the Options are granted;
 - (iv) the Market Price of a Share on a specified date which is after the date the Options are granted; or
 - (v) a percentage above the amount in sub paragraphs (ii), (iii) or (iv).

5.3 Eligibility

- (a) The Company may only make an Offer to an Eligible Employee.
- (b) Eligibility to participate in the Plan under Rule 5.3(a) does not confer a right to participate in the Plan.

5.4 Determination of Offers

The Board may in its absolute discretion make Offers of Options to Eligible Employees of the Group to which the Board has resolved that the Plan shall for the time being apply. In determining which Eligible Employees will receive Offers, and which Eligible Employees will not, the Board may have regard to any matters which it considers relevant, including, without limitation:

- (a) the Eligible Employee's length of service with the Group;
- (b) the seniority of the Eligible Employee within the Group;
- (c) the contribution to the Group which has been made by the Eligible Employee;
- (d) the potential contribution of the Eligible Employee to the Group;
- (e) any misconduct or wilful default by an Eligible Employee;
- (f) whether the Eligible Employee will continue to be an employee of the Group at or soon after the time of issue of the Options;
- (g) taxation implications for the Group, the Eligible Employee and/or other Eligible Employees participating in the Plan; and
- (h) securities and/or employment laws.

5.5 Deemed Eligible Employees

The Board may authorise a casual employee or consultant of the Company or of an Associated Body Corporate to participate in the Plan and such person is deemed to be an Eligible Employee for the purposes for the Plan.

5.6 Casual Employees

To qualify as a casual employee and be eligible to be deemed an Eligible Employee under Rule 5.5, a person must

- (a) have been in employment with the Company for more than 1 year; and
- (b) be an employee whom the Company regards as equivalent to either a full-time or a part-time employee.

5.7 Consultant

To qualify as a consultant and be eligible to be deemed an Eligible Employee under Rule 5.5, a person must have worked for the Company for more than 6 months.

5.8 Number of Options offered

The number of Options offered to an Eligible Employee is the number determined from time to time by the Board in its absolute discretion.

5.9 Liability of Eligible Employee

- (a) An Eligible Employee is not liable to make any payment to the Company in respect of Options issued to the Eligible Employee under the Plan.
- (b) No brokerage, commission, stamp duty or other transaction costs will be payable by the Eligible Employee in respect of any allotment or transfer of Options under the Plan.

5.10 Terms of issue

Options must be issued on the terms of these Rules, the Corporations Act and the Listing Rules, and any additional terms as the Board considers appropriate (not being inconsistent with these Rules) and each Eligible Employee will be taken to have agreed to be bound by:

- (a) these Rules;
- (b) any additional terms imposed under this Rule; and
- (c) the constitution of the Company from time to time,
- (d) on acceptance of any Offer of Options under this Plan.

6. Offer and Acceptance

6.1 Offers

- (a) The Board may from time to time make Offers in writing to Eligible Employees inviting them to take up Options under the Plan.
- (b) Each Offer made by the Board must:
 - (i) specify the number of Options offered;
 - (ii) state the terms and conditions of the issue of the Options the subject of the Offer;
 - (iii) include any information or document that the Corporations Act, the Listing Rules, and applicable laws and regulations require the Company to provide; and
 - (iv) state the period within which the Offer may be accepted;
 - (v) have attached an Acceptance Form and a copy of these Rules.

6.2 Acceptance

- (a) To accept an Offer made by the Board under the Plan the Eligible Employee must send a completed Acceptance Form to the Company.
- (b) The Acceptance Form must be received by the Company within the period for acceptance of the Offer.
- (c) The Eligible Person may also nominate in writing to the Board a nominee in whose favour the Eligible Person wishes to renounce the offer. The Board may, in its absolute discretion, resolve to allow, or not to allow such renunciation of an Offer in favour of this nominee, without giving any reason for such decision.

The Board may renounce an Offer to an Eligible Employee in accordance with this subrule (c) in favour of an Offer to the nominee ("**Permitted Nominee**"), provided however that such nominee must acquire and hold the Options for the benefit of the Eligible Employee, and the Permitted Nominee may accept the whole or any lesser number of Options offered by notice in writing to the Board.

- (d) If Options are issued to a Permitted Nominee of an Eligible Person, the Eligible Person and the Permitted Nominee will be taken to have agreed to be bound by these Rules and the Eligible Person must, without limiting any provision in these Rules, ensure that the Permitted Nominee complies with these Rules.

6.3 Effect of Acceptance

An Acceptance Form does not create a binding contract to grant Options. After acceptance of a completed Acceptance Form, the Board may in its absolute discretion determine:

- (a) not to grant the Options specified in the Offer; or
- (b) grant Options which differ in number or their terms from that specified in the Offer.

7. Restriction on Offer of Options

The Board shall not Offer or issue Options to any Eligible Employee in accordance with the Plan if at the time of the proposed Offer it would cause the Company to exceed any thresholds set out in any applicable ASIC Class Order and any thresholds set out in the Listing Rules.

8. Cessation of employment

8.1 Lapse of Options

Any Options issued pursuant to the Plan will be allotted on the condition that the whole of the Options issued to an Eligible Employee automatically lapse and are forfeited:

- (a) 30 days after the date on which that Eligible Employee voluntarily resigns from employment with the Company otherwise than to take up employment with a Related Body Corporate of the Company; or
- (b) immediately, if that Eligible Employee is dismissed from employment with the Company for any one or more of the following reasons:
 - (i) wilful misconduct bringing disrepute on the Company or a Related Body Corporate;
 - (ii) repeated disobedience, after prior written warning;
 - (iii) incompetence in the performance of any duties for which the Eligible Employee was employed, after prior written warning;
 - (iv) fraud or any other dishonesty in respect of the property or affairs of the Company or a Related Body Corporate; or
 - (v) any other reason, based on which the Board believes it is fair and reasonable that the Options lapse and are forfeited.

8.2 Exceptions

- (a) Options issued to an Eligible Employee will not lapse and be forfeited where an Eligible Employee ceases employment with the Company in the following circumstances:
 - (i) death or total permanent disability (as that term is recognised by Statute);
 - (ii) retirement; or
 - (iii) any other circumstances on the basis of which the Board believes it is fair and reasonable that the Eligible Employee retains his or her right to exercise the Options.
- (b) Should an Eligible Employee, in the opinion of the Board, satisfy the requirements of Rule 8.2(a) the Eligible Employee, or if the Eligible Employee dies, the Eligible Employee's legal personal representative, will have a period of 6 months to exercise the Option from the date the Company receives notice of the specified

event and acknowledges in writing that such event satisfies the requirements of Rule 8.2(a).

9. Taxation

- 9.1 Neither the Company nor its Directors, officers, employees, representatives or agents take any responsibility or assume any liability for the taxation liabilities of Eligible Employees.
- 9.2 Employees should obtain their own independent financial and tax advice before agreeing to participate in the Plan or accepting any Offer.

10. Listing Rules

10.1 Listing Rules generally

The terms and conditions of the Plan must at all times comply with the Listing Rules. If there is any inconsistency between the terms and conditions of the Plan and the Listing Rules then the Listing Rules will prevail.

10.2 New Issues

Subject to the Listing Rules (where relevant), a Holder may only participate in respect of an Option in a new issue of Shares or other securities to holders of Shares if the Option has been exercised in accordance with its terms on or before the Record Date for determining entitlements to the issue.

10.3 Adjustment for pro-rata issues

Subject to the Listing Rules, if there is a pro rata issue which has been offered to all ordinary shareholders on a pro rata basis (except a bonus issue), the Option Exercise Price will be adjusted in accordance with the Listing Rules.

10.4 Adjustment for bonus issues

If, during the life of any Option, Shares are issued pro rata to the Company's shareholders for which no consideration is payable by those shareholders, the Holder will be entitled, upon later exercise of that Option, to receive in addition to the Share comprised in the Option an issue of so many additional Shares as would have been issued to a shareholder who, on the Record Date for determining entitlements under the bonus issue, held Shares equal in number to the Shares comprised in the Option exercised.

10.5 Reconstruction event

In the event of any reconstruction (including consolidation, sub-division, reduction, capital return, buy back or cancellation) of the share capital of the Company, the number of Options to which each participant in the Plan is entitled and/or the Exercise Price of those Options must be reconstructed in accordance with the Listing Rules. Options must be reconstructed in a manner which will not result in any additional benefits being conferred on Holders which are not conferred on other security holders of the Company.

10.6 Adjustment final and binding

Any adjustment required under this rule

11. Exercise of Options

11.1 Offer

Unless the Board, when granting an Option, in its absolute discretion determines otherwise, the terms of this Rule are included in the Offer as terms on which the Options are granted.

11.2 Exercise Period

- (a) The Options lapse immediately after the Expiry Date has passed.

- (b) For the avoidance of doubt, Options may be exercised:
 - (i) during a Bid Period; or
 - (ii) at any time after a Change of Control Event has occurred; or
 - (iii) on an application under section 411 of the Corporations Act, if a court orders a meeting to be held concerning 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.

12. Administration of the Plan

12.1 Administration

The Plan will be administered by the Board in accordance with these Rules. The Board may make regulations for the operation of the Plan which are consistent with these Rules.

12.2 Powers of the Board

- (a) 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, in exercising that power or discretion, under any fiduciary or other obligation to any other person.
- (b) Any power or discretion which is conferred on the Board by these Rules may be delegated by the Board for such period and on such conditions as the Board may determine to a committee or any one or more persons, who need not be or include Directors.
- (c) Every exercise of discretion by the Board (or its delegate) and every decision of the Board as to the interpretation, effect or application of these Rules is final, conclusive and binding.

13. Rights of Participants

Nothing in these Rules:

- (a) confers on any employee the right to receive any Options;
- (b) confers on any employee the right to continue as an employee of the Group;
- (c) affects any rights which any corporation in the Group may have to terminate the employment of any employee; or
- (d) may be used to increase damages in any action brought against any corporation in the Group in respect of the termination of the employment of any employee of any corporation in the Group.

14. Amendment of these Rules

14.1 Amendment

Subject to Rules 14.2 and 14.3, 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 14).

14.2 Restrictions on amendment

No amendment of the provisions of these Rules is to reduce the rights of any Eligible Employee in respect of Options issued to the Eligible Employee under the Plan prior to the date of the amendment, other than an amendment introduced primarily:

- (a) for the purposes of complying with or conforming to present or future laws governing or regulating the maintenance or operation of the Plan or like plans;

- (b) to correct any manifest error or mistake;
- (c) to enable contributions or other amounts paid by a member of the Group in respect of the Plan to qualify as tax deductions for that entity;
- (d) to enable the Eligible Employee or their employer to reduce the amount of tax or impost that may otherwise be payable by the Eligible Employee or their employer in relation to the Plan, including under the *Fringe Benefits Tax Assessment Act* 1986 and the *Income Tax Assessment Acts* of 1936 and 1997, or any other similar legislation in any jurisdiction outside Australia;
- (e) for the purpose of enabling the Eligible Employees generally (but not necessarily each Eligible Employee) to receive a more favourable taxation treatment in respect of their participation in the Plan; or
- (f) to enable the Company to comply with the Corporations Act or the Listing Rules or any similar legislation or requirements in any jurisdiction outside Australia.

14.3 Listing Rules

Any amendment of these Rules must be made in accordance with and in the manner stipulated (if any) by the Listing Rules.

14.4 Retrospective effect of amendment

Subject to the provisions of this Rule 14, any amendment made under Rule 14.1 may be given retrospective effect, as specified in the written instrument or resolution by which the amendment is made.

15. Termination of Plan

- (a) The Plan may be terminated at any time or suspended for any period by resolution of the Board and notification thereof to the ASX.
- (b) Termination or suspension of the Plan does not affect the rights of the Holders of unexpired Options previously granted under the Plan and these Rules will continue to apply to those options until the Options lapse or is exercised.

16. Register of Option Holders

The required information in relation to all Options must be entered in the Register of Option Holders maintained by the Company under sections 168 and 170 of the Corporations Act.

17. Notices

Any notice regarding Options issued under the Plan will be sent to the address of the Holder as recorded in the register of members maintained by the Company or the Share Registry.

18. Governing Law

The Plan is governed by, and is to be construed and take effect in accordance with, the laws of New South Wales.

19. Definitions and interpretation

- 19.1 In these Rules, the following words and expressions have the meanings indicated unless a contrary intention appears:

Acceptance Form means a form to accept Offers in the form annexed to these Rules at Annexure A with any amendment or modification determined from time to time by the Board;

Associated Body Corporate of the Company means:

- (a) A body corporate that is a related body corporate of the Company;
- (b) A body corporate that has voting power in the Company of not less than 20%; or
- (c) A body corporate in which the Company has voting power of not less than 20%.

ASX means the Australian Stock Exchange Limited (ACN 008 624 691);

Bid Period has the meaning given to that term in section 9 of the Corporations Act;

Board means all or some of the Directors acting as a board of the Company;

Change of Control Event means a shareholder, or a group of associated shareholders, becoming entitled to more than 50% of the issued shares in the Company;

Company means Fifth Element Resources Ltd (ACN 166 025 047);

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

Director means a director of the Company;

Eligible Employee means a person who is at the time of the Offer, a full or part-time employee or director of the Company or of an Associated Body Corporate and any person deemed to be an Eligible Person under Rule 5.5;

Employee Share Option Plan means the Plan;

Exchange means the ASX in its role as the national stock exchange;

Exercise Price means the price determined by the Board under Rule 5.2;

Expiry Date means the date 5 calendar years after the date of issue of the Options in question or such earlier date as the Board may determine in its absolute discretion;

Group means the Company and its Associated Bodies Corporate;

Holder means the holder of an Option issued under the Plan;

Listing Rules means the official listing rules of the Exchange;

Market Price means, in relation to a particular date, the weighted average market price per Share (weighted by reference to volume) during five consecutive trading days on the ASX ending on the day before the particular date;

Offer means an offer in writing made by the Board to an Eligible Employee to take up Options under the Plan made in accordance with Rule 6;

Official Quotation has the meaning given to that term in the Listing Rules;

Option means an option to subscribe for a Share issued in accordance with the Rules;

Permitted Nominee has the meaning given to that term in Rule 6.2(c).

Plan means the Fifth Element Resources Limited Employee Share Option Plan established in accordance with the Rules;

Record Date has the meaning given to that term in the Listing Rules;

Related Body Corporate has the same meaning as that given to it in the Corporations Act;

Register of Option Holders means the register referred to in Rule 16;

Rules means the rules of the Fifth Element Resources Ltd Employee Share Option Plan; and

Share means a fully paid ordinary share in the Company;

Statute means any Act of Parliament of either the State of New South Wales or the Commonwealth of Australia; and

Takeover Period has the meaning given to it in Rule 11.4(a).

19.2 In these Rules, unless the context otherwise requires:

- (a) rule and sub-rule headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this document includes its successors and permitted assigns;
- (g) any reference to any agreement or document includes that agreement or document as amended at any time;
- (h) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (i) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
- (j) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (k) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (l) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this document;
- (m) reference to a provision described, prefaced or qualified by the name, heading or caption of a rule, subrule, paragraph, schedule, item, annexure, exhibit or attachment in this document means a cross reference to that rule, subrule, paragraph, schedule, item, annexure, exhibit or attachment;
- (n) when a thing is required to be done or money required to be paid under this document on a day which is not a Business Day, the thing must be done and the money paid on the immediately preceding Business Day; and
- (o) reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated;
- (p) a reference to a Listing Rule includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of that Listing Rule; and
- (q) a reference to a person includes a reference to the person's executors, administrators and successors, a legal personal representative, a firm or a body corporate.

Annexure A - Acceptance Form

FIFTH ELEMENT RESOURCES LIMITED

ACN 166 025 047 (Company)

Employee Share Option Plan

Application for Options

I of

hereby apply for Options with an issue price of \$nil to subscribe for an equal number of Shares in the capital of the Company at an exercise price of \$ per Share.

Optional: In accepting this offer, I formally request the Board of Fifth Element Resources Limited to approve that the ownership of these Options is renounced in favour of my nominee [name of Nominee].

I agree that upon issue of those Options I [we] shall hold those Options and deal with them only in accordance with the terms and conditions of the Employee Share Option Plan of the Company (a copy of the Rules of the Plan are attached), subject to and in accordance with the constitution of the Company.

Dated this day of 20

Signed:

Name: