

MALLESONS STEPHEN JAQUES

# Troy Employee Share Option Plan Rules

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# Troy Employee Share Option Plan Rules

## Contents

<b>Rules</b>	<b>1</b>
<b>1 Purpose</b>	<b>1</b>
<b>2 Offer and grant of Options</b>	<b>1</b>
2.1 Offer	1
2.2 No issue price	1
2.3 Options to Insiders	1
2.4 Grant of options	1
<b>3 Restriction on offer</b>	<b>2</b>
3.1 Restriction	2
3.2 Matters to be disregarded	2
<b>4 Option terms</b>	<b>2</b>
4.1 Entitlement	2
4.2 Exercise of Options	3
4.3 Restriction on transfer	5
4.4 Quotation of Options	5
4.5 Shares to rank pari passu	5
4.6 Quotation of Shares	5
4.7 Future issues of Shares	5
4.8 Bonus issue	5
4.9 Rights issue	5
4.10 Reorganisations	6
4.11 Advice	6
4.12 Right to accounts	6
4.13 Dividends and rights to vote	6
<b>5 Overriding restrictions on grant and exercise</b>	<b>6</b>
<b>6 Administration of the Plan</b>	<b>7</b>
6.1 Consistency with Rules	7
6.2 Board's power and discretion	7
6.3 Delegation	7
6.4 Board's decision final and conclusive	7
6.5 Termination or suspension	7
6.6 Listing Rule 7.1, Exception 9	7
6.7 Company may approve other schemes	8
6.8 Participation in other schemes	8
6.9 Board may amend Plan or Option terms	8
6.10 No reduction of existing rights	9
6.11 Shareholder approval for certain amendments	9
6.12 Instructions by Participants	10
6.13 Notices	10
6.14 Governing law	10

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<b>7</b>	<b>Participants</b>	<b>10</b>
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<b>8</b>	<b>Definitions and interpretation</b>	<b>11</b>
8.1	Definitions	11
8.2	Interpretation	13
8.3	Headings	13

# Troy Employee Share Option Plan Rules

## Rules

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### 1 Purpose

The Plan has been established by the Company to provide long term incentives to Eligible Persons by giving such Eligible Persons the opportunity to acquire an ownership interest, or exposure to an ownership interest, in the Company.

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### 2 Offer and grant of Options

#### 2.1 Offer

The Board may, from time to time, offer Options to Eligible Persons having regard to:

- (a) each Eligible Person's length of service with the Group;
- (b) each Eligible Person's contribution to the Group;
- (c) the potential contribution of the Eligible Person to the Group; and
- (d) any other matters which the Board considers relevant.

#### 2.2 No issue price

No amount is payable on the grant of an Option.

#### 2.3 Options to Insiders

Notwithstanding anything in these Rules to the contrary, for so long as the TSX Rules apply to the Plan, the aggregate of either:

- (a) the number of securities issuable to Insiders, at any time under all of the Company's security based compensation arrangements; or
- (b) the number of securities issued to Insiders, within any one year period under all of the Company's security based compensation arrangements,

may not exceed 10% of the Company's issued and outstanding securities, in each case, calculated in accordance with the TSX Rules.

#### 2.4 Grant of options

Options must be granted on the terms of these Rules and each Participant will be deemed to have agreed to be bound by these Rules on acceptance (either in writing or by his or her conduct) of any offer of Options.

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## **3 Restriction on offer**

### **3.1 Restriction**

Options may not be offered under this Plan if, immediately following the offer, the aggregate of:

- (a) the number of Shares to be received on exercise of those Options;
- (b) the number of Shares issuable if each outstanding offer with respect to (i) Shares, (ii) units of Shares and (iii) options to acquire unissued Shares, under any employee share scheme were accepted or exercised; and
- (c) the number of Shares issued during the previous five years pursuant to the Plan or any other employee share scheme extended only to full or part-time employees or directors of a member of the Group,

would exceed 5% of the total number of Shares on issue at the time of the offer.

### **3.2 Matters to be disregarded**

Any offer made, option acquired or Share issued by way of or as a result of:

- (a) the making of an offer or invitation to a person situated at the time of receipt of the offer or invitation outside Australia; or
- (b) an “excluded offer” or “excluded invitation” (each as defined in the Corporations Law as in force prior to the commencement of Schedule 1 to the Corporate Law Economic Reform Program Act 1999 (Cwlth)); or
- (c) an offer which did not need disclosure because of Section 708 of the Corporations Act; or
- (d) an offer made under a disclosure document,

is to be disregarded for the purposes of Rule 3.1 of these Rules.

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## **4 Option terms**

### **4.1 Entitlement**

- (a) Subject to these Rules, each Option entitles the holder to subscribe for and be allotted one Share at an exercise price per Option to be determined by the Board but which will not be less than the Market Value of a Share on the Date of Grant of the Option (as such exercise price may be subsequently adjusted by these Rules, “**Exercise Price**”).
- (b) Subject to these Rules and, if then applicable, the TSX Rules, the Company must allot Shares on exercise of an Option in accordance with the Listing Rules. Subject to, if then applicable, the TSX Rules,

the Company may defer allotment for up to 15 Business Days in order to allot Shares to all Participants exercising Options at the same time. No Option may be exercised if to do so would contravene:

- (i) the Corporations Act, the Listing Rules or, if then applicable, the TSX Rules; or
- (ii) the local laws or customs of an Eligible Person's country of residence or in the opinion of the Board would require actions to comply with those local laws or customs which are impractical.

#### **4.2 Exercise of Options**

- (a) An Option is exercisable by the holder lodging a notice of exercise of Option and application for Shares, together with the Exercise Price and any relevant Option certificate, with the Company Secretary.
- (b) The total amount payable by a Participant on exercise of Options is the Exercise Price of an Option (expressed in cents to one decimal place) multiplied by the number of Options being exercised by that Participant, rounded up to the nearest cent.
- (c) Options must be exercised in multiples of five hundred unless the Participant exercises all Options exercisable at that time. The exercise of some Options only does not affect the Participant's right to exercise other Options at a later time. If the Participant exercises less than all Options represented by a certificate then the Company will cancel the certificate and issue a new certificate for the balance.
- (d) Options may only be exercised by a Participant at the times, to the extent and in the manner set by the Board at the time of offer of the Options, provided that:
  - (i) subject to the other terms of these Rules, Options may only be exercised not less than one year nor more than four years after the date of grant of the Option;
  - (ii) the Board may stipulate that Options may only be exercised if the Company achieves stipulated performance benchmarks; and
  - (iii) the Board may stipulate that some or all Options are exercisable immediately if:
    - (A) a takeover bid (as defined in the Corporations Act) is made in respect of Shares and both:
      - (aa) the bidder obtains voting power (as defined in the Corporations Act) in the Company of 50% or more; and

- (ab) the takeover offers are made or declared unconditional (other than for the happening of the events or circumstances set out in section 652C(1) and (2) of the Corporations Act or the condition set out in section 625(3) of the Corporations Act); or
  - (B) a transaction by way of compromise or arrangement under Part 5.1 of the Corporations Act is approved by the requisite majorities of members of the Company at a meeting convened in accordance with the order of a court under section 411(1) of the Corporations Act; or
  - (C) an event or transaction by which an entity becomes or is to become the registered holder of more than 50% of Shares is approved or accepted by a majority of members of the Company.
- (e) An Option not exercised will lapse on the first to occur of:
- (i) the expiry of four years after the date of grant of the Option;
  - (ii) the expiry of 30 days, or any longer period which the Board determines, after the Participant ceases to be employed by, or engaged as a director of, any member of the Group for any reason (other than for reasons described in item (iii) below), including death, Total and Permanent Disablement, Retirement or Redundancy; and
  - (iii) a determination of the Board that the Participant has acted fraudulently, dishonestly or in breach of the Participant's obligations to the Company or any member of the Group .
- (f) The Board may, in its sole discretion and in accordance with the Listing Rules, determine that an Option has not lapsed under Rule 4.2(e)(ii) if the Participant has ceased to be employed or engaged as a director by any member of the Group as a result of:
- (i) Total and Permanent Disablement, ill health, death, Redundancy, economic necessity or any other factor not attributable to the conduct or performance of that person; or
  - (ii) Retirement under circumstances that are not related to the conduct or performance of that person,

in which case the Option will, subject to these Rules, remain exercisable by the Participant (or, where applicable, the Participant's executor, administrator or legal personal representative) until the date determined by the Board or until it otherwise lapses in accordance with these Rules.

#### **4.3 Restriction on transfer**

Options may not be transferred unless the transfer is effected by force of law on death of the Participant to the Participant's legal personal representative.

#### **4.4 Quotation of Options**

Options will not be quoted on ASX or the TSX.

#### **4.5 Shares to rank pari passu**

Shares issued on the exercise of Options will rank pari passu in all respects with all existing Shares from the date of issue except for any rights attaching to the Shares by reference to a record date prior to the date of their allotment.

#### **4.6 Quotation of Shares**

The Company will make an application to ASX and TSX for official quotation of Shares issued on the exercise of Options, if other Shares of the Company are listed on ASX or TSX at that time, respectively

#### **4.7 Future issues of Shares**

A Participant may only participate in new issues of securities to shareholders if the Option has been exercised, if it is permitted by its terms, and the Shares allotted in respect of the Option were allotted before the record date for determining entitlements to the issue. The Company must give notice to Participants of any new issue at least 10 Business Days before the record date for determining entitlements to the issue in accordance with the Listing Rules.

#### **4.8 Bonus issue**

If the Company makes a bonus issue of Shares or other securities pro rata to shareholders (other than an issue in lieu or in satisfaction of dividends or by way of dividend reinvestment) and no Shares have been allotted in respect of an Option before the record date for determining entitlements to the bonus issue then the number of Shares in respect of which the Option is exercisable will be increased by the number of securities which the Participant would have received if the Option had been exercised before the record date for the bonus issue.

#### **4.9 Rights issue**

Subject to the TSX Rules (if then applicable), if the Company makes an offer of Shares pro rata to all or substantially all shareholders (other than a bonus issue) for a subscription price which is less than the market price (defined below as P) and no Shares have been allotted in respect of an Option before the record date for determining entitlements to the pro rata issue then the Exercise Price of each Option will be reduced according to the following formula:

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

Where:

- O<sup>1</sup>** = the new Exercise Price of each Option;
- O** = the old Exercise Price of each Option;
- E** = the number of underlying securities into which one Option is exercisable;
- P** = the average market price of Shares (weighted by reference to volume) sold in the ordinary course of trading on the ASX during the five trading days before the ex rights date or ex entitlements date;
- S** = the subscription price (including, where applicable, calls) for new Shares issued under the pro rata issue;
- D** = any dividends due but not yet paid on existing Shares (except those to be issued under the pro rata issue); and
- N** = the number of Shares required to be held to receive a right to one new Share.

The number of Shares which the Participant is entitled to subscribe for on exercise of the Option will not change.

#### **4.10 Reorganisations**

In the event of any reorganisation of the capital of the Company, the rights of a Participant will be changed to the extent necessary to comply with the Listing Rules, and if then applicable, the TSX Rules, applying to such reorganisation at the time of the reorganisation.

#### **4.11 Advice**

The Company must give notice to each Participant of any adjustment to the number of Shares which the Participant is entitled to subscribe for or be issued on exercise of an Option or the Exercise Price in accordance with the Listing Rules.

#### **4.12 Right to accounts**

Participants will be sent all reports and accounts required to be presented to or laid before members of the Company in general meeting and all notices of general meetings of members but will not have any right in respect of their Options to attend or vote at those meetings.

#### **4.13 Dividends and rights to vote**

An Option carries no right to a dividend and no right to a vote.

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## **5 Overriding restrictions on grant and exercise**

Notwithstanding any provision of these Rules or the terms of any Option, no Option may be offered or exercised if to do so:

- (a) would contravene the Corporations Act, the Listing Rules, or (if applicable), the TSX Rules; or
- (b) would contravene the local laws or customs of an Eligible Person's country of residence or in the opinion of the Board would require actions to comply with those local laws or customs which are impractical.

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## **6 Administration of the Plan**

### **6.1 Consistency with Rules**

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.

### **6.2 Board's power and discretion**

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

### **6.3 Delegation**

Any power or discretion which is conferred on the Board by these Rules may be delegated by the Board to a committee consisting of such Directors as the Board thinks fit.

### **6.4 Board's decision final and conclusive**

The decision of the Board as to the interpretation, effect or application of these Rules will be final, conclusive and binding in the absence of manifest error.

### **6.5 Termination or suspension**

Subject to the requirements of the Listing Rules, the TSX Rules (if applicable) and the Corporations Act, the Board has the discretion to terminate or suspend the operation of the Plan at any time. Subject to Section 6.10 of these Rules, the suspension or termination of the Plan must not prejudice any existing rights of Participants.

### **6.6 Listing Rule 7.1, Exception 9(b)**

If the Plan has been approved by the Company's shareholders pursuant to Listing Rule 7.1, Exception 9(b), grants of Options under this Plan may only be made for a period of 3 years commencing on the date on which the Plan is so approved.

## **6.7 Company may approve other schemes**

The Company is not restricted to using the Plan as the only method of providing incentive rewards to Eligible Persons. The Company may approve other incentive schemes.

## **6.8 Participation in other schemes**

Participation in the Plan does not affect, and is not affected by, participation in any other incentive or other scheme of the Company unless the terms of that incentive or scheme provide otherwise.

## **6.9 Board may amend Plan or Option terms**

Subject to Rules 6.10 and 6.11 and the requirements of the Listing Rules, the TSX Rules (if then applicable) and the Corporations Act, the Board may at any time by written instrument amend (prospectively or retrospectively) all or any of the Rules or the terms attaching to any Options, including, unless the TSX Rules then apply, this Rule 6.9, without obtaining the approval of the Company's shareholders, including amending the Rules (or the terms attaching to any Options) to:

- (a) comply with any laws, or the requirements of any applicable regulatory authority or stock exchange;
- (b) clarify an ambiguity or remedy a deficiency, error or omission in the Rules or the terms of any Option;
- (c) facilitate the administration of the Plan;
- (d) amend the vesting conditions of any Options;
- (e) introduce any form of financial assistance and any amendment to a financial assistance provision which is adopted;
- (f) amend the eligibility requirements of the Plan;
- (g) amend the terms of Options or the Plan relating to the effect of the events described in section 4.2(e)(ii) on the right to exercise Options;
- (h) increase the Exercise Price of any Options;
- (i) reduce the Exercise Price of any Options as a result of the events described in section 4.8, 4.9 and 4.10 of these Rules;
- (j) reduce the number of securities issuable under the Plan;
- (k) amend the process by which a Participant can exercise options including the required form of payment, the form of exercise notice and the place where such payments and notices must be delivered;
- (l) add covenants of the Company for the protection of Eligible Persons, provided that the Board shall be of the opinion (acting in good faith) that such additions will not be prejudicial to the rights or interests of Eligible Persons; or

- (m) amend the term of any Option, provided that as a result, such term does not extend beyond four years.

#### **6.10 No reduction of existing rights**

Any suspension, termination or amendment to the Rules or the Plan (or the terms of any Option) must not materially reduce the rights of any Participant in respect of their Options held at the date of the suspension, termination or amendment, unless it is primarily:

- (a) for the purpose of complying with or conforming to present or future State, Territory or Commonwealth legislation governing or regulating the maintenance or operation of the Plan or similar plans, the constitution of a member of the Group, the Corporations Act, the Listing Rules or the TSX Rules; or
- (b) to correct any manifest error or mistake

Except as expressly stated above, no amendment, suspension or termination of the Plan shall be made at any time to the extent such action would materially adversely affect the existing rights of a Participant with respect to any then outstanding Option, as determined by the Board in good faith, without his or her consent in writing.

#### **6.11 Shareholder approval for certain amendments**

Subject to and without limiting the provisions of the Listing Rules and the Corporations Act, for so long as the TSX Rules apply to the Plan, the approval of shareholders of the Company will be required for any amendment to the Rules or the terms of any Option:

- (a) reducing the Exercise Price of a previously issued Option held by an Insider;
- (b) extending the expiry date of any Option held by an Insider;
- (c) increasing the number of Shares which may be issued on exercise of Options granted under the Plan (other than pursuant to sections 4.8, 4.9 and 4.10);
- (d) allowing a Participant to transfer Options other than where the transfer is effected by force of law on death of the Participant to the Participant's legal personal representative;
- (e) which would have the potential to broaden or increase Insider participation in the Plan; or
- (f) extending the term of any outstanding Option to a date beyond the latest exercise date currently stipulated in the Rules

provided always that for so long as the Listing Rules apply to the Company the acts referred to in paragraphs (a), (b), (c) and (f) above will not be carried out unless they are permitted by the Listing Rules.

## **6.12 Instructions by Participants**

For the purposes of the Plan, the Board, the Company and any member of the Group is entitled to regard any notice, direction or other communication given or purported to be given by or on behalf of a Participant (or an executor, administrator or legal personal representative of a Participant) as valid, whether given orally or in writing.

## **6.13 Notices**

Any notice given by the Company, a member of the Group or the Board in relation to the Plan is deemed to have been duly given if:

- (a) sent by electronic mail; or
- (b) delivered by hand; or
- (c) sent by ordinary prepaid mail,

and is deemed to have been served:

- (d) if sent by electronic mail or delivered by hand, at the time of delivery or sending; or
- (e) if posted, three Business Days (or, if posted to a Participant's address outside Australia, seven Business Days) after the date of posting.

Delivery, transmission and postage must be to the work address of that Participant or to any other address (including a home address) notified in writing by the Participant to the Company from time to time.

## **6.14 Governing law**

This Plan is governed by the laws in force in Western Australia and is construed and takes effect in accordance with those laws.

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# **7 Participants**

Nothing in these Rules:

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

No person, whether a Participant or otherwise, has any claim, right or interest in respect of the Plan or any Options, whether against the Company or any other person, except under and in accordance with these Rules.

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## **8 Definitions and interpretation**

### **8.1 Definitions**

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

**Associated Body Corporate** of a company means:

- (a) a body corporate that is a related body corporate (as defined in the Corporations Act) of the company; or
- (b) a body corporate that has voting power (as defined in the Corporations Act) in the company of not less than 20%; or
- (c) a body corporate in which the company has voting power (as defined in the Corporations Act) of not less than 20%.

**ASX** means ASX Limited ACN 008 624 691 and, where the context permits, the Australian Securities Exchange operated by ASX Limited.

**Board** means all or some of the Directors acting as a board.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Perth, Western Australia, and if the TSX Rules then apply, a day on which the TSX is open for trading.

**Company** means Troy Resources NL ABN 33 006 243 750.

**Company Secretary** means a company secretary of the Company from time to time.

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

**Date of Grant** means, in respect of an Option, the date the Board resolves to offer such Option to an Eligible Person provided that if under the Listing Rules or the TSX Rules, the grant of such Option is subject to shareholder approval, "Date of Grant" means the date upon which the Board resolves to seek shareholder approval for the offer of such Option.

**Director** means a director of the Company.

**Eligible Person** means a person who is at the time of an offer of Options under the Plan a full or part-time employee or director of a member of the Group.

**Exercise Price** has the meaning given to it in Rule 4.1(a).

**Group** means the Company and its Associated Bodies Corporate.

**Insider** has the meaning given to it in section 1 of the Securities Act (Ontario).

**Listing Rules** means the Listing Rules of ASX.

**Market Value** of a Share means:

- (a) the **VWAP of the Shares**, on such stock exchange where the majority of the trading volume and value of the Shares occurs, for the five trading days prior to the Date of Grant; and
- (b) if the Shares are not quoted on any stock exchange, the value determined by the Board as the market value.

**Option** means an option issued (or to be issued, as the context required) under the Plan to subscribe for and be allotted Shares.

**Participant** means a person who holds an Option issued under the Plan including, where applicable, a Participant's executor, administrator or legal personal representative.

**Plan** means the Troy Resources NL Employee Share Option Plan, the rules of which are set out in this document.

**Redundancy** means termination of employment of a Participant by a member of the Group due to economic, technological, structural or other organisational change where through no act or default of the Participant:

- (a) the member of the Group no longer requires the duties and responsibilities carried out by the Participant to be carried out by anyone; or
- (b) the member of the Group no longer requires the position held by the Participant to be held by anyone.

**Retirement** in relation to a Participant means retirement by the Participant from employment by any member of the Group at age 55 or over.

**Rules** means these Troy Employee Share Option Plan Rules.

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

**Total and Permanent Disablement** in relation to a Participant means that the Participant 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 Participant unlikely ever to engage in any occupation for which he or she is reasonably qualified by education, training or experience.

**TSX** means the Toronto Stock Exchange.

**TSX Rules** means, if at the applicable time the Shares are listed on the TSX, the rules and policies of the TSX in respect of security based compensation arrangements, as the same may be amended from time to time.

**VWAP** means the volume weighted average trading price of the Shares, calculated by dividing the total value by the total volume of Shares traded during the relevant period.

## **8.2 Interpretation**

In these Rules, unless the contrary intention appears:

- (a) words importing the singular include the plural and vice versa;
- (b) references to the Plan, the Rules or any particular Rule means the Plan, the Rules or the relevant Rule (respectively), as amended from time to time;
- (c) references to a document, or any part of a document means the document or relevant part, as amended from time to time;
- (d) references to a statute or other law include regulations and other instruments made under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) references to the exercise of a power or discretion by a person (including a Participant) include exercised by that person's executor, administrator or legal personal representative;
- (f) references to the exercise of a power or discretion include a decision not to exercise the power or discretion;
- (g) references to a "year" mean any period of 12 months;
- (h) "including" when introducing a list of items does not exclude a reference to other items whether of the same class or genus or not; and
- (i) "Australian dollars", "dollars", "A\$" or "\$" is a reference to the lawful currency of Australia.

## **8.3 Headings**

Headings are for convenience only and do not affect the interpretation of this Plan.