

**BHP BILLITON LTD**

**THE BHP BILLITON LTD  
EXECUTIVE INCENTIVE PLAN**

Remco Endorsement

July 2008

**Freehills**

# THE RULES OF THE BHP BILLITON LTD EXECUTIVE INCENTIVE PLAN

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## THE BHP BILLITON LTD EXECUTIVE INCENTIVE PLAN

### PLAN SUMMARY

The BHP Billiton Ltd Executive Incentive Plan has been set up to assist in the recruitment, retention and motivation of key employees.

The Plan has been approved by the GMC (and endorsed by the Remuneration Committee of the Board) but not by the shareholders of the Company.<sup>1</sup>

The Plan is an “employee share scheme” within the meaning of section 9 of the Corporations Act 2001. It is administered by the GMC. Participation in the Plan is discretionary.

Under the Plan, eligible employees may be granted awards in respect of shares in the Company. The terms upon which those awards may be granted will be determined from time to time by the GMC but will generally require continued employment in the Group for a specified period of time. Awards may or may not be subject to performance targets.

Awards may take one of several forms:

- a Nil-cost Option: a Nil-cost Option is the right to acquire, at no cost, a specified number of shares;
- a Market-priced Option: a Market-priced Option is the right to acquire specified number of shares at an exercise price per share linked to the market value of a share at or about the date of grant; and
- a Conditional Award: a Conditional Award is the right to receive the specified number of shares once the conditions have been satisfied. Under a Conditional Award, the shares will be released to the participant automatically without any action on the part of the participant.

This summary of the Plan does not form part of the rules of the Plan which apply in the event of any inconsistency.

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<sup>1</sup> It is the intention of the Company that Awards will not be granted to directors of the Company or members of the GMC without shareholder approval, having regard to the UK Listing Authority requirements. In addition awards may not be satisfied by the use of newly issued shares without having regard to the UK Listing Authority requirements.

## 1. INTERPRETATION AND CONSTRUCTION

### 1.1 Definitions

In this Plan, the following expressions have the meanings shown next to them:

**Award** - an award made under this Plan which is either a Nil-cost Option, a Market-priced Option or a Conditional Award;

**Addendum** – an award made under this Plan which is either a Nil-cost Option, a Market-priced Option or a Conditional Award;

**Board** - the board of directors of the Company or any duly authorised committee of that board;

**Cause** - any reason which justifies a Participant's summary dismissal;

**Clauses** - the clauses set out in the Schedules to these Rules;

**Code** – the US Internal Revenue Code of 1986, as amended, and the Treasury regulations promulgated thereunder;

**Company** - BHP Billiton Ltd (ABN 49 004 028 077);

**Conditional Award** - a right to receive Shares subject to and in accordance with the terms set out in Schedule 2 to these Rules;

#### **Control Event:**

- (i) either:
  - (a) a person (or a group of persons acting in concert) obtains Control of the Company as a result of making an offer to acquire Shares; or
  - (b) transactions have occurred or will occur which have resulted or will or are highly likely to result in:
    - (1) changes in the identity of more than one-half of the existing Board members; or
    - (2) the appointment of new Board members such that more than one-half of the Board is newly appointed; or
    - (3) persons who were entitled to cast more than one-half of the votes that could be cast at a Board meeting prior to the changes occurring not being entitled to cast more than one-half of the votes after the changes have occurred,

which the Board determines in its discretion, acting reasonably (and, if the Board determines appropriate, after obtaining written advice from a leading commercial Queen's Counsel or other equivalent Senior Counsel), to constitute or be equivalent to a change of control for the purposes of the Plan;

- (ii) when a court sanctions a compromise or arrangement for the purposes of or in connection with a scheme for the amalgamation of the Company with any other company or companies other than Plc under section 413 (*Provisions for facilitating reconstruction and amalgamation of Part 5.1 bodies*) of the Corporations Act; or
- (iii) when the Company passes a resolution for voluntary winding up or if an order is made for the compulsory winding up of the Company;

**Control** - the same meaning as in section 50AA (*Control*) of the Corporations Act;

**Corporations Act** - Corporations Act 2001;

**Dealing Day** - a day on which the Stock Exchange is open for the transaction of business;

**Dividend Equivalent Payment** - in respect of any Share acquired by a Participant on the exercise of an Option or the vesting of a Conditional Award, the payment of an amount equivalent to the amount of dividends that would have been payable to a Participant had he or she been the owner of that Share from the first day of the Financial Year in which the Grant Date occurs;

**Eligible Employee** - any employee who is eligible to take part in the Plan according to Rule 2 (*Eligibility*);

**Exercise Price** - the price payable to buy a Share on the exercise of a Market-priced Option determined by the GMC in accordance with Clause 3.1 (*Exercise Price*) of Schedule 1 to these Rules;

**Financial Year** - a financial year of the Company;

**GMC** - Group Management Committee or such other executive committee as replaces it from time to time and any delegate of the Group Management Committee or of any such committee;

**Good Leaver** – a Participant who ceases employment due to death, serious injury, disability or illness which prohibits continued employment or for any other reason with the approval of the GMC;

**Grant Date** - the date on which an Award is granted;

**Group:**

- (i) for the purposes of Clause 6 (*Leaving employment*) in both Schedule 1 and Schedule 2 to these Rules, the Company and its Subsidiaries and Plc and its Subsidiaries; and
- (ii) for all other purposes, the Company and its Subsidiaries,

and the expression **member of the Group** will be construed accordingly;

**Holding Company** - the same meaning as in section 9 of the Corporations Act;

**Holding Period** - in relation to an Option, the period before the Exercise Period (as defined in Schedule 1 to these Rules) and, in relation to a Conditional Award, the Vesting Period (as defined in Schedule 2 to these Rules);

**Listing Rules** - the official Listing Rules of the Stock Exchange as they apply to the Company from time to time;

**Market Value of Shares** - the volume weighted average of the prices at which Shares were traded on the Stock Exchange during the one week period up to and including the day upon which the market value is to be determined;

**Market-priced Option** - a right to buy Shares on payment of the Exercise Price subject to and in accordance with the terms set out in Schedule 1 to these Rules;

**Nil-cost Option** - a right to buy Shares without payment subject to and in accordance with the terms set out in Schedule 1 to these Rules;

**Option** - a Nil-cost Option or a Market-priced Option;

**Participant** - the holder of an Award or, after his or her death, his or her personal representative;

**Participating Employer** - any member of the Group;

**Performance Period** - the period determined by the GMC in accordance with Rule 3.4 (*Performance Targets and other conditions*) over which the Performance Target (if any) is to be measured;

**Performance Target** - the target or targets for an Award set under Rule 3.4 (*Performance Targets and other conditions*) as changed from time to time under Rule 3.5 (*Changing the Performance Targets and other conditions*);

**Plan** – this plan;

**Plc** – BHP Billiton Plc incorporated in England and Wales with No. 3196209;

**Restricted Shares** – the Shares over which an Award is granted;

**Rules** - the rules of the Plan, including any Schedules to the Rules;

**Section 409A** – Section 409A of the Code and the regulations promulgated thereunder;

**Share** - a fully-paid ordinary share in the capital of the Company;

**Social Security Contribution** - any tax, duty, levy or impost which is payable in addition to income tax by an employer or an employee on any remuneration or benefit-in-kind including, without limitation, national insurance contributions in the United Kingdom and anything which is payable in jurisdictions outside the United Kingdom and which, in the opinion of the GMC, is reasonably equivalent to national insurance contributions;

**Stock Exchange** - ASX Limited (ABN 98 008 624 691) or such other body corporate that is declared by the Board to be the Company's primary stock exchange for the purposes of this definition;

**Subsidiary** - the same meaning in Part 1.2, Division 6 (*Subsidiaries and related bodies corporate*) of the Corporations Act;

**US Taxpayer** - any Participant who is subject to US taxation on compensation paid under the Plan.

## 1.2 Meaning of ceasing to be employed within the Group

- (A) Subject to (B), an individual is to be treated as ceasing to be employed within the Group for the purposes of the Plan when he or she is no longer employed by any member of the Group.
- (B) Subject to (C), if an individual is away from work because of family leave or in other circumstances where he or she has a contractual or statutory right to return to work at the end of the period of leave or for another absence approved by the GMC for this purpose, the individual must be treated for the purposes of the Plan as continuing to be employed within the Group unless and until the GMC is satisfied that there is no longer any reasonable expectation that he or she will return to work in exercise of his or her contractual or statutory rights.

## 1.3 Construction of the Rules

- (A) Where the context so admits, any reference in this Plan:
  - (i) to the singular includes the plural and vice versa;
  - (ii) to the masculine includes the feminine; and
  - (iii) to an enactment includes that enactment as for the time being amended or re-enacted.
- (B) Any reference in a Rule or a Clause to a number or letter in parenthesis (for example, (B)) is a reference to the paragraph in that Rule or Clause with that number or letter.
- (C) The headings to the Rules and the Clauses are for reference purposes only and are not to affect the meaning or construction of the Rules and the Clauses.
- (D) The Schedules to these Rules form part of the Rules.
- (E) The Addendum forms part of the Plan and the Rules

#### 1.4 **Governing law**

Unless the Rules say otherwise, this Plan and any Award granted under it are governed by and construed in accordance with the law in force in Victoria, Australia.

#### 1.5 **Administration**

Unless the Rules say otherwise, the GMC will administer the Plan. The GMC may from time to time delegate all or part of its responsibilities to such person or persons as it thinks fit.

#### 1.6 **Disputes**

The GMC's decision on the construction of the Rules and on any disputes arising under the Plan is final and binding on all persons.

#### 1.7 **The Addendum**

The Addendum contains certain rules and definitions that apply to US Taxpayers. The terms and conditions set forth in the Addendum shall apply to such US Taxpayers, and as indicated in the Addendum, certain terms and conditions of this Plan shall not apply to such US Taxpayers. In the case of any conflict between the terms of the Plan and the terms of the Addendum with respect to US Taxpayers, the terms of the Addendum shall prevail.

### 2. **ELIGIBILITY**

(A) An individual is eligible to be granted an Award at the discretion of the GMC if he or she satisfies both of the following conditions:

- (i) he or she is an employee of a Participating Employer; and
- (ii) he or she is not under notice (given or received) to cease to be such an employee.

(B) If an Award is granted to individual who was not eligible to be granted an Award, the Award shall be void.

(C) If an Award is granted to an individual by mistake, the Award shall be void.

### 3. **GRANTING AWARDS**

#### 3.1 **Restrictions on grant**

(A) The GMC must make sure that the Plan is not operated at any time, or in any circumstances, when to do so would breach the Company's code of practice on dealings in shares and securities, the Listing Rules or any other applicable laws or regulations.

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### **3.2 Procedure on grant of Awards**

- (A) Whenever it decides to operate the Plan, the GMC must decide:
- (i) which type of Awards are to be granted; and
  - (ii) whether an Award will qualify for a Dividend Equivalent Payment.
- (B) The Company may invite Eligible Employees to apply for Awards or it may grant Awards without issuing invitations.

### **3.3 Grant of Awards**

Awards may be granted from time to time to such Eligible Employees as the GMC may decide.

### **3.4 Performance Targets and other conditions**

The GMC may make an Award subject to a Performance Target; it may also impose other conditions on the Award. In particular, but without limitation, an Award may be granted on terms that the Participant must agree to bear the cost of some or all of any liability to Social Security Contributions arising from the Award either by reimbursing the person otherwise liable or by entering into an election to transfer the liability to himself.

### **3.5 Changing the Performance Targets and other conditions**

- (A) Subject to the overriding requirements of the Listing Rules, the GMC may change the Performance Target or the other conditions to which an Award is subject in any of the following circumstances:
- (i) if there is any change in the Company's capital;
  - (ii) if the terms of the Performance Target or the other conditions allow it; or
  - (iii) if any event or series of events happens as a result of which the GMC considers it fair and reasonable to make the change.
- (B) The power to change includes the power both to adjust the existing Performance Target or other conditions and to impose a new Performance Target or different conditions. The change must not, however, have the effect, in the opinion of the GMC, of making the Performance Target or the other conditions materially more difficult to achieve than it was or they were when the Award was first granted.
- (C) The Company must tell each Participant of any change in the Performance Target or other conditions which apply to his or her Award.

## **4. GENERAL**

### **4.1 Non-transferability of Awards**

An Award is personal to the Participant and his or her personal representatives. It will lapse immediately if:

- (i) the Participant transfers it or creates any interest in it in favour of any third party; or
- (ii) a bankruptcy order is made in respect of him or any similar event occurs under the laws of any country other than Australia.

#### **4.2 Relationship to contract of employment**

Participation in the Plan is a matter entirely separate from, and does not affect, a Participant's pension rights or terms of employment. If a Participant ceases to be entitled to exercise his or her Award or to receive Restricted Shares or the Restricted Shares are forfeited because his or her employment ends (whether fairly, unfairly, lawfully or wrongfully) or for any other reason, he or she will not be entitled to any compensation by reference to the rights granted to, or the benefits capable of being received by, him under the Plan or for the loss of such rights or benefits.

#### **4.3 Notices and circulars to shareholders**

- (A) The Company need not give Participants copies of any documents sent by the Company to its shareholders.
- (B) The Company may decide that copies of any documents sent by the Company to its shareholders will be provided electronically (including via the Company's website) to present and former Participants and other Eligible Employees.

#### **4.4 Costs**

The Company must pay the costs of preparing and running the Plan. It may, however, require Participating Employers to share the costs on such a basis as the GMC considers fair.

#### **4.5 Notices to Eligible Employees and Participants**

- (A) Any notice under the Plan to an Eligible Employee or Participant may be given personally or through the internal post or by sending it by ordinary post, e-mail or facsimile or by other electronic means (including the internet and the intranet) to the address or number given by that person.
- (B) Where a notice or document is sent to an Eligible Employee or Participant by post, it will be treated as being received 72 hours after it was put into the post properly addressed and stamped. In all other cases, the notice or document will be treated as received when it is given.
- (C) All notices and documents given or sent to Eligible Employees or Participants will be given or sent at the risk of the addressee. Neither the Company nor any of its Subsidiaries have any liability in respect of any notice or document sent, nor any obligation to check that the addressee actually receives it.

#### **4.6 Notices to the Company**

A person must give notice to the Company or the GMC by such means as the GMC may from time to time decide. Such means may include, but are not limited to, delivering it personally or through the internal post or by post to the Company's registered office (or at such other place or places as the GMC may from time to time determine) marked for the attention of the Company Secretary or by sending it by facsimile or e-mail or other electronic means (including the internet and the intranet) to such address or number as the GMC may from time to time determine. Unless otherwise agreed by the Company, a notice will only be effective when it is received by the Company.

#### **4.7 Dividends after the transfer of Shares**

The Company may determine that dividends payable in respect of Shares held by present and former Participants and other Eligible Employees may be paid through the Company's payroll system.

### **5. CHANGING AND ENDING THE PLAN**

#### **5.1 Power of change - general**

Subject to the limitations in Rule 5.3, the GMC may change the Plan in any way.

#### **5.2 Power of change - sub-plans**

In exercise of the power of change, the GMC may create sub-plans to the Plan.

#### **5.3 Power of change - limitations**

Subject to the exceptions in Rule 5.4, no change may be made which would affect adversely any of the subsisting rights of a Participant except either with his or her written consent or with the consent of most of the Participants affected by the change.

#### **5.4 Power of change - exceptions**

- (A) The GMC may change the Plan to take account of any changes to relevant legislation.
- (B) The GMC may change the Plan and/or the terms of Awards to get or keep favourable tax, exchange control or regulatory treatment for Participants or any member of the Group.
- (C) The GMC may make minor changes to the Plan to ease its administration or to correct clerical errors.

#### **5.5 Notification of changes**

The Company must tell a Participant about any change which affects his or her rights.

**5.6 Ending the Plan**

The GMC may end the Plan at any time in which case no further Awards will be granted. In all other respects, the Plan will remain in force.

**SCHEDULE 1****TERMS APPLICABLE TO AN AWARD WHICH IS AN OPTION****1. GENERAL**

The terms set out in this Part apply where the Award is an Option.

**2. DEFINITIONS**

In this Schedule, the following expressions have the meanings shown next to them:

**Clauses** - the clauses set out in this Schedule;

**Exercise Period** - such period as the GMC set at the time of grant ending not later than the day before the tenth anniversary of the Grant Date;

**Unvested Option** - any Option or, as the case may be, that part of an Option which is not a Vested Option;

**Vested Option:**

(i) where the Option is not subject to a Performance Target, an Option (or the part of the Option) in respect of which the Exercise Period has started; and

(ii) where the Option is subject to a Performance Target, an Option, or (as the case may be) that part of an Option, in respect of which the Performance Target has been met or waived except that, if the Performance Target is met or waived before the start of the Exercise Period, the Option will not become a Vested Option until the start of the Exercise Period; and

**Vested Shares** - the number of Restricted Shares subject to a Vested Option.

**3. GRANT OF OPTIONS****3.1 Exercise Price**

Where the Option is a Market-priced Option, the GMC must set the Exercise Price. In the absence of any other price being set by the GMC, the Exercise Price shall be the Market Value of Shares on the Grant Date.

**3.2 Grant by deed poll**

On the Grant Date, the Grantor must execute a deed poll in favour of each recipient of an Option where the Option is to be governed by the terms of this Schedule. The deed poll may be in favour of more than one recipient. If so, it will be retained by the Grantor but the Grantor must make it (or the relevant part of it) available for inspection by each recipient. As soon as practicable after the Grant Date, the Grantor must give each recipient written details of his or her Option. The

deed poll and the written details given to each recipient must state the full terms of any Performance Target and any additional conditions applicable to the Option.

#### **4. RESTRICTIONS UPON EXERCISE**

##### **4.1 General**

Clause 4 overrides the other terms of this Schedule except where otherwise stated.

##### **4.2 End of Exercise Period**

A Participant may not exercise his or her Option:

- (i) before the start of the Exercise Period except where permitted by the GMC or where either Clause 6 (*Termination of employment*) or Clause 7 (*Change in Control*) applies; or
- (ii) after the end of the Exercise Period.

##### **4.3 Lapsing of Options**

If an Option lapses under any Rule or Clause, it may not be exercised subsequently under any other Clause.

##### **4.4 Meeting the Performance Targets and other conditions**

- (A) Where an Option is subject to a Performance Target, the GMC must determine whether and to what extent the Option has become a Vested Option according to the Performance Target at the end of the Performance Period or as otherwise specified in this Schedule. If and to the extent that it does not become a Vested Option and the Performance Target is not waived, it will immediately lapse.
- (B) Unless the GMC otherwise decides, a Participant may not exercise his or her Option:
  - (i) unless it is a Vested Option; or
  - (ii) except in accordance with any other conditions imposed under Rule 3.4 (*Performance Targets and other conditions*) as changed under Rule 3.5 (*Changing the Performance Targets and other conditions*).

##### **4.5 Share dealing code**

- (A) The GMC may postpone the start of the Exercise Period of a Participant's Option if the start would otherwise happen at a time when the Participant is not free to deal in Shares under BHP Billiton's Securities Dealing Code as amended or replaced from time to time.
- (B) The exercise of Options and all Shares to be transferred upon the exercise of an Option must be in accordance with and will be subject to BHP Billiton's Securities Dealing Code as amended or replaced from time to time.

## **5. EXERCISE OF AN OPTION**

### **5.1 Exercise during the Exercise Period**

A Participant may exercise his or her Vested Option during the Exercise Period. Where an Option is exercisable, it may be exercised in whole or in part and from time to time.

### **5.2 Method of exercise**

- (A) To exercise his or her Option, a Participant must give notice to the Company or an administrator appointed by the Company. The notice of exercise must be in such form, and be accompanied by such other documents as the GMC may decide.
- (B) If the Option is a Market-priced Option, the Exercise Price must be paid at the same time as the notice to exercise the Option is given. Alternatively, the Participant may enter into any arrangements that the GMC may approve for the payment of the Exercise Price.

### **5.3 Transfer of Shares**

- (A) Within 30 days of the date of exercise, the Company must arrange for the transfer to the Participant, or to someone else chosen by the Participant, of the Vested Shares to which he or she is entitled on that exercise.
- (B) The Company's obligation under (A) is, however, subject to:
  - (i) any necessary consents or approvals as may be required by any competent authority having first been obtained;
  - (ii) the Participant having complied with the terms of the Option; and
  - (iii) Clause 5.6.

### **5.4 Dividend Equivalent Payment**

If the Option qualifies for a Dividend Equivalent Payment, the Company must arrange for it to be paid, subject to Clause 5.5, to the Participant as soon as reasonably practicable after the Vested Shares are transferred.

### **5.5 Withholding obligations**

The Company, any employing company or the trustee of any employee benefit trust may withhold such amount and make such arrangements as it considers necessary to meet any liability to taxation, duties, Social Security Contributions or other amounts in respect of Options or otherwise in connection with a person's participation in the Plan, whether the liability is a liability of, or is payable by, the Participant, the Company, the employing company or the trustee. These arrangements may include the sale or reduction in number of any Restricted Shares subject to an Option and/or the exercise of an Option.

## 5.6 Cash or Share alternative

- (A) Subject to (B), this Clause applies in either of the following circumstances:
- (i) if the Company and the Participant agree that it should; or
  - (ii) if the transfer of Shares on the exercise of the Option would be contrary to any laws or regulations or would involve the Company in costs which, in the opinion of the GMC, are disproportionate; or
  - (iii) if the transfer of Shares would result in tax disadvantages for either the Participant or the Company which might be mitigated by the application of this Clause.
- (B) Unless the GMC decides otherwise at the time of grant, this Clause does not apply in relation to Options granted to Participants who are subject to taxation in Australia.
- (C) The GMC may decide that, instead of the Shares to which the Participant would otherwise be entitled, the Participant will be paid the cash alternative by his or her employing company. The cash alternative will be found by the following formula:

$$(MV - EP) \times C$$

where MV is this the market value (see D) of a Share on the Dealing Day before the Exercise Date;

EP is the Exercise Price (if any); and

C is the number of Shares in respect of which the Participant wishes to exercise his or her Option.

- (D) For the purposes of this Clause, the **market value** of a Share on any date is the closing middle market price of a Share as shown in the daily official list of the Stock Exchange for that date.
- (E) As soon as reasonably practicable after the GMC has made its decision, the Company must:
- (i) procure that a member of the Group pays the Participant the cash alternative; and
  - (ii) if the Participant has already paid the Exercise Price (if any), return it to him.
- (F) The Company may determine that some or all of the amount otherwise payable to the Participant under (B) will instead be satisfied by the issue or transfer to the Participant (or to someone else chosen by him) of Shares. For each such Share, the amount otherwise payable will be reduced by the market value (determined as in (D)) of a Share.
- (G) Clause 5.5 applies with the necessary changes to any payment under this Clause.

## 6. LEAVING EMPLOYMENT

- (A) This Clause applies if the employment within the Group of a Participant ends.

- (B) If the Participant's employment ends for Cause or otherwise than in circumstances in which the GMC determines that the Participant is a Good Leaver, his or her Vested Options (if any) and his or her Unvested Options (if any) will lapse immediately unless and to the extent that the GMC so determines at the time of termination.
- (C) If the Participant's employment ends in circumstances in which the GMC determines that the Participant is a Good Leaver, the Participant may exercise his or her Vested Options (if any) in the period of six months starting with the date on which his or her employment ends or during such longer period as the GMC may decide. The Participant's Vested Options will lapse at the end of the period for exercise allowed under this Clause.
- (D) If the Participant's employment ends in circumstances in which the GMC determines that the Participant is a Good Leaver, his or her Unvested Options (if any) will lapse immediately:
- (i) unless and to the extent specified otherwise in the terms on which the Option was granted; or
  - (ii) unless and to the extent that the GMC so determines at the time of termination (which determination may include waiving the Performance Target in whole or in part).

## 7. CHANGE OF CONTROL

- (A) This Clause applies upon a Control Event happening and the date on which the event happens is called for the purposes of this Clause the **relevant date**.
- (B) If the Participant has an Unvested Option, it will become a Vested Option (if at all) to such extent as the GMC may decide. If and to the extent that it does not become a Vested Option and is not exchanged for a new option under Clause 8 (*Substitute options following a change of Control*), it will forthwith lapse.
- (C) If the Participant has a Vested Option or an Unvested Option that becomes a Vested Option according to (B), then he or she may exercise it in accordance with Clause 6 (*Exercise of Option*) during the period of six months starting on the relevant date and, at the end of that period, the Option will lapse.

## 8. SUBSTITUTE OPTIONS FOLLOWING CHANGE OF CONTROL

### 8.1 Application

Clause 8 applies if a company (the **acquiring company**) obtains Control of the Company:

- (i) as a result of making a general offer to buy Shares; or
- (ii) as a result of a compromise or arrangement approved by the court under section 413 (*Provisions for facilitating reconstruction and amalgamation of Part 5.1 bodies*) of the Corporations Act.

### 8.2 Release of Options

- (A) The GMC may allow a Participant to release his or her Option (the **old option**) in return for the grant to him of another option (the **new option**).
- (B) The number of shares over which the new option is granted must have the same value as the Restricted Shares subject to the old option or otherwise be determined on such terms as the GMC considers to be fair and reasonable.

### **8.3 Deemed release**

The GMC may decide that the Participant will be deemed to have agreed to the release of his or her old option in return for the grant of a new option under Clause 8 in either or both of the following cases:

- (i) a Participant does not exercise the old option within the period allowed by Clause 7 (*Change of Control*); or
- (ii) a Participant is not allowed to exercise his or her old option because it is an Unvested Option.

### **8.4 Consequences of release**

- (A) If a Participant is granted a new option under Clause 8:
  - (i) the new option will be exercisable in the same way as the old option;
  - (ii) the Rules and the Clauses will apply to the new option as if references to Shares were references to the shares in respect of which the new option is granted; and
  - (iii) the Rules and the Clauses will apply to the new option as if references to the Company (including any such references as occur in expressions which are defined in Rule 1.1 (*Definitions*) and are used in the Rules and the Clauses) were references to the company in respect of whose shares the new option is granted.
- (B) However, Clause 4.4 (*Meeting the Performance Targets and other conditions*) will not apply to the new option unless it has been granted subject to a performance target and/or other conditions.
- (C) If the Participant is granted a new option in respect of an old option that was subject to a Performance Target but the new option is not subject to a performance target, the date on which the new option becomes a Vested Option must be determined as if the Performance Target still applied to it.

## **9. VARIATION OF CAPITAL**

- (A) Clause 9 applies if there is a variation in the share capital of the Company or in such other circumstances as the GMC considers appropriate.
- (B) The GMC may adjust each Option in any way that it thinks appropriate. The GMC's decision will be final.

- (C) The adjustment may be to any or all of the nominal amount and the number of Restricted Shares under the Option.
- (D) For the avoidance of doubt, the GMC may adjust an Option which has been exercised but in respect of which Shares have not yet been transferred.
- (E) The Company must tell each Participant of any adjustment to his or her Option as soon as possible after the GMC's decision.

**SCHEDULE 2****TERMS APPLICABLE TO AN AWARD WHICH IS A CONDITIONAL AWARD****1. GENERAL**

The terms set out in this Part apply where the Award is a Conditional Award.

**2. DEFINITIONS**

In this Schedule, the following expressions have the meanings shown next to them:

**Clauses** - the clauses set out in this Schedule;

**Vested Award:**

- (i) where the Award is subject to a Performance Target, the Award or that part of the Award in respect of which the Performance Target has been met; and
- (ii) where the Award is not subject to a Performance Target, an Award in respect of which the Vesting Period specified by the GMC at the time of grant has ended;

**Vesting Period;**

- (i) where the Award is subject to a Performance Target, the period which ends on the date on which the GMC determines whether or not the Performance Target has been met; and
- (ii) where the Award is not subject to a Performance Target, the period specified by the GMC at the time of grant; and

**Vested Shares** - the number of Restricted Shares subject to a Vested Award.

**3. GRANT OF CONDITIONAL AWARDS**

On the Grant Date, the Grantor must execute a deed poll making the grant in favour of each recipient of an Award where the Award is to be governed by the terms of this Schedule. The deed poll may be in favour of more than one recipient. If so, it will be retained by the Grantor but the Grantor must make it (or the relevant part of it) available for inspection by each recipient. As soon as practicable after the Grant Date, the Grantor must give each recipient written details of his or her Award. The deed poll and the written details given to each recipient must state the full terms of any Performance Target and any additional conditions applicable to the Award.

**4. RESTRICTIONS UPON RELEASE OF SHARES****4.1 General**

Clause 4 overrides the other terms of this Schedule except where otherwise stated.

#### 4.2 Lapsing of Conditional Awards

If a Conditional Award lapses under any Rule or Clause, the Restricted Shares may not be subsequently released under any other Clause.

#### 4.3 Meeting the Performance Targets and other conditions

(A) Where a Conditional Award is subject to a Performance Target, the GMC must determine whether and to what extent the Restricted Shares have become Vested Shares according to the Performance Target at the end of the Performance Period or as otherwise specified in this Schedule. If and to the extent that the Restricted Shares do not become Vested Shares and the Performance Target is not waived, the Conditional Award will immediately lapse.

(B) Unless the GMC otherwise decides, Restricted Shares may not be released to a Participant:

- (i) unless they are Vested Shares; or
- (ii) except in accordance with any other conditions imposed under Rule 3.4 (*Performance Targets and other conditions*) as changed under Rule 3.5 (*Changing the Performance Targets and other conditions*).

#### 4.4 Share dealing code

(A) The GMC may postpone the date on which an Award becomes a Vested Award if it would otherwise become a Vested Award at a time when the Participant is not free to deal in Shares under BHP Billiton's Securities Dealing Code as amended or replaced from time to time.

### 5. RELEASE OF SHARES

#### 5.1 General

(A) The Company must transfer, or procure the transfer of, a Participant's Vested Shares to him as soon as reasonably practicable after they become Vested Shares.

(B) The Company's obligation under (A) is, however, subject to:

- (i) any necessary consents or approvals as may be required by any competent authority having first been obtained;
- (ii) the Participant having complied with the terms of the Conditional Award; and
- (iii) Clause 5.3.

#### 5.2 Dividend Equivalent Payment

If the Conditional Award qualifies for a Dividend Equivalent Payment, the Company must arrange for it to be paid, subject to Clause 5.3, to the Participant as soon as reasonably practicable, after the Vested Shares are transferred.

### 5.3 Withholding obligations

The Company, any employing company or the trustee of any employee benefit trust may withhold such amount and make such arrangements as it considers necessary to meet any liability to taxation, duties, Social Security Contributions or other amounts in respect of Awards or otherwise in connection with a person's participation in the Plan, whether the liability is a liability of, or is payable by, the Participant, the Company, the employing company or the trustee. These arrangements may include the sale or reduction in number of any Restricted Shares subject to an Award.

### 5.4 Cash alternative

(A) Subject to (B), this Clause applies in either of the following circumstances:

- (i) if the Company and the Participant agree that it should; or
- (ii) if the transfer of Shares would be contrary to any laws or regulations or would involve the Company in costs which, in the opinion of the GMC, are disproportionate; or
- (iii) if the transfer of Shares would result in tax disadvantages for either the Participant or the Company which might be mitigated by the application of this Clause.

(B) Unless the GMC decides otherwise at the time of grant, this Clause does not apply in relation to Awards granted to Participants who are subject to taxation in Australia.

(C) The GMC may decide that, instead of the Shares to which the Participant would otherwise be entitled, the Participant will be paid the cash alternative by his or her employing company. The cash alternative will be found using the a cash sum of an amount found by the following formula:

$$MV \times C$$

where  $MV$  is the market value (see D) of a Share on the Dealing Day immediately before the date on which the Shares become Vested Shares; and

$C$  is the number of Vested Shares.

(D) For the purposes of this Clause, the **market value** of a Share on any date is the closing middle market price of a Share as shown in the daily official list of the Stock Exchange for that date.

(E) As soon as reasonably practicable after the GMC has made its decision, the Company must procure that the Participant's employing company pays the Participant the cash alternative.

(F) Clause 5.3 applies with the necessary changes to any payment under this Clause.

## 6. LEAVING EMPLOYMENT

(A) This Clause applies if the employment within the Group of a Participant ends.

- (B) If the Participant's employment ends for Cause or otherwise than in circumstances in which the GMC determines that the Participant is a Good Leaver, his or her Conditional Award will lapse immediately.
- (C) If the Participant's employment ends in circumstances in which the GMC determines that the Participant is a Good Leaver, his or her Conditional Award will lapse immediately:
- (i) unless and to the extent specified otherwise in the terms on which the Conditional Award was granted; or
  - (ii) unless and to the extent that the GMC so determines at the time of termination (which determination may include waiving the Performance Target in whole or in part).
- (D) If any of the Restricted Shares become Vested Shares under this Clause, Clause 5 (*Release of Shares*) applies.

## 7. CHANGE OF CONTROL

- (A) This Clause applies upon a Control Event happening and the date on which the event happens is called for the purposes of this Clause the **relevant date**.
- (B) The GMC will determine to what extent, if at all, a Participant's Conditional Award will become a Vested Award. If and to the extent that it does not become a Vested Award and is not exchanged for a new Award under Clause 8 (*Substitute awards following a change of Control*), it will forthwith lapse.
- (C) If any of the Restricted Shares become Vested Shares, Clause 5 (*Release of Share*) applies.

## 8. SUBSTITUTE AWARDS FOLLOWING CHANGE OF CONTROL

### 8.1 Application

Clause 8 applies if a company (the **acquiring company**) obtains Control of the Company:

- (i) as a result of making a general offer to buy Shares; or
- (ii) as a result of a compromise or arrangement approved by the court under section 413 (*Provisions for facilitating reconstruction and amalgamation of Part 5.1 bodies*) of the Corporations Act.

### 8.2 Release of Awards

- (A) The GMC may allow a Participant to release his or her Award (the **old award**) in return for the grant to him of another award (the **new award**).
- (B) The number of shares over which the new award is granted must have the same value as the Restricted Shares subject to the old award or otherwise be determined on such terms as the GMC considers to be fair and reasonable.

**8.3 Deemed release**

The GMC may decide that the Participant will be deemed to have agreed to the release of his or her old award in return for the grant of a new award under Clause 8.

**8.4 Consequences of release**

- (A) If a Participant is granted a new award under Clause 8:
- (i) the Rules and the Clauses will apply to the new award as if references to Shares were references to the shares in respect of which the new award is granted; and
  - (ii) the Rules and the Clauses will apply to the new award as if references to the Company (including any such references as occur in expressions which are defined in Rule 1.1 (*Definitions*) and are used in the Rules and the Clauses) were references to the company in respect of whose shares the new award is granted.
- (B) However, Clause 4.3 (*Meeting the Performance Targets and other conditions*) will not apply to the new award unless it has been granted subject to a performance target and/or other conditions.
- (C) If the Participant is granted a new award in respect of an old award that was subject to a Performance Target but the new award is not subject to a performance target, the date on which the new award becomes a Vested Award must be determined as if the Performance Target still applied to it.

**9. VARIATION OF CAPITAL**

- (A) Clause 9 applies if there is a variation in the share capital of the Company or in such other circumstances as the GMC considers appropriate.
- (B) The GMC may adjust each Conditional Award in any way that it thinks appropriate. The GMC's decision will be final.
- (C) The Company must tell each Participant of any adjustment to his or her Conditional Award as soon as possible after the GMC's decision.
- (D) The adjustment may be to any or all of the nominal amount and the number of the Shares subject to the Conditional Award.

## THE ADDENDUM

### PROVISIONS APPLICABLE TO US TAXPAYERS

The Rules and Clauses of the Plan referred to in this Addendum shall refer to, replace, and/or supplement, as applicable, the corresponding Rules and Clauses of the earlier part of the Plan.

#### A. THE RULES

##### 1.1 Definitions

**Control Event** - with respect to any Award that constitutes a deferral of compensation subject to Section 409A, a change in the ownership or effective control of the Company or in the ownership of a substantial portion of the assets of the Company under Section 409A(a)(2)(A)(v) of the Code and regulations thereunder;

**Disability** - the US Taxpayer's absence from service within the Group which:

- (i) was due to his inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months; or
- (ii) resulted from a medically determinable physical or mental impairment which can be expected to result in death or can be expected to last for a continuous period of not less than 12 months, and caused the US Taxpayer to receive income replacement benefits for a period of not less than three months under an accident and health plan covering the employees of the US Taxpayer's employer;

**Dividend Equivalent Payment:**

- (i) with respect to any Option, the payment of an amount equivalent to the amount of dividends that would have been payable to such US Taxpayer had he been the owner of the Shares pursuant to such Option from the first day of the Financial Year in which the Grant Date occurs to the date on which the Option vests and comes exercisable; and
- (ii) with respect of any Share acquired by a Participant on the vesting of a Conditional Award, the payment of an amount equivalent to the amount of dividends that would have been payable to a Participant had he been the owner of that Share from the first day of the Financial Year in which the Grant Date occurs;

**Good Leaver** - a "separation from service" (as defined in Section 409A) due to death or Disability.

## 1.2 Meaning of ceasing to be employed within the Group

With respect to any Award of a Participant who is a US Taxpayer which constitutes deferred compensation for purposes of Section 409A, the Participant is to be treated as ceasing to be employed by any member of the Group for the purposes of the Plan when either:

- (i) the Participant has a "separation from service" (as defined in Section 409A); or
- (ii) the member of the Group by which the Participant is employed ceases to be a member of the Group by reason of a change in the ownership or effective control of the Company or in the ownership of a substantial portion of the assets of the Company under Section 409A(a)(2)(A)(v) of the Code and regulations thereunder

## 1.8 Section 409A of the Code

- (A) Notwithstanding any provision to the contrary in this Plan, no payment or distribution under this Plan which constitutes an item of deferred compensation under Section 409A and becomes payable by reason of a US Taxpayer's termination of employment within the Group will be made to such US Taxpayer unless the US Taxpayer's termination of employment constitutes a "separation from service" (as such term is defined in Treasury Regulations issued under Section 409A). For the purposes of the Plan, each amount to be paid or benefit to be provided shall be construed as a separate identified payment for the purposes of Section 409A. If a US Taxpayer is a "specified employee" (as defined in Section 409A) and, as a result of that status, any portion of the payments under the Plan would otherwise be subject to taxation pursuant to Section 409A, the US Taxpayer shall not be entitled to any payments upon a termination of his employment until the earlier of (i) the expiration of the six-month period measured from the date of his "separation from service" (as such term is defined in Treasury Regulations issued under Section 409A) and (ii) the date of his death. Upon the expiration of the applicable Section 409A deferral period, all payments and benefits deferred pursuant to this Section (whether they would have otherwise been payable in a single sum or in instalments in the absence of such deferral) shall be paid or reimbursed to the US Taxpayer in a lump sum, and any remaining payments due under this Plan will be paid in accordance with the normal payment dates specified for them in the Plan.
- (B) It is intended that this Plan shall comply with the provisions of Section 409A so as not to subject any US Taxpayer to the payment of additional taxes and interest under Section 409A. In furtherance of this intent, this Plan shall be interpreted, operated, and administered in a manner consistent with these intentions, and to the extent that any rules, regulations or other guidance issued under Section 409A would result in a US Taxpayer being subject to payment of additional income taxes or interest under Section 409A, the GMC may amend this Plan in order to avoid the application of such taxes or interest to the extent permitted by Section 409A.

## 5.6 Ending the Plan

If the Plan is terminated, amounts payable to US Taxpayers under the Plan that constitute deferred compensation for purposes of Section 409A may not be accelerated and shall be paid in accordance with the normal payment dates specified for them in the Plan as if the Plan had not been terminated; provided however that such amounts may be accelerated only as permitted by the applicable requirements under Section 409A.

**B. THE CLAUSES OF SCHEDULE 1 (TERMS APPLICABLE TO AN AWARD WHICH IS AN OPTION)**

**2. Definitions**

**Exercise Period:**

- (i) in relation to a Market-priced Option, such period as the GMC set at the time of grant ending not later than the tenth anniversary of the Grant Date; and
- (ii) in the case of a Nil-cost Option, such period as the GMC set at the time of grant ending not later than the 15<sup>th</sup> day of the third month following the end of the taxable year (of the Company or the US Taxpayer, whichever is later) in which the Nil-cost Option vests and becomes exercisable.

**3.1 Exercise Price**

With respect to an Option (that is not a Nil-cost Option) to a US Taxpayer, the Exercise Price must be equal to the Market Value of Shares on the Grant Date.

**4.5 Share dealing code**

- (A) With respect to a US Taxpayer, such postponement shall comply with the requirements of Section 409A.

**5.4 Dividend Equivalent Payment**

A Dividend Equivalent Payment payable to a US Taxpayer must be paid in no event later than the 15th day of the third month following the end of the taxable year (of the Company or the US Taxpayer, whichever is later) in which the Option vests and becomes exercisable.

**5.5 Withholding obligations**

In addition, the Company may withhold from any amounts payable under this Plan to a US Taxpayer such Federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

**6. LEAVING EMPLOYMENT**

- (E) For the avoidance of any doubt, a US Taxpayer may not exercise his Option under this Clause after the end of the Exercise Period and his Option will lapse at that time or, if earlier, at the time provided for in this Clause.

**7. CHANGE OF CONTROL**

- (D) For the avoidance of any doubt, a US Taxpayer may not exercise his Option under this Clause after the end of the Exercise Period and his Option will lapse at that time or, if earlier, at the time provided for in this Clause.

**C. THE CLAUSES OF SCHEDULE 2 (TERMS APPLICABLE TO AN AWARD WHICH IS A CONDITIONAL AWARD)**

**4.4 Share dealing code**

- (A) With respect to a US Taxpayer, such postponement shall comply with the requirements of Section 409A.

**5.1 General**

- (C) If the Participant is a US Taxpayer, the Vested Shares must be transferred no later than the 15th day of the third month following the end of the taxable year (of the Company or the US Taxpayer, whichever is later) in which such Shares become Vested Shares.

**5.2 Dividend Equivalent Payment**

If the Conditional Award qualifies for a Dividend Equivalent Payment, and such Dividend Equivalent Payment is payable to a US Taxpayer, such payment must be made no later than the 15th day of the third month following the end of the taxable year (of the Company or the US Taxpayer, whichever is later) in which such Dividend Equivalent Payment becomes payable.

**5.3 Withholding obligations**

In addition, the Company may withhold from any amounts payable under this Plan to a US Taxpayer such Federal, state, local or foreign taxes as shall be required to be withheld pursuant to any applicable law or regulation.

**6. LEAVING EMPLOYMENT**

- (C) If a US Taxpayer's Conditional Award is accelerated under this Clause, the Vested Shares must be transferred no later than the 15th day of the third month following the end of the taxable year (of the Company or the US Taxpayer, whichever is later) in which such Shares become Vested Shares.

**7. CHANGE OF CONTROL**

If the Participant is a US Taxpayer, the Vested Shares must be transferred no later than the 15th day of the third month following the end of the taxable year (of the Company or the US Taxpayer, whichever is later) in which such vesting occurs.

**8.4 Consequences of release**

For the avoidance of doubt, if the Participant is a US Taxpayer, the Vested Shares in respect of the new award must be transferred no later than the 15th day of the third month following the end of the taxable year (of the Company or the US Taxpayer, whichever is later) in which such vesting occurs.