



**BERKELEY**energia

**BERKELEY ENERGIA LIMITED**  
**ACN 052 468 569**

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## **NOTICE OF ANNUAL GENERAL MEETING**

**The Annual General Meeting of the Company will be held at the Conference Room, Ground Floor, 28 The Esplanade, Perth, Western Australia on Tuesday, 15 November 2022 at 10:00am (AWST)**

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*This Notice and the accompanying Explanatory Memorandum should be read in its entirety. If Shareholders are in doubt as to how they should vote, they should seek advice from their stockbroker, investment advisor, accountant, solicitor or other professional adviser prior to voting.*

***Should you wish to discuss any matter please do not hesitate to contact the Company Secretary by telephone on + 61 8 9322 6322.***

**Shareholders are urged to vote by lodging the Proxy Form attached to the Notice.**

## **NOTICE OF ANNUAL GENERAL MEETING**

Notice is hereby given that the annual general meeting of shareholders of Berkeley Energia Limited (**Company**) will be held at the Conference Room, Ground Floor, 28 The Esplanade, Perth, Western Australia on Tuesday, 15 November 2022 at 10:00am (AWST) (**Meeting**).

The Explanatory Memorandum provides additional information on matters to be considered at the Meeting. The Explanatory Memorandum and the Proxy Form form part of this Notice.

The Directors have determined pursuant to regulation 7.11.37 of the *Corporations Regulations 2001* (Cth) that the persons eligible to vote at the Meeting are those who are registered as Shareholders on Sunday, 13 November at 4:00pm (AWST).

Terms and abbreviations used in this Notice and the Explanatory Memorandum are defined in Schedule 1.

## **AGENDA**

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### **Annual Report**

To consider the Annual Report of the Company and its controlled entities for the year ended 30 June 2022, which includes the Financial Report, the Directors' Report and the Auditor's Report.

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### **1. Resolution 1 – Remuneration Report**

To consider and, if thought fit, to pass with or without amendment, as an ordinary resolution, the following:

*"That, pursuant to and in accordance with section 250R(2) of the Corporations Act and for all other purposes, approval is given by the Shareholders for the adoption of the Remuneration Report on the terms and conditions in the Explanatory Memorandum."*

#### **Voting Exclusion**

In accordance with section 250R of the Corporations Act, a vote on this Resolution must not be cast (in any capacity) by, or on behalf of:

- (a) a member of the Key Management Personnel whose remuneration details are included in the Remuneration Report; or
- (b) a Closely Related Party of such member.

However, a person described above may cast a vote on this Resolution if the vote is not cast on behalf of a person described in subparagraphs (a) or (b) above and either:

- (a) the person does so as a proxy appointed in writing that specifies how the proxy is to vote on this Resolution; or
  - (b) the person is the Chairperson voting an undirected proxy which expressly authorises the Chairperson to vote the proxy on a resolution connected with the remuneration of a member of the Key Management Personnel.
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### **2. Resolution 2 – Re-election of Mr Robert Behets as a Director**

To consider and, if thought fit, to pass with or without amendment, as an ordinary resolution the following:

*"That, pursuant to and in accordance with Listing Rule 14.4, Articles 6.3(b) and 6.3(c) of the Constitution and for all other purposes, Mr Robert Behets, Director, retires and being eligible, is re-elected as a Director on the terms and conditions in the Explanatory Memorandum."*

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### 3. Resolution 3 – Election of Mr Francisco Bellón as a Director

To consider and, if thought fit, to pass with or without amendment, as an ordinary resolution the following:

*"That, pursuant to and in accordance with Listing Rule 14.4 and Article 6.3(j) of the Constitution and for all other purposes, Mr Francisco Bellón, Director, who was appointed as a casual vacancy on 1 July 2022, retires and being eligible pursuant to Article 6.3(j) of the Constitution, is elected as a Director on the terms and conditions in the Explanatory Memorandum."*

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### 4. Resolution 4 – Adoption of New Constitution

To consider and, if thought fit, to pass with or without amendment, as a special resolution the following:

*"That, pursuant to and in accordance with section 136 of the Corporations Act and for all other purposes, the Company repeal its existing Constitution and adopt the New Constitution tabled at the Meeting with effect from the close of the Meeting, on the terms and conditions in the Explanatory Memorandum."*

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### 5. Resolution 5 – Renewal of Employee Incentive Plan

To consider and, if thought fit, to pass with or without amendment, as an ordinary resolution the following:

*"That, pursuant to and in accordance with Listing Rule 7.2, Exception 13 and for all other purposes, Shareholders approve the renewal of the Employee Incentive Plan and grant of up to 44,579,672 Performance Rights and Options under the Employee Incentive Plan on the terms and conditions in the Explanatory Memorandum."*

#### **Voting Exclusion**

The Company will disregard any votes cast in favour of this Resolution by or on behalf of a person who is eligible to participate in the Employee Incentive Plan or an associate of that person or those persons.

However, this does not apply to a vote cast in favour of this Resolution by:

- (a) a person as proxy or attorney for a person who is entitled to vote on this Resolution, in accordance with the directions given to the proxy or attorney to vote on this Resolution in that way; or
- (b) the Chairperson as proxy or attorney for a person who is entitled to vote on this Resolution, in accordance with a direction given to the Chairperson to vote on this Resolution as the Chairperson decides; or
- (c) a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:
  - (i) the beneficiary provides written confirmation to the Shareholder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting on this Resolution; and
  - (ii) the Shareholder votes on this Resolution in accordance with the directions given by the beneficiary to the Shareholder to vote in that way.

In accordance with section 250BD of the Corporations Act, a vote on this Resolution must not be cast by a person appointed as a proxy, where that person is either a member of the Key Management Personnel or a Closely Related Party of such member.

However, a vote may be cast by such person if the vote is not cast on behalf of a person who is otherwise excluded from voting, and

- (a) the person is appointed as a proxy and the appointment specifies how the proxy is to vote; or
- (b) the person appointed as proxy is the Chairperson and the appointment does not specify how the Chairperson is to vote but expressly authorises the Chairperson to exercise the proxy even if the Resolution is connected with the remuneration of a member of the Key Management Personnel.

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## 6. Resolution 6 – Approval of 10% Placement Facility

To consider and, if thought fit, to pass with or without amendment, as a special resolution, the following:

*"That, pursuant to and in accordance with Listing Rule 7.1A and for all other purposes, Shareholders approve the issue of Equity Securities of up to 10% of the issued capital of the Company (at the time of the issue) calculated in accordance with the formula prescribed in Listing Rule 7.1A.2 and on the terms and conditions in the Explanatory Memorandum."*

### Voting Exclusion

The Company will disregard any votes cast in favour of this Resolution by or on behalf of a person (and/or their nominee(s)) who is expected to participate in the proposed issue or who will obtain a material benefit as a result of the proposed issue (except a benefit solely by reason of being a holder of Shares), or any associates of those persons.

However, this does not apply to a vote cast in favour of this Resolution by:

- (a) a person as proxy or attorney for a person who is entitled to vote on this Resolution, in accordance with the directions given to the proxy or attorney to vote on this Resolution in that way;
- (b) the Chairperson as proxy or attorney for a person who is entitled to vote on this Resolution, in accordance with a direction given to the Chairperson to vote on the Resolution as the Chairperson decides; or
- (c) a Shareholder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:
  - (i) the beneficiary provides written confirmation to the Shareholder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting on this Resolution; and
  - (ii) the Shareholder votes on the Resolution in accordance with the directions given by the beneficiary to the Shareholder to vote in that way.

*Note: As at the date of this Notice, it is not known who may participate in any Equity Securities issued under Resolution 6 and the Company has not approached any Shareholder or identified a class of existing Shareholders to participate in any issue of Equity Securities under the 10% Placement Facility. Accordingly, no Shareholders are excluded from voting on Resolution 6.*

### BY ORDER OF THE BOARD

*[signed electronically without signature]*

Dylan Browne  
**Company Secretary**

Dated: 4 October 2022

## **EXPLANATORY MEMORANDUM**

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### **1. Introduction**

This Explanatory Memorandum has been prepared for the information of Shareholders in connection with the business to be conducted at the Meeting on Tuesday, 15 November 2022 at 10:00am (AWST)

This Explanatory Memorandum should be read in conjunction with, and forms part of, the Notice.

The purpose of this Explanatory Memorandum is to provide information to Shareholders in deciding whether or not to pass the Resolutions.

This Explanatory Memorandum includes the following information to assist Shareholders in deciding how to vote on the Resolutions:

Section 2:	Action to be taken by Shareholders
Section 3:	Annual Report
Section 4:	Resolution 1 – Remuneration Report
Section 5:	Resolution 2 – Re-election of Mr Robert Behets as a Director
Section 6:	Resolution 3 – Election of Mr Francisco Bellón as a Director
Section 7	Resolution 4 – Adoption of New Constitution
Section 8:	Resolution 5 – Renewal of Employee Incentive Plan
Section 9:	Resolution 6 – Approval of 10% Placement Facility
Schedule 1:	Definitions
Schedule 2:	Summary of New Constitution
Schedule 3	Summary of Employee Incentive Plan

A Proxy Form is located at the end of the Explanatory Memorandum.

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### **2. Action to be taken by Shareholders**

Shareholders should read the Notice (including this Explanatory Memorandum) carefully before deciding how to vote on the Resolutions.

#### **2.1 Proxies**

A Proxy Form is attached to the Notice. This is to be used by Shareholders if they wish to appoint a representative (a 'proxy') to vote in their place. All Shareholders are invited and encouraged to attend the Meeting or, if they are unable to attend in person, sign and return the Proxy Form to the Company in accordance with the instructions set out in the Proxy Form. Returning the Proxy Form to the Company will not preclude a Shareholder from attending or (subject to the voting exclusions set out in the Notice) voting at the Meeting in person.

Please note that:

- (a) a Shareholder entitled to attend and vote at the Meeting is entitled to appoint a proxy;
- (b) a proxy need not be a Shareholder; and
- (c) a Shareholder entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise. Where the proportion or number is not specified, each proxy may exercise half of the votes.

Proxy Forms must be received by the Company no later than 10:00am (AWST) on Sunday, 13 November 2022, being at least 48 hours before the Meeting.

The Proxy Form provides further details on appointing proxies and lodging Proxy Forms.

## **2.2 Attendance at the Meeting**

The Company advises Shareholders that the Meeting will be held in compliance with any government restriction on public gatherings.

If it becomes necessary or appropriate to make alternative arrangements to those set out in this Notice, the Company will notify Shareholders accordingly via the Company's website at [www.berkeleyenergia.com](http://www.berkeleyenergia.com) and the ASX announcements platform.

## **2.3 Voting Prohibition by Proxy holders (Remuneration Report)**

In accordance with section 250R of the Corporations Act, a vote on Resolution 1 must not be cast (in any capacity) by, or on behalf of:

- (a) a member of the Key Management Personnel whose remuneration details are included in the Remuneration Report; or
- (b) a Closely Related Party of such member.

However, a person described above may cast a vote on Resolution 1 if the vote is not cast on behalf of a person described in subparagraphs (a) or (b) above and either:

- (a) the person does so as a proxy appointed in writing that specifies how the proxy is to vote on Resolution 1; or
- (b) the person is the Chairperson voting an undirected proxy which expressly authorises the Chairperson to exercise the proxy even if Resolution 1 is connected directly or indirectly with the remuneration of a member of the Key Management Personnel.

A vote on Resolution 1 must not be cast by a person appointed as a proxy, where that person is either a member of the Key Management Personnel or a Closely Related Party of such member.

However, a vote may be cast by such persons if the vote is not cast on behalf of a person who is excluded from voting on Resolution 1, and:

- (a) the person is appointed as a proxy that specifies the way the proxy is to vote on this Resolution 1; or
- (b) the person is the chair and the appointment of the chair as proxy does not specify the way the proxy is to vote on Resolution 1, but expressly authorises the Chairperson to exercise the proxy even if Resolution 1 is connected with the remuneration of a member of the Key Management Personnel.

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## **3. Annual Report**

In accordance with section 317(1) of the Corporations Act, the Annual Report for the financial year ended 30 June 2022 must be laid before the Meeting.

At the Meeting, Shareholders will be offered the opportunity to:

- (a) discuss the Annual Report which is available online at [www.berkeleyenergia.com](http://www.berkeleyenergia.com);
- (b) ask questions about, or comment on, the management of the Company; and
- (c) ask the Auditor questions about the conduct of the audit and the preparation and content of the Auditor's Report.

In addition to taking questions at the Meeting, written questions to the Chairperson about the management of the Company, or to the Auditor about:

- (a) the preparation and contents of the Auditor's Report;
- (b) the conduct of the audit;
- (c) accounting policies adopted by the Company in relation to the preparation of the financial statements; and
- (d) the independence of the Auditor in relation to the conduct of the audit,

may be submitted no later than five business days before the Meeting to the Company Secretary at the Company's registered office.

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## 4. Resolution 1 – Remuneration Report

In accordance with section 250R(2) of the Corporations Act, the Company must put the Remuneration Report to the vote of Shareholders. The Directors' Report contains the Remuneration Report which sets out:

- (a) the Company's remuneration policy; and
- (b) the remuneration arrangements in place for the executive Directors, specified executives and non-executive Directors.

In accordance with section 250R(3) of the Corporations Act, Resolution 1 is advisory only and does not bind the Directors of the Company. If Resolution 1 is not passed, the Directors will not be required to alter any of the arrangements in the Remuneration Report.

Pursuant to the Corporations Act, Shareholders will have the opportunity to remove the whole Board except the Managing Director if the Remuneration Report receives a 'no' vote of 25% or more (**Strike**) at two consecutive AGMs.

If a resolution on the Remuneration Report receives a Strike at two consecutive AGMs, the Company will be required to put to Shareholders at the second AGM, a resolution on whether another meeting should be held (within 90 days) at which all Directors (other than the Managing Director) who were in office at the date of approval of the applicable Directors' Report must stand for re-election.

The Company's Remuneration Report did not receive a Strike at the 2021 annual general meeting. Please note, if the Remuneration Report receives a Strike at this Meeting and if a second Strike is received at the 2023 annual general meeting, this may result in the re-election of the Board.

The Chairperson will allow reasonable opportunity for Shareholders to ask questions about or comment on the Remuneration Report.

Resolution 1 is an ordinary resolution.

The Chairperson intends to exercise all available proxies in favour of Resolution 1.

If the Chairperson is appointed as your proxy and you have not specified the way the Chairperson is to vote on Resolution 1, by signing and returning the Proxy Form, you are considered to have provided the Chairperson with an express authorisation for the Chairperson to vote the proxy in accordance with the Chairperson's intention, even though the Resolution is connected directly or indirectly with the remuneration of a member of the Key Management Personnel.

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## 5. Resolution 2 – Re-election of Mr Robert Behets as Director

### 5.1 General

In accordance with Listing Rule 14.4 and Article 6.3(b) of the Constitution, a Director must not hold office (without re-election) past the third AGM following the Director's appointment or 3 years, whichever is longer.

Article 6.3(c) of the Constitution requires that one third of the Directors must retire at each AGM (rounded down to the nearest whole number), excluding the Managing Director.

Article 6.3(f) of the Constitution states that a Director who retires from office under Article 6.3(b) or Article 6.3(c) of the Constitution is eligible for re-election.

Accordingly, Resolution 2 provides that Mr Behets will retire by rotation at this Meeting and, being eligible, offers himself for re-election.

Details of the qualifications and experience of Mr Behets are in the Annual Report.

Resolution 2 is an ordinary resolution.

The Chairperson intends to exercise all available proxies in favour of Resolution 2.

### 5.2 Board Recommendation

The Board (excluding Mr Behets) unanimously supports the re-election of Mr Behets and recommends that Shareholders vote in favour of Resolution 2.

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## **6. Resolution 3 – Election of Mr Francisco Bellón as Director**

### **6.1 General**

Article 6.2(b) of the Constitution gives the Directors authority to appoint a person to fill a casual vacancy at any time, provided that the number of Directors is not less than 3 (the minimum number of Directors specified in Article 6.1(a) of the Constitution).

Article 6.3(i) of the Constitution states that a Director appointed under Article 6.2(b) may retire at the next general meeting and is eligible for re-election at that meeting.

Article 6.3(j) of the Constitution states that unless a Director appointed under Article 6.2(b) has retired under Article 6.3(i) that Director must retire at the next Annual General Meeting and is eligible for re-election. Accordingly, Mr Francisco Bellón will retire as a Director at the Meeting and being eligible seeks to be elected as a Director.

Details of the qualifications and experience of Mr Bellón are in the Annual Report.

Resolution 3 is an ordinary resolution.

The Chairperson intends to exercise all available proxies in favour of Resolution 3.

### **6.2 Board Recommendation**

The Board (excluding Mr Bellón) unanimously supports the election of Mr Bellón and recommends that Shareholders vote in favour of Resolution 3.

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## **7. Resolution 4 – Adoption of New Constitution**

### **7.1 General**

The Company's existing Constitution was previously reviewed and adopted by the Shareholders at the Company's annual general meeting on 27 November 2014. The Board has conducted a review of the existing Constitution, and in view of changes to the Listing Rules and the Corporations Act, and recent developments in corporate governance and current market practice, has resolved that it would be in the best interests of the Company and the Shareholders to repeal the existing Constitution and replace it with a new constitution (**New Constitution**) as opposed to making multiple amendments to the existing Constitution. The New Constitution does not make any changes to Shareholders' fundamental rights (including voting rights, transmission rights, dividend entitlements).

Resolution 4 seeks Shareholder approval for the adoption of the New Constitution in accordance with section 136 of the Corporations Act.

Resolution 4 is a special resolution and therefore requires approval of 75% of the votes cast by Shareholders present and eligible to vote (in person, by proxy, by attorney or, in the case of a corporate Shareholder, by a corporate representative).

A copy of the New Constitution will be sent to any Shareholder on request and will also be available for inspection at the office of the Company during normal business hours prior to the Meeting and available for inspection at the Meeting.

The New Constitution will be effective from the close of the Meeting.

The Chairperson will cast all undirected proxies in favour of Resolution 4.

### **7.2 Summary of New Constitution**

The key provisions of the New Constitution are summarised in Schedule 2.

### **7.3 Board Recommendation**

The Board unanimously recommends that Shareholders vote in favour of Resolution 4.



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## 8. Resolution 5 – Renewal of Employee Incentive Plan

### 8.1 General

Resolution 5 seeks Shareholder approval, pursuant to Listing Rule 7.2, Exception 13, to renew the Berkeley Energia Limited Employee Incentive Plan approved by the Shareholders on 18 February 2020 (the **Employee Incentive Plan**) and to enable Performance Rights, Options, and Shares upon exercise or conversion of those Performance Rights and Options to continue to be issued under the Employee Incentive Plan to eligible Directors, employees and contractors (**Incentive Securities**) and to be exempted from Listing Rule 7.1 for a period of 3 years from the date on which Resolution 5 is passed.

A summary of the Employee Incentive Plan, to be adopted pursuant to Resolution 5, is set out in Schedule 3.

The Company's existing employee equity incentive plan was last approved by Shareholders on 18 February 2020. The Employee Incentive Plan offered the opportunity for eligible Directors, employees and contractors to subscribe for Performance Rights. Resolution 5 seeks Shareholder approval to renew the Employee Incentive Plan to offer the opportunity for eligible Directors, employees and contractors to subscribe for Options in addition to Performance Rights, in order to increase the range of potential incentives available for eligible Directors, employees and contractors.

The Employee Incentive Plan is intended to assist the Company to attract and retain key staff, whether employees or contractors. The Board believes that grants made to eligible participants under the Employee Incentive Plan will provide a powerful tool to underpin the Company's employment and engagement strategy, and that the Employee Incentive Plan will:

- (a) enable the Company to incentivise and retain existing key management personnel and other eligible employees and contractors needed to achieve the Company's business objectives;
- (b) enable the Company to recruit, incentivise and retain additional key management personnel, and other eligible employees and contractors, needed to achieve the Company's business objectives;
- (c) link the reward of key staff with the achievement of strategic goals and the long-term performance of the Company;
- (d) align the financial interest of participants of the Employee Incentive Plan with those of Shareholders; and
- (e) provide incentives to participants under the Employee Incentive Plan to focus on superior performance that creates Shareholder value.

Resolution 5 is an ordinary resolution.

### 8.2 ASX Listing Rules

Listing Rule 7.1 provides that a company must not (subject to specified exceptions), without the approval of shareholders, issue or agree to issue during any 12 month period any equity securities, or other securities with rights to convert to equity (such as an option or performance right), if the number of those securities exceeds 15% of the number of ordinary securities on issue at the commencement of that 12 month period.

Listing Rule 7.2, Exception 13, operates as one of the exceptions to Listing Rule 7.1. The effect of Shareholder approval under Listing Rule 7.2, Exception 13 is that any issues of securities under the Employee Incentive Plan are treated as having been made with the approval of shareholders for the purposes of Listing Rule 7.1. Approval under Listing Rule 7.2, Exception 13 lasts for a period of three years.

If Resolution 5 is passed, any Incentive Securities issued under the Employee Incentive Plan will be treated as having been made with the approval of shareholders for the purposes of Listing Rule 7.1 for a period of three years after the approval.

If Resolution 5 is not passed, the Employee Incentive Plan will not be renewed and the existing approval of the Employee Incentive Plan will received on 18 February 2020 will expire in 18 February 2023. After this time the Incentive Securities under the Employee Incentive Plan will be included in the Company's 15% placement capacity under Listing Rule 7.1 and the Company's 10% placement capacity under Listing Rule 7.1A, respectively, for the 12 month period following the issue of the Incentive Securities.

### 8.3 Specific Information Required by Listing Rule 7.2

In accordance with the requirements of Listing Rule 7.2, Exception 13(b), the following information is provided:

- (a) a summary of the material terms of the Employee Incentive Plan is set out in Schedule 3;
- (b) a total of 7,400,000 Options have been issued to eligible Directors, employees and contractors since the Company's existing employee equity incentive plan was last approved by Shareholders on 18 February 2020, of which 7,400,000 Options have since vested. 800,000 Options have been exercised (using the Cashless Exercise Facility) and converted into 377,000 Shares. No Options have lapsed and expired or been cancelled. 6,600,000 Options remain on issue. 200,000 Performance Rights issued under the Company's employee equity incentive plan approved in July 2015 expired on 31 December 2021 while 100,000 Performance Rights were cancelled on 2 February 2020. No Performance Rights remain on issue;
- (c) the maximum number of Incentive Securities proposed to be issued under the Employee Incentive Plan following Shareholder approval is 44,579,672 securities being 10% of the Company's issued share capital (although the Company does not intend to use the full capacity); and
- (d) a voting exclusion statement in respect of Resolution 5 has been included in the Notice.

### 8.4 Board Recommendation

The Board unanimously recommends that Shareholders vote in favour of Resolution 5.

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## 9. Resolution 6 – Approval of 10% Placement Facility

### 9.1 General

Broadly speaking, and subject to a number of exceptions, Listing Rule 7.1 limits the amount of Equity Securities that a listed company can issue without the approval of its shareholders over any 12 month period to 15% of the fully paid ordinary securities it had on issue at the start of that period.

Listing Rule 7.1A enables eligible entities to issue Equity Securities up to 10% of its issued share capital through placements over a 12-month period after the annual general meeting (**10% Placement Facility**). The 10% Placement Facility is in addition to the Company's 15% placement capacity under Listing Rule 7.1.

An eligible entity for the purposes of Listing Rule 7.1A is an entity that is not included in the S&P/ASX 300 Index and has a market capitalisation of \$300 million or less. The Company is an eligible entity.

The Company is seeking Shareholder approval by way of a special resolution to have the ability to issue Equity Securities under the 10% Placement Facility. The number of Equity Securities to be issued under the 10% Placement Facility will be determined in accordance with the formula prescribed in Listing Rule 7.1A.

If Resolution 6 is passed, the effect will be that the Company will be able to issue Equity Securities under the 10% Placement Facility in addition to the Company's 15% placement capacity under Listing Rule 7.1.

If Resolution 6 is not passed, the effect will be that the Company will not be able to issue any Equity Securities under the 10% Placement Facility and will have to rely upon its 15% placement capacity under Listing Rule 7.1 for the issue of Equity Securities.

Resolution 6 is a special resolution and therefore requires approval of 75% of the votes cast by Shareholders present and eligible to vote (in person, by proxy, by attorney or, in the case of a corporate Shareholder, by a corporate representative).

The Chairperson intends to exercise all available proxies in favour of Resolution 6.

### 9.2 Listing Rule 7.1A

#### (a) Shareholder approval

The ability to issue Equity Securities under the 10% Placement Facility is subject to Shareholder approval by way of a special resolution at an annual general meeting.

(b) **Equity Securities**

Any Equity Securities issued under the 10% Placement Facility must be in the same class as an existing quoted class of Equity Securities of the Company.

The Company, as at the date of the Notice, has on issue one quoted class of Equity Securities, being Shares.

(c) **Formula for calculating 10% Placement Facility**

Listing Rule 7.1A.2 provides that eligible entities that have obtained Shareholder approval at an annual general meeting may issue or agree to issue, during the 12 month period after the date of the annual general meeting, a number of Equity Securities calculated in accordance with the following formula:

**(A x D) – E**

**A** is the number of Shares on issue 12 months before the date of issue or agreement:

- (i) plus the number of fully paid ordinary securities issued in the 12 months under an exception in Listing Rule 7.2 (other than exception 9, 16 or 17),
- (ii) plus the number of Shares issued in the 12 months on the conversion of convertible securities within rule 7.2 (exception 9) where:
  - (A) the convertible securities were issued or agreed to be issued before the commencement of the 12 months; or
  - (B) the issue of, or agreement to issue, the convertible securities was approved, or taken under the Listing Rules to have been approved, under Listing Rule 7.1 or Listing Rule 7.4,
- (iii) plus the number of Shares issued in the 12 months under an agreement to issue securities within Listing Rule 7.2 (exception 16) where:
  - (A) the agreement was entered into before the commencement of the relevant period; or
  - (B) the agreement or issue was approved or taken under these rules to have been approved under Listing Rule 7.1 or Listing Rule 7.4,
- (iv) plus the number of any other fully paid ordinary securities issued in the 12 months with approval under Listing Rule 7.1 or Listing Rule 7.4 (noting that this may include fully paid ordinary securities issued in the 12 months under an agreement to issue securities within Listing Rule 7.2 (exception 17) where the issue is subsequently approved under Listing Rule 7.1),
- (v) plus the number of partly paid ordinary securities that became fully paid in the 12 months;
- (vi) less the number of fully paid ordinary securities cancelled in the 12 months.

Note that A is has the same meaning in Listing Rule 7.1 when calculating an entity's 15% placement capacity.

**D** is 10%.

**E** is the number of Equity Securities issued or agreed to be issued under Listing Rule 7.1A.2 in the 12 months where the issue or agreement to issue has not been subsequently approved by Shareholders under Listing Rule 7.4.

(d) **Listing Rule 7.1 and Listing Rule 7.1A**

The ability of an entity to issue Equity Securities under Listing Rule 7.1A is in addition to the entity's 15% placement capacity under Listing Rule 7.1.

At the date of the Notice, the Company has on issue 445,796,715 Shares and therefore has a capacity to issue:

- (i) 66,869,507 Equity Securities under Listing Rule 7.1; and
- (ii) subject to Shareholder approval being sought under Resolution 6, 44,579,672 Equity Securities under Listing Rule 7.1A.

The actual number of Equity Securities that the Company will have capacity to issue under Listing Rule 7.1A will be calculated at the date of issue of the Equity Securities in accordance with the formula prescribed in Listing Rule 7.1A.2 (refer to Section 9.2(c)).

(e) **Minimum Issue Price**

The issue price of Equity Securities issued under Listing Rule 7.1A must be not less than 75% of the VWAP of Equity Securities in the same class calculated over the 15 Trading Days on which trades in that class were recorded immediately before:

- (i) the date on which the price at which the Equity Securities are to be issued is agreed by the Company and the recipient of the Equity Securities; or
- (ii) if the Equity Securities are not issued within 10 Trading Days of the date in paragraph (i) above, the date on which the Equity Securities are issued.

(f) **10% Placement Period**

Shareholder approval of the 10% Placement Facility under Listing Rule 7.1A is valid from the date of the annual general meeting at which the approval is obtained and expires on the first to occur of the following:

- (i) The date that is 12 months after the date of the annual general meeting at which the approval is obtained.
- (ii) The time and date of the entity's next annual general meeting.
- (iii) The time and date of Shareholder approval of a transaction under Listing Rules 11.1.2 (a significant change to the nature or scale of activities) or 11.2 (disposal of main undertaking),

**(the 10% Placement Period).**

**9.3 Effect of Resolution**

The effect of Resolution 6 will be to allow the Directors to issue the Equity Securities under Listing Rule 7.1A during the 10% Placement Period without using the Company's 15% placement capacity under Listing Rule 7.1.

**9.4 Specific information required by Listing Rule 7.3A**

In accordance with Listing Rule 7.3A, information is provided as follows:

- (a) Shareholder approval will be valid during the 10% Placement Period as detailed in Section 9.2(f).
- (b) The Equity Securities will be issued at an issue price of not less than 75% of the VWAP for the Company's Equity Securities over the 15 Trading Days on which trades in that class were recorded immediately before:
  - (i) the date on which the price at which the Equity Securities are to be issued is agreed by the Company and the recipient of the Equity Securities; or
  - (ii) if the Equity Securities are not issued within 10 Trading Days of the date in paragraph (i) above, the date on which the Equity Securities are issued.
- (c) If Resolution 6 is approved by Shareholders and the Company issues Equity Securities under the 10% Placement Facility, the existing Shareholders' voting power in the Company will be diluted as shown in the below table. There is a risk that:
  - (i) the market price for the Company's Equity Securities may be significantly lower on the date of the issue of the Equity Securities than on the date of the Meeting; and
  - (ii) the Equity Securities may be issued at a price that is at a discount to the market price for the Company's Equity Securities on the issue date,

which may have an effect on the amount of funds raised by the issue of the Equity Securities.

- (d) The below table shows the dilution of existing Shareholders on the basis of the current market price of Shares and the current number of ordinary securities for variable 'A' calculated in accordance with the formula in Listing Rule 7.1A(2) as at the date of the Notice.
- (e) The table also shows:

- (i) two examples where variable 'A' has increased, by 50% and 100%. Variable 'A' is based on the number of ordinary securities the Company has on issue. The number of ordinary securities on issue may increase as a result of issues of ordinary securities that do not require Shareholder approval (for example, a pro rata entitlements issue or scrip issued under a takeover offer) or future specific placements under Listing Rule 7.1 that are approved at a future Shareholders' meeting; and
- (ii) two examples of where the issue price of ordinary securities has decreased by 50% and increased by 100% as against the current market price.

Variable 'A' in Listing Rule 7.1A.2		Dilution		
		\$0.16 50% decrease in Issue Price	\$0.32 Issue Price	\$0.64 100% increase in Issue Price
<b>Current Variable A 445,796,715 Shares</b>	<b>10% Voting Dilution</b>	44,579,672 Shares	44,579,672 Shares	44,579,672 Shares
	<b>Funds raised (\$)</b>	7,132,747	14,265,495	28,530,990
<b>50% increase in current Variable A 668,695,073 Shares</b>	<b>10% Voting Dilution</b>	66,869,507 Shares	66,869,507 Shares	66,869,507 Shares
	<b>Funds raised (\$)</b>	10,699,121	21,398,242	42,796,485
<b>100% increase in current Variable A 891,593,430 Shares</b>	<b>10% Voting Dilution</b>	89,159,343 Shares	89,159,343 Shares	89,159,343 Shares
	<b>Funds raised (\$)</b>	14,265,495	28,530,990	57,061,980

The table has been prepared on the following assumptions:

- (i) The Company issues the maximum number of Equity Securities available under the 10% Placement Facility.
- (ii) No Options are exercised or converted into Shares before the date of the issue of the Equity Securities.
- (iii) The 10% voting dilution reflects the aggregate percentage dilution against the issued share capital at the time of issue. This is why the voting dilution is shown in each example as 10%.
- (iv) The table does not show an example of dilution that may be caused to a particular Shareholder by reason of placements under the 10% Placement Facility, based on that Shareholder's holding at the date of the Meeting.
- (v) The table shows only the effect of issues of Equity Securities under Listing Rule 7.1A, not under the 15% placement capacity under Listing Rule 7.1.
- (vi) The issue of Equity Securities under the 10% Placement Facility consists only of Shares.
- (vii) The issue price is \$0.32, being the closing price of the Shares on ASX on 20 September 2022. The Company will only issue the Equity Securities during the 10% Placement Period.
- (f) The Company may seek to issue the Equity Securities for cash consideration for continued exploration and development of the Salamanca project and general working capital.
- (g) The Company will only issue the Listing Rule 7.1A Shares during the 10% Placement Period. The approval under Resolution 6 will cease to be valid in the event that Shareholders approve a transaction under Listing Rule 11.1.2 (a significant change to the nature of scale of activities) or Listing Rule 11.2 (disposal of main undertaking).
- (h) The Company will comply with the disclosure obligations under Listing Rules 7.1A(4) and 3.10.3 upon issue of any Equity Securities.
- (i) The Company's allocation policy is dependent on the prevailing market conditions at the time of any proposed issue pursuant to the 10% Placement Facility. The identity of the subscribers of Equity Securities will be determined on a case-by-case basis having regard to the factors including but not limited to the following:
  - (i) the methods of raising funds that are available to the Company, including but not limited to, rights issue or other issue in which existing security holders can participate;
  - (ii) the effect of the issue of the Equity Securities on the control of the Company;

- (iii) the financial situation and solvency of the Company; and
- (iv) advice from corporate, financial and broking advisers (if applicable).
- (j) The subscribers under the 10% Placement Facility have not been determined as at the date of the Notice but may include existing substantial Shareholders and/or new Shareholders who are not a related party or an associate of a related party of the Company and are likely to be sophisticated and professional investors.
- (k) In the 12 months preceding the date of the Meeting, the Company has not issued any Equity Securities pursuant to Listing Rule 7.1A.2.
- (l) A voting exclusion statement is included in the Notice for Resolution 6. However as at the date of this Notice, the Company has not invited any existing Shareholder to participate in an issue of Equity Securities under ASX Listing Rule 7.1A. Therefore, no existing Shareholders will be excluded from voting on this Resolution.

## **9.5 Board Recommendation**

The Board unanimously recommends that Shareholders vote in favour of Resolution 6.

## Schedule 1 – Definitions

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In the Notice and this Explanatory Memorandum, words importing the singular include the plural and vice versa.

**\$ or \$A** means Australian Dollars.

**10% Placement Facility** has the meaning given in Section 9.1.

**10% Placement Period** has the meaning given in Section 9.2.

**Article** means an article of the Constitution.

**AGM** means an annual general meeting of the Shareholders.

**Annual Report** means the Directors' Report, the Financial Report, and Auditor's Report, in respect to the year ended 30 June 2022.

**ASX** means the ASX Limited ABN 98 008 624 691 and where the context permits the Australian Securities Exchange operated by ASX Limited.

**Auditor** means the Company's auditor from time to time (being Ernst & Young as at the date of the Notice).

**Auditor's Report** means the Auditor's report on the Financial Report.

**AWST** means Australian Western Standard Time, being the time in Perth, Western Australia.

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

**Chairperson** means the person appointed to chair the Meeting convened by the Notice.

**Closely Related Party** means in relation to a member of a Key Management Personnel:

- (a) a spouse or child of the member; or
- (b) has the meaning given in section 9 of the Corporations Act.

**Company** means Berkeley Energia Limited ACN 052 468 569.

**Constitution** means the constitution of the Company as at the commencement of the Meeting.

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

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

**Directors' Report** means the annual directors' report prepared under chapter 2M of the Corporations Act for the Company and its controlled entities.

**Employee Incentive Plan** means the Company's employee incentive plan last approved by Shareholders on 18 February 2020.

**Equity Security** has the meaning given in the Listing Rules.

**Explanatory Memorandum** means this explanatory memorandum which forms part of the Notice.

**Financial Report** means the annual financial report prepared under chapter 2M of the Corporations Act for the Company and its controlled entities.

**Key Management Personnel** means persons having authority and responsibility for planning, directing and controlling the activities of the Company, directly or indirectly, including any Director (whether executive or otherwise) of the Company.

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

**Managing Director** means the Managing Director.

**Meeting** has the meaning given to that term in the introductory paragraph of the Notice.

**New Constitution** has the meaning given in section 7.1

**Notice** means the notice of the Meeting and includes the agenda, Explanatory Memorandum and the Proxy Form.

**Option** means an option which entitles the holder to subscribe for one Share.

**Performance Right** means a right to subscribe for or otherwise acquire a Share subject to the achievement of certain milestones.

**Proxy Form** means the proxy form attached to the Notice.

**Related Body Corporate** means a related body corporate within the meaning given in section 9 of the Corporations Act and includes and associated entities.

**Remuneration Report** means the remuneration report of the Company contained in the Directors' Report.

**Resolution** means a resolution proposed pursuant to the Notice.

**Schedule** means a schedule to this Explanatory Memorandum.

**Section** means a section of this Explanatory Memorandum.

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

**Shareholder** means a registered holder of a Share.

**Strike** means a 'no' vote of 25% or more on the resolution approving the Remuneration Report.

**Trading Day** means a day determined by ASX to be a trading day in accordance with the Listing Rules.

**VWAP** means volume weighted average price.

## Schedule 2 – Summary of New Constitution

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### 1. Shares

The issue of Shares by the Company is under the control of the Directors, subject to the Corporations Act, Listing Rules and any rights attached to any special class of Shares.

### 2. Preference Shares

The Corporations Act requires certain rights of preference shares to be either set out in the constitution or approved in general meeting by special resolution before preference shares are issued.

The New Constitution sets out a framework of rights for preference share issues from which the Board can determine to issue preference shares, without the need to obtain further Shareholder approval every time an allotment of preference shares is proposed. Schedule 6 to the New Constitution contains the framework as well as specific rights of preference shares as to the repayment of capital, requirements for redemption (if the preference shares are redeemable), participation in surplus assets and profits, voting rights and priority of payment of capital and dividends. Other specific terms, including the dividend amount, the redemption date (if applicable) and redemption amount (if applicable), would be set by the issuing resolution of the Directors.

### 3. Reductions of Capital

The New Constitution is consistent with the Corporations Act requirements which must be satisfied by the Company in undertaking an alteration of capital.

### 4. Liens

If the Company issues partly paid Shares and a call made on those shares is unpaid, the Company will have a lien over the shares on which the call is unpaid. The lien may be enforced by a sale of those shares. The powers of the Company in relation to calls, company payments, forfeiture and liens are set out in schedule 2 to the New Constitution.

### 5. Transfer of Shares

The Company may participate in any clearing and settlement facility provided under the Corporations Act, the Listing Rules and the ASX Settlement Corporation Pty Ltd (**ASC**) Operating Rules. Transfers through ASC are effected electronically in ASC's Clearing House Electronic Sub register System (**CHESS**). For the purposes of the Company's participation in the CHESS, the Company may issue holding statements in lieu of share certificates. The Company will not charge any fee for registering a transfer of shares. The Directors may refuse to register a transfer of shares in the circumstances permitted or required under the Corporations Act and Listing Rules.

### 6. Proportional Takeovers

A proportional takeover bid is one in which the offer or offers only to buy a specified proportion of each Shareholders' shares.

The New Constitution provides for Shareholder approval of any proportional takeover bid for the shares. Subject to the Listing Rules and ASC Operating Rules, the provisions require the Directors to refuse to register any transfer of shares made in acceptance of a proportional takeover offer until the requisite Shareholder approval has been obtained.

A proportional takeover bid may result in control of the Company changing without Shareholders having the opportunity to dispose of all their Shares. By making a partial bid, a bidder can obtain practical control of the Company by acquiring less than a majority interest. Shareholders are exposed to the risk of being left as a minority in the Company and the risk of the bidder being able to acquire control of the Company without payment of an adequate control premium. The proportional takeover provisions allow Shareholders to decide whether a proportional takeover bid is acceptable in principle, and assist in ensuring that any partial bid is appropriately priced.

At the date of this Notice, no Director is aware of any proposal by any person to acquire, or to increase the extent of, a substantial interest in the Company.

The perceived advantages of including proportional takeover provisions in a constitution are that such provisions may:

- (i) enhance the bargaining power of Directors in connection with any potential sale of the Company;
- (ii) improve corporate management by eliminating the possible threat of a hostile takeover through longer term planning;
- (iii) make it easier for Directors to discharge their fiduciary and statutory duties to the Company and its Shareholders to advise and guide in the event of a proportional bid occurring; and
- (iv) strengthen the position of Shareholders of the Company in the event of a takeover, assuming the takeover will result in a sharing of wealth between the offeror and Shareholders, as the more cohesive Shareholders are in determining their response the stronger they are. A requirement for approval can force Shareholders to act in a more cohesive manner. Where Shareholders know that a bid will only



be successful if a specified majority of Shareholders accept the offer, they have less to fear by not tendering to any offer which they think is too low.

The perceived disadvantages of including proportional takeover provisions in a constitution include the following:

- (v) a vote on approval of a specific bid suffers from a bias in favour of the incumbent Board;
- (vi) the provisions are inconsistent with the principle that a share in a public company should be transferable without the consent of other Shareholders; and
- (vii) a Shareholder may lack a sufficient financial interest in any particular company to have an incentive to determine whether the proposal is appropriate.

To comply with the Corporations Act, the proportional takeover provisions must be renewed by Shareholders in general meeting at least every 3 years to remain in place.

While the proportional takeover provisions were in effect under the existing Constitution, there were no proportional takeover bids for the Company. Therefore, there has been no example against which to review the advantages or disadvantages of the provisions for the Directors and the Shareholders, respectively, during this period.

The proportional takeover provisions are contained in schedule 5 to the New Constitution.

## **7. Alterations of share capital**

Shares may be converted or cancelled with Shareholder approval and the Company's share capital may be reduced in accordance with the requirements of the Corporations Act and the Listing Rules.

If a reduction of capital occurs by way of a distribution of shares or other securities in another body corporate, Shareholders (i) are deemed to have agreed to be members of and bound by the constitution of that body corporate, (ii) appoint the Company and its directors to execute any transfers to give effect to the distribution of shares or other securities and (iii) any binding instructions or notification given to the Company are deemed to be binding instructions or notifications to the other body corporate. The Company also has the discretion to not distribute the shares or other securities in the other body corporate and instead make a cash payment if the distribution would be illegal, give rise to unmarketable parcels or be unreasonable having regard to the number, value and/or the legal requirements of distributions to Shareholders in particular overseas jurisdictions.

## **8. Buy Backs**

The Company may buy back shares in itself on terms and at such times determined by the Directors.

## **9. Disposal of less than a Marketable Parcel**

For the sake of avoiding excessive administration costs, the New Constitution contains provisions enabling the Company to procure the disposal of Shares where the Shareholder holds less than a marketable parcel of shares within the meaning of the Listing Rules (being a parcel of shares with a market value of less than \$500). To invoke this procedure, the Directors must first give notice to the relevant Shareholder holding less than a marketable parcel of shares, who may then elect not to have his or her shares sold by notifying the Directors.

The provisions relating to unmarketable parcel are contained in schedule 4 to the New Constitution.

## **10. Variation of class rights**

Class rights attaching to a particular class of shares may be varied or cancelled with the consent in writing of holders of 75% of the shares in that class or by a special resolution of the holders of shares in that class.

## **11. Meetings of Shareholders**

The Directors may call a meeting of Shareholders whenever they think fit. Shareholders may call a meeting as provided by the Corporations Act. The New Constitution contains provisions prescribing the content requirements of notices of meetings of Shareholders and all Shareholders are entitled to a notice of meeting. Consistent with the Corporations Act, a meeting may be held in two or more places linked together by audio-visual communication devices. A quorum for a meeting of Shareholders is 2 eligible voters.

The Company will hold annual general meetings in accordance with the Corporations Act and the Listing Rules.

## **12. Virtual Meetings**

A meeting of Shareholders may be held virtually using any technology that gives Shareholders as a whole a reasonable opportunity to participate in the meeting.

## **13. Voting of Shareholders**

Resolutions of Shareholders will be decided by a show of hands unless a poll is demanded. On a show of hands each eligible voter present has one vote. On a poll each eligible Shareholder has one vote for each fully paid share held and a fraction of a vote for each partly paid share determined by the amount paid up on that share.

## **14. Direct Voting**

The Directors may determine that Shareholders may cast votes to which they are entitled on any or all of the resolutions (including any special resolution) proposed to be considered at, and specified in the notice convening, a meeting of Shareholders, by direct vote. Direct voting is a mechanism by which Shareholders can vote directly

on resolutions which are to be determined by poll. Votes cast by direct vote by a Shareholder are taken to have been cast on the poll as if the Shareholder had cast the votes on the poll at the meeting. In order for direct voting to be available, directors must elect that votes can be cast via direct vote for all or any resolutions and determine the manner appropriate for the casting of direct votes. If such a determination is made by the directors, the notice of meeting will include information on the application of direct voting.

**15. Proxies**

An eligible Shareholder may appoint a proxy to attend and vote at the meeting on the Shareholder's behalf. The New Constitution contains provisions specifying the manner of lodgement of proxy instruments. A Shareholder may appoint an individual or corporation to act as its representative.

**16. Directors**

Unless changed by the Company in general meeting, the minimum number of directors is 3 and no maximum number is specified. The Directors and the Company may at any time appoint any person as a Director. Any such Director must retire at the next following annual general meeting of the Company (at which meeting he or she may be eligible for re-election as director). No Director other than the Managing Director may hold office for longer than 3 years without submitting himself or herself for re-election.

**17. Powers of Directors**

The business of the Company is to be managed by or under the direction of the Directors.

**18. Remuneration of Directors**

The Company may pay non-executive Directors a maximum of the total amount as determined by the Shareholders in General Meeting and such sum must not be paid by way of commission on, or percentage of, profits or operating revenue.

The remuneration of executive Directors will be subject to the provisions of any contract between each of them and the Company and may be by way of commission on, or percentage of, profits of the Company, but will not be by way of commission on, or percentage of, operating revenue.

**19. Execution of documents**

In accordance with the Corporations Act, the Constitution provides for execution of documents by the Company without the use of the Company's company seal.

**20. Notice to Shareholders**

The Constitution provides that notices provided to Shareholders can be provided in person, by post, fax, email, electronic means, by posting a notice identifying where a notice is available or any other means permitted by the Corporations Act.

**21. Dividends**

The Directors may fix the amount, the time for payment and the method of payment of a dividend. Subject to any special rights attaching to shares (such as preference shares), dividends will be paid proportionately.

The Company is not required to pay any interest on dividends.

**22. Indemnities and insurance**

To the extent permitted by law, the Company indemnifies every person who is or has been a Director or Secretary of the Company against a liability incurred by that person in his or her capacity as a Director or secretary. A similar indemnity is provided in respect of legal proceedings. The Company may also pay the premiums on directors' and officers' liability insurance.

**23. Restricted Securities**

The Company's constitution complies with Listing Rule 15.12. Certain more significant holders of restricted securities and their controllers (such as related parties, promoters, substantial holders, service providers and their associates) are required to execute a formal escrow agreement in the form Appendix 9A. Those with less significant holdings (such as non-related parties and non-promoters), the Company will issue restriction notices to holders of restricted securities in the form Appendix 9C advising them of the restriction rather than requiring signed restriction agreements.

## Schedule 3 – Summary of Employee Incentive Plan

The terms of the Employee Incentive Plan are summarised below. A copy of the Employee Incentive Plan can be obtained by contacting the Company. Terms not defined in the Notice have the meaning given in the Employee Incentive Plan.

**Eligible Employees:** The eligible participants under the Employee Incentive Plan are Directors (excluding non-executive Directors) and Employees who are declared by the Board in its sole and absolute discretion to be eligible to receive grants of Options or Performance Rights under the Employee Incentive Plan; or any other person who is declared by the Board in its sole and absolute discretion to be eligible to receive grants of Options or Performance Rights under the Employee Incentive Plan. For the purposes of the Employee Incentive Plan, "Employee" means an employee or other consultant or contractor of the Company, or any member of the Group.

In accordance with the Listing Rules, prior Shareholder approval will be required before any Director or related party of the Company can participate in the Employee Incentive Plan and be granted Shares, Options or Performance Rights.

**Limits on Entitlement:** An Offer of Options or Performance Rights may only be made under the Employee Incentive Plan if the number of Shares that may be acquired on exercise of the Options Performance Rights when aggregated with the number of Shares issuable if each outstanding Option and Performance Rights were exercised and the number of Shares issued pursuant to the Employee Incentive Plan or any other Group employee incentive scheme during the previous 3 years does not exceed 10% of the total number of Shares on issue at the time of the proposed issue.

The maximum allocation and allocated pool may be increased by Board resolution, provided such an increase complies with the Listing Rules.

**Individual Limits:** The Employee Incentive Plan does not set out a maximum number of Shares that may be made issuable to any one person or company.

**Offer and Conditions:** An Offer must be set out in an Offer Letter delivered to an Eligible Employee. The Offer Letter may specify (as determined by the Board):

- (a) the number of Options or Performance Rights;
- (b) the conditions on the Offer (**Offer Conditions**);
- (c) the Grant Date;
- (d) the Fee (if any);
- (e) the Performance Criteria (if any);
- (f) the Vesting Conditions (if any);
- (g) the Exercise Price (if any);
- (h) the Exercise Period (if applicable);
- (i) the Performance Period (if applicable); and
- (j) the Expiry Date and Term (if applicable).

**Consideration Payable:** Options and Performance Rights will be issued for nil consideration.

**Cashless Exercise:** Under the Employee Incentive Plan, a Participant may elect to pay the exercise price for each Option by setting off the total exercise price against the number of Shares which they are entitled to receive upon exercise (**Cashless Exercise Facility**). By using the Cashless Exercise Facility, the holder will receive Shares to the value of the surplus after the exercise price has been set off.

**Lapse of Options and Performance Rights:** Subject to the Board's discretion, Options and Performance Rights shall automatically be cancelled for no consideration where:

- (a) the Participant ceases to hold employment or office with the Company or Group member (except where the Participant is a Good Leaver);
- (b) the Participant is determined to have engaged in Fraudulent or Dishonest Conduct (described below);
- (c) the applicable Performance Criteria and/or Vesting Conditions are not achieved by the relevant time;
- (d) the Board determines, in its reasonable opinion, that the applicable Performance Criteria and/or Vesting Conditions have not been met or cannot be met within the relevant time;
- (e) the Expiry Date has passed;
- (f) the Board determines that the Participant has brought the Group into disrepute or acted contrary to the interest of the Company or Group;
- (g) the Participant has elected to surrender the Performance Rights or Options; and
- (h) the Offer Letter provides for the cancellation of the Performance Rights or Options in any other circumstances.

**Good Leaver:** A Good Leaver is a Participant who ceases employment or office with the Company or a Group Member and is determined by the Board to be a Good Leaver. Where a Participant who holds Employee Incentives becomes a Good Leaver:

- (a) all vested Options which have not been exercised will continue in force and remain exercisable for 90 days after the date the Participant becomes a Good Leaver, unless the Board determines otherwise in its sole and absolute discretion, after which the Employee Incentives will lapse; and
- (b) the Board may in its discretion permit unvested Employee Incentive held by the Good Leaver to vest, amend the vesting criteria applicable to the Employee Incentives (including Performance Criteria and/or Vesting Conditions or determine that the unvested Employee Incentives lapse.

**Bad Leaver:** Where a Participant who holds Employee Incentives becomes a Bad Leaver all vested and unvested Employee Incentives will lapse. Where a Participant who holds Employee Incentives becomes a Bad Leaver the Board may determine to exercise the right to buy back any Shares issued upon exercise of an Option or conversion of a Performance Rights.

A Bad Leaver is a Participant who, unless the Board determines otherwise, ceases employment or office with the Company or a Group member (which includes for any of the circumstances amount to Fraudulent or Dishonest Conduct (described below)).

**Fraudulent or Dishonest Conduct:** Where, in the opinion of the Board, a Participant or former Participant (which may include a Good Leaver) has engaged in Fraudulent or Dishonest Conduct the Board may deem all Employee Incentives held by the Participant or former Participant to be automatically be forfeited. Fraudulent or Dishonest Conduct means a Participant or former Participant:

- (a) acts fraudulently or dishonestly;
- (b) wilfully breaches his or her duties to the Company or any member of the Group; or
- (c) has, by any act or omission, in the opinion of the Board (determined in its absolute discretion):
  - (i) brought the Company, the Group, its business or reputation into disrepute; or
  - (ii) is contrary to the interest of the Company or the Group.
- (d) commits any material breach of the provisions of any employment contract entered into by the Participant with any member of the Group;
- (e) commits any material breach of any of the policies of the Group or procedures or any laws, rules or regulations applicable to the Company or Group;
- (f) is subject to allegations, has been accused of, charged with or convicted of fraudulent or dishonest conduct in the performance of the Participant's (or former Participant's) duties, which in the reasonable opinion of the relevant directors of the Group effects the Participant's suitability for employment with that member of the Group, or brings the Participant or the relevant member of the Group into disrepute or is contrary to the interests of the Company or the Group;
- (g) is subject to allegations, has been accused of, charged with or convicted of any criminal offence which involves fraud or dishonesty or any other criminal offence which Board determines (in its absolute discretion) is of a serious nature;
- (h) has committed any wrongful or negligent act or omission which has caused any member of the Group substantial liability;
- (i) has become disqualified from managing corporations in accordance with Part 2D.6 of the Corporations Act or has committed any act that, pursuant to the Corporations Act, may result in the Participant being banned from managing a corporation; or
- (j) has committed serious or gross misconduct, wilful disobedience or any other conduct justifying termination of employment without notice.
- (k) has wilfully or negligently failed to perform their duties under any employment contract entered into by the Participant with any member of the Group;
- (l) has engaged in a transaction which involves a conflict of interest to their employment with the Company resulting in the Participant or former Participant obtaining a personal benefit;
- (m) accepts a position to work with a competitor of the Company or Group;
- (n) acting in such a manner that could be seen as being inconsistent with the culture and values of the Company or the Group; or
- (o) any other act that the Board determines in its absolute discretion to constitute fraudulent or dishonest by the Participant or former Participant.

**Change of Control:** All granted Performance Rights which have not yet vested or lapsed shall automatically and immediately vest (regardless of whether any Performance Criteria or Vesting Conditions have been satisfied) and a Participant may exercise any or all of their Options (regardless of whether the Vesting Conditions have been satisfied) provided that no Option will be capable of exercise later than the Expiry Date, if any of the following change of control events occur:

- (a) the Company announces that its Shareholders have at a Court convened meeting of Shareholders voted in favour, by the necessary majority, of a proposed scheme of arrangement (excluding a merger by way of scheme of arrangement for the purposes of a corporate restructure (including change of domicile, or any reconstruction, consolidation, sub-division, reduction or return) of the issued capital of the Company) and the Court, by order, approves the scheme of arrangement;
- (b) a Takeover Bid:
  - (i) is announced;
  - (ii) has become unconditional; and
  - (iii) the person making the Takeover Bid has a Relevant Interest in 50% or more of the issued Shares;
- (c) any person acquires a Relevant Interest in 50.1% or more of the issued Shares by any other means; or
- (d) the Company announces that a sale or transfer (in one transaction or a series of transaction) of the whole (or substantially the whole) of the undertaking and business of the Company has been completed.

**Holding Lock:** The Board may at any time request that the Company's share registry to impose a holding lock on any Employee Incentives issued pursuant to the Employee Incentive Plan where the Board determines or reasonably believes (in its absolute discretion) that a Participant (or a Former Participant) has or may breach these Rules.

**Contravention of Rules:** The Board may at any time, in its sole and absolute discretion, take any action it deems reasonably necessary in relation to any Employee Incentives if it determines or reasonably believes a Participant has breached the Employee Incentive Plan or the terms of issue of any Employee Incentives, including but not limited to, signing transfer forms in relation to Employee Incentives, placing a holding lock on Employee Incentives, signing any and all documents and doing all acts necessary to effect a Buy-Back, accounting for the proceeds of the sale of forfeited Employee Incentives, refusing to transfer any Employee Incentives and/or refusing to issue any Shares.

# BERKELEY ENERGIA LIMITED

ACN 052 468 569

## PROXY FORM

The Company Secretary  
Berkeley Energia Limited

### By delivery:

Level 9, 28 The Esplanade  
PERTH WA 6000

### By post:

PO Box Z5083  
PERTH WA 6831

### By email:

voting@berkeleyenergia.com

### By facsimile:

+61 8 9322 6558

Name of Shareholder:

Address of Shareholder:

Number of Shares entitled to vote:

Please mark ☒ to indicate your directions. Proxy appointments will only be valid and accepted by the Company if they are made and received no later than 48 hours before the meeting. Further instructions are provided overleaf.

### Step 1 – Appoint a Proxy to Vote on Your Behalf

I/we being Shareholder/s of the Company hereby appoint:

**The Chairperson**  
(mark box)

☐

**OR** if you are **NOT** appointing the Chairperson as your proxy, please write the name of the person or body corporate (excluding the registered shareholder) you are appointing as your proxy

or failing the individual or body corporate named, or if no individual or body corporate is named, the Chairperson, as my/our proxy to act generally on my/our behalf and to vote in accordance with the following directions (or if no directions have been given, and to the extent permitted by law, as the proxy sees fit) at the Annual General Meeting of Berkeley Energia Limited to be held at the Conference Room, Ground Floor, 28 The Esplanade, Perth, Western Australia on Tuesday, 15 November 2022 at 10:00am (AWST) and at any adjournment or postponement of such meeting. If 2 proxies are appointed, the proportion or number of votes that this proxy is authorised to exercise is [ ]% of the Shareholder's votes / [ ] of the Shareholder's votes. (An additional Proxy Form will be supplied by the Company, on request).

**Important – Chairperson authorised to exercise undirected proxies on remuneration related resolutions:** Where I/we have appointed the Chairperson of the Meeting as my/our proxy (or the Chairperson becomes my/our proxy by default), I/we expressly authorise the Chairperson to exercise my/our proxy on Resolution 1 (except where I/we have indicated a different voting intention below) even though Resolution 1 is connected directly or indirectly with the remuneration of a member of key management personnel, which includes the Chairperson. If the Chairperson of the Meeting is (or becomes) your proxy you can direct the Chairperson to vote for or against or abstain from voting on Resolution 1 by marking the appropriate box in step 2 below.

### Step 2 – Instructions as to Voting on Resolutions

The proxy is to vote for or against the Resolutions referred to in the Notice as follows:

		For	Against	Abstain*
Resolution 1	Remuneration Report			
Resolution 2	Re-election of Mr Robert Behets as a Director			
Resolution 3	Election of Mr Francisco Bellón as a Director			
Resolution 4	Adoption of New Constitution			
Resolution 5	Renewal of Employee Incentive Plan			
Resolution 6	Approval of 10% Placement Facility			

\*If you mark the Abstain box for a particular Resolution, you are directing your proxy not to vote on your behalf and your votes will not be counted in computing the required majority on the poll.

**The Chairperson of the Meeting intends to vote all available and undirected proxies in favour of each Resolution.**

### Step 3 – Authorised signature/s

This section **must** be signed in accordance with the instructions below to enable your voting instructions to be implemented.

Individual or Shareholder 1

Sole Director and Sole Company Secretary

Shareholder 2

Director

Shareholder 3

Director/Company Secretary

Contact Name

Contact Daytime Telephone

Date

**Proxy Notes:**

A Shareholder entitled to attend and vote at the Meeting may appoint a natural person as the Shareholder's proxy to attend and vote for the Shareholder at that Meeting. If the Shareholder is entitled to cast 2 or more votes at the Meeting the Shareholder may appoint not more than 2 proxies. Where the Shareholder appoints more than one proxy the Shareholder may specify the proportion or number of votes each proxy is appointed to exercise. If such proportion or number of votes is not specified each proxy may exercise half of the Shareholder's votes. A proxy may, but need not be, a Shareholder of the Company.

If a Shareholder appoints a body corporate as the Shareholder's proxy to attend and vote for the Shareholder at that Meeting, the representative of the body corporate to attend the Meeting must produce the Certificate of Appointment of Representative prior to admission. A form of the certificate may be obtained from the Company's share registry.

You must sign this form as follows in the spaces provided:

Joint Holding: where the holding is in more than one name all of the holders must sign.

Power of Attorney: if signed under a Power of Attorney, you must have already lodged it with the registry, or alternatively, attach a certified photocopy of the Power of Attorney to this Proxy Form when you return it.

Companies: a Director can sign jointly with another Director or a Company Secretary. A sole Director who is also a sole Company Secretary can also sign. Please indicate the office held by signing in the appropriate space.

If a representative of the corporation is to attend the Meeting the appropriate "Certificate of Appointment of Representative" should be produced prior to admission. A form of the certificate may be obtained from the Company's Share Registry.

Proxy Forms (and the power of attorney or other authority, if any, under which the Proxy Form is signed) or a copy or facsimile which appears on its face to be an authentic copy of the Proxy Form (and the power of attorney or other authority) must be deposited at or received by electronic email or by facsimile transmission at the Perth office of the Company (Level 9, 28 The Esplanade, Perth, WA, 6000, or by post to PO Box Z5083, Perth, WA, 6831 or by email at [voting@berkeleyenergia.com](mailto:voting@berkeleyenergia.com) or by facsimile (08) 9322 6558 if faxed from within Australia or +618 9322 6558 if faxed from outside Australia) not less than 48 hours prior to the time of commencement of the Meeting (WST).