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## LETTER TO SHAREHOLDERS REGARDING ANNUAL GENERAL MEETING

Dear Shareholder

ENRG Elements Limited (**Company**) will be holding its annual general meeting of shareholders at 10:00am (WST) on 18 November 2022 (**Meeting**) at Quest West Perth, 54 Kings Park Road, West Perth WA 6005.

In accordance with section 110D(1) of the Corporations Act 2001 (Cth), the Company will not be sending hard copies of the Notice of Meeting to shareholders, unless the shareholder has made a valid election to receive such documents in hard copy. The Notice of Meeting can be viewed and downloaded from the website link:

<https://enrg-elements.com.au/investor-centre/#asx-announcement>

If you have nominated an email address and have elected to receive electronic communications from the Company, you will also receive an email to your nominated email address with a link to an electronic copy of the Notice of Meeting.

A copy of your personalised proxy form is enclosed for your convenience. Please complete and return the attached proxy form to the Company's share registry, Automic Group Pty Ltd by:

post to:       Automic  
                  GPO Box 5193  
                  Sydney NSW 2001

email to:       [meetings@automicgroup.com.au](mailto:meetings@automicgroup.com.au)

in person:     Automic  
                  Level 5, 126 Phillip Street  
                  Sydney NSW 2000

facsimile to: +61 2 8583 3040

Proxy votes may also be lodged online using the following link:

<https://investor.automic.com.au/#/loginsah>

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Your proxy voting instruction must be received by 10:00am (WST) on 16 November 2022, being not less than 48 hours before the commencement of the Meeting. Any proxy voting instructions received after that time will not be valid for the Meeting.

The Notice of Meeting is important and should be read in its entirety. If you are in doubt as to the course of action you should follow, you should consult your financial adviser, lawyer, accountant or other professional adviser. If you have any difficulties obtaining a copy of the Notice of Meeting please contact the Company's share registry, Automic Group Pty Ltd on, 1300 288 664 (within Australia) or +61 2 9698 5414 (overseas).

To comply with Federal and State government restrictions on social gatherings, the Company may need to admit a limited number of persons to the Meeting. There is a risk that shareholders intending to attend the physical Meeting may not be admitted, depending on the number of shareholders who wish to physically attend the Meeting. Therefore, the Company strongly encourages all shareholders to submit their directed proxy votes in advance of the Meeting, as detailed above.

The Company will continue to closely monitor guidance from the Federal and State Government for any impact on the proposed arrangements for the Meeting. If any changes are required, the Company will advise shareholders by way of announcement on ASX and the details will also be made available on our website at <https://enrg-elements.com.au/>.

Authorised by the Board of ENRG Elements Limited.

**FOR FURTHER INFORMATION PLEASE CONTACT:**

**CAROLINE KEATS**

Managing Director

ENRG Elements Limited

Tel. +61 8 9322 1587

[info@enrg-elements.com](mailto:info@enrg-elements.com)

[www.enrg-elements.com.au](http://www.enrg-elements.com.au)

**- END -**

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**ENRG ELEMENTS LIMITED****ACN 149 230 811****NOTICE OF ANNUAL GENERAL MEETING**

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Notice is given that the Meeting will be held at:

**TIME:** 10:00am (WST)  
**DATE:** 18 November 2022  
**PLACE:** Quest West Perth  
54 Kings Park Road  
West Perth, Western Australia 6005

***The business of the Meeting affects your shareholding and your vote is important.***

***This Notice of Meeting should be read in its entirety. If Shareholders are in doubt as to how they should vote, they should seek advice from their professional advisers prior to voting.***

***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 Shareholders at 4:00pm (WST) on 16 November 2022.***

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## IMPORTANT INFORMATION

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### Time and place of Meeting

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Notice is given that the Meeting will be held at Quest West Perth, 54 Kings Park Road, West Perth WA 6005 on 18 November 2022 at 10:00am (WST).

### Your vote is important

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The business of the Meeting affects your shareholding and your vote is important.

### Voting in person

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To vote in person, attend the Meeting at the time, date and place set out above.

### Voting by proxy

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To vote by proxy, please complete and sign the enclosed Proxy Form and return by the time and in accordance with the instructions set out on the Proxy Form.

In accordance with section 249L of the Corporations Act, Shareholders are advised that:

- each Shareholder has a right to appoint a proxy;
- the proxy need not be a Shareholder of the Company; and
- a Shareholder who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is appointed to exercise. If the member appoints 2 proxies and the appointment does not specify the proportion or number of the member's votes, then in accordance with section 249X(3) of the Corporations Act, each proxy may exercise one-half of the votes.

**Proxy vote if appointment specifies way to vote:** Section 250BB(1) of the Corporations Act provides that an appointment of a proxy may specify the way the proxy is to vote on a particular resolution and, **if it does:**

- the proxy need not vote on a show of hands, but if the proxy does so, the proxy must vote that way (ie as directed); and
- if the proxy has 2 or more appointments that specify different ways to vote on the resolution, the proxy must not vote on a show of hands; and
- if the proxy is the chair of the meeting at which the resolution is voted on, the proxy must vote on a poll, and must vote that way (ie as directed); and
- if the proxy is not the chair, the proxy need not vote on the poll, but if the proxy is not the chair, the proxy need not vote on the poll, but if the proxy does so, the proxy must vote that way (ie as directed).

**Transfer of non-chair proxy to chair in certain circumstances:** Section 250BC of the Corporations Act provides that, if:

- an appointment of a proxy specifies the way the proxy is to vote on a particular resolution at a meeting of the Company's members; and
- the appointed proxy is not the chair of the meeting; and
- at the meeting, a poll is duly demanded on the resolution; and
- either of the following applies:
  - the proxy is not recorded as attending the meeting; or

➤ the proxy does not vote on the resolution,

the chair of the meeting is taken, before voting on the resolution closes, to have been appointed as the proxy for the purposes of voting on the resolution at the meeting. Your proxy voting instruction must be received by 10:00am (WST) on Wednesday, 16 November 2022, being not later than 48 hours before the commencement of the Meeting.

***Should you wish to discuss the matters in this Notice of Meeting please do not hesitate to contact the Joint Company Secretary on +61 8 9322 1587.***

#### **Chair's voting intentions**

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If the Chair is your proxy, either by appointment or by default, and you have not indicated your voting intention, you expressly authorise the Chair to exercise the proxy in respect of Resolution 1, Resolution 6 and Resolution 7 even though these Resolutions are connected directly or indirectly with the remuneration of the Company's Key Management Personnel.

The Chair intends to exercise all available proxies in favour of all Resolutions, unless the Shareholder has expressly indicated a different voting intention.

#### **Submitting questions**

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Shareholders may submit questions in advance of the Meeting to the Company. Questions must be submitted by emailing the Joint Company Secretaries at [sarah.wilson@sourceservices.com.au](mailto:sarah.wilson@sourceservices.com.au) by 11 November 2022.

Shareholders will also have the opportunity to submit questions during the Meeting in respect to the formal items of business. In order to ask a question during the Meeting, please follow the instructions from the Chair.

The Chair will attempt to respond to the questions during the Meeting. The Chair will request prior to a Shareholder asking a question that they identify themselves (including the entity name of their shareholding and the number of Shares they hold).

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## BUSINESS OF THE MEETING

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### AGENDA

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#### 1. FINANCIAL STATEMENTS AND REPORTS

To receive and consider the annual financial report of the Company for the financial period ended 30 June 2022 including the declaration of the Directors, the Directors' report, the Remuneration Report and the auditor's report.

**Note:** there is no requirement for Shareholders to approve the Annual Report.

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#### 2. RESOLUTION 1 – ADOPTION OF REMUNERATION REPORT

To consider and, if thought fit, to pass, with or without amendment, the following resolution as a **non-binding ordinary resolution**:

*"That, for the purposes of section 250R(2) of the Corporations Act and for all other purposes, approval is given for the adoption of the Remuneration Report as contained in the Company's annual financial report for the financial year ended 30 June 2022."*

**Note:** the vote on this Resolution is advisory only and does not bind the Directors or the Company.

**Voting Prohibition Statement:** In accordance with sections 250BD and 250R of the Corporations Act, a vote on this Resolution must not be cast (in any capacity) by or on behalf of either of the following persons:

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

However, a person (the voter) described above may cast a vote on this Resolution as a proxy if the vote is not cast on behalf of a person described above and either:

- (a) the voter is appointed as a proxy by writing that specifies the way the proxy is to vote on this Resolution; or
- (b) the voter is the Chair and the appointment of the Chair as proxy:
  - (i) does not specify the way the proxy is to vote on this Resolution; and
  - (ii) expressly authorises the Chair to exercise the proxy even though this Resolution is connected directly or indirectly with the remuneration of a member of the Key Management Personnel.

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#### 3. RESOLUTION 2 – ELECTION OF DIRECTOR – QUINTON DE KLERK

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

*"That, Mr Quinton de Klerk, having been appointed as an additional director of the Company on 17 January 2022, who retires in accordance with article 7.6(c) of the Company's Constitution and Listing Rule 14.4 and, being eligible and offering himself for election, be elected as a Director."*

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**4. RESOLUTION 3 – APPROVAL OF 10% PLACEMENT CAPACITY**

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

*"That, for the purposes of ASX Listing Rule 7.1A and for all other purposes, approval is given for the Company to issue up to that number of Equity Securities equal to 10% of the issued capital of the Company at the time of issue, calculated in accordance with the formula prescribed in ASX Listing Rule 7.1A.2 and otherwise on the terms and conditions set out in the Explanatory Statement."*

**Voting exclusion**

Pursuant to the Listing Rules, the Company will disregard any votes cast in favour of this Resolution, if at the time of the Meeting, the Company is proposing to make an issue of Equity Securities under Listing Rule 7.1A.2, by or on behalf of any persons who are expected to participate in, or who will obtain a material benefit as a result of, the proposed issue (except a benefit solely by reason of being a Shareholder), or any of their respective associates.

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

- (a) a person as proxy or attorney for a person who is entitled to vote, in accordance with directions given to the proxy or attorney to vote on the Resolution in that way; or
- (b) the Chair as proxy or attorney for a person who is entitled to vote, in accordance with a direction given to the Chair to vote on the Resolution as the Chair 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 holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on the Resolution; and
  - (ii) the holder votes on the Resolution in accordance with directions given by the beneficiary to the holder to vote in that way.

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**5. RESOLUTION 4 – MODIFICATION OF EXISTING CONSTITUTION**

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

*"That, in accordance with section 136(2) of the Corporations Act, and for all other purposes, approval is given for the Company's Constitution to be amended in the manner set out in the Explanatory Notes to this notice with effect from the close of this Meeting."*

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**6. RESOLUTION 5 – APPROVAL OF EMPLOYEE SECURITIES INCENTIVE PLAN**

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

*“That, pursuant to and in accordance with exception 13(b) of Listing Rule 7.2 and for all other purposes, Shareholders approve the new employee securities incentive scheme of the Company known as the ‘ENRG Elements Limited Employee Securities Incentive Plan’ and the issue of Securities under that plan, on the terms and conditions in the Explanatory Statement.”*

**Voting exclusion**

Pursuant to the Listing Rules, 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 scheme, or any of their respective associates.

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

- (a) a person as proxy or attorney for a person who is entitled to vote, in accordance with directions given to the proxy or attorney to vote on the Resolution in that way; or
- (b) the Chair as proxy or attorney for a person who is entitled to vote, in accordance with a direction given to the Chair to vote on the Resolution as the Chair 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 holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on the Resolution; and
  - (ii) the holder votes on the Resolution in accordance with directions given by the beneficiary to the holder to vote in that way.

**Voting prohibition**

In accordance with section 250BD of the Corporations Act, a person appointed as a proxy must not vote, on the basis of that appointment, on this Resolution if:

- (a) the proxy is either a member of the Key Management Personnel or a Closely Related Party of such member; and
- (b) the appointment does not specify the way the proxy is to vote on the Resolution.

However, the above prohibition does not apply if:

- (a) the proxy is the Chair; and
- (b) the appointment expressly authorises the Chair to exercise the proxy even though the Resolution is connected directly or indirectly with remuneration of a member of the Key Management Personnel.



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**7. RESOLUTION 6 – APPROVAL OF POTENTIAL TERMINATION BENEFITS UNDER THE PLAN**

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

*'That, conditional on Resolution 5 being approved, for a period commencing from the date this Resolution is passed and ending upon the expiry of all Securities issued or to be issued under the "ENRG Elements Limited Employee Securities Incentive Plan", approval be given for all purposes including Part 2D.2 of the Corporations Act for the giving of benefits to any current or future person holding a managerial or executive office of the Company or a related body corporate in connection with that person ceasing to hold such office, on the terms and conditions in the Explanatory Statement.'*

**Voting prohibition**

In accordance with section 250BD of the Corporations Act, a person appointed as a proxy must not vote, on the basis of that appointment, on this Resolution if:

- (a) the proxy is either a member of the Key Management Personnel or a Closely Related Party of such member; and
- (b) the appointment does not specify the way the proxy is to vote on the Resolution.

However, the above prohibition does not apply if:

- (a) the proxy is the Chair; and
- (b) the appointment expressly authorises the Chair to exercise the proxy even though the Resolution is connected directly or indirectly with remuneration of a member of the Key Management Personnel.

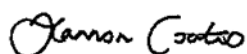
Further, in accordance with section 200E(2A) of the Corporations Act, a vote on this Resolution must not be cast by any participants or potential participants in the Plan and their associates, otherwise the benefit of this Resolution will be lost by such a person in relation to that person's future retirement.

However, a vote may be cast by such a person if:

- (a) the person is appointed as proxy by writing that specifies the way the proxy is to vote on the Resolution; and
- (b) it is not cast on behalf of the person or an associate of the person.

**Dated: 19 October 2022**

**By order of the Board**



**Shannon Coates**

**Joint Company Secretary**

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## EXPLANATORY STATEMENT

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This Explanatory Statement has been prepared to provide information which the Directors believe to be material to Shareholders in deciding whether or not to pass the Resolutions.

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### 1. FINANCIAL STATEMENTS AND REPORTS

In accordance with the Constitution, the business of the Meeting will include receipt and consideration of the annual financial report of the Company for the financial year ended 30 June 2022 together with the declaration of the Directors, the Directors' report, the Remuneration Report and the auditor's report.

The Company will not provide a hard copy of the Company's annual financial report to Shareholders unless specifically requested to do so. The Company's annual financial report is available on its website at [www.enrg-elements.com.au](http://www.enrg-elements.com.au).

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### 2. RESOLUTION 1 – ADOPTION OF REMUNERATION REPORT

#### 2.1 General

The Corporations Act requires that at a listed company's annual general meeting, a resolution that the remuneration report be adopted must be put to the shareholders. However, such a resolution is advisory only and does not bind the company or the directors of the company. The remuneration report sets out the company's remuneration arrangements for the directors and senior management of the company. The remuneration report is part of the directors' report contained in the annual financial report of the company for a financial year. The chair of the meeting must allow a reasonable opportunity for its shareholders to ask questions about or make comments on the remuneration report at the annual general meeting.

#### 2.2 Voting consequences

A company is required to put to its shareholders a resolution proposing the calling of another meeting of shareholders to consider the appointment of directors of the company (**Spill Resolution**) if, at consecutive annual general meetings, at least 25% of the votes cast on a remuneration report resolution are voted against adoption of the remuneration report (**Strike**) and at the first of those annual general meetings a Spill Resolution was not put to vote. If required, the Spill Resolution must be put to vote at the second of those annual general meetings.

If more than 50% of votes cast are in favour of the Spill Resolution, the company must convene a shareholder meeting (**Spill Meeting**) within 90 days of the second annual general meeting.

All of the directors of the company who were in office when the directors' report (as included in the company's annual financial report for the most recent financial year) was approved, other than the managing director of the company, will cease to hold

office immediately before the end of the Spill Meeting but may stand for re-election at the Spill Meeting.

Following the Spill Meeting those persons whose election or re-election as directors of the company is approved will be the directors of the company.

### **2.3 Previous voting results**

At the Company's 2021 annual general meeting held on 11 January 2022, the remuneration report considered at the annual general meeting did not receive a Strike. Accordingly, the Spill Resolution is not relevant for this Annual General Meeting.

If the Remuneration Report receives a Strike at this Annual General Meeting, Shareholders should be aware that if a second Strike is received at the 2023 annual general meeting, this may result in the re-election of the Board.

The Chair will allow a reasonable opportunity for Shareholders as a whole to ask about or make comments on the Remuneration Report.

### **2.4 Additional information**

Resolution 1 is an ordinary resolution.

Given the personal interests of all Directors in the outcome of this Resolution, the Board declines to make a recommendation to Shareholders regarding this Resolution.

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## **3. RESOLUTION 2 – ELECTION OF DIRECTOR – MR QUINTON DE KLERK**

### **3.1 General**

Article 7.6(a) of the Company's Constitution allows the Directors to appoint at any time a person to be a Director either to fill a casual vacancy or as an addition to the existing Directors. Article 7.6(c) of the Company's Constitution and Listing Rule 14.4 both provide that any Director so appointed holds office only until the conclusion of the next annual general meeting and is then eligible for election by Shareholders.

Quinton de Klerk, having been appointed pursuant to article 7.6(a) of the Constitution on 17 January 2022, will retire in accordance with the Constitution and being eligible, seeks election as a Director.

If Resolution 2 is passed, Mr de Klerk will be appointed as a Non-Executive Director of the Company.

If Resolution 2 is not passed, Mr de Klerk will not be appointed as a Non-Executive Director of the Company.

### **3.2 Qualifications and other material directorships**

Mr de Klerk is a highly qualified and accomplished mining engineer with more than 30-years' experience spanning operational roles in open pit and underground mining

environments, as well as consulting services across multiple jurisdictions and commodities.

Mr de Klerk has held senior positions with AngloGold Ashanti Ltd in South Africa, Namibia and Australia. He is currently the Head of Mining Engineering and a director of Cube Consulting Pty Ltd where, for the past 16 years, he led the mining team in multiple feasibility studies, due diligence processes, reserves CP responsibilities and audits. He has a demonstrated and respected capability in providing strategic direction and advice to executives and boards of junior and mid-tier mining companies.

In addition to being a qualified mining engineer, Mr de Klerk is a Fellow of the Australasian Institute of Mining and Metallurgy (AusIMM) and a graduate of the Australian Institute of Company Directors (AICD) Company Directors course.

### **3.3 Corporate governance**

Mr de Klerk has no interests, position association or relationship that might influence, or reasonably be perceived to influence, in a material respect his capacity to bring an independent judgement to bear on issues before the Board and to act in the best interest of the Company and its security holders generally.

If elected, the Board considers Mr de Klerk an independent Director.

The Company conducts appropriate checks on the background and experience of candidates before their appointment to the Board. These include checks as to a person's experience, educational qualifications, character, criminal record, and bankruptcy history. The Company undertook such checks prior to the appointment of Mr de Klerk and the checks did not reveal any information of concern.

Mr de Klerk has confirmed that he considers he will have sufficient time to fulfil his responsibilities as a Non-Executive Director of the Company and does not consider that any other commitment will interfere with his availability to perform his duties as a Non-Executive Director of the Company.

### **3.4 Directors' Recommendation**

The Board (other than Mr de Klerk) recommends Shareholders vote in favour of Resolution 2 on the basis that Mr de Klerk's skills and experience have and will continue to support the Company in achieving its strategic objectives.

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

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## **4. RESOLUTION 3 – APPROVAL OF 10% PLACEMENT CAPACITY**

### **4.1 General**

ASX Listing Rule 7.1A provides that an Eligible Entity (as defined below) may seek shareholder approval by special resolution passed at an annual general meeting to have the capacity to issue up to that number of Equity Securities equal to 10% of its

issued capital as calculated in accordance with the formula in ASX Listing Rule 7.1A.2 (**10% Placement Capacity**) without using that entity's existing 15% annual placement capacity granted under ASX Listing Rule 7.1.

An Eligible Entity is one that, as at the date of the relevant annual general meeting:

- (a) is not included in the S&P/ASX 300 Index; and
- (b) has a maximum market capitalisation (excluding restricted securities and securities quoted on a deferred settlement basis) of \$300,000,000.

As at the date of this Notice, the Company is an Eligible Entity as it is not included in the S&P/ASX 300 Index and has a current market capitalisation of \$27,840,556 (based on the number of Shares on issue and the closing price of Shares on the ASX on 5 October 2022 and excluding any restricted securities that may be on issue).

An Equity Security is a share, a unit in a trust, a right to a share or unit in a trust or option, an option over an issued or unissued security, a convertible security, or, any security that ASX decides to classify as an equity security. Any Equity Securities issued under the 10% Placement Capacity must be in the same class as an existing class of quoted Equity Securities. As at the date of this Notice, the Company currently has one class of quoted Equity Securities on issue, being the Shares (ASX Code:EEL).

If Shareholders approve Resolution 3, the number of Equity Securities the Company may issue under the 10% Placement Capacity will be determined in accordance with the formula prescribed in ASX Listing Rule 7.1A.2.

If Resolution 3 is passed, the Company will be able to issue Equity Securities up the combined 25% limit in ASX Listing Rules 7.1 and 7.1A without any further Shareholder approval.

If Resolution 3 is not passed, the Company will not be able to access the additional 10% Placement Capacity to issue Equity Securities without Shareholder approval provided for in ASX Listing Rule 7.1A and will remain subject to the 15% limit on issuing Equity Securities without shareholder approval set out in ASX Listing Rule 7.1.

Resolution 3 is a special resolution. Accordingly, at least 75% of 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) must be in favour of Resolution 3 for it to be passed.

#### **4.2 Formula outlined in ASX Listing Rule 7.1A.2**

Listing Rule 7.1A.2 provides that under the approved 10% Placement Facility, the Company may issue or agree to issue a number of Equity Securities calculated in accordance with the following formula:

$$(A \times D) - E$$

Where:

- A = is the number of Shares on issue at the commencement of the Relevant Period:
- (A) plus the number of fully paid Shares issued in the Relevant Period under an exception in Listing Rule 7.2 other than exception 9, 16 or 17;
  - (B) plus the number of fully paid Shares issued in the Relevant Period on the conversion of convertible securities within Listing Rule 7.2 exception 9 where:
    - (1) the convertible securities were issued or agreed to be issued before the commencement of the Relevant Period; or
    - (2) 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;
  - (C) plus the number of fully paid Shares issued in the Relevant Period under an agreement to issue securities within Listing Rule 7.2 exception 16 where:
    - (1) the agreement was entered into before the commencement of the Relevant Period; or
    - (2) the agreement or issue was approved, or taken under the Listing Rules to have been approved, under Listing Rule 7.1 or Listing Rule 7.4;
  - (D) plus the number of partly paid Shares that became fully paid Shares in the Relevant Period;
  - (E) plus the number of fully paid Shares issued in the Relevant Period with approval under Listing Rules 7.1 and 7.4; and
  - (F) less the number of fully paid Shares cancelled in the Relevant Period.

Note that 'A' has the same meaning in Listing Rule 7.1 when calculating the Company's 15% annual 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 Relevant Period where the issue or agreement has not been subsequently approved by Shareholders under Listing Rule 7.4.

#### **4.3 Technical information required by ASX Listing Rule 7.3A**

Pursuant to and in accordance with ASX Listing Rule 7.3A, the information below is provided in relation to Resolution 3:

**(a) Minimum Price**

Any Equity Securities issued under Listing Rule 7.1A must be issued for a cash consideration per Equity Security which is not less than 75% of the volume weighted average price of Equity Securities in that class, calculated over the 15 ASX 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 ASX trading days of the date in Section 4.2(a)(i), the date on which the Equity Securities are issued.

**(b) Date of Issue**

Equity Securities may be issued under the 10% Placement Capacity commencing on the date of the Meeting and expiring on the first to occur of the following:

- (i) 12 months after the date of this Meeting;
- (ii) the time and date of the Company's next annual general meeting; and
- (iii) the date and time of approval by Shareholders of any transaction under ASX Listing Rules 11.1.2 (a significant change to the nature or scale of the Company's activities) or 11.2 (disposal of the Company's main undertaking);

after which date, an approval under Listing Rule 7.1A ceases to be valid **(10% Placement Capacity Period)**.

**(c) Risk of voting dilution**

Shareholders should note that there is a risk that:

- (i) the market price for the Company's Shares may be significantly lower on the issue date 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 date of issue,

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

Any issue of Equity Securities under the 10% Placement Capacity will dilute the interests of Shareholders who do not receive any Shares under the issue.

If Resolution 3 is approved by Shareholders and the Company issues the maximum number of Equity Securities available under the 10% Placement Capacity, the economic and voting dilution of existing Shares would be as shown

in the table below (in the case of Options, only if the Options are converted into Shares).

The table below shows the dilution of existing Shareholders calculated in accordance with the formula outlined in ASX Listing Rule 7.1A.2 (see Section 4.2 above), on the basis of the market price of Shares and the number of Equity Securities on issue as at 5 October 2022.

The table also shows the voting dilution impact where the number of Shares on issue (Variable A in the formula) changes and the economic dilution where there are changes in the issue price of Shares issued under the 10% Placement Capacity.

The table below demonstrates various examples as to the number of Equity Securities that may be issued under the Additional 10% Placement Capacity.

*Variable 'A'	Number of Shares issued and funds raised under the Additional 10% Placement Capacity and dilution effect	Dilution		
		\$0.015 Issue price at half the current market price	\$0.03 Issue price at current market price	\$0.06 Issue price at double the current market price
<b>Current Variable A</b> 928,001,854 Shares	<b>Shares issued – 10% voting dilution</b>	92,800,185	92,800,185	92,800,185
	<b>Funds raised</b>	\$1,392,003.78	\$2,784,006	\$5,568,011
<b>50% increase in current Variable A</b> 1,392,002,781 Shares	<b>Shares issued – 10% voting dilution</b>	139,200,278	139,200,278	139,200,278
	<b>Funds raised</b>	\$2,088,004.17	\$4,176,008.34	\$8,352,016.68
<b>100% increase in current Variable A</b> 1,856,003,708 Shares	<b>Shares issued – 10% voting dilution</b>	185,600,371	185,600,371	185,600,371
	<b>Funds raised</b>	\$2,784,005.56	\$5,568,011.13	\$11,136,022.26



\*The number of Shares on issue (Variable A in the formula) could increase as a result of the issue of Shares that do not require Shareholder approval (such as under a pro rata rights issue or scrip issued under a takeover offer) or that are issued with Shareholder approval under Listing Rule 7.1.

**The table above is based on the following assumptions:**

1. There are currently 928,001,854 Shares on issue.
2. The issue price set out above is the closing price of Shares on the ASX on 5 October 2022, being the latest practicable date before this Notice was signed.
3. The Company issues the maximum possible number of Equity Securities under the 10% Placement Capacity.
4. The Company has not issued any Equity Securities in the 12 months prior to the meeting that were not issued under an exception in ASX Listing Rule 7.2 or with Shareholder approval under ASX Listing Rule 7.1 and 7.4.
5. The issue of Equity Securities under the 10% Placement Capacity consists only of Shares. If the issue of Equity Securities includes quoted Options, it is assumed that those quoted Options are exercised into Shares for the purpose of calculating the voting dilution effect on existing Shareholders.
6. It is assumed that no convertible securities (including any issued under the 10% Placement Capacity) are exercised or converted into Shares before the date of issue of the Equity Securities.
7. The calculations above do not show the dilution that any one particular Shareholder will be subject to. All Shareholders should consider the dilution caused to their own shareholding depending on their specific circumstances.
8. This table does not set out any dilution pursuant to approvals under ASX Listing Rule 7.1 unless otherwise disclosed.
9. 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%.

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 Capacity, based on that Shareholder's holding at the date of the Meeting.

#### **4.4 Purpose of Issue under 10% Placement Capacity**

Equity Securities can only be issued under the 10% Placement Capacity for cash consideration. The Company intends to use funds raised towards an acquisition of new business assets and/or investments (including expenses associated with such acquisitions), continued expenditure on the Company's current assets and/or general working capital.

The Company will comply with the disclosure obligations under Listing Rules 7.1A(4) and 2.7 upon issue of any Equity Securities.

#### **4.5 Compliance with Listing Rule 7.1A.4**

In accordance with Listing Rule 7.1A.4, when the Company issues Equity Securities pursuant to the 10% Placement Capacity, it must:

- (a) state in its announcement of the proposed issue under Listing Rule 3.10.3 or in its application for quotation of the securities under Listing Rule 2.7 that the securities are being issued under Listing Rule 7.1A; and
- (b) give to ASX immediately after the issue a list of names of the persons to whom the Company issued the Equity Securities and the number of Equity Securities issued to each. This list is not for release to the market.

#### **4.6 Allocation policy under the 10% Placement Capacity**

The recipients of the Equity Securities to be issued under the 10% Placement Capacity have not yet been determined. However, the recipients of Equity Securities could consist of current Shareholders or new investors (or both), none of whom will be related parties of the Company. The Company will determine the recipients at the time of the issue under the 10% Placement Capacity, having regard to the following factors:

- (a) the purpose of the issue;
- (b) alternative methods for raising funds available to the Company at that time, including, but not limited to, an entitlement issue or other offer where existing Shareholders may participate;
- (c) the effect of the issue of the Equity Securities on the control of the Company;
- (d) the circumstances of the Company, including, but not limited to, the financial position and solvency of the Company;
- (e) prevailing market conditions; and
- (f) advice from corporate, financial and broking advisers (if applicable).

#### **4.7 Previous approval under ASX Listing Rule 7.1A**

The Company previously obtained approval from its Shareholders pursuant to ASX Listing Rule 7.1A at its annual general meeting held on 11 January 2022 (**Previous Approval**).

The following information is provided in accordance with Listing Rule 7.3A.6(b) in respect of the Previous Issue:

<b>Date of Issue and Appendix 2A</b>	<b>Date of Issue:</b> 14 and 15 June 2022 <b>Date of Appendix 2A:</b> 10 and 15 June 2022
<b>Recipients</b>	Existing Shareholders and new institutional, professional and/or sophisticated investors as part of a placement announced on 3 June 2022. The placement participants were identified through a bookbuild process, which involved Axion Capital Partners Pty Ltd seeking expressions of interest to participate in the placement from non-related parties of the Company.
<b>Number and Class of Equity Securities Issued</b>	83,538,890 Shares <sup>2</sup>
<b>Issue Price and discount to Market Price<sup>1</sup> (if any)</b>	\$0.033 per Share (at a discount of 13.2% to Market Price).
<b>Total Cash Consideration and Use of Funds</b>	<b>Amount raised:</b> \$2,756,783 <b>Amount spent:</b> \$1,079,903 <sup>3</sup> <b>Use of funds:</b> to fund the exploration and development of the Company's portfolio of assets, in particular the Agadez Uranium Project, and for general working capital purposes <b>Amount remaining:</b> \$1,676,880 <b>Proposed use of remaining funds<sup>4</sup>:</b> Exploration programs at the Company's Agadez Project, and general working capital purposes.

**Notes:**

1. Market Price means the closing price of Shares on ASX (excluding special crossings, overnight sales and exchange traded option exercises). For the purposes of this table the discount is calculated on the Market Price on the last trading day on which a sale was recorded prior to the announcement of the placement on 3 June 2022.
2. Fully paid ordinary shares in the capital of the Company, ASX Code: EEL (terms are set out in the Constitution).
3. As at 15 September 2022.
4. This is a statement of current intentions as at the date of this Notice. As with any budget, intervening events and new circumstances have the potential to affect the manner in which the funds are ultimately applied. The Board reserves the right to alter the way the funds are applied on this basis.

At the date of this Notice, the Company is not proposing to make an issue of Equity Securities under Listing Rule 7.1A and has not approached any particular existing Shareholder or security holder or an identifiable class of existing security holder to participate in any such issue.

However, in the event that between the date of this Notice and the date of the Meeting, the Company proposes to make an issue of Equity Securities under Listing Rule 7.1A to one or more existing Shareholders, those Shareholders' votes will be excluded under the voting exclusion statement in the Notice.

#### **4.8 Directors' Recommendation**

The Board recommends Shareholders vote in favour of Resolution 3.

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

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### **5. RESOLUTION 4 – MODIFICATION OF EXISTING CONSTITUTION**

#### **5.1 General**

Under section 136(2) of the Corporations Act, a company may modify or repeal its constitution or a provision of its constitution by special resolution of shareholders.

Resolution 4 seeks the approval of Shareholders to modify the Company's existing Constitution.

The proposed modification to the existing Constitution will incorporate recent amendments to the Corporations Act regarding the holding of meetings of Shareholders using virtual meeting technology and the new regime for the making of offers in connection with employee share schemes under Part 7.12 of the Corporations Act.

The Directors believe that it is preferable in the circumstances to simply modify a couple of provisions of the existing Constitution rather than repealing the entire existing Constitution and replacing it with a new constitution.

The Directors believe these amendments are not material nor will they have any significant impact on Shareholders.

A copy of the modified Constitution is available for review by Shareholders at the Company's website [www.enrg-elements.com.au](http://www.enrg-elements.com.au) and at the office of the Company. A copy of the modified Constitution can also be sent to Shareholders upon request to the Joint Company Secretary at [sarah.wilson@sourceservices.com.au](mailto:sarah.wilson@sourceservices.com.au). Shareholders are invited to contact the Company if they have any queries or concerns.

If Resolution 4 is passed, the Company will adopt the modified Constitution with effect from the date this Resolution 4 is passed.

## **5.2 Summary of material proposed changes**

### **(a) Convening a general meeting (Article 5.2)**

The modifications provide for the ability of the Company to hold general meetings using virtual technology only, as well as physical or hybrid meetings. This improved flexibility is necessary to ensure the Company is able to hold general meetings at times where physical meetings may not be practicable (such as during pandemics).

Set out below are the proposed modifications to article 5.2 of the existing Constitution:

#### Prior to modification

##### 5.2 Convening a general meeting

- (a) *The Directors may convene and arrange to hold a general meeting of the Company whenever they think fit and must do so if required to do so under the Corporations Act.*
- (b) *The Company may hold a meeting of Members at 2 or more venues using any technology that gives the Members as a whole a reasonable opportunity to participate.*
- (c) *Notice of a general meeting must be given in accordance with article 14, the Corporations Act and the Listing Rules.*
- (d) *In computing the period of notice under article 5.2(c), the day of the meeting is to be disregarded.*
- (e) *A Director is entitled to receive notice of and to attend all general meetings and all separate meetings of the holders of any class of shares in the capital of the Company and is entitled to speak at those meetings.*

#### After modification:

##### 5.2 Convening a general meeting

- (a) *The Directors may convene and arrange to hold a general meeting of the Company whenever they think fit and must do so if required to do so under the Corporations Act.*
- (b) *The Company may hold a meeting of Members at a time determined by the Directors:*
  - (i) *at one or more physical venues;*
  - (ii) *at one or more physical venues and using virtual meeting technology; and*
  - (iii) *using virtual meeting technology only,*

*provided that, in each case, Members as a whole are given a reasonable opportunity to participate in the meeting, and otherwise in the manner determined by the Directors.*

- (c) If the Directors elect to use virtual meeting technology for a general meeting of the Company, the Directors will determine the type of virtual meeting technology to be used, which may include any combination of telephone, video conferencing, messaging, smartphone application or any other audio and/or visual device which permits instantaneous communication.*
- (d) Notice of a general meeting must be given in accordance with article 14, the Corporations Act and the Listing Rules.*
- (e) In computing the period of notice under article 5.2(d), the day of the meeting is to be disregarded.*
- (f) A Director is entitled to receive notice of and to attend all general meetings and all separate meetings of the holders of any class of shares in the capital of the Company and is entitled to speak at those meetings.*

**(b) Issue cap for offers involving monetary consideration under an employee incentive scheme**

The proposed amendment provides the ability for the Company to increase the 5% issue cap under the Corporations Act in respect of offers for monetary consideration under the Plan to 10%. Set out below is the proposed modification to the existing Constitution.

**i. Insert as new definitions in article 1.1:**

**ESS Interests** has the meaning under section 1100M(1) of the Corporations Act.

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

**ii. Insert as a new article 2.8:**

**2.8 Issue cap for offers involving monetary consideration under an employee incentive scheme**

For the purposes of section 1100V(2)(a) of the Corporations Act, the Company may only make an offer of ESS Interests if, at the time the offer is made, the Company reasonably believes:

- (a) the total number of Shares that are, or are covered by, the ESS Interests of the Company that may be issued under the offer; and
- (b) the total number of Shares that are, or are covered by, the ESS Interests that have been issued, or could have been issued, under

offers made under the Company's employee share scheme at any time during the 3 year period ending on the day the offer is made, does not exceed 10% of the number of Shares actually on issue as at the start of the day the offer is made.

### 5.3 Additional information

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).

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

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## 6. RESOLUTION 5 – APPROVAL OF EMPLOYEE SECURITIES INCENTIVE PLAN

### 6.1 General

On 1 October 2022, amendments to the Corporations Act will commence, simplifying the process for incentivising participants under employee share schemes (**ESS**). Division 1A will be introduced into Part 7.12 of the Corporations Act, providing a separate regime for the making of offers in connection with an ESS (**New Regime**). This regime will replace the current relief afforded by ASIC Class Order 14/1000 (**Class Order**), which commenced on 30 October 2014.

To ensure that the Company is afforded the relief provided by the New Regime, the Company considers it necessary to adopt a new ESS that refers to the New Regime and includes the changes that come into effect on 1 October 2022.

Resolution 5 seeks Shareholder approval for the adoption of the new ESS titled the 'ENRG Elements Limited Employee Securities Incentive Plan' (**Plan**) in accordance with Listing Rule 7.2 exception 13(b), for the sole purpose of ensuring that the Company is afforded the relief provided by the New Regime.

Under the Plan, the Board may offer to eligible persons the opportunity to subscribe for such number of Equity Securities in the Company as the Board may decide and, on the terms set out in the rules of the Plan, a summary of the key terms and conditions is in Section 9. In addition, a copy of the Plan is available for review by Shareholders at the registered office of the Company until the date of the Meeting. A copy of the Plan can also be sent to Shareholders upon request to the Joint Company Secretaries at [info@enrg-elements.com](mailto:info@enrg-elements.com). Shareholders are invited to contact the Company if they have any queries or concerns.

### 6.2 Key changes between the Class Order and New Regime

The following table summarises the key changes that will be implemented by the New Regime for "Invitations" (within the meaning given in the Plan) made on or after 1 October 2022:

	<b>Current position under the Class Order</b>	<b>Position from 1 October 2022</b>
Disclosure obligations	<p>The Class Order mandates certain information that must be provided to ESS participants.</p> <p>There is no difference between the disclosure requirements where ESS Interests are offered for monetary consideration or for no monetary consideration.</p>	<p><b>If the offer of ESS Interests is for no monetary consideration:</b> There are no prescribed disclosure obligations, other than a statement that the offer is made under Division 1A.</p> <p><b>If the offer of ESS Interests is for monetary consideration:</b></p> <ul style="list-style-type: none"> <li>• Certain prescribed disclosure requirements apply. These disclosure requirements are similar (although different) to the current disclosure requirements under the Class Order.</li> <li>• The participant cannot acquire the ESS Interests until 14 days after receiving the above disclosure. This mandates a waiting period ensuring a participant has time to consider their decision and seek legal financial advice.</li> <li>• Any associated trust, contribution plan and loan arrangement will need to comply with specified requirements.</li> </ul>
Eligible participants	<ul style="list-style-type: none"> <li>• Directors;</li> <li>• Full-time and part-time employees;</li> <li>• Casual employees and contractors, provided they work the number of hours that are the pro-rata equivalent of 40% or more of a comparable full-time position with the entity.</li> </ul>	<ul style="list-style-type: none"> <li>• Directors;</li> <li>• Full-time and part-time employees;</li> <li>• Any service providers to the entity (with no minimum requirement of hours of service provided);</li> <li>• Certain 'related persons' to the above.</li> </ul>
5% limit	The maximum number of ESS Interests that can be issued under the Class Order relief	<b>If the offer of ESS Interests is for no monetary consideration:</b> There is no limit on the number of such ESS Interests that may be issued.



	over a three-year period is 5% of the issued share capital.	<b>If the offer of ESS Interests is for monetary consideration:</b> The number of ESS Interests issued over a three-year period must not exceed 5% of the issued share capital. Entities may specify a different issue cap in their constitution.
Quotation requirement	An entity's shares must have been quoted for three months before the Class Order relief is available.	Newly listed entities can offer ESS Interests under the new regime without any minimum quotation period. This will make it much simpler for newly listed entities to offer ESS Interests.
Suspension	For the Class Order relief to be available, the entity's shares must not have been suspended for more than 5 days over the previous 12 months.	The new regime permits an entity to offer ESS Interests regardless of any suspension to the trading of its shares.
On-sale relief	Relief is provided from the on-sale provisions for securities issued under the Class Order.	There is no equivalent relief under the new provisions. This means cleansing notices (or cleansing prospectuses for entities unable to rely on a cleansing notice) must be issued in order to ensure shares may be on-sold within 12 months of issue.
ASIC involvement	A 'Notice of Reliance' must be submitted to ASIC to rely on the Class Order relief.	There are no ASIC lodgement requirements.  ASIC has the power to require the provision of documents necessary in order to form an opinion about whether the regime has been complied with.  ASIC has also been given express enforcement powers including the ability to issue 'stop orders'.
Participant Loans	N/A	The Board may, in its discretion, determine that the Company will provide limited recourse loans to participants to use to pay the subscription price for the purchase of Shares under the Plan.  As security for a Participant Loan, the relevant participant grants to the Company a pledge of its Loan Shares provided under the Plan and a charge over all dividends and other amounts paid or payable on those Loan Shares.

Criminal offences	N/A	New ESS related criminal offences have been introduced regarding certain misleading or deceptive statements or omissions.
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### 6.3 Listing Rules 7.1 and 7.2, exception 13(b)

Broadly speaking, Listing Rule 7.1 limits the ability of a listed entity from issuing or agreeing to issue Equity Securities over a 12-month period which exceeds 15% of the number of fully paid ordinary Shares it had on issue at the start of the 12 month period.

Listing Rule 7.2, exception 13(b), provides an exception to Listing Rule 7.1 such that issues of Equity Securities under an employee incentive scheme are exempt for a period of three years from the date on which Shareholders approve the issue of Equity Securities under the scheme.

Listing Rule 7.2, exception 13(b), ceases to be available to the Company if there is a material change to the terms of the Plan from those set out in this Notice in Section 9.

If Resolution 5 is passed, the Company will be able to issue up to a maximum of 92,800,185 Equity Securities under the Plan pursuant to Listing Rule 7.2, exception 13(b), to eligible participants over a period of three years without using the Company's 15% annual placement capacity under Listing Rule 7.1.

However, any future issues of Equity Securities under the Plan to a related party or a person whose relationship with the Company or the related party is, in ASX's opinion, such that approval should be obtained will require additional Shareholder approval under Listing Rule 10.14 at the relevant time.

If Resolution 5 is not passed, the Company will not be able to adopt the Plan and, instead, any issues will be made either with Shareholder approval under Listing Rules 7.1 and 7.1A or, in default of Shareholder approval, pursuant to the Company's placement capacity under either or both Listing Rules 7.1 and 7.1A.

### 6.4 Specific information required by Listing Rule 7.2, exception 13(b)

Pursuant to and in accordance with Listing Rule 7.2, exception 13(b), the following information is provided in relation to the Plan:

- (a) A summary of the material terms of the Plan is in Section 9.
- (b) As at the date of this Notice, no Equity Securities have been issued under the Plan.
- (c) Shareholders approved the Company's existing employee securities incentive plan under Listing Rule 7.2, exception 13(b) at the annual general meeting on 11 January 2022 (**Existing Plan**). Since that date, the Company has issued the following Equity Securities under the Existing Plan:

Issue date	Equity Security	Number of Equity Securities
19 August 2022	Performance Rights	2,192,341
4 March 2022	Shares	10,000,000
12 January 2022	Shares	20,000,000

- (d) The maximum number of Equity Securities proposed to be issued under the Plan pursuant to Listing Rule 7.2, exception 13(b), following approval of Resolution 5 is 92,800,185. This number comprises approximately 10% of the Company's Equity Securities currently on issue.
- (e) A voting exclusion statement is included in the Notice.

### 6.5 Permit the Company to take security over its own Shares

Section 259B(1) of the Corporations Act prohibits a company taking security over shares in itself or in a company that controls it, unless one of the exceptions in sections 259B(2) or 259B(3) applies.

Section 259B(2) of the Corporations Act permits the taking of security by a Company over its own Shares, if the security is taken over Shares issued under an ESS approved at a meeting of shareholders via an ordinary resolution.

Accordingly, Shareholder approval under this Resolution 5 includes approval to permit the Company to take security over its own Shares issued under the Plan if required to do so.

### 6.6 Additional information

Resolution 5 is an ordinary resolution.

The Board declines to make a recommendation in relation to Resolution 5 due to their personal interests in the outcome of the Resolution.

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## 7. RESOLUTION 6 – APPROVAL OF POTENTIAL TERMINATION BENEFITS UNDER THE PLAN

### 7.1 General

The Corporations Act contains certain limitations concerning the payment of 'termination benefits' to persons holding 'managerial or executive office'. The Listing Rules also provide certain limitations on the payment of 'termination benefits' to officers of listed entities.

As is common with employee incentive schemes, the Plan provides the Board with the discretion to, amongst other things, determine that some or all of the Equity Securities granted to a participant under the Plan (**Plan Securities**) will not lapse in the event of that participant ceasing their engagement with the Company before such Plan Securities have vested. This 'accelerated vesting' of Plan Securities may constitute a

'termination benefit' prohibited under the Corporations Act, regardless of the value of such benefit, unless Shareholder approval is obtained.

If Resolution 6 is not passed, the Company will not be able to offer 'termination benefits' to persons holding 'managerial or executive office' in the Company pursuant to the terms of the Plan.

## **7.2 Part 2D.2 of the Corporations Act**

Under section 200B of the Corporations Act, a company may only give a person a benefit in connection with them ceasing to hold a 'managerial or executive office' (as defined in the Corporations Act) if an exemption applies or if the benefit is approved by Shareholders in accordance with section 200E of the Corporations Act.

Subject to Shareholder approval of Resolution 6, Shareholder approval is sought for the purposes of Part 2D.2 of the Corporations Act to approve the giving of benefits under the Plan to a person by the Company in connection with that person ceasing to be an officer of, or ceasing to hold, a managerial or executive office in the Company (or subsidiary of the Company) on the terms and conditions in this Explanatory Statement.

As noted above, under the terms of the Plan and subject to the Listing Rules, the Board possesses the discretion to vary the terms or conditions of the Plan Securities. Notwithstanding the foregoing, without the consent of the participant in the Plan, no amendment may be made to the terms of any granted Plan Security which reduces the rights of the participant in respect of that Plan Security, other than an amendment introduced primarily to comply with legislation, to correct any manifest error or mistake or to take into consideration possible adverse tax implications.

As a result of the above discretion, the Board has the power to determine that some or all of a participant's Plan Securities will not lapse in the event of the participant ceasing employment or office before the vesting of their Plan Securities.

The exercise of this discretion by the Board may constitute a 'benefit' for the purposes of section 200B of the Corporations Act. The Company is therefore seeking Shareholder approval for the exercise of the Board's discretion in respect of any current or future participant in the Plan who holds:

- (a) a managerial or executive office in, or is an officer of, the Company (or subsidiary of the Company) at the time of their leaving or at any time in the three years prior to their leaving; and
- (b) Plan Securities at the time of their leaving.

## **7.3 Valuation of the termination benefits**

Provided Shareholder approval is given, the value of the termination benefits may be disregarded when applying section 200F(2)(b) or section 200G(1)(c) of the

Corporations Act (i.e. the approved benefit will not count towards the statutory cap under the legislation).

The value of the termination benefits that the Board may give under the Plan cannot be determined in advance. This is because various matters will or are likely to affect that value. In particular, the value of a particular benefit will depend on factors such as the Company's Share price at the time of vesting and the number of Plan Securities that will vest or otherwise be affected. The following additional factors may also affect the benefit's value:

- (c) the participant's length of service and the status of the vesting conditions attaching to the relevant Plan Securities at the time the participant's employment or office ceases; and
- (d) the number of unvested Plan Securities that the participant holds at the time they cease employment or office.

In accordance with Listing Rule 10.19, the Company will ensure that no officer of the Company or any of its child entities will, or may be, entitled to termination benefits if the value of those benefits and the terminations benefits that are or may be payable to all officers together exceed 5% of the equity interests of the Company as set out in the latest accounts given to ASX under the Listing Rules.

#### **7.4 Additional information**

Resolution 6 is conditional on the passing of Resolution 5.

If Resolution 5 is not approved at the Meeting, Resolution 6 will not be put to the Meeting. Resolution 6 is an ordinary resolution.

The Board declines to make a recommendation in relation to Resolution 6 due to their potential personal interests in the outcome of the Resolution.

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## 8. GLOSSARY

**\$** means Australian dollars.

**10% Placement Capacity** has the meaning given in Section 4.1.

**Annual General Meeting** or **Meeting** means the meeting convened by the Notice.

**ASIC** means the Australian Securities and Investments Commission.

**ASX** means ASX Limited (ACN 008 624 691).

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

**Board** means the current board of directors of the Company.

**Business Day** means Monday to Friday inclusive, except New Year's Day, Good Friday, Easter Monday, Christmas Day, Boxing Day or a day that ASX declares is not a business day.

**Chair** means the chair of the Meeting.

**Class Order** means ASIC Class Order 14/1000.

**Closely Related Party** of a member of the Key Management Personnel means:

- (a) a spouse or child of the member;
- (b) a child of the member's spouse;
- (c) a dependent of the member or the member's spouse;
- (d) anyone else who is one of the member's family and may be expected to influence the member, or be influenced by the member, in the member's dealing with the entity;
- (e) a company the member controls; or
- (f) a person prescribed by the *Corporations Regulations 2001 (Cth)* for the purposes of the definition of 'closely related party' in the Corporations Act.

**Company** means ENRG Elements Limited (ACN 149 230 811).

**Constitution** means the Company's constitution.

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

**Directors** means the current directors of the Company.

**Eligible Entity** means an entity that, at the date of the relevant general meeting:

- (a) is not included in the S&P/ASX 300 Index; and
- (b) has a maximum market capitalisation (excluding restricted securities and securities quoted on a deferred settlement basis) of \$300,000,000.

**Equity Securities** includes a Share, a right to a Share or Option, an Option, a convertible security and any security that ASX decides to classify as an Equity Security.

**ESS** means employee share scheme.

**ESS Interest** has the meaning given in section 1100M of the Corporations Act.

**Existing Plan** means the Company's existing employee securities incentive plan approved by Shareholders under Listing Rule 7.2, exception 13(b) at the annual general meeting on 11 January 2022.

**Explanatory Statement** means the explanatory statement accompanying the Notice.

**Key Management Personnel** has the same meaning as in the accounting standards issued by the Australian Accounting Standards Board and means those persons having authority and responsibility for planning, directing and controlling the activities of the Company, or if the Company is part of a consolidated entity, of the consolidated entity, directly or indirectly,

including any director (whether executive or otherwise) of the Company, or if the Company is part of a consolidated entity, of an entity within the consolidated group.

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

**New Regime** means the separate regime under Division 1A of Part 7.12 of the Corporations Act for the making of offers in connection with an ESS.

**Notice** or **Notice of Meeting** means this notice of meeting including the Explanatory Statement and the Proxy Form.

**Plan** means the 'ENRG Elements Limited Employee Securities Incentive Plan', the subject of Resolution 5.

**Plan Securities** means Equity Securities granted to a participant under the Plan.

**Proxy Form** means the proxy form accompanying the Notice.

**Remuneration Report** means the remuneration report set out in the Director's report section of the Company's annual financial report for the year ended 30 June 2022.

**Relevant Period** has the meaning given in ASX Listing Rule, Chapter 7.

**Resolutions** means the resolutions set out in the Notice, or any one of them, as the context requires.

**Section** means a section of the Explanatory Statement.

**Securities** means any Equity Securities of the Company (including Shares, Options and/or Performance Rights/Options/Shares).

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

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

**Spill Meeting** has the meaning given in Section 2.2.

**Spill Resolution** has the meaning given in Section 2.2.

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

**Variable A** means "A" as set out in the formula in ASX Listing Rule 7.1A(2) and Section 4.2.

**VWAP** means the volume weighted average market price for Shares.

**WST** means Western Standard Time as observed in Perth, Western Australia.

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## 9. SUMMARY OF ENRG ELEMENTS LIMITED EMPLOYEE SECURITIES INCENTIVE PLAN

A summary of the material terms and conditions of the Plan is set out below:

- (a) **(Eligible Participant)**: Eligible Participant means a person that has been determined by the Board to be eligible to participate in the Plan from time to time and is an “ESS participant” (as that term is defined in Division 1A of Part 7.12 of the Corporations Act) in relation to the Company or an associated entity of the Company. This relevantly includes, amongst others:
- (i) an employee or director of the Company or an individual who provides services to the Company;
  - (ii) an employee or director of an associated entity of the Company or an individual who provides services to such an associated entity;
  - (iii) a prospective person to whom paragraphs (i) or (ii) apply;
  - (iv) a person prescribed by the relevant regulations for such purposes; or
  - (v) certain related persons on behalf of the participants described in paragraphs (i) to (iv) (inclusive).
- (b) **(Maximum allocation)** The Company must not make an offer of Securities under the Plan in respect of which monetary consideration is payable (either upfront, or on exercise of convertible securities) where:
- (i) the total number of Plan Shares (as defined in paragraph (m) below) that may be issued or acquired upon exercise of the convertible securities offered; plus
  - (ii) the total number of Plan Shares issued or that may be issued as a result of offers made under the Plan at any time during the previous 3 year period,

would exceed 5% of the total number of Shares on issue at the date of the offer or such other limit as may be specified by the relevant regulations or the Company’s Constitution from time to time.

The maximum number of equity securities proposed to be issued under the Plan for the purposes of Listing Rule 7.2, Exception 13 will be as approved by Shareholders from time to time (**ASX Limit**). This means that, subject to the following paragraph, the Company may issue up to the ASX Limit under the Plan without seeking Shareholder approval and without reducing its placement capacity under Listing Rule 7.1.

The Company will require prior Shareholder approval for the acquisition of equity securities under the Plan to Directors, their associates and any other person whose relationship with the Company or a Director or a Director’s associate is such that, in ASX’s



opinion, the acquisition should be approved by Shareholders. The issue of Securities with Shareholder approval will not count towards the ASX Limit.

- (c) **(Purpose)**: The purpose of the Plan is to:
- (i) assist in the reward, retention and motivation of Eligible Participants;
  - (ii) link the reward of Eligible Participants to Shareholder value creation; and
  - (iii) align the interests of Eligible Participants with shareholders of the Group (being the Company and each of its Associated Bodies Corporate), by providing an opportunity to Eligible Participants to receive an equity interest in the Company in the form of Securities.
- (d) **(Plan administration)**: The Plan will be administered by the Board. The Board may exercise any power or discretion conferred on it by the Plan rules in its sole and absolute discretion, subject to compliance with applicable laws and the Listing Rules. The Board may delegate its powers and discretion.
- (e) **(Eligibility, invitation and application)**: The Board may from time to time determine that an Eligible Participant may participate in the Plan and make an invitation to that Eligible Participant to apply for Securities on such terms and conditions as the Board decides. An invitation issued under the Plan will comply with the disclosure obligations pursuant to Division 1A.

On receipt of an invitation, an Eligible Participant may apply for the Securities the subject of the invitation by sending a completed application form to the Company. The Board may accept an application from an Eligible Participant in whole or in part. If an Eligible Participant is permitted in the invitation, the Eligible Participant may, by notice in writing to the Board, nominate a party in whose favour the Eligible Participant wishes to renounce the invitation.

A waiting period of at least 14 days will apply to acquisitions of Securities for monetary consideration as required by the provisions of Division 1A.

- (f) **(Grant of Securities)**: The Company will, to the extent that it has accepted a duly completed application, grant the successful applicant (**Participant**) the relevant number of Securities, subject to the terms and conditions set out in the invitation, the Plan rules and any ancillary documentation required.
- (g) **(Terms of Convertible Securities)**: Each 'Convertible Security' represents a right to acquire one or more Shares (for example, under an option or performance right), subject to the terms and conditions of the Plan.

Prior to a Convertible Security being exercised a Participant does not have any interest (legal, equitable or otherwise) in any Share the subject of the Convertible Security by

virtue of holding the Convertible Security. A Participant may not sell, assign, transfer, grant a security interest over or otherwise deal with a Convertible Security that has been granted to them. A Participant must not enter into any arrangement for the purpose of hedging their economic exposure to a Convertible Security that has been granted to them.

- (h) **(Vesting of Convertible Securities)**: Any vesting conditions applicable to the grant of Convertible Securities will be described in the invitation. If all the vesting conditions are satisfied and/or otherwise waived by the Board, a vesting notice will be sent to the Participant by the Company informing them that the relevant Convertible Securities have vested. Unless and until the vesting notice is issued by the Company, the Convertible Securities will not be considered to have vested. For the avoidance of doubt, if the vesting conditions relevant to a Convertible Security are not satisfied and/or otherwise waived by the Board, that Convertible Security will lapse.
- (i) **(Exercise of Convertible Securities and cashless exercise)**: To exercise a Convertible Security, the Participant must deliver a signed notice of exercise and, subject to a cashless exercise of Convertible Securities (see below), pay the exercise price (if any) to or as directed by the Company, at any time prior to the earlier of any date specified in the vesting notice and the expiry date as set out in the invitation.

At the time of exercise of the Convertible Securities, and subject to Board approval, the Participant may elect not to be required to provide payment of the exercise price for the number of Convertible Securities specified in a notice of exercise, but that on exercise of those Convertible Securities the Company will transfer or issue to the Participant that number of Shares equal in value to the positive difference between the Market Value of the Shares at the time of exercise and the exercise price that would otherwise be payable to exercise those Convertible Securities.

**Market Value** means, at any given date, the volume weighted average price per Share traded on the ASX over the 5 trading days immediately preceding that given date, unless otherwise specified in an invitation.

A Convertible Security may not be exercised unless and until that Convertible Security has vested in accordance with the Plan rules, or such earlier date as set out in the Plan rules.

- (j) **(Delivery of Shares on exercise of Convertible Securities)**: As soon as practicable after the valid exercise of a Convertible Security by a Participant, the Company will issue or cause to be transferred to that Participant the number of Shares to which the Participant is entitled under the Plan rules and issue a substitute certificate for any remaining unexercised Convertible Securities held by that Participant.

- (k) **(Forfeiture of Convertible Securities)**: Where a Participant who holds Convertible Securities ceases to be an Eligible Participant or becomes insolvent, all unvested Convertible Securities will automatically be forfeited by the Participant, unless the Board otherwise determines in its discretion to permit some or all of the Convertible Securities to vest.

Where the Board determines that a Participant has acted fraudulently or dishonestly, or wilfully breached his or her duties to the Group, the Board may in its discretion deem all unvested Convertible Securities held by that Participant to have been forfeited.

Unless the Board otherwise determines, or as otherwise set out in the Plan rules:

- (i) any Convertible Securities which have not yet vested will be forfeited immediately on the date that the Board determines (acting reasonably and in good faith) that any applicable vesting conditions have not been met or cannot be met by the relevant date; and
  - (ii) any Convertible Securities which have not yet vested will be automatically forfeited on the expiry date specified in the invitation.
- (l) **(Change of control)**: If a change of control event occurs in relation to the Company, or the Board determines that such an event is likely to occur, the Board may in its discretion determine the manner in which any or all of the Participant's Convertible Securities will be dealt with, including, without limitation, in a manner that allows the Participant to participate in and/or benefit from any transaction arising from or in connection with the change of control event.
- (m) **(Rights attaching to Plan Shares)**: All Shares issued under the Plan, or issued or transferred to a Participant upon the valid exercise of a Convertible Security, (**Plan Shares**) will rank pari passu in all respects with the Shares of the same class. A Participant will be entitled to any dividends declared and distributed by the Company on the Plan Shares and may participate in any dividend reinvestment plan operated by the Company in respect of Plan Shares. A Participant may exercise any voting rights attaching to Plan Shares.
- (n) **(Disposal restrictions on Securities)**: If the invitation provides that any Plan Shares or Convertible Securities are subject to any restrictions as to the disposal or other dealing by a Participant for a period, the Board may implement any procedure it deems appropriate to ensure the compliance by the Participant with this restriction.
- (o) **(Adjustment of Convertible Securities)**: If there is a reorganisation of the issued share capital of the Company (including any subdivision, consolidation, reduction, return or cancellation of such issued capital of the Company), the rights of each Participant

holding Convertible Securities will be changed to the extent necessary to comply with the Listing Rules applicable to a reorganisation of capital at the time of the reorganisation.

If Shares are issued by the Company by way of bonus issue (other than an issue in lieu of dividends or by way of dividend reinvestment), the holder of Convertible Securities is entitled, upon exercise of the Convertible Securities, to receive an allotment of as many additional Shares as would have been issued to the holder if the holder held Shares equal in number to the Shares in respect of which the Convertible Securities are exercised.

Unless otherwise determined by the Board, a holder of Convertible Securities does not have the right to participate in a pro rata issue of Shares made by the Company or sell renounceable rights.

- (p) **(Participation in new issues)**: There are no participation rights or entitlements inherent in the Convertible Securities and holders are not entitled to participate in any new issue of Shares of the Company during the currency of the Convertible Securities without exercising the Convertible Securities.
- (q) **(Amendment of Plan)**: Subject to the following paragraph, the Board may at any time amend any provisions of the Plan rules, including (without limitation) the terms and conditions upon which any Securities have been granted under the Plan and determine that any amendments to the Plan rules be given retrospective effect, immediate effect or future effect.

No amendment to any provision of the Plan rules may be made if the amendment materially reduces the rights of any Participant as they existed before the date of the amendment, other than an amendment introduced primarily for the purpose of complying with legislation or to correct manifest error or mistake, amongst other things, or is agreed to in writing by all Participants.

- (r) **(Plan duration)**: The Plan continues in operation until the Board decides to end it. The Board may from time to time suspend the operation of the Plan for a fixed period or indefinitely, and may end any suspension. If the Plan is terminated or suspended for any reason, that termination or suspension must not prejudice the accrued rights of the Participants.

If a Participant and the Company (acting by the Board) agree in writing that some or all of the Securities granted to that Participant are to be cancelled on a specified date or on the occurrence of a particular event, then those Securities may be cancelled in the manner agreed between the Company and the Participant.

- (s) **(Loan Shares)**: As part of an invitation, the Board may, in its absolute discretion, offer to an Eligible Participant a limited recourse, interest free loan to be made by the Company to the Eligible Participant for an amount equal to the aggregate issue price of the Shares

**(Loan Shares)** offered to the Eligible Participant pursuant to the relevant invitation **(Participant Loan)**.

A Participant Loan must be used for the sole purpose of paying the Company the issue price for the Loan Shares to be issued to the Eligible Participant on acceptance of the relevant invitation, with the amount to be advanced to the Eligible Participant under the Participant Loan applied to payment of the issue price for such Loan Shares.

Unless the Board, in its absolute discretion, determines otherwise, the date on which a Participant Loan must be repaid by the Participant shall be the earlier of:

- (i) three months after the date that the Participant ceases to be an Eligible Participant; or
- (ii) if determined by the Board to be repayable as a result of, or in anticipation of, a change of control event.

As security for a Participant Loan, the relevant Participant grants to the Company:

- (i) a pledge of its Loan Shares provided under the Plan; and
- (ii) a charge over all dividends and other amounts paid or payable on those Loan Shares.

If you are attending the meeting in person, please bring this with you for Securityholder registration.

Holder Number:

Your proxy voting instruction must be received by **10.00am (AWST) on Wednesday, 16 November 2022**, being **not later than 48 hours** before the commencement of the Meeting. Any Proxy Voting instructions received after that time will not be valid for the scheduled Meeting.

## SUBMIT YOUR PROXY VOTE ONLINE

**Vote online at <https://investor.automic.com.au/#/loginsah>**

Login & Click on 'Meetings'. Use the Holder Number as shown at the top of this Proxy Voting form.

- ✓ **Save Money:** help minimise unnecessary print and mail costs for the Company.
- ✓ **It's Quick and Secure:** provides you with greater privacy, eliminates any postal delays and the risk of potentially getting lost in transit.
- ✓ **Receive Vote Confirmation:** instant confirmation that your vote has been processed. It also allows you to amend your vote if required.



## SUBMIT YOUR PROXY VOTE BY PAPER

Complete the form overleaf in accordance with the instructions set out below.

### YOUR NAME AND ADDRESS

The name and address shown above is as it appears on the Company's share register. If this information is incorrect, and you have an Issuer Sponsored holding, you can update your address through the investor portal: <https://investor.automic.com.au/#/home> Shareholders sponsored by a broker should advise their broker of any changes.

### STEP 1 – APPOINT A PROXY

If you wish to appoint someone other than the Chair of the Meeting as your proxy, please write the name of that Individual or body corporate. A proxy need not be a Shareholder of the Company. Otherwise if you leave this box blank, the Chair of the Meeting will be appointed as your proxy by default.

### DEFAULT TO THE CHAIR OF THE MEETING

Any directed proxies that are not voted on a poll at the Meeting will default to the Chair of the Meeting, who is required to vote these proxies as directed. Any undirected proxies that default to the Chair of the Meeting will be voted according to the instructions set out in this Proxy Voting Form, including where the Resolutions are connected directly or indirectly with the remuneration of KMP.

### STEP 2 - VOTES ON ITEMS OF BUSINESS

You may direct your proxy how to vote by marking one of the boxes opposite each item of business. All your shares will be voted in accordance with such a direction unless you indicate only a portion of voting rights are to be voted on any item by inserting the percentage or number of shares you wish to vote in the appropriate box or boxes. If you do not mark any of the boxes on the items of business, your proxy may vote as he or she chooses. If you mark more than one box on an item your vote on that item will be invalid.

### APPOINTMENT OF SECOND PROXY

You may appoint up to two proxies. If you appoint two proxies, you should complete two separate Proxy Voting Forms and specify the percentage or number each proxy may exercise. If you do not specify a percentage or number, each proxy may exercise half the votes. You must return both Proxy Voting Forms together. If you require an additional Proxy Voting Form, contact Automic Registry Services.

### SIGNING INSTRUCTIONS

**Individual** Where the holding is in one name, the Shareholder must sign.

**Joint holding:** Where the holding is in more than one name, all Shareholders should sign.

**Power of attorney:** If you have not already lodged the power of attorney with the registry, please attach a certified photocopy of the power of attorney to this Proxy Voting Form when you return it.

**Companies:** To be signed in accordance with your Constitution. Please sign in the appropriate box which indicates the office held by you.

**Email Address:** Please provide your email address in the space provided.

**By providing your email address, you elect to receive all communications despatched by the Company electronically (where legally permissible) such as a Notice of Meeting, Proxy Voting Form and Annual Report via email.**

### CORPORATE REPRESENTATIVES

If a representative of the corporation is to attend the Meeting the appropriate 'Appointment of Corporate Representative' should be produced prior to admission. A form may be obtained from the Company's share registry online at <https://automic.com.au>.



