

# Marion Energy Limited

## ABN 99 000 031 292

### Notice of Annual General Meeting

An Annual General Meeting of shareholders of Marion Energy Limited (**Company**) will be held at Mantra on Russell, 222 Russell Street, Melbourne at 11.00 am (AEDT) on 19 December 2014 (**Meeting**).

The Explanatory Memorandum which accompanies this notice (**Notice of Meeting**) (and forms part of it) provides additional information on a number of matters to be considered at the Meeting.

### AGENDA

#### Ordinary Business

#### Annual Financial Report – 2014

*“To receive and consider the Annual Financial Report of the Company and its controlled entities and the reports of the Directors and of the Auditors for the financial year ended 30 June 2014.”*

The Company’s auditor will be present at the Meeting to answer questions regarding the Auditor’s Report.

#### Resolution 1. – Adoption of Remuneration Report – 2014

To consider and, if thought fit, to pass the following resolution:

*“To adopt the Remuneration Report for the year ended 30 June 2014 submitted as part of the Directors’ Report for the financial year ended 30 June 2014, pursuant to sections 250R(2) and 250R(3) of the Corporations Act 2001 (**Corporations Act**).”*

Please note that the vote on this item is advisory only and does not bind the Directors of the Company or the Company.

**Voting Exclusion Statement:** *In accordance with section 250R of the Corporations Act, a vote on Resolution 1 must not be cast by, or on behalf of, a member of the Company’s Key Management Personnel whose remuneration details are included in the Remuneration Report (“KMP”) or a closely related party of a KMP, whether the votes are cast as a shareholder, proxy or in any other capacity, and the Company will disregard any such vote.*

*However, the Company will not disregard a vote cast by a KMP or closely related party of a KMP if:*

- (a) the person is acting as proxy appointed by writing that specifies how the proxy is to vote on the resolution, and the vote is not cast on behalf of a person who is otherwise excluded from voting on the resolution as described above; or*
- (b) the person is the Chair voting an undirected proxy which expressly authorises the Chair to vote the proxy on a resolution connected with the remuneration of a member of the Company’s KMP.*

*If you are a KMP or a closely related party of a KMP (or are acting on behalf of any such person) and purport to cast a vote that will be disregarded by the Company (as described above), you may commit an offence by breaching the voting restrictions that apply to you under the Corporations Act.*

*A closely related party of a member of the Company's KMP means any of the following:*

- *a spouse or child of the member;*
- *a child of the member's spouse;*
- *a dependant of the member or of the member's spouse;*
- *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 dealings with the entity;*
- *a company the member controls; or*
- *a person prescribed by regulations (as at the date of this Notice, no such regulations have been prescribed).*

*The proxy form accompanying this Notice contains detailed instructions regarding how to complete the proxy form if a shareholder wishes to appoint the Chairman as his or her proxy and to authorise the Chairman to vote on the resolution to adopt the Remuneration Report. You should read those instructions carefully.*

## **Resolution 2. – Election of Director – Mr Nicholas Stretch**

To consider and, if thought fit, to pass the following Resolution:

*“That Mr Nicholas Stretch, who retires in accordance with clause 6.3 (c) of the Company’s Constitution, being eligible, is elected as a Director of the Company.”*

Information about the candidate is set out in the Explanatory Memorandum accompanying this Notice of Meeting.

## **Special Business**

## **Resolution 3. – Approval for issue of options to KM Custodians**

To consider and, if thought fit, to pass the following Resolution:

*"That for the purposes of ASX Listing Rule 7.1 and for all other purposes, Shareholders approve the issue to KM Custodians of up to 8,870,475 options with an exercise price of \$0.05 and an expiry date which is two years from the date of issue, for the consideration and on the further terms and conditions set out in the Explanatory Memorandum (KM Option Issue)."*

**Voting Exclusion Statement:** *The Company will disregard any votes cast on Resolution 3 by any person to whom KM Options are proposed to be issued, any other person who will obtain a benefit (except a benefit solely in the capacity of a holder of securities), and any of their associates.*

*However, the Company will not disregard a vote if:*

- (a) *it is cast by a person as proxy for a person who is entitled to vote, in accordance with directions on the Proxy Form; or*
- (b) *it is cast by the person chairing the Meeting as proxy for a person who is entitled to vote, in accordance with directions on the Proxy Form to vote as the proxy decides.*

## **Resolution 4. – Ratification of prior issue of shares to KM Custodians**

To consider and, if thought fit, to pass the following Resolution:

*"That for the purpose of ASX Listing Rule 7.4 and all other purposes Shareholders ratify the issue of 17,740,951 ordinary shares for the consideration and on the further terms and conditions set out in the Explanatory Memorandum (KM Share Issue)."*

*Note: if all Resolutions are approved by Shareholders, the maximum shareholding of KM Custodians, if it exercises all Options held by it and no Options held by other persons are exercised will be 31.49%, and if all other Options are exercised will be 24.08%. KM Custodians has informed the Company that it will not exercise any Options if doing so would result in it contravening section 606 of the Corporations Act 2001 (Cth).*

**Voting Exclusion Statement:** *The Company will disregard any votes cast on Resolution 10 by any person to whom the KM Share Issue is proposed to be made, any other person who will obtain a benefit (except a benefit solely in the capacity of a holder of securities), and any of their associates.*

*However, the Company will not disregard a vote if:*

- (a) it is cast by a person as proxy for a person who is entitled to vote, in accordance with directions on the Proxy Form; or*
- (b) it is cast by the person chairing the Meeting as proxy for a person who is entitled to vote, in accordance with directions on the Proxy Form to vote as the proxy decides.*

## **Resolution 5. – Approval for issue of Convertible Notes**

To consider and, if thought fit, to pass the following Resolution:

*"That for the purpose of ASX Listing Rule 7.1, and for all other purposes, approval be given to the Company to issue up to a total of 1,900 Convertible Notes (**Convertible Note Issue**), on the further terms and conditions set out in the Explanatory Memorandum."*

**Voting Exclusion Statement:** *The Company will disregard any votes cast on Resolution 5 by any person to whom Convertible Notes are proposed to be issued, any other person who will obtain a benefit (except a benefit solely in the capacity of a holder of securities), and any of their associates.*

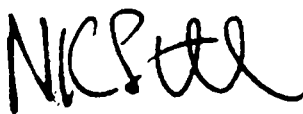
*However, the Company will not disregard a vote if:*

- (a) it is cast by the person as proxy for a person who is entitled to vote, in accordance with directions on the Proxy Form; or*
- (b) it is cast by the person chairing the Meeting as proxy for a person who is entitled to vote, in accordance with directions on the Proxy Form to vote as the proxy decides.*

## Voting and Proxies

- 1) For the purposes of the Meeting, the Directors have determined that shares will be taken to be held by the persons who are registered as shareholders of the Company at 7.00pm on 17 December 2014.
- 2) A Proxy Form accompanies this Notice of Meeting.
- 3) A shareholder entitled to attend and vote is entitled to appoint not more than two proxies. A proxy need not be a shareholder. Where the Chairman is appointed proxy, he will vote in accordance with the shareholder's directions given on the Proxy Form or, in the absence of a direction or an acknowledgement referred to below, in favour of the resolutions contained in the Notice of Meeting (except where on the particular resolution he is excluded from voting).
- 4) The Proxy Form has provision for the shareholder to acknowledge that the Chairman may exercise the proxy even if he has an interest in the outcome of the resolution and that votes cast by him, other than as proxy holder, would be disregarded because of that interest.
- 5) Where a shareholder wishes to appoint two proxies an additional Proxy Form may be obtained by contacting the Company's share registry. Alternatively a photocopied form, duly completed, will be acceptable. A shareholder appointing two proxies may specify the proportion or number of votes each proxy is appointed to exercise. If a shareholder appoints two proxies and does not specify the proxies voting rights the rights will be deemed to be half each. Fractions of votes will be disregarded.
- 6) A body corporate appointed as a proxy will need to appoint a representative to exercise the powers that body corporate may exercise as the member's proxy at the Annual General Meeting, in accordance with section 250D of the Corporations Act and provide a "Certificate of Appointment of Representative" to the Company prior to the commencement of the Annual General Meeting. A form of the certificate may be obtained from the Company's Registered Office at Suite 802, 530 Little Collins Street, Melbourne Victoria 3000.
- 7) A proxy document or form is valid if it is signed by the member of the Company making the appointment and contains the member's address, the Company's name, the proxy's name or the name of the office held by the proxy and the meeting at which the appointment may be used and is received in accordance with note 8 below.
- 8) The Proxy Form, and a certified copy of any authority or power of attorney under which the Proxy Form is signed, must be received either (a) at the Company's Registered Office at Suite 802, 530 Little Collins Street, Melbourne Victoria 3000; or (b) share registry of the Company, Computershare Investor Services Pty Limited, GPO Box 242, Melbourne Victoria 3001 (or by facsimile to 1800 783 447 within Australia or +61 3 9473 2555 outside Australia); by 11.00 am on 17 December 2014.
- 9) Alternatively, you may appoint a proxy or vote online at [www.investorvote.com.au](http://www.investorvote.com.au). To log in you will need your 6 digit Control Number as well as your Holder Identification Number or Security Reference Number which are shown on your proxy form.

By Order of the Board



Nick Stretch  
Company Secretary  
21 November 2014

## **EXPLANATORY MEMORANDUM**

### **INTRODUCTION**

This Explanatory Memorandum has been prepared for the information of Shareholders of the Company in connection with the business to be conducted at the Annual General Meeting (**AGM**) to be held at 11.00am on 19 December 2014, at Mantra on Russell, Level 3, 222 Russell Street, Melbourne.

This Explanatory Memorandum should be read in conjunction with, and forms part of, the accompanying Notice of Meeting. The purpose of this Explanatory Memorandum is to provide information to Shareholders to assist in deciding how to vote on Resolutions 1 to 27 as set out in the Notice of Meeting.

This Explanatory Memorandum should also be read in conjunction with the Accounts announced and released to ASX on 21 November 2014 and separately dispatched to Shareholders, and with the Company's announcements to ASX.

### **ACTION TO BE TAKEN BY SHAREHOLDERS**

Shareholders should read the Notice of Meeting and this Explanatory Memorandum carefully before deciding how to vote on the Resolutions.

A Proxy Form is located at the end of the Explanatory Memorandum. 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 thereon. Lodgement of a Proxy Form will not preclude a Shareholder from attending and voting at the Meeting in person.

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

### **Voting Exclusions**

As set out in the Notice of Meeting, voting exclusions apply to a number of Resolutions to be considered at the AGM. Please read the voting exclusions carefully before completing a Proxy Form. In some circumstances, you may commit an offence by voting in disregard of a voting exclusion.

**Glossary:**

In this Notice of Meeting and Explanatory Statement, unless the context otherwise requires:

**Accounts** means the Company's full-year financial reports for the year ended 30 June 2014.

**ASX** means Australian Securities Exchange Limited ACN 008 624 691 or the financial market conducted by it, as applicable.

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

**Listing Rules** means the listing rules of ASX, as amended or varied from time to time.

**KM Agreement** means the facility agreement between KM Custodians and the Company dated 27 October 2014.

**KM Custodians** means KM Custodians Pty Limited ACN 143 388 176.

**KM Funding** means the funding provided by KM Custodians pursuant to the KM Agreement.

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

**Shareholder** means a person registered as a holder of Shares as at 7.00pm (AEDT) on 17 December 2014.

## 1. Introduction

The Explanatory Statement has been prepared to assist Shareholders to understand the Resolutions set out in the Notice of Meeting that will be put to Shareholders at the forthcoming Annual General Meeting (**Meeting** or **AGM**).

## 2. Purpose of Meeting

The Meeting has the following two main purposes:

- (a) to consider Resolutions relating to the ordinary business of the Company, including the adoption of accounts, the approval of the remuneration report, and the election of Directors; and
- (b) to consider a number of Resolutions relating to issues of securities in the Company to investors who have provided financial support to the Company.

## 4. Annual Financial Report – 2014

Pursuant to the Corporations Act, the Directors of a public company that is required to hold an Annual General Meeting must table the financial statements and reports of the Company for the previous year before the members at that Annual General Meeting.

Shareholders have been provided with all relevant information concerning the Company's financial statements in the Annual Report of the Company for the year ended 30 June 2014. A copy of the Annual Report has been forwarded or made available to each Shareholder and may also be found online at <http://www.marionenergy.com.au> and as announced to ASX. A copy of the financial statements and the associated reports will also be tabled at the Meeting.

Shareholders should note that the sole purpose of tabling the financial statements of the Company at the Annual General Meeting is to provide Shareholders with the opportunity to be able to ask questions or discuss matters arising from the financial statements at the Meeting. It is not the purpose of the meeting that the financial statements be accepted, rejected or modified in any way. Further, as it is not required by the Corporations Act, no resolution to adopt the Company's financial statements will be put to Shareholders at the Meeting.

Shareholders will be allowed a reasonable opportunity to ask questions about, or make comments on, the management of the Company.

It is proposed that the Company's auditors will be present at the meeting. Shareholders present at the meeting will be allowed a reasonable opportunity to ask the Chairman of the Company questions about the management of the Company or ask the auditors questions relevant to:

- (a) the conduct of the audit;
- (b) the preparation and content of the auditor's report;
- (c) the accounting policies adopted by the Company in relation to the preparation of the financial statements; and
- (d) the independence of the auditors in relation to the conduct of the audit.

Written questions to the Chairman about the management of the Company, or to the Company's auditor about the above matters, may be submitted by no later than 5 business days before the meeting to the Company Secretary at the Company's registered office.

## 5. Resolution 1: Remuneration Report 2014

Section 300A of the Corporations Act requires that the Directors' Report must contain a Remuneration Report containing prescribed information about the Board's policy for determining the nature and amount of the remuneration of Directors and senior management. The Remuneration Report must also explain the relationship between the remuneration policy of the Board and the Company's performance. The Remuneration Report is set out on page 11 of the Company's 2014 Annual Report.

The Corporations Act requires that the Remuneration Report be submitted to shareholders for adoption by a non-binding resolution.

The Remuneration Report contains information regarding such matters (among others) as:

- the Board's policy for determining the nature and levels of remuneration of the Company's senior management personnel;
- the relationship between the Board's remuneration policy and the Company's performance;
- prescribed information regarding the remuneration paid to each member of the Company's key management personnel, including the amount of the remuneration paid to those personnel; and
- where any element of the remuneration of a member of the key management personnel depended on the satisfaction of a performance condition, a summary of that performance condition and an explanation of why it was adopted in relation to the relevant personnel.

Section 250R(2) of the Corporations Act provides that the Company is required to put the Remuneration Report to the vote of shareholders.

Section 250R(3) of the Corporations Act provides that Resolution 1 is advisory only and does not bind the Directors of the Company. Of itself, a failure of Shareholders to pass Resolution 1 will not require the Directors to alter any of the arrangements described in the respective Remuneration Report.

However, sections, 250U and 250Y, among others of the Corporations Act, give shareholders the opportunity to remove the Board if the Remuneration Report receives a "no" vote of 25% or more at two consecutive annual general meetings (**Two Strikes Rule**).

Under the Two Strikes Rule, where a resolution on the Remuneration Report receives a "no" vote of 25% or more at two consecutive annual general meetings, the Company will be required to put to Shareholders at the second annual general meeting 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 Director's Report must stand for re-election (**Spill Resolution**).

In addition, if comments are made on the Remuneration Report at the AGM, the Company's remuneration report in respect of the following financial year will be required to include an explanation of the Board's proposed action in response to those comments or, if no action is proposed, the reasons why.

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

The Chairman will cast all available proxies in favour of Resolution 1. Shareholders may also choose to direct the Chairman to vote against Resolution 1 or to abstain from voting.

## 6. Resolution 2: Election of Director – Mr Nicholas Stretch

Mr Nicholas Stretch offers himself for re-election to the Board in accordance with the Company's Constitution, which requires that one third of the Directors (rounded down to the nearest whole number) must retire at each Annual General Meeting and offer themselves for re-election.

Mr Stretch graduated from Melbourne University in 1983 with degrees in Law and Commerce. He has been a solicitor in private practice for most of his career and has held a number of senior management positions in a major Australian law firm including that of Victorian and National Chairman.

In 2007 – 2008, Nick was elected chairman of ASX-listed coal seam gas explorer Blue Energy Limited (ASX:BUL) during which time he oversaw the implementation of a number of corporate governance and investor relations processes for the company.

Currently Nick is a director of Nick Stretch Legal Pty Ltd where he practices corporate and commercial law. He also sits on the boards of not-for-profit organisations, M A & V L Perry Foundation, Firbank Grammar School, Firbank Grammar School Foundation and the Bowness Family Foundation.

Mr Stretch was appointed to the Board on 7 May 2013.

The Chairman will cast all available proxies in favour of Resolution 2.

Shareholders may also choose to direct the Chairman to vote against Resolution 2 or to abstain from voting.

Each Director, other than Mr Stretch, recommends that Shareholders vote in favour of Resolution 2.

## 7. Resolution 3: Approval for Issue of Options to KM Custodians

The Company seeks Shareholder approval under Listing Rule 7.1 for the issue to KM Custodians of 8,870,475 options to subscribe for Shares (**KM Option Issue**), pursuant to the KM Agreement. Since the last general meeting of the Company, KM Custodians provided \$2,556,889 in emergency funding to the company (**KM Funding**) which enabled the Company to continue operating while it works towards refinancing its senior debt.

The Directors consider that, without the provision of the KM Funding by KM Custodians, the Company's prospects for continuing as a going concern would be severely limited. The Directors considered that the terms of the KM Funding, including the terms of issue of the KM Options, represented the best financing arrangement that could be achieved by the Company at the time, and that entering into the KM Agreement was in the best interests of the Company.

It is a condition of the KM Agreement that the Company seek shareholder approval for the issue to KM Custodians of 8,870,475 unlisted options to subscribe for Shares, on the terms of issue set out below.

As at the date of this Notice of Meeting, the Company has no capacity to make the KM Option Issue as its 15% placement capacity under the Listing Rules is fully utilised. Therefore, in order for the KM Option Issue to occur, Shareholder approval under Listing Rule 7.1 is required.

If Resolution 3 is not approved by Shareholders then the KM Agreement requires that the Company pay to KM Custodians an amount equal to the economic value of those options as compensation. This amount will become due and payable upon sale of the Company's interests in the Clear Creek assets or upon a change of control of the Company, whichever is the earlier.

The Directors of the Company unanimously recommend to Shareholders that they vote in favour of Resolution 3.

As at the date of the Notice of Meeting, due to the Company's Shares having been suspended from trading on ASX since 3 October 2011, the Company is not able to issue a cleansing notice under section 708A(5)(e) and section 708A(6) of the Corporations Act in respect of the issue of Convertible Notes or any Shares to be issued pursuant to the terms of issue of the Convertible Notes. If necessary, the Company will prepare and issue a prospectus prior to the exercise of options by KM Custodians. However, if the Company does not issue a prospectus by the date on which Shares are re-admitted to quotation on ASX, then the Company must give to ASX a cleansing notice in respect of the relevant Shares within 5 business days after Shares are issued to the Convertible Note holder pursuant to the terms of issue of the Convertible Notes.

### **Specific Information required by ASX Listing Rule 7.1**

For the purposes of ASX Listing Rule 7.1 the following information is provided:

- (a) *The maximum number of KM Options to be issued is 8,870,475.*
- (b) *The issue date of the KM Options will be shortly after approval is obtained, and in any case within 3 months of the date of the Meeting.*
- (c) *The KM Options are issued with an exercise price of \$0.05 per KM Option.*
- (d) *The KM Options are to be issued pursuant to the contractual arrangements under which the KM Funding was provided, as part of the consideration for the provision of the KM Funding. The KM Options otherwise have a nil issue price.*
- (e) *Each KM Option will expire on the date that is two years from the date of issue.*
- (f) *The KM Options will be issued to KM Custodians.*
- (g) *The terms of issue of the KM Options are set out in the Appendix.*
- (h) *A voting exclusion statement is included in the Notice of Meeting.*

As set out in the Appendix, the KM Options may be exercised by each holder by payment in cleared funds of the Exercise Price.

Funds raised by the Company through the exercise of the KM Options will be used by the Company for working capital.

As at the date of the Notice of Meeting, due to the Company's Shares having been suspended from trading on ASX since 3 October 2011, the Company is not able to issue a cleansing notice under section 708A(5)(e) and section 708A(6) of the Corporations Act in respect of the issue of Convertible Notes or any Shares to be issued pursuant to the terms of issue of the Convertible Notes. If necessary, the Company will prepare and issue a prospectus prior to the exercise of options by KM Custodians. However, if the Company does not issue a prospectus by the date on which Shares are re-admitted to quotation on ASX, then the Company must give to ASX a cleansing notice in respect of the relevant Shares within 5 business days after Shares are issued to the Convertible Note holder pursuant to the terms of issue of the Convertible Notes.

## **8. Resolution 4: Approval of Prior Issue of Shares to KM Custodians**

The Company seeks approval under Listing Rule 7.4 to ratify the issue of 17,740,951 ordinary shares to KM Custodians (**KM Share Issue**) on 28 October 2014.

### **Background**

On 28 October 2014 the Company issued 17,740,951 Shares to KM Custodians, pursuant to an agreement entered into with KM Custodians dated 27 October 2014 (**KM Agreement**). Information regarding the issue of the shares was announced by the Company on 3 November 2014.

Under ASX Listing Rule 7.1, a company may only issue equity securities in any 12 month period equal to 15% of the lowest number of ordinary shares on issue during that period without obtaining shareholder approval. By issuing 17,740,951 ordinary shares to KM Custodians, the Company used almost the entirety of the 15% placement capacity available to it under this Listing Rule.

The Company wishes to maintain a 15% placement capacity to provide it with flexibility to make further issues of equity securities as the need and strategic opportunities arise.

Accordingly, under ASX Listing Rule 7.4, the Company seeks Shareholder approval to ratify the KM Share Issue, pursuant to Resolution 4. If Resolution 4 is approved by Shareholders, the Company's capacity to issue further equity securities during the next 12 months will not be reduced by the KM Share Issue having occurred.

The Directors of the Company unanimously recommend to Shareholders that they vote in favour of Resolution 4.

#### **Specific Information required by ASX Listing Rule 7.4**

For the purposes of ASX Listing Rule 7.4 the following information is provided:

- (a) *The following securities at the issue prices set out below were issued:*
  - (i) *17,740,951 ordinary shares at a price of \$0.03 per share to KM Custodians (KM Share Issue);*
- (b) *the shares issued were fully paid ordinary shares in the capital of the Company issued on the same terms and conditions as the Company's existing Shares;*
- (c) *The KM Share Issue was made in order to reduce the loan balance outstanding under the KM Agreement;*
- (d) *A voting exclusion statement is included in the Notice of Meeting.*

## **9. Resolution 5: Approval of Issue of Convertible Notes**

The Company seeks approval under Listing Rule 7.1 to issue up to 1,900 convertible notes (**Convertible Notes**) and the Shares and options to subscribe for Shares that would be issued pursuant to their conversion. The convertible notes would be issued following Shareholder approval. If Shareholder approval of conversion of the convertible notes is not obtained, the convertible notes will constitute a debt of the Company.

### **Background**

In addition to the finance raised from KM Custodians, a number of professional and sophisticated investors have provided short term loans to the Company on the basis that, if shareholder approval is obtained, these loans will be repaid by the issue of the Convertible Notes. Each Convertible Note would:

- have a face value of \$100;
- mature on 15 March 2016;
- be unsecured;
- carry a coupon rate of 12% per annum on the face value of the Convertible Notes. Interest would be payable quarterly in arrears and is to be satisfied by the issue of Shares at \$0.06 per Share, being the last traded share price of Shares; and
- convert into Shares at an issue price of \$0.06 per Share, and options to subscribe for Shares with an exercise price of \$0.10 per option and an exercise period of two years commencing on the date of conversion. One option will be issued for every two Shares issued on conversion.

If all the Convertible Notes are converted into Shares and the interest payable in respect of Convertible Notes is paid in full by the issue of Shares and options, then a maximum total of 3,655,985 additional Shares (including Shares issued in payment of interest) and 1,827,994 unlisted options will be issued pursuant to the terms of the Convertible Notes.

Each holder of Convertible Notes has informed the Company that they intend to exercise their right to convert their Convertible Notes and be issued Shares and options, following the resumption of trading of the Company's securities on ASX.

## **Reasons for Resolution 5**

Under ASX Listing Rule 7.1, a company may only issue equity securities in any 12 month period equal to 15% of the lowest number of ordinary shares on issue during that period without obtaining shareholder approval. The Company issued the Convertible Notes on the basis that the issue of Shares and options on conversion would be subject to Shareholder approval, in order to ensure that it would be able to convert all the Convertible Notes without exceeding its 15% placement capacity under the Listing Rules.

By obtaining Shareholder approval for the conversion of Convertible Notes, the Company will be able to preserve its 15% placement capacity to provide it with flexibility to make further issues of equity securities as the need and strategic opportunities arise.

Accordingly, under Resolution 5 the Company seeks Shareholder approval to issue Shares and options that may be issued pursuant to the conversion of Convertible Notes. If Resolution 5 is approved by Shareholders, the Company's capacity to issue further equity securities during the next 12 months will not be reduced by the Convertible Note Issue and conversion having occurred.

The Directors of the Company unanimously recommend to Shareholders that they vote in favour of Resolution 5.

## **Specific Information required by ASX Listing Rule 7.1**

For the purposes of ASX Listing Rule 7.1 the following information is provided:

- (a) *1,900 Convertible Notes will be issued at \$100 per Convertible Note;*
- (b) *Each Convertible Note:*
  - (i) *has a face value (and issue price) of \$100;*
  - (ii) *matures on 15 March 2016;*
  - (iii) *is unsecured;*
  - (iv) *carries a coupon rate of 12% per annum on the face value of the Convertible Notes. Interest is payable quarterly in arrears and is to be satisfied by the issue of Shares at \$0.06 per Share, being the last traded share price of Shares; and*
  - (v) *converts into:*
    - (A) *Shares at an issue price of \$0.06 per Share; and*
    - (B) *options to subscribe for Shares with an exercise price of \$0.10 per option and an exercise period of two years commencing on the date of issue (Note Options). One Note Option will be issued for every two Shares issued on conversion. The Note Options are attached to the Shares to be issued on conversion and otherwise have a nil issue price. The terms are set out in the Appendix*

- (c) *Subscribers for Convertible Notes were identified by advisers to the Company from professional investors with an interest in the Company. The subscribers are:*
- (i) *Indigo Blue Holdings Pty Ltd;*
  - (ii) *Nazdall Pty Ltd;*
  - (iii) *J.A. Leith and A.E. Leith as trustees for the JA & AE Leith Superannuation Fund; and*
  - (iv) *Granelle Australia Pty Ltd as trustee for the Optimizers Super Fund.*
- None of the subscribers are related parties of the Company.*
- (d) *The Convertible Notes will be issued progressively in the period shortly after approval is obtained, and in any case within 3 months of the date of the Meeting.*
- (e) *The \$190,000 in funds raised from the issue of the Convertible Notes would be used repay loans made to fund the Company's ongoing operations, administration and to provide working capital.*
- (f) *A voting exclusion statement is included in the Notice of Meeting.*

## APPENDIX – Option Terms

1. **Exercise Price.** The exercise price for each KM Option is A\$0.05 and for each Note Option is \$0.10 (the Exercise Price) as recorded on the statement evidencing the Option.
2. **Entitlement on Exercise.** Each Option when exercised will entitle the holder to one fully paid ordinary share in the capital of the Company (Share).
3. **Expiry Date.** Each Option will expire two years from the date of issue, and thereafter no party has any claim against any other party, and in particular the Company, arising under or in respect of the Option.
4. **Exercise Period.** Each Option will become exercisable immediately upon issue and will remain exercisable until the end of the Expiry Date.
5. **Exercise Multiple.** Each Option is exercisable alone or in conjunction with any number of other Options, subject to certain limitations outlined in section 7 below.
6. **Notice of Exercise.** Options may be exercised by a notice attached to the statement for the Options addressed to the Company, signed by the holder of the Options stating the holder exercises the Options and specifying the number of Options exercised (Notice of Exercise).
7. **Delivery of Notice of Exercise.** The completed Notice of Exercise must be delivered together with payment in cleared funds, equal to the cleared funds amount ('Payment') of the Exercise Price for each Option being exercised.

Any Notice of Exercise so received by the Company (ie with full Payment) will be deemed to be an exercise of the Options by the holder as at date of receipt. A completed Notice of Exercise which is not accompanied by a sufficient Payment will be deemed not to have been received by the Company until such time as the Company receives sufficient cleared funds.

8. **Ranking of Shares.** The Shares issued upon exercise of Options will rank pari passu in all respects with the Company's then existing shares.
9. **Issue of Shares.** After an Option is validly exercised, the Company must as soon as possible:
  - i. issue and allot the Share; and
  - ii. apply for quotation for the share on the Australian Securities Exchange (ASX).
10. **Rights attached to Options.** The holder of Options is not a shareholder and will not by virtue of holding the Options be entitled to participate in new issues of capital offered to all shareholders during the currency of the Options. However, the Company will ensure that for purposes of determining entitlements to participate in any such issue, the record date for any issue during the Exercise Period of the Options will be at least ten business days after the issue is announced. This will give the holder of the Options the opportunity to exercise prior to the date for determining entitlements to participate in the issue.
11. **Bonus Issues.** If the Company makes a bonus issue of Shares or other securities to existing shareholders (other than an issue in lieu or in satisfaction of dividends or by way of dividend re-investment):
  - i. the number of Shares which must be issued on the exercise of an Option will be increased by the number of Shares which the Optionholder would have received if the Optionholder had exercised the Option before the record date for the bonus issue; and
  - ii. no change will be made to the Exercise Price.

12. If the Company makes an issue of Shares pro rata to existing Shareholders (other than (i) a bonus or other issue as referred to in 11 above; or (ii) an issue in lieu or in satisfaction of dividends or by way of dividend re-investment), the Exercise Price of the Options will be reduced in the manner specified in ASX Listing Rule 6.22.
13. In the event of any reorganisation of the issued ordinary share capital of the Company (including consolidation, subdivision, reduction or return) the number of Shares attaching to each Option or the Exercise Price of the Option or both will be reorganised in the manner specified in the ASX Listing Rules at the time of the reorganisation.
14. Subject to 11, 12 and 13 above, the Exercise Price and the number of Shares to be issued on the exercise of the Option will not change in the event of a new issue of securities by the Company.
15. The Company will give notice to the holder of the Options of any adjustment to the number of Shares to which the holder will be entitled on exercise of the Options or the Exercise Price of the Options in accordance with the ASX Listing Rules at that time.
16. The Company will not apply for official quotation of the Options on ASX.