



# Notice of Annual General Meeting 2012

Thursday 29 November, 2012 at 2.00 pm

To be held at:  
Level 1, 82 Gilbert Street  
Adelaide SA 5000

## Notice of Annual General Meeting

Notice is hereby given that the Annual General Meeting of the shareholders of Ellex Medical Lasers Limited (the Company) will be held at Ellex Medical Lasers Limited, Level 1, 82 Gilbert Street, Adelaide, South Australia, at 2:00 pm (Adelaide time) on Thursday 29 November 2012 for the purpose of transacting the following business.

### Ordinary Business

#### 1. Accounts & Reports

To receive and consider the financial statements of the Company and its controlled entities for the year ended 30 June 2012 and the related Directors' Reports, Directors' Declarations and Auditor's Report. The electronic copy of the 2012 Annual Report is available to download or view on the company website at the following address:

[www.ellex.com/corp/investors/annual-reports](http://www.ellex.com/corp/investors/annual-reports).

The 2012 Annual Report has also been sent by post to those shareholders who have previously elected to receive a hard copy.

#### Resolution 2 – Re-election of Director

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

“To re-elect Malcolm Plunkett as a director. Malcolm Plunkett retires by rotation in accordance with the Company's Constitution and, being eligible, offers himself for re-election.”

#### Resolution 3 – Adoption of Remuneration Report

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

“To adopt the Remuneration Report as set out in the Directors' Report which forms part of the Annual Report for the year ended 30 June 2012”.

The resolution is advisory only and does not bind the Company or its directors. However, under the Corporations Act 2001, if 25% or more of votes that are cast are voted against the adoption of the remuneration report at two consecutive AGMs, shareholders will be required to vote at the second of those AGMs on a resolution (a “spill resolution”), that another meeting be held within 90 days at which all of the Company's directors must go up for re-election.

The Board will consider the outcome of the vote and comments made by shareholders on the remuneration report at the meeting when reviewing the Company's remuneration policies.

*The Chairman of the meeting intends to vote undirected proxies in FAVOUR of this resolution.*

*A voting exclusion statement in relation to this resolution is set out on Page 3 of this Notice of Meeting.*

### Special Business

#### Resolution 4 – Conditional resolution to hold Director elections at special meeting

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

“That, subject to and conditional on at least 25% of the votes cast on Resolution 3, the adoption of the Remuneration Report, being cast against it:

- (1) a general meeting of the company (the “Spill Meeting”) be held within 90 days of the passing of this resolution;
- (2) all of the Directors in office when the resolution to make the Directors' Report for the financial year ended 30 June 2012 was passed (being Victor Previn, Alex Sundich, Malcolm Plunkett and Giuseppe Canala) and who remain in office at the time of the Spill Meeting, cease to hold office immediately before the end of the Spill Meeting; and

- (3) resolutions to appoint persons to offices that will be vacated immediately before the end of the Spill Meeting be put to the vote at the Spill Meeting.”

*The Chairman of the meeting intends to vote undirected proxies AGAINST this resolution.*

*A voting exclusion statement in relation to this resolution is set out on page 3 of this Notice of Meeting.*

## Other Business

To deal with any other business that may be properly brought forward.

## Shareholder Information

1. A shareholder entitled to attend and vote at this meeting is entitled to appoint not more than two proxies (who need not be shareholders of the Company) to attend and vote on a poll in the shareholder's place.
2. The appointment of two proxies should specify the percentage of voting rights or number of securities to be applied to each proxy and if not specified then each proxy may exercise half your votes with fractions disregarded. A single proxy exercises all voting rights.

### 3. Voting Exclusions

In accordance with the Corporation Act, a vote must not be cast (in any capacity), and the Company will disregard any votes cast on Resolutions 3 and 4 by any Key Management Personnel (which includes each of the Directors), the details of whose remuneration are included in the Remuneration Report, and any Closely Related Party of such Key Management Personnel.

However, a person described above may cast a vote on Resolutions 3 and 4 if the vote is not cast on behalf of a person described above and either:

- (a) the person does so as proxy appointed in writing that specifies how the proxy is to vote on the proposed resolution; or
- (b) the Chair of the meeting is appointed as proxy and the appointment of the Chair does not specify the way in which the Chair is to vote and expressly authorises the Chair to exercise the proxy even though the resolution is connected directly or indirectly with the remuneration of a member of the Key Management Personnel.

Please note, in accordance with sections 250R(4) and 250R(5) of the Corporations Act, the Chair will not vote any undirected proxies in relation to a resolution unless the shareholder expressly authorises the Chair to vote in accordance with the Chair's stated voting intentions. Please note that if the Chair of the meeting is your proxy (or becomes your proxy by default), by completing the attached proxy form, you will expressly authorise the chair to exercise your proxy on Resolutions 3 and 4 even though it is connected directly or indirectly with the remuneration of a member of Key Management Personnel for the Company, which includes the Chair.

If you appoint the Chair as your proxy, you can direct the Chair to vote for or against or abstain from voting on Resolutions 3 or 4 by marking the appropriate box on the proxy form.

Alternatively, Shareholders can nominate as their proxy for the purpose of voting on Resolutions 3 or 4, a proxy who is not a member of the Company's Key Management Personnel. That person would be permitted to vote undirected proxies.

4. The Company has determined in accordance with Corporations Regulation 7.11.37, that for the purpose of voting at the meeting, shares will be taken to be held by those who hold them at 7:00 pm (Adelaide time) on Tuesday 27 November 2012.

To record a valid vote, members will need to take the following steps:

Cast your vote online by visiting [www.investorvote.com.au](http://www.investorvote.com.au) and following the instructions and information provided on the enclosed proxy form; or

Complete and lodge the Proxy Form (and the power of attorney or other authority, if any) under which it is signed, or a certified copy of it at:

- (a) the share registry of the Company, Computershare Investor Services Pty Limited, located at GPO Box 242, Melbourne VIC 3001, or by facsimile on 1800 783 447 (within Australia) or +61 3 9473 2555 (outside Australia); or
- (b) the registered office of the Company located at 82 Gilbert Street, Adelaide SA 5000, or by facsimile on (08) 8104 5231

no later than 48 hours before the time for the holding of the meeting.

**Custodian voting** – for Intermediary Online subscribers only (custodians) please visit [www.intermediaryonline.com](http://www.intermediaryonline.com) to submit your voting intentions.

By order of the Board  
**Giuseppe Canala**  
Company Secretary  
Adelaide

Dated: 19 October 2012

## Explanatory Memorandum

### Introduction

This Explanatory Memorandum has been prepared for the information of shareholders of Ellex Medical Lasers Limited (the Company) in connection with the business to be conducted at the Annual General Meeting to be held at 2:00 pm (Adelaide time) on Thursday 29 November 2012

### Financial Statements and Reports

The financial statements of the Company and its controlled entities for the year ended 30 June 2012 and the Directors' Report and Auditor's Report are set out in the Ellex Medical Lasers Limited Annual Report 2012.

Neither the Corporations Act nor the Company's Constitution requires a vote of shareholders to approve these Reports.

This item is intended to provide an opportunity for shareholders to raise questions of the Reports and on the performance of the Company generally. In addition, a reasonable opportunity will be given to members of the meeting to ask the Company's Auditor questions relevant to the conduct of the audit, the preparation and content of the Auditor's Report, the accounting policies adopted by the Company in relation to the preparation of the financial statements and the independence of the auditor in relation to the conduct of the audit.

### Resolution 2 — Re-election of Director

#### Malcolm Plunkett, Executive Director

Malcolm Plunkett is 58 years old and was appointed a director on 17 October 2008. Malcolm has spent nearly four decades involved in the design and manufacture of industrial and scientific electronic devices for medical and other industries. He joined Ellex in 1996 and was appointed Vice President of Advanced Research in late June 2005. Malcolm plays a significant role in directing the Company's growth into new markets. Recently, Malcolm has led the Ellex 2RT™ (Retina Regeneration Therapy) program,

directing clinical trials and ongoing laboratory experimentation.

#### Board Recommendation

*The Board (excluding M Plunkett because of his interest) unanimously recommends that shareholders vote in FAVOUR of the Resolution to elect Malcolm Plunkett as a Director.*

*The Chairman of the meeting intends to vote undirected proxies in FAVOUR of this resolution.*

### Resolution 3 — Remuneration Report

The Directors' Report, which forms part of the Annual Report for the year ended 30 June 2012, outlines the remuneration arrangements in place for Key Management Personnel (KMP) of the Company.

The Corporations Act 2001 requires that a resolution be put to shareholders each year to adopt the Remuneration Report. The vote on this resolution is advisory only and does not bind the directors or the Company, but the outcome could have consequences for the Board and the Company.

In 2011 new laws on executive remuneration were introduced, including the "two strike Rule". Under the two strike rule, if more than 25% of the votes cast on the resolution to adopt the Remuneration Report are "against" the resolution, the Company receives a "first strike". At the 2011 AGM, Ellex received a first strike.

If the votes cast against this year's resolution to adopt the 2012 Remuneration Report, again exceed 25% of the total votes cast, the Company will receive a "second strike". When a company receives two strikes, it is required to put a resolution to the meeting to determine whether the Company's Directors (who were in office at the time of the 2012 Remuneration Report was approved) will need to stand for re-election at a special meeting.

As a result of this, this Notice of Meeting includes a "conditional" resolution (Resolution 4). This resolution will be put to the meeting, but even if it is passed, it will only become effective if, on the basis of the formal results of the poll, it is evident that the

Company has received a second strike. Further detail is included in the Explanatory Notes to Resolution 4.

After the Remuneration Report was not adopted at the 2011 AGM, efforts to elicit comments from the “no voters” present were unsuccessful. As the shareholders who voted against the Remuneration Report did not provide any comments or reasoning for such a vote, the Board was unable to identify the areas of remuneration which had caused the shareholders to vote against the report.

At the 2010 AGM, under the previous legislation, the Remuneration Report received a no vote of less than 2% of the votes lodged for the meeting. The Remuneration Report in 2011 was not materially different from the 2010 report, but there was a significant change in voting with a no vote of 63%. (Key Management Personnel being excluded from voting, contributed to the major part of this change).

In the absence of comments from shareholders identifying the areas of remuneration which are of concern, it has been difficult for the Board to take action to address the significant change in voting.

In order to obtain an objective view of the remuneration levels paid by Ellex to its directors and executives, the Board engaged PKF Chartered Accountants to undertake a comparative analysis of Ellex with seven other comparable public companies in the 2010/11 FY. (Detailed in endnote<sup>1</sup>.)

The report confirms that Ellex’s remuneration levels are very modest. In the category of non-executive directors, Ellex was ranked eighth, and in the categories of CEO and Other Executives, Ellex was ranked seventh out of eight in its remuneration ranking (eighth being the lowest). The Board has concluded that the current remuneration values are correct for Ellex at this time.

The voting exclusion statement for this resolution is set out on Page 3 of this Notice of Meeting.

#### **Board Recommendation**

***The Board unanimously recommends that shareholders vote in FAVOUR of this resolution.***

***The Chairman of the meeting intends to vote undirected proxies in FAVOUR of this resolution.***

#### **Resolution 4 — Conditional resolution to hold Director elections at special meeting**

This resolution will be put to the meeting in the usual course of business and voting will be conducted by a poll. However, even if it is passed, it will only become effective if, based on the formal results of the poll, it is clear that

- more than 25% of the votes cast on Resolution 3 are against the adoption of the 2012 Remuneration Report and, accordingly, that the Company has received a “second strike”; and
- if this resolution is passed with 50% or more of the votes cast in favour and becomes effective based upon the results of the poll on Resolution 3, then it will be necessary for the Board to convene a further general meeting (“Spill Meeting”) of the Company within 90 days of the AGM in order to consider the composition of the Board.

If a Spill Meeting is held, all the Directors will automatically vacate office at the conclusion of the Spill Meeting unless they are willing to stand for re-election and are re-elected at that meeting.

There will be a considerable cost to the Company to organise and execute a Spill Meeting for its more than 3,000 shareholders. Furthermore, holding a Spill Meeting would cause significant disruption to the running of the Company as a result of management distraction, the time involved in organising such a meeting and the diversion of resources.

The voting exclusion statement for this resolution is set out on page 3 of this Notice of Meeting.

#### **Board Recommendation**

***The Board unanimously recommends that shareholders vote AGAINST this resolution on the basis that it would be extremely disruptive to the Company.***

***The Chairman of the meeting intends to vote undirected proxies AGAINST this resolution.***

## Endnote 1

- (a) The Remuneration Report consultant was:  
Mr Geoff Edwards  
Partner  
PKF Chartered Accountants & Business  
Advisors  
Level 2  
129 Frome Road  
Adelaide, SA 5000
- (b) Geoff Edwards submitted an independent review of Ellex Medical Lasers Limited (Ellex) Key Management Personnel remuneration structure and levels, against comparable listed companies. The report dated 19 September 2012, was delivered to Ellex's Remuneration Committee.
- (c) PKF Chartered Accountants have been engaged only one other time by Ellex. It was in the 2011/12 FY, for the task of developing an Accounting Consolidation Model.
- (d) PKF undertook to use only publicly available data published in the 2010/11 FY annual reports to compile their report.
- (e) PKF made no recommendations to Ellex.
- (f) The Board of Ellex is satisfied that PKF was not subject to undue influence in its preparation of its report.

## Glossary

In this Explanatory Memorandum and Notice of Annual General Meeting the following expressions have the following meanings unless stated otherwise or unless the context otherwise requires:

**Board** means the board of directors of the Company;

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

- (a) a spouse or child of the member;
- (b) a child of the member's spouse;
- (c) a dependant of the member or of 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 dealings with the entity;
- (e) a company the member controls; or
- (f) a person prescribed as such by the Corporations Regulations 2001 (Cth);

**Company** means Ellex Medical Lasers Limited ACN 007 702 927;

**Constitution** means the existing constitution of the Company;

**Corporations Act** means Corporations Act 2001 (Cth);

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

**Key Management Personnel** has the same meaning as in the accounting standards as defined in section 9 of the Corporations Act (so the term broadly includes those persons having authority and responsibility for planning, directing and controlling the activities of the Company, directly or indirectly, including any director, whether executive or otherwise, of the Company);

**Meeting** means the meeting of shareholders convened by the Notice;

**Notice** means the notice of meeting to which this Explanatory Memorandum is attached.

Ellex Medical Lasers Limited  
ACN 007 702 927



**Ellex Medical Lasers Limited**  
ACN 007 702 927

**Lodge your vote:**



**Online:**  
www.investorvote.com.au



**By Mail:**  
Computershare Investor Services Pty Limited  
GPO Box 242 Melbourne  
Victoria 3001 Australia

Alternatively you can fax your form to  
(within Australia) 1800 783 447  
(outside Australia) +61 3 9473 2555

For Intermediary Online subscribers only  
(custodians) www.intermediaryonline.com

**For all enquiries call:**  
(within Australia) 1300 556 161  
(outside Australia) +61 3 9415 4000

**Proxy Form**



Vote online or view the annual report, 24 hours a day, 7 days a week:

**www.investorvote.com.au**



**Cast your proxy vote**



**Access the annual report**



**Review and update your securityholding**

*Your secure access information is:*

**Control Number:**

**SRN/HIN:**



**PLEASE NOTE:** For security reasons it is important that you keep your SRN/HIN confidential.

**For your vote to be effective it must be received by 2:00 pm (Adelaide time) on Tuesday 27 November 2012**

**How to Vote on Items of Business**

All your securities will be voted in accordance with your directions.

**Appointment of Proxy**

**Voting 100% of your holding:** Direct your proxy how to vote by marking one of the boxes opposite each item of business. If you do not mark a box your proxy may vote as they choose. If you mark more than one box on an item your vote will be invalid on that item.

**Voting a portion of your holding:** Indicate a portion of your voting rights by inserting the percentage or number of securities you wish to vote in the For, Against or Abstain box or boxes. The sum of the votes cast must not exceed your voting entitlement or 100%.

**Appointing a second proxy:** You are entitled to appoint up to two proxies to attend the meeting and vote on a poll. If you appoint two proxies you must specify the percentage of votes or number of securities for each proxy, otherwise each proxy may exercise half of the votes. When appointing a second proxy write both names and the percentage of votes or number of securities for each in Step 1 overleaf.

**A proxy need not be a securityholder of the Company.**

**Signing Instructions for Postal Forms**

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

**Joint Holding:** Where the holding is in more than one name, all of the securityholders 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 form when you return it.

**Companies:** Where the company has a Sole Director who is also the Sole Company Secretary, this form must be signed by that person. If the company (pursuant to section 204A of the Corporations Act 2001) does not have a Company Secretary, a Sole Director can also sign alone. Otherwise this form must be signed by a Director jointly with either another Director or a Company Secretary. Please sign in the appropriate place to indicate the office held. Delete titles as applicable.

**Attending the Meeting**

Bring this form to assist registration. If a representative of a corporate securityholder or proxy is to attend the meeting you will need to provide the appropriate "Certificate of Appointment of Corporate Representative" prior to admission. A form of the certificate may be obtained from Computershare or online at www.investorcentre.com under the information tab, "Downloadable Forms".

**Comments & Questions:** If you have any comments or questions for the company, please write them on a separate sheet of paper and return with this form.

**GO ONLINE TO VOTE,  
or turn over to complete the form** ➔

**Change of address.** If incorrect, mark this box and make the correction in the space to the left. Securityholders sponsored by a broker (reference number commences with 'X') should advise your broker of any changes.

# Proxy Form

Please mark  to indicate your directions

## STEP 1 Appoint a Proxy to Vote on Your Behalf

I/We being a member/s of Ellex Medical Lasers Limited hereby appoint

the Chairman of the Meeting **OR**

**PLEASE NOTE:** Leave this box blank if you have selected the Chairman of the Meeting. Do not insert your own name(s).

or failing the individual or body corporate named, or if no individual or body corporate is named, the Chairman of the Meeting, as my/our proxy to act generally at the Meeting on my/our behalf and to vote in accordance with the following directions (or if no directions have been given, and to the extent permitted by law, as the proxy sees fit) at the Annual General Meeting of Ellex Medical Lasers Limited to be held at Level 1, 82 Gilbert Street, Adelaide, South Australia, at 2:00pm (Adelaide time) on Thursday 29 November 2012 and at any adjournment or postponement of that Meeting.

**Chairman authorised to exercise undirected proxies on remuneration related resolutions:** Where I/we have appointed the Chairman of the Meeting as my/our proxy (or the Chairman becomes my/our proxy by default), I/we expressly authorise the Chairman to exercise my/our proxy on Items 3 & 4 (except where I/we have indicated a different voting intention below) even though Items 3 & 4 are connected directly or indirectly with the remuneration of a member of key management personnel, which includes the Chairman.

**The Chairman of the Meeting intends to vote undirected proxies in favour of each Item of business with the exception of Item 4 where the Chairman of the Meeting will be voting against.**

**Important Note:** If the Chairman of the Meeting is (or becomes) your proxy you can direct the Chairman to vote for or against or abstain from voting on Items 3 & 4 by marking the appropriate box in step 2 below.

## STEP 2 Items of Business

**PLEASE NOTE:** If you mark the **Abstain** box for an item, you are directing your proxy not to vote on your behalf on a show of hands or a poll and your votes will not be counted in computing the required majority.

### ORDINARY BUSINESS

The Chairman of the Meeting intends to vote all available proxies in favour of the following items of business:

For      Against      Abstain

2. Re-election of Malcolm Plunkett as a Director.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Adoption of Remuneration Report	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### SPECIAL BUSINESS

The Chairman of the Meeting intends to vote all available proxies against the following item of business:

4. Conditional Resolution to hold Director elections at special meeting	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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The Chairman of the Meeting intends to vote all available proxies in favour of each item of business with the exception of Item 4 where the Chairman of the Meeting will be voting against.

## SIGN Signature of Securityholder(s) *This section must be completed.*

Individual or Securityholder 1

Sole Director and Sole Company Secretary

Securityholder 2

Director

Securityholder 3

Director/Company Secretary

Contact Name \_\_\_\_\_

Contact Daytime Telephone \_\_\_\_\_

Date      /      /



82 Gilbert Street  
Adelaide SA, 5000 Australia  
☎ +61 8 8104 5200  
☎ +61 8 8104 5231

## A LETTER TO ELLEX SHAREHOLDERS FROM THE CEO, TOM SPURLING

19 October 2012

Dear Shareholder

I am writing to you as the manager of your Company. You will see in the enclosed Notice of Annual General Meeting that, in accordance with the Corporations Act 2001, there is a resolution to approve the Remuneration Report for 2012 for your Company and a conditional resolution to hold Director elections at a special meeting ("Spill Motion").

The purpose of this letter is to encourage you to vote in favour of the Remuneration Report and against the Spill Motion. Only shareholders who are not Key Management Personnel, (KMPs - directors and the CEO) of your Company or closely related parties of KMPs can vote on the Remuneration Report resolution and Spill Motion. As a large percentage of your Company's shares are owned by KMPs, and there are a large number of shareholders who traditionally do not vote on any resolution, the Remuneration Report for 2011 received an "against" vote of more than 25% and your Company received its "first strike" through the vote of a relatively small number of shareholders. As a result, at this Annual General Meeting on 29 November 2012, if your Company receives an "against" vote of 25% or more against adoption of the Remuneration Report for 2012 (a so called "second strike") and the Spill Motion for the Board is passed with 50% or more of votes cast in favour, then it would be necessary for the Board to convene a further general meeting ("Spill Meeting") within 90 days of the AGM where all Directors will stand for re-election.

The current Board and Management are making improvements, and investing in the initiatives, required to see your Company flourish, even in a high dollar environment. Good progress was made in 2011/12 and more is underway. I am concerned that the distraction, diversion of resources and instability that would be caused by your Company receiving a "second strike" and successful passing of the Spill Motion, will hamper further progress.

All this appears to be so unnecessary as the Remuneration Report has remained relatively unchanged in the past few years. Furthermore, PKF, the independent consultant engaged to assess the appropriateness of the remuneration of the Board and myself, confirms that Ellex's remuneration levels are at the low end for our space.

If you are concerned with the Remuneration Report, please tell us why. If you are not overly concerned, **I encourage you to vote in FAVOUR of the Remuneration Report, and AGAINST the Spill Motion**, in order to minimise the damage to your Company. Please make your vote count.

Yours sincerely

**Ellex Medical Lasers Ltd**

**Tom Spurling**  
**Chief Executive Officer**

Direct Dial: +61 8 8104 5293  
email: [tspurling@ellex.com](mailto:tspurling@ellex.com)  
ABN 15 007 702 927