

ASX Release

27 October 2023

Notice of 2023 Annual General Meeting

Melbourne, Australia; 27 October 2023

Acrux Limited (ASX:ACR) is pleased to provide a copy of the Notice of Meeting for the 2023 Annual General Meeting and a sample Proxy Form.

The meeting is to be held on 29 November 2023, commencing at 10am.

Authorised for release by the Board of Acrux Limited.

For more information, please contact:
Michael Kotsanis
Acrux Limited
CEO & Managing Director

P: +61 3 8379 0100

E: michael.kotsanis@acrux.com.au

About Acrux

Acrux (ASX: ACR) is a pharmaceutical company dedicated to developing and commercialising topical pharmaceuticals. Drawing on 25 years of experience and using in house facilities and capabilities, Acrux has successfully developed and commercialised through licensees a number of topically applied pharmaceutical products in the US and Europe. Acrux is developing of a range of generic products for the US market by leveraging its on-site laboratories, GMP manufacturing suite, clinical and commercial experience to bring affordable products to market. Acrux encourages collaboration and is well positioned to discuss partnering and product development.

For further information on Acrux, visit www.acrux.com.au



All Registry communications to: Link Market Services Limited Locked Bag A14 Sydney South NSW 1235 Australia Telephone: +61 1300 554 474 ASX Code: ACR

Email: registrars@linkmarketservices.com.au Website: www.linkmarketservices.com.au

27 October 2023

Dear Acrux Shareholder

Annual General Meeting, Wednesday, 29 November at 10:00am (AEDT)

You are invited to attend the 2023 Annual General Meeting ('AGM') of Acrux Ltd ('Acrux') which will be held as an in-person meeting on Wednesday, 29 November 2023 at 10:00 am (AEDT) in the offices of Pitcher Partners, located at Level 13, 664 Collins St, Docklands, Victoria.

Notice of Meeting and Proxy Form

This Notice of Meeting and Explanatory Memorandum is distributed to shareholders according to their instructions and is also available to be viewed and downloaded from the Company's website, https://investors.acrux.com.au/investor-centre/. The Notice of Meeting contains information which is material in respect of the business of the AGM and accordingly should be read in its entirety.

All shareholders are encouraged to attend and participate at the AGM as this is an important forum for shareholders and the Company. Questions will be invited during the meeting and additionally written questions may be submitted in advance using the email address: info@acrux.com.au.

Voting

All resolutions for this AGM will be decided on by poll and shareholders can vote by attending the AGM, providing instructions to appointed proxy to vote at the meeting or by submitting a proxy prior to Monday, 27 November 2023 using the detailed instructions outlined in the enclosed Proxy Form. We encourage shareholders to submit their proxies as early as possible.

It is pleasing that once again we can hold our AGM as an in-person meeting and we look forward to your attendance and participation. On behalf of the Board, I would like thank you for your continued support.

Yours sincerely,

Ross Dobinson Chair, Acrux Ltd

ACRUX LIMITED ABN 72 082 001 152 (the Company)

NOTICE OF ANNUAL GENERAL MEETING

NOTICE is hereby given that the Annual General Meeting ("AGM") of the members of Acrux Limited will be held on Wednesday, 29 November 2023 at 10:00 am (AEDT) at the offices of Pitcher Partners, Level 13, 664 Collins St, Docklands, Victoria.

The Explanatory Notes that accompany and form part of this Notice of Meeting describe the various matters to be considered.

AGENDA

ORDINARY BUSINESS

Financial Statements and Reports

To receive and consider the financial report of the Company and the reports of the Directors and Auditor for the year ended 30 June 2023.

Resolution 1 Re-election of Mr Ross Dobinson as a Director

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

That Mr Ross Dobinson, who in accordance with clauses 58.3 and 58.4 of the Company's constitution ceases to hold office and offers himself for re-election as a Director, be re-elected as a Director of the Company.

Resolution 2 Issue of Rights to Non-executive Directors' as a component of their Remuneration

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

That for the purposes of ASX Listing Rule 10.14 and for all other purposes, approval is given for Rights to be issued to the Non-executive Directors under the Company's Omnibus Equity Plan (**OEP**) and as outlined in the Explanatory Statement.

Resolution 3 Approval of 10% Placement Capacity – Shares

To consider, and if thought fit, to pass the following resolution as a **special resolution**:

That for the purposes of Listing Rule 7.1A and for all other purposes, approval is given for the issue of equity securities in the Company (**Equity Securities**) totalling up to 10% of the Company's fully paid ordinary shares on issue (**Shares**), calculated in accordance with the formula prescribed in Listing Rule 7.1A.2 and on the terms and conditions set out in the Explanatory Statement.

Resolution 4 Approval of Omnibus Equity Plan – to refresh approval as required by ASX Listing Rules

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

That for the purposes of ASX Listing Rule 7.2 (Exception 13(b)) and for all other purposes, the OEP be adopted and approved and the Board be authorised to issue securities to Eligible Participants in accordance with the OEP.

Resolution 5 Adoption of Remuneration Report

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

That the Company's remuneration report for the year ended 30 June 2023 (**Remuneration Report**) be adopted and approved.

The vote on this resolution is advisory only and does not bind the Directors or the Company.

As a 'First Strike' was received on the Remuneration Report which was presented at the 2022 AGM, should 25% or more of the votes be cast against Resolution 5, the Conditional Spill Resolution as set out in Resolution 6 will be put to shareholders for their consideration and vote.

CONTINGENT BUSINESS

Resolution 6 Conditional Spill Resolution

Resolution 6 will only be considered at this AGM if 25% or more of the votes cast on Resolution 5 are against the adoption of the Remuneration Report. The Explanatory Statement further explains the circumstances in which Resolution 6 will be put to the meeting.

If the condition (described above) is satisfied, to consider and if thought fit, pass the following resolution as an ordinary resolution:

That, subject to and conditional on 25% or more of the votes validly cast on the resolution to adopt the Remuneration Report for the year ended 30 June 2023 being cast against the adoption of the Remuneration Report, that:

- (a) an extraordinary general meeting of the Company (the **Spill Meeting**) be held within 90 days of the passing of this resolution;
- (b) all of the Directors of the Company, excluding the Chief Executive Officer and Managing Director of the Company, who were in office at the time of this AGM, being Mr Ross Dobinson, Dr Timothy Oldham, Dr Geoff Brooke and Mr Don Brumley, 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
- (c) 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.

By order of the Board

Joanna Johnson Company Secretary 27 October 2023

EXPLANATORY STATEMENT

This Explanatory Statement has been prepared for the information of shareholders of the Company in connection with the business to be conducted at the AGM to be held on Wednesday, 29 November 2023 at 10:00 am (AEDT).

The purpose of this Explanatory Statement is to provide information to assist shareholders vote on the resolutions outlined in this Notice of Meeting. This Explanatory Statement is important and should be read carefully.

Receipt of Financial Statements and Reports

The Company's financial report and reports of the Directors and Auditor for the year ended 30 June 2023 are placed before the AGM for shareholders to discuss and ask questions. No resolution is required in respect of these documents.

The Company's financial report and the reports of the Directors and Auditor for the year ended 30 June 2023 have been provided to shareholders according to their instructions and can also be accessed via the Company's website, www.acrux.com.au.

Resolution 1: Re-election of Mr Ross Dobinson as a Director

Resolution 1 seeks re-election of Mr Ross Dobinson as a Director of the Company. In accordance with clauses 58.3 and 58.4 of the Company's constitution, Mr Dobinson will hold office until the conclusion of the AGM and being eligible, offers himself to be re-elected as a Director of the Company.

Ross has been a Director of Acrux since 1998. He was first appointed as Chair in January 2006 and was Executive Chair from July 2012 to October 2014. He is a founder and former CEO of Acrux.

Ross has a background in investment banking and stockbroking. He was formerly a Director of Reliance Worldwide Corporation (ASX: RWC) and was a founding Director of Starpharma Holdings Limited (ASX: SPL), Executive Director of Hexima Limited (ASX: HXL), Chair of TPI Enterprises Limited (now Palla Pharma Ltd. ASX: PAL), Director of Roc Oil Company Limited (ASX: ROC) and a Director of Racing Victoria Limited.

The Board recommends shareholders to vote in FAVOUR of Resolution 1.

Resolution 2 Issue of Rights to Non-executive Directors as a component of their Remuneration

Since November 2019, Non-executive Directors have received approximately half of the value of their annual remuneration as monthly cash payments and superannuation and half in the form of rights which vest on a quarterly basis in accordance with their service. The final tranches of the rights which were approved at the 2022 AGM and issued in November 2022 vest in November 2023.

Acrux's Directors are committed to the Company's success and are conscious of the need to preserve the Company's cash reserves. It is therefore proposed to continue this practice of remunerating Non-executive Directors through both cash payments and rights. ASX Listing Rule 10.14 requires securities issued to Directors under an employee incentive scheme to be approved by shareholders.

Rights to be issued following approval of this resolution will vest on a quarterly basis in arrears subject to the continuing service of the Non-executive Director. The number of rights to be issued will be calculated using the volume weighted average share price for the 15 trading days preceding the issue date.

If Resolution 2 is approved, the proposed change to Non-executive Directors' remuneration will be effective from 24 November 2023 and the rights will be issued as soon as practical after approval, in any event no later than 3 years after the date of the AGM. Rights issued to Directors (and any shares following exercising of such rights) under ASX Listing Rule 10.14, which requires securities issued to directors under an employee share plan to be approved by shareholders, do not count towards the 15% share placement cap available under ASX Listing Rule 7.1.

If Resolution 2 is not passed, the Non-executive directors will revert to receiving all of their remuneration in the form of monthly cash payments and superannuation.

In accordance with the requirements of ASX Listing Rule 10.15, the following information is provided:

- Dr Geoff Brooke, Mr Don Brumley, Mr Ross Dobinson and Dr Timothy Oldham are Non-executive Directors of the company. Collectively, these Directors are referred to as Non-executive Directors and are related parties of the Company for whom approval must be obtained under ASX Listing Rule 10.14.1.
- The **primary purpose** of issuing rights to Non-executive Directors is to preserve the Company's cash reserves and to align the interests of Non-executive Directors with those of shareholders towards long term sustained superior growth.
- The remuneration is proposed to be structured as follows:

Non-executive Director	Total remuneration \$	Proposed cash and superannuation \$	Value of proposed rights \$
Dr Geoff Brooke	85,470	43,470	42,000
Mr Don Brumley	85,470	43,470	42,000
Mr Ross Dobinson (Chair)*	132,400	66,200	66,200
Dr Timothy Oldham	85,470	43,470	42,000
Total	388,810	196,610	192,200

^{*} The proportion of cash, superannuation and the value of proposed rights differs for Mr Ross Dobinson compared with the other Non-executive Directors. Mr Ross Dobinson's total remuneration is calculated inclusive of superannuation, whereas superannuation is not included in the calculation of the remuneration of the other Non-executive Directors.

- Rights to the total annual value of \$192,200, calculated using the volume weighted average share
 price for the 15 trading days preceding issue date (VWAP), as set out in the formula below, are
 proposed to be issued following shareholder approval. The rights will vest in four equal quarterly
 tranches commencing 24 November 2023 and ending on 23 November 2024, subject only to
 continuous service and without performance vesting conditions.
- The number of rights per annum proposed to be issued to the Non-executive Directors is determined by the following formula:

Value of the proposed rights per annum

Issue price based on VWAP

- The rights will be issued for nil cash consideration and therefore no funds will be raised.
- No loan is applicable to the grant of the rights.
- The last exercising date is subject to the provisions of the OEP and will be no more than 7 years after the date granted.
- Each right grants the recipient Non-executive Director a right to acquire one ordinary share in the Company for nil consideration provided vesting conditions are achieved.
- Details of any securities issued under the OEP will be disclosed in Acrux's Annual Report relating
 to the period in which they were issued, along with a statement that approval for the issue was
 obtained under listing rule 10.14.

- Any additional persons (who require approval under ASX Listing Rule 10.14) who become eligible
 to participate in an issue of securities under the OEP after this resolution is approved and who
 were not named in this explanatory statement will not participate until approval is obtained under
 ASX Listing Rule 10.14.
- The number of rights that have previously been issued to the Non-executive Directors under the OEP are set out in the table at the end of this section of the explanatory statement.
- A summary of the material terms of the OEP is set out below:
 - Offer: The Board may award options, rights, performance rights, performance shares and ordinary shares, including Exempt Share Awards under Division 83A of the Income Tax Assessment Act 1997 (Cth) and salary sacrifice share awards. The Board has further discretion to determine vesting conditions such as service conditions or other performance hurdles, exercise prices, minimum holding periods, forfeiture conditions and other conditions of awards and may vary or waive these terms and conditions (subject to Corporations Act 2001 limitations on shareholder approval for awards to Directors).
 - Eligibility: Participants under the OEP can include permanent, full-time, or part-time employees, Non-executive Directors, casual employees or contractors who work a prorata equivalent of 40% or more of a comparable full-time position and are Australian residents for tax purposes.
 - Shares: The total number of ordinary shares over which rights or securities may be awarded under the OEP is capped at 5% of the issued share capital of the Company. This cap includes any securities awarded under the OEP and any other employee share scheme of the Company that may be in place from time to time within the 3 years before any new award under the OEP, but excludes any rights or securities that have been cancelled.
 - Vesting: Rights and options vest in accordance with applicable performance hurdles, service conditions or other exercise conditions. Where a participant ceases to be employed by the Company or a related body corporate of the Company as a result of death or serious injury prohibiting continued employment, retirement or retrenchment or such other eligible circumstance as determined by the Board ('Qualifying Event'), the Board may, in its absolute discretion, determine that unvested rights and/or options become Vested.
 - Change of Control: Where there is a change in control of the Company, the Board may in its absolute discretion determine that any unvested rights and/or options become vested.
 - Exercise: Once options and rights have vested, they may generally be exercised prior to the lapsing and forfeiture events. On exercise, the participant must pay any applicable exercise price for those options and/or rights.
 - Quotation: Options and rights are not quoted on the ASX. The Company will apply for Official Quotation of shares issued upon exercise of options and/or rights, in accordance with the ASX Listing Rules.
 - Cessation of eligibility: Where a participant ceases to be employed by the Company or a related body corporate of the Company, other than as a result of a Qualifying Event, any options, rights and performance rights will be immediately forfeited, whether or not those awards have vested.
 - Restrictions: Awards are non-transferrable (subject to limited exceptions). Dealings in awarded securities are subject to the Company's Securities Trading Policy and the Corporations Act 2001 as it relates to securities trading.
 - Amendments: To the extent permitted by the ASX Listing Rules, the Board retains the discretion to vary the terms and conditions of the OEP.

Details of the security holdings of Non-executive Directors as at the date of this statement are set out in the following table:

	Ordinary	Rights	Rights	Rights	Rights	Rights
	Shares	currently	issued	issued	issued	issued
	currently	held	November	December	November	November
	held		2018 ⁽²⁾	2019 ⁽³⁾	2021 ⁽³⁾	2022 ⁽³⁾
Geoff Brooke	1,552,114	138,187	160,000	583,322	-	552,748
Don Brumley ⁽¹⁾	2,992,185	138,187	-	-	347,624	552,748
Ross Dobinson	4,592,784	237,610	320,000	983,334	-	950,440
Tim Oldham	1,105,058	414,561	160,000	583,332	-	552,748
Total	10 2/2 1/1	928 5/15				

- (1) Don Brumley was appointed as a director in June 2021.
- (2) Rights issued in November 2018 were issued for nil consideration and were in lieu of an increase in remuneration.
- (3) Rights issued in December 2019, November 2021 and November 2022 were issued for nil consideration and were to approximate half of the Non-executive Director's remuneration over the vesting period of each issue.

All rights issued to Non-executive Directors have been issued within the provisions of the OEP and following approval at an annual general meeting. Some of these rights have vested and have been exercised.

Given the Board has an interest in Resolution 2, no voting recommendation is provided.

Resolution 3: Approval of 10% Placement Capacity - Shares

3.1 General

ASX Listing Rule 7.1A provides that an eligible entity may seek Shareholder approval, by special resolution passed at its AGM, to have additional capacity to issue Equity Securities, in this case up to 10% of its issued capital, provided the issue occurs over a 12-month period from the date of approval at the AGM (10% Placement Capacity).

An entity is an "Eligible Entity" if at the date of the relevant AGM:

- (a) it 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 equal to or less than A\$300 million.

Acrux is an Eligible Entity as it is not included in the S&P/ASX 300 Index and has a market capitalisation of \$12,414,205 as at 13 October 2023.

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 (as set out below).

The effect of Resolution 3 is to allow Directors to potentially issue Equity Securities up to 10% of Acrux's fully paid ordinary securities on issue under the 10% Placement Capacity for up to 12 months after the AGM without subsequent Shareholder approval and without using the Company's 15% annual placement capacity granted under Listing Rule 7.1.

If Resolution 3 is not passed, Acrux cannot access the additional 10% Placement Capacity without shareholder approval under Listing Rule 7.1A and remains subject to the 15% limit on issuing equity securities without shareholder approval set out in Listing Rule 7.1.

Resolution 3 is a special resolution. Accordingly, at least 75% of votes cast by Shareholders eligible to vote at the AGM must be in favour of Resolution 4 for it to be passed.

3.2 ASX Listing Rule 7.1A

ASX Listing Rule 7.1A enables an Eligible Entity to seek shareholder approval at its AGM to issue Equity Securities in addition to those which may be issued under its 15% annual placement capacity. Equity Securities issued must be in the same class as an existing class of quoted Equity Securities. The Company currently has one class of quoted securities on issue, being ordinary shares.

The exact number of Equity Securities that the Company may issue under an approval under Listing Rule 7.1A will be calculated according to the following formula, prescribed by Listing Rule 7.1A.2 (**Formula**):

$(A \times D) - E$

Where:

A is the number of Shares on issue 12 months before the date of issue or agreement: plus the number of Shares issued in the previous 12 months under an exception in ASX Listing Rule 7.2:

plus the number of partly paid shares that became fully paid in the previous 12 months; plus the number of Shares issued in the previous 12 months with approval of holders of Shares under Listing Rules 7.1 or 7.4; and

less the number of Shares cancelled in the previous 12 months.

D is 10%.

is the number of Equity Securities issued or agreed to be issued under ASX Listing Rule 7.1A.2 in the 12 months before the date of issue or agreement to issue that are not issued with the approval of holders of Ordinary Securities under ASX Listing Rule 7.1 or 7.4.

3.3 Technical information required by ASX Listing Rule 7.1A

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

- (a) **Minium Price** The minimum price at which the Equity Securities may be issued is 75% of their volume weighted average price, 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; or
 - (ii) if the Equity Securities are not issued within 10 ASX trading days of the date at 3.3(a)(i), the date on which the Equity Securities are issued.
- (b) **Date of Issue** The Equity Securities may be issued under the 10% Placement Capacity during the period commencing on the date of Shareholder approval at the AGM and expiring on the first to occur of the following:
 - (i) 12 months after the date of this AGM;
 - (ii) the time and date of the company's next AGM, and
 - (iii) the time and date 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) in which case Shareholder approval for Resolution 3 will cease to be valid.
- (c) **Risk of Voting Dilution** 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 Shareholders would be as shown in the table below, calculated in accordance with the formula outlined in ASX Listing Rule 7.1A.2, based on the current market price of Shares and the current number of Equity Securities on issue as at the date of this Notice of Meeting.

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.

	Dilution				
	Number of Shares issued under 10% Placement Capacity	Funds raised based on issue price of \$0.0275 (50% decrease in current issue	Funds raised based on issue price of \$0.055 (Current issue price)	Funds raised based on issue price of \$0.0825 (50% increase in current issue	
Number of Shares		price)		price)	
288,702,440 (Current)	28,870,244	\$620,710	\$1,241,420	\$1,862,131	
433,053,660 (50% increase)*	43,305,366	\$931,065	\$1,862,131	\$2,793,196	
577,404,880 (100% increase)*	57,740,488	\$1,241,420	\$2,482,841	\$3,724,261	

^{*}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 or that are issued with Shareholder approval under Listing Rule 7.1.

The table above uses the following assumptions:

- 1. The number of Shares on issue as at 13 October 2023 is 288,702,440.
- 2. The issue price set out above is the closing price of the Shares on the ASX on 13 October 2023 which was \$0.043.
- 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 AGM that were not issued under an exception in ASX Listing Rule 7.2 or with Shareholder approval under ASX Listing Rule 7.1.
- These calculations do not show the dilution relevant to any one particular Shareholder. All Shareholders should consider the potential impacts on their own shareholding, depending on their specific circumstances.
- 6. This table does not set out any dilution pursuant to Shareholder approvals under ASX Listing Rule 7.1.

Shareholders should note the possible risks that:

- The market price for the Company's Shares may be significantly different on the issue date than on the date of Shareholder approval at the AGM; and
- 2. The Shares may be issued at a discounted price to the market price for those Shares on the date of issue.

- (d) **Purpose of Issue under 10% Placement Capacity** The Company would, if necessary, utilise the 10% Placement Capacity should funds be required to support further development of its product pipeline, commercialisation activities and the general working capital requirements of the Company.
- (e) Allocation under the 10% Placement Capacity The Company has not yet determined the need to utilise the Placement Capacity and therefore has also not identified recipients who could be allotted Equity Securities under the 10% Placement Capacity. However, potential recipients likely would include both current Shareholders and new investors.

The Company will determine the need for the Placement capacity and identify recipients of Securities at the time of any issue under the 10% Placement Capacity, having regard to the following factors:

- the purpose of the issue;
- alternative sources of funds available to the Company at that time, including, but not limited to, an entitlement issue or other offer where existing Shareholders may participate;
- the effect of the issue of the Equity Securities on the control of the Company;
- the circumstances of the Company, including, but not limited to, the financial position and solvency of the Company;
- prevailing market conditions; and
- advice from corporate, financial and broking advisers.
- **3.4 Voting Exclusion** As at the date of this Notice, the Company has not approached nor invited any existing Shareholder to participate in an issue of Equity Securities under ASX Listing Rule 7.1A. Therefore, no existing Shareholders will be excluded from voting on Resolution 3.

The Board unanimously recommends that you vote in <u>FAVOUR</u> of Resolution 3.

Resolution 4: Approval of Omnibus Equity Plan – to refresh approval as required by the ASX Listing Rules

Resolution 4 seeks approval to adopt the Company's employee incentive scheme entitled the Omnibus Equity Plan in accordance with ASX Listing Rule 7.2 (exception 13(b)).

ASX Listing Rule 7.1 provides that a company must not, subject to specified exceptions, issue or agree to issue more equity securities during any 12 month period than that amount which represents 15% of the number of fully paid ordinary securities on issue at the commencement of that 12 month period. ASX Listing Rule 7.2 (exception 13(b)) provides that issues under an employee incentive scheme are excluded from this calculation for a period of 3 years from the date on which shareholders approve the issue of securities under the scheme.

If Resolution 4 is passed, the Company may issue securities under the OEP to eligible participants for 3 years without shareholder approval and without impacting the Company's capacity to issue up to 15% of its total ordinary securities.

If Resolution 4 is not passed, the Company may issue securities under the OEP to eligible participants, but any issues of securities will reduce the Company's capacity to issue securities without shareholder approval under Listing Rule 7.1 for the 12 month period following the issue of the securities.

The OEP was last approved by shareholders at the Company's 2020 Annual General Meeting and no changes to these OEP Plan Rules are proposed at this time. Since that date 777,123 exempt shares and 3,163,459 Rights have been issued under the authority of the OEP.

The OEP Rules include, but are not limited to, the following features:

- Offer: The Board may award of options, rights, performance rights, performance shares and ordinary shares, including Exempt Share Awards under Division 83A of the Income Tax Assessment Act 1997 (Cth) and salary sacrifice share awards. The Board has further discretion to determine vesting conditions which may include service conditions, performance hurdles, exercise prices, minimum holding periods, forfeiture conditions or events and other conditions of awards and may vary or waive these terms and conditions (subject to Corporations Act 2001 limitations on shareholder approval for awards to Directors).
- **Eligibility:** Participants under the OEP may include permanent, full-time, or part-time employees, Non-Executive Directors, casual employees or contractors who work a pro-rata equivalent of 40% or more of a comparable full-time position and are Australian residents for tax purposes.
- Shares: The total number of ordinary shares over which rights or securities may be awarded under the OEP is capped at 5% of the issued share capital of the Company. This cap includes any securities awarded under the OEP within the 3 years before any new award under the OEP, but excludes any rights or securities that have been cancelled or that were issued without the need for disclosure.
- Vesting: Rights and options will vest in accordance with performance hurdles, service conditions
 and exercise conditions. Where a Participant ceases to be employed by the Company or a
 related body corporate of the Company as a result of death or serious injury which prohibits
 continued employment, retirement or retrenchment or such other eligible circumstance as
 determined by the Board ('Qualifying Event'), the Board may, in its absolute discretion,
 determine that unvested rights and/or options become vested.
- Change of Control: Where there is a change in control of the Company, the Board may in its absolute discretion determine that any unvested rights and/or options become vested.
- **Exercise:** Once options and rights have vested, they are generally able to be exercised prior to the lapsing and forfeiture events. On exercise, the participant must pay the relevant exercise price for those options and/or rights.
- **Quotation:** Options and/or rights are not quoted on the ASX. The Company will apply for Official Quotation of the shares issued on exercise of options and/or rights, in accordance with the ASX Listing Rules.
- **Cessation of eligibility**: Where a Participant ceases to be employed by the Company or a related body corporate of the Company, other than as a result of a Qualifying Event, any options, rights and performance rights or shares will be immediately forfeited, whether or not those awards have vested.
- **Restrictions**: Awards are non-transferrable (subject to certain limited exceptions). Dealings in awarded securities are subject to the Company's Securities Trading Policy and the *Corporations Act 2001*.
- **Amendments:** To the extent permitted by the ASX Listing Rules, the Board retains the discretion to vary the terms and conditions of the OEP.

The Board has chosen to make annual awards to employees under the OEP in the form of performance rights based on a four-year cycle. Each performance right will be a right to acquire one ordinary share at no cost vesting after one year, provided the total return to shareholders (TSR) over that period is at least 10% and the employee remains employed at Acrux. Grants that do not vest may be "rolled over" into following years, subject to an additional 10% TSR hurdle per year. There may be no "roll-over" after the fourth year. Rights expire 7 years after grant. The TSR for each performance right is based on a 30 (calendar) day volume weighted average price (VWAP) up to and including the date of grant.

Given the Board has an interest in this resolution they do not believe it is appropriate to provide a voting recommendation on Resolution 4.

Resolution 5: Adoption of Remuneration Report

General

The *Corporations Act 2001* requires information relating to remuneration arrangements for Directors and senior executives to be disclosed in the Company's Remuneration Report. The Remuneration Report can be found at pages 22 to 28 of the 2023 Annual Report.

The *Corporations Act 2001* requires Australian listed public companies include a resolution at its AGM that the Remuneration Report be adopted. The vote is advisory only and does not bind the Company or its Directors. However, the Board will consider the outcome of the vote when reviewing remuneration policies and practices of the Company.

Voting consequences

Under the Corporations Act 2001, if, at consecutive AGMs:

- (a) 25% or more of the votes cast on a remuneration report resolution are cast against the adoption of the remuneration report; and
- (b) at the first of those AGMs a Spill Resolution (as defined below) was not put to vote, a company is required to put to its shareholders a resolution proposing the calling of another meeting of the company's shareholders (**Spill Meeting**) to consider the board composition (**Spill Resolution**).

If more than 50% of the votes cast are in favour of the Spill Resolution, the Company must convene the Spill Meeting within 90 days of the second AGM. This is commonly known as the "two-strike" rule.

Previous voting results

At the Company's 2022 AGM, 25.78% of votes were cast against accepting the 2022 Remuneration Report, which being greater than 25% of votes cast resulted in a 'First Strike'.

No comments were made nor were questions asked in relation to the 2022 Remuneration Report at the 2022 AGM.

Whilst the vote on Resolution 5 is advisory only, should more than 25% of the votes be cast against adoption of the 2023 Remuneration Report, a Spill Resolution will be put to this meeting. The operation and consequences of a Spill Resolution are explained under Resolution 6.

The Board unanimously recommends shareholders vote in <u>FAVOUR</u> of Resolution 5.

CONTINGENT BUSINESS

Resolution 6: Conditional Spill Resolution

Resolution 6 is a "conditional" resolution which is required if 25% or more of the votes cast on Resolution 5 are against the adoption of the 2023 Remuneration Report. Resolution 6 is an ordinary resolution which means that to be passed, it requires the approval of a simple majority of votes cast by or on behalf of shareholders entitled to vote on the matter.

If the votes cast on Resolution 5 against the adoption of the 2023 Remuneration Report are less than 25% of the votes, then the Company will not record a "second strike" and Resolution 6 is not required to be put to this meeting.

If Resolution 6 is passed then the Company must hold the **Spill Meeting** within 90 days of this AGM to consider the composition of the Board. If a Spill Meeting is required, details of the Spill Meeting will be separately notified to shareholders.

If a Spill Meeting is held, the following Non-Executive Directors will cease to hold office at the conclusion of the Spill Meeting, unless they stand for re-election and are re-elected at the Spill Meeting:

- Mr Ross Dobinson
- Dr Timothy Oldham
- Dr Geoff Brooke
- Mr Don Brumley.

For the avoidance of doubt, even if Mr Ross Dobinson, who seeks re-election at this year's AGM, is elected at this AGM, he must be re-elected at the Spill Meeting in order to remain in office after 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.

The Board unanimously recommends that you vote <u>AGAINST</u> Resolution 6.

IMPORTANT VOTING INFORMATION

Entitlement to Vote and Proxies

Only registered holders of the Company's shares as at Monday, 27 November 2023 at 7:00 pm (AEDT) are eligible to vote at the AGM.

All Resolutions will be decided by Poll.

Voting by Proxy

A member who is entitled to attend and vote at this AGM may appoint up to two proxies using the proxy form. A proxy need not be a member of the Company and may be an individual or a body corporate. Your proxy's authority to speak and vote for you at the AGM is suspended if you are present at the AGM.

Where two proxies are appointed, each proxy may represent a specified proportion of voting rights. If you appoint two proxies and the appointment does not specify the proportion or number of votes each proxy may exercise, section 249X of the *Corporations Act 2001* provides each proxy may exercise half of the votes (ignoring fractions).

You may direct your proxy how to vote by marking X in one of the four boxes opposite each item of business. All your votes will be cast in accordance with your direction unless you indicate only a portion of votes are to be cast on any item by inserting the percentage of your voting rights applicable to the proxy appointed by the proxy form in the appropriate box.

If you do not mark any of the boxes relating to the items of business, your proxy may vote as he or she chooses. If you mark more than one box relating to the same item of business any vote by your proxy on that item will be invalid.

The proxy form provides further details on appointing proxies and lodging proxy forms. Proxies and the original or a certified copy of the power of attorney (if the proxy form is signed by an attorney) must be received not later than 10:00 am (AEDT) on Monday, 27 November 2023:

- by lodging it online at the registry's website (www.linkmarketservices.com.au) in accordance with the instructions given there. (You will be taken to have signed your proxy form if it is lodged according to the instructions given on the website); or
- by post addressed to Link Market Services Limited; or
- by facsimile to Link Market Services Limited on fax number +61 2 9287 0309.

Documents received after that time will not be valid for the scheduled meeting.

The Chair of the Meeting Acting as Your Proxy

You may appoint the Chair of the AGM as your proxy. Additionally, the Chair is deemed to be appointed where a completed proxy form is submitted without naming a proxy, where the person appointed on the form is absent from the AGM or does not vote in accordance with your directions. If you direct the Chair how to vote on an Item of business, the Chair must vote according to your direction. If you appoint the Chair of the AGM as your proxy or the Chair is appointed as your proxy by default, and you do not mark a voting instructions box for Resolution 2 and 5, then by completing and submitting the proxy form, you will be expressly authorising the Chair to exercise the proxy as the Chair sees fit in respect of Resolution 2 and 5 even though Resolution 2 and 5 are connected directly or indirectly with remuneration of the Company's key management personnel. The Chair intends to vote all available proxies in favour of each Item of business, except Resolution 6, which the Chair intends to vote all available proxies against.

Bodies Corporate

A body corporate may appoint an individual as its representative to exercise any of the powers the body may exercise at meetings of the Company's shareholders. The appointment may be a standing one. Unless the appointment states otherwise, the representative may exercise all of the powers that the appointing body could exercise at a meeting or in voting on a resolution. The representative should bring to the meeting evidence of his or her appointment, including any authority under which the appointment is signed, unless it has previously been given to the Company.

Voting Exclusions

Key Management Personnel ("KMP") are named in Acrux's 2023 Annual Report. The *Corporations Act 2001* restricts KMP and their closely related parties, including a spouse, dependants, and certain other close family members, as well as any companies controlled by the KMP, from voting in certain circumstances on certain resolutions.

Voting exclusions apply to the following Items:

- Resolution 2 Issue of Rights to Non-executive Directors as a component of their Remuneration,
- Resolution 4 Approval of Omnibus Equity Plan to refresh approval as required by the ASX Listing Rules,
- Resolution 5 Adoption of Remuneration Report, and
- Resolution 6 Conditional Spill

Votes cast in favour of Resolution 2 by any Non-executive Director, and any associate of a Non-executive Director who is eligible to participate in the plan and a person whose relationship with the Non-executive Director is such that in the ASX's opinion that the vote should be excluded, will be disregarded in accordance with Listing Rules 10.14.1, 10.14.2 and 10.14.3.

However, this does not apply to a vote cast in favour of Resolution 2 by:

- a person as proxy or attorney for a person who is entitled to vote on Resolution 2, in accordance with the directions given to the proxy or attorney to vote on Resolution 2 in that way; or
- the Chair of the AGM as proxy or attorney for a person who is entitled to vote on the resolution, in accordance with a direction given to the Chair to vote on the resolution as the Chair decides; or
- a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of the beneficiary provided that:
 - the beneficiary provides written confirmation to the holder that they are not excluded from voting, nor is an associate of a person excluded from voting, on the resolution; and
 - o the holder votes on the resolution in accordance with directions given by the beneficiary to the holder to vote in that way.

Acrux will disregard any votes cast on Resolution 4 by or on behalf of a person who is eligible to participate in the OEP or any associates of such persons.

However, this does not apply to a vote cast in favour of Resolution 4 by:

- a person as proxy or attorney for a person who is entitled to vote on Resolution 4, in accordance with the directions given to the proxy or attorney to vote on Resolution 4 in that way; or
- the Chair of the AGM as proxy or attorney for a person who is entitled to vote on the resolution, in accordance with a direction given to the Chair to vote on the resolution as the Chair decides; or
- a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of the beneficiary provided that:
 - o the beneficiary provides written confirmation to the holder that they are not excluded from voting, nor an associate of a person excluded from voting, on the resolution; and
 - the holder votes on the resolution in accordance with directions given by the beneficiary to the holder to vote in that way.

Acrux will disregard any votes cast on Resolutions 5 and 6 by or on behalf of the following persons:

- a KMP, details of whose remuneration are included in the Remuneration Report; or
- a closely related party of such a member.

However, a person (the **voter**) described above may cast a vote on Resolutions 5 or 6 as a proxy if the vote is not cast on behalf of a person described above and either:

- the voter is appointed as a proxy by writing that specifies the way the proxy is to vote on the resolution; or
- the voter is the Chair of the AGM and the appointment of the Chair as proxy:
 - o does not specify the way the proxy is to vote on Resolutions 5 or 6; and
 - expressly authorises the Chair to exercise the proxy even though Resolutions 5 and 6 are connected directly or indirectly with the remuneration of a member of the KMP.



	LUDGE YOUR VOIE
	ONLINE https://investorcentre.linkgroup.com
	BY MAIL Acrux Limited C/- Link Market Services Limited Locked Bag A14 Sydney South NSW 1235 Australia
	BY FAX +61 2 9287 0309
Ť	BY HAND Link Market Services Limited Parramatta Square, Level 22, Tower 6, 10 Darcy Street, Parramatta NSW 2150
(1)	ALL ENQUIRIES TO Telephone: 1300 554 474



X99999999999

Board

recommendation

PROXY FORM

I/We being a member(s) of Acrux Limited and entitled to attend and vote hereby appoint:

APPOINT A PROXY

the Chairman of the Meeting (mark box)

OR if you are **NOT** appointing the Chairman of the Meeting as your proxy, please write the name of the person or body corporate you are appointing as your proxy

or failing the person or body corporate named, or if no person or body corporate is named, the Chairman of the Meeting, as my/our proxy to act on my/ our behalf (including to vote in accordance with the following directions or, if no directions have been given and to the extent permitted by the law, as the proxy sees fit) at the Annual General Meeting of the Company to be held at 10:00am (AEDT) on Wednesday, 29 November 2023 at Pitcher Partners, Level 13, 664 Collins St, Docklands, Victoria (the Meeting) and at any postponement or adjournment of the Meeting.

Important for Resolutions 2, 4 and 5: If the Chairman of the Meeting is your proxy, either by appointment or by default, and you have not indicated your voting intention below, you expressly authorise the Chairman of the Meeting to exercise the proxy in respect of Resolutions 2, 4 and 5, even though the Resolutions are connected directly or indirectly with the remuneration of a member of the Company's Key Management Personnel (KMP).

The Chairman of the Meeting intends to vote undirected proxies in favour of each resolution except for Resolution 6. The Chairman intends to vote undirected proxies against resolution 6

VOTING DIRECTIONS

Proxies will only be valid and accepted by the Company if they are signed and received no later than 48 hours before the Meeting.

Please read the voting instructions overleaf before marking any boxes with an \boxtimes

Resolutions Re-election of Mr Ross Dobinson as a Director

2 Issue of Rights to Non-executive Directors' as a component of their Remuneration

3 Approval of 10% Placement Capacity - Shares

4 Approval of Omnibus Equity Plan – to refresh approval as required by the ASX Listing Rules

5 Adoption of Remuneration Report

Conditional Spill Resolution

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

SIGNATURE OF SHAREHOLDERS – THIS MUST BE COMPLETED

Shareholder 1 (Individual) Joint Shareholder 2 (Individual) Joint Shareholder 3 (Individual)

Sole Director and Sole Company Secretary Director/Company Secretary (Delete one) Director

This form should be signed by the shareholder. If a joint holding, either shareholder may sign. If signed by the shareholder's attorney, the power of attorney must have been previously noted by the registry or a certified copy attached to this form. If executed by a company, the form must be executed in accordance with the company's constitution and the Corporations Act 2001 (Cth).

For Against Abstain*

HOW TO COMPLETE THIS SHAREHOLDER PROXY FORM

YOUR NAME AND ADDRESS

This is your name and address as it appears on the Company's share register. If this information is incorrect, please make the correction on the form. Shareholders sponsored by a broker should advise their broker of any changes. Please note: you cannot change ownership of your shares using this form.

APPOINTMENT OF PROXY

If you wish to appoint the Chairman of the Meeting as your proxy, mark the box in Step 1. If you wish to appoint someone other than the Chairman of the Meeting as your proxy, please write the name of that individual or body corporate in Step 1. A proxy need not be a shareholder of the Company.

DEFAULT TO CHAIRMAN OF THE MEETING

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

VOTES ON ITEMS OF BUSINESS - PROXY APPOINTMENT

You may direct your proxy how to vote by placing a mark in 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 A SECOND PROXY

You are entitled to appoint up to two persons as proxies to attend the Meeting and vote on a poll. If you wish to appoint a second proxy, an additional Proxy Form may be obtained by telephoning the Company's share registry or you may copy this form and return them both together.

To appoint a second proxy you must:

- (a) on each of the first Proxy Form and the second Proxy Form state the percentage of your voting rights or number of shares applicable to that form. If the appointments do not specify the percentage or number of votes that each proxy may exercise, each proxy may exercise half your votes. Fractions of votes will be disregarded; and
- (b) return both forms together.

SIGNING INSTRUCTIONS

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

Individual: where the holding is in one name, the holder must sign.

Joint Holding: where the holding is in more than one name, either shareholder may sign.

Power of Attorney: to sign under Power of Attorney, you must lodge the Power of Attorney with the registry. If you have not previously lodged this document for notation, 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 indicate the office held by signing in the appropriate place.

CORPORATE REPRESENTATIVES

If a representative of the corporation is to attend the Meeting the appropriate "Certificate of Appointment of Corporate Representative" must be received at registrars@linkmarketservices.com.au prior to admission in accordance with the Notice of Annual General Meeting. A form of the certificate may be obtained from the Company's share registry or online at www. linkmarketservices.com.au.

LODGEMENT OF A PROXY FORM

This Proxy Form (and any Power of Attorney under which it is signed) must be received at an address given below by **10:00am (AEDT) on Monday, 22 November 2022,** being not later than 48 hours before the commencement of the Meeting. Any Proxy Form received after that time will not be valid for the scheduled Meeting.

Proxy Forms may be lodged using the reply paid envelope or:



ONLINE

https://investorcentre.linkgroup.com

Login to the Link website using the holding details as shown on the Proxy Form. Select 'Voting' and follow the prompts to lodge your vote. To use the online lodgement facility, shareholders will need their "Holder Identifier" - Securityholder Reference Number (SRN) or Holder Identification Number (HIN).



BY MOBILE DEVICE

Our voting website is designed specifically for voting online. You can now lodge your proxy by scanning the QR code adjacent or enter the voting link https://investorcentre.linkgroup.com into your mobile device. Log in using the Holder Identifier and postcode for your shareholding.



To scan the code you will need a QR code reader application which can be downloaded for free on your mobile device.



BY MAIL

Acrux Limited C/- Link Market Services Limited Locked Bag A14 Sydney South NSW 1235 Australia



BY FAX

+61 2 9287 0309



BY HAND

delivering it to Link Market Services Limited*
Parramatta Square
Level 22, Tower 6
10 Darcy Street
Parramatta NSW 2150

* During business hours (Monday to Friday, 9:00am-5:00pm)







COMMUNICATIONS PREFERENCE

We encourage you to receive all your shareholder communication via email. This communication method allows us to keep you informed without delay, is environmentally friendly and reduces print and mail costs.



ONLINE

www.linkmarketservices.com.au

Login to the Link website using the holding details as shown on the Proxy Form. Select 'Communications' and click the first button to receive all communications electronically and enter your email address. To use the online facility, Shareholders will need their "Holder Identifier" - Shareholder Reference Number (SRN) or Holder Identification Number (HIN).