

MERLIN DIAMONDS LIMITED

ABN 86 009 153 119

NOTICE OF GENERAL MEETING

NOTICE IS HEREBY GIVEN that a General Meeting of Merlin Diamonds Limited (the "Company") will be held at Level 1, 333 Collins Street, Melbourne, Victoria 3000, Australia, on 24 January 2013, commencing at 10.30 am for the following purposes:

AGENDA

SPECIAL BUSINESS

ORDINARY RESOLUTIONS

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

1. Approve an issue of up to 8,000,000 Convertible Notes.

"To approve the Company issuing 8,000,000 convertible notes at a price of \$1 per convertible note on the terms and conditions as set out in the Explanatory Statement to the Notice of Meeting dated 18 December 2012."

By Order of the Board and dated this 20th day of December 2012.



PETER LEE
Company Secretary

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VOTING EXCLUSION STATEMENT

The Company will disregard any votes cast on the resolution by (a) any person who may participate in the issue; any person who may obtain a benefit; and (b) and associate of that person.

However, the Company need not disregard a vote on the resolution if (a) it is cast by a person as proxy for a person who is entitled to vote, in accordance with the 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 a direction on the proxy form to vote as the proxy decides.

NOTES TO THE NOTICE OF GENERAL MEETING

1. A Member entitled to attend and vote at the aforementioned meeting is entitled to appoint not more than two other persons as his/her proxy or proxies to attend and vote, in certain circumstances, instead of the Member at the meeting.
2. If a Member appoints one proxy, that proxy may vote on a show of hands.
3. If a Member appoints two proxies neither may vote on a show of hands. However, if you appoint two proxies to represent you at the Meeting, you must show in the space provided either the percentage of your Shareholding or the number of votes (you are entitled to one vote for each Share you own upon a poll being declared) those proxies are to represent. If you do not complete this section then each proxy may, on a poll, vote half of your Shareholding. A separate proxy form must be submitted for each proxy you appoint.
4. A proxy need not be a Member of the Company.
5. If you appoint a proxy to represent you and vote on your behalf at the Meeting and that person is also a Member or has already been appointed as a proxy for another Member, your vote may not be counted on a show of hands. This is because, on a show of hands, your proxy's vote is only counted once irrespective of the number of Members that that person represents. However, if a poll is taken and your proxy votes, your vote will be counted in full in reaching a decision.
6. The Proxy Form together with the Power of Attorney (if any) or a certified copy of the Power of Attorney (if any) under which it is signed must be lodged at either Level 12, 680 George Street, Sydney, NSW 2000, mailed to Locked Bag A14, Sydney South, NSW 1235 or the Registered Office of the Company or by being sent by fax to (+61) 02 9287 0309, not less than forty-eight (48) hours before the time of the commencement of the meeting.
7. Signing Proxies
 - (i) Joint Holding - All holders must sign.
 - (ii) Shares in Company Names - Companies must execute this form in the way provided by Law.
 - (iii) Individual - Must be signed by the Member or their attorney.
8. For the purpose of the Meeting, Shares will be taken to be held by the persons who are registered holders at 7pm, on 22 January 2013. Accordingly, share transfers registered after that time will be disregarded in determining entitlements to attend and vote at the Meeting.

COMPANY REPRESENTATIVE

If Shares are held in a company name and it is intended that a representative of the company attend the Meeting rather than lodge a proxy prior to the Meeting, the person attending the Meeting must present authority from the company director/s signed in the way provided by law.

EXPLANATORY MEMORANDUM TO SHAREHOLDERS

This Explanatory Statement provides shareholders of the Company with information in respect of the resolutions to be considered at the General Meeting of the Company to be held at Level 1, 333 Collins Street, Melbourne 3000 on 24 January 2013 at 10.30 am. Shareholders should carefully review this Explanatory Statement and the associated Notice of General Meeting (**Notice**) to which this Explanatory Statement is attached.

If you have difficulty in properly understanding this documentation, you should consult your financial or legal adviser.

1. APPROVE ISSUE OF CONVERTIBLE NOTE.

Preamble

The Company has entered into a convertible note agreement (**Agreement**) with ISR Investments Ltd (**ISR**). Under the terms of the Agreement, ISR will provide an \$8 million to the Company to be used for development, exploration and working capital purposes. The convertible notes will accrue interest at 6.5% per annum which will be paid quarterly. The convertible notes will be for a period of 1 year from the date of draw down and can be converted at any time within the 1 year at a conversion price of 22 cents per note. Any convertible notes not converted at the end of the 1 year period automatically convert into ordinary shares at that time. The Agreement has a requirement that the conversion of the convertible notes cannot result in ISR holding more than 19.9% of the issued shares of the Company at the time of conversion. The Agreement also has a requirement that the convertible notes are reconstructed in accordance with the requirements of the listing Rules in the case of a reorganisation of the Company ordinary shares on issue. The convertible notes are unsecured. The Agreement is conditional on the Company obtaining any necessary government approvals and shareholder approval by 28 February 2013.

ASX Listing Rule 7.1 provides that a company must not, without shareholder approval (but subject to certain exceptions), issue during any 12 month period any equity securities or other securities with rights of conversion to equity (such as an option) if the number of those securities exceeds 15% of the number of fully paid ordinary securities on issue at the commencement of that 12 month period. In order to ensure that the Company has the capacity to issue the ordinary shares upon conversion of the convertible notes, which may occur anytime within the term of the convertible note, the Company has decided to seek shareholder approval to the issue of the convertible notes immediately.

For the purposes of Australian Stock Exchange ("ASX") Listing Rules 7.3, the Company also advises:

1. The number of securities to be allotted is 8,000,000 convertible notes at a price of \$1 per convertible note. The convertible notes may be converted into ordinary shares at a price of 22 cents.
2. The conversion price of the convertible notes into ordinary shares will be 22 cents per note.
3. The convertible notes will be issued to ISR Investments Ltd, or its nominee or any assignee.
4. The convertible notes will not be issued to a related party.
5. The date by which the Company will issue the convertible notes is no later than 3 months after the date of approval by shareholders.
6. A copy of the convertible note agreement is annexed to this notice of meeting. The ordinary shares are fully paid and rank pari passu with existing ordinary shares on issue, from the date of issue on exercise of the convertible note.
7. The Company anticipates that it will allot the ordinary shares in one tranche however it may allot in several tranches.
8. The funds raised by the convertible note issue will be utilised for development, exploration and working capital for the Company however the conversion of the notes into ordinary shares will not raise any funds.

By Order of the Board and dated this 20th day of December 2012



PETER LEE
Company Secretary

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CONVERTIBLE NOTE AGREEMENT

1 Parties

This Agreement is made between:

Merlin Diamonds Limited (ACN 009 153 119) of Level 8 – 580 St Kilda Road, Melbourne Victoria 3004

(the Company)

-and-

ISR Investments Ltd (IBC No. 530262), a company incorporated in the British Virgin Islands with its registered address at Equity Trust (BVI) Limited, Palm Grove House, PO Box 438, Road Town, Tortola, British Virgin Islands

(the Noteholder)

2 Recitals

The Company desires to issue Notes to and the Noteholder desires to subscribe for Notes on the terms and conditions set out in this Agreement.

3 Interpretation

3.1 Definitions

The meanings of the terms used in this Agreement are set out below.

Term	Meaning
Adjusted Conversion Price	As defined in clause 8.5(a).
Agreement	This agreement.
Business Day	A day not being a Saturday, Sunday or a Public Holiday upon which the Banks are open in Melbourne, Australia.
Company	Merlin Diamonds Ltd
Conditions Precedent	As defined in clause 4.1.
Consequential Loss	(a) any special, indirect or consequential loss or damage; (b) any economic loss in respect of any claim in tort; (c) any loss of profits, loss of production, loss of revenue, loss of use, loss of contract, loss of opportunity, loss of goodwill or wasted overheads whatsoever; (d) any loss arising out of any Claim by a third Party.
Conversion Date	A date upon which Notes are bound to convert to Ordinary Shares pursuant to clause 6.1 or clause 6.2.
Conversion Notice	A notice in the form of Schedule 5.
Conversion Price	\$0.22
Deposit	\$1,000,000
Dollars or \$	The lawful currency of Australia.
Event of Default	Any of the events set out in clause 13.2.
Execution Date	The date this Agreement is signed by the last party to sign.
Expiration Date	That date being 12 months from the date the Noteholder is notified that the Condition Precedent has been satisfied.
Interest Rate	8% per annum.
Major Event of Default	Any of the events set out in clause 13.1.
Note	A Note issued pursuant to this Agreement convertible to Ordinary Shares in accordance with the terms of this Agreement.

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Noteholder	ISR Investments Ltd
Note Certificate	A certificate in the form of Schedule 3.
Outstanding Amount	On a given date, means the Subscription Price of a Note plus any interest (but not including interest already paid) accrued in accordance with clause 5.
Reorganisation Event	Any of the following changes to the Capital of the Company: <ul style="list-style-type: none"> • A consolidation of the Company's Ordinary Shares. • A sub-division of the Company's Ordinary Shares.
Security Interest	Any mortgage, lien, encumbrance or restriction of any kind (other than a restriction imposed by the terms of this Agreement).
Subscription Amount	Has the meaning in clause 4.2.
Subscription Price	Has the meaning in clause 4.2.

3.2 Interpretation

In this agreement:

- (a) Headings are for reference only and do not affect the interpretation of this agreement.
- (b) The singular includes the plural and the plural includes the singular.
- (c) A reference to a "clause" means a clause of this agreement.
- (d) A reference to a party or parties means a party or the parties to this Agreement.
- (e) Neither this Agreement in its entirety or any particular provision of it shall be construed adversely to a party by reason of that party having been responsible for the preparation of this Agreement or that provision.
- (f) The use of the words including or includes does not limit what else may be included.

3.3 Time

Where a time period is specified in this Agreement commencing from or ending upon the date of a particular event, the period does not include the day of the particular event.

3.4 Business Day

Where any action or payment is due on a particular date and that date is not a Business Day, that action or payment must be done on or by the next Business Day.

4 Condition Precedent, Subscription and Issue of Notes

4.1 Condition Precedent

- (a) Each of the following is a condition precedent to this Agreement:
 - (1) All necessary government approvals (including but not limited to Foreign Investment Review Board approval if required) necessary for the issue of the Notes or the conversion of the Notes to shares in the Company are obtained; and
 - (2) that the Company obtains shareholder approval for the capacity to issue of sufficient shares to satisfy its obligations hereunder for the conversion of the Notes to Ordinary Shares

(Conditions Precedent).
- (b) Upon the Conditions Precedent being satisfied, the Company shall as soon as practicable notify the Noteholder in writing.
- (c) In the event the Conditions Precedent are not satisfied by 28 February 2013 (or such later date as is agreed by the parties), this Agreement will terminate without further notice being required by either party.

4.2 Subscription

The Noteholder hereby subscribes for 8,000,000 Notes at \$1.00 per Note (**Subscription Price**) for a total subscription amount of \$8,000,000.00 (**Subscription Amount**).

4.3 Payment of Subscription Price

- (a) The Noteholder shall pay the Subscription Amount as follows:
- (1) Payment of the Deposit by 1 February 2013 or within 7 days of the Company notifying the Noteholder pursuant to clause 4.2(b) of the satisfaction of the Condition Precedent, whichever is later; and
 - (2) The balance of the Subscription Amount 90 days after the date of payment of the Deposit.
- (b) at the office of the Company or at any other place the parties agree; and
- (c) at the time (but during banking hours at that place) that the parties agree.

4.4 Issue of Notes

Upon receipt of full payment of the Subscription Amount, the Company must issue the Notes to the Noteholder free from any Security Interest or other third party rights and deliver the Note Certificate within 3 Business Days thereof.

5 Interest

5.1 Payment

Interest on each Note shall accrue on the Outstanding Amount at the Interest Rate and no interest shall be payable on interest except where such interest has been capitalised pursuant to clause 5.3.

5.2 Calculation

Interest pursuant to clause 5.1 shall be calculated as follows:

- (a) Interest shall commence to be payable on the Subscription Amount on and from the first day following the date the balance of the Subscription Amount is received by the Company pursuant to clause 4.2(a)(2).
- (b) Interest shall be calculated on the daily balance assuming a 365 day year;
- (c) No Interest on a Note shall be payable on the one calendar day on which that Note is redeemed or converts to shares.

5.3 Calculation and payment of interest

Interest shall be calculated and paid in arrears on a quarterly basis.

6 Conversion of Notes

6.1 Mandatory Conversion on Expiration of Term

On the Expiration Date those Convertible Notes (if any) that have not been converted to shares in accordance with clause 6 will automatically convert to Ordinary Shares at the Conversion Price

6.2 Voluntary Conversion prior to Expiration of Term

At any time following the issue of the Notes to the Noteholder, the Noteholder may issue a Conversion Notice in respect of some or all of the Notes to convert those Notes to Ordinary Shares at the Conversion Price, provided that a Conversion Notice must:

- (a) be for the conversion of at least 100,000 notes; and
- (b) in multiples thereafter of at least 50,000 Notes.

7 [Deleted]

8 Conversion Mechanics

8.1 Conversion of Notes to Shares

Upon a Conversion Date the Company must issue to the Noteholder the number of Ordinary Shares in accordance with the following formula:

$$x \times \frac{y}{z}$$

Where:

- x = The number of Notes to convert on the Conversion Date
- y = The Outstanding Amount in respect of each Note; and
- z = The Conversion Price (including any adjustment pursuant to clause 8.5(a).

8.2 [Deleted]

8.3 Conversion Shares

- (a) No fractional Ordinary Shares will be issued upon conversion in accordance with this agreement and any fractional Ordinary Shares to which the Noteholder would otherwise be entitled will be rounded up to the nearest whole Ordinary Share.
- (b) The Conversion Shares issued on the Conversion of any Notes will:
 - (1) be fully paid and free from any Security Interest or other third party rights; and
 - (2) rank in all respects equally, and form one class with, all other Ordinary Shares.

8.4 Undertakings relating to Conversion

The Company undertakes to the Noteholder that it will:

- (a) be able to issue Ordinary Shares to satisfy the conversion rights attaching to the Notes;
- (b) ensure that the Conversion Shares are freely transferrable without any requirement for disclosure to investors under Part 6D.2 of the Corporations Act; and
- (c) obtain, maintain and promptly renew (if appropriate) from time to time, all such authorisations, approvals, consents, licences and exemptions as may be required under any applicable Law, regulation to enable it to perform its obligations under this agreement and the Notes or which are required for the validity or enforceability of the Notes.

8.5 Reorganisation of Capital by the Company

- (a) In the event of any Reorganisation Event the Conversion Price shall be adjusted (**Adjusted Conversion Price**) to ensure compliance with ASX Listing Rule 7.21. The Adjusted Conversion Price shall be the amount derived by application of the following formula:

$$\frac{x}{\left(\left(\frac{z}{100 - \left(\frac{x}{y} \div \left(\frac{x}{y} + w \right) \times 100 \right)} \right) \times 100 \right) - z}$$

Where:

x = The Outstanding Amount;

y = The Conversion Price;

w = The Number of Ordinary Shares on issue prior to the reorganisation of the Company's capital.

z = The Number of Ordinary Shares on issue following the reorganisation of the Company's capital (but excluding any shares issued to the Noteholder pursuant to any conversion event occurring after the reorganisation of the Company's capital).

- (b) In the event of any other reorganisation of capital by the Company other than the Reorganisation Event, Schedule 6 shall apply.

8.6 Conversion Restriction

- (a) Notwithstanding anything else in this Agreement, no conversion of shares (the relevant conversion event) is to occur such that the Noteholder's total number of ordinary shares (taking into account any other shares purchased by or issued to the Noteholder at anytime and in any manner prior to the relevant conversion event) exceeds 19.99% (the maximum percentage) of the total number of Ordinary Shares in the Company.
- (b) Where any conversion of Notes to Ordinary Shares (whether arising by reason of the issue of a Conversion Notice, or by operation of clause 9.1 of this Agreement) would otherwise result in the Noteholder's total number of Ordinary Shares exceeding the percentage prescribed by clause 8.6(a) above, then:
- (1) The number of Notes that can be converted to Ordinary Shares (rounded to the nearest 50,000 shares) so as to result in the Noteholder holding up to but not exceeding the maximum percentage shall convert (even if that number is less than the minimums prescribed in clause 6.2(a)(1) or 6.2(a)(2)); and
 - (2) The remaining Notes unable to be converted, will not convert and will, upon the Expiration Date be redeemed for cash for the Outstanding Amount in respect of each Note that does not convert.

For example, if the Company has 250,000 shares on issue prior to the relevant conversion event and:

- (c) *The Noteholder was the holder of 40,000,000 Ordinary Shares prior to the relevant conversion event; and*
- (d) *the Conversion Notice the subject of the relevant conversion event would result in a conversion of Notes to 15,000,000 Ordinary Shares (and therefore, the Noteholder holding 55,000,000 of 265,000,000 shares in the Company – being 20.755% of the total issued Ordinary Shares); then*
- (e) *Notes resulting in the issue 12,450,000 shares shall be converted to Ordinary Shares pursuant to the Conversion Notice (resulting in a holding of 19.985% of the total issue Ordinary Shares in the Company) and the remaining Notes shall not convert and be redeemable pursuant to clause 8.6(b)(2).*

8.7 Post Conversion

- (a) The Company will procure that the relevant ASIC forms are lodged within 1 Business Day to reflect the issue of the Conversion Shares.
- (b) The Company must procure the official quotation of the Conversion Shares on the ASX.

9 Termination

This Agreement will terminate when the Noteholder ceases to hold any Notes under this agreement.

10 Assignment

This Agreement may not be assigned by either party without the consent in writing of the other party and shall not be effective until the proposed assignee enters into a Deed in terms acceptable to the non-assigning party assuming all the obligations of the assignor under this Agreement.

11 Warranties

11.1 Warranties

The Company gives the Warranties to and for the benefit of the Noteholder.

11.2 Noteholder Warranties

The Noteholder gives the Noteholder Warranties to and for the benefit of the Company.

12 Ongoing requirements

12.1 Remain a company limited by shares

The Company and each Subsidiary must maintain its status as a company limited by shares incorporated under the Corporations Act. The Company and each Subsidiary must not transfer nor permit the transfer of its jurisdiction of incorporation outside Australia.

12.2 Maintain its Listing and Comply with the Listing Rules

The Company must maintain its listing on the Australian Stock Exchange (or other recognised Stock Exchange) and comply with all relevant Listing Rules.

12.3 Non-dilution by non-cash share issues to existing shareholders

- (a) The Company must not, other than by a Reorganisation Event or an Employee Options Share Plan, issue further shares or options to existing shareholders of the Company other than where such shares are issued for reasonable value received by the Company.

For example, the Company may not issue further shares by way of a dividend. However, the Company may undertake a rights issue whereby existing shareholders make further payment for further shares in cash provided the price for each additional share is reasonable having regard to market conditions.

- (b) Nothing in this clause 12.3 or this Agreement shall prevent the Company from raising further capital by subscription for further shares by private subscription or a public offering of shares.

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12.4 Negative Pledge

So long as the Notes remain outstanding and have not been converted to shares in accordance with this Agreement, the Company will not create or permit to subsist any mortgage, charge, lien or other form of encumbrance or security interest upon the whole or any part of the issued and paid up capital of the Company and/or its subsidiaries or any assets of the Company (save and except as provided in clause 12.5 below.

12.5 Exception to Pledge

Notwithstanding clause 12.4 the Company may enter into normal financing arrangements (including chattel mortgages and the like) for plant and equipment in the usual course of business so long as not individual item is valued at a sum greater than \$200,000.00.

13 Events of default

13.1 Major Events of Default by the Company

Each of the following is a Major Event of Default:

- (a) an order is made for the winding up of the Company or for the appointment of a liquidator in respect of the Company;
- (b) the Company passes a resolution for its winding up;
- (c) the Company is deregistered, or any steps are taken to deregister the Company under the Corporations Act;
- (d) a distress, attachment, execution or other process of a Government Agency is issued against, levied or entered upon a asset of the Company in an amount exceeding \$250,000 and is not set aside or satisfied within 10 Business Days;
- (e) a receiver, controller (within the meaning of section 9 of the Corporations Act) or analogous person is appointed to, or the holder of a Security Interest takes possession of, all or any part of the assets of the Company;
- (f) the Company:
 - (1) suspends payment generally;
 - (2) becomes an externally-administered body corporate within the meaning of the Corporations Act;
 - (3) becomes subject to administration under Part 5.3A of Chapter 5 of the Corporations Act,; or
 - (4) is or states that it is, or is deemed by applicable Law to be, unable to pay its debts;
- (g) pursuant to section 459F of the Corporations Act the Company is taken to have failed to comply with a statutory demand;
- (h) the Company takes any step for the purpose of entering into a compromise or arrangement with its members or creditors generally;
- (i) a person is appointed under any legislation to manage any part of the affairs of the Company;

13.2 Events of Default

Each of the following is an Event of Default:

- (a) A breach of an obligation to pay money;
- (b) A breach of clause 4.3, 8.1, 8.4, 10, 11.1, 11.2, 12.1, 12.2 or 12.3.

13.3 Other Defaults

For clarity, any other default under this agreement, other than those specified in clauses 13.1 and 13.2 shall not constitute either a Major Event of Default or an Event of Default for the purposes of clause 14.1.

14.1 Termination Rights

- (a) Where a Major Event of Default occurs, the Investor shall have the right to immediately serve a notice terminate this agreement (Termination Notice) in accordance with sub-clause (c) below.
- (b) Where either party commits an Event of Default, then:
- (1) Where the default is capable of remedy, the non-defaulting party shall be entitled to serve a notice on the defaulting party requiring the breach to be remedied within 14 days;
 - (2) In the event, that the defaulting party does not remedy the breach (the subject of a notice pursuant to sub-clause (1) above) within 14 days of receipt of such notice, then the non-defaulting party shall be entitled to serve a notice
 - (3) Where the default is not capable of remedy, the non-defaulting party may immediately serve notice pursuant to sub-clause (c) below;
- (c) A party having a right pursuant to either clause 14.1(a) or (b) to serve a Termination Notice must include in that notice:
- (1) The nature of the breach alleged by reference to the specific clause of this Agreement or a Schedule to this Agreement;
 - (2) The date of the alleged breach; and
 - (3) Any other material facts, dates, calculations or details of the alleged breach.

14.2 Consequences of Termination

- (a) Where a Termination Notice is served by the Noteholder pursuant to clause 14.1(a) then:
- (1) this Agreement will terminate on the day the Notice is received or deemed to be received;
 - (2) and Company shall be required to repay the Outstanding Amount of all Notes (other than those that have already been converted pursuant to clause 6.2) to the Noteholder within 3 days of receipt of the Termination Notice.
- (b) Where a Termination Notice is served pursuant to clause 14.1(b)(2) and does not relate to the failure to make a payment of money under this Agreement, then:
- (1) this Agreement will terminate on the day the Notice is received or deemed to be received; and
 - (2) the non-defaulting party shall remain entitled to recover any damages it would otherwise have been entitled to recover if this Agreement had not been terminated.
- (c) Where a Termination Notice is served pursuant to clause 14.1(a)(2) and relates to the failure to make a payment of money under this Agreement, then:
- (1) This Agreement terminates on the day the Notice is received or deemed to be received; and
 - (2) The non-defaulting party may still recover the money owed as a debt due to it, provided that where it relates to a failure by the Noteholder to pay any amount under clause 4.2(a)(2) of this agreement, upon the amount (and any costs or interest awarded by an arbitral body) being paid by the Noteholder, the Company must issue Ordinary Shares to the Noteholder at a conversion price equal to the 5 day weighted average trading price of the Company's shares on the Australian Stock Exchange (or such other exchange upon which the Company's shares are traded as at the date of conversion under this clause).
- (d) Where a Termination Notice is served pursuant to clause 14.1(a)(3) then:
- (1) this Agreement will terminate on the day the Notice is received or deemed to be received; and
 - (2) the non-defaulting party shall remain entitled to recover any damages it would otherwise have been entitled to recover if this Agreement had not been terminated.

14.3 Damages

- (a) Any other default shall not entitle a party to terminate this agreement but its remedy shall be limited to:
- (1) an order for specific performance;
 - (2) an injunction; or
 - (3) damages.
- (b) Notwithstanding anything else in this Agreement in no event shall either party to this Agreement be entitled to recover any Consequential Loss from the other party.

15 Duties, costs and expenses

15.1 Duties

The Noteholder must pay all duty in respect of the execution, delivery and performance of this agreement and any agreement or document entered into or signed under this agreement.

15.2 Costs and expenses

- (a) Unless otherwise provided for in this agreement, each party must pay its own costs and expenses in respect of the negotiation, preparation, execution, delivery and registration of this agreement and any other agreement or document entered into or signed under this Agreement.
- (b) Any action to be taken by the Noteholder or the Company in performing its obligations under this agreement must be taken at its own cost and expense unless otherwise provided in this agreement.

16 GST

16.1 Definitions

Words used in this clause 15 which have a defined meaning in the GST Law have the same meaning as in the GST Law unless the context indicates otherwise.

16.2 GST

- (a) Unless expressly included, the consideration for any supply under or in connection with this agreement does not include GST.
- (b) To the extent that any supply made under or in connection with this agreement is a taxable supply (other than any supply made under another agreement which contains a specific provision dealing with GST), the recipient must pay, in addition to the consideration provided under this agreement for that supply (unless it expressly includes GST) an amount (additional amount) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. The recipient must pay the additional amount at the same time as the consideration to which it is referable.
- (c) Whenever an adjustment event occurs in relation to any taxable supply to which this clause 16.2 applies:
- (1) the supplier must determine the amount of the GST component of the consideration payable; and
 - (2) if the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.

16.3 Tax invoices

The supplier must issue a Tax Invoice to the recipient of a supply to which clause 16.2 applies no later than 7 days following payment of the GST inclusive consideration for that supply under that clause.

16.4 Reimbursements

If either party is entitled under this agreement to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with this agreement, the reimbursement or indemnity payment must not include any GST component of the cost or expense to the extent that the cost or expense is the consideration for a creditable acquisition made by the party being reimbursed or indemnified, or by its representative member.

17 Note certificates and register

17.1 Note certificates

- (a) Upon registration of a transfer of Notes, the Company must cancel the Note Certificate in respect of those Notes and re-issue a Note Certificate in respect of the Notes to the transferee (and, if the transferor has retained any Notes represented by the cancelled Note Certificate, re-issue a Note Certificate in respect of those Notes to the transferor).
- (b) Upon repayment of the amount due in respect of Notes on redemption of the Notes or Conversion of Notes, the Company must cancel the Note Certificate in respect of those Notes and re-issue a Note Certificate in respect of the remaining Notes (if any) represented by the cancelled Note Certificate to the holder of those remaining Notes.

17.2 Maintenance of register

The Company must prepare and maintain a register of the Noteholder containing all usual and proper information relating to the Notes including, without limitation:

- (a) the name and address of the Noteholder;
- (b) the number and Face Value of Notes held by or on behalf of the Noteholder;
- (c) whether Notes held by or on behalf of a Noteholder have been repaid, converted or issued to or transferred to or from the Noteholder;
- (d) the date of issue, transfer, repayment or conversion of each Note;
- (e) if a Note held by or on behalf of the Noteholder has been converted into Ordinary Shares, the number and class of Ordinary Shares issued pursuant to the conversion; and
- (f) the number of each Note Certificate.

17.3 Effect of inscription

- (a) Each inscription in the register of Noteholder is sufficient and conclusive evidence to all persons and for all purposes that the person whose name is so inscribed is the registered holder of the Note, except in the case of manifest error, fraud or a breach by the Company of its obligations under clause 16.2
- (b) The Company must, if directed by a Noteholder, record on the register of Noteholder that a Noteholder (or nominee) holds Notes as trustee or custodian for another party.

17.4 Inspection

The Company must make the register of Noteholder available for inspection by Noteholder during Business Hours and as required by the Corporations Act.

17.5 Replacement

If any Note Certificate:

- (a) becomes worn out or defaced, the Company must upon the Note Certificate being provided to the Company and upon request by the Noteholder who holds the Notes represented by the

Note Certificate cancel the Note Certificate and issue a replacement Note Certificate to the Noteholder; and

- (b) is lost or destroyed, the Company must upon request by the Noteholder who holds the Notes represented by the Note Certificate cancel the Note Certificate and issue a replacement Note Certificate to the Noteholder.

18 Information

18.1 Confidentiality

Each party (**recipient**) must keep secret and confidential, and must not divulge or disclose any information relating to another party or its business (which is disclosed to the recipient by the other party, its representatives or advisers), this agreement or the terms of the Notes other than to the extent that:

- (a) the information is in the public domain as at the date of this agreement (or subsequently becomes in the public domain other than by breach of any obligation of confidentiality binding on the recipient);
- (b) the recipient is required to disclose the information by applicable law, order of court of competent jurisdiction, order of Government Authority having the power to do so or the rules of any recognised stock exchange on which its shares or the shares of any of its related bodies corporate are listed, provided that the recipient has to the extent possible having regard to the required timing of the disclosure consulted with the provider of the information as to the form and content of the disclosure;
- (c) the disclosure is made by the recipient to its financiers or lawyers, accountants, investment bankers, consultants, Permitted Transferee, investors, potential investors, or other professional advisers to the extent necessary to enable the recipient to properly perform its obligations under this agreement or to conduct their business generally, in which case the recipient must ensure that such persons keep the information secret and confidential and do not divulge or disclose the information to any other person;
- (d) the disclosure is required for use in legal proceedings regarding this agreement or the Notes; or
- (e) the party to whom the information relates has consented in writing before the disclosure.

18.2 Extent of obligation

Each recipient must ensure that its directors, officers, employees, agents, investors, potential investors, representatives, financiers, advisers and related bodies corporate (collectively "**Confidential Associates**") comply in all respects with the recipient's obligations under clause 18.1 and shall be liable in full for any disclosure by such Confidential Associate.

19 Notices

19.1 How and where Notices may be sent

A notice or other communication under this agreement (**Notice**) must be in writing and delivered by hand or sent by pre-paid post to a party at the address for that party in Schedule 1 or as otherwise specified by a party by Notice.

19.2 When Notices are taken to have been given and received

- (a) A Notice sent by post is regarded as given and received on the second Business Day following the date of postage.
- (b) A Notice delivered or received other than on a Business Day or after 5.00pm (recipient's time) is regarded as received at 9.00am on the following Business Day and a Notice delivered or received before 9.00am (recipient's time) is regarded as received at 9.00am.

20 General matters

20.1 Waiver

No party to this agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.

20.2 Severance

If any provision of this agreement is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this agreement.

20.3 Counterparts

This agreement may be executed in any number of counterparts. All counterparts taken together, constitute one instrument. A party may execute this agreement by signing any counterpart.

20.4 Separate capacities

If a person is a party or a Noteholder in more than one capacity of trustee, responsibility entity, agent, custodian or nominee, the person will for the purposes of this agreement be treated as a separate person in respect of each such capacity.

20.5 Variation

A variation of any term of this agreement must be in writing and signed by the parties.

20.6 Governing law and jurisdiction

- (a) This agreement is governed by the law in force in State of Victoria.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in State of Victoria and courts of appeal from them in respect of any proceedings arising out of or in connection with this agreement. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

Notice details

Company

Address:

Level 8, 580 St Kilda Road,
Melbourne, Victoria, 3004.

Attention:

Company Secretary

Phone:

+613 8532 2800

Noteholder

Address

Equity Trust (BVI) Limited,
Palm Grove House, PO Box
438, Road Town, Tortola,
British Virgin Islands

Attention

Phone

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Form of Note certificate

Convertible Note Certificate

Certificate Number: [insert number]

Insert name, ACN and name of underlying beneficiary (if any)

(the Company)

THIS IS TO CERTIFY that **[insert Noteholder]** (the Noteholder) is the registered holder of **[insert number]** convertible notes with a face value of \$1 each issued under the convertible note agreement dated **[insert date]** between **[insert parties]**.

The common seal of
[insert name of company]
is fixed to this document in the presence of

sign here



Company Secretary/Director

print name

sign here



Director

print name

This certificate must be surrendered to the Company on transfer, conversion, repayment or purchase by the Company of any convertible note represented by it.

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Warranties

1 Incorporation

The Company is validly incorporated pursuant to the *Corporations Act 2001* (Cth).

2 Capacity

The Company has the power and capacity to enter into and perform its obligations under this Agreement.

3 Corporate authorisations

The Company has all necessary authorisations required for the execution and performance by it of this Agreement (save and except for the approval required by shareholders of the Company which is a condition precedent to this Agreement).

4 Compliance with Constitution and Law

The execution of this Agreement and the performance by the Company of its obligations hereunder:

- (a) comply with its constitution; and
- (b) does not constitute a breach of any law and does not give rise to any default under any agreement by which the Company is bound.

5 Tenements in Good Standing

The tenements held by the Company are in good standing and will at all times continue to be maintained in good standing.

6 JORC Report

The Company is not aware of any material matter or any material omission that would render the JORC Report published by it to be misleading in any material way.

7 No Litigation

The Company is not a party to or involved in any way in any material litigation as at the date of this Agreement.

Noteholder Warranties

1 Incorporation

The Noteholder is validly incorporated in accordance with the laws of the jurisdiction in which it is incorporated.

2 Capacity

The Noteholder has the power and capacity to enter into and perform its obligations under this Agreement.

3 Corporate authorisations

The Noteholder has all necessary authorisations required for the execution and performance by it of this Agreement.

4 Compliance with Constitution and Law

The execution of this Agreement and the performance by the Noteholder of its obligations hereunder:

- (a) comply with its constitution; and
- (b) does not constitute a breach of any law and does not give rise to any default under any agreement by which the Noteholder is bound.

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Form of Conversion Notice

CONVERSION NOTICE

To: The Company

Take Notice that:

.....[Insert name of Noteholder] hereby gives notice pursuant to clause 6.2 of the Convertible Note Agreement dated[insert date] that it requires the Company to convert the number of convertible notes set out in the schedule below to shares in the Company in accordance with the terms and conditions of the Agreement.

Dated.....[Insert Date]

.....
Signed for and on behalf of the Noteholder
By its duly authorised officer of Attorney

[Insert office held or details of any Power of Attorney]

Schedule

Number of Notes to convert: _____

[Enter number of notes, minimum 100,000 and
in multiples of 50,000 only]

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Adjustments to Conversion Price

The Conversion Price will be subject to adjustment in following events:

- (a) *Any alteration to the number of issued Shares as a result of consolidation, subdivision, or reclassification.*

If and whenever there shall be an alteration to the number of issued Shares as a result of consolidation, subdivision or reclassification, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before such alteration by the following fraction:

$$\frac{A}{B}$$

where:

A is the aggregate number of issued Shares immediately before such alteration; and

B is the aggregate number of issued Shares immediately after such alteration.

Such adjustment shall become effective on the date the alteration takes effect.

- (b) *Capitalisation of profits or reserves*

- (i) The issue of Shares by the Company credited as fully paid to any persons in whose name Shares are registered (the "**Shareholders**"), by way of capitalisation of profits or reserves, including a free distribution or bonus issue of Shares (other than an issue of Shares paid-up out of profits or reserves and issued in lieu of the whole or part of a specifically declared cash dividend (the "**Relevant Cash Distribution**"), being a dividend which the Shareholders concerned would or could otherwise have received (a "**Scrip Dividend**")) and where such issue does not constitute a Capital Distribution (as defined below).

In such an event, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before such issue by the following fraction:

$$\frac{A}{B}$$

where:

A is the aggregate number of issued Shares immediately before such issue; and

B is the aggregate number of issued Shares immediately after such issue.

Such adjustment shall become effective from the date of issue of the Shares.

- (ii) In the case of an issue of Shares by way of a Scrip Dividend where the Current Market Price (as defined below) of such Shares exceeds the amount of the Relevant Cash Distribution and where such issue does not constitute a Capital Distribution, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before the issue of such Shares by the following fraction:

$$\frac{A + B}{A + C}$$

Where:

- A is the aggregate number of issued Shares immediately before such issue;
- B is the aggregate number of Shares issued by way of such Scrip Dividend multiplied by a fraction of which (i) the numerator is the amount of the whole, or the relevant part, of the Relevant Cash Distribution and (ii) the denominator is the Current Market Price of the Shares issued by way of Scrip Dividend in respect of each existing Share in lieu of the whole, or the relevant part, of the Relevant Cash Dividend; and
- C is the aggregate number of Shares issued by way of such Scrip Dividend,

or by making such other adjustment as a leading independent investment bank of international repute (acting as experts), selected by the Company, shall certify is fair and reasonable.

Such adjustment shall become effective on the date of issue of such Shares or if a Record Date is fixed therefor, the day immediately after such Record Date.

(c) Capital Distribution

If and whenever the Company shall pay or make any Capital Distribution to the Shareholders (except where the Conversion Price falls to be adjusted under Condition (b) above or (j) below), the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before such Capital Distribution by the following fraction:

$$\frac{A - B}{A}$$

where:

- A is the Current Market Price of one Share on the last Trading Day preceding the date on which the declaration of the Capital Distribution (or the Relevant Distribution which resulted in the Capital Distribution) is first publicly announced; and
- B is the Fair Market Value on the date of such announcement, as determined in good faith by an Independent Bank (as defined hereinafter), of the portion of the Capital Distribution (excluding any Capital Distribution in respect of the same financial year which has previously resulted in an adjustment under this Condition (c) attributable to one Share.

Such adjustment shall become effective on the date that such Capital Distribution is made or, if a record date is fixed therefore, on such record date.

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(d) *Rights Issues or Options over Shares*

The issue of Shares to all or substantially all Shareholders as a class by the Company by way of rights, or issue or grant to all or substantially all Shareholders as a class, by way of rights of options, warrants or other rights to subscribe for or purchase any Shares, on the last Trading Day preceding the date the final terms of such issue or grant is first publically announced.

In such an event, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before such issue or grant by the following fraction:

$$\frac{A + B}{A + C}$$

where:

- A is the number of Shares in issue immediately before such announcement;
- B is the number of Shares which the aggregate amount (if any) payable for the Shares issued by way of rights or for the options or warrants or other rights issued by way of rights and for the total number of Shares comprised therein would purchase at such Current Market Price per Share; and
- C is the aggregate number of Shares issued or, as the case may be, comprised in the issue or grant.

Such adjustment shall become effective on the date of issue of such Shares or issue or grant of such options, warrants or other rights (as the case may be) or, where a record date is set, the first date on which the Shares are traded ex-rights, ex-options or ex-warrants, as the case may be.

(e) *Rights issues of other securities*

The issue of any securities (other than Shares or options, warrants or other rights to subscribe or purchase Shares) to all or substantially all Shareholders as a class by the Company by way of rights, or the grant to all or substantially all Shareholders as a class by way of rights of any options, warrants or other rights to subscribe for or purchase, any securities (other than Shares or options, warrants or other rights to subscribe for, purchase or otherwise acquire Shares).

In such an event, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before such issue or grant by the following fraction:

$$\frac{A - B}{A}$$

where:

- A is the Current Market Price of one Share on the last Trading Day preceding the date on which the final terms of such issue or grant is first publicly announced; and
- B is the Fair Market Value on the date of such announcement, as determined in good faith by an Independent Bank (as defined hereinafter), of the portion of the rights attributable to one Share.

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Such adjustment shall become effective on the date of issue of the securities or grant of such rights, options or warrants (as the case may be) or, where a record date is set, the first date on which the Shares are traded ex-rights, ex-options or ex-warrants, as the case may be.

(f) *Issues at less than Current Market Value*

The issue (otherwise than as mentioned in Condition (d) above) by the Company wholly for cash of any Shares (other than Shares issued on the exercise of Conversion Rights or on the exercise of any other rights of conversion into, or exchange or subscription for, Shares) or the issue or grant of (otherwise than as mentioned in Condition (d)) options, warrants or other rights to subscribe or purchase Shares.

In such an event, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before such issue by the following fraction:

$$\frac{A + B}{C}$$

where:

- A is the number of Shares in issue immediately before the issue of such additional Shares or the grant of such options, warrants or other rights to subscribe for or purchase any Shares;
- B is the number of Shares which the aggregate consideration receivable for the issue of such additional Shares would purchase at such Current Market Price per Share; and
- C is the number of Shares in issue immediately after the issue of such additional Shares.

References to additional Shares in the above formula shall, in the case of an issue by the Company of options, warrants or other rights to subscribe or purchase Shares, mean such Shares to be issued assuming that such options, warrants or other rights are exercised in full at the initial exercise price on the date of issue of such options, warrants or other rights.

Such adjustment shall become effective on the date of issue of such additional Shares or, as the case may be, the issue of such options, warrants or other rights.

(g) *Other Issues at less than Current Market Price*

Save in the case of an issue of securities arising from a conversion or exchange of other securities in accordance with the terms applicable to such securities themselves falling within the provisions of this Condition (g), the issue wholly for cash by the Company or any Subsidiary (otherwise than as mentioned in Conditions (d), (e) or (f) above) or (at the direction or request of or pursuant to any arrangements with the Company or any Subsidiary) any other company, person or entity of any securities (other than the Bonds) which by their terms of issue carry rights of conversion into, or exchange or subscription for, Shares to be issued by the Company.

In such an event, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before such issue by the following fraction:

$$\frac{A + B}{A + C}$$

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where:

- A is the number of Shares in issue immediately before such issue;
- B is the number of Shares which the aggregate consideration receivable by the Company for the Shares to be issued on conversion or exchange or on exercise of the right of subscription attached to such securities would purchase at such Current Market Price per Share; and
- C is the maximum number of Shares to be issued on conversion or exchange of such securities or on the exercise of such rights of subscription attached thereto at the initial conversion, exchange or subscription price or rate.

Such adjustment shall become effective on the date of issue of such securities.

(h) *Modification of rights of conversion*

Any modification of the rights of conversion, exchange or subscription attaching to any such securities as are mentioned in Condition (g) above (other than in accordance with the terms applicable to such securities) so that the consideration per Share (for the number of Shares available on conversion, exchange or subscription following the modification.

In such an event, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before such modification by the following fraction:

$$\frac{A + B}{A + C}$$

where:

- A is the number of Shares in issue immediately before such modification;
- B is the number of Shares which the aggregate consideration receivable by the Company for the Shares to be issued on conversion or exchange or on exercise of the right of subscription attached to the securities, in each case so modified, would purchase at such Current Market Price per Share or, if lower, the existing conversion, exchange or subscription price of such securities; and
- C is the maximum number of Shares to be issued on conversion or exchange of such securities or on the exercise of such rights of subscription attached thereto at the modified conversion, exchange or subscription price or rate but giving credit in such manner as an Independent Bank considers appropriate (if at all) for any previous adjustment under this Condition (h) or Condition (g) above.

Such adjustment shall become effective on the date of modification of the rights of conversion, exchange or subscription attaching to such securities.

(i) *Other offers to Shareholders*

The issue, sale or distribution by or on behalf of the Company or any Subsidiary or (at the direction or request of or pursuant to any arrangements with the Company or any Subsidiary) any other company, person or entity of any securities in connection with an offer by or on behalf of the Company or any Subsidiary or such other company, person or entity pursuant to which offer the Shareholders generally

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(meaning for these purposes the holders of at least 60.00 per cent. of the Shares outstanding at the time such offer is made) are entitled to participate in arrangements whereby such securities may be acquired by them (except where the Conversion Price falls to be adjusted under Conditions (d), (e), (f) and (g) above).

In such an event, the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before such issue by the following fraction:

$$\frac{A - B}{A}$$

where:

- A is the Current Market Price of one Share on the last Trading Day preceding the date on which the final terms of such issue is first publicly announced; and
- B is the Fair Market Value on the date of such announcement, as determined in good faith by an Independent Bank, of the portion of the rights attributable to one Share.

Such adjustment shall become effective on the date of issue of the securities.

(j) *Relevant Distribution*

If the Company issues or distributes to its shareholders a Relevant Distribution in the form of cash (as described below), the Conversion Price shall be adjusted by multiplying the Conversion Price in force immediately before the Relevant Distribution is issued or distributed by the following fraction:

$$\frac{A - B}{A}$$

where:

- A is the Current Market Price of one Share on the last Trading Day immediately preceding the date on which the Relevant Distribution is publicly announced; and
- B is the amount of cash so distributed attributable to one Share.

Such adjustment shall become effective on the date such Relevant Distribution is paid.

- (k) If (i) an offer is made to all Shareholders to acquire the whole or any part of the issued share capital of the Company; or (ii) any person proposed a scheme of arrangement with regard to such acquisition, and (such offer or scheme having become or been declared unconditional in all respects) more than 50 per cent. of the voting rights of the issued share capital of the Company have or will become unconditionally vested in the offeror and/or its associates, or an event which has a like or similar effect (a “**Change of Control Event**”), then upon any exercise of Conversion Rights where the Conversion Date falls during the Change of Control Period (as defined herein), the Conversion Price (the “**Change of Control Conversion Price**”) shall be determined pursuant to the following formula:

$$\text{COCCP} = \text{OCP} / (1 + (\text{CP} \times \text{c}/\text{t}))$$

where:

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COCCP is the Change of Control Conversion Price;

OCP is the Conversion Price in effect on the relevant Conversion Date (disregarding the application of the paragraph (k));

CP means 20 per cent, (expressed as a fraction);

c means the number of days from and including the date the Change of Control Event occurs to but excluding the Maturity Date; and

t means the number of days from and including the Issue Date to but excluding the Maturity Date.

Executed as an agreement

Noteholder

Executed by **ISR Investments Ltd**
by

sign here



Director

print name Neo Kim Hock

sign here



Director/Secretary

print name _____

Company

Executed by
Merlin Diamonds Ltd
by

sign here



Company Secretary

print name PETER JAMES LEE

sign here



Director

print name JOSEPH ISAAC GUTNICK

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