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23 December 2022

The Manager
ASX Market Announcements Office
ASX Limited
Exchange Centre
20 Bridge Street
SYDNEY NSW 2000

FOR LODGEMENT ONLINE

Dear Sir/Madam

Takeover bid for Nitro Software Limited (ACN 079 215 419) (ASX:NTO) – variation of Offer and Third Supplementary Bidder's Statement

We act for Potentia Capital Management Pty Ltd (ACN 630 264 210) (**Potentia**).

We refer to Potentia's off-market takeover bid through Technology Growth Capital LLC (**Bidder**) to acquire ordinary shares in Nitro Software Limited (ACN 079 215 419) (ASX:NTO) (**Nitro**), on the terms set out in the offer contained in the Bidder's Statement dated 28 October 2022 (as amended) (**Offer**).

We enclose, in accordance with sections 647(3)(b) and 650D of the *Corporations Act 2001* (Cth) (**Corporations Act**):

- a copy of the Bidder's Third Supplementary Bidder's Statement dated 23 December 2022 in relation to the Offer; and
- a formal notice of variation to the Offer (**Notice**) to:
 - vary the share offer consideration to include a scrip alternative;
 - extend the period during which the Offer will remain open for acceptance until **7.00pm (Sydney, Australia time) on 31 March 2023** (unless withdrawn or further extended) pursuant to section 650D of the Corporations Act; and
 - confirm the new date for giving notice of the status of the Offer conditions as a result of the extension of the Offer period pursuant to section 630(2)(b) of the Corporations Act.

The Third Supplementary Bidder's Statement and Notice have been lodged today with the Australian Securities and Investments Commission and sent to Nitro.

Yours faithfully,



Johnson Winter Slattery

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Liability limited by a scheme approved under Professional Standards Legislation

THIRD SUPPLEMENTARY BIDDER'S STATEMENT

ACCEPT

THE OFFER TO ACQUIRE YOUR SHARES IN

NITRO SOFTWARE LIMITED

ACN 079 215 419

BY

Potentia Capital Management Pty Ltd

ACN 630 264 210

potentia

THROUGH

Technology Growth Capital LLC

The Offer is dated 11 November 2022 and expires at 7:00pm (Sydney, Australia time) on 31 March 2023, unless extended or withdrawn

**THIS IS AN IMPORTANT DOCUMENT AND REQUIRES
YOUR IMMEDIATE ATTENTION**

Please call 1300 101 297 (for calls made within Australia) or +61 2 9068 1929 (for calls made from outside Australia) from Monday to Friday between 9:00am and 5:00pm (Sydney, Australia time) if you require assistance with your acceptance.

You should read this document in its entirety. If you are in doubt as to how to deal with this document, please consult your financial, legal or other professional adviser

Legal Adviser

Financial Adviser

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 **JARDEN**

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NOTICE

This document is a supplementary bidder's statement under section 643 of the Corporations Act.

This is the third supplementary bidder's statement (**Third Supplementary Bidder's Statement**) issued by Technology Growth Capital LLC (**Bidder**) to the bidder's statement dated 28 October 2022 lodged with Australian Securities Exchange (**ASX**), Nitro Software Limited ACN 079 215 419 (**Nitro**) and the Australian Securities and Investments Commission (**ASIC**) on 28 October 2022 (**Original Bidder's Statement**) (as supplemented by the first supplementary bidder's statement dated 11 November 2022 (**First Supplementary Bidder's Statement**) and second supplementary bidder's statement dated 8 December 2022 (**Second Supplementary Bidder's Statement**)) in relation to the Bidder's off-market takeover bid for ordinary shares in Nitro.

This Third Supplementary Bidder's Statement supplements and should be read together with the Original Bidder's Statement, the First Supplementary Bidder's Statement and the Second Supplementary Bidder's Statement.

A copy of this Third Supplementary Bidder's Statement was lodged with ASIC on 23 December 2022. Neither ASIC nor any of its officers takes any responsibility for the contents of this document.

Unless the context otherwise requires, capitalised terms used in this Third Supplementary Bidder's Statement have the same meaning as given to them in the Original Bidder's Statement. This Third Supplementary Bidder's Statement will prevail to the extent of any inconsistency with the Original Bidder's Statement, the First Supplementary Bidder's Statement and the Second Supplementary Bidder's Statement.

23 December 2022

**Potentia Capital's takeover offer for Nitro Software Limited:
scrip alternative and extension of Offer Period**

Dear Nitro Shareholder,

Scrip Alternative

Potentia Capital has now added a scrip alternative form of consideration in its takeover bid for Nitro (**Offer**) through Technology Growth Capital LLC (**Bidder**) (**Scrip Alternative**).

The Scrip Alternative is intended to facilitate existing Nitro Shareholders' rollover into Potentia Capital's acquisition vehicle, including members of the Nitro management team and broader employee group.

Potentia Capital's inclusion of the Scrip Alternative in its Offer provides Nitro Shareholders with the opportunity to participate in any potential upside generated by the future growth of the business while under Potentia Capital's management.

As specialist investors in the Australian technology sector with a strong track record of growing successful software businesses, Potentia Capital believes that it can help Nitro successfully deliver on its global growth plans as a standalone enterprise software leader and would welcome the participation of current Nitro Shareholders on that journey.

Extension of Offer Period

Potentia Capital has also varied its Offer by extending the Offer Period in its Offer. The Offer is now scheduled to close at **7.00 pm (Sydney time) on 31 March 2023**, unless extended or withdrawn.

Offer Price

As announced on 8 December 2022, Potentia Capital has increased the cash price offered in its takeover bid to \$2.00 per Nitro Share. Potentia Capital will consider increasing this price if Potentia Capital is granted access to information required to undertake full customary legal, financial, technical and tax due diligence on the business and assets of Nitro.

Alludo Competing Scheme Proposal

Potentia Capital confirms its previous statements that it will vote all the Nitro Shares that it controls, at the relevant time, against the Alludo Competing Scheme Proposal, and that it will not accept any of those Nitro Shares into any Competing Takeover Proposal (including the Alludo Competing Takeover Bid).

In addition, on 20 December 2022 in the first court hearing relating to the Alludo Competing Scheme Proposal, Nitro agreed that it would keep a record of whether or not the 9,469,384 unallocated treasury shares (**Treasury Shares**) in Nitro (which is expected to be 3.76% of the total Nitro Shares at the date of the proposed scheme meeting for the Alludo Competing Scheme Proposal¹) are voted on the scheme, so that their influence (if any) on the outcome of the Alludo Competing Scheme Proposal can be considered by the court at the second court hearing for the Alludo Competing Scheme Proposal. Consequently, if the Treasury Shares are voted in favour of the Alludo Competing Scheme Proposal and for that reason the 75% resolution for the Alludo Competing Scheme Proposal is passed, Potentia Capital will make submissions to the court in the second court hearing relating to the Alludo Competing

¹ Calculated on the basis that there are 245,283,492 Nitro Shares quoted on ASX (including 3,185,461 quoted Treasury Shares) and 6,283,923 unquoted Treasury Shares.

Scheme Proposal about why the votes from the Treasury Shares should not be counted towards the scheme approval.

In addition, the terms of the Offer give the Bidder the right as attorney to vote any Nitro Shares accepted into the Offer against the Alludo Competing Scheme Proposal.

In light of the above, and also given that Potentia Capital currently controls 19.31% of Nitro Shares², and that any Competing Scheme Proposal requires 75% of the votes cast by eligible Nitro Shareholders to be in support of the scheme, at least 93% of all Nitro Shares not controlled by Potentia Capital must be voted in favour of the scheme for the scheme to succeed (assuming 100% voter turnout and on the basis that Potentia Capital does not receive any further acceptances of its Offer prior to the vote).

As a result, Potentia Capital believes that the Alludo Competing Scheme Proposal is unlikely to succeed.

Next steps

We encourage you to read this Third Supplementary Bidder's Statement together with the other Potentia Bid Documents in full for further details about the Offer.

If you have any questions in relation to the Potentia Bid Documents, the Offer or how to accept the Offer, please call the Offer Information Line on **1300 101 297** (for calls made within Australia) or **+61 2 9068 1929** (for calls made from outside Australia) Monday to Friday between 9:00am and 5:00pm (Sydney, Australia time).

If you are in doubt as to how to deal with this document, please consult your financial, legal or other professional adviser.

Yours sincerely,



Andrew Gray
Managing Director
Potentia Capital



Michael McNamara
Partner
Potentia Capital

² Calculated with reference to the 6,283,923 unquoted and unallocated treasury shares as disclosed in the Target's Statement on 23 November 2022.

1 Variation to the Offer

1.1 Overview

As explained in the letter from Potentia Capital commencing on page 4 of this Third Supplementary Bidder's Statement, the Bidder has further varied its Offer by:

- (a) making available the Scrip Alternative, so that Nitro Shareholders can elect to receive scrip consideration in HoldCo, or a mixture of cash and scrip consideration for their Nitro Shares, instead of cash only, as detailed in Section 1.2; and
- (b) extending the Offer Period so that it will now close at 7.00 pm (Sydney time) on **31 March 2023**, as detailed further in Section 1.3.

The formal notice of variation relating to these changes as required by the Corporations Act, being the Bidder's third variation of the Offer, is set out in **Annexure 4** to this Third Supplementary Bidder's Statement.

The Bidder's first variation of the Offer is set out in **Annexure 6** and the Bidder's second variation of the Offer attached to the Second Supplementary Bidder's Statement set out in **Annexure 7**.

1.2 Scrip Alternative

The Bidder is now offering to acquire your Nitro Shares:

- (a) for \$2.00 per Nitro Share (the **All Cash Consideration**);
- (b) for 70% of a HoldCo Ordinary Share and 30% of a HoldCo Redeemable Preference Share (together, **HoldCo Shares**) per Nitro Share (the **All Scrip Consideration**); or alternatively
- (c) for 50% of your Nitro Shares you will receive All Cash Consideration and for your remaining Nitro Shares, you will receive All Scrip Consideration (the **Mixed Consideration**).

If you accept the Offer, you should choose between the alternative forms of Offer Consideration by making an election on the New Acceptance Form or, if your Nitro Shares are in a CHESS Holding, by instructing your Controlling Participant of your election. You must elect only one form of Offer Consideration for all of your Nitro Shares.

If you accept the Offer but do not make an election, you will be deemed to have elected the All Cash Consideration.

1.3 Extension of Offer Period

As mentioned above, in accordance with section 650D of the Corporations Act, the Bidder has varied its Offer by extending the Offer Period so the Offer is now scheduled to close at **7.00 pm (Sydney time) on 31 March 2023** (unless extended or withdrawn in accordance with the Corporations Act).

The date for giving notice of the status of the Conditions as required by section 630(1) of the Corporations Act is consequently extended to **22 March 2023**. This is subject to any further variation in accordance with section 630(2)(b) of the Corporations Act in the event that the Offer Period is further extended.

The formal notice of variation of the Offer as required under sections 650D and 630(2)(b) of the Corporations Act is set out in **Annexure 4** to this Third Supplementary Bidder's Statement.

As a result of the extension of the Offer Period, Nitro Shareholders who have accepted the Offer will be entitled to withdraw those acceptances in accordance with section 650E of the Corporations Act, on the terms and in the manner described in the formal notice of variation.

1.4 Important information for Nitro Shareholders

UK Nitro Shareholders

If you are a UK Nitro Shareholder who Elects to receive the All Scrip Consideration or the Mixed Consideration, the UK Scrip-for-Scrip Rollover Process will apply so as to allow you to obtain the benefits of rollover relief for United Kingdom capital gains tax purposes by adhering with the rollover requirements prescribed by the *Taxation of Chargeable Gains Act 1992*.

A summary of this process is set out in Section 7.4 and the terms of the Offer setting out the UK Scrip-for-Scrip Rollover Process is in Section 10.7B (see also Section 8.1(d)).

Ineligible Foreign Shareholders

If you Elect the All Scrip Consideration or the Mixed Consideration and you are an Ineligible Foreign Shareholder (which does not include a UK Nitro Shareholder or a US Nitro Shareholder), you will not receive the HoldCo Shares as a result of your Election.

The HoldCo Shares to which you would otherwise become entitled will be issued to the Nominee that will deal with them in accordance with Section 10.7A of the Offer (which is set out in Section 8.1(c)).

Rounding

If you choose the All Scrip Consideration or the Mixed Consideration, your entitlement to HoldCo Shares will be subject to the effects of rounding. Your entitlement to any fraction of a HoldCo Ordinary Share or HoldCo Redeemable Preference Share will be rounded up to the next whole number if the fraction is one-half or more or rounded down to the next whole number if the fraction is less than one-half, in accordance with Section 10.2(d) of the Offer (as set out in Section 8.1).

How to accept the Offer

Information about how to accept the Offer is set out in Section 3.

Please note that if you wish to choose the All Scrip Consideration or the Mixed Consideration, you will need to use the New Acceptance Form which accompanies this Third Supplementary Bidder's Statement.

Persons who have already accepted the Offer

If you have already accepted the Offer before you received this Third Supplementary Bidder's Statement, you will have the right within one month after you receive this Third Supplementary Bidder's Statement to make an Election as to the form of the consideration you wish to receive.

Further details about how to make a fresh election are set out in Section 3.3.

Further information

Please call 1300 101 297 (for calls made within Australia) or +61 2 9068 1929 (for calls made from outside Australia) on Monday to Friday between 9:00am and 5:00pm (Sydney, Australia time) if you require assistance with your acceptance.

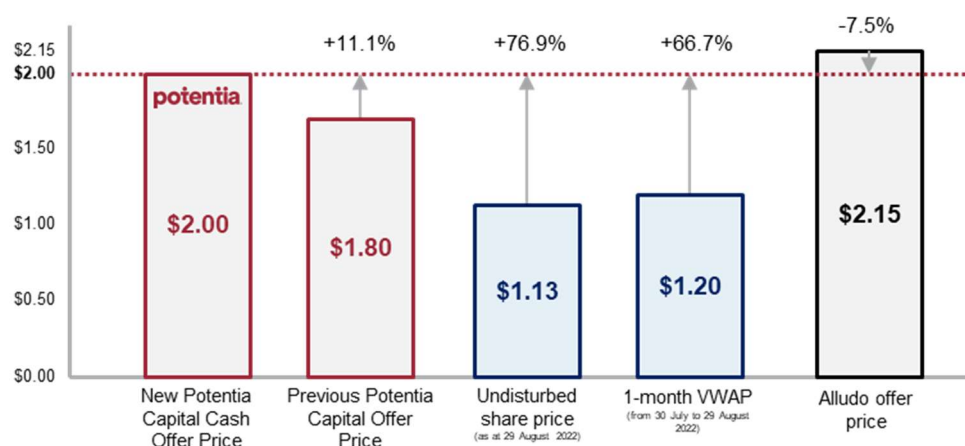
2 Why you should accept the Offer

1	You will receive substantial value for your Nitro Shares	✓
2	Potential to receive capital gains tax rollover relief	✓
3	Opportunity to gain exposure to Nitro under Potentia Capital's management	✓
4	You may receive the Offer Consideration on an advanced timeline to the Alludo Proposal	✓
5	Risks of not accepting Potentia Capital's Offer	✓

2.1 You will receive substantial value for your Nitro Shares

The Cash Offer Price is at a premium to the previous Offer price, the undisturbed share price (as at 29 August 2022) and the 1-month VWAP (from 30 July 2022 to 29 August 2022). The percentage premium of the Cash Offer Price to these benchmarks is set out in the graph below.

Premium of Potentia Capital's Cash Offer Price



It is important for Nitro Shareholders to be aware that the value of the HoldCo Shares (which will be received by Nitro Shareholders who Elect to receive the All Scrip Consideration or the Mixed Consideration) is not the same as the Cash Offer Price.

The reasons for why HoldCo Shares may be valued less than the Cash Offer Price is set out in Section 5.4(b).

2.2 Potential to receive capital gains tax rollover relief

If following the takeover, the wholly-owned group which includes the Bidder, secures 80% or more of Nitro Shares, Nitro Shareholders who Elect to receive the All Scrip Consideration or the Mixed Consideration may, depending on their individual circumstances, benefit from capital gains tax rollover relief.

General information about the Australian tax implications of accepting the Offer is set out in Section 8 of the Original Bidder's Statement and Section 7 of this Third Supplementary Bidder's Statement. You should consult your tax adviser for further details regarding the tax implications of accepting the Offer.

2.3 Opportunity to gain exposure to Nitro under Potentia Capital's management

Unlike holding Nitro Shares, HoldCo Shares will provide a Nitro Shareholder who elects to receive the All Scrip Consideration or Mixed Consideration the opportunity to benefit from the ability to invest alongside Potentia Capital who may be able to generate returns in excess of those that Nitro Shareholders would be able to generate if they Elected to receive the All Cash Consideration and invested in alternative assets with a similar risk profile.

2.4 You may receive the Offer Consideration on an advanced timeline to the Alludo Proposal

If you accept the Offer in accordance with the instructions contained in the Offer and the New Acceptance Form and the Conditions are satisfied or waived, you will be sent or issued your Offer Consideration by the later of:

- (a) 10 Business Days after the date the Conditions are satisfied or waived; or
- (b) 10 Business Days after the date that you validly accept the Offer,

which has the potential to be quicker than the time for payment of consideration under the Alludo Proposal.

2.5 Risks of not accepting Potentia Capital's Offer

There are risks associated with not accepting the Offer, including:

- (a) the only alternative offer for your Nitro Shares currently available (i.e. the Alludo Proposal) does not offer you the ability to elect to receive shares (and the associated rollover relief) meaning you will only be able to elect to receive cash under the current Alludo Proposal and you may have to pay capital gains tax (see Sections 8.2 and 8.3 of the Original Bidder's Statement for the capital gains tax implications of accepting a cash offer);
- (b) the risk that there will be a significant delay to you receiving any consideration under an Alludo Proposal because the Alludo Competing Scheme Proposal component of the Alludo Proposal is likely to fail for the following reasons:
 - (i) TGC (which holds 19.31% of the Nitro Shares) will vote its significant shareholding in Nitro against the competing Alludo scheme (which requires 75% of eligible Nitro Shareholders to approve);
 - (ii) the terms of the Offer give the Bidder the right as attorney to vote any Nitro Shares accepted into the Offer against the Alludo Competing Scheme Proposal; and
 - (iii) any Treasury Shares that are voted might not be counted.
- (c) If the Alludo Competing Scheme Proposal fails then Nitro Shareholders will have to wait until the Alludo Competing Takeover Bid succeeds before receiving their

consideration under the Alludo Competing Takeover Bid. The Alludo Competing Takeover Bid may not succeed and, if it does, Nitro Shareholders are not likely to receive their consideration until the end of March 2023, at the earliest.

The points set out above in this Section 2 must be balanced against the risks of accepting Potentia Capital's Offer, which are set out in Section 5.3.

For personal use only

3 How to accept the Offer or make a fresh election

3.1 *CHESS Holdings*

Instruct your Controlling Participant (usually your broker) to accept the Offer for your Nitro Shares or complete, sign and return the New Acceptance Form for your Nitro Shares.

3.2 *Issuer Sponsored Holdings*

Complete, sign and return the New Acceptance Form.

3.3 *Changing your election*

If you have already accepted the Offer for cash before you received this Third Supplementary Bidder's Statement, you have the right within one month after you receive this Third Supplementary Bidder's Statement to elect to take the All Scrip Consideration or Mixed Consideration instead which, for the avoidance of doubt, will supersede your earlier acceptance of the Offer for cash. To make an Election you must, in accordance with section 651B of the Corporations Act, give the Bidder written notice by writing to Automic Group at GPO Box 5193, Sydney NSW 2001 that you wish to take the All Scrip Consideration or Mixed Consideration.

In the unlikely event that you receive a cash payment before then you must return that consideration before you will be permitted to change your Election.

Please refer to Section 7 for important information about the Australian tax implications of making an Election to accept the All Scrip Consideration or Mixed Consideration instead of the All Cash Consideration.

3.4 *Further information*

If you are in doubt as to what to do, please consult your financial or other professional adviser.

If you have any questions in relation to this document, the other Potentia Bid Documents, the Offer or how to accept the Offer, please call the Offer Information Line on **1300 101 297** (for calls made within Australia) or **+61 2 9068 1929** (for calls made from outside Australia) from Monday to Friday between 9:00am and 5:00pm (Sydney, Australia time). Please note that calls to these numbers may be recorded.

4 Information on the Potentia Bidder Group restructure

4.1 Potentia Bidder Group restructure

Subsequent to the lodgement of the First Supplementary Bidder's Statement, the Potentia Bidder Group undertook an internal corporate restructure (**Restructure**), whereby the shareholders of TGP (the former ultimate holding company of the Potentia Bidder Group) exchanged their shares in TGP for shares in a new unlisted Australian public company called Oak Ridge Software Limited ACN 664 474 999 (**HoldCo**) to effect a "top-hat restructure". On completion of the Restructure, HoldCo became the ultimate holding company of the Potentia Bidder Group.

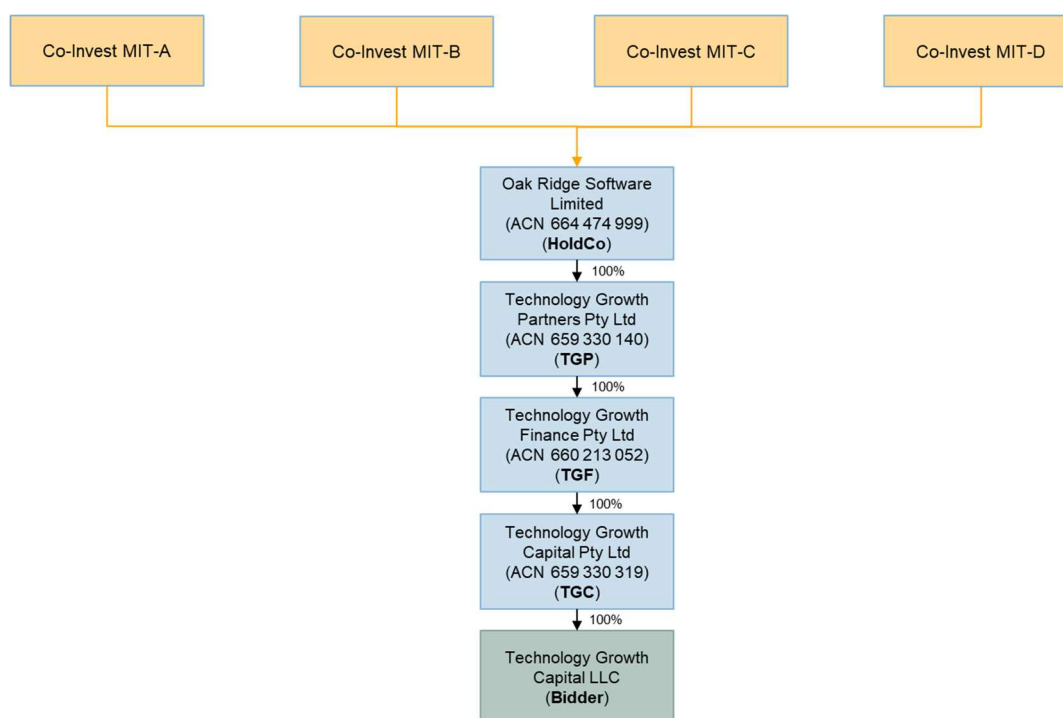
HoldCo will be wholly-owned by four managed investment trusts (**Co-Invest MITs**).

Initially, all of the units in three of the Co-Invest MITs, being Co-Invest MIT-A, Co-Invest MIT-B and Co-Invest MIT-C (together, the **Potentia MITs**), will be held by funds managed by Potentia Capital.³

The Potentia MITs will, if the Offer becomes unconditional, become partly owned by the Co-Investor either through itself or an investment vehicle in which the Co-Investor has an interest (though Potentia Capital will retain a majority interest).⁴

The units in the fourth Co-Invest MIT (**Co-Invest MIT-D**) will be held by funds managed by Potentia Capital.

A high-level structure chart for the Potentia Bidder Group following Co-Invest MIT-D becoming a shareholder of HoldCo is set out below.



³ As described in Section 6.

⁴ Further details on the Co-Investor are set out in Section 7.4 of the Original Bidder's Statement and Sub-section 2(f) of the First Supplementary Bidder's Statement.

4.2 HoldCo Constitution and HoldCo Shareholders' Deed

Nitro Shareholders who receive HoldCo Shares as a result of their Election will become parties to the HoldCo Shareholders' Deed and the Custodian (who will hold the legal title to those HoldCo Shares) will also become a party to the HoldCo Shareholders' Deed.

Important information regarding the Custodian arrangement to be put in place to hold all HoldCo Shares on behalf of HoldCo Shareholders

Each HoldCo Shareholder will hold its HoldCo Shares through the Custodian and subject to the terms of the Custodian Deed and the HoldCo Shareholders' Deed.

The Custodian will hold all of the HoldCo Shares issued in favour of a HoldCo Shareholder on bare trust pursuant to the terms of the Custodian Deed and the HoldCo Shareholders' Deed.

This means that if a Nitro Shareholder makes an Election to receive All Scrip Consideration or the Mixed Consideration, the legal title to the HoldCo Shares component of their consideration will not be held directly by the HoldCo Shareholder and will instead be held by the Custodian as bare trustee for the HoldCo Shareholder.

The key terms of the Custodian arrangements under the Custodian Deed are set out in Section 5.2(h) below.

A copy of the HoldCo Shareholders' Deed is set out at **Annexure 1**. The following is a summary of the HoldCo Shareholders' Deed and a summary of the rights attaching to the HoldCo Shares compared to your current rights as a Nitro Shareholder.

Topic	Summary of rights in the HoldCo Shareholders' Deed and attaching to HoldCo Shares	Summary of current rights as a Nitro Shareholder and impact of Offer on those rights
HoldCo Board	The HoldCo Board must be constituted by a minimum of three directors and not more than 10 directors (unless otherwise approved by the Potentia Shareholders). The Potentia Shareholders are entitled to appoint, remove and replace all directors. <i>For further information refer to clause 4 of the HoldCo Shareholders' Deed.</i>	Presently, the Nitro Shareholders may by resolution appoint, remove or replace a director at a general meeting. Nitro Shareholders who will receive HoldCo Shares as a result of their Election will have no rights to appoint, remove or replace a director of HoldCo.
HoldCo Board meetings	At least two directors are required to form a quorum for a HoldCo Board meeting. Subject to applicable law, all resolutions at meetings of the directors must be decided by a simple majority of votes. <i>For further information refer to clause 5 of the HoldCo Shareholders' Deed.</i>	The rights of Nitro Shareholders who will receive HoldCo Shares as a result of their Election will remain unchanged in this regard.
HoldCo Shareholder meetings and voting	A quorum for a meeting of HoldCo Shareholders is constituted by two or more HoldCo Shareholders that are entitled to vote (if the number of HoldCo Shareholders entitled to vote is two or more) and otherwise one HoldCo Shareholder. Subject to the other terms of the HoldCo Constitution and to any rights or restrictions attached to any shares or class of shares, at a general meeting:	A quorum for a Nitro Shareholders meeting is two attending shareholders entitled to vote on a resolution at that meeting. There is no substantive change to the rights of Nitro Shareholders who will receive HoldCo Shares as a result of their Election in this regard. Each Nitro Shareholder is presently entitled to the number of votes which is

Topic	Summary of rights in the HoldCo Shareholders' Deed and attaching to HoldCo Shares	Summary of current rights as a Nitro Shareholder and impact of Offer on those rights
	- on a show of hands, every HoldCo Shareholder present has one vote; and - on a poll, every HoldCo Shareholder present has: - one vote for each fully paid share held by the HoldCo Shareholder and in respect of which the HoldCo Shareholder is entitled to vote; and - in the case of partly paid shares, a fraction of one vote which the amount paid (not credited) on the share bears to the total issue price of that share and excludes amounts paid in advance of a call. Simple majority decisions Subject to any special majority required as a matter of law certain reserved matters in the HoldCo Shareholders' Deed to the contrary, all HoldCo Shareholder decisions will be made by affirmative vote of a simple majority (50%) of HoldCo Shareholders present (in person or by proxy or attorney) and entitled to vote. <i>For further information refer to clause 6 of the HoldCo Shareholders' Deed and to clause 7 of the HoldCo Constitution.</i>	equivalent to the number of fully paid up shares held by it. This will remain the same for any Nitro Shareholders who will receive HoldCo Shares as a result of their Election, but only to the extent they hold HoldCo Ordinary Shares (as HoldCo Redeemable Preference Shares confer no voting rights on its holder).
Winding up	If HoldCo is wound up, the liquidator may: - divide among the HoldCo Shareholders the whole or any part of the property of HoldCo; and - determine how the division is to be carried out as between the HoldCo Shareholders or different classes of HoldCo Shareholders. <i>For further information refer to clause 11 of the HoldCo Constitution.</i>	Nitro Shareholders who will receive HoldCo Shares as a result of their Election will have equivalent rights in a winding up of HoldCo as they would have in a winding up of Nitro.
Issue of further shares	HoldCo must first offer any new shares in HoldCo on a pro-rata basis to the then-current HoldCo Shareholders, except in the following circumstances: (HoldCo Redeemable Preference Shares) HoldCo Ordinary Shares issued to a HoldCo Shareholder upon conversion of HoldCo Redeemable Preference Shares; (emergency funding) the issue of shares to Potentia Shareholders for emergency funding requirements, provided that HoldCo must offer new shares in HoldCo on a pro-rata basis to each other existing HoldCo Shareholder following the provision of emergency funding to allow each other HoldCo Shareholder to maintain its relevant proportionate interest in HoldCo; (Offer related issuance) the issue of shares in connection with the Offer;	Subject to applicable law and any rights and restrictions attached to a class of shares, Nitro may by resolution of the Nitro Board issue shares, options to acquire shares and other securities with rights of conversion to shares on any terms, to any person, at any time and for any consideration, as the Nitro Board resolves. Nitro is presently required to comply with ASX Listing Rules in relation to the issuance of Nitro Shares, including obtaining Nitro Shareholder approval for issuances in certain circumstances. For more information, see Chapter 7 of ASX Listing Rules. As an unlisted company, HoldCo will not be required to comply with ASX Listing Rules. Nitro Shareholders who will receive HoldCo Shares as a result of their Election should be aware that HoldCo will not need to seek the approval of HoldCo Shareholders to issue any number of shares in HoldCo (in any class) including any issuance of shares to pursue acquisitions or to

Topic	Summary of rights in the HoldCo Shareholders' Deed and attaching to HoldCo Shares	Summary of current rights as a Nitro Shareholder and impact of Offer on those rights
	• (debt financiers) a provider of debt finance (or any agent, trustee or nominee of or for any such provider) in connection with genuine debt finance; • (management) the issue of shares (or other securities) to management under a management or employee incentive arrangement; • (acquisitions) an issue of shares as non-cash consideration for an acquisition of a company, business or assets by HoldCo or its subsidiaries, as approved by the HoldCo Board from time to time; • (reorganisation or reconstruction) the issue of shares in connection with a reorganisation event, provided that the reorganisation event does not dilute a HoldCo Shareholder's interests in HoldCo Shares or require a HoldCo Shareholder to provide any consideration; • (IPO) the issue of securities pursuant to an initial public offering of HoldCo or one of its subsidiaries; or • (consent) with consent of HoldCo Shareholders. <i>For further information refer to clause 10 of the HoldCo Shareholders' Deed.</i>	incentivise members of HoldCo management.
Restrictions on transfer and granting security interests	Generally, HoldCo Shareholders cannot grant a security interest over or create an encumbrance or option over HoldCo Shares. The HoldCo Board must decline to register any transfer of HoldCo Shares, unless that transfer is permitted by the HoldCo Shareholders' Deed. <i>For further information refer to clause 11.3 of the HoldCo Shareholders' Deed.</i>	Nitro Shareholders are presently able to sell their Nitro Shares on market at any time and there is a liquid market for Nitro Shares. Nitro Shareholders who will receive HoldCo Shares as a result of their Election should be aware that HoldCo will be an unlisted public company and as such, there will be no public market for the trading of HoldCo Shares and a lack of liquidity in respect of their shares and other securities in HoldCo. Further, the HoldCo Shareholders' Deed imposes extensive restrictions on the transfer of HoldCo Shares with limited exceptions which further restrict the ability of a HoldCo Shareholder in being able to sell its securities.
Restrictions on dealing	Generally, a HoldCo Shareholder (other than a Potentia Shareholder) must not dispose of (including transfer) HoldCo Shares unless: • (permitted transferee) by way of disposal to a permitted transferee under the HoldCo Shareholders' Deed; • (exit) in connection with an exit mechanism outlined below; or • (approval) with Potentia Shareholders' prior written approval, <i>For further information refer to clause 11 of the HoldCo Shareholders' Deed.</i>	See above.

Topic	Summary of rights in the HoldCo Shareholders' Deed and attaching to HoldCo Shares	Summary of current rights as a Nitro Shareholder and impact of Offer on those rights
Drag along rights	If Potentia Shareholders propose to dispose some or all of their HoldCo Shares to a third party under a bona fide offer, they have the option to require each other HoldCo Shareholder to transfer to the third party the same proportion of shares held by that HoldCo Shareholder as are being sold by the Potentia Shareholders (on substantially the same terms). <i>For further information refer to clause 12 of the HoldCo Shareholders' Deed.</i>	There are no equivalent provisions under Nitro's constitution – this provision is specific to HoldCo's structure. Nitro Shareholders who will receive HoldCo Shares as a result of their Election should be aware that they will have no rights to vote on any transactions involving the use of the drag along right.
Tag along rights	If Potentia Shareholders wish to sell all or a proportion of their HoldCo Shares to a third party in a single transaction or series of related transactions, and they have not issued a drag along notice, then the other HoldCo Shareholders must be invited to sell the same proportion of their HoldCo Shares as will be sold by the Potentia Shareholders to the third party on materially the same terms. <i>For further information refer to clause 13 of the HoldCo Shareholders' Deed.</i>	There are no equivalent provisions under Nitro's constitution – this provision is specific to HoldCo's structure. Nitro Shareholders who will receive HoldCo Shares as a result of their Election should be aware that they will have no rights to vote on any transactions involving the use of the tag along.
Exit	If the Potentia Shareholders give notice of an intention to proceed with an exit (including a listing, sale or merger of the business), each other HoldCo Shareholder must cooperate and use their best endeavours to do all acts, matters and things within its power to effect the exit on the terms specified by the Potentia Shareholders. <i>For further information refer to clause 14 of the HoldCo Shareholders' Deed.</i>	There are no equivalent provisions under Nitro's constitution – this provision is specific to HoldCo's structure. Nitro Shareholders who will receive HoldCo Shares as a result of their Election should be aware that they will have no rights to vote on any transactions pursuing an exit in the future.
Power of attorney	Each HoldCo Shareholder (other than the Potentia Shareholders) irrevocably appoints the Potentia Shareholders as its attorney to receive notices, give consents and approvals, complete and execute documents, attend meetings and vote on resolutions and take such other steps for and on its behalf as the attorney thinks necessary or desirable to give effect to certain transactions contemplated by the HoldCo Shareholders' Deed (including the drag along, the disposal of shares, an exit and due to an event of default). <i>For further information refer to clause 18 of the HoldCo Shareholders' Deed.</i>	There are no equivalent provisions under Nitro's constitution – this provision is specific to HoldCo's structure. Nitro Shareholders who will receive HoldCo Shares as a result of their Election should be aware that they are agreeing to grant a power of attorney to the Potentia Shareholders in respect of a range of matters relating to their HoldCo Shares, including matters which, in the context of Nitro, they would be required to sign, consent to or approve. This means that certain actions may occur without any input from Nitro Shareholders who will receive HoldCo Shares as a result of their Election (noting that, in most circumstances, the power of attorney is only granted upon a default by the HoldCo Shareholders of their obligations under the HoldCo Shareholders' Deed).

Topic	Summary of rights in the HoldCo Shareholders' Deed and attaching to HoldCo Shares	Summary of current rights as a Nitro Shareholder and impact of Offer on those rights
Deed of accession	No person may be registered as a holder of shares in HoldCo unless they (or their attorney, include an attorney appointed under the Offer) execute and deliver a deed of accession agreeing to be bound by the terms of the HoldCo Shareholders' Deed (except in the case where the proposed transferee is already a party to the HoldCo Shareholders' Deed). <i>For further information refer to clause 11.2 of the HoldCo Shareholders' Deed.</i>	Not applicable.
Custodian deed	Each HoldCo Shareholder will hold its HoldCo Shares and have the rights and obligations under the HoldCo Shareholders' Deed through the Custodian. HoldCo will appoint the Custodian to hold all of the HoldCo Shares issued to a HoldCo Shareholder on bare trust pursuant to the terms of the Custodian Deed. Following appointment of the Custodian, each HoldCo Shareholder agrees to appoint HoldCo as its attorney for the purpose of facilitating the transfer of its shares to the Custodian. The key terms of the Custodian arrangements under the Custodian Deed are set out in Section 5.2(h) below. <i>For further information refer to clause 17 of the HoldCo Shareholders' Deed.</i>	Each Nitro Shareholder is presently entitled to choose to hold its Nitro Shares in its own name or in a structure of its choice (including through a custodian on bare trust for the relevant Nitro Shareholder). Nitro Shareholders who will receive HoldCo Shares as a result of their Election should be aware that HoldCo will require the HoldCo Shares held by Nitro Shareholders in HoldCo to be held by a custodian on bare trust (rather than in the name of the Nitro Shareholder). Nitro Shareholders holding through the Custodian will still be entitled to the economic benefits associated with their beneficial shareholding.
Amendment to HoldCo Shareholders' Deed	The HoldCo Shareholders' Deed may be amended by the HoldCo Board. However, where an amendment would adversely affect the rights of a HoldCo Shareholder, the variation can only occur with the consent of each affected HoldCo Shareholder or the HoldCo Shareholders holding a majority of all HoldCo Shares held by all HoldCo Shareholders (other than the Potentia Shareholders). <i>For further information see clause 25.5 of the HoldCo Shareholders' Deed.</i>	Nitro Shareholders who will receive HoldCo Shares as a result of their Election should be aware that the HoldCo Board may amend the HoldCo Shareholders' Deed without seeking their approval.
Information rights	HoldCo is an unlisted public company. The Potentia Bidder Group will be required to prepare an audited financial report and a directors' report in accordance with Chapter 2M of the Corporations Act and must lodge those reports with ASIC within four months of the financial year end (as required by section 315(4) of the Corporations Act). Any HoldCo Shareholder may request a copy of the most recent audited annual account of HoldCo and its Related Bodies Corporate and HoldCo will provide that within 10 business days after such request.	Nitro Shareholders who will receive HoldCo Shares as a result of their Election should be aware that the Potentia Bidder Group will not need to comply with the extensive continuous disclosure obligations in Chapter 3 of ASX Listing Rules and section 674 of the Corporations Act resulting in HoldCo Shareholders not having any rights to information about the Potentia Bidder Group beyond receipt of the audited financial reports each financial year.

Topic	Summary of rights in the HoldCo Shareholders' Deed and attaching to HoldCo Shares	Summary of current rights as a Nitro Shareholder and impact of Offer on those rights
Reserved matters	HoldCo cannot undertake the following actions without approval of HoldCo Shareholders (other than Potentia Shareholders) holding a majority of the HoldCo Shares held by such HoldCo Shareholders: • adverse amendments to HoldCo Shareholders' Deed or HoldCo Constitution; or • take any action or make any changes to the HoldCo Shares, where such action would have a disproportionately adverse effect on the legal or economic rights of such HoldCo Shareholders.	There are no equivalent provisions under Nitro's constitution – this provision is specific to holding shares in an unlisted entity.

5 Information on the All Scrip Consideration and Mixed Consideration

5.1 Overview

As an alternative to receiving the All Cash Consideration, Nitro Shareholders may elect (subject to certain limitations) to receive the All Scrip Consideration or the Mixed Consideration which will enable Nitro Shareholders to retain an interest in Nitro in the event that the Conditions of the Offer are satisfied or waived.

The following Sections 5.2 to 5.8 outline a number of important considerations for Nitro Shareholders regarding the All Scrip Consideration and Mixed Consideration.

5.2 Summary of All Scrip Consideration and Mixed Consideration features

(a) **Information on HoldCo Ordinary Shares and HoldCo Redeemable Preference Shares**

This Section sets out information about the HoldCo Ordinary Shares and HoldCo Redeemable Preference Shares. This information will only apply to you if you are considering Electing the All Scrip Consideration or Mixed Consideration.

Before making the Election to take All Scrip Consideration or Mixed Consideration, you should carefully read this Third Supplementary Bidder's Statement in its entirety and specifically consider the information in this Section 5 and the risks, features and relevant considerations in relation to an investment in HoldCo Shares set out in Schedule 2.

HoldCo will have two classes of shares on issue, being HoldCo Ordinary Shares and HoldCo Redeemable Preference Shares. Nitro Shareholders who will receive HoldCo Shares as a result of their Election will be issued 70% of a HoldCo Ordinary Share and 30% of a HoldCo Redeemable Preference Share per Nitro Share.

(b) **Overview of HoldCo Shares**

A summary of the key rights and liabilities attaching to the HoldCo Shares is set out below.

This summary is not exhaustive and does not set out all rights and liabilities of the HoldCo Shares or the restrictions that HoldCo Shareholders will be subject to under the HoldCo Shareholders' Deed and should be read subject to the full terms of the HoldCo Shareholders' Deed, the HoldCo Constitution and the Custodian Deed. Nitro Shareholders who are considering electing the All Scrip Consideration or Mixed Consideration should read and understand the HoldCo Shareholders' Deed, the HoldCo Constitution and the Custodian Deed in full and seek their own independent advice before making a decision.

In relation to the Custodian arrangements, Nitro Shareholders who are considering making an Election to receive the All Scrip Consideration or Mixed Consideration should refer to Section 5.2(h).

Full copies of the HoldCo Constitution, the Custodian Deed and HoldCo Shareholders' Deed are annexed to this Third Supplementary Bidder's Statement and can be obtained by calling the Offer Information Line on **1300 101 297** (for calls made within Australia) or **+61 2 9068 1929** (for calls made from outside Australia) from Monday to Friday between 9:00am and 5:00pm (Sydney, Australia time) or from Nitro's website: <https://ir.gonitro.com/Investor-Centre/> or from ASX: www.asx.com.au.

The HoldCo Constitution and the HoldCo Shareholders' Deed provide that the terms of the HoldCo Shareholders' Deed will prevail in the event of any inconsistency between the provisions of the HoldCo Constitution and the HoldCo Shareholders' Deed.

Nitro Shareholders who elect to receive HoldCo Shares will become parties to the HoldCo Shareholders' Deed in relation to the beneficial ownership of their HoldCo Shares but the legal

title to their Nitro Shares will be held by the Custodian. If you receive HoldCo Shares as a result of your Election then those HoldCo Shares will be registered in the name of the Custodian nominated by HoldCo in accordance with the terms of the Custodian Deed to ensure that the aggregate allotment of HoldCo Shares as a result of all Elections will not result in there being more than 50 registered shareholders in HoldCo.

Under the HoldCo Shareholders' Deed, HoldCo Shares held by HoldCo Shareholders are subject to certain restrictions which include, but are not limited to, restrictions with regards to disposals and transfers, shareholder approvals, director appointment rights and exit rights.

Any investment in HoldCo will be regulated differently to an investment in Nitro because:

- HoldCo will not be admitted to the official list of ASX and will be an unlisted public company;
- ASX Listing Rules will not apply to HoldCo; and
- the continuous disclosure, takeover restrictions and certain other minority protection rights currently relevant to Nitro will not apply to HoldCo.

(c) ***Rights and liabilities of HoldCo Ordinary Shares***

The HoldCo Ordinary Shares that are offered to Nitro Shareholders under the Offer are fully paid ordinary shares in the capital of HoldCo, and from their date of issue will rank equally with all then existing HoldCo Ordinary Shares and will have the same rights and liabilities attaching to them.

The rights and liabilities attaching to the HoldCo Ordinary Shares are governed by the HoldCo Constitution, the HoldCo Shareholders' Deed, the Corporations Act and the general law of Australia.

The following is a summary of the more significant rights and liabilities attaching to the HoldCo Ordinary Shares.

Topic	Overview
General meetings	Each HoldCo Shareholder is entitled to receive notice of, and to attend and vote at, general meetings of HoldCo and to receive all notices and documents required to be sent to HoldCo Shareholders under the HoldCo Constitution, the HoldCo Shareholders' Deed and the Corporations Act. The HoldCo Board may convene a general meeting whenever they think fit. HoldCo Shareholders may call a general meeting in accordance with the Corporations Act. A notice of general meeting must be given in accordance with the Corporations Act and must specify the place, date and time of the meeting, the general nature of the business to be transacted at the meeting, information regarding a HoldCo Shareholder's right to appoint a proxy, and if a special resolution is to be proposed at the meeting, set out an intention to propose the special resolution and the text of the special resolution.
Voting	Subject to the other terms of the HoldCo Constitution and to any rights or restrictions attached to any shares or class of shares, at a general meeting: • on a show of hands, every HoldCo Shareholder present has one vote; and • on a poll, every HoldCo Shareholder present has: • one vote for each fully paid share held by the HoldCo Shareholder and in respect of which the member is entitled to vote; and • a fraction of one vote which the amount paid (not credited) on the share bears to the total issue price of that share and excludes amounts paid in advance of a call.
Transfer restrictions	A HoldCo Shareholder may not transfer the HoldCo Ordinary Shares other than in accordance with the HoldCo Shareholders' Deed.

Topic	Overview
Variation of class rights	Subject to the HoldCo Constitution and Corporations Act, if at any time the HoldCo share capital is divided into different classes of shares, the rights attached to the shares in any class may be altered only by special resolution passed at a separate meeting of the holders of the issued shares of the affected class, or with the written consent of the holders of at least three quarters of the issued shares of the affected class.
Dividends	Subject to the HoldCo Constitution, the Corporations Act and all applicable law, the directors may declare or determine to pay any dividend that, in their judgment, the financial position of HoldCo justifies.

(d) **Rights and liabilities of HoldCo Redeemable Preference Shares**

The HoldCo Redeemable Preference Shares that are offered to Nitro Shareholders under the Offer are redeemable preference shares in the capital of HoldCo.

The rights and liabilities attaching to the HoldCo Redeemable Preference Shares are governed by HoldCo Constitution, HoldCo Shareholders' Deed, the Corporations Act and the general law of Australia.

The following is a summary of the more significant rights and liabilities attaching to the HoldCo Redeemable Preference Shares.

Topic	Overview
Issue and ranking	HoldCo Redeemable Preference Shares are redeemable preference shares issued as fully paid and will rank: - equally with all other HoldCo Redeemable Preference Shares from the date of issue and with all present unsubordinated and unsecured indebtedness of HoldCo; and - senior to all other HoldCo shares including HoldCo Ordinary Shares. The HoldCo Redeemable Preference Shares have the right on liquidation of HoldCo to payment of the Redemption Amount (defined below) in accordance with the ranking stated directly above. The HoldCo Redeemable Preference Shares will not participate in any further or other distribution of profits or assets of HoldCo.
Meetings and voting rights	Subject to the Corporations Act, a HoldCo Redeemable Preference Share does not confer on a HoldCo Shareholder any right to attend or vote at any general meeting of HoldCo.
Transfer restrictions	A HoldCo Shareholder may not transfer the HoldCo Redeemable Preference Shares other than in accordance with the HoldCo Shareholders' Deed.
Voluntary redemption	HoldCo may elect in its discretion to redeem some or all of the HoldCo Redeemable Preference Shares on or prior to the "Maturity Date" (being the date that is 24 months after the date of issue of the HoldCo Redeemable Preference Shares to the HoldCo Shareholders) (Maturity Date) by giving HoldCo Shareholders a redemption notice. The HoldCo Redeemable Preference Shares will be redeemed for the redemption amount (being the amount equal to price that the HoldCo Redeemable Preference Shares were issued) (Redemption Amount). To the extent not redeemable, there will also be a right for HoldCo to buy-back the HoldCo Redeemable Preference Shares for the Redemption Amount.

Topic	Overview
Event on maturity date	If some or all of the HoldCo Redeemable Preference Shares have not been redeemed by HoldCo on or before the Maturity Date, then: - a HoldCo Shareholder may elect (with such election in its discretion) to convert some or all of its HoldCo Redeemable Preference Shares into HoldCo Ordinary Shares, by giving HoldCo notice of its election (Maturity Holder Notice) within five Business Days after the Maturity Date; and - no later than 10 Business Days after the date of receipt of the Maturity Holder Notice, HoldCo must give the HoldCo Shareholder a conversion notice which sets out the date that the HoldCo Redeemable Preference Shares will be converted. If the HoldCo Shareholder does not issue a Maturity Holder Notice, HoldCo must redeem all of the HoldCo Redeemable Preference Shares held by a HoldCo Shareholder, and HoldCo must give the HoldCo Shareholder a redemption notice.
Conversion	If a HoldCo Shareholder elects to have their HoldCo Redeemable Preference Shares converted, the number of HoldCo Ordinary Shares issued to the Shareholder will be calculated as follows: $NCS = \frac{PO}{CP}$ Where: NCS = the number of HoldCo Ordinary Shares to be issued to the HoldCo Shareholder; PO = the Redemption Amount multiplied by the number of HoldCo Redeemable Preference Shares held by the HoldCo Shareholder to be converted; and CP = the fair market value of the HoldCo Ordinary Shares. On the conversion date, the number of HoldCo Redeemable Preference Shares to be converted will be consolidated or subdivided (as required) to be equal to the number of HoldCo Ordinary Shares to be issued, and the rights attaching to each HoldCo Redeemable Preference Share that is to be converted will automatically vary such that each HoldCo Redeemable Preference Share becomes one HoldCo Ordinary Share. HoldCo Ordinary Shares issued on conversion of the HoldCo Redeemable Preference Shares will rank equally with all other HoldCo Ordinary Shares.
Variation of class rights	Subject to the HoldCo Constitution and the Corporations Act, if at any time the HoldCo share capital is divided into different classes of shares, the rights attached to the shares in any class may be altered only by special resolution passed at a separate meeting of the holders of the issued shares of the affected class, or with the written consent of the holders of at least three quarters of the issued shares of the affected class.

(e) **Public unlisted company**

HoldCo is an unlisted public company. As such, HoldCo will not be subject to the various provisions that were applicable to Nitro previously as a company listed on ASX. For example, the continuous disclosure obligations under ASX Listing Rules and Australia's takeover regime will no longer apply (for the latter, so long as HoldCo does not have more than 50 shareholders).

It is not expected that HoldCo will, in the foreseeable future, have more than 50 shareholders, noting that as detailed further in Section 5.2(h), each HoldCo Shareholder will hold its HoldCo Shares through the Custodian.

(f) **Management fee**

In the event that the Conditions of the Offer are satisfied or waived Potentia Capital or a nominated Related Body Corporate of Potentia Capital will charge a management fee to HoldCo which is to be paid in cash by HoldCo. The management fee is expected to be charged

on an annual basis to HoldCo and will be equal to approximately 1% of the value of Nitro Shares held by the Potentia Bidder Group at the end of the Offer Period.

In circumstances where HoldCo does not have sufficient funds to pay the management fee or any debt covenants do not permit the payment of the management fee, the management fee will be deferred and will accrue until such time as HoldCo has the funds and ability to pay the management fee to Potentia Capital or a nominated Related Body Corporate of Potentia Capital.

(g) ***Refinancing and redemption of HoldCo Redeemable Preference Shares***

In the event that the Conditions of the Offer are satisfied or waived Potentia Capital anticipates that it will cause HoldCo to seek to raise debt financing with the proceeds of that debt financing being used to redeem some or all of the HoldCo Redeemable Preference Shares from all holders of HoldCo Redeemable Preference Shares (including the Potentia Shareholders).

The effect of redeeming the HoldCo Redeemable Preference Shares from HoldCo Shareholders will result in a partial or full liquidity event in respect of their HoldCo Redeemable Preference Shares.

HoldCo Shareholders should be aware that the proposal to raise debt will result in, among other things, HoldCo being subject to any debt covenants required to be put in place by the financier and that HoldCo will be required to pay interest on the debt raised.

(h) ***Custodian arrangements***

The key terms of the Custodian arrangements under the Custodian Deed and the HoldCo Shareholders' Deed are as follows:

- HoldCo Shareholders, through the Custodian, will be beneficial holders in relation to HoldCo Shares held by the Custodian as bare trustee on their behalf;
- each beneficial holder will be able to instruct the Custodian to exercise voting rights or take other steps as the registered holder of HoldCo Shares on its behalf;
- HoldCo will procure that any distribution or dividend that would otherwise be paid to the Custodian will instead be paid to the relevant beneficial holder in proportion to the number of HoldCo Shares that are held on trust for that beneficial holder;
- HoldCo will give, make available or dispatch all notices or information it circulates to shareholders to beneficial holders as well as the Custodian;
- there will be no meetings of the beneficial holders;
- the restrictions on transfer set out above apply to HoldCo Shareholders that are beneficial holders through the Custodian. However, provided that the Custodian and HoldCo Shareholder acts in accordance with the Custodian Deed and the HoldCo Shareholders' Deed, a beneficial holder may instruct the Custodian to transfer their shares to a permitted transferee on the basis that the Custodian is directed to hold legal title to the relevant HoldCo Shares as bare trustee on behalf of the transferee, unless the HoldCo Board decides otherwise; and
- under the terms of the Custodian Deed, HoldCo will undertake to the Custodian that it will dispatch or make available any notice of meeting of shareholders to the beneficial holders of the HoldCo Shares, and the Custodian must, to the extent reasonably practicable, vote at any such meeting as directed by an instruction given by the underlying beneficial holder. In the absence of an instruction, the Custodian will not vote.

5.3 **Risks of accepting the All Scrip Consideration or Mixed Consideration**

You should form your own view as to whether you wish to make an election to receive the All Scrip Consideration or Mixed Consideration based on your individual circumstances, financial situation, taxation position, investment objectives and risk profile. You should also consider obtaining professional advice appropriate to your specific circumstances before making any election.

Important information in relation to the All Scrip Consideration and Mixed Consideration only (this does not apply to the All Cash Consideration)

Importantly, Nitro Shareholders should be aware that if they make an election to receive All Scrip Consideration or Mixed Consideration:

- they will face risks that apply to an investment in HoldCo that are materially different from, and in addition to, those risks that apply to their existing investment in Nitro;
- they will hold shares in an unlisted public company, which will not be subject to the same level of regulation as an ASX-listed public company (for example, it will not be subject to ASX Listing Rules, Australia's takeover regime, continuous disclosure obligations and certain other investor protections that apply to ASX-listed public companies);
- a custodian will hold all of the HoldCo Ordinary Shares and HoldCo Redeemable Preference Shares on bare trust for the HoldCo Shareholders;
- they will face a lack of liquidity in respect of their HoldCo Ordinary Shares and HoldCo Redeemable Preference Shares because there will be no active market for the sale and purchase of HoldCo Shares; and
- they will become a party to the HoldCo Shareholders' Deed, which restricts the ability of HoldCo Shareholders to transfer or Deal with their HoldCo Shares.

In particular, Nitro Shareholders should note that the Potentia Shareholders do not intend to be an active buyer of HoldCo Ordinary Shares and HoldCo Redeemable Preference Shares if the Potentia takeover Offer is successful.

Accordingly, there is a risk that a holder of HoldCo Ordinary Shares and HoldCo Redeemable Preference Shares may not be able to transfer or sell the HoldCo Ordinary Shares and HoldCo Redeemable Preference Shares issued to them other than through an Exit, and there is no guarantee that an Exit will take place.

This means that if you want to sell your HoldCo Shares at any time in the future you should not assume that you will be able to do so in a timely manner (including in an 'emergency' scenario).

There is consequently a risk that a HoldCo Shareholder may not be able to transfer or sell their HoldCo Shares issued to them if and when they would like to do so.

Please refer to Sections 4.2 and 5.2 which set out a summary of the HoldCo Shareholders' Deed and the rights attaching to HoldCo Shares.

It is important to understand that any investment in unlisted shares would represent a fundamentally different investment than your current investment in Nitro. In particular, your continuing exposure to Nitro would have materially different risks and a different investment and financial profile to your existing investment in Nitro as an ASX-listed company.

Furthermore, the value of the All Scrip Consideration and Mixed Consideration is less certain than the All Cash Consideration and there is no assurance that the future value of HoldCo Ordinary Shares and HoldCo Redeemable Preference Shares be equal to or higher than the value of the All Cash Consideration.

Accordingly, you should carefully read Schedule 2, and consider obtaining appropriate professional advice before making any election to receive the All Scrip Consideration or Mixed Consideration. In particular, you should consider the risks, features and relevant considerations in relation to an investment in HoldCo Shares set out in Schedule 2.

5.4 **Compliance with the Minimum Bid Price Rule**

(a) **Minimum Bid Price Rule**

Section 621(3) of the Corporations Act provides that a bidder making a takeover bid must offer consideration equal to or greater than the maximum consideration that the bidder or an Associate of the Bidder provided or agreed to provide for a bid class security under any purchase or agreement during the four months before the date of the bid (**Minimum Bid Price Rule**).

In the four months before the date of the bid, being 11 November 2022, the maximum consideration paid by the Bidder or an Associate of the Bidder for a Nitro Share was \$1.58 (**Minimum Bid Price**).

This means that in order to comply with the Minimum Bid Price Rule the value of the All Cash Consideration, Mixed Consideration and All Scrip Consideration cannot be lower than the Minimum Bid Price.

(b) **Compliance with the Minimum Bid Price Rule**

Given the All Cash Consideration is at \$2.00 per Nitro Share, the All Cash Consideration being offered complies with the Minimum Bid Price Rule as it is greater than the Minimum Bid Price.

For the purpose of determining whether the Offer of the All Scrip Consideration and Mixed Consideration complies with the Minimum Bid Price Rule, Potentia Capital has engaged Grant Thornton to prepare the Grant Thornton Report, a copy of which is set out in **Annexure 5**.

The Grant Thornton Report provides an opinion on the appropriate discount range that should be applied to the value of the Nitro Shares in order to determine the value of the HoldCo Shares.

A discount is applied because the HoldCo Shares are subject to a range of different rights, obligations, restrictions and risks compared to Nitro Shares. The Grant Thornton Report sets out the material differences between the HoldCo Shares and Nitro Shares together with an explanation of how these differences result in HoldCo Shares being valued at a discount to the Nitro Shares.⁵

In summary, on page 11 of the Grant Thornton Report, Grant Thornton concludes that based on the procedures outlined in the Grant Thornton Report, "*the discount to be applied in valuing [the HoldCo Shares] should be between 20% and 25%*" (**Applicable Discount Range**).

For the purpose of determining whether the value of a HoldCo Share is at or above the Minimum Bid Price, this Applicable Discount Range can be applied to the fair market value range of \$2.00 and \$2.20 per Nitro Share as determined in the independent expert's report contained within the Target's Statement. The Bidder has selected a point estimate for the fair market value of Nitro of \$2.15 per share (**Selected Fair Market Value**). This is based on the price of \$2.15 being offered under the Alludo Proposal (which has arisen after Alludo has had the benefits of undertaking due diligence procedures).

The Selected Fair Market Value also falls within the fair market value range of \$2.00 and \$2.20 per Nitro Share as determined in the independent expert's report contained within the Target's Statement.

⁵ These differences are also discussed in Section 4.2 with respect to the difference between the rights which will apply to the HoldCo Shares compared to the rights which currently apply to the Nitro Shares.

To determine whether the value of a HoldCo Share is at or above the Minimum Bid Price, applying the largest discount value of the Applicable Discount Range (of 25%) to the Selected Fair Market Value of the Nitro Shares implies that the value of each of the HoldCo Shares given as consideration for each Nitro Share is \$1.6125 (a premium of 3.25 cents to the Minimum Bid Price). This means the Minimum Bid Price Rule has been satisfied in respect of the All Scrip Consideration and Mixed Consideration.

Important notice: value of All Scrip Consideration and Mixed Consideration compared to All Cash Consideration

Nitro Shareholders should be aware that the value of the All Scrip Consideration and Mixed Consideration is less than the value of the All Cash Consideration. This is due to, among other things, the factors discussed in this Section 5.4 and the Grant Thornton Report regarding the discount to the valuation of Nitro Shares by the Independent Expert engaged by Nitro.

As a consequence, a Nitro Shareholder who makes an election for either All Scrip Consideration or Mixed Consideration will be electing a consideration option which is less valuable than the All Cash Consideration.

5.5 Effect of All Scrip Consideration and Mixed Consideration on the Bidder's funding

(a) Increased All Cash Consideration

As described in Section 1.1, the Bidder has recently increased the price for which it will purchase Nitro Shares from \$1.80 to a new Cash Offer Price of \$2.00. This has the effect of increasing the total amount of cash payable by the Bidder (assuming Nitro Shareholders Elect only All Cash Consideration and the Bidder acquires 100% of the Nitro Shares) from the Offer Amount to the Increased Offer Amount.

(b) All Scrip Consideration and Mixed Consideration

However, as a result of the Bidder varying the Offer to offer the All Scrip Consideration and the Mixed Consideration, the total cash amount that the Bidder will be required to pay to Nitro Shareholders may be reduced if Nitro Shareholders elect the All Scrip Consideration or the Mixed Consideration.

If a Nitro Shareholder elects either the All Scrip Consideration or the Mixed Consideration, they will forgo some or all of their entitlement to a cash payment (depending on their Election). As a result of this, the Bidder will not be required to fund the full Increased Offer Amount.

A full discussion of the impact of the offer of the All Scrip Consideration and Mixed Consideration on the Bidder's funding of the Offer Amount is set out in Section 6.

5.6 Tax considerations

A summary of the tax considerations applicable to Nitro Shareholders who will receive HoldCo Shares as a result of their Election is set out in Section 7.

5.7 Ineligible Foreign Shareholders

As noted in Section 1.4, Ineligible Foreign Shareholders will not be entitled to receive HoldCo Shares on acceptance of the Offer. Ineligible Foreign Shareholders who accept the Offer and elect to receive the All Scrip Consideration and Mixed Consideration will receive the net cash proceeds of a nominee sale of their entitlement to HoldCo Shares in accordance with Section 10.7A of the Offer (which is set out in Section 8).

5.8 **Foreign jurisdictions**

Nitro Shareholders should note that the consideration under the Offer includes HoldCo Shares, which are shares in an unlisted Australian public company. This Third Supplementary Bidder's Statement and the Offer have been prepared having regard to Australian disclosure requirements, which may be different from those applicable in other jurisdictions.

Nitro Shareholders whose address in Nitro's registers of security holders are not in Australia, the United Kingdom or in United States (provided the US Nitro Shareholders are also Institutional Accredited Investors) will not be entitled to receive HoldCo Shares on acceptance of the Offer unless the Bidder determines otherwise. Ineligible Foreign Shareholders who accept the Offer will have their Nitro Shares sold by the Nominee with the net proceeds returned in cash calculated in accordance with Section 10.7A of the Offer.

The distribution of this Third Supplementary Bidder's Statement in jurisdictions outside Australia may be restricted by law, and persons who come into possession of it should observe any such restrictions. Any failure to comply with such restrictions may constitute a violation of applicable securities laws.

This Third Supplementary Bidder's Statement does not constitute an offer in any jurisdiction in which, or to any person to whom, it would not be lawful to make such an offer.

No action has been taken to register or qualify HoldCo or to otherwise permit a public offering of HoldCo Shares outside Australia. HoldCo Shares have not been, and will not be, registered under the United States Securities Act of 1933 (**Securities Act**) or the securities laws of any US state or other jurisdiction, and may not be offered or sold in the United States, except in a transaction exempt from, or not subject to, the registration requirements of the Securities Act and applicable United States state securities laws.

If you are not an Australian resident taxpayer or are liable for tax outside Australia, you should seek specific tax advice in relation to the Australian and overseas tax consequences of accepting the Offer.

(a) **United Kingdom**

Neither this Third Supplementary Bidder's Statement nor any other document relating to the offer has been delivered for approval to the Financial Conduct Authority in the United Kingdom and no prospectus (within the meaning of section 85 of the Financial Services and Markets Act 2000, as amended (**FSMA**)) has been published or is intended to be published in respect of the HoldCo Shares.

The HoldCo Shares may not be offered or sold in the United Kingdom by means of this Third Supplementary Bidder's Statement or any other document, except in circumstances that do not require the publication of a prospectus under section 86(1) of the FSMA. This Third Supplementary Bidder's Statement is issued on a confidential basis in the United Kingdom to "qualified investors" (as defined in the UK Prospectus Regulation) and fewer than 150 other persons who are existing shareholders of Nitro. This Third Supplementary Bidder's Statement may not be distributed or reproduced, in whole or in part, nor may its contents be disclosed by recipients to any other person in the United Kingdom.

Any invitation or inducement to engage in investment activity (within the meaning of section 21 of the FSMA) received in connection with the issue or sale of the HoldCo Shares has only been communicated or caused to be communicated and will only be communicated or caused to be communicated in the United Kingdom in circumstances in which section 21(1) of the FSMA does not apply to HoldCo.

In the United Kingdom, this Third Supplementary Bidder's Statement is being distributed only to, and is directed at, persons (i) who have professional experience in matters relating to investments falling within Article 19(5) (investment professionals) of the Financial Services

and Markets Act 2000 (Financial Promotions) Order 2005, as amended (**FPO**), (ii) who fall within the categories of persons referred to in Article 49(2)(a) to (d) (high net worth companies, unincorporated associations, etc.) of the FPO or (iii) to whom it may otherwise be lawfully communicated (together "relevant persons"). The investment to which this Third Supplementary Bidder's Statement relates is available only to relevant persons. Any person who is not a relevant person should not act or rely on this Third Supplementary Bidder's Statement.

(b) ***United States of America***

This Third Supplementary Bidder's Statement has not been filed with, or reviewed by, the United States Securities and Exchange Commission or any state securities authority and none of them has passed on or endorsed the merits of the offer of HoldCo Shares or the accuracy, adequacy or completeness of this document. Any representation to the contrary is a criminal offence.

The HoldCo Shares have not been, and will not be, registered under the United States Securities Act of 1933, as amended (**Securities Act**) or the securities laws of any US state or other jurisdiction. The HoldCo Shares are not being offered in any U.S. state or other jurisdiction where it is not legally permitted to do so. Accordingly, this Third Supplementary Bidder's Statement may be delivered, and the HoldCo Shares may be issued, in the United States only to Nitro Shareholders who are Institutional Accredited Investors (as defined in Rule 501 of Regulation D) in reliance on exemptions from the registration requirements under the U.S. Securities Act provided by Section 4(a)(2) of the Securities Act and Regulation D promulgated thereunder and similar exemptions under applicable U.S. state securities laws.

Nitro Shareholders should note that the Offer is made for the securities of an Australian company in accordance with the laws of Australia and ASX Listing Rules. The Offer is subject to the disclosure requirements of Australia that are different from those of the United States. Any financial statements included in the Potentia Bid Documents have been prepared in accordance with Australian accounting standards and may not be comparable to the financial statements of U.S. companies.

It may be difficult for you to enforce your rights and any claim you may have arising under U.S. federal securities laws, since HoldCo is incorporated in Australia and some of its officers and directors are residents of Australia. You may not be able to sue HoldCo or its officers or directors in Australia for violations of the U.S. securities laws. It may be difficult to compel HoldCo and its affiliates to subject themselves to a U.S. court's judgment.

You should be aware that the Potentia Bidder Group may purchase securities other than under the Offer, such as in privately negotiated purchases outside the offer period.

Any pro forma historical financial information included in this Third Supplementary Bidder's Statement does not purport to be in compliance with Article 11 of the SEC's Regulation S-X. The pro forma adjustments made in arriving at the pro forma historical financial information included in this Third Supplementary Bidder's Statement may not be permissible under the SEC's rules and regulations on pro forma financial presentations.

6 Funding

As described in Section 5.2(b), the Bidder's variation of the Offer to include an option for shareholders to elect the alternative form of consideration in the form of All Scrip Consideration or Mixed Consideration means that, if the Offer is successful, the Bidder may not be required to provide the full Increased Offer Amount to Nitro Shareholders.

The effect of a Nitro Shareholder electing the Mixed Consideration option is set out below for demonstrative purposes.

Example: Effect of choosing Mixed Consideration or All Scrip Consideration on funding

For the purpose of demonstrating the effect of Nitro Shareholders' consideration elections on Potentia's funding obligations, assume that Nitro Shareholders make the following elections and the Bidder acquires 100% of the Nitro Shares from Nitro Shareholders other than Potentia Capital or its Associates:

- **60% of Nitro Shareholders other than Potentia Capital or its Associates Elect to receive (or do not make an Election and therefore as a default will receive) All Cash Consideration;**
- **20% of Nitro Shareholders other than Potentia Capital or its Associates Elect to receive the Mixed Consideration; and**
- **20% of Nitro Shareholders other than Potentia Capital or its Associates elect to receive the All Scrip Consideration.**

As a result of the Nitro Shareholders elections, the Bidder will not be required to fund 30% of the Nitro Shareholders' entitlements in cash as they will receive HoldCo Shares instead. This 30% is calculated by adding the 20% of Nitro Shareholders who elect to receive the All Scrip Consideration and half of the 20% of Nitro Shareholders who elected to receive the Mixed consideration.

In the circumstances outlined above, this would mean that the Bidder would only need to pay an aggregate cash amount equal to approximately \$309.1 million (as opposed to a full funding amount of \$441.5 million (plus costs associated with the Offer, which would be required even if all Nitro Shareholders elected to receive the All Cash Consideration).

7 Australian Taxation Considerations

7.1 Introduction

The following is a general description of the Australian income tax, GST and stamp duty consequences for Nitro Shareholders from disposing of their Nitro Shares under the Offer.

This summary only applies to Nitro Shareholders who hold their Nitro Shares on capital account for Australian income tax purposes. In particular, it does not apply to Nitro Shareholders who buy and sell shares in the ordinary course of business or who otherwise hold their Nitro Shares on revenue account or as trading stock for Australian tax purposes.

In addition, this summary does not apply to:

- Nitro Shareholders who acquired their Nitro Shares under an employee share or option scheme;
- Nitro Shareholders who are subject to special taxation rules (for example, insurance companies and tax exempt organisations);
- Nitro Shareholders whose Nitro Shares are subject to the "taxation of financial arrangements" rules in Division 230 of the *Income Tax Assessment Act 1997*; and
- non-Australian resident Nitro Shareholders who have held their Nitro Shares at any time in carrying on a business at or through a permanent establishment in Australia.

This summary also does not address Nitro Shareholders that are partnerships, persons that are partners of such partnerships or persons that are beneficiaries of a trust that is a Nitro Shareholder. If a partnership or a trust is a Nitro Shareholder, the partners of such partnership or the beneficiaries of such trust should consult their own tax advisers with respect to the Australian taxation consequences to them of the partnership or the trust (as applicable) before accepting the Offer.

The information in this description is based upon Australian taxation law and practice in effect at the date of this Third Supplementary Bidder's Statement. It is not intended to be an authoritative or comprehensive analysis of the taxation laws of Australia. The summary does not consider any specific facts or circumstances that may apply to particular Nitro Shareholders.

You are advised to seek independent professional advice regarding the Australian tax consequences of disposing of your Nitro Shares according to your particular circumstances.

7.2 Nitro Shareholders who are Australian residents for tax purposes

This Section applies to Nitro Shareholders who are residents of Australia for Australian income tax purposes and hold their Nitro Shares on capital account.

(a) **CGT consequences of choosing All Cash Consideration**

Refer to Section 8.2(a) of the Original Bidder's Statement for further information on CGT consequences of Electing the All Cash Consideration.

(b) **CGT consequences of choosing All Scrip Consideration**

If you are an Australian resident for Australian income tax purposes and you hold your Nitro Shares on capital account, you may be entitled to "scrip-for-scrip" rollover relief to defer CGT if, among other things:

- (i) you accept the Offer choosing the All Scrip Consideration and receive HoldCo Shares as consideration;

- (ii) you would otherwise make a capital gain on your Nitro Shares (that is, you are not entitled to rollover relief if your Nitro Shares are exempt from CGT, or you would otherwise have made a capital loss);
- (iii) the wholly-owned group that includes the Bidder acquires at least 80% of the voting shares in Nitro; and
- (iv) you choose for rollover relief to apply.

The availability of rollover relief will also depend on your particular circumstances (for example, it is not available if your Nitro Shares are trading stock or are otherwise held on revenue account). You should consult your own tax adviser to confirm whether or not rollover relief will be available to you.

If you are eligible for rollover relief and you choose to claim it, you should not realise a capital gain in respect of the disposal of your Nitro Shares. However, the CGT cost base, and reduced cost base, of your Nitro Shares, and the date or deemed date that they were acquired, will be inherited by you in respect of your new HoldCo Shares. This should defer any taxable capital gain on your Nitro Shares until you sell your HoldCo Shares.

(c) ***CGT consequences of choosing Mixed Consideration***

In the event that partial CGT scrip-for-scrip rollover relief is available and has been chosen by a Nitro Shareholder, the part of the capital gain that relates to consideration received in the form of HoldCo Shares may be disregarded. Any part of the capital gain that relates to consideration received in the form of cash cannot be disregarded, may be subject to CGT as described in Section 7.2(a) above.

Where a Nitro Shareholder has applied partial scrip-for-scrip rollover relief, the cost base of the HoldCo Shares received should be equal to the cost base of their original Nitro Shares as reasonably attributable to the consideration received in the form of HoldCo Shares. Under the Offer, the cash consideration will be equal to \$2.00 per Nitro Share.

(d) ***Nitro Shares acquired in Compulsory Acquisition***

If the Bidder becomes entitled to Compulsorily Acquire any outstanding Nitro Shares under the Corporations Act (see Section 6.3(a) of the Original Bidder's Statement) and your Nitro Shares are compulsorily acquired, you will be taken to have disposed of your Nitro Shares for CGT purposes on the date you cease to be the owner.

The tax treatment on the disposal of your Nitro Shares should be similar to the disposal for All Cash Consideration as described in Section 7.2(a) above.

(e) ***Indexation for pre-21 September 1999 shares***

Refer to Section 8.2(b) of the Original Bidder's Statement for further information on Indexation for pre-21 September 1999 shares.

(f) ***Discount capital gains***

Refer to Section 8.2(c) of the Original Bidder's Statement for further information on the discount capital gain provisions. Nitro Shareholders who are not Australian residents for tax purposes

Refer to Section 8.3 of the Original Bidder's Statement for further information on the tax consequences for Nitro Shareholders that are not Australia residents for tax purposes and hold their Nitro Shares on capital account. .

7.3 CGT non-resident withholding tax

Refer to Section 8.4 of the Original Bidder's Statement for further information on the CGT non-resident withholding tax regime.

7.4 Rollover relief for Nitro Shareholders resident in the United Kingdom

In order to facilitate rollover relief being available to Nitro Shareholders who are residents of the United Kingdom, the Bidder is providing the mechanism set out in section 10.7B of the Offer. In summary, this process will allow Nitro Shareholders residing in the United Kingdom (**UK Nitro Shareholders**) that Elect to receive the All Scrip Consideration or the Mixed Consideration to be entitled to rollover relief in respect of United Kingdom capital gains tax purposes by adhering with the rollover requirements prescribed by the *Taxation of Chargeable Gains Act 1992*.

The process will result in UK Nitro Shareholders receiving the same consideration received by an equivalent non-UK Nitro Shareholders (other than Ineligible Foreign Shareholders) who Elected to receive either All Scrip Consideration or the Mixed Consideration. However, before receiving the HoldCo shares issued in connection with the UK Nitro Shareholders' Election, back-to-back loan notes will be provided by the Bidder, TGC, TGF and TGP to a UK Nitro Shareholder as set out in section 10.7B of the Offer (**UK Scrip-for-Scrip Rollover Process**).

The steps in the UK Scrip-for-Scrip Rollover Process will occur in the manner described by Section 8.1(d) and will result in UK Nitro Shareholders receiving their HoldCo Shares on the same timetable as other Nitro Shareholders who Elect, and are entitled, to receive HoldCo Shares.

7.5 GST

Refer to Section 8.5 of the Original Bidder's Statement for further information on GST.

7.6 Stamp duty

Refer to Section 8.6 of the Original Bidder's Statement for further information on stamp duty.

8 Variation of Potentia Capital's Offer

8.1 Variations

Pursuant to section 650D of the Corporations Act, the Bidder varies the Offer dated 11 November 2022 for some or all of the Nitro Shares.

The Bidder varies the Offer to offer alternative forms of consideration, namely the All Scrip Consideration and Mixed Consideration, as follows:

- (a) By deleting Section 10.2 of the Offer contained in the Original Bidder's Statement and substituting the following:

- (a) *Subject to the terms of this Offer, the consideration offered by the Bidder for Your Nitro Shares to which this Offer relates is, at your election:*

- (i) *\$2.00 per Nitro Share (the **All Cash Consideration**);*
- (ii) *70% of a HoldCo Ordinary Share and 30% of a HoldCo Redeemable Preference Share per Nitro Share (the **All Scrip Consideration**); or*
- (ii) *for 50% of Your Nitro Shares (with any partial Nitro Share rounded up to the nearest whole number) you will receive All Cash Consideration and for Your remaining Nitro Shares, you will receive All Scrip Consideration (the **Mixed Consideration**).*

- (b) *You may choose to receive:*

- (i) *the All Cash Consideration for all Your Nitro Shares;*
- (ii) *the Mixed Consideration for all Your Nitro Shares; or*
- (iii) *the All Scrip Consideration for all Your Nitro Shares.*

You must specify your choice when completing the New Acceptance Form or instructing your Controlling Participant. If you accept the Offer but do not specify which of the alternative considerations you wish to receive, you will be treated as choosing the All Cash Consideration for all Your Nitro Shares.

- (c) *If you are:*

- (i) *an Ineligible Foreign Shareholder and you would receive HoldCo Shares under your Election, then despite any other provision of this Offer, you are offered and will receive for Your Nitro Shares a cash amount calculated under Section 10.7A; and*
- (ii) *a UK Nitro Shareholder and you would receive HoldCo Shares under your Election, then despite any other provision of this Offer, you will receive your HoldCo Shares following UK Scrip-for-Scrip Rollover Process set out in Section 10.7B.*

- (d) *Subject to Section 10.5 below, if you would otherwise become entitled to a fraction of a HoldCo Ordinary Share, HoldCo Redeemable Preference Share, or both as a result of your acceptance of the Offer your Election, any such fractional entitlement of:*

- (i) *less than 0.5 will be rounded down to zero; and*
- (ii) *0.5 or more will be rounded up.*

- (e) *If the Bidder reasonably believes that any parcel or parcels of Nitro Shares has or have been created or manipulated to take advantage of the rounding provision in Section 10.2(d) above, then any fractional entitlement to HoldCo Ordinary Shares or HoldCo Redeemable Preference Shares arising in relation to that parcel, or those parcels, will be rounded down so that the entitlement to HoldCo Ordinary*

Shares and HoldCo Redeemable Preference Shares arising in relation to each parcel consists of the nearest whole number of HoldCo Ordinary Shares and HoldCo Redeemable Preference Shares only and the fractional entitlement will be disregarded.

- (b) By inserting the following at the end of Section 10.5 of the Offer:

In this Offer, a reference to:

(i) the CHES Acceptance Form is to the Original CHES Acceptance Form or to the New CHES Acceptance Form;

(ii) the Issuer Acceptance Form is to the Original Issuer Acceptance Form or to the New Issuer Acceptance Form; and

(iii) the Acceptance Form is to the Original Acceptance Form or to the New Acceptance Form,

but you must use the New Acceptance Form (and includes, to avoid doubt, either the New CHES Acceptance Form or New Issuer Acceptance Form) if you wish to choose the All Scrip Consideration or Mixed Consideration.

- (c) By inserting the following new Section 10.7A after Section 10.7 of the Offer:

10.7A Ineligible Foreign Shareholders

If you are an Ineligible Foreign Shareholder and you accept this Offer and choose the All Scrip Consideration or Mixed Consideration you will not be entitled to receive HoldCo Shares as consideration for your Nitro Shares. Instead the Bidder will:

- (a) *arrange for the issue to a nominee approved by ASIC (**Nominee**) of the number of HoldCo Shares to which you and all other Ineligible Foreign Shareholders would have been entitled but for this Section and the equivalent Section in the Offer;*
- (b) *procure that any one of the Potentia Shareholders acquire the HoldCo Shares offered to Nitro Shareholders in circumstances where a Nitro Shareholder (including the Nominee) who holds HoldCo Shares exercises the right set out in Section 16.1 of the HoldCo Shareholders' Deed; and*
- (c) *cause the amount ascertained in accordance with the formula below to be paid to you:*

$$\text{Nominee Net Sale Proceeds} \times \frac{\text{Your HoldCo Shares}}{\text{Nominee HoldCo Shares}}$$

where:

net proceeds of sale *is the amount remaining after deducting the expenses of sale and of appointing the Nominee from the total proceeds of sale of the HoldCo Shares issued to the nominee under this Section and the equivalent Section in the Offer;*

Your HoldCo Shares *is the number of HoldCo Shares which would, but for this Section, have been issued to you; and*

Nominee HoldCo Shares *is the total number of HoldCo Shares issued to the Nominee under this Section and the equivalent Section in the Offer.*

You will be paid by cheque in Australian currency. The cheque will be sent at your risk by pre-paid airmail to the address shown in the Acceptance Form."

- (d) By inserting the following new Section 10.7B after the new Section 10.7A of the Offer:

10.7B UK scrip-for-scrip rollover process

For the purpose of Section 10.2(c), the following steps will occur in circumstances where You are a UK Nitro Shareholder and You would receive HoldCo Shares as a result of Your Election:

- (a) *the Bidder will acquire the number of Nitro Shares to be acquired from you (as calculated in accordance with Section 10.2(a)(iii)) by issuing a Bidder Loan Note to you for each of your Nitro Shares; then*
- (b) *TGC will acquire, through the exercise of their rights under a put and call option agreement, the Bidder Loan Notes issued to you by issuing a TGC Loan Note to you for each of your Bidder Loan Notes; then*
- (c) *TGF will acquire, through the exercise of their rights under a put and call option agreement, the TGC Loan Notes issued to you by issuing a TGF Loan Note to you for each of your TGC Loan Notes; then*
- (d) *TGP will acquire, through the exercise of their rights under a put and call option agreement, the TGF Loan Notes issued to you by issuing a TGP Loan Note to you for each of your TGF Loan Notes; then*
- (e) *HoldCo will acquire, through the exercise of their rights under a put and call option agreement, the TGP Loan Notes issued to you by issuing a HoldCo Loan Note to you for each of your TGP Loan Notes; then*
- (f) *HoldCo will acquire, through the exercise of their rights under a put and call option agreement, each HoldCo Loan Note issued to you by issuing you the HoldCo Shares which you are entitled to receive under Section 10.2(a) (subject to any rounding which is to be calculated in accordance with Section 10.2(d)),*

*with each step other than (a) being conditional on the exchange described in the prior step occurring (together the **UK Scrip-for-Scrip Rollover Process**).*

- (e) By inserting the following new Section 10.8A after Section 10.8 of the Offer:

10.8A Further agreement where All Scrip Consideration or Mixed Consideration chosen

By signing and returning the Acceptance Form or initiating or causing acceptance of this Offer under the ASTC Settlement Rules in accordance with Section 3, if you choose to receive the All Scrip Consideration or Mixed Consideration, you also:

- (a) *represent and warrant that you are not an Ineligible Foreign Shareholder unless otherwise indicated on the Acceptance Form, and acknowledge and agree that if you are an Ineligible Foreign Shareholder, or the Bidder believes you are an Ineligible Foreign Shareholder, Section 10.7A applies to you; and*
- (b) *unless Section 10.7A applies to you and subject to Section 10.8(d):*
 - (i) *agree to accept the HoldCo Shares to which you become entitled by accepting this Offer subject to the HoldCo Constitution and authorise HoldCo to place your name on its register of members as the beneficial holder of those HoldCo Shares; and*
 - (ii) *agree to become a party to and be bound by the Custodian Deed and HoldCo Shareholders' Deed.*

- (f) By inserting the following new Section 10.9A after Section 10.9 of the Offer:

10.9A Interpretation of "pay"

In Sections 10.8 and 10.9, "pay" includes "provide".

- (g) By inserting the following sentences at the end of Section 10.11 of the Offer:

Subject to the Corporations Act and the constitution of HoldCo, the Bidder will send you a holding statement for any HoldCo Ordinary Shares and HoldCo Redeemable Preference Shares issued to you upon acceptance of the Offer at your risk by pre-paid ordinary mail, or in the case of an address outside Australia by airmail, to the address shown in the Acceptance Form. Any HoldCo Ordinary Shares and HoldCo Redeemable Preference Shares issued to you recorded in HoldCo's share register.

8.2 Section 650B notice and the right to make a fresh election

In accordance with section 650B of the Corporations Act, the Bidder gives notice that a person who has already accepted an Offer when the variations in this Section 8 are made has the right to make a fresh election as to the form of consideration to be taken.

Details about how to make a fresh election, and the requirement to return any cash consideration already received as a result of your Election, are included in Section 3.

9 Other material information

9.1 *Relevant interests in Nitro Shares and voting power*

As at the date of this Third Supplementary Bidder's Statement, the Bidder has relevant interests in 48,586,139 Nitro Shares representing a voting power in Nitro of 19.31%. The relevant interests noted above arise from on-market acquisitions by TGC (the sole shareholder of the Bidder) of Nitro Shares during the period commencing four months before the date of the Original Bidder's Statement. The maximum price paid for any of those Nitro Shares was \$1.58.

9.2 *Consents*

This Third Supplementary Bidder's Statement contains statements made by, or statements based on, statements made by the Bidder, TGC, Potentia Capital, the Co-Investor and Grant Thornton. The Bidder, TGC, Potentia Capital and the Co-Investor has each given and has not, before lodgement of this Third Supplementary Bidder's Statement with ASIC, withdrawn its consent to the inclusion of:

- (a) references to its name;
- (b) each statement it has made; and
- (c) each statement which is based on a statement it has made,

in this Third Supplementary Bidder's Statement in the form and context in which those statements appear and to the maximum extent permitted by law expressly disclaims and takes no responsibility for any part of this Third Supplementary Bidder's Statement other than any statement which has been included in this Third Supplementary Bidder's Statement with the consent of that party.

The following firms and companies have given, and have not at the date of this Third Supplementary Bidder's Statement withdrawn, their written consent to being named in this Third Supplementary Bidder's Statement:

Name of person	Named as
Johnson Winter Slattery	Legal adviser in respect of the Offer.
Jarden	Financial adviser in respect of the Offer.
Automic Pty Ltd	Share Registry.
Grant Thornton	Adviser in respect of the appropriate discount range to be applied to Nitro Shares.

None of these firms and companies have caused or authorised the issue of this Third Supplementary Bidder's Statement.

Each of the above firms and companies:

- (a) does not make, or purport to make, any statement in this Third Supplementary Bidder's Statement, or any statement on which a statement in this Third Supplementary Bidder's Statement is based, other than a reference to its name or a statement included in this Third Supplementary Bidder's Statement with the consent of that person; and
- (b) to the maximum extent permitted by law, expressly disclaim and take no responsibility for any part of this document, other than a reference to its name or a

statement included in this Third Supplementary Bidder's Statement with the consent of that person.

In addition, this Third Supplementary Bidder's Statement includes statements which are made in, or based on statements made in, documents lodged with ASIC or the company announcement platform of ASX by Nitro and others. Under the terms of ASIC Class Order 13/521, the parties making those statements are not required to, and have not consented to, the inclusion of those statements in this Third Supplementary Bidder's Statement. This information may also be obtained from Nitro's website at <https://www.gonitro.com/>.

9.3 Acceptance results in power of attorney being granted to the Bidder

Clause 10.8 of the Offer provides that your acceptance of this Offer results in the appointment of the Bidder as your attorney who has the power to attend and vote at any meeting of Nitro Shareholders (including any court convened meeting of Nitro). That appointment occurs even while the Offer remains subject to the Conditions.

It follows that the Bidder could vote your Nitro Shares against a Competing Scheme Proposal and defeat the Competing Scheme Proposal even though the Offer remains subject to the Conditions and may not become unconditional.

The Bidder encourages you to consider all information that has either been sent to you or is included in this document and the other Potentia Bid Documents, and to ACCEPT the Offer.

If you have any questions in relation to this document, the Third Supplementary Bidder's Statement, the Offer or how to accept the Offer, please call the Offer Information Line on 1300 101 297 (for calls made within Australia) or +61 2 9068 1929 (for calls made from outside Australia) from Monday to Friday between 9:00am and 5:00pm (Sydney, Australia time).

If you are in doubt as to how to deal with this document, please consult your financial, legal or other professional adviser.

11 Approval of the Third Supplementary Bidder's Statement

This Third Supplementary Bidder's Statement has been approved by a resolution of the directors of the Bidder.

Dated: 23 December 2022

Signed for and on behalf of the Bidder by:



Andrew Gray
President
Technology Growth Capital LLC

Schedule 1 – Definitions and Interpretation

1. Definitions

A number of defined terms are used in this Third Supplementary Bidder's Statement. These terms are explained in the 'Definitions and interpretation' in Section 11 of the Original Bidder's Statement (except as otherwise defined in this Schedule 1 or where the context makes it clear that a definition is not intended to apply).

The following definitions apply in interpreting this Third Supplementary Bidder's Statement and the New Acceptance Form, except where the context makes it clear that a definition is not intended to apply:

Acceptance Form means the form of acceptance of the Offer enclosed with this Offer, this Third Supplementary Bidder's Statement or, as the context requires, any replacement or substitute acceptance form provided by or on behalf of the Bidder (and includes, to avoid doubt, both the Issuer Acceptance Form and the CHES Acceptance Form).

All Cash Consideration has the meaning set out in Section 8.1.

All Scrip Consideration has the meaning set out in Section 8.1.

Alludo means Cascade Parent Limited, trading as Alludo.

Alludo Competing Scheme Proposal means the scheme of arrangement for Nitro in which Alludo is the proponent.

Alludo Competing Takeover Bid means the off-market takeover bid for Nitro under which Alludo is the bidder.

Alludo Proposal means the proposal by Alludo to proceed with the Alludo Competing Scheme Proposal and the Alludo Competing Takeover Bid.

Applicable Discount Range has the meaning set out in Section 5.4(b).

Associate has the meaning given in the Corporations Act.

Bidder means Technology Growth Capital LLC.

Bidder Loan Note means a loan note issued by the Bidder to you for one of your Nitro Shares.

Business Day means any day that is each of the following:

- (a) a 'Trading Day' within the meaning given in ASX Listing Rules; and
- (b) a day that is not Saturday, Sunday or a public holiday or bank holiday in Sydney, New South Wales.

Cash Offer Price means the price of \$2.00 being offered by the Bidder as part of its Offer.

CHES means the Clearing House Electronic Subregister System operated by ASX Settlement, which provides for the electronic transfer, settlement and registration of securities in Australia.

CHES Holding means a holding of Nitro Shares on the CHES subregister of Nitro.

Co-Invest MIT-A means Potentia Capital Trust IA Pty Ltd (ACN 659 330 140) as trustee for Potentia Capital Trust IA.

Co-Invest MIT-B means Potentia Capital Trust IB Pty Ltd (ACN 659 330 140) as trustee for Potentia Capital Trust IB.

Co-Invest MIT-C means Potentia Capital Trust IC Pty Ltd (ACN 659 063 322) as trustee for Potentia Capital Trust IC.

Co-Invest MIT-D has the meaning set out in Section 4.1.

Co-Invest MITs has the meaning set out in Section 4.1.

Co-Investor means HarbourVest Partners Co-Investment VI Aggregator L.P.

Compulsory Acquisition means the compulsory acquisition by the Bidder of Nitro Shares pursuant to Chapter 6A of the Corporations Act, and Compulsorily Acquire has the corresponding meaning.

Competing Scheme Proposal means a scheme of arrangement in accordance with Part 5.1 of the Corporations Act.

Competing Takeover Proposal means a takeover bid in accordance with Part 6.4 of the Corporations Act.

Conditions means the conditions of the Offer set out in Section 10.3 of the Original Bidder's Statement.

Controlling Participant has the meaning given in ASX Settlement Operating Rules.

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

Custodian Deed means the custodian deed in substantially the same form as set out in **Annexure 3** to be entered into by the Custodian and HoldCo.

Custodian means a custodian to be appointed by HoldCo at a future date.

Deal means, when used with respect to an item of property (including shares), includes sell, offer for sale, dispose, transfer, deal with, assign, alienate the right to exercise votes attached to, or decrease any economic interest in, or grant or allow to exist any Encumbrance (as defined in the HoldCo Shareholders' Deed), trust, option or other right in relation to the whole or any part of the item of property and agreeing to do any of those things or granting an option or making an offer that permits a person to require the doing of any of those things.

Election means an election by a Nitro Shareholder to receive either the All Cash Consideration, All Scrip Consideration or Mixed Consideration, which election is made by following the procedure set out in Section 3 of the Offer.

Exit has the meaning set out in paragraph 4(d) of Schedule 2.

First Supplementary Bidder's Statement means the Bidder's first supplementary bidder's statement dated 11 November 2022.

Grant Thornton means Grant Thornton Corporate Finance Pty Ltd.

Grant Thornton Report means the limited scope opinion report and financial services guide prepared by Grant Thornton dated 22 December 2022, as set out in **Annexure 5**.

HoldCo means Oak Ridge Software Limited ACN 664 474 999.

HoldCo Board means the board of directors of HoldCo from time to time.

HoldCo Constitution means the constitution of HoldCo on those terms set out in **Annexure 2** to this Third Supplementary Bidder's Statement.

HoldCo Loan Note means a loan note issued by HoldCo to you for one of your TGP Loan Notes.

HoldCo Ordinary Share means an ordinary share, as that term is defined in the HoldCo Shareholders' Deed, in the capital of HoldCo.

HoldCo Redeemable Preference Share means a redeemable preference share, as that term is defined in the HoldCo Shareholders' Deed, in the capital of HoldCo.

HoldCo Shareholder means a holder of a HoldCo Share.

HoldCo Shareholders' Deed means the shareholders' deed in respect of the affairs of HoldCo to be entered into by the shareholders of HoldCo on substantially those terms set out in **Annexure 1** to this Third Supplementary Bidder's Statement.

HoldCo Shares means HoldCo Ordinary Shares and HoldCo Redeemable Preference Shares.

Increased Offer Amount means \$441.5 million (plus costs associated with the Offer), calculated on the basis set out in the Second Supplementary Bidder's Statement.

Ineligible Foreign Shareholder means a person whose address as shown in the Register as being in a jurisdiction other than Australia and its external territories, but does not include a UK Shareholder or a US Shareholder (excluding Nitro Shareholders who are not Institutional Accredited Investors).

Institutional Accredited Investor means an "institutional accredited investor" within the meaning of Rule 501(a)(1), (2), (3), (7), (8), (9) or (12) under the *US Securities Act of 1933*.

Issuer Acceptance Form means the Acceptance Form enclosed with this Offer and this Third Supplementary Bidder's Statement for Nitro Shareholders with an Issuer Sponsored Holding.

Issuer Sponsored Holding means a holding of Nitro Shares on Nitro's issuer sponsored sub register.

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

Maturity Holder Notice has the meaning set out in Section 5.2(d).

Minimum Bid Price has the meaning set out in Section 5.4(a).

Minimum Bid Price Rule has the meaning set out in Section 5.4(a).

Mixed Consideration has the meaning set out in Section 8.1.

New Acceptance Form means the form with the title "Acceptance Form" that accompanies this Third Supplementary Bidder's Statement (or any replacement or substitute Acceptance Form provided by or on behalf of the Bidder).

New CHES Acceptance Form means the New Acceptance Form enclosed with this Offer and the Third Supplementary Bidder's Statement for Nitro Shareholders with a CHES Holding.

New Issuer Acceptance Form means the New Acceptance Form enclosed with this Offer and Third Supplementary Bidder's Statement for Nitro Shareholders with an Issuer Sponsored Holding.

Nitro means Nitro Software Limited ACN 079 215 419.

Nitro Board means the board of directors of Nitro from time to time.

Nitro Group Member means each of Nitro and its Subsidiaries and **Nitro Group** means all of Nitro and its Subsidiaries.

Nitro Shares means fully paid ordinary shares in Nitro on issue.

Nitro Shareholder means a person registered as a holder of Nitro Shares in the Register.

Nominee means a nominee approved by ASIC for the purpose of section 619(3) of the Corporations Act who will effect the sale of the HoldCo Shares issued to it on behalf of Ineligible Foreign Shareholders.

Offer or the **Bidder's Offer** means, as the context requires, the offer for Nitro Shares contained in Section 10 of the Original Bidder's Statement, or the off-market takeover bid constituted by that offer (as varied in accordance with the Corporations Act).

Offer Amount has the meaning given in Section 7.3 of the Original Bidder's Statement.

Offers means the several like offers which together constitute the Offer, as varied in accordance with the Corporations Act.

Offer Consideration means the forms of consideration being offered by the Bidder as part of its Offer set out in Section 10.2 of the Offer (as amended by Section 8.1(a)) which includes the All Cash Consideration, All Scrip Consideration and Mixed Consideration.

Offer Information Line means the information telephone line available at 1300 101 297 (for calls made within Australia) or +61 2 9068 1929 (for calls made from outside Australia) Monday to Friday between 9:00am and 5:00pm (Sydney, Australia time).

Offer Period means the period during which Offers will remain open for acceptance as described in Section 1.3.

Offer Price means the Offer price of \$2.00 for each Nitro Share, as varied in accordance with the Corporations Act.

Original Acceptance Form means the form with the title "Acceptance Form" that accompanied the Original Bidder's Statement.

Original Bidder's Statement means the bidder's statement dated 28 October 2022 in relation to Potentia Capital's offer through the Bidder to acquire shares in Nitro at a price of \$1.80 per Nitro Share.

Original CHES Acceptance Form means the Acceptance Form enclosed with the Original Bidder's Statement for Nitro Shareholders with a CHES Holding.

Original Issuer Acceptance Form means the Acceptance Form enclosed with the Original Bidder's Statement for Nitro Shareholders with an Issuer Sponsored Holding.

Potentia Capital means Potentia Capital Management Pty Ltd.

Potentia Bid Documents means each of the following:

- (a) Original Bidder's Statement;
- (b) First Supplementary Bidder's Statement;
- (c) Second Supplementary Bidder's Statement; and
- (d) this document, being the Third Supplementary Bidder's Statement.

Potentia Bidder Group means each of:

- (a) HoldCo;

- (b) TGP;
- (c) TGF;
- (d) TGC; and
- (e) Bidder.

Potentia MITs has the meaning set out in Section 4.1.

Potentia Shareholders means the Co-Invest MITs.

Redemption Amount has the meaning set out in Section 5.2(d).

Register means the register of Nitro Shareholders maintained by Nitro in accordance with the Corporations Act.

Related Body Corporate has the same meaning as that in the Corporations Act and includes a body corporate which is at the relevant time after the date of this deed a 'related body corporate' and **Related Bodies Corporate** has a corresponding meaning.

Scrip Alternative has the meaning set out in the letter commencing on page 4 of this Third Supplementary Bidder's Statement.

Second Supplementary Bidder's Statement means the Bidder's second supplementary bidder's statement dated 8 December 2022, set out in **Annexure 7**.

Selected Fair Market Value has the meaning set out in Section 5.4(b).

Subsidiary has the meaning given in the Corporations Act.

Target's Statement means Nitro's target's statement dated 23 November 2022 in relation to Offer (as supplemented by the first supplementary target's statement dated 12 December 2022).

TGC means Technology Growth Capital Pty Ltd ACN 659 330 319.

TGC Loan Note means a loan note issued by TGC to you for one of your Bidder Loan Notes.

TGF means Technology Growth Finance Pty Ltd ACN 660 213 052.

TGF Loan Note means a loan note issued by TGF to you for one of your TGC Loan Notes.

TGP means Technology Growth Partners Pty Ltd ACN 659 330 140.

TGP Loan Note means a loan note issued by TGP to you for one of your TGF Loan Notes.

Third Supplementary Bidder's Statement means this document.

Treasury Shares has the meaning set out in the letter set out on page 4 of this Third Supplementary Bidder's Statement.

UK Nitro Shareholder means a person whose address, as shown in the Register, is in the United Kingdom.

UK Scrip-for-Scrip Rollover Process has the meaning set out in Section 7.4.

US Nitro Shareholder means a person whose address, as shown in the Register, is in the United States of America.

2. Interpretation

Section 16.2 of the Original Bidder's Statement applies to the interpretation of the terms set out in this Third Supplementary Bidder's Statement.

Schedule 2 – Risks, features and considerations in relation to accepting All Scrip Consideration or Mixed Consideration

1. Introduction

The Offer presents a number of potential risks that Nitro Shareholders should consider when deciding whether to accept All Scrip Consideration or Mixed Consideration. In making your decision, you should carefully read the Potentia Bid Documents in their entirety. You should also carefully consider the risk factors, features and considerations outlined in this Schedule 2 and your personal circumstances. This Schedule 2 is general in nature only and does not take into account your individual objectives, financial situation, tax position or particular needs.

This Schedule 2 outlines:

- (a) general investment risks (refer to Section 2 of this Schedule 2);
- (b) specific risks associated with your current investment in Nitro Shares (refer to Section 3 of this Schedule 2); and
- (c) additional features and considerations in relation to an investment in HoldCo Shares (refer to Section 4 of this Schedule 2);

If you accept the Offer and Elect to receive All Cash Consideration, the risks in Sections 2, 3 and 4 of this Schedule 2 will not apply because you will not hold HoldCo Shares nor be exposed to the risks of holding Nitro Shares. The risk factors in Sections 2, 3 and 4 of this Schedule 2 will continue to apply to Nitro Shareholders who elect the All Scrip Consideration or Mixed Consideration as they will hold HoldCo Shares.

If the Offer is withdrawn, Nitro Shares will remain quoted on ASX and all Nitro Shareholders will continue to be subject to the risks in Sections 2 and 3 of this Schedule 2.

This Schedule 2 is not an exhaustive list of the risks, features and matters to be considered in relation to an investment in HoldCo Shares. This Schedule 2 does not purport to list every risk or consideration that may be associated with an investment in HoldCo now or in the future. The occurrence or consequences of some of the risks described in this Schedule 2 may be partially or completely outside the control of Nitro or the Bidder or their respective directors and management teams.

The risk factors do not take into account the individual investment objectives, financial situation, position or particular needs of Nitro Shareholders. Nitro Shareholders should seek professional advice from their accountant, tax adviser, stockbroker, lawyer or other professional adviser before making an Election. Before making any Election for All Scrip Consideration or Mixed Consideration, you should have a sufficient understanding of these matters having regard to your own individual risk profile, portfolio strategy, investment objectives, financial circumstances and taxation position.

These risks may, individually or in combination, have a material adverse effect on HoldCo's future financial performance, financial position, cash flows distributions and your ability to dispose of HoldCo Shares if you wish to do so and, consequently, on the value of your HoldCo Shares. Further, there is no guarantee that HoldCo will achieve its stated objectives or any of its statements of current future intent as described in the Potentia Bid Documents (including those statements set out in Section 2 of this Schedule 2), or that any dividends or distributions will be paid to HoldCo Shareholders.

You should carefully consider the matters discussed in this Schedule 2, as well as the other information contained in this Third Supplementary Bidder's Statement and the other Potentia

Bid Documents before accepting the Offer. Despite the operating history of Nitro, an investment in HoldCo should be considered a speculative investment.

2. General investments risks

The value of Nitro Shares and future distributions made to the shareholders of Nitro in the future (including, indirectly, HoldCo) will be influenced by a number of macroeconomic factors including:

- changes in investor sentiment and overall performance of the Australian and international stock markets;
- changes in general business, industry cycles and economic conditions including inflation, interest rates, exchange rates, commodity prices, employment levels, house prices, retail sales and consumer demand;
- changes in government fiscal, monetary and regulatory policies, including foreign investment;
- natural disasters and catastrophes, whether on a global, regional or local scale; and
- accounting standards which affect the financial performance and position reported by Nitro.

3. Risk factors relating to the business and operations of Nitro

In considering the Offer you should be aware that there are a number of risk factors, both general and specific associated with the Offer. These are relevant to HoldCo Shareholders on the basis that you will be taking an indirect interest in the operations of Nitro in the event that you begin to hold HoldCo Shares. This means that to an extent that a risk applies to Nitro Shares, those risks are likely to apply in a similar way to HoldCo Shares.

As the Offer is not subject to a minimum acceptance condition, the degree to which some of these risks will apply to a HoldCo Shareholder will depend on how many Nitro Shares are held by the Bidder at the end of the Offer. Importantly, the Potentia Bidder Group has not been granted access by Nitro to conduct due diligence using proprietary information available to Nitro.

Consequently, the outline of risks set out below has been made without the benefit of the Potentia Bidder Group undertaking due diligence in respect of Nitro.

(a) Reliance on Nitro Group Member entities to pay distributions

Nitro is a holding entity and may rely on other Nitro Group Members to provide Nitro with the funds necessary meet Nitro's financial obligations. Nitro and the other Nitro Group Members are legally distinct and some of them are or may become restricted in their ability to pay dividends and distributions or otherwise make funds available to Nitro pursuant to local law, regulatory requirements and their contractual agreements.

(b) Acquisition and growth opportunities

According to disclosures in previous annual reports, Nitro considers that mergers and acquisitions could be used by Nitro to add scale and capabilities to the offering of Nitro. This strategy is dependent to a significant extent on the ability of Nitro to identify acquisition opportunities that are suitable for the Nitro business.

(c) Transaction risk

The completion of new acquisitions can have the effect of significantly increasing the scale and scope of Nitro's operations, including operations in new geographic areas and industry segments, and Nitro may have difficulty managing these additional operations.

Whilst it is general practice to conduct extensive due diligence investigations into businesses being acquired, it is possible that due diligence may fail to uncover all material risks in the business being acquired, or to identify a change of control trigger in a material contract or authorisation, or that a contractual counterparty or government agency may take a different view on the interpretation of such a provision to that taken by Nitro, thereby resulting in a dispute.

(d) Foreign currency risk

Nitro's current operations also occur in countries other than Australia where the Australian dollar is not the functional currency. This means that conversions of foreign currencies may occur, thus exposing HoldCo to currency risk.

Fluctuations in currency exchange rates could reduce the value of cash flows generated by Nitro Group Members or could make it more expensive for Nitro's customers to purchase Nitro's services and consequently reduce the demand for Nitro's services. In addition, a significant depreciation in the value of such foreign currencies may have a material adverse effect on Nitro's business, financial condition and results of operations.

(e) Regulation under the Corporations Act (and similar legislation)

The Corporations Act and the rules thereunder (and similar legislation in other jurisdictions) provide certain protections to investors and impose certain restrictions on companies. Amongst other things, such rules limit or prohibit transactions with related parties, impose limitations on the issue of debt and equity securities and impose certain governance requirements.

(f) Risks associated with a separation of economic interest from control

If the Conditions of the Offer are satisfied or waived, the Bidder may obtain a controlling interest in Nitro and, as a result of such controlling interest, the Bidder will be able to control the appointment and removal of Nitro's directors and, accordingly, exercise substantial influence over Nitro. Further, the Potentia Shareholders may exercise their rights under the HoldCo Shareholders' Deed, including with respect to redeeming the HoldCo Redeemable Preference Shares, with the effect that HoldCo Shareholders may have their economic interest in HoldCo reduced over time whilst the Potentia Shareholders maintain a controlling interest.

Therefore, the Potentia Shareholders may use their control rights in a manner that conflicts with the economic interests and investment goals of HoldCo Shareholders.

In addition, debt incurred by HoldCo could exacerbate the separation of economic interest from controlling interest, thereby creating an incentive to leverage HoldCo, Nitro and their respective investments. Any such increase in debt would also make Nitro and HoldCo more sensitive to declines in revenues, increases in expenses and interest rates, and adverse market conditions.

(g) Internal control failure

Any failure to maintain adequate internal control over financial reporting or to implement required, new or improved controls, or difficulties encountered in their implementation, could cause HoldCo or Nitro to report material weaknesses or other deficiencies in its internal control over financial reporting and could result in a more than remote possibility of errors or misstatements in its consolidated financial statements that would be material.

In addition, material weaknesses in internal controls could require significant expense and management time to remediate.

(h) Loss of key personnel

Nitro is likely to depend on the diligence, skill and business contacts of Nitro's professionals and the information and opportunities they generate during the normal course of their activities. Nitro's success will likely depend on the continued service of these individuals, who are not obligated to remain employed with Nitro.

The departure of certain key Nitro professionals or a significant number of Nitro's professionals for any reason, or the failure to appoint qualified or effective successors in the event of such departures, could have a material adverse effect on Nitro's ability to achieve its objectives.

(i) Conflicts of interest

The organisational and ownership structure of Nitro may give rise to conflicts of interest between Potentia Capital, the Bidder, Nitro Group Members, Potentia Shareholders and HoldCo Shareholders. In certain instances, the interests of Potentia Capital, the Bidder and Nitro Group Members may differ from Potentia Shareholders and HoldCo Shareholders, including with respect to the types of acquisitions made, the timing and amount of the distributions of Nitro, the reinvestment of returns generated by the operations, the use of leverage when making acquisitions and the appointment of outside advisors and service providers.

(j) Financing and credit risk

General economic and business conditions that impact the debt or equity markets could affect access credit markets in the future.

Nitro's ability to finance its operations is subject to various risks relating to the state of the capital markets. Changes in Nitro's credit ratings may have an adverse effect on Nitro's financial position and ability to raise capital.

Nitro Group Members could use leverage and such indebtedness may result in Nitro Group Members being subject to certain covenants which restrict its ability to engage in certain types of activities or to make distributions of equity.

(k) Bribery and corruption

Nitro may suffer a significant loss resulting from fraud, bribery, corruption, other illegal acts by its employees or those of Nitro, inadequate or failed internal processes or systems, or from external events, such as security threats affecting its ability to operate. Although specific programs, policies, standards and methodologies may have been developed to support the management of these risks, these cannot guarantee that such conduct does not occur and if it does, it can result in direct or indirect financial loss, reputational impact or regulatory consequences.

(l) Transfer pricing risks

To the extent that Nitro enters into transactions or arrangements with parties with whom they do not deal at arm's length, the relevant tax authorities may seek to adjust the quantum or nature of the amounts received or paid by such entities if the tax authorities consider that the terms and conditions of such transactions or arrangements differ from those that would have been made between persons dealing at arm's length. This could result in more tax being paid by Nitro and therefore the return to investors could be reduced.

In addition, Nitro may also be liable for transfer pricing penalties in respect of transfer pricing adjustments unless reasonable efforts were made to determine, and use, arm's length transfer prices.

(m) General taxation risks

Nitro's operations may involve separate taxation authorities and differing regulations, which results in significant complexity. Any changes to taxation law, its interpretation, or its administration may increase the amount of tax paid by Nitro or affect the treatment of tax losses that may have been, or may be, accumulated. These changes could adversely affect the accounting profit and loss recognised by Nitro, the cash tax that it pays, and the tax treatment of distributions.

(n) People and safety

The Nitro Group Members are exposed to the following risks in relation to people and safety that may impact on its financial position:

- injury to employees, contractors and other third parties;
- industrial relations activity that impacts Nitro's ability to meet its contractual and customer expectations; and
- attraction and retention (as discussed in paragraph (h) of Section 3 in this Schedule 2) of key senior management and operational staff.

(o) Customers

An increase in competition may result in the loss of major customers. The increase may be caused by new or existing entrants or by government legislated changes resulting in increased competition.

Nitro is likely to also be exposed to counterparty risks. Counterparty risk is the risk that a major customer, or a number of significant customers, will fail to meet its or their contractual obligations. In those circumstances, there would be a risk of financial loss to Nitro.

(p) Global and local markets conditions

The Nitro Group Members are exposed to volatility in global economic conditions. Accordingly, global and local market conditions may significantly impact Nitro's revenues.

If domestic or global economic conditions deteriorate, the Nitro Group Members may not be able to access financial markets to seek equity or debt funding on competitive terms. This may adversely impact the financial performance of Nitro or the capacity for the Nitro Group Members to implement their strategy.

(q) Changes in government policy, investment decisions and regulation

Any change in the application of relevant competition laws and other changes to regulation or administrative practices that apply to the Nitro Group Members may impact the efficient operation of the Nitro Group's business and, as a consequence, its financial performance.

(r) Operational risk

The Nitro Group Members may also be subject to the following common operational risks:

- capacity constraints and disruptions caused by weather events, natural disasters and/or failure of critical IT platforms and support;
- performance, compliance and reputational issues;
- disruption or loss of critical supply inputs, including security breaches of IT platforms;
- integration risks associated with acquisitions and business restructures including the impact on customer service levels; and

- impact of disruptive technologies on traditional supply chains.

(s) Customer demand for Nitro's services

Nitro's revenues are subject to fluctuations in customer demand for the services that Nitro provides. Customer demand may be adversely affected by a number of factors, which may individually or in aggregate adversely affect Nitro's future financial performance and position.

(t) Increased competition

An increase in competition in the type of business offered by Nitro may result in lower volumes and margins for the division which may, in turn, have a material impact on its financial performance.

(u) Customer service

Nitro's ability to maintain relationships with major customers is likely to be integral to its financial performance.

This in turn depends on Nitro's ability to offer competitive service standards and pricing. Poor performance in either area may lead to a loss of major customers which may have a material impact on the division's financial performance.

(v) Litigation risk

Nitro's business may be at risk of becoming involved in disputes and possible litigation. Nitro's business may operate or provide services in jurisdictions with less developed legal systems and could experience potential difficulties in obtaining effective legal redress and create uncertainties.

(w) Technology

Nitro's business appears to be heavily reliant upon the use of technology. This technology includes computer systems used for providing services but also for the purpose of accessing information, administrative functions and commercial operations.

Computer systems may be subject to cybersecurity risks or other breaches of information technology security, noting the increasing frequency and severity of these kinds of incidents.

A breach of Nitro's cyber or data security measures, the failure of any such computerised system or of the operating equipment used by Nitro for a significant time period could have a material adverse effect on its business prospects, financial condition, results of operations and cash flow.

4. Additional features and considerations regarding an investment in HoldCo Shares

This Section 4 of this Schedule 2 sets out some of the other features and considerations which HoldCo Shareholders should consider if they are contemplating an investment in HoldCo Shares. The features that apply to an investment in HoldCo are materially different from those that apply to your existing investment in Nitro.

(a) Different regulatory regime

HoldCo will be an unlisted Australian public company and Nitro will be removed from the official list of ASX if the Conditions of the Offer are satisfied or waived and results in the Bidder obtaining relevant interests in 75% or more of the Nitro Shares.

Many of the protections available to shareholders of Australian listed companies are not available to shareholders of unlisted companies. For example, ASX listed companies are subject to continuous disclosure obligations under ASX Listing Rules. Further, and subject to

certain conditions, Australia's takeover regime will not apply and information that may have required disclosure under ASX Listing Rules may not be available to shareholders

There is a risk that, because of the different regulatory regime that applies to an investment in HoldCo, HoldCo Shareholders may not realise the outcome with respect to their investment that they intended, or which might have been available were their investment in a listed entity. A summary of some of the key types of investor protections that currently apply to Nitro Shareholders and will no longer apply to Nitro Shareholders who accept HoldCo Shares as part of the Offer is set out in the table below:

Nitro at present	Description of lost protections as a HoldCo Shareholder
Continuous disclosure (ASX Listing Rules – Chapter 3)	
Chapter 3 of ASX Listing Rules contains obligations on listed entities to immediately disclose material price sensitive information to the market.	If HoldCo has less than 100 shareholders, HoldCo will not have an obligation to provide any disclosure to HoldCo Shareholders which could be comparable to the continuous disclosure obligations currently applicable to Nitro as a listed company. Subject to limited exceptions, it is a requirement under the HoldCo Shareholders' Deed, that HoldCo has no more than 50 shareholders. HoldCo intends to rely on the Custodian arrangements described in Section 5.2(h) to give effect to this requirement.
Securities (ASX Listing Rules — Chapter 6)	
Chapter 6 of the ASX Listing Rules provides that each class of equity security must be appropriate and equitable in ASX's view. It also provides protections in relation to voting rights of holders of ordinary and preference shares.	The terms of the HoldCo Shares are not subject to ASX approval.
Changes in capital and share issues (ASX Listing Rules — Chapter 7)	
Chapter 7 of ASX Listing Rules requires issuers who issue more than 15% of a listed entity's capital in a 12-month period to seek security holder approval, subject to certain exceptions. It also imposes limits on the ability of listed entities to issue securities under a rights issue, dividend or distribution plan or during a takeover unless prescribed conditions are met.	Holdings of HoldCo Shares may be more easily diluted.
Transactions with persons of influence (ASX Listing Rules — Chapter 10)	
Chapter 10 of ASX Listing Rules imposes restrictions on persons in a position of influence, such as related parties, a subsidiary, or a substantial holder, from entering into certain transactions with the listed entity unless certain conditions are met. In prescribed cases, transactions of this nature will require security holder approval.	As an unlisted Australian public company, HoldCo must comply with the provisions contained in: • Division 2 of Part 2D.1 of the Corporations Act, which excludes directors of public companies with material personal interests in certain matters attending directors meetings about, or voting on these matters; and • Chapter 2E of the Corporations Act, which requires public companies to obtain shareholder approval to provide a financial benefit to a related party, subject to certain exceptions.

Nitro at present	Description of lost protections as a HoldCo Shareholder
	However, if the Conditions of the Offer are satisfied or waived and the Bidder obtains relevant interests in 75% or more of the Nitro Shares, HoldCo will not be subject to broader provisions contained in Chapter 10 of ASX Listing Rules which impose restrictions on entering into transactions with persons in a position of influence.
Significant transactions (ASX Listing Rules — Chapter 11)	
Chapter 11 of ASX Listing Rules requires a listed entity to obtain the approval of security holders in certain circumstances (and where required by ASX), if it proposes to make a significant change to the nature or scale of its activities.	A significant change to the operations of HoldCo, the Bidder and/or Nitro may not require shareholder approval.

Chapter 6 of the Corporations Act will only apply to HoldCo if it has more than 50 shareholders. As outlined above, subject to limited exceptions, it is a requirement under the HoldCo Shareholders' Deed, that HoldCo has no more than 50 shareholders.

Chapter 6 of the Corporations Act sets out Australia's takeovers regime (which is supplemented by ASIC Regulatory Guides and guidance notes issued by the Australian Takeovers Panel). These provisions prohibit a person from acquiring relevant interests in the securities of a listed entity where it would have the effect of causing the person's or someone else's voting power in the company to increase from 20% or below to above 20%, or to increase from a starting point of above 20% and below 90%, unless an exception applies. Exceptions include where the person increases its voting power by way of a takeover bid or a scheme of arrangement. Chapter 6 also requires public disclosure when a shareholder holds 5% or more of the voting shares in a company or changes that position by 1% or more.

The purpose of Chapter 6 of the Corporations Act is to ensure such increases in voting power occur in a manner which provides shareholders with sufficient time to enable them to assess an offer put to them by an acquirer, sufficient information and disclosure about the offer and allows them to have an equal opportunity to participate in the offer and any control premium offered by the acquirer.

If HoldCo has less than 50 shareholders, then there is no specific regime under the Corporations Act regulating acquisitions of shares in or assets of HoldCo. However, the HoldCo Shareholders' Deed restricts HoldCo Shareholders from transferring or disposing of shares in HoldCo (see Section 4.2 for details).

(b) Different regulatory regime

Nitro will not be an ASX-listed company if the Conditions of the Offer are satisfied or waived and the Bidder obtains relevant interests in 75% or more of the Nitro Shares.

Given that HoldCo is similarly not listed on ASX, this means that, if the Conditions of the Offer are satisfied or waived and the Bidder obtains relevant interests in 75% or more of the Nitro Shares, the HoldCo Shareholders will receive significantly less information and reports about Nitro and its subsidiaries than Nitro Shareholders currently receive.

Under the HoldCo Shareholders' Deed, HoldCo Shareholders are entitled to receive a copy of the latest audited financial statements of the Potentia Bidder Group if requested. HoldCo Shareholders will not however receive reports such as remuneration reports or corporate governance reports and HoldCo will not be required to comply with the extensive continuous disclosure obligations set out in Chapter 3 of ASX Listing Rules and, provided HoldCo has less than 100 shareholders, section 674 of the Corporations Act.

A summary of some of the key information differences is set out in the table below. The summary is not exhaustive.

Nitro at present	Description of lost information rights as a HoldCo Shareholder
Financial reporting (Corporations Act— Chapter 2M)	
Chapter 2M of the Corporations Act requires public companies of every size to disclose their annual financial report and directors' report. The financial report includes the audited financial statements for the year, and the directors' declaration about the statements.	HoldCo, being a public company (but not a disclosing entity) must lodge with ASIC an annual financial report and directors' report. The financial report includes the audited financial statements for the year, and the directors' declaration about the statements.
A listed public company's annual financial report and directors' report must include additional information specified by the Corporations Act.	There is no requirement for HoldCo's financial statements to include:
A listed public company's financial statements must include a declaration by the CEO and CFO regarding those financial statements, including that they give a true and fair view.	• a declaration by the CEO and CFO that they give a true and fair view; • an 'operating and financial review'; and • financial report and directors' report for each half-year.
A listed public company's directors' report must include an 'operating and financial review' which contains information that shareholders would reasonably require to make an informed assessment of the company's operations, financial position, business strategies, and prospects for future financial years.	
If the public company is listed, they must also make their remuneration report available, which is voted on at its annual general meeting. A disclosing entity must also provide a financial report and directors' report for each half-year.	
Corporate Governance Statements (ASX Listing Rules — Chapter 4)	
Chapter 4 of ASX Listing Rules requires each listed company to include in its annual report either a corporate governance statement or a website address where such statement is located.	There is no requirement for HoldCo to provide a corporate governance report.

(c) HoldCo Shareholders' Deed

If the Conditions of the Offer are satisfied or waived, Nitro Shareholders who elected to receive HoldCo Shares will become shareholders in HoldCo and parties to the HoldCo Shareholders' Deed in relation to their beneficial interest in their HoldCo Shares but the legal title to their HoldCo Shares will be held by the Custodian who will also be party to the HoldCo Shareholders' Deed. The HoldCo Shareholders' Deed is intended to govern the relationship between investors in HoldCo. The HoldCo Shareholders' Deed provides HoldCo Shareholders with certain rights and obligations in connection with, amongst other things, the governance of HoldCo and the disposal of shares and other securities in HoldCo.

(d) Exit

Consistent with usual private equity practice, the Potentia Shareholders may seek to sell their investment in HoldCo and consequently, the Nitro business, in the future (**Exit**). This is subject to the Potentia Shareholders' preferences, prevailing market conditions, the performance of the business and other factors which may be considered relevant at the time. As such, the

time period for the Exit is currently unknown and is at the discretion of the Potentia Shareholders (meaning HoldCo Shareholders may not agree with the exit strategy adopted by the Potentia Shareholders or receive the price and return on investment they expect).

There is no guarantee that HoldCo Shareholders will be able to sell their HoldCo Shares if a decision to Exit is not made by the Potentia Shareholders. In particular, there will be no active market for the sale and purchase of HoldCo Ordinary Shares or HoldCo Redeemable Preference Shares following the completion of the takeover and there are restrictions, in the HoldCo Shareholders' Deed, on the ability of HoldCo Shareholders to sell or transfer their HoldCo Shares other than in very limited circumstances.

For further information about the exit rights of HoldCo Shareholders, see Section 4.2.

(e) Lack of liquidity

In the event that the Conditions are satisfied or waived, Nitro Shareholders who elected to receive HoldCo Shares will become shareholders in an unlisted public company. As such, there will be no public market for the trading of HoldCo Shares received by HoldCo Shareholders if the Conditions of the Offer are satisfied or waived, nor is there expected to be any such market in the future. As noted above, there are also substantial restrictions on the ability of HoldCo Shareholders to transfer their HoldCo Shares under the HoldCo Shareholders' Deed.

This will result in HoldCo Shares being substantially illiquid. As discussed in Section 5.4(b), this may also affect the value of HoldCo Shares following the Conditions of the Offer being satisfied or waived as well as HoldCo Shareholders' ability to dispose of them, either at all or in a timely manner.

(f) Dilution

HoldCo may need to raise additional capital through the issue of new shares in the future in order to meet the operating and/or financing requirements of itself, the Potentia Bidder Group, and Nitro.

Future capital raisings, equity funded acquisitions by the Potentia Bidder Group or issuance of shares to management undertaken in accordance with the HoldCo Shareholders' Deed, may dilute the holdings of a particular HoldCo Shareholder relative to other HoldCo Shareholders.

In the event that further equity funding is required, existing HoldCo Shareholders may be offered to participate and, if they do not take up their proportional share of any pro rata issue of shares offered to them, have their stakes diluted relative to other HoldCo Shareholders who elected to take up their proportional share of any pro rata issue.

See Section 4.2 for further information.

(g) Leverage

A HoldCo Shareholder will be exposed to the risks arising from the commitments obtained by HoldCo under any debt facilities it chooses to implement in the future. Specifically, a HoldCo Shareholder may become exposed to greater risks than they currently face in circumstances where HoldCo has debt facility commitments which lead it to have a gearing (debt to equity) ratio that is significantly greater than the gearing ratio of Nitro and other similar ASX-listed companies.

(h) Fewer rights as minority shareholders

Nitro Shareholders who receive HoldCo Shares as a result of their Election will be subject to risks that are inherent in minority shareholdings. However, HoldCo Shareholders will have access to certain protections provided under the HoldCo Shareholders' Deed (as set out in Section 4.2).

Furthermore, under the Corporations Act there are remedies available to minority shareholders against minority oppression.

Nitro Shareholders who receive HoldCo Shares as part of their consideration will be issued HoldCo Shares if the Conditions of the Offer are satisfied or waived. Relevantly the HoldCo Ordinary Shares and HoldCo Redeemable Preference Shares carry the rights set out in the HoldCo Constitution. In relation to voting rights, HoldCo Ordinary Shares are entitled to the voting rights set out in clause 7.10 of the HoldCo Constitution. However, as set out in paragraph 7 of Annexure A of the HoldCo Constitution, HoldCo Redeemable Preference Shares do not confer voting rights.

The HoldCo Shareholders' Deed contains provisions under which HoldCo Shareholders may be compelled to transfer their HoldCo Shares. For example, the HoldCo Shareholders' Deed includes a "drag-along" provision, which allows holders of a majority of HoldCo Shareholders (i.e. the Potentia Shareholders) to require each other HoldCo Shareholder to transfer their HoldCo Shares to the same transferee in certain circumstances (see the "Drag Along" rights section of the table in Section 4.2 for further details).

(i) Lack of dividends

Whilst each HoldCo Ordinary Share ranks equally with each other for payment of dividends, the declaration and payment of any dividends will be at the sole discretion of the HoldCo Board.

HoldCo Redeemable Preference Shares do not confer any right to receive a dividend on a HoldCo Shareholder.

The HoldCo Board's determination in respect of any dividend will have regard to matters including the retention of such reasonable and proper reserves for working capital requirements, possible future acquisitions, capital expenditure, debt amortisation or other actual or contingent liabilities or commitments of Nitro as the HoldCo Board considers reasonably appropriate.

To the extent HoldCo pays any dividends in the future, the level of franking on any dividends on HoldCo Shares will be affected by the level of HoldCo's available franking credits and distributable profits. HoldCo's level of franking credits may be affected by a wide range of factors, including its business performance, the jurisdictions in which Nitro makes profits and pays tax and any other franked dividends it may receive (if any). HoldCo's distributable profits may also be affected by a wide range of factors including its level of earnings. The level of franking on any dividend may vary over time and dividends may be partially, fully or not franked. The value and availability of franking credits to a HoldCo Shareholder will depend on that HoldCo Shareholder's particular circumstances.

(j) No due diligence and reliance on information

The Potentia Bidder Group has not been granted access by Nitro to conduct due diligence using proprietary information available to Nitro. As such, the Offer has been made without the benefit of the Potentia Bidder Group undertaking due diligence in respect of Nitro.

The Potentia Bidder Group has prepared the summary of risks set out in this Schedule 2 on the basis of information regarding Nitro that is known to the Potentia Bidder Group from its review of publicly accessible information and accordingly there may be other risks associated with Nitro that are currently unknown to the Potentia Bidder Group.

Additionally, there is a risk that the information currently available to the Potentia Bidder Group in respect of Nitro may contain inaccuracies or have changed due to changes in the economy or other risk factors outside of the control of either the Potentia Bidder Group or Nitro.

(k) Change of control

In the event that the Conditions of the Offer are satisfied or waived and the Bidder obtains more than 50% of the Nitro Shares, a change of control in Nitro will occur.

Certain material contracts to which a Nitro Group Member is a party may be subject to pre-emptive rights, review or termination upon a change of control.

The Potentia Bidder Group is not aware of any counterparty that may wish to terminate, review or exercise pre-emptive rights under such a material contract. However, in the event that such rights exist, the relevant Nitro Group Member may lose the benefit of the contract and may be unable to obtain similar terms upon entry into replacement contracts (should such replacement contracts be available). HoldCo Shareholders are consequently exposed to this risk.

Annexure 1 – HoldCo Shareholders’ Deed

See next page.

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Oak Ridge Software Limited

Shareholders

Shareholders' Deed

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Shareholders' Deed

Date

Parties

- 1 Oak Ridge Software Limited (ACN 664 474 999) (Company)**
 Address: c/- Potentia Capital Services Pty Ltd, Suite 38.01, 'Gateway', Level 38,
 1 Macquarie Place, Sydney NSW 2000
 Email: Andrew Gray, andrew@potentiacap.com
 Michael McNamara, michael@potentiacap.com
 Copy to: Stacey Kelly, stacey@potentiacap.com
- 2 The parties set out in Column 1 of the table in Schedule 1 (the Potentia Shareholders)**
- 3 The Rollover Shareholders from time to time**, including those who become bound to the provisions of this deed under clause 17.3 of this deed
- 4 The Shareholders from time to time**, including, as at the date of this deed the Potentia Shareholders, and each person who has entered into a Deed of Accession.

Recitals

- A** The Company is an Australian unlisted public company limited by shares and was incorporated on 13 December 2022, with the name Oak Ridge Software Limited.
- B** As at the date of this deed, the Potentia Shareholders hold 100% of the Shares.
- C** The Consortium intends for the Company (through a Company Group Member) to acquire and hold shares in Nitro under the Potentia Takeover.
- D** The consideration offered to Nitro Shareholders under the Potentia Takeover includes Shares (**Scrip Option**).
- E** Nitro Shareholders who accept the Scrip Option under the Potentia Takeover become a party to this deed as a 'Rollover Shareholder' through a Deed of Accession and:
 - (a) the Custodian will hold the legal title to each Rollover Shareholder's Shares as bare trustee under a Bare Trust; and
 - (b) each Rollover Shareholder will retain the beneficial interest in its Shares.
- F** This deed sets out the terms and conditions upon which:
 - (a) the holdings of Shareholders (including the Potentia Shareholders, the Rollover Shareholders and the Custodian) are regulated;
 - (b) Shareholders agree to conduct the Business of the Company; and
 - (c) the Shareholders agree to finance, control and manage the Company Group.
- G** The Company has agreed to be bound by and to comply with all of the provisions of this deed which relate to the Company.

Operative part

1 Definitions and interpretation

1.1 Definitions

The following definitions apply in this deed, unless the context requires otherwise.

Admission Date means in respect of a Shareholder, the earlier of the date upon which the Company issues Shares to that Shareholder or registers that Shareholder as a holder of Shares.

Affiliate means, in relation to a Shareholder, a Related Corporation of that Shareholder.

Auditor means the person appointed from time to time to the office of the auditor of the Company.

Bare Trust means a trust established under the Custodian Deed under which the Custodian holds Beneficial Shares for a Rollover Shareholder.

Beneficial Shares means in relation to a Rollover Shareholder, the Shares held by the Custodian as bare trustee for that Rollover Shareholder.

Board means the board of directors of the Company and includes a validly constituted committee of or duly appointed delegate of that board of directors.

Business means the businesses carried on by the Company Group from time to time.

Business Day means a day other than a public holiday in the place where the Company's registered office is located, a Saturday or a Sunday.

CD Deed of Adherence has the meaning given in the Custodian Deed.

CEO means the chief executive officer of the Company.

CFO means the chief financial officer of the Company.

Claim means against any person, means any claim, action, proceeding, demand, judgment, loss (realised or unrealised), cost, expense, outgoing, payment or liability incurred or suffered by, or brought or made or recovered against, the person and however arising (whether or not presently ascertained, immediate, future or contingent; and whether made at law, in equity or under statute).

Company Group means the Company and all its subsidiaries from time to time.

Company Group Member means any entity within the Company Group.

Confidential Information means all:

- (a) know how, trade secrets, ideas, concepts, technical and operational information, owned or used by any Company Group Member;
- (b) information concerning the finances, affairs or property of a Company Group Member, a Shareholder or any Affiliate of a Shareholder or any business, asset or transaction in which any of them is, was, or may have been, concerned or interested, including details of any customer or supplier of any Company Group Member;
- (c) details of any customer or supplier of any Company Group Member;

- (d) information about the terms of this deed, the Constitution or the constitutional documents of any Company Group Member; and
- (e) information which by its nature or by the circumstances of its disclosure, is or could reasonably be expected to be regarded as confidential to a Company Group Member, a party or an Affiliate of a party or any third party with whose consent or approval the relevant Company Group Member uses that information,

but does not include any information that is within the public domain, other than as a result of a breach of confidentiality by any party to this deed.

Consortium means Potentia and its co-investors for the purposes of making the Potentia Takeover.

Constitution means the constitution of the Company from time to time.

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

Custodian means the independent third party trustee company appointed from time to time by the Company under clause 17 and the Custodian Deed to hold Shares on bare trust in accordance with clause 17 and the Custodian Deed.

Custodian Deed means the document entitled "Custodian Deed" entered into on or about the date of this deed between the Company, the Custodian and the initial Rollover Shareholders as at that date.

Custodian Transfer means a Disposal of legal title to Shares:

- (a) to the extent that this has not already occurred, by a Rollover Shareholder to the Custodian to be held under a Bare Trust, either at the request of the Board or with the prior written consent of the Board;
- (b) in connection with the replacement of the Custodian in accordance with clause 11.3 of the Custodian Deed; or
- (c) by the Custodian to a Rollover Shareholder if the Custodian is required to do so under this deed or the transfer otherwise has the approval of the Board.

Deed of Accession means a deed poll substantially in the form set out in Annexure 1 that has:

- (a) been executed by a person (in order for that person to become bound to the provisions of this deed) and delivered to the Company; or
- (b) in the case of a Rollover Shareholder that acquires Shares as a result of the Potentia Takeover, executed by that Rollover Shareholder's attorney (including an attorney appointed under the Potentia Takeover) and delivered to the Company.

Director means a director of the Company from time to time.

Dispose means, in relation to a person and any property:

- (a) to sell, offer for sale, transfer, assign, surrender, gift, grant a Security Interest over, create an Encumbrance or option over the benefit of or otherwise dispose of that property (or any direct or indirect legal or beneficial interest in or over any rights in respect of any part of it), including, in the case of Shares, by way of buy-back, redemption, forfeiture, exchange or cancellation upon a capital reduction;

- (b) to do anything which has the effect of placing a person in substantially the same position as if the person had done any of the things specified in paragraph (a) of this definition; or
- (c) to attempt to do any of the things specified in paragraph (a) or (b) of this definition, and **Disposal** has the corresponding meaning.

Drag Along Notice has the meaning given in clause 12.2(a).

Drag Along Option has the meaning given in clause 12.1.

Drag Proportion has the meaning given in clause 12.1.

Encumbrance means an interest or power:

- (a) reserved in or over any interest in any asset including any retention of title; or
- (b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of security for the payment of a debt, the satisfaction of any other monetary obligation or the performance of any other obligation, and includes any agreement to grant or create any of the above.

Event of Default has the meaning given in clause 15.1.

Exit means:

- (a) a Listing;
- (b) a sale or merger of the Business (or a substantial part of it) or all of the Shares to a Third Party;
- (c) a time or event determined by the Board to be an "Exit" (with the consent of at least one Potentia Director); or
- (d) any combination of the above.

Financial Year means:

- (a) in respect of the first financial year of the Company Group, the period commencing 13 December 2022 and ending on 31 December 2022, and
- (b) with respect to each subsequent financial year of the Company Group, the period commencing on 1 January and running for 12 months ending on 31 December of each year,

or any other period for a financial year as may be determined by the Board in accordance with section 323D of the Corporations Act.

Forward Looking Statement means any forward looking statement, estimate, projection or forecast communicated to a Shareholder from time to time (including prior to that person becoming a Shareholder).

Governmental Agency means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

Initial Acceptance Period has the meaning given in clause 10.3(c).

Insolvency Event means in relation to a person, the happening of any of the following events:

- (a) an administrator, liquidator or provisional liquidator is appointed to the person or a resolution is passed to appoint any of those persons to the person;
- (b) an order is made for the winding-up or dissolution of the person or a resolution is passed for the winding-up or dissolution of the person;
- (c) a bankruptcy notice issued against the person or a court order is made that the person is declared bankrupt;
- (d) a receiver, receiver and manager, trustee, other controller or similar officer is appointed over all or any of the assets or undertaking of the person;
- (e) the person stops or suspends, or threatens to stop or suspend, the payment of all or a class of its debts;
- (f) the person proposes or effects a moratorium involving any of the person's creditors;
- (g) the person is unable, or states that the person is unable, to pay its debts as and when they fall due or is presumed to be insolvent under applicable law;
- (h) the person proposes, enters into or resolves to enter into any scheme of arrangement (other than a scheme of arrangement only in relation to members, and, if applicable holders of options), arrangement, composition or compromise with, or assignment for the benefit of, its creditors or any class of them;
- (i) a garnishee notice is given concerning any money that the person is said to owe; or
- (j) anything having a substantially similar effect to any of the events specified above happens under any law of any applicable jurisdiction.

IPO means an initial public offering of Shares in the Company or a special purpose company formed for the purpose of an initial public offer.

IPO Sale Co means a company, whether or not an Affiliate, formed for the purpose of conducting a Listing or an IPO (whether or not that entity will also become the holding company of the Company or of companies including those who hold the Business).

Liability means any Claim, debt, liability, or obligation of any kind (whether actual, contingent or prospective) however and whenever arising, including for any Loss of whatever description irrespective of when the acts, events or things giving rise to the liability or obligation occurred.

Listing means the admission for trading on a recognised stock exchange of securities (other than merely subordinated debt securities) in the Company or any Company Group Member (or any company which is proposed by the Board to become the ultimate holding company of the Company Group), whether or not in conjunction with an IPO or sell-down of any such securities.

Listing Rules means the listing rules of the securities exchange on which a Listing is to occur as they apply to the Company from time to time.

Loss means any loss, damage, liability, action, charge, cost, expense, fee, outgoing or payment whether direct, indirect, consequential, present, future, fixed, unascertained, actual or contingent and for the avoidance of doubt includes any indirect or consequential diminution in value of any Share.

Mandatory Transfer Completion Date has the meaning given in clause 16.2.

Nitro means Nitro Software Limited ACN 079 215 419.

Nitro Share means an ordinary share in the capital of Nitro.

Nominee Shareholder means a person who executed a Deed of Accession to this deed and agrees that with effect from the date of the Deed of Accession it will be bound by this deed and have rights under this deed as if that entity were named as a party to this deed as a "Nominee Shareholder", and, unless the Board determines otherwise, any person to which a Nominee Shareholder (or a subsequent transferee) Disposes Shares to a Permitted Transferee.

Non-Potentia Shareholder means a Shareholder in the Company from time to time that is not a Potentia Shareholder.

Notice of Sale has the meaning given in clause 13.1(a).

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

Ordinary Share Percentage means with respect to any Shareholder from time to time, the aggregate number of all Ordinary Shares held by that Shareholder, expressed as a percentage of the aggregate number of all Ordinary Shares on issue at that time.

Permitted Transferee, in respect of a Shareholder, means:

- (a) an Affiliate;
- (b) an investment Vehicle (including a vehicle which forms part of a fund) being a Vehicle managed or advised by Potentia or an Affiliate of Potentia;
- (c) a trust of which a Related Corporation of the Shareholder is the responsible entity, trustee, manager or investment adviser of the trust; and
- (d) a custodian of any of the persons referred to in paragraphs (a), (b) and (c) of this definition.

Potentia means Potential Capital Management Pty Ltd ACN 630 264 210 and its Related Corporations.

Potentia Bid Documents means each bidder's statement by Technology Growth Capital LLC relating to the offer dated 11 November 2022 made under the Potentia Takeover, including, as at the date of this deed:

- (a) the original bidder's statement dated 28 October 2022;
- (b) the first supplementary bidder's statement dated 11 November 2022;
- (c) the second supplementary bidder's statement dated 8 December 2022;
- (d) the third supplementary bidder's statement dated 23 December 2022; and
- (e) any further supplementary bidder's statements lodged by Technology Growth Capital LLC in connection with the Potentia Takeover.

Potentia Director means a Director appointed by the Potentia Shareholders under clause 4.3(a).

Potentia Shareholders' Representative means Michael McNamara or any other individual appointed by Potentia from time to time.

Potentia Takeover means the off-market takeover offer by Potentia through Technology Growth Capital LLC to acquire all of the shares in Nitro which is set out in the Potentia Bid Documents.

Preference Share means a redeemable preference share issued by the Company on the terms set out in Annexure A of the Constitution.

Related Corporation means a 'related body corporate' as that expression is defined in the Corporations Act and includes a body corporate which is at the relevant time after the date of this deed a 'related body corporate'.

Relevant Proportion means,

- (a) when used in relation to all Shareholders, the proportions which their respective holdings of Shares bear to the share capital of the Company at the time of the relevant event; or
- (b) when used in relation to less than all of the Shareholders, the proportions which their respective holdings of Shares bear to the aggregate of their holdings of share capital of the Company at the time of the relevant event,

provided in each case, where the context requires, a "Relevant Proportion" to be determined with reference to a particular class of Shares, the proportionate holdings for the purposes of the above definition are to be determined with reference to the relevant parties' holdings of that particular class, that is, only Shares of the particular class will comprise the numerator and the denominator for the purposes of the calculation.

Relevant Trust means, in respect of a Shareholder who is a trustee of a trust, that trust.

Reorganisation Event means:

- (a) a bonus issue of Shares;
- (b) a sub-division or consolidation of Shares; or
- (c) any other reorganisation or reconstruction of share capital of the Company where the Company does not pay or receive cash.

Restricted Confidential Information means any Confidential Information relating to trade secrets or product information (including source code of any proprietary software) of the Business which is not generally known or available in the market place or which but for a breach of confidentiality by any party would not generally be known or available in the market place.

Restricted Party means each Shareholder (other than the Potentia Shareholders or their Permitted Transferees) and each of their Affiliates.

Rollover Shareholder means each person holding the beneficial interest to any Shares who is a party to this deed and is not a Potentia Shareholder, the Nominee Shareholder, or the Custodian, including any Shareholder who:

- (a) executes and delivers a Deed of Accession to the Company; or
- (b) has a Deed of Accession delivered to the Company on that Shareholder's behalf by its attorney appointed under the Potentia Takeover.

Sale Costs means all reasonable costs and expenses reasonably incurred by the Potentia Shareholders in connection with a Disposal of shares to a Third Party or IPO Sale Co (as applicable) pursuant to clause 12 or 13 (whether or not consummated and as applicable), including any legal fees and expenses, all accounting fees and expenses and all finders, brokerage or investment banking fees, expenses or commission.

Sale Shares has the meaning given in clause 15.3(a).

Security Interest means a right, interest, power or arrangement in relation to an asset which provides security for the payment or satisfaction of a debt, obligation or liability including under a bill of sale, mortgage, charge, lien, pledge, trust, power, deposit, hypothecation or arrangement for retention of title, and includes an agreement to grant or create any of those things.

Selling Shareholders has the meaning given in clauses 12.1 or 13.1 (as applicable).

Share means any Ordinary Share or Preference Share.

Shareholder means a person that is from time to time a registered holder of Shares.

Tag Along Exercise Period means the period of time commencing on the day on which the Notice of Sale is given and expiring five Business Days after that day.

Tag Along Notice has the meaning given in clause 13.2(a).

Tag Along Option has the meaning given in clause 13.1(b).

Tag Proportion has the meaning given in clause 13.1(a).

Third Party has the meaning given in clause 12.1.

Title Document means any original, duplicate or counterpart certificate or document evidencing title or ownership of an asset including any contract note, entitlement notice, marked transfer or share certificate.

Transfer Payment means an amount equal to the Transfer Price multiplied by the number of Shares held by the Nominee Shareholder immediately prior to the Mandatory Transfer Completion Date.

Transfer Price means the final cash price offered per Nitro Share by Technology Growth Capital LLC in the Potentia Takeover.

Trustee means a Shareholder that is a trustee of a trust.

Vehicle means any unit trust, investment trust, investment company, limited partnership, general partnership, fund or other collective investment scheme, pension fund, insurance company or any body corporate or other entity, in each case, the business, operations or assets of which are managed or advised professionally for investment purposes.

1.2 Interpretation

In this deed, unless provided otherwise:

- (a) a reference to:
 - (i) the singular includes the plural and vice versa;
 - (ii) a gender includes all genders;

- (iii) a person includes an individual, corporation or other body corporate, partnership, trust, joint venture, unincorporated body, government agency or other entity, whether or not it is a separate legal entity;
- (iv) a clause, schedule or annexure is a reference to a clause, schedule or annexure of this deed;
- (v) this deed includes any schedule or annexure to it;
- (vi) a party includes that party's successors, permitted substitutes and permitted assigns;
- (vii) dollars or \$ is a reference to Australian dollars;
- (viii) this deed or another document includes that document as amended, supplemented, novated or replaced from time to time;
- (ix) legislation or a provision of legislation includes all regulations, orders or instruments issued under that legislation or provision and any modification, consolidation, amendment, re-enactment, replacement or codification of it;
- (x) subsidiary and holding company has the same meaning as in the Corporations Act;
- (xi) a day, month, quarter or year means a calendar day, calendar month, calendar quarter or calendar year respectively;
- (xii) time is to the time in Sydney, Australia; and
- (xiii) writing includes any method of representing or reproducing words, figures, drawings or symbols in a visible or tangible form (and includes communication by email);
- (b) where a word or expression is defined or given meaning, another grammatical form has a corresponding meaning;
- (c) any recital, heading or table of contents is for convenience only and does not affect the interpretation of this deed;
- (d) a provision of this deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this deed or the inclusion of the provision in this deed;
- (e) where an act would be required to be done, or a time limit or period would expire, on a day which is not a Business Day, the act must be done, or the limit or period will expire, on the following Business Day;
- (f) if a period of time is specified from or after a given day, the period is to be calculated exclusive of that day;
- (g) any phrase introduced by the terms "**including**", "**include**", "**in particular**" or any similar expression must be construed as illustrative and will not limit the sense of the words preceding those terms; and

- (h) references to "the parties" are to the parties to this deed and include their respective permitted successors in title and permitted assignees.

2 Capital structure and effect

2.1 Initial shareholding

- (a) As at the date of this deed, the Potentia Shareholders hold the Shares set out opposite their names in Schedule 1.
- (b) The parties acknowledge that the initial holdings of the Potentia Shareholders may change and that there may be additional Affiliates of the Potentia Shareholders that receive transfers of Shares from other Potentia Shareholders. The Potentia Shareholders will notify each other Shareholder of the details of the relevant Shares and any such additional entity. Any additional entity must sign a Deed of Accession to this deed and each party agrees that with effect from the date of the Deed of Accession it will be bound by this deed and have rights under this deed as if that entity were named as a party to this deed as a "Potentia Shareholder".

3 Potentia Shareholders

- (a) The parties acknowledge and agree that when this deed provides that any action, power or decision may be performed, any notice may or must be given by or to, or any consent may be given by, the Potentia Shareholders or similar expressions:
- (i) then that action power or decision may be performed by, that notice may be given by or to and that consent may be given by, the Potentia Shareholders' Representative for and on behalf of all Potentia Shareholders; and
 - (ii) the Shareholders (other than the Potentia Shareholders) may deal solely with the Potentia Shareholders' Representative and may rely on the exercise, decision, action, notice, instruction or consent of the Potentia Shareholders' Representative in relation to any such matters as having been given on behalf of all the Potentia Shareholders.
- (b) The Potentia Shareholders agree to ratify and be bound by all lawful acts and omissions of the Potentia Shareholders' Representative in exercising its rights and performing its obligations under this deed.

4 Board

4.1 Responsibility of the Board

The Board is responsible for the overall direction and management of the Company Group and formulation of the policies to be applied to the Business.

4.2 Maximum number of Directors

The number of Directors must not be less than three and not more than ten (**Director Limit**) (excluding alternate directors), unless otherwise approved by the Potentia Shareholders.

4.3 **Appointment of Directors**

- (a) Subject to clause 4.2, each of the Potentia Shareholders have the right from time to time to appoint, remove or replace Directors to the Board subject to the total number of Directors on the Board not exceeding the Director Limit (each a **Potentia Director**) and as at the date of this deed:
- (i) Potentia Capital IA Pty Limited atf Potentia Capital Trust IA has chosen to appoint (if not already an officer of the Company) Andrew Gray as a Potentia Director to the Board;
 - (ii) Potentia Capital IB Pty Limited atf Potentia Capital Trust IB has chosen to appoint (if not already an officer of the Company) Timothy Reed as a Potentia Director to the Board; and
 - (iii) Potentia Capital IC Pty Limited atf Potentia Capital Trust IC has chosen to appoint (if not already an officer of the Company) Michael McNamara as a Potentia Director to the Board.
- (b) The Potentia Shareholders will otherwise notify any future exercise of the right set out in clause 4.3(a) via the Potentia Shareholders' Representative.
- (c) No other Shareholder has the right to appoint, remove or replace any Director.
- (d) At all relevant times the Board must consist of at least two Australian resident Directors.
- (e) Subject to clause 4.2 and 4.3(a)-(c), the Board is entitled to appoint, remove or replace, other executive or non-executive directors to the Board.

4.4 **Chairperson**

- (a) The Potentia Shareholders may from time to time appoint any Director as chairperson and as at the date of this deed have agreed to appoint Andrew Gray as the initial chairperson. The Potentia Shareholders will notify the exercise of this right via the Potentia Shareholders' Representative.
- (b) If the chairperson is absent or unwilling to act a chairperson, any Potentia Director that is present at that meeting may elect a Director to act as chairperson of the meeting.
- (c) The chairperson does not have a casting vote on a resolution of the Directors.

4.5 **Officer appointments**

- (a) The Potentia Shareholders have the right (but are not obliged) to appoint, remove and replace the CEO, CFO and such other officer of the Company and each Company Group Member from time to time. The Potentia Shareholders will notify the exercise of this right via the Potentia Shareholders' Representative.
- (b) Unless appointed as a Director, the CEO will be appointed as an observer to attend each meeting of the Board. The parties must ensure that the observer is given the same notice of meetings of the Board and access to relevant Board papers as are given to Directors. The observer is not entitled to vote at meetings of the Board (except in the observer's capacity as a Director).

4.6 Company Group Member boards

- (a) The composition of the boards and committees of each other Company Group Member will be determined by the Board.
- (b) The parties agree the provisions of this clause 4 apply to the board of each other Company Group Member, with changes to those provisions reasonably required to make them apply to the Company Group Member on a consistent basis (unless any such Company Group Member is listed on a recognised stock exchange or incorporated or registered outside Australia, in which case it will not be a subsidiary or a Company Group Member for the purposes of this clause 4.6(b)).

4.7 Nominee Directors

Subject to the duties of each Director to the Company and the Shareholders at law (to the extent such duties cannot be modified by agreement), a Director may:

- (a) in performing any of his or her duties or exercising any power, right or discretion as a Director, take into account the interests of his or her appointor (in priority to the interests of any other Shareholder) and act on the wishes of his or her appointor; and
- (b) disclose to his or her appointor (and in the case of a Potentia Director, to the Potentia Shareholders and their respective Affiliates) any information obtained in his or her capacity as a Director.

4.8 Alternate Directors

- (a) Each Director may appoint an alternate to represent him or her at meetings of the Board. That person may be appointed by notice in writing to the Company signed by the appointor.
- (b) An alternate Director will be entitled to attend and vote at meetings of the Board and to be counted in determining whether a quorum is present, without the need for such alternate to be approved by the Board.

4.9 Directors' fees

- (a) Any entitlement to fees for acting as a Director will be determined by the Board from time to time.
- (b) The Company will, subject to the prior approval of the Board, reimburse the reasonable third party expenses of Directors incurred in attending Board meetings and other meetings or events attended on behalf of and at the request of the Company.

4.10 Observers

- (a) The Potentia Shareholders may invite and appoint additional persons to attend and be an observer at any meeting of directors of a Company Group Member.
- (b) An observer appointed under 4.10(a) is not a Director and has no right to vote on any matter put forward to a meeting of directors of a Company Group Member.

5 Board meetings

5.1 Quorum for Board meetings

- (a) The quorum for a meeting of the Board is at least two Directors (including at least one Potentia Director).
- (b) If a quorum is not present at a meeting of the Board within 30 minutes from the scheduled commencement time of the meeting, the meeting must be postponed to a date (and to the extent possible the same time and place) between two and five Business Days after the initial meeting or such other time and place that is agreed in writing between the Directors.
- (c) If a quorum is not present at the scheduled commencement time of the reconvened meeting, the quorum will be the Directors present (including at least one Potentia Director).

5.2 Voting at Board meetings

Each Director is entitled to one vote on a resolution of Directors.

5.3 Board Resolutions

All resolutions at meetings of the Directors must be decided by a simple majority of votes.

5.4 Notice of Board Meetings

Unless all the Directors agree otherwise (including retrospectively):

- (a) each Director must receive at least two days' notice of a meeting; and
- (b) the Board cannot pass a resolution unless notice of the subject of that resolution was included in the notice of meeting.

5.5 Conduct of meetings of Directors

Meetings of the Directors may, at the request of any Director, be held by conference telephone or similar equipment, so long as all of the participants can hear each other and such meetings will be as effective as if the Directors had met in person.

5.6 Directors' and Officers' Insurance

- (a) The Company (and each other Company Group Member) must, to the extent permitted by law, take out and maintain at all times directors' and officers' liability insurance cover for the benefit of all Directors on terms (including that the relevant Director is named as a beneficiary) and with an insurer approved by the Board (or the relevant Company Group Member board of directors) acting reasonably.
- (b) To the extent permitted by law, the parties will procure that each Company Group Member (including the Company) will indemnify each of its Directors against all Claims in any way incurred by such Director:
 - (i) in his or her capacity as a Director; and
 - (ii) in connection with the lawful exercise of all or any of the Directors' powers and authorities conferred upon them,

provided that such indemnification will be enforceable even if the relevant Director has been or is entitled to be reimbursed or indemnified by his or her appointor.

- (c) Nothing in this clause 5.6 constitutes an agreement by the Company or any other Company Group Member to pay a premium which it is prohibited from paying under the Corporations Act or otherwise.
- (d) Prior to the commencement of their appointment, the Company will execute a deed of access, insurance and indemnity with each Director on terms no less favourable to the Director than those enjoyed by the other Directors at the time of the Director's appointment to the Board.

6 Shareholder meetings

6.1 Quorum

- (a) The quorum for a meeting of Shareholders two Shareholders of which one must be a Potentia Shareholder.
- (b) If a quorum is not present at a meeting of the Shareholders within 30 minutes from the scheduled commencement time of the meeting, the meeting must be postponed to a date (and to the extent possible the same time and place) between two and five Business Days after the initial meeting or such other time and place that is agreed in writing between the Shareholders.
- (c) If a quorum is not present at the scheduled commencement time of the reconvened meeting, the quorum for the meeting will be the presence of one Potentia Shareholder.

6.2 Decisions of Shareholders

- (a) Subject to any special majority required as a matter of law and any other express provision of this deed to the contrary, questions arising at a general meeting are to be decided by a simple majority of votes cast by Shareholders entitled to vote on the resolution and present in person (including under section 20D of the Corporations Act) or by proxy or attorney and voting and any such decision is for all purposes a decision of the Shareholders.
- (b) A Shareholder may have regard to and represent the interests of that Shareholder and may act on the wishes of that Shareholder when exercising any power to vote in relation to the Company.

6.3 Notice of general meetings

- (a) Subject to clause 6.3(b) and any other express provision of this deed to the contrary, unless the Shareholders consent in writing to shorter notice, at least 21 days' notice in writing must be given to all Shareholders entitled to receive notice of any general meeting of Shareholders including notice of all resolutions to be considered at that meeting.
- (b) In the case of a meeting which is adjourned under clause 6.1 above because a quorum is not present, each Shareholder must be given notice in writing of the adjourned meeting which notice must:
 - (i) be given promptly following the adjournment of the meeting; and
 - (ii) state the date, time and place of the adjourned meeting.

- (c) For the avoidance of doubt, the 21 days' notice requirement in clause 6.3(a) does not apply to the giving of a notice under this clause 6.3(b).

6.4 Chairperson

- (a) Subject to clause 6.4(b), the Potentia Directors present at a general meeting of the Shareholders must elect one of their number as chairperson of that meeting.
- (b) If at any general meeting of the Shareholders no Director is present, the Potentia Shareholders present must elect one of their number as chairperson of that meeting.

6.5 Conduct of meetings of Shareholders

Meetings of the Shareholders may, at the request of any Shareholder, be held by conference telephone or similar equipment, so long as all of the participants can hear each other and such meetings will be as effective as if the Shareholders had met in person.

7 Resolutions without a meeting

- (a) If the requisite number of Shareholders or Directors (as the case may be) sign a document which:
 - (i) was provided to all Shareholders or to all Directors (as the case may be); and
 - (ii) contains a statement to the effect that each of the signatories are in favour of a particular resolution set out in the document,

then for the purpose of this deed a resolution in those terms is to be taken as having been passed at a general meeting or Board meeting (as the case may be), which meeting is taken to have been held on the day and at the time at which the document was last signed.
- (b) For the purposes of this clause 7:
 - (i) a document is signed by the requisite number of:
 - (A) Shareholders, if it is signed, where required, in accordance with section 249A of the Corporations Act or otherwise if it is signed by such number of Shareholders as would be required to pass the relevant resolution in a general meeting; and
 - (B) Directors, if it is signed by Directors entitled to vote on the resolution who if they so voted on the resolution at a meeting of the Board, could pass the resolution (and so long as the quorum requirement in clause 5.1 is satisfied as if a meeting were held); and
 - (ii) two or more separate documents in identical terms, each of which is signed by one or more Shareholders or Directors (as the case may be), are to be taken to constitute one document.

8 Business and management of the Company

8.1 General policy determined by Directors

- (a) Subject to the Constitution and any decisions which are required by any applicable law or to be determined by Shareholders (pursuant to clause 8.2 or otherwise), management of the Company Group vests in the Board. Among other things, the Board will be responsible for:
 - (i) the overall direction and control of the management of the Company;
 - (ii) all business of the Company which does not form part of the day to day management of the Company;
 - (iii) the Company's management of the other Company Group Members; and
 - (iv) the formulation of the policies to be applied in the conduct of the Business.
- (b) The Board may by resolution and in accordance with the Constitution delegate decision-making to a committee of the Board.

8.2 Reserved matters

Despite any other provision of this deed, the Company and the Shareholders must not do or commit to do and must procure that no Company Group Member does or commits to do and the parties must use all voting rights and any other powers of control available to them (whether as a Shareholder, as a director, or through the control of a nominee director or otherwise) to procure that the Company does not do, or commit to do, and no Company Group Member does or commits to do, a thing listed in Schedule 2 without the approval of Non-Potentia Shareholders (if any) holding a majority of the Shares held by Non-Potentia Shareholders.

8.3 Dividends

- (a) Subject to the Corporations Act, a decision to pay and the amount of any dividend will be at the sole discretion of the Board, subject to retention of such reasonable and proper reserves for working capital requirements, possible future acquisitions, capital expenditure, debt amortisation or other actual or contingent liabilities or commitments of the Company Group as the Board considers reasonably appropriate.
- (b) Each Shareholder (as at the relevant record date) will be entitled to receive its Relevant Proportion of any dividend declared by the Board.

9 Audit and reporting obligations

9.1 Information generally

- (a) The Company Group must maintain books and records as required by law.
- (b) Each Director must at all times be given reasonable access to:
 - (i) inspect the assets of the Company;
 - (ii) inspect and take copies of documents relating to the Business, including the accounts of the Company; and

- (iii) discuss the affairs, finances and accounts of the Company with its officers, employees, agents, representatives or contractors and the Auditor.
- (c) Each Director may disclose all information (confidential or otherwise) about the affairs, finances and accounts of the Company to Shareholder appointing him or her.

9.2 **Information to Potentia Shareholders**

The Company must procure that each Company Group Member:

- (a) promptly deliver to, or as directed by, the Potentia Shareholders reports and such financial and other information relating to the Company Group as a Potentia Shareholder may request, including any information required by financiers or prospective financiers of the Company or any other Company Group Member;
- (b) provide to each Potentia Shareholder, upon request, full access to:
 - (i) inspect and take copies of documents relating to the Business or the Company or any other Company Group Member; and
 - (ii) discuss the affairs, finances and accounts of the Company Group (including the annual budget and strategy) with the Company's officers, employees, agents, representative, consultants and the Auditor; and
- (c) notwithstanding clauses 9.2(a) and (b), promptly deliver to the Potentia Shareholders quarterly information prepared which contains key financial and performance metrics relating to the Company Group.

9.3 **Audit**

The Company must ensure that the accounts of the Company Group are audited annually by the Auditor.

9.4 **Confidentiality**

Any information provided to the Directors or the Shareholders under this clause 9 or otherwise is provided subject to clause 19.

10 **Issues of New Shares**

10.1 **No obligation**

No Shareholder will be obliged to provide any funds of any nature whatsoever to or on behalf of any Company Group Member, whether by way of a loan or subscription for Shares, provide any form of financial accommodation to or on behalf of any Company Group Member, or guarantee or secure the obligations of any Company Group Member.

10.2 **Issue of New Shares**

Subject to clause 11.2 and compliance with all applicable laws, the Board may resolve to issue new Shares (or any rights to be allotted or issued, or to subscribe for, Shares) (**New Shares**) to any person after the date of this deed, provided that it must first comply with this clause 10.

10.3 **Contents of Issue Notice**

If the Company proposes to issue New Shares, it must serve a notice (**Issue Notice**) on each Shareholder (other than the Nominee Shareholder) specifying the:

- (a) **(issue price)** the issue price per New Share or the manner in which the issue price is proposed to be calculated or determined;
- (b) **(total number)** the total number of New Shares to be issued and the number(s) of each class of New Shares to be issued;
- (c) **(acceptance period)** the date by which a Shareholder must give the Company written notice exercising its rights to make an offer to subscribe for New Shares, which date must not be less than 10 Business Days after the date of the Issue Notice (**Initial Acceptance Period**);
- (d) **(completion timing)** the date on which subscription funds for the New Shares must be paid to the Company, which date must not be less than 10 Business Days after the end of the Initial Acceptance Period;
- (e) **(other terms)** if the Shares are not Ordinary Shares or Preference Shares, the other terms of issue of the New Shares; and
- (f) **(Relevant Proportions)** if some or all of the New Shares will be:
 - (i) Ordinary Shares, the number of New Shares which constitutes the Shareholder's Ordinary Share Percentage of those Ordinary Shares; and/or
 - (ii) any other class of Shares, the number of New Shares for which the Shareholder would need to subscribe in order to maintain the Shareholder's existing Relevant Proportion (after accounting for any Ordinary Shares to be issued).

10.4 Notice by Shareholder

A Shareholder may exercise its right to make an offer to subscribe for New Shares by notifying the Company in writing, by no later than the end of the Initial Acceptance Period, of the number of New Shares which it offers to subscribe for (which may equal to, or more or less than, the number of each relevant class of Shares specified in the Issue Notice under clause 10.3(f)).

10.5 Failure to give notice

If a Shareholder fails to give the notice referred to in clause 10.4 by the end of the Initial Acceptance Period, the Shareholder will cease to have any right to offer to subscribe for the New Shares, unless the Company (with Board approval) otherwise agrees.

10.6 Issue

Subject to compliance with clause 11.2, if a Shareholder exercises its right to offer to subscribe for New Shares under this clause 10, the Company must, subject to receipt of the relevant subscription amount and compliance with this clause 10, issue to that Shareholder the number of New Shares allocated to that Shareholder in accordance with clause 10.8.

10.7 Nominated Affiliate

Subject to compliance with clauses 11.2 and 10.12, the Potentia Shareholders may nominate an Affiliate and a Non-Potentia Shareholder may nominate a person who is, or qualifies as, an Affiliate of the Non-Potentia Shareholder (**Nominated Affiliate**) to exercise its right to make an offer to subscribe for New Shares under this clause 10, and the Company must, subject to receipt of the relevant subscription amount and compliance with this clause 10, issue to the

Nominated Affiliate the number of New Shares allocated to the Shareholder in accordance with clause 10.8.

10.8 Allocation

- (a) If the Company receives offers under clause 10.4 to subscribe for:
 - (i) equal to or less than the total number of New Shares referred to in the Issue Notice, the Company must issue to each Shareholder who has made an offer under clause 10.4, the number of New Shares which the Shareholder has offered to subscribe for; or
 - (ii) more New Shares than the total number of New Shares referred to in the Issue Notice then, subject to clause 10.9(b), each Shareholder who has made an offer under clause 10.4 is entitled to subscribe for the lesser of the number(s) of its Relevant Proportion and the number(s) of New Shares for which it has offered to subscribe.
- (b) Any remaining New Shares that have not been allocated after the application of clause 10.8(a) must be allocated on a pro rata basis among those Shareholders (by reference to their Relevant Proportion), that offered to subscribe for a greater number of New Shares.
- (c) No allocation under clause 10.8(a) or clause 10.8(b) may exceed the number(s) of New Shares which any Shareholder has offered to subscribe under clause 10.4 (and the Company must reapply clauses 10.8(a) and clause 10.8(b) in respect of the then remaining New Shares until all the New Shares that the Shareholders offered to subscribe for under clause 10.4 are allocated).

10.9 Notice of allocation of New Shares

- (a) As soon as reasonably practicable after the determination of the entitlements of each Shareholder under clause 10.8, the Company must give each Shareholder who has made an offer under clause 10.4 a notice setting out the number of New Shares that the Shareholder has been allocated in accordance with this clause 10.
- (b) Following receipt of the notice referred to in clause 10.9(a):
 - (i) each Shareholder (or their Nominated Affiliate) must pay to the Company the subscription funds for the New Shares which the Shareholder has been allocated, on or before the date set out in the Issue Notice (or such other date as is agreed between the Shareholder and the Company (with Board approval)); and
 - (ii) subject to the receipt of the subscription funds referred to in clause 10.9(b)(i), the Company must issue the relevant New Shares and certificates evidencing title to the New Shares to the Shareholder (or its Nominated Affiliate, as applicable) and update all relevant registers.

10.10 Failure to complete subscription for New Shares

If New Shares are allocated to a Shareholder or its Nominated Affiliate under this clause 10 but:

- (a) the Shareholder or its Nominated Affiliate, as applicable, breaches any of its obligations in connection with its subscription for the relevant New Shares and that

breach is not remediable or is not remedied within two Business Days' notice from the Company (or any later date agreed by the Board and the Shareholder); or

- (b) the relevant New Shares cannot be issued to the Shareholder or their Nominated Affiliate, as applicable, due to the application of clause 10.12 or otherwise,

the Company may issue the New Shares allocated to the Shareholder to any person determined by the Board at the time and on the terms the Board determines.

10.11 Issue to other persons

- (a) If a Shareholder does not participate and subscribe up to its full entitlement (including those Shares offered under clause 10.8(b)), the Potentia Shareholders may elect to take up the balance of Shares to which that Shareholder was entitled.
- (b) If the Potentia Shareholders do not elect to take up the balance of Shares under clause 10.11, the Company may issue any New Shares that are not subscribed for by the Shareholders in accordance with this clause 10 to any person determined by the Board within 180 days of the date on which the Company sends notices to the Shareholders under clause 10.9 (or, if no such notices will be sent as none of the Shareholders have offered to subscribe for any New Shares, 180 days from last day of the Initial Acceptance Period) for an issue price per New Share of not less than 90% of the relevant price specified in the Issue Notice (or as would have been calculated in accordance with the method of calculation specified in the Issue Notice). Subject to clause 10.14, if the Company does not issue the New Shares within that period, the Company may not issue the New Shares without first complying again with clauses 10.1 to 10.10.

10.12 No more than 50 members

Despite any other provision of this deed, except with approval of the Potentia Shareholders or in connection with an IPO:

- (a) the Company must not issue Shares to a person who is not a Shareholder; and
- (b) no party may Dispose of any Shares to a person who is not a Shareholder,

if that issue or Disposal of Shares would result in there being more than 50 Shareholders (calculated assuming that at the time of that issue or Disposal of Shares, all securities convertible into Shares or another class of securities (other than from a class of Ordinary Shares into another class of Ordinary Shares) have been converted into Shares by their holders).

10.13 No requirement to prepare disclosure document

- (a) Any person's rights to be offered Shares, to subscribe for or transfer or otherwise Dispose of Shares under this deed (whether under this clause 10 or otherwise) are subject to those rights not requiring a Company Group or the Potentia Shareholders to issue a disclosure document (including a prospectus) or a product disclosure statement, undertake any registration or filing with any Governmental Agency or take any comparable action, whether under Chapter 6D or Chapter 7 of the Corporations Act or any comparable legislation in any other jurisdiction, unless the Board determines otherwise.
- (b) Neither the Company nor any other party will be in breach of this deed if it fails to offer or issue any Shares to any person, or give any notice which would constitute

an offer of any Shares to any person, in circumstances where such offer or issue of Shares would require the taking of any action described in this clause 10.12.

10.14 **Excluded issues**

Clauses 10.1 to 10.10 do not apply to:

- (a) **consent:** an issue of Shares to which the Potentia Shareholders and Non-Potentia Shareholders consent;
- (b) **acquisitions:** an issue of Shares as non-cash consideration for an acquisition of a company, business or assets by any Company Group Member, as approved by the Board from time to time;
- (c) **Management:** an issue of Shares to an officer, employee or contractor of a Company Group Member in connection with any Company Group management or employee incentive arrangements (including share and option plans) as approved by the Board from time to time;
- (d) **reorganisation or reconstruction:** an issue of Shares under a Reorganisation Event, provided that the Reorganisation Event does not dilute any Shareholders' interests in Shares or require a Shareholder to provide any consideration;
- (e) **Preference Shares:** Ordinary Shares issued to a Shareholder upon conversion of Preference Shares;
- (f) **debt financiers:** a provider of debt finance (or any agent, trustee or nominee of or for any such provider) as part of any genuine debt finance provided to the Company Group or any Company Group Member (including any restructuring of existing debt finance);
- (g) **IPO:** an issue of securities in an IPO;
- (h) **Offer related issuances:** the issue of Shares:
 - (i) to the Potentia Shareholders to provide funding to:
 - (A) pay for transaction costs incurred by or on behalf of the Potentia Shareholders in connection with the Potentia Takeover up to \$12 million; and
 - (B) finance the payment of the cash consideration payable under the Potentia Takeover to Nitro Shareholders or repay the debts of Nitro prior to completion of the Potentia Takeover; or
 - (ii) pursuant to the Potentia Takeover in consideration for the transfer of Nitro Shares to a Company Group Member; and
- (i) **emergency funding:** an issue of Shares to the Potentia Shareholders (on a pro rata basis) where the Board determines (acting reasonably) that an injection of funds:
 - (i) is appropriate in order to ensure that a Company Group Member does not breach (or ceases to breach) a covenant or condition of its external finance facilities;
 - (ii) is otherwise required by its external financiers; or

- (iii) is necessary to ensure that a Company Group Member does not become insolvent,

provided that, within 30 Business Days after such injection of funds, those Shareholders who did not participate in such injection will be given the opportunity to subscribe for Shares at the same issue price to obtain the same proportion of Shares (based on their Relevant Proportion immediately prior to the injection of funds, but excluding any Shares under a management equity plan) and each such Shareholder must be given a reasonable time to accept such an offer.

10.15 No obligation

No Shareholder is under any obligation to provide any funds, financial accommodation, guarantee or other similar commitment or comfort in relation to any Company Group Member.

10.16 Aggregation for Potentia Shareholders

Despite any other provision of this deed, if there is more than one Potentia Shareholder, the number of Shares allocated to the Potentia Shareholders and the amount that they may invest will be aggregated for the purpose of all calculations under this clause 10 and the Potentia Shareholders' Representative may allocate that amount and the number of Shares amongst the Potentia Shareholders as it may determine.

10.17 Overriding restrictions

Despite any other provision of this deed:

- (a) any person's rights to be offered Shares and to subscribe for Shares are subject to those rights not requiring the Company to issue a disclosure document or a product disclosure statement under Chapter 6D or Chapter 7 respectively of the Corporations Act;
- (b) if a Shareholder is in a jurisdiction outside Australia and the Shareholder is not a United States person (as defined by Section 7701(a)(30) of the United States Internal Revenue Code of 1986, as amended), the Shareholder is a person to whom an offer and issue of Shares may be made without registration, lodgement or approval of a formal disclosure document or other filing in accordance with laws of that jurisdiction; and
- (c) if a Shareholder is a United States person, the Shareholder is an "Accredited Investor" as such term is defined in Rule 501(a) of Regulation D of the Securities and Exchange Commission promulgated pursuant to the U.S. Securities Act or is subscribing for the Shares in an offshore transaction in reliance upon the exemption from registration provided by Regulation S promulgated pursuant to the U.S. Securities Act.

10.18 Conversion of Shares

Subject to compliance with the Corporations Act and other applicable laws, the conversion of any Share into any other class of Share will not constitute a cancellation, redemption or termination of the Share or the issue, allotment or creation of new Shares, but will have the

effect of varying the status of, and the rights attaching to, the Share so that it becomes a Share of the class into which it converts.

10.19 Calculation of fair market value of 'Conversion Securities'

For the purpose of determining the fair market value of the 'Conversion Securities' (as that term is defined in the Constitution) for the purpose of clause 10.2 of the Constitution, the fair market value shall be determined in good faith by the Board as at the 'Conversion Date' (as that term is defined in the Constitution).

11 Disposal of Shares

11.1 Restriction on Disposal

A Shareholder (other than the Potentia Shareholders or their transferees) may not Dispose of any Shares, except:

- (a) subject to compliance with other expressly applicable provisions of this deed, to a Permitted Transferee; or
- (b) as permitted or required under:
 - (i) Clause 11.4 (Disposals);
 - (ii) Clause 12 (Drag along rights);
 - (iii) Clause 13 (Tag along rights);
 - (iv) Clause 14 (Exit);
 - (v) Clause 15 (Event of Default);
 - (vi) Clause 16 (Nominee Shareholder); or
 - (vii) Clause 17 (Custodian Arrangements).
- (c) Each Shareholder must take all such actions as they are permitted to do by law so that any purported Disposal which does not comply with this deed will be of no force and effect.

11.2 Accession by new Shareholders

- (a) Despite any other provision of this deed, a Shareholder must not Dispose of Shares to any person other than another Shareholder, and no person who is not already a party to his document can become a holder of Shares, unless the person executes a Deed of Accession (or has a Deed of Accession executed on that person's behalf by its attorney) agreeing to be bound by this deed and any other document required by the Company or the Potentia Shareholders.
- (b) Subject to clause 11.2(c), each party agrees that each person who executes a Deed of Accession (or has had a Deed of Accession executed on that person's behalf by its attorney) which is accepted by the Company (in the case of a deed poll) or executed by the parties to this deed or their attorney (in the case of an inter partes deed):
 - (i) gives the warranties set out in clauses 21.1 and 21.2;

(ii) if entering into this deed in the capacity of a trustee of a trust, gives the warranties set out in clause 21.3; and

(iii) is bound by this deed, and has rights under this deed,

with effect from the date of the registration of the issue or transfer (as applicable) of Shares to the relevant Shareholder.

(c) A person who executes a Deed of Accession as a transferee of any Shares will not be liable under this deed for any breach of the Disposing party that occurred before the date of the transfer, or for any liability under this deed that was incurred by the Disposing party before the date of the transfer.

11.3 Refusal to register

(a) The Company must refuse to register the transfer of any Shares in respect of which this clause 11 has not been complied with or the transfer of which would not comply with this clause 11.

(b) Otherwise, subject to the payment of any applicable stamp duty, the Board must not refuse to register a transfer that complies with this deed.

11.4 Disposals with consent of Potentia Shareholders

(a) Subject to clause 11.2, a Non-Potentia Shareholder may Dispose of Shares with the prior written approval of the Potentia Shareholders.

(b) If Shares are Disposed of in accordance with clause 11.4(a), and at any time after that Disposal it becomes known that the Non-Potentia Shareholder obtained that approval by misleading the Potentia Shareholders, or that any conditions attached to the approval by the Potentia Shareholders are not satisfied (or cease to be satisfied) according to their terms, that transferee must within five Business Days transfer the relevant Shares to the original transferor or to such other person as the Potentia Shareholders may direct in writing.

11.5 Deemed release

Despite any other provision of this deed, on completion of any sale or other Disposal of Shares by any Non-Potentia Shareholder, after which the relevant Non-Potentia Shareholder will no longer hold any Shares, the Company, the Potentia Shareholders and the other Non-Potentia Shareholders will be deemed to be unconditionally released from all Liabilities to that Shareholder and any other Claims by that Shareholder of any nature whatsoever, actual or contingent, in respect of any prior breach by the Company, any Potentia Shareholder or any other Non-Potentia Shareholder of any of their respective obligations under this deed (whether that Liability or claim is known at the relevant time or not).

11.6 Related parties

(a) If a Non-Potentia Shareholder Disposes of any Shares to a Permitted Transferee or under clause 11.4, or purports to Dispose of any Shares other than in compliance with this deed, that Non-Potentia Shareholder remains liable in respect of all covenants, warranties, undertakings and obligations given by it under this deed (including in respect of those Shares).

(b) Each Non-Potentia Shareholder who has any Permitted Transferees must ensure that each of those persons comply with all of its obligations under this deed.

12 Drag along rights

12.1 Drag Along Option

If the Potentia Shareholders (in this clause 12 referred to as the **Selling Shareholders**) propose to Dispose some or all of their Shares in one or more transactions and those Shares to any person or persons other than an existing Shareholder or a Permitted Transferee of an existing Shareholder (**Third Party**) under a bona fide offer; whether such transfer is to be structured as one or a series of related transactions, then the Selling Shareholder has the option to require each Non-Potentia Shareholder to transfer to the Third Party the same proportion of Shares held by that Non-Potentia Shareholder as are being sold by the Selling Shareholders (**Drag Proportion**) in accordance with this clause 12 (the **Drag Along Option**).

12.2 Exercise of Drag Along Option

- (a) The Selling Shareholder may exercise its Drag Along Option by serving a notice (the **Drag Along Notice**), signed by the Selling Shareholder, on the Company and the Non-Potentia Shareholders stating that the Selling Shareholder is exercising its Drag Along Option and specifying:
 - (i) the name of the Third Party or IPO Sale Co (as applicable);
 - (ii) the estimated sale price or other consideration per Share (for each class or type of Share) or the means by which the price or other consideration will be calculated;
 - (iii) the date on which the sale by the Selling Shareholder of all of the Shares to the Third Party or IPO Sale Co (as applicable) is proposed to be completed;
 - (iv) the Drag Proportion; and
 - (v) any other material terms of the proposed transfer of the Shares.
- (b) A Drag Along Notice may be revoked at any time.
- (c) A Drag Along Notice and all obligations under it will lapse if for any reason the Third Party or IPO Sale Co (as applicable) notifies the Selling Shareholder that the Third Party or IPO Sale Co (as applicable) does not wish to purchase all of the relevant Shares.
- (d) Subject to clause 12.2(c), each Non-Potentia Shareholder must sell the Drag Proportion of its Shares in each class to the Third Party or the IPO Sale Co (as applicable) on the terms set out in the Drag Along Notice (as amended by any changes to such terms and conditions which are notified by the Selling Shareholder to the Non-Potentia Shareholders after the Drag Along Notice).
- (e) The Selling Shareholder must ensure that the other terms and conditions for the Disposal of the Shares of the Selling Shareholder and the Shares of the Shareholders are substantially the same except to the extent reasonably determined by the Selling Shareholder to be necessary or appropriate in order to address differences in the terms of issue of and rights attaching to the relevant Shares and legal, regulatory, taxation or other relevant differences in the character or circumstances of the Selling Shareholder and Shareholders.

12.3 Representations and warranties

The Selling Shareholder may require the Non-Potentia Shareholders to represent and warrant to the Third Party in respect of its Drag Along Option that each of the following statements is true and accurate as at the date of completion:

- (a) it is validly existing under the laws of its place of incorporation or formation and has full corporate power and legal authority to enter into the relevant sale document and to sell the Shares to the Third Party;
- (b) that:
 - (i) in the case of the Custodian, it is the legal owner of the Shares;
 - (ii) in the case of a Rollover Shareholder, it is the beneficial owner of the Shares;
 - (iii) in the case of a Non-Potentia Shareholder who holds shares in a capacity other than as Custodian or a Rollover Shareholder, that it is the legal and beneficial owner of the Shares;
- (c) the Shares have been validly allotted and issued and is fully paid; and
- (d) on completion, the Third Party will acquire full legal and beneficial ownership of the Shares free from all Security Interests (except those set out in this deed) subject only to the Third Party complying with the terms of the relevant sale document, the payment of any duties by the Third Party and the registration of the Dispose of the Shares in the register of Shareholders of the Company.

12.4 Restrictive covenants

Despite any other provision of this deed, a Shareholder is not required to agree to any restrictive covenants in connection with the Drag Along Option (including, without limitation, any covenant not to compete or covenant not to solicit customers, employees or suppliers of any party to the proposed transaction) or any release of Claims other than a release in customary form of claims arising solely in such Shareholder's capacity as a shareholder of the Company.

12.5 Completion

- (a) Completion of the transfer of each Shareholder's Shares under clause 12.2(d) will take place on the date on which the Selling Shareholder completes the sale of its Shares to the Third Party or IPO Sale Co (as applicable) or such other date as is agreed by the Selling Shareholder, the Third Party or IPO Sale Co (as applicable) and the relevant Shareholder.
- (b) On completion, each Shareholder must execute and deliver all share transfers and provide all Title Documents necessary to transfer the Shareholder's Shares.

12.6 Conversion

- (a) Subject to clause 12.6(b), if, at the time of the giving of a Drag Along Notice, any Shareholder holds any options, convertible securities or rights which upon exercise, conversion, subdivision or consolidation become Shares of a given class, and these options, securities or rights are exercised, converted, subdivided or consolidated on or before completion of the transaction the subject of the Drag Along Notice, each such person will be deemed for the purpose of this clause 12 to have been holding

the resulting Shares at the time of the Drag Along Notice and will be bound by the provisions of this clause 12 in respect of those Shares as if they had held all such Shares at the time of the Drag Along Notice.

- (b) The terms of issue of any options, convertible securities or rights referred to in clause 12.6(a) may contain provisions regulating how those options, securities or rights (and any resulting Shares) are to be dealt with in a transaction to which this clause 12 applies. If there are such provisions, then the parties must take all steps necessary to give effect to them (and those provisions will prevail over any inconsistent aspect of this clause 12, to the extent of that inconsistency).

12.7 Power of attorney

Each Non-Potentia Shareholder appoints the Company as its attorney in accordance with clause 18 on default by it of performance of its obligations under this clause 12.

12.8 Costs in relation to drag along rights

If the Drag Along Option is exercised and a Non-Potentia Shareholder's Shares are transferred pursuant to this clause 12 in connection with that Drag Along Option, that Non-Potentia Shareholder must reimburse the Selling Shareholders, or enter into such arrangements as the Selling Shareholders may reasonably request to give effect to a reimbursement of, the Non-Potentia Shareholder's Relevant Proportion of the Sale Costs.

12.9 New Shareholders

If any person (excluding the Third Party or IPO Sale Co the subject of the Drag Along Notice) becomes a Shareholder after a Drag Along Notice is issued:

- (a) a Drag Along Notice is treated as having been served upon the new Shareholder on the same terms as the previous Drag Along Notice;
- (b) each new Shareholder is bound to transfer all of the Shares acquired by it to the Third Party or IPO Sale Co the subject of the Drag Along Notice; and
- (c) this clause 12 applies (with all relevant changes) to the new Shareholder.

13 Tag along rights

13.1 Tag Along Option

- (a) If the Potentia Shareholders (in this clause 13 referred to as the **Selling Shareholder**) wishes to Dispose any of its Shares to a Third Party under a bona fide offer (whether such transfer is to be structured as one or a series of related transactions), other than in an IPO, and the Selling Shareholder has not given a Drag Along Notice or the Drag Along Notice has been revoked, then the Selling Shareholder must give each Non-Potentia Shareholder a notice (the **Notice of Sale**) specifying:
 - (i) the name of the Third Party;
 - (ii) the estimated sale price or other consideration payable for each Share or the means by which the price or other consideration will be calculated;
 - (iii) the date on which the transfer to the Third Party is proposed to be completed;

- (iv) the number of Shares that the Selling Shareholder proposes to sell as a percentage of all of the Selling Shareholder's Shares (**Tag Proportion**); and
 - (v) any other material terms of the proposed transfer of Shares by the Selling Shareholder to the Third Party and, if applicable, any separate material terms which would apply to a transfer of Shares if the Tag Along Option is exercised.
- (b) Each Non-Potentia Shareholder who receives a Notice of Sale will have an option to require the Selling Shareholder to procure that the Third Party buy the Tag Proportion of Shares held by the relevant Non-Potentia Shareholder (the **Tag Along Option**) at the sale price and on the materially same terms as specified in the Notice of Sale (as amended by any changes to the terms and conditions notified by the Selling Shareholder to the Non-Potentia Shareholders after the Notice of Sale).

13.2 **Exercise of Tag Along Option**

- (a) During the Tag Along Exercise Period, any Non-Potentia Shareholder may exercise its Tag Along Option by giving a notice (the **Tag Along Notice**), signed by the Non-Potentia Shareholder, to the Company and the Selling Shareholder.
- (b) A Tag Along Notice is irrevocable.
- (c) Subject to clause 13.2(d), if the Selling Shareholder receives a Tag Along Notice, then the Selling Shareholder must:
 - (i) do all things reasonably required to procure the sale of all Shares referred to in the Tag Along Notice on the materially same terms as specified in the Notice of Sale (as amended by any changes to the terms and conditions notified by the Selling Shareholder to the Non-Potentia Shareholders after the Notice of Sale); and
 - (ii) not complete the proposed sale unless, at the same time, the proposed Third Party buyer offers to buy all Shares referred to in the Tag Along Notice.
- (d) The Selling Shareholder must ensure that the other terms and conditions for the Disposal of the Shares of the Selling Shareholder and the Non-Potentia Shareholders are substantially similar except to the extent reasonably determined by the Selling Shareholder to be necessary or appropriate in order to address differences in the terms of issue of and rights attaching to the relevant Shares and legal, regulatory, taxation or other relevant differences in the character or circumstances of the Selling Shareholder and Non-Potentia Shareholders.

13.3 **Conversion**

- (a) Subject to clause 13.3(b), if, at the time of the giving of a Notice of Sale, any Non-Potentia Shareholder holds any options, convertible securities or rights which upon exercise, conversion, subdivision or consolidation become Shares of a given class, and these options, securities or rights are exercised, converted, subdivided or consolidated on or before completion of the transaction the subject of the Notice of Sale, each such person will be deemed for the purpose of this clause 13 to have been holding the resulting Shares at the time of the Notice of Sale and will be bound

by the provisions of this clause 13 in respect of those Shares as if they had held all such Shares at the time of the Notice of Sale.

- (b) The terms of issue of any options, convertible securities or rights referred to in clause 13.3(a) may contain provisions regulating how those options, securities or rights (and any resulting Shares) are to be dealt with in a transaction to which this clause 13 applies. If there are such provisions, then the parties must take all steps necessary to give effect to them (and those provisions will prevail over any inconsistent aspect of this clause 13, to the extent of that inconsistency).

13.4 Representations and warranties

The Selling Shareholder may require each Non-Potentia Shareholder to represent and warrant to the Third Party in respect of its Tag Along Option that each of the following statements is true and accurate as at the date of completion:

- (a) it is validly existing under the laws of its place of incorporation or formation and has full corporate power and legal authority to enter into the relevant sale document and to sell its Shares to the Third Party;
- (b) that:
 - (i) in the case of the Custodian, it is the legal owner of the Shares;
 - (ii) in the case of a Rollover Shareholder, it is the beneficial owner of the Shares;
- (c) in the case of a Non-Potentia Shareholder who holds shares in a capacity other than as Custodian or a Rollover Shareholder, that it is the legal and beneficial owner of the Shares;
- (d) the Shares have been validly allotted and issued and is fully paid; and
- (e) on completion, the Third Party will acquire full legal and beneficial ownership of the Shares from all Security Interests (except those set out in this deed) subject only to the Third Party complying with the terms of the relevant sale document, the payment of any duties by the Third Party and the registration of the transfer of Shares in the register of Shareholders of the Company.

13.5 Restrictive covenants

Despite any other provision of this deed, a Shareholder is not required to agree to any restrictive covenants in connection with the Tag Along Option (including, without limitation, any covenant not to compete or covenant not to solicit customers, employees or suppliers of any party to the proposed transaction) or any release of Claims other than a release in customary form of claims arising solely in such Shareholder's capacity as a shareholder of the Company.

13.6 Power of attorney

Each Non-Potentia Shareholder appoints the Company as its attorney in accordance with clause 18 on default by it of performance of its obligations under this clause 13.

13.7 Completion of sale of Shares

- (a) Completion of the transfer of each Non-Potentia Shareholder's Shares under clause 13.2 will take place on the date on which the Selling Shareholder completes the sale of its Shares to a Third Party or such other date as is agreed by the Selling Shareholder and the Third Party.

- (b) On completion, each Non-Potentia Shareholder must execute and deliver all shares transfers and provide all Title Documents necessary to transfer the Shareholder's Shares.

13.8 Costs in relation to tag along rights

If the Tag Along Option is exercised and a Non-Potentia Shareholder's Shares are transferred pursuant to this clause 13 in connection with that Tag Along Option, that Non-Potentia Shareholder must reimburse the Selling Shareholders, or enter into such arrangements as those Selling Shareholders may reasonably request to give effect to a reimbursement of, the Shareholder's Relevant Proportion of the Sale Costs.

13.9 Tag Along Option does not apply to certain Disposals

For the avoidance of doubt, this clause 13 does not apply to the following Disposals of Shares:

- (a) in connection with an Exit under clause 14;
- (b) in connection with a Disposal of Shares to a Permitted Transferee in accordance with this deed.

14 Exit

14.1 Implementation of Exit proposal

- (a) If the Potentia Shareholders give notice of intention to proceed with an Exit, each Non-Potentia Shareholder must cooperate and use their best endeavours to do all acts, matters and things within its power to effect the Exit on the terms specified by the Potentia Shareholders, including in the case of an IPO:
 - (i) to dispose of some or all of the Non-Potentia Shareholder's Shares (to an IPO Sale Co, a newly incorporated sale vehicle or otherwise) and surrendering any Title Documents in respect of such Shares;
 - (ii) to allow the buy-back or purchase by the Company of some or all of the Shares including doing all things reasonably required by the Potentia Shareholders to give effect to the buy-back or purchase;
 - (iii) to exchange the Shares for similar Shares and/or convert the Shares into shares in any company which is reasonably proposed by the Potentia Shareholders to become (and following such exchange will become) the ultimate holding company of the Company Group;
 - (iv) entering into escrow arrangements in respect of the Shares for such period as the Potentia Shareholders consider to be necessary or appropriate; and
 - (v) agreeing to such amendments of this deed and the Constitution or the constitution of any of the other Company Group Member as the Potentia Shareholders reasonably require.
- (b) Without limiting clause 14.1(a), where this clause 14 applies, each Shareholder will fully cooperate with, assist and comply with all reasonable requests of the Potentia Shareholders, the Company and its Related Corporations and the other Shareholders and their respective financiers and external advisers in connection with any Exit, including by participating in any due diligence, disclosure, warranty verification or similar process which may be necessary or desirable in relation to the Exit and providing all information in their possession reasonably requested, in

relation to the business and affairs of the Company and its Related Corporations or otherwise, in connection with the Exit.

14.2 **Reimbursement of costs**

Subject to any restrictions in the Corporations Act or the Listing Rules, the Company must reimburse all reasonable costs and expenses incurred by each Shareholder in performing their obligations under this clause 14.

14.3 **Drag Along rights operate independently**

For the avoidance of doubt, nothing in this clause 14 limits a Potentia Shareholder's rights under clause 12 (or vice versa).

15 **Event of Default**

15.1 **Events of Default**

In this clause 15, **Event of Default** means in relation to a Non-Potentia Shareholder, whether or not it is within the control of that Non-Potentia Shareholder, if any of the following occurs or subsists in relation to the Non-Potentia Shareholder (the **defaulting party**):

- (a) **upstream change of control:** in the case of a Rollover Shareholder who is not an individual, a change occurs after the Rollover Shareholder's Admission Date such that (in the opinion of the Board, acting reasonably) a new person or persons directly or indirectly have the power to:
 - (i) direct the management or policies of the Rollover Shareholder; or
 - (ii) control the membership of the board of the Rollover Shareholder,

whether or not the power is legally binding or arises out of formal or informal arrangements (an **Upstream Change of Control**). An Upstream Change of Control will not be taken to have occurred where:

 - (iii) there is a transfer of securities to a Permitted Transferee;
 - (iv) there is a transfer with the prior written consent of the Potentia Shareholders; or
 - (v) the Rollover Shareholder is, or is controlled by, an institutional superannuation fund and the Upstream Change of Control results from a genuine merger of institutional superannuation funds;
- (b) **Disposal of Shares:** the defaulting party Disposes of, or purports to Dispose of, any of its Shares in breach of the Constitution or this deed;
- (c) **assignment:** the defaulting party makes or purports to make an assignment in breach of clause 25.6;
- (d) **material breach:**
 - (i) the defaulting party breaches any material obligation under this deed;
 - (ii) another party gives written notice of the breach to the party in default and to the Company; and

- (iii) the defaulting party does not remedy the breach within 10 Business Days after the date of the notice;
- (e) **Insolvency Event:** an Insolvency Event occurs in relation to the defaulting party; or
- (f) **change in law:** the defaulting party is prohibited from being a shareholder in the Company by a change in any law.

15.2 **Notice obligations**

If an Event of Default occurs in relation to a Non-Potentia Shareholder (**Defaulting Shareholder**):

- (a) the Defaulting Shareholder must immediately notify the Company and the Potentia Shareholders in writing; and
- (b) the Defaulting Shareholder has the obligations, and the Potentia Shareholders have the rights, contained in clause 15.3.

15.3 **Right to purchase Defaulting Shareholder's Shares**

- (a) If an Event of Default has occurred, the Potentia Shareholders have an option to purchase or procure the transfer, buy back or cancellation of the Defaulting Shareholder's Shares (**Sale Shares**) (or any combination thereof) at the lower of:
 - (i) market value of the Sale Shares determined in good faith by the Board as at the date the Event of Default first occurs; and
 - (ii) the aggregate issue price of the Sale Shares.
- (b) Upon receipt of a written notice from the Potentia Shareholders that it wishes to exercise its rights under clause 15.3(a), the Defaulting Shareholder must promptly, and otherwise within five Business Days:
 - (i) deliver to the Company its Title Documents for the Sale Shares being purchased, transferred, bought back or cancelled (to the extent not already held by the Company) or provide a separate written indemnity in respect of the loss or destruction of such Title Documents in a form acceptable to the Board; and
 - (ii) complete and execute such documents (including transfers), and take such other steps as the Company and the Potentia Shareholders deem necessary or desirable to give effect to the purchase, transfer, buy-back or cancellation (as applicable), including all things required under any applicable law (including under Div 2 of Part 2J.1 of the Corporations Act), to approve or otherwise give effect to the purchase, transfer, buy-back or cancellation.
- (c) Upon the exercise by the Potentia Shareholders' of their rights under this clause 15.3, without limiting clause 17, the Defaulting Shareholder is hereby deemed to appoint the Company as its agent for the purpose of effecting a sale of its Sale Shares pursuant to this clause 15.
- (d) Any exercise by the Potentia Shareholders of their rights under this clause 15.3 will not limit or affect any other rights or remedies available to it under this deed or otherwise.

15.4 Failure by Defaulting Shareholder to comply

In the Event of Default by the Defaulting Shareholder in relation to its obligation to sell its Sale Shares under clause 15.3:

- (a) the Potentia Shareholder, the Company and the Board (excluding any Director(s) appointed by the Defaulting Shareholder) may rely on the power of attorney granted by the Defaulting Shareholder under clause 17; and
- (b) if the default relates to the provision of Title Documents, the Defaulting Shareholder hereby indemnifies the Potentia Shareholders (as relevant) and the Company against any Claim or Loss suffered in relation to the non-provision of those Title Documents.

15.5 Aggregation for Potentia Shareholders

Despite any other provision of this clause 15, the Potentia Shareholders' Representative may allocate the amount and the number of Sale Shares amongst the Potentia Shareholders as it may determine.

16 Nominee Shareholder**16.1 Transfer of Nominee Shares to Potentia Shareholders**

- (a) Within 30 days of the Nominee Shareholder's Admission Date, the Nominee Shareholder must transfer all of its Shares (the **Nominee Shares**) to the Potentia Shareholders for the Transfer Payment and on and subject to the terms and conditions of this deed (**Mandatory Transfer**).
- (b) The Potentia Shareholders' Representative may allocate the number of Nominee Shares amongst the Potentia Shareholders as it may determine.
- (c) The Nominee Shareholder is hereby deemed to appoint the Company as its agent for the purpose of effecting the Mandatory Transfer under this clause 16.

16.2 Completion

- (a) Completion of the Mandatory Transfer will take place on a date agreed between the Nominee Shareholder and Potentia Shareholders' Representative, and must be a date that is no less than 15 days and no more than 30 days after the Nominee Shareholder's Admission Date (**Mandatory Transfer Completion Date**).
- (b) On the Mandatory Transfer Completion Date:
 - (i) the Potentia Shareholders must pay to the Nominee Shareholder the Transfer Payment in immediately available funds without any set off, deduction or withholding; and
 - (ii) the Nominee Shareholder must complete, execute and deliver all share transfers and provide all Title Documents to transfer the Nominee Shares to the Potentia Shareholders, and take such other steps as the Company and the Potentia Shareholders deem necessary or desirable to give effect to the Mandatory Transfer, including all things required under any applicable law.

17 Custodian Arrangements

17.1 Disposal to Custodian

- (a) If requested by the Company (with Board approval), a Rollover Shareholder must undertake a Custodian Transfer, including by Disposing of the Shares which it holds from time to time to the Custodian.
- (b) Each Rollover Shareholder must comply with the directions of the Company for the purposes of facilitating the Disposal of its Shares to the Custodian in accordance with this clause 17, including executing a CD Deed of Adherence.

17.2 Intended operation of this clause

- (a) The parties confirm that the principle to which this clause 17 is intended to give effect is that the voting, economic and other interests of a Rollover Shareholder under this deed and in respect of the Rollover Shareholder's holding of Shares should, assuming that the Custodian and Rollover Shareholder act in accordance with this deed and the Custodian Deed, be neither enhanced nor impaired as a consequence of appointing the Custodian as bare trustee in respect of that Rollover Shareholder's Shares.
- (b) Each party must take all actions within its power and authority, including giving relevant instructions to the Custodian and, in the case of a Rollover Shareholder, exercising its rights in its capacity as appointor of the Custodian as bare trustee for it, to give effect to the principle in clause 17.2(a).
- (c) Clauses 17.3 to 17.10 (inclusive) are to be interpreted subject to, and in a manner is consistent with, the principle in clause 17.2(a).
- (d) This clause 17 applies separately in relation to the Custodian in its capacity as bare trustee for each Rollover Shareholder.

17.3 Rollover Shareholder's rights and obligations

- (a) Each Rollover Shareholder will continue to have the benefit of, and be bound by, all the provisions of this deed which would have applied to the Rollover Shareholder by virtue of, or in relation to, that Rollover Shareholder's holding of its Beneficial Shares had it not transferred legal title to its Beneficial Shares to the Custodian (**Relevant Rights and Obligations**), subject to the terms of this deed and the Custodian Deed.
- (b) Notwithstanding clause 17.3(a), each Rollover Shareholder will be bound to this deed by:
 - (i) that Rollover Shareholder or an attorney of the Rollover Shareholder (including an attorney appointed under the Potentia Takeover) executing and delivering to the Company:
 - (A) in respect of a Rollover Shareholder that acquires an interest in the Beneficial Shares as a result of the Potentia Takeover, the form of election used by that person under the Potentia Takeover to receive those interests; or
 - (B) a Deed of Accession; or

- (ii) virtue of any provision of the Potentia Takeover which provides that by making an election to receive an interest in the Beneficial Shares as consideration under the Potentia Takeover, that person will be taken to have agreed to become a party to, and bound by, this deed.
- (c) The Relevant Rights and Obligations will so far as possible have application to the Custodian and the relevant Rollover Shareholder in the same way as they would have continued to apply to the Rollover Shareholder if it held legal title to its Beneficial Shares.
- (d) Each Rollover Shareholder undertakes to the Company that it will not:
 - (i) take any action, or omit to take any action (including the giving of any instruction to the Custodian or failing to give any instruction to the Custodian) which would breach its obligations under this deed;
 - (ii) fail to give, or delay in giving, any instruction to the Custodian which is required to enable the Rollover Shareholder or the Custodian to comply with their respective obligations under this deed or the Custodian Deed; or
 - (iii) give an instruction to the Custodian which has the effect of cancelling or superseding an instruction given on behalf of the Rollover Shareholder by an attorney acting on behalf of the Rollover Shareholder under clause 17.1.

17.4 Definitions

- (a) Where the context requires to give effect to clauses 17.2 and 17.3 and without limiting any other provision of this deed, including clause 17.4(b), any reference in this deed to a Rollover Shareholder is to be taken to also include a reference to the Custodian as bare trustee for that Rollover Shareholder.
- (b) For the purposes of any references in this deed to:
 - (i) Shares of, or held by, the Rollover Shareholder (or any comparable expression, including for the purposes of determining the Relevant Proportion), the Rollover Shareholder is to be regarded as holding legal title to its Beneficial Shares; and
 - (ii) the Rollover Shareholder taking an action in respect of any Shares, is taken to also include a reference to the Custodian taking that action as bare trustee for the Rollover Shareholder.
- (c) A Rollover Shareholder will continue to be a "Rollover Shareholder" for the purposes of this deed irrespective of whether legal title to all or any of the Rollover Shareholder's Shares is held by the Custodian.
- (d) Obligations under this deed or the Constitution on a Rollover Shareholder to exercise voting rights or take other actions as the registered holder of Shares are to be interpreted as obligations to ensure that the Custodian takes the relevant actions.
- (e) The Custodian is not itself to be regarded for the purposes of this deed as a Shareholder or otherwise as a holder of any Shares who has independent obligations in their capacity as such.

17.5 Voting and dividends

- (a) Instructions may be given by each Rollover Shareholder to the Custodian (as the person legally entitled to voting rights, dividends and distributions in respect of those Shares) in accordance with this deed and the Custodian Deed:
 - (i) in relation to voting, Disposals and other dealings in respect of the Rollover Shareholder's Beneficial Shares; and
 - (ii) in respect of the payment of dividends and distributions.
- (b) Each Rollover Shareholder directs the Company to pay dividends and distributions in respect of its Beneficial Shares as it directs in accordance with the Custodian Deed. This clause 17.5(b) does not affect the right of a Rollover Shareholder to change such a direction from time to time.

17.6 Disposals of Shares

- (a) References to a Disposal of Share(s) in this deed and the Constitution include a Disposal of a beneficial interest in Beneficial Shares and any Disposal of the legal title to those Shares by the Custodian (at the Rollover Shareholder's direction, or by the Company or another attorney on behalf of the Rollover Shareholder acting under power of attorney, or otherwise).
- (b) A Rollover Shareholder must not direct the Custodian to Dispose of, nor otherwise procure the Disposal of, legal or beneficial title to any of its Beneficial Shares to itself or any other person unless it would be entitled in accordance with this deed to Dispose of these Shares in that manner in the relevant circumstances if it held legal title to them.
- (c) Where this deed permits the Company to issue or any other party to transfer, sell or otherwise Dispose of Shares to any person, that provision includes permission to issue, transfer, sell or otherwise Dispose of Shares to the Custodian as bare trustee for the Rollover Shareholder.
- (d) A Rollover Shareholder may Dispose of Shares under clause 11.1 on the basis that the Custodian is directed to transfer beneficial title to the relevant Beneficial Shares to the transferee (that is, the Rollover Shareholder may Dispose of only the beneficial interest in its Beneficial Shares without a Disposal of legal title from the Custodian).

17.7 Additional Shares

- (a) If a Rollover Shareholder becomes entitled to receive any additional Shares, whether by way of issue or Disposal (and whether under this deed or otherwise), then unless the Board has approved another holding arrangement in relation to the relevant transaction, the issue or Disposal must be made in favour of the Custodian on the basis that the Shares are to be held by the Custodian as bare trustee for the Rollover Shareholder and will be Beneficial Shares of the Rollover Shareholder.
- (b) An offer to a Rollover Shareholder to participate in an issue of Shares or other transaction on the basis that legal title to the relevant Shares will be issued to the Custodian as bare trustee for the Rollover Shareholder will not be regarded for that reason alone as being on different terms from the terms offered to other Shareholders.

17.8 Notices

All notices or communications under this deed or the Custodian Deed which are provided to the Custodian in its capacity as bare trustee for a particular Rollover Shareholder must also be provided at the same time to the relevant Rollover Shareholder.

17.9 Liability of Custodian

Each party acknowledges that, subject to the terms of the Custodian Deed, the Custodian is obliged to act in accordance with the directions of the Rollover Shareholders in relation to their respective Beneficial Shares. Each party agrees that any breach of this deed or the Constitution which arises as a result of the Custodian complying with a direction given by a Rollover Shareholder (**Directed Breach**) is to be construed for all purposes as a breach by the relevant Rollover Shareholder for which the Rollover Shareholder is personally liable (including in accordance with the Custodian Deed) and not by the Custodian and without limiting the foregoing:

- (a) the Custodian is released from any Claim or Liability in respect of any Directed Breach; and
- (b) each party (other than the Custodian) covenants not to Claim, sue or take any action against the Custodian in respect of any Directed Breach.

17.10 Limitation of Custodian's liability

- (a) Each party acknowledges that the Custodian enters into this deed in its capacity as bare trustee of the Bare Trusts and in no other capacity.
- (b) Any Liability of the Custodian arising under or in connection with this deed is limited to, and can be enforced against the Custodian only to the extent to which it can be satisfied out of, the assets of the Bare Trust from which the Custodian is actually indemnified for the Liability or to the extent that under clause 12 of the Custodian Deed the Custodian is actually indemnified for the Liability. This limitation of the Custodian's Liability applies despite any other provision of this deed and extends to all Liabilities of the Custodian in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed or the Custodian Deed.
- (c) No party may sue the Custodian in any capacity other than as trustee of a Bare Trust, including seeking the appointment of a receiver (except in relation to property of a Bare Trust), a liquidator, an administrator, or any similar person to the Custodian nor may any party prove in any liquidation, administration or arrangement of or affecting the Custodian (except in relation to property of the relevant Bare Trust).
- (d) The provisions of this clause 17.10 do not apply to any Liability of the Custodian to the extent that it is not satisfied under the Custodian Deed or by operation of law or there is a reduction in the extent of the Custodian's indemnification out of the assets of the relevant Bare Trust, in each case as a result of the Custodian's fraud, negligence or breach of trust.
- (e) No attorney, agent, receiver or receiver and manager appointed in accordance with this deed has authority to act on behalf of the Custodian in a way which exposes the Custodian to any personal Liability.

18 Power of attorney

18.1 Appointment

Each Non-Potentia Shareholder, for valuable consideration hereby irrevocably appoints the Potentia Shareholders as its attorney to receive such notices, give consents and approvals, complete and execute such documents (whether under seal or not), attend meetings and vote on resolutions (whether with or without a meeting) and take such other steps for and on its behalf as the attorney thinks necessary or desirable to give effect to:

- (a) any of the transactions contemplated by clauses 11, 12, 13 (other than the giving of a Tag Along Notice), 14, 15 and 16; or
- (b) the terms of issue of any Shares.

18.2 Scope of attorney's powers

In respect of each appointment of an attorney under this deed:

- (a) the attorney may exercise its powers in the name of the appointor or in its own name and as the act of the appointor;
- (b) the attorney may exercise its powers even if the attorney benefits from the exercise of that power, or if such exercise may give rise to a conflict of interests or duties;
- (c) the appointor must ratify and confirm any act of the attorney in exercise of its powers;
- (d) on demand, the appointor must give to the attorney any power of attorney, instrument of transfer or other document as the attorney may require in connection with the attorney's appointment or exercise of its powers and authorities;
- (e) the appointor must not:
 - (i) issue, sign or execute, or permit to continue to operate, any power of attorney or other instrument that is inconsistent with some or all of the rights which the attorney has been appointed to exercise; or
 - (ii) give the attorney any direction or instruction in relation to the exercise of those rights;
- (f) the attorney's powers under the appointment are delegable and the attorney may, at any time, appoint or remove any substitute or delegate or sub-attorney; and
- (g) each appointor must indemnify the attorney against all Claims, demands, costs, charges, expenses, outgoings, losses and liabilities arising in any way in connection with the lawful exercise of all or any of the attorney's powers and authorities under that appointment.

18.3 Specific performance

Each Non-Potentia Shareholder acknowledges that damages may not be an adequate remedy if there is a breach or a potential breach by the Shareholder of its obligations under this clause 17 and if a breach by the Shareholder of its obligations under this clause 17 occurs, is threatened or in the opinion of the Potentia Shareholders or the Company is likely, the Potentia Shareholders and the Company are immediately entitled to apply for injunctive relief or for an order for specific performance.

19 Confidentiality and publicity

19.1 Confidentiality

Subject to clause 19.2, each party must not do, and must use its best endeavours to ensure that its auditor, officers, employees, agents or advisers do not do, any of the following:

- (a) disclose any Confidential Information;
- (b) use any Confidential Information in any manner:
 - (i) which may cause or be calculated to cause loss to the Company Group, another Shareholder or the other parties; or
 - (ii) other than for the purpose for which it was disclosed; or
- (c) make any public announcement or issue any press release regarding this deed or the transactions contemplated by it.

19.2 Permitted disclosure

A Shareholder may disclose, and may permit its auditor, officers, employees, agents and advisers to disclose, any Confidential Information:

- (a) **(consent)** with the prior written consent of the Potentia Shareholders;
- (b) **(fund)** in the case of the Potentia Shareholders, to the manager, trustee, custodian, nominee, general partner, limited partner, investor or prospective investor of or in that partnership, trust or fund, and any subsidiary or Related Corporation of that Shareholder;
- (c) **(financiers)** in the case of the Potentia Shareholders, to the party's actual or prospective (debt or equity) financiers and their advisers who have a legitimate need to know the Confidential Information and are bound by a duty of confidence in accordance with this clause 19;
- (d) **(professional advisers)** to the party's professional advisers and consultants who have a legitimate need to know the Confidential Information and are bound by a duty of confidence in accordance with this clause 19;
- (e) **(prospective purchaser)** in the case of the Potentia Shareholders, to a genuine prospective or potential purchaser (and their debt or equity financiers and legal advisers and the legal advisers of the potential purchaser's debt or equity financiers) or assignee in respect of the sale of any securities by a Shareholder or of all or a substantial part of the Business who have entered into reasonably satisfactory confidentiality arrangements to protect the confidentiality of the Confidential Information;
- (f) **(mandatory disclosure)** to the extent it is required to do so by law, a Governmental Agency or any reporting requirement to which it is subject under the terms of any trust deed, contract or other document in effect as at the date of this deed;
- (g) **(mandatory disclosure required by a court)** in proceedings before any court arising out of, or in connection with, this deed; and
- (h) **(enforcement)** to the extent necessary to enforce the terms of this deed.

19.3 Restricted Confidential Information

The Restricted Parties must not do, and must ensure that their Affiliates, auditors, officers, employees, agents or advisers do not do, any of the following:

- (a) disclose any Restricted Confidential Information; or
- (b) use any Restricted Confidential Information in any manner:
 - (i) which may cause or be calculated to cause loss to the Company Group, a Potentia Shareholder or the other parties; or
 - (ii) other than for the purpose for which it was disclosed,

without the prior written consent of the Potentia Shareholders.

19.4 Announcements

Any public announcement and press release by a Shareholder relating to the subject matter of this deed must have the prior written consent of the Potentia Shareholders.

19.5 Survival of clause

The provisions of this clause 19 survive termination of this deed indefinitely.

20 Termination**20.1 Automatic termination**

Subject to clause 20.2, this deed terminates automatically in respect of a Shareholder and the Shareholder will have no further rights or obligations under this deed:

- (a) when the relevant Shareholder no longer holds any interest (legal or beneficial) in Shares; or
- (b) at such other time as the Company and Shareholders may agree in writing.

20.2 Consequences of termination

- (a) The termination of this deed with respect to a party does not affect any provision of this deed which is expressed to come into effect on, or continue in effect after, that termination, including clauses 1, 11.4(b), 19, 23 and 24 and the indemnities which will remain in full force and effect and will survive the expiry or termination of this deed (whether in relation to a particular Shareholder or generally).
- (b) Termination of this deed will not discharge the parties from any obligations which accrued before that termination and which remain unsatisfied or from liability for breaches occurring before termination.

21 Warranties**21.1 General warranties**

Each party represents and warrants to each other party, as an inducement to those parties to enter into this deed, that:

- (a) unless it is a natural person, it is duly incorporated and validly existing under the laws of the place of its incorporation;

- (b) it has full power to execute, deliver and perform its obligations under this deed;
- (c) the execution, delivery and performance of this deed has been properly authorised by it;
- (d) this deed constitutes a legal, valid and binding obligation of it enforceable in accordance with its terms by appropriate legal remedy; and
- (e) there are no actions, Claims, proceedings or investigations pending or to the best of its knowledge threatened against it or by it that may have a material adverse effect on its ability to perform its obligations under this deed.

21.2 **Shareholder warranties**

Each Shareholder makes the following representations and warranties for the benefit of the Company and each other Shareholder:

- (a) **(no reliance)** no representation, warranty, promise or undertaking except those expressly set out in this deed has induced or influenced the Shareholder to enter into, or agree to any terms or conditions of, this deed has been relied on in any way as being accurate by the Shareholder or has been warranted by any person (including the Company, any Shareholders and any of their respective officers, representatives or agents) as being true or accurate; and
- (b) **(Forward Looking Statements)** the Shareholder has not relied on any Forward Looking Statement in relation to the Shares, any matter concerning the Shares or any of the transactions contemplated by this deed, and acknowledges that no person represents (or has at any time represented) that any such Forward Looking Statements will be achieved or are accurate or are made on reasonable grounds.

21.3 **Trustee warranties**

Each Shareholder who is a trustee of a trust, makes the following representations and warranties on the Admission Date, for the benefit of the Company and each other Shareholder:

- (a) in respect of the trust no action has been taken or is now proposed to be taken to terminate or dissolve the Relevant Trust;
- (b) it has full and valid power and authority under the terms of the Relevant Trust to enter into this deed and to carry out the transactions contemplated by this deed;
- (c) it has in full force and effect the authorisations necessary for it to enter into this deed and perform its obligations under it and allow them to be enforced;
- (d) it enters into this deed and the transactions contemplated by this deed for the proper administration of the Relevant Trust and for the benefit of all the beneficiaries of the Relevant Trust;
- (e) it is the sole trustee of the Relevant Trust and no action has been taken or is now proposed to be taken to remove it as trustee of the Relevant Trust;
- (f) it has a right, including after any set off, to be fully indemnified out of assets of the Relevant Trust in respect of obligations incurred by it under this deed;
- (g) it is not in breach of any of its obligations as trustee of a trust, whether under the trust deed or otherwise; and
- (h) it is not in default under the terms of the Relevant Trust.

21.4 Company warranties

The Company represents and warrants to each other party, as an inducement to those parties to enter into this deed, that it was incorporated on 13 December 2022.

21.5 Acknowledgement

Each Shareholder acknowledges that the Company enters into this deed and issues the Shares in reliance on the Shareholders' representations and warranties given in this deed.

21.6 Separate warranties

Each of the representations and warranties set out in clause 21 is separate and independent and is not limited by reference to any other representation and warranty.

22 Disclaimers**22.1 No representation about acquisition or investment**

None of the Potentia Shareholders, the Company or any of their respective Affiliates makes:

- (a) any representation or warranty to any other Shareholder in relation to any acquisition by the Company Group, the value of any Shares or other securities in any Company Group Member at any time, the proposed business strategy of any Company Group Member, the Business performance or the potential Exit strategy or returns achievable on an Exit; or
- (b) any recommendation on the suitability of an acquisition by any Company Group Member or on the suitability of an investment in the Company by any other Shareholder.

22.2 No liability accepted for Shareholders investing

To the maximum extent permitted by law, the Company, the Potentia Shareholders and their Affiliates disclaim all liability in relation to the matters referred to in clause 22.1 and no Shareholder may take any action against the Company, the Potentia Shareholders or any of those Affiliates for any Liability suffered as a result of any other Shareholder's decision to invest in the Company, in relation to any matter referred to in clause 22.1(a) or as a result of any Potentia Shareholder lawfully performing its obligations and exercising its rights under this deed.

22.3 Independent investigations, assessment and advice

Each Shareholder (other than the Potentia Shareholders):

- (a) acknowledges and agrees that it has entered into this deed on the basis of its own independent investigation and assessment and after making its own enquiries; and
- (b) confirms that it has received independent legal, accounting and tax advice in relation to the terms and conditions of this deed.

23 GST

- (a) Any reference in this clause to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.

- (b) Unless expressly included, the consideration for any supply made under or in connection with this deed does not include an amount on account of GST in respect of the supply (**GST Exclusive Consideration**) except as provided under this clause.
- (c) Any amount referred to in this deed (other than an amount referred to in clause 23(g)) which is relevant in determining a payment to be made by one of the parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (d) To the extent that GST is payable in respect of any supply made by a party (**Supplier**) under or in connection with this deed, the consideration to be provided under this deed for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- (e) The recipient must pay the additional amount payable under clause 23(d) to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (f) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this deed the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under clause 23(e), the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (g) If one of the parties to this deed is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this deed, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 23(d).

24 Resolution of disputes

24.1 No proceedings

A party must not start court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this deed (**Dispute**) unless it has complied with this clause 24.

24.2 No relief from obligations

Despite the existence of a Dispute each party must continue to perform its obligations under this deed pending the determination of the Dispute under this clause 24.

24.3 Dispute Notice

A party claiming that a Dispute has arisen must give each party to the Dispute notice setting out details of the Dispute (**Dispute Notice**).

24.4 Best efforts to resolve Dispute

Each party to the Dispute (**Disputant**) must use its best efforts to resolve the Dispute within 10 Business Days after the Dispute Notice is given (or any longer period agreed by the Disputants) (**Initial Period**).

24.5 Referral to director

If the Disputants cannot resolve the Dispute within the Initial Period, the Dispute must be referred to a director (or their nominee) of each Disputant (or other similar representative of the Disputant) who must use their best efforts to resolve the Dispute within 10 Business Days after the Dispute is referred to them (**Second Period**).

24.6 Termination of Dispute resolution process

After the Second Period, a Disputant that has complied with clause 24.5 may terminate the dispute resolution process by giving notice to each other Disputant.

24.7 Breach of this clause

If a Disputant breaches clauses 24.1 to 24.6 (inclusive), each other Disputant does not have to comply with those clauses.

25 General**25.1 Notices**

- (a) A notice or other communication to a party under this deed (**Notice**) must be in writing and in English and addressed to that party in accordance with the details specified or referred to below (or any alternative details nominated to the sending party by Notice):

Name	Notice details
Company	As set out in the Parties section
Potentia Shareholders	As set out in Schedule 1
Non-Potentia Shareholder	As set out in the Deed of Accession
Nominee Shareholder	As set out in the Deed of Accession

- (b) A Notice must be given by one of the methods set out in the table below and is regarded as given and received at the time set out in the table below. However, if this means the Notice would be regarded as given and received outside the period between 9.00am and 5.00pm (addressee's time) on a Business Day, the Notice will instead be regarded as given and received at 9.00am (addressee's time) on the following Business Day.

Method of giving Notice	When Notice is regarded as given and received
By hand to the nominated address	When delivered to the nominated address
By pre-paid post to the nominated address	At 9.00am (addressee's time) on the fifth Business Day after the date of posting

By email to the nominated email address	When the email (including any attachment) is sent and the sender does not receive an email receipt or other confirmation from the recipient to the sender which indicates that the email was not received at the email address of the recipient
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25.2 Governing law and jurisdiction

- (a) This deed is governed by the laws of New South Wales, Australia.
- (b) Each of the parties irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia. The parties irrevocably waive any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.

25.3 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this deed or any right, power or remedy which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this deed which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
- (c) Clause 25.3(a) does not apply where enforcement of the provision of this deed in accordance with clause 25.3(a) would materially affect the nature or effect of the parties' obligations under this deed.

25.4 Waiver

No party to this deed may rely on the words or conduct (including any delay in exercising a right) of any other party as a waiver (including an election between rights and remedies and conduct which might give rise to an estoppel) of any right, power or remedy arising under or in connection with this deed (including the right to rely on this clause 25.4) unless the waiver is in writing and signed by the party granting the waiver.

25.5 Variation

- (a) With the Board's prior written consent (including the consent of at least one Potentia Director), the Company may modify, vary, supplement or waive the provisions of this deed:
 - (i) subject to clause 25.5(b), in such manner as the Board may determine;
 - (ii) if the Board considers such modification, variation, supplement or waiver necessary to make this deed consistent with the Constitution or any applicable law or is reasonably required to take into account any tax implications of this deed (including as may become apparent in light of announced changes to tax arrangements, changes in tax law or regulatory practice, tax rulings or interpretation of tax laws by relevant courts);
 - (iii) if Shareholders holding a majority of all Shares on issue approve the modification, variation, supplement or waiver; or

- (iv) as they apply to a particular Shareholder, by written agreement with that Shareholder.
- (b) The Company may not make a variation, modification or waiver under clause 25.5(a)(i) which has a disproportionate and materially adverse effect on the rights or obligations of a Shareholder (when compared with corresponding effects of the relevant underlying proposal upon other Shareholders) except with the consent of:
 - (i) each affected Shareholder; or
 - (ii) the Shareholders holding a majority of all Shares held by all Shareholders other than the Potentia Shareholders,
 - (iii) in each case not to be unreasonably withheld or delayed.

25.6 Assignment

- (a) Rights, powers and remedies arising out of or under this deed are not assignable by a Shareholder (other than the Potentia Shareholders) without the prior written consent of the Company and the Potentia Shareholders.
- (b) This clause 25.6 does not affect the construction of any other part of this deed.

25.7 Entire agreement

This deed and the Constitution supersede all previous agreements between the parties or any of them in respect of their subject matter and embody the entire agreement between the parties.

25.8 Cumulative rights

The rights, powers and remedies arising under this deed are cumulative and do not exclude any other right, power, authority, discretion or remedy of the parties.

25.9 Consents

- (a) Unless expressly required by the terms of this deed, a party does not have to act reasonably in giving or withholding any consent or approval or exercising any other right, power or remedy, under or in connection with this deed.
- (b) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver. Any conditions must be complied with by the party relying on the consent, approval or waiver.

25.10 Further assurances

Each party must, at its own expense, do all things and execute all further documents necessary to give full effect to this deed.

25.11 Counterparts

- (a) This deed may be executed in any number of counterparts that together will constitute one instrument.
- (b) A party may execute this deed by signing any counterpart.

25.12 Relationship of the parties

Subject to each power of attorney or agency relationship expressly created by or referenced in this deed, nothing in this deed constitutes any party the partner, agent, employee or representative of any other party and no party has the power to incur any obligations on behalf of, or pledge the credit of, any other party.

25.13 Costs and stamp duty

- (a) Each party must bear its own costs arising out of the negotiation, preparation and execution of this deed.
- (b) All stamp duty (including fines, penalties and interest) payable on or in connection with this deed must be borne by each Shareholder in respect of itself.

25.14 Shareholders' acknowledgements

Each Shareholder (other than the Potentia Shareholders) acknowledges that:

- (a) the future values of Shares are unknown and cannot be predicted with certainty and the value of the equity interests in the Company may increase or decrease over time;
- (b) the Shareholder will have no entitlement to compensation or damages or to make any other Claim as a result of any failure of the Shares to generate economic returns for the Shareholder or in respect of any diminution in value in any equity interests in the Company, including if occurring as a result of the termination of the employment with the Company Group of any person (whether or not in breach of contract); and
- (c) the Shareholder is solely responsible for any taxes or duties which may become payable by him or her or it in connection with or as a result of his or her holding of Shares.

25.15 Rights held on trust

- (a) Where any provision of this deed is expressed to confer any rights, powers or remedies on any person not a party to this deed (a **third party beneficiary**):
 - (i) the Company holds the benefit of such provision as trustee for the relevant third party beneficiary; and
 - (ii) the relevant third party beneficiary may enforce that provision directly against the parties to this deed as if they were parties to this deed.
- (b) Except as provided by clause 25.15(a) and each express grant of power of attorney pursuant to this deed, no provision of this deed confers any rights, power, remedy or benefit on any person not a party to this deed.
- (c) Despite clause 25.15(a), any provision of this deed may be varied, modified, supplemented or waived without the consent of any person who is not a party to this deed, except as expressly required under clause 25.5.

25.16 Conflict with Constitution

- (a) If there is any conflict between the provisions of this deed and the Constitution, then the provisions of this deed prevail.

- (b) On receipt of a request in writing from another party, each party must take all necessary steps to amend a provision of the Constitution which is inconsistent with this deed.
- (c) Each Shareholder undertakes with each other Shareholder and the Company to:
 - (i) exercise all its votes, powers and rights under the Constitution so as to give full force and effect to the provisions and intentions of this deed;
 - (ii) observe and comply fully and promptly with the provisions of the Constitution so that each provision of the Constitution is enforceable by the parties among themselves and in whatever capacity; and
 - (iii) exercise all its votes, powers and rights in relation to the Company so as to ensure that the Company fully and promptly observes, complies with and gives effect to the requirements and intentions of this deed and the Constitution.
- (d) The obligations in this clause 25.16 include an obligation to exercise its powers both as a Shareholder and (where applicable and to the extent permitted by law) through any Director appointed by it and (to the extent permitted by law) to ensure that any Director appointed by it (whether alone or jointly with any other person) obtains that matter or thing.
- (e) The Company must do all things necessary or desirable to give effect to the provisions and intentions of this deed to which it is a party in accordance with its terms and is bound by all provisions of this deed which expressly or by implication apply to the Company or any other Company Group Member.

25.17 Attorneys

Any attorney executing this deed states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.

25.18 Trust limitation of liability

- (a) Each Trustee enters into this deed only in its capacity as trustee of its Relevant Trust and in no other capacity. A liability arising under or in connection with this deed is limited to and can be enforced against a Trustee only to the extent to which it can be satisfied out of property of the Relevant Trust out of which that Trustee is actually indemnified for the liability. This limitation of each Trustee's liability applies despite any other provision of this deed or any other document and extends to all liabilities and obligations of each Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (b) A party may not sue any Trustee in any capacity other than as trustee of its Relevant Trust, including seeking the appointment of a receiver (except in relation to property of the Relevant Trust), a liquidator, an administrator or any similar person to the Trustee or prove in the liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Relevant Trust).
- (c) The provisions of this clause 25.18 do not apply to any obligation or liability of a Trustee to the extent that it is not satisfied because under the trust deed establishing the Relevant Trust or by operation of law there is a reduction in the extent of that Trustee's indemnification out of the assets of the Relevant Trust, as a result of that Trustee's fraud, negligence or wilful default.

- (d) No attorney, agent, receiver or receiver and manager appointed in accordance with this deed has authority to act on behalf of a Trustee in a way which exposes that Trustee to any personal liability and no act or omission of any such person will be considered fraud, negligence or wilful default of that Trustee for the purpose of clause 25.18(c).
- (e) A Trustee is not obliged to do or refrain from doing anything under this deed (including, without limitation, incur any liability) unless that Trustee's liability is limited in the same manner as set out in clauses 25.18(a) to 25.18(d).
- (f) A reference in this clause 25.18 to wilful default in relation to a Trustee means any wilful failure to comply with, or wilful breach by the Trustee of any of its obligations under this deed (**Trustee Obligations**), other than a failure or breach which:
 - (i) arose as a result of an act or omission by an Unrelated Party, where the performance of that act is a precondition to the performance by the Trustee of the Trustee Obligations or where the omission gave rise to the breach by the Trustee of the Trustee Obligations; or
 - (ii) is in accordance with a lawful court order or direction or required by law.
- (g) For the purposes of clause 25.18(f), **Unrelated Party** means any person other than the Trustee or any officer, employee, affiliated entity or agent of the Trustee.
- (h) This clause 25.18 applies notwithstanding any other provision of this deed.

25.19 *Potentia Shareholders independent*

If there is more than one Potentia Shareholder, nothing in this deed imposes any obligation on the Potentia Shareholders to act other than independently from one another in their own respective interests.

25.20 *No merger*

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

25.21 *Severability of provisions*

Any provision of this deed which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this deed nor affect the validity or enforceability of that provision in any other jurisdiction.

25.22 *Survival of representations and warranties*

All representations and warranties in this deed will survive the execution and delivery of this deed and the completion of transactions contemplated by it.

25.23 *Enurement*

The provisions of this deed will, subject as otherwise provided in this deed, enure for the benefit of and be binding on the parties and their respective successors and permitted substitutes and assigns and (where applicable) legal personal representatives.

Schedule 1 – Potentia Shareholders

Potentia Shareholder	Address	Initial shareholding
Potentia Capital IA Pty Limited atf Potentia Capital Trust IA	Address: Suite 38.01, 'Gateway', Level 38, 1 Macquarie Place, Sydney NSW 2000 Email: Andrew Gray, andrew@potentiacap.com, Michael McNamara, michael@potentiacap.com Copy to: Stacey Kelly, stacey@potentiacap.com	1 Ordinary Share
Potentia Capital IB Pty Limited atf Potentia Capital Trust IB	Address: Suite 38.01, 'Gateway', Level 38, 1 Macquarie Place, Sydney NSW 2000 Email: Andrew Gray, andrew@potentiacap.com, Michael McNamara, michael@potentiacap.com Copy to: Stacey Kelly, stacey@potentiacap.com	1 Ordinary Share
Potentia Capital IC Pty Limited atf Potentia Capital Trust IC	Address: Suite 38.01, 'Gateway', Level 38, 1 Macquarie Place, Sydney NSW 2000 Email: Andrew Gray, andrew@potentiacap.com, Michael McNamara, michael@potentiacap.com Copy to: Stacey Kelly, stacey@potentiacap.com	1 Ordinary Share

Schedule 2 – Non-Potentia Shareholders' reserved matters

- 1 **(Adverse amendments to Shareholders' Deed or Constitution):** amend, alter or repeal any provision of this deed or the Constitution where such change itself or together with any other action taken by a Company Group Member, a Shareholder or Affiliate of a Shareholder as part of a connected arrangement would, or could reasonably be expected to, have a disproportionately adverse effect on the legal or economic rights of the Non-Potentia Shareholders.
- 2 **(Changes to Shares):** take any action or make any changes to the Shares held by Non-Potentia Shareholders (including a share split, scheme or other reorganisation) where such change itself or together with any other action taken by a Company Group Member, a Shareholder or Affiliate of a Shareholder as part of a connected arrangement would, or could reasonably be expected to, have a disproportionately adverse effect on the legal or economic rights of the Non-Potentia Shareholders.

Execution

EXECUTED as a deed

Executed by the Company

Executed by Oak Ridge Software Limited in
accordance with section 127(1) of the
Corporations Act 2001 (Cth):

Director signature

Director/Secretary signature

Director full name
(BLOCK LETTERS)

Director/Secretary full name
(BLOCK LETTERS)

Executed by the Potentia Shareholders

**Executed by Potentia Capital IA Pty Limited
att Potentia Capital Trust IA** in accordance
with section 127(1) of the *Corporations Act
2001 (Cth)*:

Director signature

Director/Secretary signature

Director full name
(BLOCK LETTERS)

Director/Secretary full name
(BLOCK LETTERS)

**Executed by Potentia Capital IB Pty Limited
att Potentia Capital Trust IB** in accordance
with section 127(1) of the *Corporations Act
2001 (Cth)*:

Director signature

Director/Secretary signature

Director full name
(BLOCK LETTERS)

Director/Secretary full name
(BLOCK LETTERS)

**Executed by Potentia Capital IC Pty Limited
att Potentia Capital Trust IC** in accordance
with section 127(1) of the *Corporations Act
2001 (Cth)*:

Director signature

Director/Secretary signature

Director full name
(BLOCK LETTERS)

Director/Secretary full name
(BLOCK LETTERS)

Annexure 1 – Deed of Accession

The Directors
Oak Ridge Software Limited (ACN 664 474 999)

This Deed of Accession is made, in respect of the Shareholders' Deed (**Shareholders' Deed**) dated on or about [●] between Oak Ridge Software Limited (ACN 664 474 999) (**Company**), and each Shareholder who is a party to the Shareholders' Deed as at the date of this deed (collectively the **Parties**), as a deed poll in favour of the Company, each Party from time to time and each other person who is a Shareholder from time to time by:

[Name of new party] (Shareholder)

1 Interpretation

In this deed poll (the **Deed**), capitalised words and expressions have the same meaning as in the Shareholders' Deed, unless those words or expressions are otherwise defined in this Deed.

2 Shareholder Undertakings

The Shareholder:

- (a) agrees to accept the Shares specified below and agrees to the terms of the offer of the Shares (as set out in the Shareholders' Deed and associated documents):

[insert]	[insert]	[insert]	[insert]
[Ordinary Shares]	[insert]	[insert]	[insert]
[Preference Shares]	[insert]	[insert]	[insert]
TOTAL	[insert]	[insert]	[insert]

- (b) represents and warrants that the representations and warranties in clause 21 of the Shareholders' Deed are true and correct in respect of the Shareholder and gives the acknowledgements set out in clauses 21.5 and 25.14 of the Shareholders' Deed;
- (c) agrees to be bound by the Constitution upon issue of the Shares to the Shareholder; and
- (d) confirms that it has been given and read a copy of the Constitution and the Shareholders' Deed and covenants with the Parties to perform and be bound by the Constitution and to be bound by all the terms of the Shareholders' Deed as if the Shareholder were named in the Shareholders' Deed as a **[Potentia Shareholder / Nominee Shareholder / Non-Potentia Shareholder / Shareholder / Rollover Shareholder]**.

3 **General**

(a) The notice details of the Shareholder for the purpose of clause 25.1 of the Shareholders' Deed are as set out below:

Name	Notice details
Shareholder	Address: [insert]
	Email: [insert]
	Attention: [insert]

- (b) This deed poll may be executed in any number of counterparts.
- (c) This deed poll is governed by the laws of New South Wales, Australia.

Dated: [insert date]

[Execution blocks to be amended as appropriate]

Signed, sealed and delivered by
[Shareholder] in the presence of:

_____ Director signature	_____ Director/Secretary signature
_____ Director full name (BLOCK LETTERS)	_____ Director/Secretary full name (BLOCK LETTERS)

Annexure 2 – Constitution

See next page.

For personal use only

Oak Ridge Software Limited

A public company limited by shares

Constitution

JOHNSON | WINTER | SLATTERY

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SYDNEY NSW 2000
T +61 2 8274 9555 | F +61 2 8274 9500
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Liability limited by a scheme approved under Professional Standards Legislation

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Constitution

1 Definitions and interpretation

1.1 Definitions

The following definitions apply in this Constitution, unless the context requires otherwise.

Act means *Corporations Act 2001* (Cth).

Business Day means a day other than a public holiday in the place where the Company's registered office is located, a Saturday or a Sunday.

Company means Oak Ridge Software Limited ACN 664 474 999.

Liabilities includes losses, liabilities, costs, charges and expenses of any kind including, in particular, legal costs incurred in defending any proceedings (whether criminal, civil, administrative or judicial) or appearing before any court, tribunal, government authority or other body.

member means a person who is registered as a member of the Company or, in the case of joint holders of any Share, persons who are registered as, joint holders of that Share, and **members** means more than one Member.

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

Preference Share means a convertible redeemable preference share issued by the Company on the terms set out in Annexure A of this Constitution.

Record Time means:

- (a) in the case of a meeting for which the caller of the meeting has decided, under the Act, that Shares are to be taken to be held by the persons who held them at a specified time before the meeting, that time; and
- (b) in any other case, 48 hours before the relevant meeting.

Representative means, in relation to a member which is a body corporate and in relation to a meeting, a person authorised in accordance with the Act (or a corresponding previous law) by the body corporate to act as its representative at the meeting.

Seal means any common seal, duplicate seal or certificate seal of the Company.

Share means an issued share of any class in the capital of the Company (as the context requires).

Shareholders' Deed means the shareholders' deed entered into between the Company and its Members, as amended from time to time, if any.

Transmission Event means:

- (a) for a member who is an individual, the member's death, the member's bankruptcy or the member becoming of unsound mind or a person who, or whose estate, is liable to be dealt with in any way under the law relating to mental health; and
- (b) for a member who is a body corporate, the dissolution of the member or the succession by another body corporate to the assets and liabilities of the member.

1.2 Interpretation

In this Constitution, any heading, subheading, table of contents or marginal note is for convenience only and does not affect the interpretation of this document. Unless a contrary intention appears in this Constitution, the following rules of interpretation apply:

- (a) The singular includes the plural and vice versa and a reference to a gender includes all people regardless of gender.
- (b) A reference to:
 - (i) a person includes an individual, body corporate, firm, partnership, joint venture, unincorporated body and government authority;
 - (ii) a person includes their successors and legal personal representatives;
 - (iii) a rule is to a rule of this Constitution;
 - (iv) a document includes that document as amended, varied, supplemented, novated or replaced from time to time and any schedule, attachment, annexure or exhibit to that document;
 - (v) “agreement” includes an undertaking, deed, contract or other legally enforceable arrangement, whether or not in writing, and a reference to “document” includes an agreement (as so defined) in writing or any certificate, notice, instrument or other document of any kind;
 - (vi) law includes the common law, principles of equity and legislation;
 - (vii) legislation or a provision of legislation includes all regulations, orders or instruments issued under that legislation or provision and any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision;
 - (viii) time is to the time in Sydney, Australia; and
 - (ix) “include”, “including” and “for example”, and similar expressions, when introducing a list of items, does not limit the meaning of the words to which the list relates to those items or to items of a similar kind; and
 - (x) dollars or \$ is to Australian dollars.
- (c) A reference to a member for the purposes of a meeting of members (or a class of them) is a reference to the registered holder of Shares as at the relevant Record Time.
- (d) A reference to a person being “present” at a meeting:
 - (i) at a meeting of members, includes:
 - (A) a member present in person;
 - (B) a member present by proxy, attorney or Representative;
 - (C) to the extent permitted by law, a member participating using technology approved by the directors in accordance with this Constitution; and

- (D) except in any rule which specifies a quorum, a member who has duly lodged a valid direct vote in relation to the meeting under rule 7.11; and
 - (ii) at a meeting of directors, includes participating using technology approved by the directors in accordance with this Constitution.
- (e) A chair appointed under this Constitution may also be referred to as a chairperson, chairman, chairwoman or like term.
- (f) Where a word or expression is defined or given meaning, another grammatical form has a corresponding meaning.
- (g) This Constitution is to be interpreted subject to the Act. Unless the contrary intention appears:
 - (i) an expression in a rule that deals with a matter dealt with by a provision of the Act has the same meaning as in that provision; and
 - (ii) subject to rule 1.2(g)(i), an expression in a rule that is used in the Act has the same meaning in this Constitution as in the Act.
- (h) A reference in this Constitution to:
 - (i) a partly paid Share is a reference to a Share on which there is an amount unpaid;
 - (ii) an amount unpaid on a Share includes a reference to any amount of the issue price which is unpaid;
 - (iii) a call or an amount called on a Share includes a reference to a sum that, by the terms of issue of a Share, becomes payable on issue or at a fixed date;
 - (iv) to a person holding or occupying a particular office or position is a reference to any person who occupies or performs the duties of that office or position.

1.3 Replaceable rules not to apply

The provisions of the Act that apply as replaceable rules do not apply to the Company.

1.4 Shareholders' Deed

- (a) This Constitution is to be interpreted subject to the Shareholders' Deed in all respects.
- (b) In this Constitution, where there is a reference to the Shareholders' Deed:
 - (i) for such time as there is no Shareholders' Deed in force, the relevant rule will be read as if it did not contain any reference to the Shareholders' Deed, and if it is not capable of being so read, will be disregarded in its entirety;
 - (ii) where there are references to any matter being subject to the Shareholders' Deed or which turn upon whether a thing is done in accordance with the Shareholders' Deed or in contravention of the Shareholders' Deed (in each case, however expressed), if parties entitled to do so effectively waive the relevant provisions of the Shareholders'

Deed (in accordance with the Shareholders' Deed) then the applicable rule of this Constitution will apply as if the Shareholders' Deed contained no relevant additional or inconsistent requirements or as if the relevant provisions of the Shareholders' Deed had in fact been complied with in accordance with their terms, as the case may be (provided that, if the waiver is given subject to conditions, those conditions are complied with in accordance with their terms); and

- (iii) where a rule of this Constitution contains provisions to the effect that if the Shareholders' Deed is in force, a matter will be governed by the applicable provisions of the Shareholders' Deed, but the Shareholders' Deed does not in fact contain provisions governing that matter, then the rule will be read as if it did not contain any reference to the Shareholders' Deed, and if it is not capable of being so read, will be disregarded in its entirety.
- (c) If this Constitution is inconsistent with the Shareholders' Deed, the Shareholders' Deed prevails to the extent of the inconsistency.
- (d) To the extent of any inconsistency between the Shareholders' Deed and this Constitution, then the members and the Company must take all steps reasonably required to remove the inconsistency, including causing this Constitution to be amended to remove the inconsistency.
- (e) Despite any other provision of this Constitution, for so long as the Shareholders' Deed is in force, the Company may not (and each member and officer must take all action to procure that the Company does not) undertake any act under the Shareholders' Deed which requires certain approval or a particular procedure to be followed without first obtaining that approval or following that procedure (as applicable).
- (f) A holder of any Shares who, for any reason, is not at any time a party to the Shareholders' Deed must comply with the Shareholders' Deed as if it were a party to it.

1.5 Exercise of powers

- (a) The Company may, in any way the Act permits:
 - (i) exercise any power;
 - (ii) take any action; or
 - (iii) engage in any conduct or procedure,
 which under the Act a company limited by shares may exercise, take or engage in.
- (b) Where this Constitution:
 - (i) provides that a person "may" do a particular act or thing, the act or thing may be done at the person's discretion;
 - (ii) confers a power to do a particular act or thing, the power is, unless the contrary intention appears, to be taken as including a power exercisable in the same way and subject to the same conditions (if any) to repeal, rescind, revoke, amend or vary that act or thing;

- (iii) confers a power to do a particular act or thing, the power may be exercised from time to time and may be exercised subject to conditions; and
 - (iv) confers a power to do a particular act or thing concerning particular matters, the power is, unless the contrary intention appears, to be taken to include a power to do that act or thing as to only some of those matters or as to a particular class of those matters, and to make different provision concerning different matters or different classes of matters.
- (c) Where this Constitution confers a power to make appointments to any office or position, the power is, unless the contrary intention appears, taken to include a power:
 - (i) to appoint a person to act in the office or position until a person is appointed to the office or position;
 - (ii) subject to any contract between the Company and the relevant person, to remove or suspend any person appointed, with or without cause; and
 - (iii) to appoint another person temporarily in the place of any person so removed or suspended or in place of any sick or absent holder of such office or position.
- (d) Where this Constitution gives power to a person to delegate a function or power:
 - (i) the delegation may be concurrent with, or (except in the case of a delegation by the directors) to the exclusion of, the performance or exercise of that function or power by the person;
 - (ii) the delegation may be either general or limited in any way provided in the terms of delegation;
 - (iii) the delegation need not be to a specified person but may be to any person holding, occupying or performing the duties of a specified office or position;
 - (iv) the delegation may include the power to delegate; and
 - (v) where performing or exercising that function or power depends on that person's opinion, belief or state of mind about a matter, that function or power may be performed or exercised by the delegate on the delegate's opinion, belief or state of mind about that matter.

1.6 Currency

The directors may, at their discretion:

- (a) differentiate between members as to the currency in which any amount payable to a member is paid (whether by way of or on account of dividends, repayment of capital, participation in surplus property of the Company or otherwise);
- (b) determine to pay a distribution or other amount to a member in a currency other than Australian dollars and the amount payable will be converted from Australian dollars in any manner, at any time and at any exchange rate as the directors think fit; and

- (c) in deciding the currency in which a payment is to be made to a member, have regard to the registered address of the member, the register on which a member's Shares are registered and any other matters as the directors consider appropriate.

Payment in another currency of an amount converted under this rule 1.6 is as between the Company and a member adequate and proper payment of the amount payable.

1.7 Submission to jurisdiction

Each member submits to the non-exclusive jurisdiction of the Supreme Court of the State or Territory in which the Company is taken to be registered for the purposes of the Act, the Federal Court of Australia and the courts which may hear appeals from those courts.

1.8 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this Constitution which is prohibited in any place is, in that place, ineffective only to the extent of that prohibition.
- (b) Any provision of, or the application of any provision of, this Constitution which is void, illegal or unenforceable in any place does not affect the validity, legality or enforceability of that provision in any other place or of the remaining provisions in that or any other place.

2 Share capital

2.1 Issue of Shares

Subject to the Act, any approval requirements set out in the Shareholders' Deed, this Constitution and any special rights conferred on the holders of any Shares or class of Shares, the directors may issue, allot or grant options for, or otherwise dispose of, Shares in the Company and may decide the following:

- (a) the persons to whom Shares are issued or options are granted;
- (b) the terms on which Shares are issued or options are granted;
- (c) the rights and restrictions attached to those Shares or options; and
- (d) the manner in which fractions of a Share, however arising, are to be dealt with.

2.2 Classes of Shares

At the adoption of this Constitution, the Share capital of the Company is divided into:

- (a) Ordinary Shares; and
- (b) Preference Shares.

2.3 Certificates

- (a) Each member is entitled without payment to receive a certificate for Shares issued as required under the Act.
- (b) The directors may order lost, damaged or defaced share certificates be cancelled and, if necessary, replaced by new share certificates.

2.4 Alteration of Share capital

Subject to the Act and the Shareholders' Deed, the directors may do anything required to give effect to any resolution authorising reduction or alteration of the Share capital of the Company, including, where a member becomes entitled to a fraction of a Share:

- (a) making cash payments;
- (b) ignoring a fractional entitlement;
- (c) appointing a trustee to deal with any fractions on behalf of members; and
- (d) rounding up a fractional entitlement to the nearest whole Share.

2.5 Conversion or reclassification of Shares

Subject to the Act, the Shareholders' Deed and this Constitution, the Company may by resolution convert or reclassify Shares from one class to another.

2.6 Variation of class rights

- (a) Subject to the Shareholders' Deed and the Act, the rights attached to any class of Shares may, unless the terms of issue state otherwise, be varied:
 - (i) by special resolution of the Company; and
 - (ii) by a special resolution passed at a meeting of the holders of the Shares of the class; or
 - (iii) with written consent of the holders of 75% of the Shares of the class.
- (b) The provisions of this Constitution relating to general meetings apply, with necessary changes, to separate class meetings except that:
 - (i) if there is one holder of Shares in a class, the quorum is that person; and
 - (ii) any holder of Shares of the class present or the chair of the meeting may demand a poll.
- (c) Unless otherwise provided by the terms of issue, the issue of new Shares ranking equally with existing Shares is not a variation of the rights conferred on the holders of the existing Shares.

2.7 Joint holders of Shares

Where two or more persons are registered as the holders of any Shares, they are considered to hold them as joint tenants with rights of survivorship, subject to the following conditions:

- (a) the Company is not bound to register more than four persons as joint holders of the Shares;
- (b) the joint holders and their respective legal personal representatives are liable individually as well as jointly for all payments in respect of the Shares;
- (c) subject to rule 2.7(b), on the death of any one of the joint holders, the remaining joint holder or holders (as the case may be) is the only person or persons the Company will recognise as having any title to the Shares;
- (d) any one of the joint holders may give a receipt for any dividend, bonus or other distribution or payment in respect of the Shares;

- (e) any one of the joint holders may appoint a proxy under rule 7.13 in respect of the share;
- (f) where the Act requires the number of members to be counted, they are to be counted as one member;
- (g) the Company is not bound to issue more than one certificate for the share and delivery of a certificate to any one of the joint holders is sufficient delivery to all of them.

2.8 Recognition of equitable interests

- (a) The Company may treat the registered holder of a Share as the absolute owner of that Share and need not:
 - (i) recognise a person as holding a Share on trust, even if the Company has notice of that trust; or
 - (ii) recognise, or be bound by, any equitable, contingent, future or partial claim to or interest in a Share by any other person, except an absolute right of ownership in the registered holder, even if the Company has notice of that claim or interest.
- (b) With the consent of the directors, Shares held by a trustee may be marked in the register in such a way as to identify them as being held subject to the relevant trust.
- (c) Nothing in rule 2.8(b) limits rule 2.8(a).

3 Calls on Shares

3.1 Power to make calls

- (a) Subject to the terms of issue, the directors may:
 - (iii) make calls on the members for any amount unpaid on their Shares;
 - (iv) require a call to be paid by instalments;
 - (v) on the issue of Shares, differentiate between members as to the amount of calls to be paid and the time for payment; and
 - (vi) revoke or postpone a call or extend the time for payment.
- (b) A call is made at the time of or as specified in the resolution of the directors authorising the call.

3.2 Notice of calls

- (a) The directors must send members notice of a call at least 14 days before the amount called is due, specifying the time of payment and the manner in which payment must be made.
- (b) Each member must pay the amount called by the time, and in the manner, specified in the notice.
- (c) A call is not invalidated by the non-receipt of a notice of a call or the accidental omission to give notice of a call to any member.

3.3 Fixed instalments

If the terms of a Share make a sum payable on issue of the Share or at a fixed date, this is taken to be a call duly made, notified and payable on the date on which, by the terms of issue, the sum becomes payable. In the case of non-payment, all the relevant provisions of this Constitution as to payment of interest and expenses, forfeiture or otherwise apply as if the sum had become payable by virtue of a call duly made and notified.

3.4 Interest on unpaid amounts

- (a) If an amount called on a Share is not paid in full by the time specified for payment, the person who owes the amount must pay:
 - (i) interest on the unpaid part from the date payment is due to the date payment is made, at a rate the directors decide. Interest accrues daily and may be capitalised monthly or at such other intervals as the directors decide; and
 - (ii) any costs, expenses or damages the Company incurs due to the failure to pay or late payment.
- (b) The directors may, to the extent permitted by law, waive payment of some or the entire amount of interest payable under rule 3.4(a).

3.5 Prepayment of calls and interest

The directors may:

- (a) accept from a member the whole or part of the amount unpaid on a Share even if no part of that amount has been called;
- (b) authorise payment by the Company of interest on the whole or any part of an amount accepted under rule 3.5(a) until the amount becomes payable, at a rate agreed between the directors and the member paying the amount; and
- (c) repay to a member any amount accepted under rule 3.5(a).

3.6 Proceedings to recover calls

In a proceeding to recover a call, or an amount payable due to the failure to pay or late payment of a call, conclusive evidence of the obligation to pay the call is established by proof that:

- (a) the name of the person is entered in the register of members as the holder or one of the holders of the Share on which the call was made;
- (b) the resolution making the call is recorded in the minute book; and
- (c) notice of the call was given or taken to be given to the person in accordance with this Constitution,

and it is not necessary to prove the appointment of the directors who made the call or any other matter.

4 Forfeiture, Liens and Surrender

4.1 Liability to forfeiture

- (a) If a member fails to pay any sum payable on a call by the time specified for payment, the directors may serve a notice on that member requiring payment of the unpaid part of the call, together with interest accrued and all costs, expenses or damages the Company has incurred due to the failure to pay.
- (b) The notice must:
 - (i) specify a day (at least 14 days after the date of the notice) by which, and the manner by which, the amount payable must be paid; and
 - (ii) state that, if payment is not made by the time and in the manner specified, the Shares on which the call was made will be liable to be forfeited.

4.2 Power to forfeit

- (a) If a notice served under rule 4.1 has not been complied with by the date specified in the notice, the directors may by resolution forfeit the relevant Shares, at any time before the payment required by the notice is made.
- (b) A forfeiture under rule 4.2(a) includes all dividends, interest and other amounts payable by the Company in respect of the forfeited Shares and not paid or distributed before the forfeiture.
- (c) At any time before a forfeited Share has been sold, reissued or otherwise disposed of, the directors may cancel the forfeiture on the conditions they decide.

4.3 Notice of forfeiture

- (a) Where a Share has been forfeited:
 - (i) notice of the resolution must be given to the member holding the Share immediately before the forfeiture; and
 - (ii) an entry of the forfeiture, with the date, must be made in the register of members.
- (b) Any failure to give notice or enter the forfeiture in the register of members does not invalidate the forfeiture.

4.4 Consequences of forfeiture

- (a) A forfeited Share becomes the property of the Company and may be sold, reissued or otherwise disposed of on such terms as the directors decide, and with or without crediting as paid up any amount paid on the Share by any former holder.
- (b) A person whose Shares have been forfeited:
 - (i) ceases to be a member in respect of the forfeited Shares;
 - (ii) has no claims, demands or other rights against the Company in respect of or incident to those Shares, except as provided by the Act or this Constitution; and

- (iii) remains liable to pay to the Company all amounts that are owing on the Shares at the time of the forfeiture, including calls, instalments, interest, costs and expenses.
- (c) The forfeiture of a Share extinguishes all interest in, and all claims and demands against the Company relating to, the forfeited Share and, subject to rule 4.7(g), all other rights attached to the Share.
- (d) The directors may:
 - (i) exempt a Share from all or part of this rule 4.4;
 - (ii) waive or compromise all or part of any payment due to the Company under this rule 4.4; and
 - (iii) before a forfeited Share has been sold, reissued or otherwise disposed of, cancel the forfeiture on the conditions it decides.

4.5 Lien on Shares

- (a) Unless the terms of issue provide otherwise and to the extent permitted by law, the Company has a first and paramount lien on every Share and on the proceeds of sale and dividends payable on every Share for:
 - (i) any due and unpaid calls and instalments in respect of that Share;
 - (ii) any amount the Company is required by law to pay and has paid in respect of that Share;
 - (iii) any amount which is outstanding under loans made by the Company to acquire a Share under an employee incentive scheme; and
 - (iv) all interest and expenses due and payable to the Company in respect of unpaid amounts on that Share.
- (b) The Company may sell any Share on which the Company has a lien, in any manner the directors think fit, if:
 - (i) an amount in respect of which the lien exists is presently payable; and
 - (ii) the Company has, not less than 14 days before the date of sale, given to the holder of the Share a notice setting out, and demanding payment of, the amount which is presently payable in respect of which the lien exists.
- (c) The directors may do anything necessary or desirable to protect a lien or other interest in Shares to which the Company is entitled under this Constitution or a law.
- (d) When the Company registers a transfer of Shares on which the Company has a lien without giving the transferee notice of its claim, the Company's lien is released so far as it relates to amounts owing by the transferor or any predecessor in title.
- (e) The directors may at any time exempt a Share wholly or in part from the provisions of this rule 4.5, and waive or compromise all or any part of any payment due to the Company under this rule 4.5.

4.6 Surrender of Shares

- (a) The directors may accept a surrender of Shares by way of compromise of a claim.

- (b) Any Shares surrendered may be sold, reissued or otherwise disposed of in the same manner as a forfeited Share.

4.7 Sale of Shares by the Company

- (a) Where the Company sells a Share under rules 4.4(a) or 4.5(b), the directors may:
 - (i) effect a transfer of the Share;
 - (ii) receive the consideration given for the Share; and
 - (iii) register as the holder of the Share the person to whom the Share is sold.
- (b) The validity of the sale of Shares may not be questioned by any person after the transfer has been registered.
- (c) The title of the purchaser is not affected by any irregularity in relation to the sale.
- (d) The proceeds of a sale of Shares under rules 4.4(a) or 4.5(b) must be applied in paying:
 - (i) first, the expenses of the sale; and
 - (ii) second, all amounts due and unpaid in respect of the Shares, and
 any balance must be paid to the person listed on the register of members as being entitled to the Shares immediately prior to the sale.
- (e) Until the proceeds of a sale of a Share sold by the Company are claimed or otherwise disposed of according to law, the directors may invest or use those proceeds in any other way for the benefit of the Company.
- (f) The Company is not required to pay interest on money payable to a former holder under this rule 4.7.
- (g) On completion of a sale, reissue or other disposal of a Share under rule 4.4(a), the rights which attach to the Share which were extinguished under rule 4.4(c) revive.
- (h) The only remedy of any person aggrieved by the sale of Shares is a claim for damages against the Company.

4.8 Members' indemnity

- (a) A member or, if the member is dead, the member's legal personal representative, must indemnify the Company against any liability which the Company has under any law to make a payment for or on account of that member including in respect of:
 - (i) Shares held by that member, solely or jointly;
 - (ii) a transfer or transmission of Shares by a member; or
 - (iii) dividends, bonuses or other money or property owed to the member.
- (b) Rule 4.8(a) includes, without limitation, a payment arising from:
 - (i) the death of that member;
 - (ii) the non-payment of any income tax, capital gains tax, wealth tax or other tax by that member or the legal personal representative of that member; or

- (iii) the non-payment of any estate, probate, succession, death, stamp or other duty by that member or the legal personal representative of that member.
- (c) The member or, if the member is dead, the member's legal personal representative, must pay to the Company immediately on demand:
 - (i) the amount required to reimburse the Company for a payment described in rule 4.8(a); and
 - (ii) interest on any part of that amount which is unpaid from the date the Company makes the payment until the date the Company is reimbursed in full for that payment, at a rate determined under rule 3.4(a)(i).
- (d) This rule 4.8 is in addition to any right or remedy the Company may have under the law which requires it to make the payment.
- (e) The directors may:
 - (i) exempt a Share from all or any part of this rule 4.8; and
 - (ii) waive or compromise all or any part of any payment due to the Company under this rule 4.8.

5 Distributions

5.1 Dividends

- (a) Subject to the Act, this Constitution, the Shareholders' Deed, all applicable law and any rights and restrictions attached to a Share or class of Shares, the directors may declare or determine to pay any dividend that, in their judgment, the financial position of the Company justifies.
- (b) Where they are entitled by law to do so, the directors may rescind a decision to pay a dividend if they decide.
- (c) The directors may pay any dividend required to be paid under the terms of issue of a Share.
- (d) Paying a dividend does not require confirmation at a general meeting.
- (e) Subject to any rights or restrictions attached to any Shares or class of Shares:
 - (i) all dividends must be paid equally on all Shares, except that a partly paid Share confers an entitlement only to the proportion of the dividend which the amount paid (not credited) on the Share is of the total amounts paid and payable (excluding amounts credited);
 - (ii) for the purposes of rule 5.1(e)(i), unless the directors decide otherwise, an amount paid on a Share in advance of a call is to be taken as not having been paid until it becomes payable; and
 - (iii) interest is not payable by the Company on any dividend.
- (f) The directors may fix a record date for a dividend, with or without suspending the registration of transfers from that date under rule 6.3.

- (g) A dividend in respect of a Share must be paid to the person who is registered, or entitled under rule 6.1(c) to be registered, as the holder of the Share:
- (i) where the directors have fixed a record date in respect of the dividend, on that date; or
 - (ii) where the directors have not fixed a record date in respect of that dividend, on the date fixed for payment of the dividend,
- and a transfer of a Share that is not registered, or left with the Company for registration under rule 6.1(b)(iii), on or before that date is not effective, as against the Company, to pass any right to the dividend.
- (h) When resolving to pay a dividend, the directors may direct payment of the dividend from any available source permitted by law, including:
- (i) wholly or partly by the distribution of specific assets, including paid-up Shares or other securities of the Company or of another body corporate, either generally or to specific members; and
 - (ii) to particular members wholly or partly out of any particular fund or reserve or out of profits derived from any particular source, and to the other members wholly or partly out of any other particular fund or reserve or out of profits derived from any other particular source.
- (i) Where a person is entitled to a Share because of a Transmission Event, the directors may, but need not, retain any dividends payable on that Share until that person becomes registered as the holder of that Share or transfers it.
- (j) The directors may retain from any dividend payable to a member any amount presently payable by the member to the Company and apply the amount retained to the amount owing.
- (k) The directors may decide the method of payment of any dividend or other amount in respect of a Share. Different methods of payment may apply to different members or groups of members (such as overseas members). Without limiting any other method of payment which the Company may adopt, payment in respect of a Share may be made:
- (i) by such electronic or other means approved by the directors directly to an account (of a type approved by the directors) nominated in writing by the member or the joint holders; or
 - (ii) by cheque sent to the address of the member shown in the register of members or, in the case of joint holders, to the address shown in the register of members of any of the joint holders, or to such other address as the member or any of the joint holders in writing direct.
- (l) A cheque sent under rule 5.1(k):
- (i) may be made payable to bearer or to the order of the member to whom it is sent or any other person the member directs; and
 - (ii) is sent at the member's risk.
- (m) If the directors decide that payments will be made by electronic transfer into an account (of a type approved by directors) nominated by a member, but no such account is nominated by the member or an electronic transfer into a nominated

account is rejected or refunded, the Company may credit the amount payable to an account of the Company to be held until the member nominates a valid account.

- (n) Where a member does not have a registered address or the Company believes that a member is not known at the member's registered address, the Company may credit an amount payable in respect of the member's Shares to an account of the Company to be held until the member claims the amount payable or nominates an account into which a payment may be made.
- (o) An amount credited to an account under rules 5.1(m) or (n) is to be treated as having been paid to the member at the time it is credited to that account. The Company will not be a trustee of the money and no interest will accrue on the money. The money may be used for the benefit of the Company until claimed, reinvested under rule 5.1(p) or disposed of in accordance with the laws relating to unclaimed monies.
- (p) If a cheque for an amount payable under rule 5.1(k) is not presented for payment for at least 11 calendar months after issue or an amount is held in an account under rules 5.1(m) or (n) for at least 11 calendar months, the directors may reinvest the amount, after deducting reasonable expenses, into Shares in the Company on behalf of, and in the name of, the member concerned and may stop payment on the cheque. The Shares may be acquired on market or by way of new issue at a price the directors accept is market price at the time. Any residual sum which arises from the reinvestment may be carried forward or donated to charity on behalf of the member, as the directors decide. The Company's liability to provide the relevant amount is discharged by an application of the relevant amount under this rule 5.1(p). The directors may do anything necessary or desirable (including executing any document) on behalf of the member to effect the application of an amount under this rule 5.1(p). The directors may determine other rules to regulate the operation of this rule 5.1(p) and may delegate their power under this rule to any person.

5.2 Capitalising profits

- (a) Subject to the Shareholders' Deed, any rights or restrictions attached to any Shares or class of Shares and any special resolution of the Company, the directors may capitalise and distribute among those members who would be entitled to receive dividends and in the same proportions, any amount:
 - (i) forming part of the undivided profits of the Company;
 - (ii) representing profits arising from an ascertained accretion to capital or a revaluation of the assets of the Company;
 - (iii) arising from the realisation of any assets of the Company; or
 - (iv) otherwise available for distribution as a dividend.
- (b) The directors may resolve that all or any part of the capitalised amount is to be applied:
 - (i) in paying up in full, at an issue price decided by the directors, any unissued Shares in or other securities of the Company;
 - (ii) in paying up any amounts unpaid on Shares or other securities held by the members; or
 - (iii) partly as specified in rule 5.2(b)(i) and partly as specified in rule 5.2(b)(ii).

The members entitled to Share in the distribution must accept that application in full satisfaction of their interest in the capitalised amount.

- (c) Rules 5.1(e), (f) and (g) apply, so far as they can and with any necessary changes, to capitalising an amount under this rule 5.2 as if references in those rules to:
 - (i) a dividend were references to capitalising an amount; and
 - (ii) a record date were references to the date the directors resolve to capitalise the amount under this rule 5.2.
- (d) Where in accordance with the terms and conditions on which options to take up Shares are granted (and being options existing at the date of the passing of the resolution referred to in rule 5.2(b)) a holder of those options will be entitled to an issue of bonus Shares under this rule 5.2, the directors may in determining the number of unissued Shares to be so issued, allow in an appropriate manner for the future issue of bonus Shares to option holders.

5.3 Ancillary powers

- (a) To give effect to any resolution to reduce the capital of the Company (by way of Share buy-back or otherwise), to satisfy a dividend or to capitalise any amount, the directors may:
 - (i) settle as they think expedient any difficulty that arises in making the distribution or capitalisation and, in particular, make cash payments in cases where members are entitled to fractions of Shares or other securities and decide that amounts or fractions of less than a particular value decided by the directors may be rounded up or down to adjust the rights of all parties;
 - (ii) fix the value for distribution of any specific assets;
 - (iii) pay cash or issue Shares or other securities to any member to adjust the rights of all parties;
 - (iv) vest any of those specific assets, cash, Shares or other securities in a trustee on trust for the persons entitled to the distribution or capitalised amount that seem expedient to the directors; and
 - (v) authorise any person to make, on behalf of all the members entitled to any specific assets, cash, Shares or other securities as a result of the distribution or capitalisation, an agreement with the Company or another person which provides, as appropriate, for the distribution or issue to them of Shares or other securities credited as fully paid up or for payment by the Company on their behalf of the amounts or any part of the amounts remaining unpaid on their existing Shares or other securities by applying their respective proportions of the amount resolved to be distributed or capitalised.
- (b) Any agreement made under an authority referred to in rule 5.3(a)(v) is effective and binds all members concerned.
- (c) If a distribution, transfer or issue of specific assets, Shares or securities to a particular member or members is, in the directors' discretion, considered impracticable, the directors may make a cash payment to those members or allocate the assets, Shares or securities to a trustee to be sold on behalf of, and for

the benefit of, those members, instead of making the distribution, transfer or issue to those members.

- (d) If the Company distributes to members (either generally or to specific members) securities in the Company or in another body corporate or trust (whether as a dividend, capital return or otherwise and whether or not for value), each of those members appoints the Company as its agent to do anything needed to give effect to that distribution, including agreeing to become a member of that other body corporate.

5.4 Reserves

- (a) The directors may set aside out of the Company's profits any reserves or provisions they decide.
- (b) The directors may appropriate to the Company's profits any amount previously set aside as a reserve or provision.
- (c) Setting aside an amount as a reserve or provision does not require the directors to keep the amount separate from the Company's other assets, nor prevent the amount being used in the Company's business or being invested or subsequently distributed to members, as the directors think fit.

5.5 Carrying forward profits

The directors may carry forward any part of the profits remaining that they consider should not be distributed as dividends or capitalised, without transferring those profits to a reserve or provision.

5.6 Dividend reinvestment plan

- (a) The directors may implement a dividend reinvestment plan on the terms they think fit under which the whole or any part of a dividend due to members who participate in the plan on their Shares or any class of Shares may be applied in subscribing for securities of the Company or of a related body corporate.
- (b) The directors may amend, suspend or terminate a dividend reinvestment plan implemented by them.

5.7 Dividend selection plans

The directors may:

- (a) implement a dividend selection plan on terms they decide, under which participants may choose:
 - (i) to receive a dividend from the Company paid wholly or partly out of any available source, including any particular fund or reserve or out of profits derived from any particular source; or
 - (ii) to forego a dividend from the Company in place of some other form of distribution from the Company or another body corporate or a trust; and
- (b) amend, suspend or terminate a dividend selection plan.

5.8 Capital reductions

The Company may reduce its share capital by any of the means authorised by the Act, subject to the provisions of that law. The Company may reduce its share capital in any way

that is not otherwise authorised by law, including by way of an in specie distribution of the assets of the Company (including any shares, options or other securities in another body corporate), if the reduction:

- (a) is fair and reasonable to the members of the Company as a whole;
- (b) does not materially prejudice the Company's ability to pay its creditors;
- (c) is approved by members in accordance with section 256C of the Act.

5.9 Shares in another body corporate

Where the Company, pursuant to a reduction in its share capital in accordance with rule 5.8, distributes shares, options or other securities in another body corporate to members:

- (a) the members of the Company will be deemed to have agreed to become members of that body corporate; and
- (b) each of the members appoints the Company or any of its directors as its agent to execute any transfer or other document required to effect the distribution of shares, options or other securities to that member.

6 Transfer and Transmission

6.1 Transferring Shares

- (a) Subject to this Constitution, the Shareholders' Deed and any rights or restrictions attached to any Shares or class of Shares, a member may transfer any of the member's Shares by an instrument in writing in any usual form or in any other form approved by the directors and permitted by law.
- (b) An instrument referred to in rule 6.1(a) must be:
 - (i) signed by or on behalf of the transferor and, if required by the directors, the transferee;
 - (ii) if required by law, duly stamped; and
 - (iii) left for registration at the Company's registered office, or at any other place determined by the directors, with such evidence as the directors require to prove the transferor's title or right to the Shares and the transferee's right to be registered as the owner of the Shares.
- (c) If the Company receives an instrument in accordance with rules 6.1(a) and 6.1(b), the Company must, subject to the powers vested in the directors by this Constitution, register the transferee as the holder of the Shares.
- (d) A transferor of Shares remains the holder of the Shares until the transferee's name is entered in the register of members as the holder of the Shares.
- (e) The Company may retain a registered instrument of transfer for any period the directors decide.
- (f) The directors may do anything necessary or desirable to facilitate participation by the Company in any clearing and settlement facility for the transfer of financial products.

- (g) The directors may, to the extent permitted by law, waive all or any of the requirements of this rule 6.1, whether for the purpose of giving effect to rule 6.1(f) or otherwise.

6.2 Power to refuse to register transfers

- (a) Subject to the Shareholders' Deed, the directors may decline to register, or prevent registration of, a transfer of Shares or apply a holding lock to prevent a transfer in accordance with the Act:
 - (i) where the transfer is not in registrable form;
 - (ii) where the Company has a lien on any of the Shares transferred;
 - (iii) where registration of the transfer may breach a law of Australia; or
 - (iv) the transfer breaches the terms of an employee share plan.
- (b) If the directors decline to register a transfer, the Company must give notice of the refusal as required by the Act. Failure to give that notice will not invalidate the decision of the directors to decline to register the transfer.
- (c) The directors may delegate their authority under this rule 6.2 to any person.
- (d) If the Shareholders' Deed is in force, and notwithstanding rule 6.3 or any other provision of this Constitution, the Directors must not decline to register a transfer of a Share and must not suspend the registration of such transfer that complies with the terms of the Shareholders' Deed, and must not register a transfer which does not comply with the terms of the Shareholders' Deed.

6.3 Power to suspend registration of transfers

- (a) Subject to this Constitution, the Board may suspend the registration of transfers at the times and for the period of time it determines.
- (b) A period of suspension of registration must not exceed 30 days in any calendar year.

6.4 Transmission of Shares

- (a) If a member dies, subject to the Shareholders' Deed, the only persons the Company will recognise as having any title to the member's Shares or any benefits accruing on those Shares are:
 - (i) where the member was a sole holder, the member's legal personal representative; and
 - (ii) where the member was a joint holder, the surviving member or members.
- (b) The death of a member does not release their estate from any liability on a Share registered in the name of that member, whether that Share was held solely or jointly.
- (c) The directors may register a transfer of Shares signed by a member before a Transmission Event even though the Company has notice of the Transmission Event.

- (d) A person who establishes to the satisfaction of the directors that they are entitled to a Share because of a Transmission Event may:
- (i) elect to be registered as the holder of the Share by giving the Company written notice; or
 - (ii) transfer that Share to another person,
- provided that where the Shareholders' Deed is in force, such person agrees to be bound by the Shareholders' Deed.
- (e) A transfer under rule 6.4(d) is subject to all provisions of this Constitution relating to transfers of Shares, so far as they can and with any necessary changes, as if the Transmission Event had not occurred and the notice or transfer were executed or effected by the registered holder of the Share.
- (f) Where two or more persons are jointly entitled to a Share because of a Transmission Event they will, on being registered as the holders of the Share, be taken to be joint holders of that Share.

7 General Meetings

7.1 *Calling general meetings*

A general meeting may only be called:

- (a) by a directors' resolution; or
- (b) as otherwise provided in the Act or the Shareholders' Deed.

7.2 *Cancellation and postponement*

Subject to this Constitution, the Shareholders' Deed and the Act, the directors may change the venue for, postpone or cancel a general meeting, but:

- (a) a meeting that is called in accordance with a members' requisition under the Act; and
- (b) any other meeting that is not called by a directors' resolution,

may not be postponed or cancelled without the prior written consent of the persons who called or requisitioned the meeting.

7.3 *Use of technology at general meetings*

- (a) Subject to any applicable law:
 - (i) the Company may hold a meeting of members using any technology approved by the directors that give the members as a whole a reasonable opportunity to participate; and
 - (ii) a meeting conducted using such technology may be held at multiple venues (not all of which need to be specified) or not held at any specified venue,

and participation in such a meeting will constitute presence as if in person at such a meeting.

- (b) If, before or during a meeting of members, any technical difficulty occurs, such that the members as a whole do not have a reasonable opportunity to participate, the chair may:
- (i) adjourn the meeting until the difficulty is remedied; or
 - (ii) where a quorum remains present (either at the place at which the chair is present or by technology as contemplated by this rule 7.3) and able to participate, subject to the Act, continue the meeting.
- (c) For the avoidance of doubt, and so long as the law permits, a virtual general meeting may be held without there being a physical meeting place by using any technology, including by an instantaneous audio-visual communication device or audio and visual or virtual communication technology, on the basis that:
- (i) the notice convening the general meeting refers to the main procedures governing how the meeting is to be conducted;
 - (ii) a member participating at the general meeting is entitled to exercise all rights as a member at the meeting including the right to vote; and
 - (iii) the members participating at the meeting should be able to hear the meeting in real time and should be given a reasonable opportunity to participate including being able to ask questions or to make comments, provided that an ability of one or more members to do so will not affect the validity of the general meeting or any business conducted so long as there are sufficient members present to constitute a quorum.

7.4 Notice of general meetings

- (a) Notice of a general meeting must be given to each person who, at the time of giving the notice, is a member, director or auditor of the Company in the form and manner the directors decide.
- (b) The non-receipt of a notice convening a general meeting or the accidental omission to give notice to any person entitled to receive the notice does not invalidate anything done or any resolution passed at the general meeting.
- (c) Unless the Act provides otherwise, no business may be transacted at a general meeting unless the general nature of the business is stated in the notice calling the meeting.
- (d) A person may waive notice of any general meeting by written notice to the Company.
- (e) Failure to give a member or any other person notice of a general meeting or a proxy form, does not invalidate anything done or any resolution passed at the general meeting if:
 - (i) the failure occurred by accident or inadvertent error; or
 - (ii) before or after the meeting, the person notifies the Company of the person's agreement to that thing or resolution.
- (f) A person's attendance at a general meeting waives any objection that person may have to a failure to give notice, or the giving of a defective notice, of the meeting unless the person at the beginning of the meeting objects to the holding of the meeting.

7.5 Quorum at general meetings

- (a) No business may be transacted at a general meeting, except the election of a chair and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- (b) If the Shareholders' Deed is in force, a quorum is as set out in the Shareholders' Deed, otherwise the quorum is two members present at the meeting and entitled to vote.
- (c) If the Shareholders' Deed is in force, if a quorum is not present within the time stipulated in the Shareholders' Deed, the relevant provisions in the Shareholders' Deed will apply. Otherwise, if there is no quorum within 30 minutes after the time appointed for the meeting:
 - (i) where the meeting was called by a single director, or at the request of members, the meeting is dissolved; or
 - (ii) in any other case, the meeting stands adjourned to the same day, time and place in the next week, or to such other day, time and place as the directors present decide. If no quorum is present at any adjourned meeting within 30 minutes after the time for the meeting, the meeting is dissolved.

7.6 Chair of general meetings

- (a) The chair of the general meeting will be determined in accordance with the Shareholders' Deed. Otherwise, the chair of directors must preside as chair at each general meeting if present within 15 minutes after the time appointed for the meeting and willing to act.
- (b) If at a general meeting:
 - (i) there is no chair of directors;
 - (ii) the chair of directors is not present within 15 minutes after the time appointed for the meeting; or
 - (iii) the chair of directors is present within that time but is not willing to act as chair of the meeting,

the directors present may elect a person present to chair the meeting.
- (c) If the directors do not choose a chair under rule 7.6(b), the members present must elect as chair of the meeting:
 - (i) another director who is present and willing to act; or
 - (ii) if no other director is present and willing to act, a member who is present and willing to act.
- (d) The chair of a general meeting may, for any item of business or discrete part of the meeting, vacate the chair in favour of another person that the chair nominates (**Acting Chair**). Where an instrument appoints the chair as a member's proxy for part of the proceedings for which an Acting Chair has been nominated, the instrument is taken to appoint the Acting Chair for the relevant part of the proceedings.

7.7 Admission to general meetings

- (a) The chair of a general meeting may refuse admission to a person, or require that person to leave and remain out of the meeting, if that person:
 - (i) has a camera, tape recorder or video camera, or another audio or visual recording device;
 - (ii) has a placard, banner or prop;
 - (iii) has an article which the chair considers to be dangerous, offensive or liable to cause disruption;
 - (iv) refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession;
 - (v) behaves or threatens to behave in a dangerous, offensive or disruptive manner; or
 - (vi) is not:
 - (A) a member or a proxy, attorney or Representative of a member;
 - (B) a director; or
 - (C) an auditor of the Company.
- (b) A person requested by the directors or the chair to attend a general meeting is entitled to be present, whether the person is a member or not.
- (c) Nothing in this rule 7.7 is taken to limit the powers conferred on the chair by law.

7.8 Conduct of general meetings

- (a) Subject to the Act, the chair of a general meeting is responsible for the general conduct of the meeting and for the procedures to be adopted at the meeting.
- (b) The chair may, at any time the chair considers it necessary or desirable for the efficient and orderly conduct of the meeting:
 - (i) impose a limit on the time that a person may speak on each motion or other item of business and terminate debate or discussion on any business, question, motion or resolution being considered by the meeting and require the business, question, motion or resolution to be put to a vote of the members present;
 - (ii) adopt any procedures for casting or recording votes at the meeting whether on a show of hands or on a poll, including the appointment of scrutineers; and
 - (iii) decide not to put to the meeting any resolution proposed in the notice convening the meeting (other than a resolution proposed by members in accordance with section 249N of the Act or required by the Act to be put to the meeting).
- (c) Any decision by the chair on matters of procedure under rules 7.8(a) or (b) is final. Any challenge to a decision must be made at the meeting and may be determined by the chair whose decision is final.
- (d) Nothing contained in this rule 7.8 limits the powers conferred on a chair by law.

7.9 Suspensions and adjournments

- (a) Subject to the Shareholders' Deed, at any time during the course of the meeting, the chair may, for the purpose of allowing a poll to be taken or determined, suspend the proceedings of the meeting for such period as the chair decides without effecting an adjournment.
- (b) Subject to the Shareholders' Deed, at any time during the course of the meeting, the chair may adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered by the meeting either:
 - (i) to a later time at the same meeting; or
 - (ii) to an adjourned meeting to be held at a time and place determined by the chair.
- (c) The chair's rights under rules 7.9(a) and (b) are exclusive and, unless the chair requires otherwise, no vote may be taken or demanded by the members present in respect of any suspension or adjournment of proceedings.
- (d) Subject to the Shareholders' Deed, only unfinished business may be transacted at a meeting resumed after an adjournment under this rule 7.9.
- (e) Where a meeting is postponed or adjourned, the directors may, subject to the Shareholders' Deed, by notice to each member and each person entitled to receive notice of the general meeting, postpone, cancel or change the place of the postponed or adjourned meeting.
- (f) Subject to the Shareholders' Deed, where a meeting is postponed or adjourned for 30 days or more, notice of the postponed or adjourned meeting must be given as in the case of the original meeting.

7.10 Voting rights

- (a) Subject to the Act, the Shareholders' Deed, any rights or restrictions attached to any Shares and to this Constitution:
 - (i) on a show of hands, each member present has one vote; and
 - (ii) on a poll, each member present has one vote for each Share held as at the Record Time, except for partly paid Shares, each of which confers on a poll only the fraction of one vote which the amount paid (not credited) on the Share bears to the total issue price of that Share and excludes amounts paid in advance of a call.
- (b) If a person present at a general meeting represents personally or by proxy, attorney or Representative more than one member, on a show of hands the person is, subject to the Act, entitled to one vote only even though he or she represents more than one member.
- (c) A joint holder may vote at a meeting either personally or by proxy, attorney or Representative as if that person was the sole holder. If more than one joint holder tenders a vote in respect of the relevant Shares, the vote of the holder named first in the register of members who tenders a vote, whether in person or by proxy, attorney or Representative, must be accepted to the exclusion of the votes of the other joint holders.

- (d) A person entitled to a Share because of a Transmission Event may vote at a meeting in respect of that Share as if that person were the registered holder of the Share if, at least 48 hours before the meeting, or such shorter time as the directors decide, the directors:

- (i) admitted that person's right to vote in respect of the Share; or
- (ii) were satisfied of that person's right to be registered as the holder of the Share.

Any vote duly tendered by that person must be accepted and any vote tendered by the current registered holder must be excluded.

- (e) If a member holds a Share on which a call or other amount payable to the Company has not been duly paid:

- (i) that member is only entitled to be present at a general meeting and vote if that member holds, as at the Record Time, other Shares on which no money is then due and payable; and
- (ii) on a poll, that member is not entitled to vote in respect of that Share but may vote in respect of any Shares that member holds, as at the Record Time, on which no money is then due and payable.

- (f) A member is not entitled to vote on a resolution to the extent that, under the Act:

- (i) the member must not vote or must abstain from voting on the resolution; or
- (ii) a vote on the resolution by the member must be disregarded for any purpose.

If the member or a person acting as proxy, attorney or Representative of the member does tender such a vote on that resolution, their vote must not be counted.

- (g) An objection to the validity of a vote tendered at a meeting must be:

- (i) raised before or immediately after the result of the vote is declared; and
- (ii) referred to the chair of the meeting, whose decision is final, and

a vote not disallowed under the objection is valid for all purposes.

- (h) The chair may decide any difficulty or dispute which arises as to the number of votes that may be cast by or on behalf of any member and the decision of the chair is final.

7.11 Direct voting

- (a) The directors may determine that at any general meeting or class meeting, a member who is entitled to attend and vote on a resolution at that meeting (or where approved by the directors, an attorney, proxy or Representative appointed by such a member) is entitled to a direct vote in respect of that resolution. A "direct vote" includes a vote delivered to the Company by post or electronic means approved by the directors. The directors may prescribe rules to govern direct voting including specifications as to the form, method and timing of giving the direct vote in order for the vote to be valid, and the treatment of direct votes.

- (b) Subject to any rules prescribed by the directors under rule 7.11(a), a direct vote on a resolution cast in accordance with rule 7.11(a) is of no effect and will be disregarded:
- (i) if, at the time of the resolution, the person who cast the direct vote:
 - (A) is not entitled to vote on the resolution in respect of the Share voted; or
 - (B) would not be entitled to vote on the resolution in respect of the Share if the person were present at the meeting at which the resolution is considered;
 - (ii) if, had the vote been cast in person at the meeting at which the resolution is considered, the vote would not be valid or the Company would be obliged to disregard the vote; or
 - (iii) if the direct vote was not cast in accordance with any regulations, rules and procedures prescribed by the directors under rule 7.11(a).
- (c) Subject to any rules prescribed by the directors under rule 7.11(a), where:
- (i) a direct vote is cast on a resolution at a meeting in respect of a Share in accordance with rule 7.11(a); and
 - (ii) either:
 - (A) the member who is registered in respect of the Share(s) for which the direct vote was cast; or
 - (B) if not that member, the person who cast the direct vote on behalf of that member,

is present in person at the meeting at the time the resolution is considered (including in the case of a body corporate, by Representative),

then the direct vote will be disregarded unless the member or other person instructs otherwise.

7.12 Decisions at general meetings

- (a) Except where a resolution requires a special majority, a resolution is taken to be passed if a simple majority of the votes cast are in favour of the resolution. A resolution passed in this way is, for all purposes, a resolution of the members.
- (b) If the votes on a proposed resolution are equal, the chair has a casting vote in addition to any deliberative vote.
- (c) Subject to rules 7.12(d) and (f), each resolution submitted to a general meeting must be decided in the first instance by a show of hands.
- (d) A poll may be demanded by a member in accordance with the Act (and not otherwise) or by the chair. The demand for a poll may be withdrawn with the chair's consent.
- (e) Unless the chair or the directors otherwise determine, no poll may be demanded on the election of a chair.
- (f) The chair may determine that a resolution be determined by a poll without first submitting the resolution to the meeting to be decided by a show of hands.

- (g) A demand for a poll does not prevent a meeting continuing to transact any business other than the question on which the poll is demanded.
- (h) Where demanded, a poll must be taken in the manner and at the time the chair decides. The result of the poll as declared by the chair is the resolution of the meeting at which the poll was demanded.
- (i) Unless a poll is demanded, a declaration by the chair following a vote on a show of hands that a resolution has either been passed or lost is conclusive, without proof of the number or proportion of the votes recorded in favour of or against the resolution.

7.13 Representation at general meetings

- (a) Subject to this Constitution and the Shareholders' Deed, each member entitled to vote at a meeting may, in accordance with the Act:
 - (i) vote in person or, where a member is a body corporate, by its Representative; or
 - (ii) appoint not more than 2 proxies or attorneys to vote for the member.
- (b) A proxy, attorney or Representative may, but need not, be a member of the Company.
- (c) An instrument appointing a proxy is valid if it is in accordance with the Act or in any form (including electronic) approved by the directors.
- (d) A proxy appointment received at an electronic address specified in the notice of meeting for the receipt of proxy appointment or otherwise received by the Company in accordance with the Act is taken to have been received at the registered office and validated by the member if the requirements set out in the notice are satisfied or the appointment is otherwise authenticated in accordance with the Act.
- (e) Unless otherwise provided in the appointment of a proxy, attorney or Representative, an appointment will be taken to confer authority:
 - (i) to do any of the acts specified in rule 7.13(f), even though the appointment may refer to specific resolutions and may direct the proxy, attorney or Representative how to vote on those resolutions; and
 - (ii) even though the appointment may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled, adjourned or postponed to another time or changed to another venue, to attend and vote at the rescheduled, adjourned or postponed meeting or at the new venue.
- (f) The acts referred to in rule 7.13(e)(i) are:
 - (i) to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion;
 - (ii) to vote on any motion before the general meeting, whether or not the motion is referred to in the appointment; and
 - (iii) to act generally at the meeting (including to speak, demand a poll, join in demanding a poll and to move motions).

- (g) A proxy form issued by the Company must allow for the insertion of the name of the person to be appointed as proxy and may provide that, in circumstances and on conditions specified in the form, the chair (or another person specified in the form) is appointed as proxy.
- (h) A proxy or attorney may not vote at a meeting or adjourned meeting or on a poll unless the instrument appointing the proxy or attorney, together with the authority under which the instrument is signed, is received by the Company:
- (i) at least 48 hours (or any shorter period as specified by the Act or as the directors permit) before the commencement of the meeting or adjourned meeting or taking the poll, as applicable; or
 - (ii) where rule 7.13(j)(ii) applies, such shorter period before the time for holding the meeting or adjourned or postponed meeting or taking the poll, as applicable, as the directors determine in their discretion.
- (i) A document is received by the Company under rule 7.13(h) when it is received in accordance with the Act, and to the extent permitted by the Act, if the document is produced or the transmission of the document is otherwise verified to the Company in the way specified in the notice of meeting.
- (j) Where, within the period specified in rule 7.13(h)(i) or as otherwise determined by the directors, the Company receives an instrument recording a direct vote or appointing a proxy or attorney in accordance with this Constitution or the Act, the Company may:
- (i) clarify with the relevant member any instruction in relation to that instrument by written or verbal communication and make any amendments to the instrument required to reflect any clarification; and
 - (ii) where the Company considers that the instrument has not been duly executed, return the instrument to the appointing member and request that the member duly execute the instrument and return it to the Company within the period determined by the Company under rule 7.13(h)(ii) or otherwise determined by the directors and notified to the member.
- (k) The member is taken to have appointed the Company as its attorney for the purpose of any amendments made to an instrument recording a direct vote or appointing a proxy or attorney in accordance with rule 7.13(j)(i). An instrument appointing a proxy or attorney which is received by the Company in accordance with rule 7.13(j)(ii) is taken to have been validly received by the Company.
- (l) Where a member appoints 2 proxies or attorneys to vote at the same meeting:
- (i) if the appointment does not specify the proportion or number of the member's votes each proxy or attorney may exercise, each may exercise half of the votes;
 - (ii) if both proxies or attorneys attend, neither may vote on a show of hands; and
 - (iii) on a poll, each proxy or attorney may only exercise votes in respect of those Shares or voting rights the proxy or attorney represents.

- (m) A vote exercised in accordance with the terms of an instrument appointing a proxy, a power of attorney or other relevant instrument of appointment is valid despite:
- (i) the occurrence of a Transmission Event;
 - (ii) the revocation of the instrument or the power (or of the authority under which a third party appointed the proxy or attorney); or
 - (iii) the transfer of the Share in respect of which the instrument or power is given,
- if no notice in writing of the Transmission Event, revocation or transfer (as the case may be) has been received by the Company within the period specified in rules 7.13(h) or (j) (as applicable).
- (n) Unless otherwise determined by the directors:
- (i) the appointment of a proxy or attorney is not revoked by the appointor attending and taking part in the meeting; but
 - (ii) if the appointor votes on a resolution, the proxy or attorney is not entitled to vote on the resolution as the proxy or attorney of the appointor.
- (o) The chair of a meeting, or their delegate, may require a person acting as a proxy, attorney or Representative to establish to the chair's satisfaction that the person is duly appointed to act and may, if the person fails to do so, exclude the person from attending or voting at the meeting.

8 Directors

8.1 Number of Directors

The Company must have at least three directors, and no more than the maximum number of directors permitted under the Shareholders' Deed, if the Shareholders' Deed is in force. At least two directors must ordinarily reside in Australia.

8.2 Appointment of Directors

- (a) If the Shareholders' Deed is in force, a director may only be appointed in accordance with the application provisions of the Shareholders' Deed. Otherwise:
- (i) the Company may by resolution at a general meeting appoint a person as a director; or
 - (ii) the Board may by resolution at a Board meeting appoint a person as a director, as an additional director or to fill the office of a director vacated when a director ceases to be a director.
- (b) Subject to any requirements at law, an appointment of a person as a director is not effective unless a signed consent to the appointment is provided by that person to the Company. The appointment of a person as a director will take effect on the later of the date of appointment and the date on which the Company receives the signed consent.

8.3 Removal of Director

The Shareholders' Deed is in force, then without limiting rule 8.4, a director may be removed in accordance with the applicable provisions of the Shareholders' Deed. Otherwise:

- (a) the Company may remove a director by resolution at a general meeting; and
- (b) on the removal of a director, the Company may by resolution appoint another person as a director instead.

8.4 Cessation of Directorship

A person ceases to be a director and the office of director is vacated if the person:

- (a) is removed from office as a director by a resolution of the Company at a general meeting;
- (b) resigns as a director in accordance with this Constitution;
- (c) is subject to assessment or treatment under any mental health law and the Board resolves that the person should cease to be a director;
- (d) dies;
- (e) is disqualified from acting as a director under the Act; or
- (f) is absent from all Board meetings for a continuous period of three months without leave of absence from the Board and the Board resolves that the director's office should be vacated.

8.5 Resignation of Directors

A director may resign from the office of director by giving written notice of resignation to the Company at its registered office.

8.6 Director need not be a member

- (a) A person is not required to hold Shares in the Company to qualify for appointment or election as a director.
- (b) A director is entitled to attend and speak at general meetings and at meetings of the holders of a class of Shares, even if the director is not a member or a holder of Shares in the relevant class.

8.7 Vacating office

In addition to the circumstances prescribed by the Act and this Constitution, the office of a director becomes vacant if the director:

- (a) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (b) becomes bankrupt or insolvent or makes any arrangement or composition with their creditors generally;
- (c) fails to attend meetings of the directors for more than 3 consecutive months without leave of absence from the directors and a majority of the other directors have not, within 14 days of having been given a notice by the secretary giving details of the absence, resolved that leave of absence be granted;
- (d) resigns by notice in writing to the Company; or

- (e) being an executive director (including the managing director), ceases to be an employee of the Company or a subsidiary of the Company, unless determined otherwise by the directors.

8.8 Remuneration

- (a) If the Shareholders' Deed is in force, the remuneration of each director is to be determined in accordance with the applicable provisions of the Shareholders' Deed. Otherwise, if there is no Shareholders' Deed in force (or the Shareholders' Deed in force does not contain applicable provisions relating to the remuneration of directors) and subject to this rule 8.8, the Company may pay a director any fee (or other remuneration) it determines by resolution for services performed as a director.
- (b) If the Shareholders' Deed is in force, the Directors are entitled to be paid such travelling and other expenses as are permitted in accordance with the applicable provisions of the Shareholders' Deed. Otherwise, if there is no Shareholders' Deed in force (or the Shareholders' Deed in force does not contain applicable provisions relating to the expenses of directors), the directors are entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any general meetings of the Company or of the directors or of committees of the directors.
- (c) If a director, with the approval of the directors, performs extra services or makes any special exertions for the benefit of the Company, the directors may cause that director to receive out of the funds of the Company such additional remuneration as the directors decide having regard to the value to the Company of the extra services or special exertions.
- (d) Any remuneration paid to an executive director must not include a commission on, or percentage of, operating revenue.
- (e) Any person (including an officer of the Company) may be paid a benefit in connection with the retirement from office of any officer of the Company, in accordance with the Act.
- (f) The Company may pay contributions to a superannuation, retirement or pension fund for a director.
- (g) Subject to the Act, a director may be engaged by the Company in any other capacity (other than an auditor) and may be appointed on terms as to remuneration, tenure of office and otherwise as may be agreed by the directors.

8.9 Interested directors

- (a) A director who has an interest in a matter that relates to the affairs of the Company must comply with any applicable provisions of the Act relating to disclosure of that interest or any rules relating to disclosure adopted by the directors.
- (b) No act, transaction, agreement, instrument, resolution or other thing is invalid or voidable only because a person fails to comply with rule 8.9(a).
- (c) A director is not disqualified by reason only of being a director from:
 - (i) holding any office or place of profit in the Company, except that of auditor;

- (ii) holding any office or place of profit in any other company, body corporate, trust, partnership or entity promoted by or otherwise associated with the Company, including one that acts in a professional capacity for the Company;
 - (iii) contracting or entering into an arrangement with the Company as vendor, purchaser or in another capacity;
 - (iv) being present and being counted in a quorum for any meeting, or voting on a resolution or decision at a meeting, where the director has an interest in a matter that is being considered by the directors, unless that is prohibited by the Act; or
 - (v) signing or participating in the execution of a document by or on behalf of the Company.
- (d) Notwithstanding the fiduciary obligations arising from the director's office, the director may do any of the things referred to in rule 8.9(c):
- (i) without any liability to account to the Company for any direct or indirect benefit accruing to the director; and
 - (ii) without affecting the validity of any contract, arrangement, instrument, resolution or other thing.
- (e) A director may exercise the voting power conferred by securities in any entity held by the Company, in accordance with the terms of the director's appointment, even in circumstances where the director may be interested in the exercise (such as a resolution appointing a director as an officer of the entity or providing for the payment of remuneration to officers of the entity).
- (f) This rule 8.9 also applies as if each reference to the Company were a reference to a subsidiary of the Company.

8.10 Powers and duties

- (a) Subject to the Shareholders' Deed, the directors are responsible for managing the business of the Company and may exercise all powers of the Company which are not, by the law or this Constitution, required to be exercised by the Company in general meeting.
- (b) Without limiting the generality of rule 8.10(a), the directors may exercise all the powers of the Company to:
 - (i) borrow or raise money in any way;
 - (ii) charge any of the Company's property or business or any of its uncalled capital; and
 - (iii) issue debentures or give any other security for a debt, liability or obligation of the Company or of any other person,

and if the Shareholders' Deed requires certain approval or a particular procedure to be followed, such act cannot be undertaken without first obtaining that approval or following that procedure (as applicable).

- (c) Debentures or other securities may be issued on the terms and at prices decided by the directors, including bearing interest or not, with rights to subscribe for, or exchange into, Shares or other securities in the Company or a related body

corporate or with special privileges as to redemption, participating in Share issues, attending and voting at general meetings and appointing directors.

- (d) The directors may decide how cheques, promissory notes, banker's drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed, as applicable, by or on behalf of the Company.
- (e) The directors may pay out of the Company's funds all expenses relating to the promotion, formation and registration of the Company and the vesting in it of the assets acquired by it.
- (f) The directors may:
 - (i) appoint any person to be an officer, attorney or agent of the Company for any purpose, with the powers, discretions and duties (including those vested in or exercisable by the directors), for any period and on any terms (including as to remuneration) as the directors decide;
 - (ii) authorise an officer, attorney or agent to delegate any of the powers, discretions and duties vested in the attorney or agent; and
 - (iii) revoke or vary any power delegated to the attorney or agent, or remove or dismiss the attorney or agent with or without cause.
- (g) A power of attorney granted under rule 8.10(f) may contain such provisions for the protection and convenience of the attorney or persons dealing with the attorney as the directors decide.
- (h) Nothing in this rule 8.10 limits the general nature of rule 8.10(a).

8.11 Committees and delegates

- (a) The directors may delegate any of their powers to one director, a committee of directors, or any other person or persons (including a committee composed partly of one or more directors and partly of one or more other persons).
- (b) A committee or delegate must exercise the powers delegated in accordance with any directions of the directors.
- (c) Any power delegated in accordance with this rule 8.11 may be revoked, withdrawn, altered or varied as the directors decide.
- (d) Subject to the terms of appointment or reference of a committee, the provisions of this Constitution applying to meetings and resolutions of directors apply, so far as they can and with the necessary changes, to meetings and resolutions of a committee.
- (e) The acceptance of a delegation of powers by a director may, if the directors so resolve, be treated as an extra service or special exertion performed by the delegate for the purposes of rule 8.8(c).
- (f) Nothing in this rule 8.11 limits the powers of the directors to delegate.

8.12 Meetings of directors

- (a) The directors may meet together to attend to business and adjourn and otherwise regulate their meetings as they decide.

- (b) The contemporaneous linking together by telephone or other electronic means of a sufficient number of directors to constitute a quorum constitutes a meeting of the directors. All the provisions in this Constitution relating to meetings of the directors apply, as far as they can and with any necessary changes, to meetings of the directors by telephone or other electronic means.
- (c) A meeting by telephone or other electronic means is taken to be held at the place where the chair of the meeting is, or at such other place the chair of the meeting decides, as long as at least one of the directors involved was at that place for the duration of the meeting.
- (d) A director taking part in a meeting by telephone or other electronic means is taken to be present in person at the meeting and all directors participating in the meeting will (unless there is a specific statement otherwise) be taken to have consented to the holding of the meeting by the relevant electronic means.
- (e) If, before or during the meeting, any technical difficulty occurs where one or more directors cease to participate, the chair may adjourn the meeting until the difficulty is remedied or may, where a quorum of directors remains present, continue with the meeting.

8.13 Calling meetings of directors

- (a) A director may, whenever the director thinks fit or as required by the Shareholders' Deed, call a meeting of the directors.
- (b) A secretary must, if requested by a director or required by the Shareholders' Deed, call a meeting of the directors.

8.14 Notice of meetings of directors

- (a) Notice of a meeting of directors must be given to each person who is at the time the notice is given:
 - (i) a director, except a director on leave of absence approved by the directors; or
 - (ii) an alternate director appointed under rule 8.19(a) by a director on leave of absence approved by the directors.
- (b) A notice of meeting of directors:
 - (i) must specify the time of the meeting and its location (or other method(s) by which the directors may participate under rule 8.12(b));
 - (ii) need not state the nature of the business to be transacted at the meeting;
 - (iii) may, if necessary, be given immediately before the meeting;
 - (iv) may be given in person or by post or by telephone, or other electronic means, or in any other way consented to by the directors; and
 - (v) will be taken to have been given to an alternate director if it is given to the director who appointed that alternate director.
- (c) A director or alternate director may waive notice of a meeting of the directors by giving notice to that effect in person or by post or by telephone, or other electronic means.

- (d) Failure to give a director or alternate director notice of a meeting of the directors does not invalidate anything done or any resolution passed at the meeting if:
 - (i) the failure occurred by accident or inadvertent error; or
 - (ii) the director or alternate director attended the meeting or waived notice of the meeting (whether before or after the meeting).
- (e) A person who attends a meeting of the directors waives any objection that person may have to a failure to give notice of the meeting.

8.15 Quorum at meetings of directors

- (a) If the Shareholders' Deed is in force, a quorum at a Board meeting is the number of directors as set out in the applicable provisions of the Shareholders' Deed. Otherwise, unless the directors decide otherwise, two directors constitutes a quorum.
- (b) No business may be transacted at a meeting of directors unless a quorum of directors is present at the time the business is dealt with.
- (c) If there is a vacancy in the office of a director, the remaining directors may act. But, if their number is not sufficient to constitute a quorum, they may only act in an emergency or to increase the number of directors to a number sufficient to constitute a quorum or to call a general meeting of the Company.

8.16 Chair and deputy chair of directors

- (a) If the Shareholders' Deed is in force, a chairperson may only be appointed in accordance with the applicable provisions of the Shareholders' Deed. Otherwise, the directors may elect one of their number to the office of chair and one or more to the office of deputy chair of directors. The directors may decide the period for which those offices will be held.
- (b) If, at a meeting of directors:
 - (i) there is no chair; or
 - (ii) the chair is either not present within 10 minutes after the time appointed for the holding of the meeting or is unable or unwilling to act,

the deputy chair (if any) is entitled to be chair of the meeting or, if the circumstances described by rules 8.16(b)(i) or 8.16(b)(ii) apply to the deputy chair, the directors present must elect one of their number to chair the meeting.

8.17 Decisions of directors

- (a) If the Shareholders' Deed is in force, questions arising at a meeting of directors must be decided in accordance with the applicable provisions of the Shareholders' Deed. Otherwise, subject to this Constitution, questions arising at a meeting of directors are decided by a majority of votes cast by the directors present and voting, and each director has one vote.
- (b) If the Shareholders' Deed is in force, whether a casting vote applies is decided in accordance with the applicable provisions of the Shareholders' Deed. Otherwise if on any resolution an equal number of votes is cast for and against a resolution, the chair does not have a casting vote.

8.18 Written resolutions

- (a) If the Shareholders' Deed is in force, a written resolution will be taken to be passed by a meeting of the directors if it is passed in accordance with the applicable provisions of the Shareholders' Deed as a written resolution of the directors, or otherwise if:
- (i) all of the directors (other than any director on leave of absence approved by the directors, any director who disqualifies themselves from considering the resolution in question and any director who would be prohibited by the Act from voting on the resolution in question) sign or consent to a written resolution; and
 - (ii) the directors who sign or consent to the resolution would have constituted a quorum at a meeting of directors held to consider that resolution,
- then the resolution is taken to have been passed by a meeting of the directors.
- (b) A director may consent to a resolution by:
- (i) signing the document containing the resolution (or a copy of that document);
 - (ii) giving to the Company at its registered office a written notice (including by electronic means) addressed to the secretary or to the chair of directors signifying assent to the resolution and either setting out its terms or otherwise clearly identifying them; or
 - (iii) telephoning the secretary or the chair of directors and signifying assent to the resolution and clearly identifying its terms.

8.19 Alternate directors

- (a) A director may, with the approval of a majority of the other directors, appoint a person to be the director's alternate director for such a period as the director decides.
- (b) The appointment may be terminated or suspended at any time by the appointor or by a majority of the other directors.
- (c) An appointment, or the termination or suspension of an appointment of an alternate director, must be in writing and signed and takes effect only when the Company has received notice in writing of the appointment, termination or suspension.
- (d) The alternate director:
- (i) may, but need not, be a member or a director of the Company;
 - (ii) may act as alternate director to more than one director;
 - (iii) in the absence of the appointor, may exercise any powers of the appointor, except the power under rule 8.19(a);
 - (iv) in the absence of the appointor, is entitled to attend and vote in place of and on behalf of the appointor and is to be counted in the quorum at the meeting of directors;
 - (v) is an officer of the Company and not the agent of the appointor, and is responsible to the Company for their own acts and defaults; and

- (vi) is not entitled to receive any remuneration or benefit from the Company other than out of the remuneration of the director appointing the alternate director or in accordance with rule 8.8(c).
- (e) An alternate director is not to be taken into account in determining the number of directors or the rotation of directors under this Constitution.
- (f) The office of an alternate director is vacated if and when the appointor vacates office as a director.
- (g) Notwithstanding the foregoing, if the Shareholders' Deed is in force, a director may only appoint an alternate if such appointment is permitted under the Shareholders' Deed.

8.20 Validity of acts

An act done at a meeting of directors, or of a committee or a person acting as a director is not invalidated by:

- (a) a defect in the appointment of a person as a director or a member of a committee; or
- (b) a person so appointed being disqualified or not being entitled to vote,

if that circumstance was not known by the directors, committee or person when the act was done.

9 Executive officers

9.1 Managing directors and executive directors

- (a) The directors may appoint one or more of the directors to the office of managing director or other executive director in accordance with the Shareholders' Deed. Subject to the terms of any agreement entered into, the directors may at any time revoke the appointment, with or without cause.
- (b) Unless the directors decide otherwise, a managing director's or other executive director's appointment as an employee automatically terminates if the managing director or other executive director ceases to be a director.
- (c) A managing director or other executive director may be referred to by any title chosen by the directors.

9.2 Secretary

The directors must appoint at least one secretary who must ordinarily reside in Australia and may appoint additional secretaries.

9.3 Executive officers

- (a) A reference in this rule 9.3 to an executive officer is a reference to a managing director or executive director (however titled) or secretary appointed under this rule 9.
- (b) An executive officer may be appointed on terms as to remuneration, tenure of office and otherwise as the directors decide.

- (c) The directors may:
 - (i) delegate or give to an executive officer any powers, discretion and duties they decide;
 - (ii) withdraw, suspend or vary any of the powers, discretions and duties given to an executive officer; and
 - (iii) authorise the executive officer to delegate any of the powers, discretions and duties given to the executive officer.
- (d) An act done by a person acting as an executive officer is not invalidated by a defect in the person's appointment, the person being disqualified from being an executive officer, or having vacated office, if (in each case) the person was not aware of that circumstance when the act was done.

10 Indemnity, insurance and access

10.1 *Persons to whom rules 10.2 and 10.3 apply*

For the purposes of rules 10.2 and 10.3, an **Officer** is:

- (a) each person who is or has been a director, alternate director or executive officer (within the meaning of rule 9.3(a)) of the Company or a subsidiary of the Company; and
- (b) such other officers or former officers of the Company or its related bodies corporate as the directors in each case decide.

10.2 *Indemnity*

- (a) The Company:
 - (i) must, to the extent permitted by law, indemnify each Officer on a full indemnity basis against all Liabilities incurred by the person as an Officer; and
 - (ii) may execute a documentary indemnity in any form in favour of an Officer on such terms as the directors think fit and which are not inconsistent with this rule 10.
- (b) The indemnity in rule 10.2(a):
 - (i) is enforceable without the Officer having to first incur any expense or make any payment;
 - (ii) is a continuing obligation and is enforceable by a person to whom rule 10.2(a) applies even though that person has ceased to be an Officer; and
 - (iii) applies to Liabilities incurred both before and after the adoption of this Constitution.

10.3 *Insurance*

The Company may, to the extent permitted by law:

- (a) purchase and maintain insurance or pay or agree to pay a premium for insurance for each Officer against any Liability incurred by the Officer, including but not

limited to a Liability for negligence or for reasonable costs and expenses incurred in defending or responding to proceedings, whether civil or criminal and whatever their outcome; and

- (b) bind itself in any contract or deed with any Officer to make payments on such terms as the directors think fit which are not inconsistent with this rule 10.

10.4 Savings

Nothing in rules 10.2(a) or 10.3:

- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any Liability referred to in those rules;
- (b) limits the capacity of the Company to indemnify or provide or pay for insurance for any person to whom those rules do not apply; or
- (c) limits or diminishes the terms of any indemnity conferred or agreement to indemnify entered into prior to the adoption of this Constitution.

11 Winding up

11.1 Distributing surplus

Subject to this Constitution, the Shareholders' Deed and any rights or restrictions attached to any Shares or class of Shares:

- (a) any surplus assets remaining after satisfaction of the debts and liabilities of the Company and the charges and expenses of winding up will be available for distribution among the members, in proportion to the number of Shares held by the members, irrespective of the amounts paid or credited as paid on the Shares; and
- (b) for the purposes of this rule 11.1 at the time of the winding up, any amount unpaid on a Share is to be treated as property of the Company. When such an amount is unpaid, the Company may:
 - (i) reduce the amount of the payment to be made to that member under rule 11.1(a) by the amount owing; or
 - (ii) if the amount owed by a particular member is greater than the distribution to which that member is entitled under rule 11.1(a), retain the full amount of that distribution in partial repayment of that amount owing.

11.2 Dividing property

- (a) If the Company is wound up, the liquidator may, with the sanction of a special resolution:
 - (i) divide among all or any of the members as the liquidator thinks fit any part of the assets of the Company, and decide how the division is to be carried out as between the members or different classes of members; and
 - (ii) vest any part of the assets of the Company in trustees on any trusts for the benefit of all or any of the members at the liquidator thinks fit.
- (b) Any division under rule 11.2(a) need not accord with the legal rights of the members and, in particular, any class may be given preferential or special rights or may be excluded altogether or in part, but if any division is otherwise than in

accordance with the legal rights of the members, a member is entitled to dissent and to exercise the same rights as if the determination were a special resolution passed under section 507 of the Act.

- (c) If any Shares to be divided include securities with a liability to call, any person entitled under the division to any of the Shares may, by notice in writing within 10 Business Days after passing of the special resolution, direct the liquidator to sell the person's proportion and pay to the person the net proceeds. The liquidator must, if practicable, act accordingly.
- (d) Nothing in this rule 11.2 takes away from or affects any right to exercise any statutory or other power which would have existed if this rule were omitted.
- (e) Rule 5.3 applies, so far as it can and with any necessary changes, to a division by a liquidator under rule 11.2(a) as if references in rule 5.3 to:
 - (i) the directors were references to the liquidator; and
 - (ii) a distribution or capitalisation were references to the division under rule 11.2(a).

12 Seals

- (a) If the Company has a common Seal:
 - (i) it may be used only by the authority of the directors; and
 - (ii) every document to which it is affixed must be signed by two directors, a director and a secretary or a director and another person appointed by the directors to countersign that document or a class of documents in which that document is included.
- (b) The directors must provide for the safe custody of any Seal of the Company.

13 Notices

13.1 *Notices by the Company to members*

- (a) Without limiting any other way in which notice may be given to a member under this Constitution or the Act, the Company may give a notice to a member by:
 - (i) providing the notice in a manner prescribed in the Shareholders' Deed;
 - (ii) delivering it personally to the member;
 - (iii) sending it by prepaid post to the member's address in the register of members or any other address the member supplies to the Company for giving notices; or
 - (iv) sending it by electronic means to the electronic address the member has supplied to the Company for giving notices.
- (b) The Company may give notice to the joint holders of a Share by giving it to the joint holder first named in the register of members in respect of the Share.
- (c) The fact that a person has supplied an electronic address for the giving of notices does not require the Company to give any notice to that person by electronic mail.

- (d) The Company may give a notice to a person entitled to a Share as a result of a Transmission Event by delivering it or sending it in the manner authorised by rule 13.1(a) addressed to the name or title of the person, to:
- (i) the address or electronic address that person has supplied to the Company for giving notices to that person; or
 - (ii) if that person has not supplied an address or electronic address, to the address or electronic address to which the notice might have been sent if that Transmission Event had not occurred.
- (e) A notice given to a member under rules 13.1(a) or 13.1(b) is, even if a Transmission Event has occurred and whether or not the Company has notice of that occurrence:
- (i) duly given for any Shares registered in that person's name, whether solely or jointly with another person; and
 - (ii) sufficiently served on any person entitled to the Shares because of the Transmission Event.
- (f) A notice given to a person who is entitled to a Share because of a Transmission Event is sufficiently served on the member in whose name the Share is registered.
- (g) A person who, because of a transfer of Shares, becomes entitled to any Shares registered in the name of a member, is taken to have received every notice which, prior to that person's name and address being entered in the register of members for those Shares, was properly given to that member.
- (h) A signature to any notice given by the Company to a member under this rule 13.1 may be printed or affixed by some mechanical, electronic or other means.

13.2 Notices by the Company to directors

The Company may give a notice to a director or alternate director by:

- (a) delivering it personally to them;
- (b) sending it by prepaid post to their usual residential or business address, or any other address they have supplied to the Company for giving notices; or
- (c) sending it by electronic means to the electronic address they have supplied to the Company for giving notices.

13.3 Notices by directors to the Company

A director or alternate director may give a notice to the Company by:

- (a) delivering it to the Company's registered office;
- (b) sending it by prepaid post to the Company's registered office; or
- (c) sending it by electronic means to the electronic address at the Company's registered office.

13.4 Time of service by the Company

- (a) A notice from the Company properly addressed and posted is taken to have been served on the day after the date of its posting, regardless of whether the address for service is in or outside Australia.

- (b) A certificate signed by a secretary or other officer of the Company stating that a notice was duly posted on a particular date under this Constitution is conclusive evidence of that fact.
- (c) A notice sent by the Company by electronic transmission is taken to be served when the transmission is sent.
- (d) Where the Company sends a notice by electronic transmission, the notice is taken as served at the time the electronic transmission is properly addressed and transmitted.
- (e) Where the Company gives a notice by any other means permitted by the Act, the notice is taken as served on the day after the date on which the recipient is notified that the notice is available.
- (f) Where a given number of days' notice or other specified period of notice must be given, the day of service is not to be counted in the number of days or other period.

Annexure A – Terms of Preference Shares

1 Redeemable Preference Share Terms of Issue

1.1 Redeemable Preference Share Terms of Issue

These terms set out the terms of Redeemable Preference Shares which may be issued by the Company (**Terms of Issue**).

1.2 Corporations Act

Despite any other clause of these Terms of Issue, the Company is not required to comply with these Terms of Issue to the extent that to do so would contravene the Corporations Act.

2 Definitions

2.1 Definitions

In these Terms of Issue:

Corporations Act means the Corporations Act 2001 (Cth).

Conversion Date has the meaning given to that term in clause 10.1 of these Terms of Issue.

Conversion Price means the Issue Price.

Conversion Securities means ordinary shares in the capital of the Company.

Conversion means the variation of a Redeemable Preference Share into a Conversion Security in accordance with clause 10 of these Terms of Issue, and **Convert** has the corresponding meaning.

Holder means a holder of Redeemable Preference Shares.

Issue Date means the date of issue of the relevant Redeemable Preference Share.

Issue Price has the meaning given to that term in clause 3 of these Terms of Issue.

Maturity Date means the date that is 24 months after the Issue Date.

Maturity Holder Notice has the meaning given to that term in clause 9.2 of these Terms of Issue.

Redeem means redeem, or buy-back, reduce capital, cancel, or any combination of such activities, in connection with the Redeemable Preference Shares, and Redeemed, Redeemable and Redemption have the corresponding meanings.

Redemption Amount means the amount equal to the Issue Price.

Redemption Date has the meaning given in clause 9.2(d)(i) of these Terms of Issue.

Redemption Notice has the meaning in clause 9.2(a) of these Terms of Issue.

Redeemable Preference Share means a convertible redeemable preference share issued by the Company on the terms of these Terms of Issue.

Taxes means taxes, levies, imposts, charges and duties imposed by any authority (including stamp and transaction duties) together with any related interest, penalties, fines and expenses in connection with them.

2.2 **Capitalised terms**

A term or expression starting with a capital letter which is not defined in this clause 2 has the meaning given to it in the Shareholders' Deed or, if not defined in the Shareholders' Deed, the Corporations Act.

3 **Redeemable Preference Share**

A Redeemable Preference Share:

- (a) is a separate class of shares in the Company;
- (b) has the rights and obligations referred to in these Terms of Issue and the Articles of Association; and
- (c) is redeemable only in accordance with these Terms of Issue.

4 **Issue**

Each Redeemable Preference Share will be issued as a fully paid share at an issue price to be determined by the Board (the **Issue Price**).

5 **Dividends**

5.1 ***No right to distributions***

The Redeemable Preference Shares do not confer on a Holder any right to receive any dividend.

6 **Ranking**

6.1 ***Ranking for payment***

With respect to amounts to be paid or repaid in respect of Redeemable Preference Shares under these Terms of Issue, Redeemable Preference Shares will:

- (a) rank equally among themselves and with all present unsubordinated and unsecured indebtedness of the Company; and
- (b) rank senior to all other Shares including ordinary shares.

6.2 ***Right to participate in profits***

The Redeemable Preference Shares have the right on the liquidation of the Company to payment of the Redemption Amount in accordance with the ranking stated in clause 6.1 of these Terms of Issue above.

6.3 ***No further right to participate in profits***

The Redeemable Preference Shares will not participate in any further or other distribution of profits or assets of the Company.

7 **Meetings and voting rights**

Subject to the terms of the Corporations Act, a Redeemable Preference Share does not confer on a Holder any right to attend or vote at any general meeting of the Company.

8 Transfer restrictions

A Holder may not transfer the Redeemable Preference Shares other than in accordance with the terms of the Shareholders' Deed.

9 Redemption

9.1 Voluntary redemption

The Company may elect in its discretion to Redeem some or all of the Redeemable Preference Shares on or prior to the Maturity Date by giving the Holders a Redemption Notice in accordance with this clause 9 of these Terms of Issue.

9.2 Maturity Date

- (a) If some or all of the Redeemable Preference Shares have not been Redeemed in accordance with clause 9.1 on or before the Maturity Date, then:
 - (i) a Holder may elect (with such election in its discretion) to convert some or all of its Redeemable Preference Shares into Conversion Securities in accordance with clause 10, by giving the Company notice of its election (which must include the number of Redeemable Preference Shares which are to be Converted) (**Maturity Holder Notice**) within 5 Business Days after the Maturity Date; and
 - (ii) no later than 10 Business Days after the date of receipt of the Maturity Holder Notice the Company must give the Holder, a Conversion Notice in accordance with clause 10 of these Terms of Issue with a Conversion Date.
 - (iii) If the Holder does not issue a Maturity Holder Notice, the Company must Redeem all of the Redeemable Preference Shares held by a Holder, and the Company must give the Holder a Redemption Notice in accordance with clause 9.3 of these Terms of Issue.

9.3 Notice of Redemption

- (a) The Company must give notice of any Redemption in respect of some or all of the Redeemable Preference Shares under clauses 9.1 and 9.2 by giving a notice (each, a **Redemption Notice**) to each Holder at least 5 Business Days before the proposed Redemption Date.
- (c) The Company must send the Redemption Notice to the Holder's email address or the physical or postal address last advised to the Company for delivery of notices in respect of that Holder and otherwise must comply with the notice provisions set out in clause 13 of the Shareholders' Deed.
- (d) Each Redemption Notice must state:
 - (i) the date the Redemption is proposed to occur (a **Redemption Date**);
 - (ii) if fewer than all of the Redeemable Preference Shares held by a Holder are being Redeemed, the proportion of those Redeemable Preference Shares being Redeemed;

- (iii) whether the Redemption Amount is proposed to be effected by way of redemption or by way of buy-back, reduction of capital, or any combination thereof; and
- (iv) the place or places where the certificates (if any) for the Redeemable Preference Shares may be submitted and the method of payment of the Redemption Amount to Holders.

9.4 Effect of Redemption

On the Redemption Date:

- (a) each of a Holder's Redeemable Preference Shares that are the subject of Redemption under this clause 9 will be Redeemed by the Company for payment to the Holder of the Redemption Amount; and
- (e) upon payment of the Redemption Amount, all other rights conferred or restrictions imposed by those Redeemable Preference Shares under these Terms of Issue will no longer have effect.

For the purposes of clause 9.4(a), if the Redemption involves a buy-back of Redeemable Preference Shares, the Redemption Notice will constitute a buy-back offer for the Redemption Amount payable on the Redemption Date and each Holder will be deemed to have accepted that buy-back offer for the Redeemable Preference Shares held by the Holder to which the Redemption Notice relates on the date the Redemption Notice is given and will be deemed to have sold those Redeemable Preference Shares to the Company on the Redemption Date for a price per Redeemable Preference Share equal to the Redemption Amount.

9.5 Partial Redemptions

If some but not all Redeemable Preference Shares are Redeemed, the Company must endeavour to treat each Holder on an approximately proportionate basis but may, in the Company's discretion, discriminate to take account of the effect on marketable parcels and other logistical considerations.

10 Conversion

10.1 Notice of Conversion

- (a) The Company must, at least 5 Business Days before the date that Conversion is proposed to occur (**Conversion Date**), give notice to those Holders who have elected to Convert some or all of the Redeemable Preference Shares they hold under clause 9.2, of the Conversion Date and the place or places where the certificates (if any) for the Redeemable Preference Shares may be submitted.
- (b) The Company must send the Conversion Notice to the Holder's email address or the physical or postal address last advised to the Company for delivery of notices in respect of that Holder and otherwise must comply with the notice provisions set out in clause 13 of the Shareholders' Deed.

10.2 Calculation of number of Conversion Securities

The Conversion Securities for a Holder will be calculated in accordance with the following formula:

$$NCS = \frac{PO}{CP}$$

Where:

NCS = the number of Conversion Securities to be issued to the Holder.

PO = the Redemption Amount multiplied by the number of Redeemable Preference Shares held by the Holder to be converted (pursuant to clause 9.2).

CP = the fair market value of the Conversion Securities.

10.3 Rounding

Where the total number of Conversion Securities calculated in accordance with clause 10.1 results in a fraction of a Conversion Security, that fraction will be rounded to the nearest whole number.

10.4 Variation of rights

- (a) On the Conversion Date, the number of Redeemable Preference Shares to be converted will be consolidated or subdivided (as required) to be equal to the number of Conversion Securities to be issued, and the rights attaching to each Redeemable Preference Share that is to be Converted will automatically vary such that each Redeemable Preference Share becomes one Conversion Security.
- (b) For the avoidance of doubt, any conversion of Shares pursuant to these Terms of Issue will occur by way of variation of the rights attaching to the relevant Shares and shall not constitute a cancellation, buy-back or redemption of the shares being converted nor any new issue of Shares by the Company.
- (c) The Company must issue a share certificate for each Redeemable Preference Share resulting from Conversion under clause 10.4(a) within two Business Days after the variation of rights.

10.5 Ranking of Conversion Securities

Conversion Securities issued on the Conversion of Redeemable Preference Shares under this clause 10 will rank in all respects equally with all other Conversion Securities on issue (or to be issued) as at the Conversion Date.

10.6 Compliance with law on conversion

Notwithstanding anything else in this document, a Redeemable Preference Share must not be converted, and no such purported conversion has any effect, if doing so would be in breach of any applicable law.

10.7 Reconstruction

If the Company prior to the conversion of a Redeemable Preference Share makes any reconstruction of its share capital, including without limitation a consolidation, share split, share dividend or bonus issue, the Conversion Price at which the Redeemable Preference Shares convert shall be reconstructed so that on conversion a Holder will be entitled to receive the same proportion of the Shares of the Company on issue as would have been the case if that reconstruction event had not occurred. The Company must take reasonable steps to ensure a Holder is not disadvantaged nor advantaged by the operation of this clause.

11 Payments

11.1 *Manner of payment to Holders*

Any money payable in cash in respect of any Redeemable Preference Share (including a Redemption Amount), must be paid in Australian Dollars and may be paid by electronic funds transfer to the account nominated by the Holder or any method requested by the Holder and approved by the Company.

11.2 *Deductions*

If the Company is required by law to deduct or withhold Taxes from a payment to a Holder in respect of a Redeemable Preference Share (including a Redemption Amount), the Company must make that deduction or withholding.

12 Amendment

- (a) The Company may, without the authority, assent or approval of any Holders, amend or add to these Terms of Issue where the amendment or addition, in the reasonable opinion of the Company:
 - (i) is of a formal, minor or technical nature;
 - (ii) is made to correct any manifest error; or
 - (iii) is necessary to comply with the provisions of any statute or the requirements of any statutory authority,and, in any case, is not materially detrimental to the Holders of Redeemable Preference Shares or to any one Holder of Redeemable Preference Shares as compared to another Holder or Holders of Redeemable Preference Shares.
- (b) An amendment not falling within clause 12(a) of these Terms of Issue may only be made if it has been approved in writing by Holders holding at least two thirds of Redeemable Preference Shares.

Annexure 3 – Custodian Deed

See next page.

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Oak Ridge Software Limited

Custodian

Custodian Deed

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Custodian Deed

Date

Parties

1 **[Insert Custodian]** (ACN) (Custodian)

Address:

Email:

Contact:

2 **Oak Ridge Software Limited** (ACN 664 474 999) (Company)

Address: c/- Potentia Capital Services Pty Ltd, Suite 38.01, 'Gateway', Level 38,
1 Macquarie Place, Sydney NSW 2000

Email: [insert]

Copy to: Stacey Kelly at stacey@potentiacap.com

1 **The parties set out in Column 1 of the table in Schedule 1 (the Rollover Shareholders)**

Recitals

A The Custodian agrees to act as trustee of each Bare Trust on the terms set out in this Deed.

Operative part

1 Definitions and interpretation

1.1 Definitions

Unless the context otherwise requires or the relevant term is defined in this Deed, terms defined in the Shareholders' Deed have the same meaning in this Deed.

Authorised Person has the meaning given to that term in clause 6.1.

Bare Trust Property means, in the case of each Bare Trust:

- (a) the Beneficial Securities held by the Custodian for and on behalf of the relevant Rollover Shareholder, as shown in the Trusts Register; and
- (b) all accretions, rights and benefits attaching to the Beneficial Securities referred to in paragraph (a) of this definition, including all rights to receive dividends and any other distributions, and all rights to receive or subscribe for Beneficial Securities, notes, options or other Securities, but excluding amounts or other property that are paid or delivered by the Company directly to the Rollover Shareholder under this Deed and/or the Shareholders' Deed.

Beneficial Securities means:

- (a) Beneficial Shares; and
- (b) any other Securities held by the Custodian on behalf of the Rollover Shareholder.

CD Deed of Adherence means a deed substantially in the form set out in Annexure A or such other form approved in writing by the Company and the Custodian.

Claim means any allegation, debt, cause of action, action, dispute, Liability, claim, proceeding, investigation, inquiry, prosecution, litigation, arbitration, mediation, audit or dispute resolution, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise.

Individual Costs means any of the following incurred by a party other than a Company Group Member:

- (a) advisory costs for tax, legal or other professional advice given to that party in connection with an Exit, which is not advice for the benefit of other parties;
- (b) Tax; and
- (c) a Liability arising out of any claim, action or proceeding of any nature in connection with an Exit or other relevant transaction, as applicable,

unless otherwise approved by the Board.

Instruction means an instruction to the Custodian from a Rollover Shareholder in respect of, or in connection with, the Bare Trust of which the Custodian is the bare trustee for the Rollover Shareholder and/or the Bare Trust Property of that Bare Trust, provided such instruction is permitted under the terms of the Shareholders' Deed.

Potentia Bid Documents means each bidder's statement by Technology Growth Capital LLC relating to the offer dated 11 November 2022 made under the Potentia Takeover, including, as at the date of this Deed:

- (a) the original bidder's statement dated 28 October 2022;
- (b) the first supplementary bidder's statement dated 11 November 2022;
- (c) the second supplementary bidder's statement dated 8 December 2022;
- (d) the third supplementary bidder's statement dated 23 December 2022; and
- (e) any further supplementary bidder's statements lodged by Technology Growth Capital LLC in connection with the Potentia Takeover.

Potentia Takeover means the off-market takeover offer by Potentia through Technology Growth Capital LLC to acquire all of the shares in Nitro which is set out in the Potentia Bid Documents.

Rollover Shareholder means each person noted on the Trusts Register as the holder of the beneficial interest in the Bare Trust Property held by the Custodian under a Bare Trust.

Shareholders' Deed means the document dated on or about the date of this Deed between, amongst others, the Company and the Investors in relation to the control, management and financing of the Company.

Tax includes:

- (a) any tax, levy, impost, fee, charge, excise, customs, rate, deduction, withholding or surcharge that is assessed, levied, imposed or collected by any tax authority or other government agency;
- (b) unless the context requires otherwise, stamp duty and GST; and

- (c) any interest, penalty, charge, fine or fee or other amount of any kind assessed, charged or imposed on or in respect of anything listed in paragraph (a) or (b) of this definition.

Trusts Register means the register of Bare Trusts established and maintained by the Company in accordance with clause 10.

1.2 Interpretation

Headings and labels used for definitions are for convenience only and do not affect the interpretation of this Deed. Unless the contrary intention appears, in this Deed:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
- (e) a reference to a "person" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (f) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (g) a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this Deed;
- (h) a reference to a time of day is a reference to Sydney, New South Wales time;
- (i) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (j) a reference to "law" includes common law, principles of equity and legislation (including regulations);
- (k) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (l) a reference to "regulations" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (m) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and each of them individually;
- (n) subject to any express provision of this Deed to the contrary, a reference to a group of persons is a reference to any 2 or more of them jointly and to each of them individually;
- (o) unless a contrary intention appears, a reference to a person Disposing of any Shares, includes Disposing of a beneficial interest in any of those Shares and instructing any trustee or other Custodian (including the Custodian) to Dispose of a legal and/or beneficial interest in any of those Shares;

- (p) a reference in a Schedule to a numbered paragraph is a reference to the numbered paragraph of the same Schedule in which the reference appears;
- (q) a reference to any thing (including an amount) is a reference to the whole and each part of it provided that satisfaction of only part of an obligation (including payment of part of an amount) will not satisfy any obligation to pay the full amount;
- (r) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (s) if a party must do something under this Deed on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day; and
- (t) if the day on which a party must do something under this Deed is not a Business Day, the party must do it on the next Business Day.

2 Declaration of Bare Trusts

2.1 Appointment of Custodian

The Custodian agrees to act as trustee of each Bare Trust.

2.2 Declaration of Bare Trusts

- (a) The Custodian declares that, in respect of each Rollover Shareholder, it holds the right, title and interest in the Bare Trust Property on a separate bare trust for that Rollover Shareholder absolutely.
- (b) For the avoidance of doubt, each Rollover Shareholder has a vested and indefeasible interest in, and is absolutely entitled as against the Custodian to, the capital, assets and income of its respective Bare Trust and is the sole beneficiary of the Bare Trust in relation to its Bare Trust Property.

2.3 Bare Trust Property in each Bare Trust to be treated separately

The Custodian will at all times treat the Bare Trust Property of each Bare Trust separately from the Bare Trust Property of all other Bare Trusts.

2.4 Rollover Shareholder's reservation of rights

- (a) Nothing in this Deed or the Shareholders' Deed entitles the Custodian to beneficial ownership of any of the Bare Trust Property or operates to deprive a Rollover Shareholder of the rights of beneficial ownership (including the right of possession) of the Bare Trust Property.
- (b) The Custodian declares that it has no beneficial interest whatsoever in the Bare Trust Property.

3 Custodian's obligations

3.1 Custodian to act on Rollover Shareholder's Instructions

- (a) The Custodian must:
 - (i) do such things and execute such documents in relation to the Bare Trust Property of a Bare Trust; and
 - (ii) exercise all rights, powers and privileges conferred by or arising from the Bare Trust Property of a Bare Trust,

in accordance with the Instructions (but then only to the extent permitted under the Shareholders' Deed) of the Rollover Shareholder in respect of that Bare Trust.

3.2 Custodian may only act on a Rollover Shareholder's Instructions

- (a) The Custodian must, to the maximum extent permitted by law, and notwithstanding any other provision of this Deed, act on the Instructions of the Rollover Shareholders under a power of attorney or otherwise, with the intent that each Rollover Shareholder exercises day-to-day control over the operation of the Bare Trust of which it is the Rollover Shareholder.
- (b) The Custodian must not in its discretion, and without an Instruction by or on behalf of a Rollover Shareholder, make any decisions or take any action or refrain from taking any action, in its discretion, over or in respect of the Bare Trust Property it holds as bare trustee for that Rollover Shareholder.
- (c) Subject to clause 3.2(d), the Custodian will only transfer or otherwise Dispose of the Bare Trust Property of a Bare Trust as the Rollover Shareholder in respect of that Bare Trust directs.
- (d) The Custodian and each Rollover Shareholder acknowledge that under the Shareholders' Deed, the Rollover Shareholder has appointed certain attorneys with authority to give Instructions to the Custodian on behalf of the Rollover Shareholder in certain circumstances specified in the Shareholders' Deed. Each Rollover Shareholder directs the Custodian to comply with, and the Custodian must comply with, any Instruction given on behalf of a Rollover Shareholder by an attorney which the Rollover Shareholder has appointed under the Shareholders' Deed.

3.3 Limitations on the Custodian

The Custodian will have no powers, duties, discretions or Liabilities under a Bare Trust except those expressly set out in this Deed, or in any other document to which the Custodian is a party which is agreed to in writing by the Company and related to the subject matter of this Deed.

3.4 Custodian may appoint attorneys

The Custodian may appoint any one or more persons as its attorney (jointly or severally if more than one) with power to execute documents on behalf of the Custodian for the day to day administration of a Bare Trust.

3.5 Notice by Custodian

The Custodian will provide the Company with written notice of:

- (a) any Disposal of the beneficial interest in a Beneficial Security to or by a Rollover Shareholder in accordance with the Shareholders' Deed;
- (b) any purported Disposal by a Rollover Shareholder of its beneficial interest in any Beneficial Security in breach of the Shareholders' Deed;
- (c) any Instruction from a Rollover Shareholder to the Custodian requesting that the Custodian Dispose of any Beneficial Securities; and
- (d) any other information which the Custodian becomes aware of which would lead to an update to the Trusts Register (unless the Company has been copied on a notice

from the relevant Rollover Shareholder under clause 4) or a breach of this Deed or the Shareholders' Deed by a Rollover Shareholder,

as soon as practicable, but in any case, by no later than 5 Business Days after the Custodian becomes aware of the relevant event or circumstance.

4 Rollover Shareholders' obligations

4.1 No breach of Shareholders' Deed

Each Rollover Shareholder undertakes to the Company and the Custodian that it will not:

- (a) take any action, or omit to take any action (including the giving of any Instruction to the Custodian or failing to give any Instruction to the Custodian) which would breach the Shareholders' Deed; or
- (b) fail to give, or delay in giving, any Instruction to the Custodian which is required to enable the Rollover Shareholder and or any of its relevant transferees to comply with the Shareholders' Deed t.

4.2 Undertaking not to give certain Instructions

Without limiting clause 4.1, each Rollover Shareholder undertakes to the Company and the Custodian that it will not give an Instruction to the Custodian:

- (a) to Dispose of legal title to any of the Beneficial Securities unless permitted to do so under the Shareholders' Deed; or
- (b) which has the effect of cancelling or superseding an Instruction given on behalf of the Rollover Shareholder by an attorney acting on behalf of the Rollover Shareholder under the Shareholders' Deed.

4.3 Rollover Shareholder to notify of changes

Every Rollover Shareholder must promptly notify the Custodian and the Company in writing of any change of name or address of the Rollover Shareholder, any change to the Rollover Shareholder's Bare Trust or Beneficial Securities of which it becomes aware and any other information which the Rollover Shareholder becomes aware of which would lead to an update to the Trusts Register.

5 Instructions from Rollover Shareholders

5.1 Form of Instructions

Each Instruction given by a Rollover Shareholder to the Custodian must:

- (a) be in writing in English;
- (b) be signed by a Rollover Shareholder, or an Authorised Person on behalf of a Rollover Shareholder (which includes any attorney appointed by the Rollover Shareholder);
- (c) state that it is an Instruction for the purposes of this Deed;
- (d) where the instruction includes a requirement for the Custodian to execute a document, includes appropriate details of the terms and purpose of the instruction; and
- (e) be in accordance with this Deed and the Shareholders' Deed,

provided that the Custodian is entitled, in its discretion, to treat an instruction as an "Instruction" for the purposes of this Deed even if it does not satisfy paragraphs (a), (b), (c) and/or paragraph (d) (but, to avoid doubt, not paragraph (e)) of this definition.

5.2 Instructions continue in force

Each Instruction continues in force until it is cancelled or superseded by a further Instruction by or on behalf of the Beneficiary.

5.3 Custodian to act promptly

Without limiting clauses 5.5 and 5.6, the Custodian will give effect to an Instruction as soon as reasonably practicable and in any event, within any time period specified for the relevant action in the Shareholders' Deed.

5.4 Custodian not required to verify Instructions

Notwithstanding clause 5.1, the Custodian:

- (a) may accept any Instruction from a Rollover Shareholder verbally or in writing and either from the Rollover Shareholder personally or from any person, firm or company which the Custodian has reason to believe is giving such Instruction on behalf of or with the authority of the Rollover Shareholder;
- (b) is not required to inquire as to whether any Instruction from a Rollover Shareholder is genuine or proper; and
- (c) is entitled to rely solely on the relevant Rollover Shareholder or its Authorised Person in respect of all matters relating to any Instruction and any transaction the subject of an Instruction.

5.5 Custodian may request further information

The Custodian may request reasonable additional information from a Rollover Shareholder or its Authorised Person in respect of any Instruction to the Custodian and the Rollover Shareholder must promptly comply with any such request, provided that this clause 5.5 does not impose any obligation on the Custodian to make any such enquiries and does not otherwise limit the effect of any other provision of this Deed.

5.6 Custodian not required to act on certain Instructions

The Custodian may disregard an Instruction if:

- (a) it determines that the Rollover Shareholder is, or will be, in breach of this Deed or the Shareholders' Deed in connection with the Instruction;
- (b) it has reasonable grounds to doubt the authenticity of the Instruction;
- (c) the Instruction is not given by an Authorised Person;
- (d) acting on the Instruction would cause the Custodian or the Rollover Shareholder to breach this Deed, the Shareholders' Deed or any law, regulations or any published policy statement or guideline of any Government Agency;
- (e) acting on the Instruction would be impracticable; or
- (f) the Instruction is ambiguous or the Custodian determines that the action it is being requested to take or not take in accordance with the Instruction is unclear.

5.7 Custodian unable to act on Instruction

If the Custodian disregards, or otherwise does not fully act on, an Instruction of a Rollover Shareholder or its Authorised Person, it must promptly (and in any event, within 2 Business Days) notify the relevant Rollover Shareholder and the Company providing reasons for it having disregarded, or otherwise not acted on, the Instruction. Upon receipt of such a notice, the relevant Rollover Shareholder may either:

- (a) withdraw the Instruction with which the Custodian is unable to comply; or
- (b) re-issue or clarify the Instruction, in which case the Instruction will not operate until it has been re-issued or clarified.

6 Authorised Persons

6.1 Authorised Persons

A Rollover Shareholder may notify the Custodian in writing of the persons who are authorised to make any written communication or take action on behalf of that Rollover Shareholder under this Deed (those persons in respect of a particular Rollover Shareholder, the "Authorised Persons").

6.2 Variation of Authorised Person

A Rollover Shareholder may vary its Authorised Persons by written notice to the Custodian and the Company provided that the notice will only become effective 48 hours after receipt by both the Custodian and the Company (unless otherwise agreed in writing by the Custodian and the Company).

6.3 Custodian's action

The Custodian is not obliged to enquire as to the identity of any person it reasonably believes is an Authorised Person.

6.4 Rollover Shareholder responsible for actions of Authorised Persons

A Rollover Shareholder is bound by, and liable for, every any action or omission by the Custodian in reliance on any Instruction given by:

- (a) any of its Authorised Persons; or
- (b) a person reasonably believed by the Custodian to be the Rollover Shareholder's Authorised Person,

and, without limiting any other provision of this Deed or the Shareholders' Deed, the Custodian is not liable for any properly performed action or omission of the Custodian in reliance on any such Instruction.

7 Meetings and information

7.1 Shareholder information

The Company undertakes to the Custodian that at the same time as it gives, makes available or despatches any document or information to Shareholders (including a notice of meeting), the Company will also give, make available or despatch that notice or information to each Rollover Shareholder.

7.2 Shareholder meetings

To the extent reasonably practicable, the Custodian must:

- (a) attend meetings of Shareholders which the Custodian is directed by an Instruction to attend and which the Custodian is entitled to attend (and in the absence of an Instruction, the Custodian will not attend any meetings);
- (b) vote at meetings of Shareholders as the Custodian is directed by an Instruction to vote at and at which the Custodian is entitled to vote (and in the absence of an Instruction, the Custodian will not vote at any meetings); and
- (c) if required by an Instruction, execute all proxies, powers of attorney and other documents which are necessary or desirable to enable a relevant Rollover Shareholder or any of its Authorised Persons to vote in the place of the Custodian at meetings of Shareholders.

7.3 Custodian may appoint proxy

The Custodian is authorised from time to time to appoint a proxy to represent the Custodian at any meeting of Shareholders which the Custodian is instructed to attend in accordance with clause 7.2.

7.4 No meetings of Rollover Shareholders

To avoid doubt, there will be no meetings of the Rollover Shareholders of the Bare Trusts.

8 Dividends and other payments**8.1 Dividends and distributions**

The Company will procure that any cash distribution or dividend that would otherwise be paid to the Custodian in respect of Beneficial Securities held by the Custodian as bare trustee for a Rollover Shareholder is paid to the Rollover Shareholder in place of the Custodian (or as the Rollover Shareholder otherwise directs the Company in writing).

8.2 Rollover Shareholder to put Custodian in funds

Each Rollover Shareholder must pay to the Custodian an amount equal to:

- (a) all calls, demands and other Liabilities which the Custodian is liable to pay in respect of that Rollover Shareholder's Bare Trust Property;
- (b) Individual Costs in respect of that Rollover Shareholder for which the Custodian is otherwise liable;
- (c) any Liabilities incurred by the Custodian which would have been incurred by that Rollover Shareholder if it had been the registered holder of its Custodian Beneficial Securities;
- (d) Liabilities suffered or incurred by the Custodian arising in connection with any action, omission or Instruction by that Rollover Shareholder which is in breach of any legal or contractual obligation of that Rollover Shareholder (including a breach of this Deed or the Shareholders' Deed); and
- (e) Liabilities incurred as a result of any action, omission or Instruction by that Rollover Shareholder that is unreasonable or otherwise outside the ordinary course (for example persistent requests for copies of the register or other documents beyond what would reasonably be expected).

The Rollover Shareholder must pay the amounts referred to in this clause 8.2 by the later of the day that those amounts are due and payable by the Custodian and 10 Business Days of written request from the Custodian or the Company for payment.

8.3 Rollover Shareholder may pay creditors directly

The Custodian directs each Rollover Shareholder to pay any amount referred to in clause 8.2 for which that Rollover Shareholder is liable directly to the Company or any other relevant third party creditor from the Rollover Shareholder's own funds, in satisfaction of the Rollover Shareholder's obligation under clause 8.2. The Rollover Shareholder must promptly notify the Custodian of any payment it makes under this clause 8.3.

9 Company's obligations

9.1 Company assistance

The Company undertakes to the Custodian will promptly provide the Custodian with all information and assistance that the Custodian reasonably requests to enable the Custodian to comply with its obligations as bare trustee for the Rollover Shareholders.

9.2 Notice by Company

The Company undertakes to the Custodian that it will provide it with written notice of:

- (a) any Disposal of the beneficial interest in a Beneficial Security to or by a Rollover Shareholder in accordance with the Shareholders' Deed;
- (b) any purported Disposal by a Rollover Shareholder of its beneficial interest in any Beneficial Security in breach of the Shareholders' Deed;
- (c) any other information which the Company becomes aware of which would lead to an update to the Trusts Register (unless the Custodian has been copied on a notice from the relevant Rollover Shareholder under clause 4); and
- (d) any breach or suspected breach of this Deed or the Shareholders' Deed by a Rollover Shareholder,

as soon as reasonably practicable (and will use reasonable endeavours to do so within 5 Business Days after the Company becomes aware of the relevant event or circumstance).

10 Register of Bare Trusts

10.1 Register of Rollover Shareholders

- (a) The Company will, at its sole cost and expense, establish and maintain a register of Bare Trusts at the cost and expense of the Company.
- (b) The following particulars will be entered into the Trusts Register in respect of each Bare Trust:
 - (i) the name, address and description of each Rollover Shareholder (and the Rollover Shareholder's Custodian or Custodian (if any));
 - (ii) the number, class and identifying designation of Beneficial Securities that are held on trust for that Rollover Shareholder;

- (iii) the date or dates at which the name of the Rollover Shareholder was noted in the Trusts Register in respect of the Bare Trust Property held on trust for that Rollover Shareholder; and
- (iv) any other details reasonably requested by the Custodian.
- (c) The Company will procure that the Trusts Register is updated on account of changes to the Bare Trusts, Beneficial Securities and Rollover Shareholders, including as a result of the termination of any Bare Trust.

10.2 Custodian to be provided with a copy of the Trusts Register

The Company will provide a copy of the Trusts Register to the Custodian:

- (a) on, or as soon as practicable after the date of this Deed;
- (b) promptly following an update to the information in the Trusts Register; and
- (c) within 10 Business Days of being reasonably requested to do so by the Custodian.

10.3 Certificates

Notwithstanding anything to the contrary in the Constitution:

- (a) no certificates will be issued to a Rollover Shareholder in respect of any Beneficial Securities held under Bare Trust for that Rollover Shareholder; and
- (b) the Company will issue separate certificates for each class of Beneficial Securities held on bare trust by the Custodian under a particular Bare Trust (other than any class of Beneficial Securities which is not certificated). The Custodian will hold all such certificates on behalf of the Rollover Shareholder.

11 Change of Custodian

11.1 Retirement of the Custodian

The Custodian may, by giving 60 Business Days' written notice (or such lesser notice period agreed by the Company) to the Company and the Rollover Shareholders, retire as the trustee of all (but not some) of the Bare Trusts.

11.2 Date of retirement becoming effective

If the Custodian retires under clause 11.1, the retirement will have effect as at the last day of the relevant notice period.

11.3 New Custodian

- (a) If the Custodian retires under clause 11.1, an independent third party trustee (who must be licensed to act as the Custodian if required to enable it to discharge its obligations under this Deed) nominated by the Company will be appointed as the replacement trustee for each Bare Trust, or if no person is nominated by the Company by the date of the Custodian's retirement, the Custodian will, acting reasonably, nominate an independent third party trustee (who must be licensed to act as the Custodian if required to enable it to discharge its obligations under this Deed) and the trustee so nominated will be appointed as the replacement trustee of each Bare Trust.
- (b) The Company, the Custodian and the Rollover Shareholders must do all things reasonably necessary to facilitate, or otherwise in connection with, the change of

trustee including by delivering all books and records relating to the Bare Trusts and the Beneficial Securities in its possession at the relevant time to the replacement trustee.

- (c) Despite anything else in this Deed, the retirement of the Custodian and the appointment of a replacement trustee is not complete until the new trustee executes a deed by which it covenants to be bound by this Deed in the place of the Custodian on and from the date of appointment and any other documents reasonably requested by the Company to effect the replacement of the Custodian with the replacement Trustee.

11.4 Release

Subject to clause 11.3(c), when the Custodian retires in accordance with clause 11.1, the Custodian is released from all obligations in relation to the Bare Trusts arising after the time it retires provided that the Custodian is still obliged to comply with clause 11.3(b).

11.5 Costs of replacing the Custodian

All reasonable costs incurred by the Custodian and all costs of any new replacement trustee of the Bare Trusts in connection with the retirement or removal and replacement of the Custodian will be borne by the Company.

12 Limitation of Liability and indemnities

12.1 No Liability of Custodian for Directed Breaches

- (a) Each party acknowledges that, subject to the terms of this Deed, the Custodian is obliged to act in accordance with the directions of the Rollover Shareholders in relation to their respective Beneficial Securities.
- (b) Any breach of this Deed, the Shareholders' Deed or the Constitution which arises as a result of the Custodian complying with a direction given by a Rollover Shareholder ("**Directed Breach**") is to be construed for all purposes as a breach by the relevant Rollover Shareholder for which the Rollover Shareholder is personally liable (including in accordance with this Deed) and not by the Custodian and without limiting the foregoing:
 - (i) the Custodian is released from any claim or Liability in respect of any Directed Breach; and
 - (ii) each party (other than the Custodian) covenants not to claim, sue or take any action against the Custodian in respect of any Directed Breach.

12.2 Indemnity from Appointing Beneficiaries

- (a) Each Rollover Shareholder indemnifies, and agrees to reimburse and compensate, the Company and the Custodian for, all Claims and Liabilities which the Company or the Custodian pays, suffers, incurs or is liable for (excluding all Liabilities contemplated by clause 13) arising out of or in connection with:
 - (i) anything done by the Custodian at the Instruction of that Rollover Shareholder;
 - (ii) by reason of that Rollover Shareholder's Beneficial Securities being registered in the name of the Custodian;
 - (iii) that Rollover Shareholder's Bare Trust;

- (iv) any breach of this Deed or the Shareholders' Deed by that Rollover Shareholder or the Custodian on the Instruction of the Rollover Shareholder; or
 - (v) in the case of the Company only, arising out of or in connection with, a Claim or Liability in respect of which the Company is obliged to indemnify, reimburse and/or compensate the Custodian in accordance with clause 12.4.
- (b) Each Rollover Shareholder covenants with the Custodian not to make any Claim against the Custodian in relation to any matter referred to in clause 12.2(a).
- (c) The indemnity in clause 12.2(a) and the covenant in clause 12.2(b) do not apply to:
 - (i) any Liability which arises as a result of the Custodian's (or any of its officers', employees', or agents') fraud, negligence, dishonesty, wilful misconduct, breach of any of its obligations under this Deed or the Shareholders' Deed or breach of trust; or
 - (ii) costs and expenses which the Company has agreed to pay in accordance with clause 13, fees of a Related Body Corporate of the Custodian as custodian of the Custodian and fees of a subcustodian, Custodian or other delegate of such a Custodian of the Custodian which arise in the ordinary course of the establishment and administration of the Bare Trusts.

12.3 Limitation of Custodian's Liability

- (a) Each party acknowledges that the Custodian enters into this Deed in its capacity as a trustee of the Bare Trusts and in no other capacity.
- (b) Any Liability of the Custodian arising under or in connection with this Deed is limited to, and can be enforced against the Custodian only to the extent to which it can be satisfied out of, the assets of the Bare Trust from which the Custodian is, or to the extent that under clause 12.2 the Custodian is, actually indemnified for the Liability. This limitation of the Custodian's Liability applies despite any other provision of this Deed and extends to all Liabilities of the Custodian in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Deed or the Shareholders' Deed
- (c) No party may sue the Custodian in any capacity other than as trustee of a Bare Trust, including seeking the appointment of a receiver (except in relation to property of a Bare Trust), a liquidator, an administrator, or any similar person to the Custodian or prove in any liquidation, administration or arrangement of or affecting the Custodian (except in relation to property of the relevant Bare Trust).
- (d) The provisions of this clause 12.3 do not apply to any Liability of the Custodian to the extent that it is not satisfied under this Deed, the Shareholders' Deed or by operation of law or there is a reduction in the extent of the Custodian's indemnification out of the assets of the relevant Bare Trust, as a result of the Custodian's fraud, negligence, wilful default or breach of trust.
- (e) No attorney, agent, receiver or receiver and manager appointed in accordance with this Deed has authority to act on behalf of the Custodian in a way which exposes the Custodian to any personal liability.

12.4 Indemnity from Company

The Company indemnifies, and agrees to reimburse and compensate, the Custodian for, all Claims and Liabilities which a Rollover Shareholder is obliged to indemnify, reimburse and/or compensate the Custodian for in accordance with clause 12.2 but does not within 20 Business Days following a written demand from the Custodian.

13 Fees and Costs

Without prejudice to clauses 12.2 and 12.4 the Company must pay to the Custodian the fees accepted and agreed between the Custodian and the Company and all costs, expenses and other Liabilities properly incurred by the Custodian in fulfilling its obligations under this Deed other than the Liabilities referred to in clause 8.2, Individual Costs of the Rollover Shareholders and any other cost, expense or Liability which this Deed or the Shareholders' Deed provides will be paid by, or are otherwise the responsibility of, a Rollover Shareholder.

14 Duration of Bare Trusts**14.1 Commencement date**

Each Bare Trust commences on the date on which the Custodian first acquires any Beneficial Securities.

14.2 Termination and termination date

Each Bare Trust will terminate on the earlier of:

- (a) the date on which the Rollover Shareholder is registered on the register held by the Company as the legal owner of all of the Beneficial Securities comprising the Bare Trust Property of that Bare Trust;
- (b) the date on which the Custodian ceases to be registered on the register held by the Company as the legal owner of any Beneficial Securities which are Bare Trust Property of that Bare Trust;
- (c) if the Company is wound up, the date on which of the proceeds of realisation payable in respect of any Bare Trust Property of that Bare Trust are distributed to the relevant Rollover Shareholder or, if no proceeds of realisation are to be distributed to the relevant Rollover Shareholder, the date on which the Company is wound up;
- (d) the date on which the Bare Trust is terminated by the operation of any applicable laws; and
- (e) the date that is 80 years from the date of the commencement of the Bare Trust pursuant to clause 14.1.

14.3 Termination of Deed for Rollover Shareholders

This Deed terminates for a Rollover Shareholder when:

- (a) each Bare Trust of which it is a beneficiary has terminated in accordance with clause 14.2; and
- (b) the Shareholders' Deed has terminated in respect of the Rollover Shareholder in its entirety in accordance with clause 19 of the Shareholders' Deed.

15 Adherence to this Deed

15.1 Rollover Shareholders to adhere

The Company will procure that each Rollover Shareholder agrees to be bound by this Deed as a Rollover Shareholder by:

- (a) that Rollover Shareholder or an attorney of the Rollover Shareholder (including an attorney appointed under the Shareholders' Deed or under the Potentia Takeover) executing and delivering to the Company and the Custodian:
 - (i) in respect of a Rollover Shareholder that acquires Beneficial Securities as a result of the Potentia Takeover, the form of election used by that person under the Potentia Takeover to receive those Beneficial Securities; or
 - (ii) a CD Deed of Adherence; or
- (b) virtue of any provision of the Potentia Takeover which provides that by making an election to receive Beneficial Securities as consideration under the Potentia Takeover, that person will be taken to have agreed to become a party to, and bound by, this Deed.

16 Warranties

Each party warrants in respect of itself to each of the other parties, as an inducement to those parties to enter into this Deed, on the date it becomes a party to this Deed (and upon signing a CD Deed of Adherence, each new Rollover Shareholder warrants to the Company, the Custodian and each existing Rollover Shareholder at that time), that:

- (a) **(status)** if it is not an Individual Party, it has been incorporated or formed in accordance with the laws of its place of incorporation or formation, is validly existing under those laws and has power and authority to own its assets and carry on its business as it is now being conducted;
- (b) **(power)** it has power to enter into this Deed, to comply with its obligations under this Deed and exercise its rights under this Deed;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this Deed does not and will not conflict with:
 - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
 - (ii) any law binding on or applicable to it or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this Deed, to comply with its obligations, and to allow this Deed to be enforced;
- (e) **(validity of obligations)** its obligations under this Deed are valid and binding and are enforceable against it in accordance with its terms; and
- (f) **(not Insolvent)** it is not Insolvent.

17 GST

17.1 Definitions and interpretation

For the purposes of this clause 15:

- (a) **"GST Act"** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (b) words and phrases which have a defined meaning in the GST Act have the same meaning when used in this clause 15, unless the contrary intention appears;
- (c) unless otherwise expressly stated in this Deed, all consideration to be provided under this Deed is exclusive of GST; and
- (d) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as if it were a separate supply.

17.2 Payment of GST

- (a) If GST is payable, or notionally payable, on a supply made under or in connection with this Deed, the party providing the consideration for the supply must pay to the supplier an additional amount equal to the amount of GST payable on that supply (**GST Amount**).
- (b) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.
- (c) This clause does not apply to the extent that the consideration for the supply is expressly stated to include GST or the supply is subject to a reverse-charge.

17.3 Adjustment events

If an adjustment event arises for a supply made under or in connection with this Deed, the GST Amount must be recalculated to reflect that adjustment, the supplier or the recipient (as the case may be) must make any payments necessary to reflect the adjustment and the supplier must issue an adjustment note.

17.4 Reimbursements

Any payment, reimbursement, indemnity or similar payment that is required to be made under this Deed which is calculated by reference to an amount paid by another party shall be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a taxable supply, clause 17.2 will apply to the reduced payment.

18 Notices and other communications

18.1 Form

- (a) Unless this Deed expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this Deed must be in writing and signed by the sender (if an individual) or an authorised officer of the sender.

- (b) All communications (other than email communications) must also be marked for the attention of the person referred to in the Details, Schedule 1 or in a CD Deed of Adherence (or as otherwise notified by the recipient in writing to the other parties).
- (c) Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

18.2 Delivery

Communications must be:

- (a) left at the address referred to in the Details, Schedule 1 or in a CD Deed of Adherence (or as otherwise notified by the recipient in writing to the other parties);
- (b) sent by prepaid ordinary post (airmail if appropriate) to the address referred to in the Details, Schedule 1 or in a CD Deed of Adherence (or as otherwise notified by the recipient in writing to the other parties); or
- (c) sent by email to the address referred to in the Details, Schedule 1 or in a CD Deed of Adherence (or as otherwise notified by the recipient in writing to the other parties).

If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

18.3 When effective

Communications take effect from the time they are received or taken to be received under clause 18.4 (whichever happens first) unless a later time is specified in the communication.

18.4 When taken to be received

Communications are taken to be received:

- (a) if sent by post, 6 Business Days after posting (or 10 days after posting if sent from one country to another);
- (b) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

18.5 Receipt outside business hours

Despite anything else in this clause 18, if communications are received or taken to be received under clause 18.4 after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause 18.5, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

19 Amendments

19.1 Amendment

This Deed may be amended only by a document signed by:

- (a) the Company;
- (b) the Custodian; and
- (c) unless clause 19.2 applies and only if the proposed amendment would adversely effect the rights of a Rollover Shareholder, that Rollover Shareholder.

19.2 Complying amendments

This Deed may be amended by a document signed by the Company and the Custodian if:

- (a) the amendment is made to cure any ambiguity, omission, manifest error, mistake or defect or inconsistency identified by the Board;
- (b) based on professional legal advice received in relation to the issue by the Company, the Board resolves that the amendment is required in order for this Deed to comply with the applicable laws;
- (c) based on professional tax advice received in relation to the issue, the Board resolves that the amendment is reasonably required to take into consideration possible adverse Tax implications in respect of this Deed and the amendment does not materially diminish the rights of, increase the obligations of, or otherwise adversely affect, a Rollover Shareholder; or
- (d) the amendment, variation or waiver relates only to a particular party and is made with the consent of that party.

19.3 Ceasing to be a party

If this Deed terminates with respect to a Rollover Shareholder under clause 14.3, then as from that time, that former Rollover Shareholder will cease to be a party to this Deed for the purposes of clauses 19.1 and this Deed may be amended without reference to, or the need for the signature of, that former Rollover Shareholder.

20 General

20.1 Consents, approvals or waivers

By giving any approval, consent or waiver a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

20.2 Discretion in exercising rights

Unless this Deed expressly states otherwise, a party (including the Custodian) may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this Deed in its absolute discretion (including by imposing conditions).

20.3 Partial exercising of rights

Unless this Deed expressly states otherwise, if a party does not exercise a right, power or remedy in connection with this Deed fully or at a given time, they may still exercise it later.

20.4 Conflict of interest

Each party may exercise their rights, powers and remedies in connection with this Deed even if this involves a conflict of duty or they have a personal interest in their exercise.

20.5 Specific performance

The parties acknowledge that:

- (a) Beneficial Securities cannot be readily purchased or sold in an open market and that damages or an account of profits may be an inadequate remedy to compensate the relevant non-breaching parties for a breach of this Deed by another party; and
- (b) each party is, to the extent permitted by law, entitled to specific performance or injunctive relief (as appropriate) as a remedy for any breach or threatened breach by another party of this Deed, in addition to any other remedies available to them at law or in equity.

20.6 Remedies cumulative

The rights, powers and remedies of the parties in connection with this Deed in addition to other rights, powers and remedies given by law independently of this Deed.

20.7 Indemnities and reimbursement obligations

Any indemnity, reimbursement or similar obligation in this Deed:

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this Deed, any settlement or any other thing;
- (b) is independent of any other obligations under this Deed; and
- (c) continues after this Deed, or any obligation arising under it, ends or terminates.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this Deed.

20.8 Inconsistent law

To the extent the law permits, this Deed prevails to the extent it is inconsistent with any law.

20.9 Supervening law

Any present or future law which operates to vary the obligations of a party in connection with this Deed with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

20.10 Counterparts

This Deed may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document and the date on which the last counterpart is executed is the date of the document.

20.11 Entire agreement

This Deed, the Shareholders' Deed and any other documents referred to in this Deed or executed in connection with this Deed constitute the entire agreement of the parties about

the subject matter of this Deed and supersede all previous agreements, understandings and negotiations on that subject matter and all other communications.

20.12 Further steps

Each party agrees to do anything (such as obtaining consent, signing and producing documents, producing receipts and getting documents completed and signed) which another party asks and reasonably considers necessary to:

- (a) bind a party and any other person intended to be bound under this Deed;
- (b) show whether a party is complying with this Deed; and
- (c) enable a party to register the power of attorney in clause 20 of the Shareholders' Deed or a similar power.

20.13 Assignment or other dealings

A party may not assign or otherwise Dispose of any of its rights under this Deed or allow any interest in them to arise or be varied without the consent of the other parties or as otherwise expressly permitted by this Deed.

20.14 Severability

If the whole or any part of a provision of this Deed is void, unenforceable or illegal in a jurisdiction it is to be severed for that jurisdiction. The remainder of this Deed has full force and effect and the validity or unenforceability of that provision in any other jurisdiction is not affected. This clause 20.14 has no effect if the severance alters the basic nature of this Deed or is contrary to public policy.

20.15 Rules of construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Deed or any part of it or seeks to rely on any provision of this Deed.

20.16 Relationship of parties

Unless this Deed expressly states otherwise, nothing contained or implied in this Deed constitutes any party as the partner, agent, associate, employee or representative of any other party for any purpose or creates any partnership, agency or trust between them and no party has authority to bind any other party in any way.

20.17 Attorneys

Each attorney executing this Deed or a CD Deed of Adherence states that the attorney has no notice of revocation or suspension of the power of attorney under which the attorney executes this Deed or a CD Deed of Adherence.

20.18 Method of payment

All payments required to be made under this Deed must be made by way of direct transfer of immediately available funds to the credit of an Australian bank account nominated by the payee to the payer, that nomination to be given at least 3 Business Day before, the due date for payment or by any other method agreed by the parties.

20.19 Third Party Benefit

If a representation, warranty, indemnity, undertaking or acknowledgment given by a party in this Deed is expressly given to or for the benefit of any Representative of the other party

(such other party being referred to in this clause 20.19 as the “**Recipient**”) including each such person that is not a party to this Deed (“**Third Party Beneficiary**”), the benefit of that representation, warranty, indemnity, undertaking or acknowledgment is held by the Recipient for the benefit of, and is enforceable by, the Recipient on behalf of the Third Party Beneficiary, notwithstanding that they are not a party to this Deed.

20.20 Certain provisions continue

Termination of this Deed with respect to a party or all parties does not affect:

- (a) any obligation or Claim of that party or those parties, as applicable, under this Deed which accrued prior to that termination and which remains unsatisfied;
- (b) any rights, Claims or Liabilities of a party which accrued prior to such termination; or
- (c) any provision of this Deed which is expressed to come into effect on, or to continue in effect after, that termination.

20.21 Parties

- (a) The Company may update Schedule 1 to reflect the Rollover Shareholders from time to time in accordance with the CD Deed of Adherence and the other relevant details in Schedule 1.
- (b) To avoid doubt, any update to Schedule 1 in accordance with clause 20.21(a) will not be an amendment to which clause 19 applies.

21 Governing law

21.1 Governing law and jurisdiction

The law in force in the place specified in the Details governs this Deed. The parties submit to the exclusive jurisdiction of the courts of that place. To the extent the law permits, the law of the Commonwealth as it applies in that jurisdiction governs a Security Interest arising under this Deed.

21.2 Serving documents

Without preventing any other method of service, any document in an action in connection with this Deed may be served on a party by being delivered or left at that party’s address for service of notices under clause 18.2.

Schedule 1– Rollover Shareholders

Rollover Shareholder	Notice Details

Execution

EXECUTED as a deed

Executed by [Insert Custodian] in
accordance with section 127 of the
Corporations Act 2001 (Cth) by:

Director signature

Director/Secretary signature

Director full name
(BLOCK LETTERS)

Director/Secretary full name
(BLOCK LETTERS)

Executed by Oak Ridge Software Limited in
accordance with section 127 of the
Corporations Act 2001 (Cth) by:

Director signature

Director/Secretary signature

Director full name
(BLOCK LETTERS)

Director/Secretary full name
(BLOCK LETTERS)

Annexure 1 – CD Deed of Adherence

Details

Parties

1 [insert Name] (ACN [insert ACN/ARBN]) (**Acceding Party**)

Address: [insert]

Email: [insert]

Attention: [insert]

1 Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears, these meanings apply.

Accession Date has the meaning given to it in clause 2.1.

Continuing Party means each party (whether an original party or a party by accession) to the Principal Deed, including those listed in Schedule 1 to this Deed.

Principal Deed means the Custodian Deed dated on or about [insert] between [insert Custodian] (ACN [insert]), Oak Ridge Software Limited (ACN 664 474 999) and the Appointing Beneficiaries (as that term is defined in that document) from time to time, as amended from time to time, a copy of which is attached as Attachment A.

1.2 Interpretation

Clauses 1.2 and 1.3 of the Principal Deed apply to this Deed as if set out in full in this Deed.

1.3 Incorporated definitions

Unless the contrary intention appears, a term which has a defined meaning in the Principal Deed has the same meaning when used in this Deed.

2 Accession

2.1 Accession

The Acceding Party accedes to the Principal Deed as a Rollover Shareholder on and from [insert relevant date] (**Accession Date**).

2.2 Rights and obligations of Acceding Party

Upon accession to the Principal Deed, the Acceding Party is bound by all the terms of the Principal Deed from the Accession Date as if the Acceding Party was, from the Accession Date, a party to the Principal Deed with all the rights and obligations of a Rollover Shareholder.

3 Representations and warranties

The Acceding Party represents and warrants to each Continuing Party:

- (a) **(status)** if it is not an individual, it has been incorporated or formed in accordance with the laws of its place of incorporation or formation, is validly existing under those laws and has power and authority to own its assets and carry on its business as it is now being conducted;
- (b) **(power)** it has power to enter into this Deed, to comply with its obligations under this Deed and exercise its rights under this Deed;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this Deed does not and will not conflict with:
 - (i) if it is with an individual, its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded; or
 - (ii) any law binding on or applicable to it or its assets;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this Deed, to comply with its obligations, and to allow this Deed to be enforced;
- (e) **(validity of obligations)** its obligations under this Deed are valid and binding and are enforceable against it in accordance with its terms; and
- (f) **(not Insolvent)** it is not Insolvent.

4 Notices

4.1 Address of Acceding Party for notices

For the purposes of the Principal Deed the address of the Acceding Party to which all notices must be delivered is:

Address: [insert]

Email: [insert]

Contact: [insert]

5 General

5.1 Variation and waiver

A provision of this document, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party to be bound.

5.2 Entire agreement

This document and the Principal Deed constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

5.3 Amendment

This document may be amended only by a document signed by all the Acceding Party and each of the Continuing Parties.

5.4 Assignment

The Acceding Party may not assign or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the written consent of each of the Continuing Parties.

5.5 Severability

If the whole or any part of a provision of this document is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this document has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this document or is contrary to public policy.

6 Governing law and jurisdiction

The law in force in New South Wales governs this document. The Acceding Party submits to the non-exclusive jurisdiction of the courts of that place.

Executed as a deed poll

(For an individual:)

Signed, sealed and delivered by [Acceding Party] in the presence of:

Witness

Signature

Name of Witness
(BLOCK LETTERS)

(For an Australian company:)

Executed by the [Acceding Party] in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Director signature

Director/Secretary signature

Director full name
(BLOCK LETTERS)

Director/Secretary full name
(BLOCK LETTERS)

(For a foreign company:)

Signed, sealed and delivered by **[Acceding Party]** in the presence of:



Witness signature

Authorised officer signature

Witness full name
(BLOCK LETTERS)

Authorised officer full name and title
(BLOCK LETTERS)

Annexure 4 – Notice of Variation

See next page.

For personal use only

**NOTICE OF VARIATION OF OFFER –
EXTENSION OF OFFER PERIOD AND SCRIP ALTERNATIVE
IN ACCORDANCE WITH THE CORPORATIONS ACT 2001 (CTH)**

OFF-MARKET TAKEOVER OFFER BY TECHNOLOGY GROWTH CAPITAL LLC

To: Australian Securities and Investments Commission (ASIC)

ASX Limited

Nitro Software Limited (ACN 079 215 419) (Nitro)

Each Nitro shareholder and other person to referred to in sections 650D(1)(c) and 650D(2) of the Corporations Act 2001 (Cth) (Corporations Act) (as modified by ASIC Class Order [13/521])

This notice is given by Technology Growth Capital LLC (**Bidder**) in relation to its off-market bid for ordinary shares in Nitro Software Limited (ACN 079 215 419) (ASX:NTO) (**Nitro**), on the terms of the offer (**Offer**) set out in the bidder's statement dated 28 October 2022 (**Bidder's Statement**). Capitalised terms in this notice have the same meaning as given in the Bidder's Statement, unless the context requires otherwise.

1 Extension of Offer Period

The Bidder gives notice under section 650D(1) of the Corporations Act that, pursuant to section 650C(1) of the Corporations Act:

- (a) the Offer is varied by extending the period during which the Offer will remain open for acceptance until **7.00pm (Sydney, Australia time) on 31 March 2023**, unless withdrawn or further extended in accordance with the Corporations Act; and
- (b) all references in the Bidder's Statement and Acceptance Form to '8 January 2023', or where '8 January 2023' is deemed to appear, are replaced with '31 March 2023' as the last day of the Offer Period.

2 New date for giving notice as to the status of conditions under the Offer

As a result of the extension of the Offer Period, the Bidder gives notice under section 630(2)(b) of the Corporations Act that:

- (a) the new date for giving notice as to the status of the Conditions of the Offer set out in section 10.3 of the Bidder's Statement, as required by section 630(3) of the Corporations Act, is 22 March 2023 (subject to variations in accordance with the Corporations Act). Accordingly, the reference to '30 December 2022' in the Bidder's Statement as the date for giving the notice on the status of the Conditions is replaced with '22 March 2023'; and
- (b) as at the date of this notice:
 - (i) the Offer and each contract resulting from acceptance of the Offer have not been freed from the Conditions set out in section 10.3 of the Bidder's Statement; and
 - (ii) so far as the Bidder is aware, the Conditions set out in section 10.3 of the Bidder's Statement are not fulfilled at the time of giving this notice.

3 Rights of withdrawal

In this Section 3 “Rights of withdrawal”, words defined in the ASX Settlement Operating Rules have the same meaning given in this notice, unless the context requires otherwise.

The extension of the Offer Period by the Bidder will postpone for more than one month the time by which the Bidder must satisfy its obligations under the Offer.

Consequently, in accordance with section 650E of the Corporations Act, each Nitro shareholder who has validly accepted the Offer on or before the date of this notice has a right to withdraw its acceptance of the Offer (**Withdrawal**) by giving written notice of withdrawal (**Withdrawal Notice**) to the Bidder, within one month beginning on the day after the day on which the relevant Nitro shareholder receives this notice (**Withdrawal Period**).

A Withdrawal Notice by a Nitro shareholder withdrawing their acceptance under section 650E of the Corporations Act must:

- (a) if the Nitro shares are in a CHESS holding:
 - (i) be in the form of a Valid Originating Message transmitted to ASX Settlement by the Controlling Participant for that CHESS holding in accordance with Rule 14.16.1 of the ASX Settlement Operating Rules; or
 - (ii) be in the form of a notice in writing to the Bidder setting out the information the Bidder requires to transmit a Valid Originating Message to ASX Settlement on behalf of the Nitro shareholder in accordance with Rule 14.16.5 of the ASX Settlement Operating Rules; and
- (b) in any other case, be in writing to Automic Pty Limited at:

Automic Group
GPO Box 5193
Sydney NSW 2001

If a Nitro shareholder is legally entitled to give, and does in fact give, a Withdrawal Notice within the Withdrawal Period, the Bidder will, before the end of 14 days after the day on which it receives the Withdrawal Notice:

- (a) return to the Nitro shareholder any documents that were sent by the Nitro shareholder to the Bidder with the acceptance of the Offer; and
- (b) if the Nitro shares are in a CHESS holding, transmit to ASX Settlement a Valid Message that authorises the release of those shares from the Offer Accepted Subposition in which the CHESS holding has been reserved in accordance with Rule 14.16.3 or Rule 14.16.5 of the ASX Settlement Operating Rules as applicable.

If you have already accepted the Offer and do not wish to withdraw your acceptance, you do not need to do anything.

4 Scrip Alternative

In this Section 4 “Scrip Alternative”, words defined in the Bidder’s third supplementary bidder’s statement dated 23 December 2022 in relation to the Offer (**Third Supplementary Bidder’s Statement**) have the same meaning given in this notice, unless the context requires otherwise

In connection with the Scrip Alternative, the Bidder gives notice under section 650D(1) of the Corporations Act that the Offer is varied to offer alternative forms of consideration, namely the All Scrip Consideration and Mixed Consideration, as follows:

- (a) By deleting Section 10.2 of the Offer contained in the Original Bidder's Statement and substituting the following:

(a) *Subject to the terms of this Offer, the consideration offered by the Bidder for Your Nitro Shares to which this Offer relates is, at your election:*

- (i) *\$2.00 per Nitro Share (the **All Cash Consideration**);*
- (ii) *70% of a HoldCo Ordinary Share and 30% of a HoldCo Redeemable Preference Share per Nitro Share (the **All Scrip Consideration**); or*
- (ii) *for 50% of Your Nitro Shares (with any partial Nitro Share rounded up to the nearest whole number) you will receive All Cash Consideration and for Your remaining Nitro Shares, you will receive All Scrip Consideration (the **Mixed Consideration**).*

(b) *You may choose to receive:*

- (i) *the All Cash Consideration for all Your Nitro Shares;*
- (ii) *the Mixed Consideration for all Your Nitro Shares; or*
- (iii) *the All Scrip Consideration for all Your Nitro Shares.*

You must specify your choice when completing the New Acceptance Form or instructing your Controlling Participant. If you accept the Offer but do not specify which of the alternative considerations you wish to receive, you will be treated as choosing the All Cash Consideration for all Your Nitro Shares.

(c) *If you are:*

- (i) *an Ineligible Foreign Shareholder and you would receive HoldCo Shares under your Election, then despite any other provision of this Offer, you are offered and will receive for Your Nitro Shares a cash amount calculated under Section 10.7A; and*
- (ii) *a UK Nitro Shareholder and you would receive HoldCo Shares under your Election, then despite any other provision of this Offer, you will receive your HoldCo Shares following UK Scrip-for-Scrip Rollover Process set out in Section 10.7B.*

(d) *Subject to Section 10.5 below, if you would otherwise become entitled to a fraction of a HoldCo Ordinary Share, HoldCo Redeemable Preference Share, or both as a result of your acceptance of the Offer your Election, any such fractional entitlement of:*

- (i) *less than 0.5 will be rounded down to zero; and*
- (ii) *0.5 or more will be rounded up.*

(e) *If the Bidder reasonably believes that any parcel or parcels of Nitro Shares has or have been created or manipulated to take advantage of the rounding provision in Section 10.2(d) above, then any fractional entitlement to HoldCo Ordinary Shares or HoldCo Redeemable Preference Shares arising in relation to that parcel, or those parcels, will be rounded down so that the entitlement to HoldCo Ordinary Shares and HoldCo Redeemable Preference Shares arising in relation to each parcel consists of the nearest whole number of HoldCo Ordinary Shares and HoldCo Redeemable Preference Shares only and the fractional entitlement will be disregarded.*

- (b) By inserting the following at the end of Section 10.5 of the Offer contained in the Original Bidder's Statement:

In this Offer, a reference to:

(i) the CHES Acceptance Form is to the Original CHES Acceptance Form or to the New CHES Acceptance Form;

(ii) the Issuer Acceptance Form is to the Original Issuer Acceptance Form or to the New Issuer Acceptance Form; and

(iii) the Acceptance Form is to the Original Acceptance Form or to the New Acceptance Form,

but you must use the New Acceptance Form (and includes, to avoid doubt, either the New CHES Acceptance Form or New Issuer Acceptance Form) if you wish to choose the All Scrip Consideration or Mixed Consideration.

- (c) By inserting the following new Section 10.7A after Section 10.7 of the Offer contained in the Original Bidder's Statement:

10.7A Ineligible Foreign Shareholders

If you are an Ineligible Foreign Shareholder and you accept this Offer and choose the All Scrip Consideration or Mixed Consideration you will not be entitled to receive HoldCo Shares as consideration for your Nitro Shares. Instead the Bidder will:

- (a) *arrange for the issue to a nominee approved by ASIC (**Nominee**) of the number of HoldCo Shares to which you and all other Ineligible Foreign Shareholders would have been entitled but for this Section and the equivalent Section in the Offer;*
- (b) *procure that any one of the Potentia Shareholders acquire the HoldCo Shares offered to Nitro Shareholders in circumstances where a Nitro Shareholder (including the Nominee) who holds HoldCo Shares exercises the right set out in Section 16.1 of the HoldCo Shareholders' Deed; and*
- (c) *cause the amount ascertained in accordance with the formula below to be paid to you:*

$$\text{Nominee Net Sale Proceeds} \times \frac{\text{Your HoldCo Shares}}{\text{Nominee HoldCo Shares}}$$

where:

net proceeds of sale is the amount remaining after deducting the expenses of sale and of appointing the Nominee from the total proceeds of sale of the HoldCo Shares issued to the nominee under this Section and the equivalent Section in the Offer;

Your HoldCo Shares is the number of HoldCo Shares which would, but for this Section, have been issued to you; and

Nominee HoldCo Shares is the total number of HoldCo Shares issued to the Nominee under this Section and the equivalent Section in the Offer.

You will be paid by cheque in Australian currency. The cheque will be sent at your risk by pre-paid airmail to the address shown in the Acceptance Form."

- (d) By inserting the following new Section 10.7B after the new Section 10.7A of the Offer contained in the Original Bidder's Statement:

10.7B UK scrip-for-scrip rollover process

For the purpose of Section 10.2(c), the following steps will occur in circumstances where You are a UK Nitro Shareholder and You would receive HoldCo Shares as a result of Your Election:

- (a) *the Bidder will acquire the number of Nitro Shares to be acquired from you (as calculated in accordance with Section 10.2(a)(iii)) by issuing a Bidder Loan Note to you for each of your Nitro Shares; then*

- (b) *TGC will acquire, through the exercise of their rights under a put and call option agreement, the Bidder Loan Notes issued to you by issuing a TGC Loan Note to you for each of your Bidder Loan Notes; then*
- (c) *TGF will acquire, through the exercise of their rights under a put and call option agreement, the TGC Loan Notes issued to you by issuing a TGF Loan Note to you for each of your TGC Loan Notes; then*
- (d) *TGP will acquire, through the exercise of their rights under a put and call option agreement, the TGF Loan Notes issued to you by issuing a TGP Loan Note to you for each of your TGF Loan Notes; then*
- (e) *HoldCo will acquire, through the exercise of their rights under a put and call option agreement, the TGP Loan Notes issued to you by issuing a HoldCo Loan Note to you for each of your TGP Loan Notes; then*
- (f) *HoldCo will acquire, through the exercise of their rights under a put and call option agreement, each HoldCo Loan Note issued to you by issuing you the HoldCo Shares which you are entitled to receive under Section 10.2(a) (subject to any rounding which is to be calculated in accordance with Section 10.2(d)),*

*with each step other than (a) being conditional on the exchange described in the prior step occurring (together the **UK Scrip-for-Scrip Rollover Process**).*

- (e) By inserting the following new Section 10.8A after Section 10.8 of the Offer contained in the Original Bidder's Statement:

10.8A Further agreement where All Scrip Consideration or Mixed Consideration chosen

By signing and returning the Acceptance Form or initiating or causing acceptance of this Offer under the ASTC Settlement Rules in accordance with Section 3, if you choose to receive the All Scrip Consideration or Mixed Consideration, you also:

- (a) *represent and warrant that you are not an Ineligible Foreign Shareholder unless otherwise indicated on the Acceptance Form, and acknowledge and agree that if you are an Ineligible Foreign Shareholder, or the Bidder believes you are an Ineligible Foreign Shareholder, Section 10.7A applies to you; and*
- (b) *unless Section 10.7A applies to you and subject to Section 10.8(d):*
 - (i) *agree to accept the HoldCo Shares to which you become entitled by accepting this Offer subject to the HoldCo Constitution and authorise HoldCo to place your name on its register of members as the beneficial holder of those HoldCo Shares; and*
 - (ii) *agree to become a party to and be bound by the Custodian Deed and HoldCo Shareholders' Deed.*

- (f) By inserting the following new Section 10.9A after Section 10.9 of the Offer contained in the Original Bidder's Statement:

10.9A Interpretation of "pay"

In Sections 10.8 and 10.9, "pay" includes "provide".

- (g) By inserting the following sentences at the end of Section 10.11 of the Offer contained in the Original Bidder's Statement:

Subject to the Corporations Act and the constitution of HoldCo, the Bidder will send you a holding statement for any HoldCo Ordinary Shares and HoldCo Redeemable Preference Shares issued to you upon acceptance of the Offer at your risk by pre-paid ordinary mail, or in the case of an address outside Australia by airmail, to the address shown in the Acceptance Form. Any HoldCo Ordinary Shares and HoldCo Redeemable Preference Shares issued to you recorded in HoldCo's share register.

5 Right to make a fresh election

As a result of the Scrip Alternative, the Bidder gives notice under section 650B(2A) of the Corporations Act that a person who has already accepted an Offer when the variations in this notice are made has the right to make a fresh election as to the form of consideration to be taken.

Details about how to make a fresh election, and the requirement to return any cash consideration already received as a result of a person's Election, are included in Section 3 of the Third Supplementary Bidder's Statement.

6 Date of lodgement with ASIC

A copy of this notice was lodged with ASIC on 23 December 2022. ASIC takes no responsibility for the contents of this notice.

Dated: 23 December 2022

Signed for and on behalf of **Technology Growth Capital LLC** pursuant to a resolution of the directors.



Andrew Gray
President
Technology Growth Capital LLC

Annexure 5 – Grant Thornton Report

See next page.

For personal use only

Potentia Capital Management Pty Ltd

Limited Scope Opinion Report and Financial Services Guide

22 December 2022

For personal use only

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The Directors
Potentia Capital Management Pty Ltd
Suite 38.01, Gateway
1 Macquarie Place
Sydney NSW 2000

22 December 2022

Dear Directors

Introduction

Nitro Software Limited ("Nitro" or the "Target") is a software provider in document productivity and eSigning¹, offering SaaS² solutions to support the digital transformation of organisations globally. The Target was founded in Melbourne in 2005 and listed on ASX on 19 December 2019.

On 31 August 2022, Nitro announced that it had received an unsolicited, conditional and non-binding indicative proposal from Potentia Capital Management Pty Ltd ("Potentia"), together with its co-investor HarbourVest Partners LLC ("Potentia Consortium") to acquire 100% of the issued share capital of Nitro at A\$1.58 cash per Nitro share ("First Potentia Consortium Offer") through Technology Growth Capital LLC ("Bidder"). The First Potentia Consortium Offer was rejected by the board of directors of Nitro. As part of the same announcement, the Potentia Consortium advised Nitro that it had acquired a combined relevant interest of approximately 17% of the issued share capital in Nitro, the maximum price paid for any of those shares being A\$1.58 per Nitro share ("Pre-Bid Acquisition").

On 28 October 2022, the Potentia Consortium announced that it intended to make an off-market takeover bid for Nitro at a price of A\$1.80 per Nitro share ("Second Potentia Consortium Offer") through the Bidder and on the same day, it served the Bidder's Statement where the Potentia Consortium disclosed that it had increased its interest in Nitro from 17%, as at 31 August 2022, to 19.8%, as at 28 October 2022.³ The Second Potentia Consortium Offer was rejected by the board of directors of Nitro.

On 15 November 2022, Nitro announced that it had entered into a binding legal agreement with Cascade Parent Limited, trading as Alludo ("Alludo"), pursuant to which Alludo would acquire 100% of Nitro shares by way of a scheme of arrangement at a cash price of A\$2.00 per Nitro share ("Alludo Scheme"). Further, Alludo would make a simultaneous off-market takeover offer at a cash price of A\$2.00 per Nitro share ("Alludo Takeover Offer") conditional on (among other things) the Alludo Scheme not proceeding and a 50.1% minimum acceptance condition (collectively, "Alludo Offer"). The Nitro board of directors determined the Alludo Offer to be superior to the Second Potentia Consortium Offer and unanimously recommended that shareholders vote in favour of the Alludo Scheme and accept the Alludo Takeover Offer, in the absence of a superior proposal and subject to the independent expert concluding that the Alludo Scheme is in the best interests of Nitro shareholders and that the Alludo Takeover Offer is fair and reasonable.

¹ eSigning is a legally binding method by which one can obtain or give consent to a digital document such as a PDF, similar to a paper signature.

² Software-as-a-Service.

³ This was first disclosed by Potentia to ASX on a Form 603 (Notice of initial substantial shareholder) on 31 August 2022.

On 23 November 2022, Nitro released the target's statement which included, among other things, the independent expert's report ("IER") prepared by Kroll Australia Pty Ltd (the "IE"). The IE assessed the fair market value of each Nitro share to be in the range of A\$2.00 to A\$2.20 ("Nitro Fair Value") on a control basis.

On 8 December 2022 and on or about the date of this report, the Potentia Consortium released the Second and Third Supplementary Bidder's Statements respectively in which it announced the following ("Potentia Consortium Third Offer"):

- Increasing the cash offer price from A\$1.80 to A\$2.00 per Nitro share ("Cash Offer" or "Cash Consideration") and declaring the price final in the absence of a superior proposal or unless it is granted access to information to undertake full customary due diligence;
- The Potentia Consortium added a scrip alternative form of consideration ("Scrip Alternative") which is intended to facilitate the rollover of existing Nitro shareholders into a new unlisted Australian public company called Oak Ridge Software Limited ("HoldCo"), including members of the Nitro management team and broader employee group ("HoldCo Minority Shareholders"). Nitro shareholders can elect to receive 100% cash consideration or an equally split combination of cash and scrip. The interest of Nitro shareholders that rollover into HoldCo will be held through a custodian on the terms of a custodian deed ("Custodian Deed") and a shareholders deed ("Shareholders Deed") of which copies have been set out as annexures in the supplementary bidder's statement. Pursuant to this, the beneficial title to the HoldCo shares that Nitro shareholders will receive by rolling over into HoldCo will be held by them in their own capacity. The legal title to those HoldCo shares will be held by the custodian under the terms of the Custodian Deed. The effect of the custodian arrangement will mean that HoldCo will have less than 50 members.
- If Potentia has a relevant interest in less than 75% of the Nitro shares at the end of the Offer Period (as defined in the Second Supplementary Bidders Statement), it will maintain Nitro's listing on the ASX.

On 12 December 2022, Nitro announced that Alludo had increased its Cash Offer from A\$2.00 per Nitro share to A\$2.15 per Nitro share ("Revised Alludo Offer"). The Revised Alludo Offer was conditional on Nitro Board confirming that it will not provide due diligence access to the Potentia Consortium in respect of the Potentia Consortium Third Offer. The Nitro board of directors also determined the Revised Alludo Offer is superior to the Potentia Consortium Third Offer, given it represents a consideration premium of A\$0.15 per Nitro share to the Potentia Consortium Third Offer.

Purpose of the report

ASIC Regulatory Guide 9 "Takeover Bids" ("RG 9") contains guidance concerning the minimum bid price rule. The minimum bid price rule is contained in section 621(3) of the Corporations Act (Cth) (the "Act") and provides that a bidder making a takeover bid must offer consideration at least equal to the maximum consideration that the bidder or an associate provided, or agreed to provide, for a bid class security under any purchase or agreement during the four months before the date of the bid ("Minimum Bid Price Rule").

Within the four months prior to the Potentia Consortium making the First Potentia Consortium Offer, the highest price paid by the Potentia Consortium for a Nitro share was A\$1.58. As a result of the requirements of RG 9, we have been instructed by the Potentia Consortium's legal adviser that the value implied in the Scrip Alternative cannot be lower than A\$1.58 per share ("Minimum Bid Price"), otherwise the Scrip

Alternative may not be in compliance with the Minimum Bid Price rule.

The directors of Potentia (the "Directors"), acting on behalf of the Potentia Consortium, have therefore engaged Grant Thornton Corporate Finance Pty Ltd ("Grant Thornton") to assist the Bidder to determine whether the value of the Scrip Alternative in HoldCo that is being offered by the Bidder as bid consideration is equal to or greater than the maximum consideration provided, or agreed to be provided, for any purchase by the Potentia Consortium of Nitro shares in the four month period prior to the start of the offer period (i.e. prior to 11 November 2022). The Potentia Consortium must make this determination so that it can confirm that the value of the Scrip Alternative is in compliance with the Minimum Bid Price Rule. In particular, Grant Thornton has been asked to advise on the appropriate illiquidity/marketability discount that should apply to the Nitro share value when determining the value of the HoldCo scrip consideration (i.e. the Scrip Alternative).

We have been instructed that the illiquidity/marketability discount should be applied to a Nitro share value of A\$2.15. We understand that A\$2.15 has been chosen because the Alludo Scheme and Alludo Takeover Offer both offer A\$2.15 per Nitro Share in cash (and A\$2.15 has been influenced by Alludo's due diligence access to Nitro) and the A\$2.15 is within the Nitro fair value range assessed by the IE.

Important notice and disclaimer

For the avoidance of doubt:

- Grant Thornton's scope of work is limited to advising on the appropriate illiquidity/marketability discount that should apply to the Nitro share value when determining the value of the HoldCo scrip consideration (i.e. the Scrip Alternative).
- This Report is not an independent expert's report prepared under Regulatory Guide 111 Contents of expert reports ("RG 111"), and Regulatory Guide 112 Independence of experts ("RG 112").
- Under no circumstances this Report should be construed as representing Grant Thornton's opinion of the fair market value of Nitro shares or of HoldCo shares. We have only been engaged to assess the discount applicable to the Nitro shares on a 100% basis to approximate the value of the Scrip Alternative.
- Grant Thornton has not been engaged by and has had no communication with the Nitro board of directors. Grant Thornton does not make or purport to make any recommendations to Nitro Shareholders in connection with the Potentia Consortium Third Offer or the Revised Alludo Offer or the Scrip Alternative.
- Our assessment of the discount and the discussion throughout this Report only apply if HoldCo acquires 100% of the issued share capital of Nitro.
- Given the shares in HoldCo will be held by a custodian, we have assumed that the custodian arrangements are not dissimilar to standard custodian arrangements. We have assumed that the fact that the HoldCo shares are held by a custodian does not impact the discount that would be applied in valuing HoldCo shares.

The preparation of this Report is based on a review of the Key Legal Agreements⁴ in relation to HoldCo. We have circulated a draft Report for factual accuracy to the Potentia Consortium's legal adviser who have confirmed the factual accuracy of our interpretation of the Key Legal Agreements and how they are presented/explained in this Report. We are not responsible to Nitro shareholders or any other parties involved in the proposed acquisition of Nitro if the Key Legal Agreements are changed, in any material respect, to the draft provided to us or if our interpretation of them as presented/explained in this Report is not correct.

Nitro shareholders should be aware that the Key Legal Agreements are not the outcome of a negotiated process between the Potentia Consortium and the Directors of Nitro. The Key Legal Agreements have been prepared exclusively by the Potentia Consortium's legal adviser.

Overview of HoldCo

In our consideration of the discount applicable under the Scrip Alternative, we have been instructed that:

- HoldCo is a dormant company recently established on 13 December 2022 for the only purpose of the acquisition of Nitro. We have made enquiries with the Potentia Consortium's legal advisers and understand that there is no balance sheet available at a contemporaneous date. Nonetheless, we have been advised by the legal advisers that there are no assets and liabilities on the balance sheet of HoldCo as at the date of this Report (other than those balance sheet items which arose in connection with the Potentia Consortium's Pre-Bid Acquisition such as an indirect shareholding in Nitro shares).
- HoldCo is an Australian public unlisted company with less than 50 members and it will therefore not be required to comply with Chapter 6 of the Corporations Act. Based on discussions with the Potentia Consortium's legal advisers, we understand that all Nitro shareholders that elect to receive scrip in HoldCo will have their shares held by a custodian regulated by the Custodian Deed and the Potentia Consortium's interest will be held through up to four managed investment trusts (MITs). Therefore, the number of members will not exceed 50.

The capital structure of HoldCo will include both ordinary shares ("Ordinary Shares") and convertible redeemable preference shares ("RPS") issued to:

- The Potentia Consortium on conversion of convertible notes. The capital structure of HoldCo is wholly owned by the Potentia Consortium immediately before the transaction via convertible notes which will convert into Ordinary Shares and RPS. The convertible notes are the instrument elected by the Potentia Consortium to raise the cash necessary in HoldCo to pay for the Cash Offer.
- A custodian to be held beneficially by Nitro shareholders opting to receive all or part of the consideration in HoldCo shares.

The RPS and Ordinary Shares will be issued in the same proportion (i.e. relativity between the Ordinary Shares and the RPS rather than in the same proportion of the issued capital of HoldCo) to the Potentia Consortium and Nitro shareholders opting to receive all or part of the bid consideration in HoldCo shares.

A comparison of the key terms of the Ordinary Shares and RPS is outlined below.

⁴ Shareholder Deed, Custodian Deed and terms of the RPS ("Key Legal Agreements").

Rights	Ordinary Shares	Convertible Redeemable Preference Shares (RPS)
Dividends	They have the right to participate in dividends. However, private equity participants such as Potentia do not typically pay dividends.	There are no dividend rights attached to these shares.
Redemption	N/A	Voluntary redemption is at the option of HoldCo. Where RPS are not redeemed, they will be converted into Ordinary Shares at maturity (24 months from the date of issue).
Voting Rights	They carry voting rights, however we note that most of the key corporate matters are reserved to the Potentia Consortium.	They do not carry voting rights.
Transfers	Transfer of Ordinary Shares can only be completed in accordance with the Shareholders Deed.	Transfers of RPS can only be completed in accordance with the Shareholders Deed.
Preference	Rank below RPS.	Rank senior to Ordinary Shares but below senior debt (if raised after completion of the takeover offer). No preferential return or distribution.
Conversion	N/A	The RPS are convertible into Ordinary Shares within 24 months from the date of issue. The number of Ordinary Shares to be issued on conversion will be calculated as the redemption amount divided by the fair market value of Ordinary Shares. We have been advised by the legal advisers of Potentia that the conversion or redemption of the RPS is on the same terms for all shareholders and as such there is no opportunity for Potentia to dilute other shareholders.

Source: Shareholders Deed and Constitution

Based on the terms outlined above, we conclude, on balance, that there is no need to allocate the value received by HoldCo Minority Shareholders between ordinary shares and RPS as we have been instructed to assume that the RPS held by the Potentia Consortium and by the HoldCo Minority Shareholders will be converted or redeemed at the same time and on the same terms.

We understand that the Potentia Consortium intends to formally go to market after completion of the takeover offer to undertake a raising of senior secured debt equivalent to c. 20% to 25% of the equity value of Nitro. Whilst discussions and negotiations with the banks are ongoing, the Potentia Consortium's preference is to have access to due diligence and confidential information⁵ after completion of the takeover offer before finalising the debt terms. Whilst there is no certainty that the debt will be raised or that the Potentia Consortium will raise the required amount of debt, we have reviewed an indicative and non-binding terms sheet received by the Potentia Consortium. The Potentia Consortium intends to use the proceeds of the debt raised to repay the RPS via a pro-rata capital reduction for all shareholders, including HoldCo Minority Shareholders.

HoldCo Minority Shareholders will be bound by the terms of the Shareholders Deed. The key provisions of the Shareholder's Deed that impact HoldCo Minority Shareholders are summarised (in a non-exhaustive manner) below:

- Only the Potentia Consortium has the right to appoint directors, the chairperson of the board of directors and the management team (including but not limited to CEO, CFO and other members of the executive management team). The Potentia Consortium will effectively have control of the business and operations independently from the interest held by HoldCo Minority Shareholders.

⁵ As at the date of this Report, the Potentia Consortium has not been granted access to due diligence of Nitro.

- Other than reserved matters⁶ as defined in the Shareholders Deed, the Directors of HoldCo have the authority to conduct the daily operations of the business.
- The Shareholders Deed also includes explicit provisions of providing access to information to the Potentia Consortium but not to the HoldCo Minority Shareholders. However, we note that under the Corporations Act, HoldCo Minority Shareholders are entitled to receive the annual report.
- With regard to the issue of new shares, there are no provisions in the Shareholders Deed to ensure that the issue price will be determined at fair market value, although general prohibitions on the oppression of minority shareholders may supplement this type of provision.
- There are also significant restrictions on the disposal of shares such that generally a HoldCo Shareholder cannot dispose of shares to a person other than a permitted transferee⁷ (as defined in the Shareholders Deed) without the prior permission of the Potentia Consortium.
- The Shareholders Deed provides for tag-along⁸ and drag along⁹ rights for HoldCo Minority Shareholders that are customary for this type of agreement.
- The Shareholders Deed also includes provisions restricting shareholders from the buying or selling of any shares that would result in an increase in the number of shareholders to 50 or more. HoldCo Minority Shareholders will hold their shares via a custodian.

Upon completion of the takeover offer, Potentia will charge a management fee ("Management Fee") to HoldCo which is typical for private equity investee companies and it will be paid in cash. Where HoldCo does not have sufficient funds to pay the Management Fee or the senior debt covenants do not permit payment of the Management Fee, this fee will be deferred and will accrue until such time as HoldCo has the funds to pay the Management Fees to the Potentia Consortium.

Summary of discounts considered

In our assessment of the discount applicable to the Scrip Alternative, we have considered that a parcel of shares in an unlisted company such as HoldCo may have a lower value than Cash Consideration as they are not as readily marketable, at least for a period of time. When two investments are substantially comparable, investors tend to place more value on a security that is more liquid.

In order to compensate for the lack of marketability and the minority position in HoldCo of Nitro shareholders electing to the receive Scrip Alternative, it may be appropriate to apply a discount (collectively, "Discounts Applicable").

The approximate value of the HoldCo shares can be estimated by applying a discount to the value of Nitro shares on a 100% basis. The discount to be applied is a combination of a minority discount and a range of other factors (discussed below) which may increase or decrease the total discount to be applied.

⁶ Reserved Matters are included in Schedule 2 of the Shareholders Deed and include adverse amendments to shareholder's deed or constitution and changes to shares that would have a disproportionately adverse effect on the legal or economic rights of shareholders not associated with the Potentia Consortium.

⁷ A permitted transferee includes an affiliate or a related party of the Shareholder or Potentia and its associated or related parties.

⁸ A tag-along right enables a minority shareholder to require the majority shareholder to procure a third party sale to join in the sale of a company. The majority owner must give the minority shareholder substantially the same price, terms and conditions as any other seller.

⁹ A drag-along right enables a majority shareholder to force a minority shareholder to join in the sale of a company. The majority owner doing the dragging must give the minority shareholders substantially the same price, terms and conditions as any other seller.

In relation to the minority discount, this is calculated as the inverse of the control premium. Evidence from studies indicates that premiums for control on successful takeovers have frequently been in the range of 20% to 40% (refer to Appendix A for control premium studies undertaken by Grant Thornton) which implies a minority discount in the range of 16.6% to 29%. From time to time, the premium for control paid in specific sectors or for specific companies may vary, potentially materially, to reflect short term market volatility or to take into account that the market prices may not necessarily reflect the underlying value on a minority basis.

The range of factors which may increase or decrease the total discount to be applied to the value of Nitro shares to approximate the value of HoldCo shares is discussed in the following section.

Factors impacting Discounts Applicable

- ***Future exit event:*** The shorter the expected holding period for an illiquid investment and the more certain the potential liquidity event via a transaction or initial public offering, the lower the applicable discount will be. Typically, a financial investor such as the Potentia Consortium will look to maximise the value of its investment in the shortest timeframe in order to achieve an exit via an IPO or a trade sale as soon as possible. Across its last three realised investments, Potentia's average holding period was c. 4 years. Whilst the holding period and the return achieved depends on several factors, with some of them outside the control of the Potentia Consortium, the HoldCo Minority Shareholders should have a high prospect of liquidity in the short to medium term. Effectively, whilst HoldCo Minority Shareholders will hold a minority shareholding with limited access to liquidity, this is only expected to be for a short period of time which reduces the Discounts Applicable.
- ***Ability to invest with Private Equity*** – Nitro shareholders accepting the Scrip Alternative will have the opportunity to invest along-side private equity and potentially benefit by the established track record and ability of the Potentia Consortium to grow the business. This may generate returns in excess of those that the HoldCo Minority Shareholders may be able to generate if they remain shareholders of Nitro (in the absence of a transaction) or invest the Cash Consideration in alternative assets with a similar risk profile. Across its last three realised investments, Potentia's average holding period was c. 4 years and it generated an average return of 9.9 times the capital invested. This is equivalent to an unlevered average holding period return of 120%. This return is materially in excess of the unlevered returns achieved by the share market or by technology stocks over the last five years as summarised below.
 - ASX 200 Index average annual return was 3.8% over the last five or 4.3% in the five years¹⁰ before the outbreak of COVID-19.
 - NASDAQ Index average annual return was 9.7% over the last five or 13.6% in the five years¹¹ before the outbreak of COVID-19.
 - ASX All Technology Index average annual return was 2.7% over the last five or 14.9% in the five years¹² before the outbreak of COVID-19.

¹⁰ Measured as the compound annual growth rate in the net return index between 1 January 2015 to 1 January 2020. The gross return indices are not available for all the benchmark indices and therefore to preserve consistency we have considered the net return indices.

¹¹ Ibid.

¹² Ibid.

Further, according to Australian Private Capital Market Yearbook 2022, the median net IRR¹³ of Australian-focused private capital funds (vintages 2012-2019) was 17.8%, which is again materially lower than the IRRs achieved by Potentia.

The comparison above should be considered with caution as there is no guarantee that Potentia will continue to deliver in line with the historical returns and the returns considered are only in relation to the last three realised investments¹⁴. Further the benchmark undertaken with the market indexes is not on a like for like basis in relation to the period of time. Nonetheless it provides indications of the potential outperformance that investing along-side private equity may deliver for the HoldCo Minority Shareholders. Generally speaking, the ability for retail investors to invest along-side private equity investors is limited and this is usually reserved for institutional investors. Nitro shareholders accepting the Scrip Alternative may well be prepared to bear the disadvantage of holding a largely illiquid investment in HoldCo for a period of time in order to benefit from private equity ownership and potentially crystallise a windfall on exit if the Potentia Consortium performs in accordance with its recent track record disclosed above.

- **Pool of Potential Purchasers:** The greater the pool of potential buyers for an asset the lower is the level of Applicable Discount. Over the last 6 months, there has also been a range of potential deals and unsolicited approaches¹⁵ in the technology industry that have been announced, driven by both private equity firms and strategic buyers, which outlines the current appetite for investments in the sector. In addition to Nitro, these transactions included:

Date	Target	Bidder	Type of Bidder	Type of offer
13 May 2022	Infomedia	Solera Holdings and TA Consortium	Strategic Buyer Private equity	NBIO ¹⁶
26 May 2022	Appen Limited	TELUS International	Strategic Buyer	NBIO
15 August 2022	Nearmap Limited	Thoma Bravo	Private Equity	SID ¹⁷
13 October 2022	Elmo Software Limited	KKR	Private Equity	SID
31 October 2022	PropTech Group Limited	MRI Software	Strategic Buyer	SID
31 October 2022	Pushpay Holdings	BGH Capital	Private Equity	SID
1 November 2022	ReadyTech Holding	Pacific Equity Partners	Private Equity	NBIO
2 December 2022	BigTinCan Holdings	SQN Investors	Private Equity	NBIO

ASX announcements

Further, we have reviewed an extract of the investment paper supporting Potentia's investment in Nitro and note that the deal team believes that there is likely to be strong interest from large global technology companies and financial acquirers, such as private equity, for Nitro on a potential exit.

¹³ Internal Rate of Return.

¹⁴ We have not reviewed the historical returns (realised and unrealised) achieved by Potentia or the composition of their portfolio. Potentia may well have a number of underperforming investee companies but until these investments are exited the subdued returns are not realised.

¹⁵ Including Non-Binding Indicative Offers.

¹⁶ Non-Binding Indicative Offer ("NBIO").

¹⁷ Scheme Implementation Deed ("SID").

A large pool of potential interested parties on exit is expected to assist the Potentia Consortium to maximise the sale price for the benefits of all the shareholders, including HoldCo Minority Shareholders which will potentially more than offset the disadvantage of holding a largely illiquid investment for a short period of time.

- **Drag-along and Tag-along rights:** The Shareholders Deed includes the ability for the Potentia Consortium to drag along HoldCo Minority Shareholders to ensure that 100% of the issued capital is sold to potential interested parties. If the drag-along rights are not exercised or revoked, then the HoldCo Minority Shareholders will effectively have the ability to tag along, if they chose to do so, and sell their shareholdings at substantially the same terms of the Potentia Consortium. This provision helps protect the interest of the HoldCo Minority Shareholders as it allows them to sell at substantially the same terms of the Potentia Consortium and hence be able to extract a premium for control on exit which they are foregoing by accepting the Scrip Alternative. HoldCo Minority Shareholders are not required to agree to any restrictive covenants in connection with the drag along option or any release of claims (other than a release in customary forms arising as a shareholder of HoldCo).

Considerations for holding HoldCo shares

- **Corporate Governance:** According to the Shareholders Deed, all the directors and management team of HoldCo will be appointed by the Potentia Consortium. HoldCo Minority Shareholders will have no ability to influence the strategic, financial and operational direction of the business. Nonetheless, in our opinion this is mitigated by the fact that HoldCo Minority Shareholders must be like-minded investors with the Potentia Consortium in order to opt for the Scrip Alternative. If Nitro shareholders do not fully trust the management and operational capabilities of the Potentia Consortium and their ability to generate superior returns, they should elect to receive the Cash Consideration. Whilst the ability to influence the strategic and operational direction of HoldCo will be fully controlled by the Potentia Consortium, at the same time, this is likely to be one of the key reasons why Nitro shareholders would elect to receive the Scrip Alternative rather than the Cash Consideration in the first instance. Whilst the corporate governance of HoldCo does weaken for the HoldCo Minority Shareholders compared with the status-quo, there are mitigant factors.
- **Capital Raising:** During the investment holding period, HoldCo may undertake capital raisings to fund organic growth or acquisitions. Whilst there is no guarantee that future capital raising will occur at fair market value, we note that there are rights in the Shareholders Deed to ensure that existing shareholders have the opportunity to participate in equal proportion to future capital raisings and hence they are not diluted if they agree to participate. Further, clause 10.2 of the Shareholders Deed provides that any issue of new shares must be in compliance with all applicable laws. One of these general principles is the rule against the oppression of minority shareholders (s 232 of the Corporations Act) which is a potential mitigant factor. Further, holding a strong reputation with investors and the financial community is one of the key pillars for a successful private equity fund, and accordingly, it is unlikely that the Potentia Consortium will seek to implement actions to oppress minorities that may damage its long term reputation and goodwill and potentially jeopardise an exit. We further note that in November 2021, Nitro undertook a capital raising via an institutional placement and retail entitlement offer to raise A\$140 million at a 10.7% discount to the last closing price before the announcement. This raising was dilutive (based on the prevailing trading prices) for the shareholders that did not participate.
- **Debt Raising:** The Potentia Consortium intends to seek to raise senior debt with the proceeds largely used to repay the RPS via a pro-rata capital return to all shareholders, including the HoldCo Minority

Shareholders. Whilst discussions and negotiations with financiers are ongoing and there is no certainty that HoldCo will be able, or ultimately decide, to raise the debt facilities. We have reviewed an indicative and non-binding term sheet to understand the potential implication for HoldCo Minority Shareholders. If HoldCo manages to raise the debt, the return of capital via the buyback of the RPS will generate a partial liquidity for all HoldCo Shareholders which will reduce the exposure of their investments in HoldCo. On the flip side, HoldCo will be required to service interest¹⁸ and principal going forward which may increase the financial risk of the business compared with the circumstances that HoldCo is 100% equity funded. This is particularly relevant considering that Nitro recently announced to the market that it was expecting to make an operating EBITDA loss between US\$10 million to US\$13 million for the year ending 31 December 2022 and accordingly it may not generate sufficient cash to service the debt going forward. However, we are of the opinion that this potential financial risk is mitigated for HoldCo Shareholders due to the following:

- Based on the current non-binding terms sheet, HoldCo will be able to capitalise interest payments and the principal is only repayable at maturity (bullet payment).
- Nitro has recently committed to being cash flow positive by 2H 2023. It is not unreasonable to expect that this process may be accelerated under PE ownership and the Potentia Consortium has identified a number of initiatives to help the business grow in an unlisted environment, both organically and through M&A.
- Based on a review of the non-binding and indicative term sheet and discussions with the Potentia Consortium, we understand that the debt covenants will primarily be based on a ratio with annual recurring revenue, diminishing the pressure to generate positive EBITDA.
- The Potentia Consortium has the ability to provide further funding to HoldCo if required, however this may be dilutive for HoldCo Minority Shareholders unless they elect to participate in a subscription for shares in connection with the funding.
- **Management Fee:** Consistent with other private equity investments, Potentia is expected to charge an annual Management Fee to HoldCo estimated at c. 1% of the opening equity value. Where Nitro is unable to pay the fees, the fees will accrue and will be paid when there are cash flows available within the business. The Management Fee, all other things being the same, will increase the cost structure of HoldCo compared with the status quo. However, we are of the opinion that there are a number of factors which will more than offset the additional costs of the Management Fee as outlined below:
 - By being privatised, Nitro will no longer incur public listing costs such as Board of Directors, ASIC and ASX listing fees, investors relation, financial reporting, etc., which the Potentia Consortium has estimated at A\$2.5 million. We have reviewed this calculation and we are of the opinion that it is not unreasonable.
 - The Potentia Consortium has identified other areas of cost saving as part of its high level review of Nitro's operations.

All else equal, the introduction of the Management Fee is not expected to have a material adverse impact on the returns for HoldCo Minority Shareholders.

¹⁸ Potentia could negotiate a PIK component. Payment-in-kind component which allows the borrower the ability to not service interest. The principal along with accrued interest is paid at a later date (often at the time of exit).

- *Dividend policy:* A company will usually attract a lower discount if it has a sustainable and consistent dividend policy as the shareholders receive their returns along the way as opposed to at the end when they dispose of their investment. Based on the Shareholders Deed, dividends will be payable at the sole discretion of the HoldCo Board. Typically, private equity investee companies do not pay dividends as they usually re-invest the cash generated or available to grow the business. However, for high-growth technology companies like Nitro, the ability to pay dividends is limited since any cash flows are required to be re-invested for growth and Nitro was not profitable in FY21 and FY22. In this context, it is worth noting that Nitro has not paid a dividend since its ASX listing. As a result, Nitro shareholders have likely not invested in the business to receive annual dividend distributions but are more focused on the capital growth of their investments. These circumstances remain unchanged between holding shares in Nitro as a listed vehicle or shares in HoldCo.

Overall conclusion

As discussed in the Purpose of the report section, Grant Thornton has been asked to advise on the appropriate discount that should apply to the Nitro share value when determining the value of the HoldCo scrip consideration.

We have been instructed to assume a point estimate for the fair market value of Nitro on a 100% basis of A\$2.15 per share ("Selected Fair Value"). This is based on the Revised Alludo Offer, which is the outcome of a highly competitive process and which arose after Alludo had the benefit of undertaking due diligence procedures. It is also within the fair market value range assessed by the IE between A\$2.00 and A\$2.20 per Nitro share.

Based on the procedures undertaken above, we are of the opinion that the discount to be applied in valuing HoldCo shares should be between 20% and 25%. Whilst this is a subjective and judgmental call, in selecting the range of the Discount Applicable, we have taken into account the following key factors:

- The ability for HoldCo Minority Shareholders to invest along-side the Potentia Consortium and the historical track record of private equity firms and of Potentia in particular. Further, under the drag along and tag along provisions included in the Shareholders Deed, HoldCo Minority Shareholders will be able to sell their interests on substantially the same terms as the Potentia Consortium and hence be able to realise a premium for control which they forgo by accepting the Scrip Alternative.
- Whilst HoldCo Minority Shareholders will hold a minority shareholding with limited access to liquidity, this is only expected to be for a short period of time as the Potentia Consortium will look to maximise the value of its investment in the shortest timeframe in order to achieve an exit via an IPO or a trade sale as soon as possible.
- Whilst the Potentia Consortium will have full and unfettered control of HoldCo, and the protection for the HoldCo Minority Shareholders is limited under the Corporations Act given the legal structure of HoldCo, Potentia is unlikely to conduct itself in a manner that would harm its reputation with the investor community in order to gain a short term financial outcome at detriment of HoldCo Minority Shareholders. Further, the HoldCo Minority Shareholders include key management personnel which are instrumental for the Potentia Consortium in order to achieve the targeted returns.
- The charging of the Management Fee, whilst typical of private equity investors, may cause some value shift from HoldCo Minority Shareholders to Potentia. However, we note that this is not expected

to be material, if any, given the synergies already identified from taking the business private and the ability of private equity firms to streamline operations and extract efficiencies.

Notwithstanding the above, the Scrip Alternative should only be considered by those Nitro shareholders, who, notwithstanding the inability to influence the operations and the lack of liquidity, wish to retain an exposure to the underlying business of Nitro. Holding a minority interest in Holdco will involve greater risk than holding a minority interest in Nitro as Holdco will not be subject to ASX listing rules and certain provisions, including Chapter 6, of the Corporations Act.

Other matters

Grant Thornton Corporate Finance has prepared a Financial Services Guide in accordance with the Corporations Act. The Financial Services Guide is set out in the following section.

The decision of whether or not to elect to receive the Scrip Alternative is a matter for each Nitro shareholder to decide based on their own views of the value of Nitro and expectations about future market conditions, Nitro's performance, risk profile and investment strategy. If Nitro shareholders are in doubt about the action they should take in relation to the election of the scrip alternative, they should seek their own professional advice.

Yours faithfully

GRANT THORNTON CORPORATE FINANCE PTY LTD



ANDREA DE CIAN
Director



JANNAYA JAMES
Director

Financial Services Guide

1 Grant Thornton Corporate Finance Pty Ltd

Grant Thornton Corporate Finance carries on a business, and has a registered office, at Level 17, 383 Kent Street, Sydney NSW 2000. Grant Thornton Corporate Finance holds Australian Financial Services Licence No 247140 authorising it to provide financial product advice in relation to securities and superannuation funds to wholesale and retail clients.

Grant Thornton Corporate Finance has been engaged by Potentia to provide general financial product advice in the form of a limited scope opinion report ("Report") in relation to the Scrip Alternative.

2 Financial Services Guide

This Financial Services Guide ("FSG") has been prepared in accordance with the Corporations Act 2001 (Cth) and provides important information to help retail clients make a decision as to their use of general financial product advice in a report, the services we offer, information about us, our dispute resolution process and how we are remunerated.

3 General financial product advice

In our report we provide general financial product advice. The advice in a report does not take into account your personal objectives, financial situation or needs.

Grant Thornton Corporate Finance does not accept instructions from retail clients. Grant Thornton Corporate Finance provides no financial services directly to retail clients and receives no remuneration from retail clients for financial services. Grant Thornton Corporate Finance does not provide any personal retail financial product advice directly to retail investors nor does it provide market-related advice directly to retail investors.

4 Remuneration

When providing the Report, Grant Thornton Corporate Finance's client is Potentia. Grant Thornton Corporate Finance receives its remuneration from the Company. In respect of the Report, Grant Thornton Corporate Finance will receive a fee based on commercial rates, plus reimbursement of out-of-pocket expenses for the preparation of the report. Our directors and employees providing financial services receive an annual salary, a performance bonus or profit share depending on their level of seniority.

Except for the fees referred to above, no related body corporate of Grant Thornton Corporate Finance, or any of the directors or employees of Grant Thornton Corporate Finance or any of those related bodies or any associate receives any other remuneration or other benefit attributable to the preparation of and provision of this report.

5 Independence

Grant Thornton Corporate Finance is required to be independent of Potentia and Nitro in order to provide this report. The guidelines for independence in the preparation of independent expert's reports are set out in RG 112 *Independence of expert* issued by ASIC. The following information in relation to the independence of Grant Thornton Corporate Finance is stated below.



“Grant Thornton Corporate Finance and its related entities do not have at the date of this report, and have not had within the previous two years, any shareholding in or other relationship with Potentia and Nitro (and associated entities) that could reasonably be regarded as capable of affecting its ability to provide the limited scope opinion report.

Grant Thornton Corporate Finance has no involvement with, or interest in the outcome of Potentia’s takeover offer, other than the preparation of this report.

Grant Thornton Corporate Finance will receive a fee based on commercial rates for the preparation of this report. This fee is not contingent on the outcome of Potentia’s takeover offer. Grant Thornton Corporate Finance’s out of pocket expenses in relation to the preparation of the report will be reimbursed. Grant Thornton Corporate Finance will receive no other benefit for the preparation of this report.

Grant Thornton Corporate Finance considers itself to be independent in terms of RG 112 “Independence of expert” issued by the ASIC.”

6 Complaint’s process

Grant Thornton Corporate Finance has an internal complaint handling mechanism and is a member of the Australian Financial Complaints Authority. All complaints must be in writing and addressed to the Chief Executive Officer at Grant Thornton Corporate Finance. We will endeavour to resolve all complaints within 30 days of receiving the complaint. If the complaint has not been satisfactorily dealt with, the complaint can be referred to the Australian Financial Complaints Authority who can be contacted at:

Australian Financial Complaints Authority Limited
GPO Box 3
Melbourne, VIC 3001
Telephone: 1800 931 678

Grant Thornton Corporate Finance is only responsible for this report and FSG. Complaints or questions about the General Meeting should not be directed to Grant Thornton Corporate Finance. Grant Thornton Corporate Finance will not respond in any way that might involve any provision of financial product advice to any retail investor.

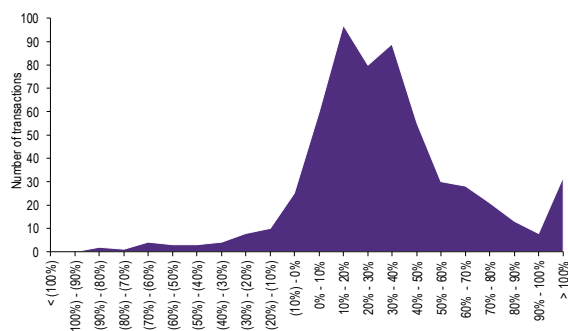
7 Compensation arrangements

Grant Thornton Corporate Finance has professional indemnity insurance cover under its professional indemnity insurance policy. This policy meets the compensation arrangement requirements of section 912B of the Corporations Act, 2001.

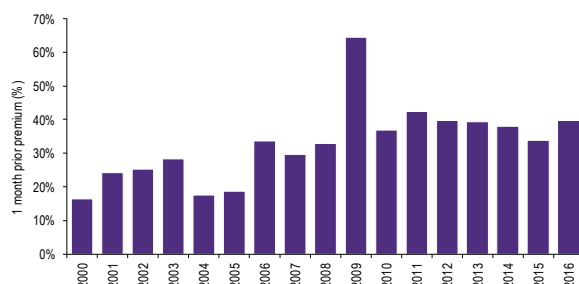
Appendix A – Control Premium study

Evidence from studies indicates that the premium for control on successful takeovers has frequently been in the range of 20% to 40% in Australia, and that the premium can vary significantly for each transaction.

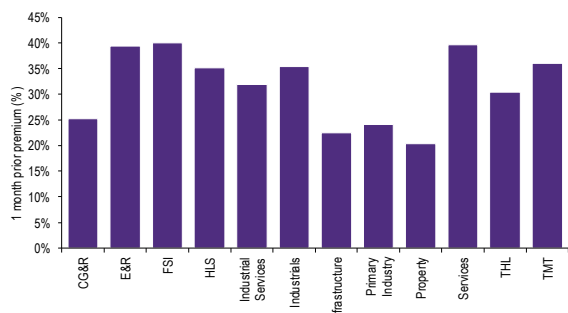
1 Month Prior Control Premium



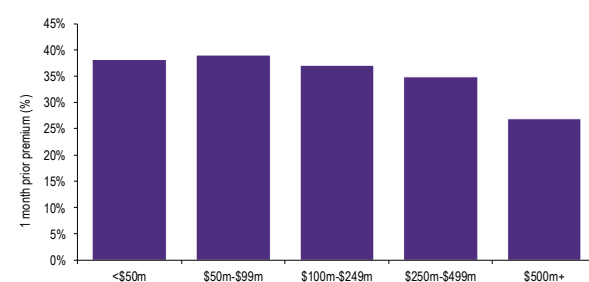
Control premium per completion date



Control premium per industry



Control premium and size



Control premium	
Average	34.33%
Median	29.34%

Source: GTCF Analysis

Annexure 6 – Bidder’s first variation to the Offer

See next page.

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**NOTICE OF VARIATION OF OFFER – EXTENSION OF OFFER PERIOD
SECTIONS 650D AND 630(2)(b) OF THE CORPORATIONS ACT 2001 (CTH)**

OFF-MARKET TAKEOVER OFFER BY TECHNOLOGY GROWTH CAPITAL LLC

To: Australian Securities and Investments Commission (ASIC)

ASX Limited

Nitro Software Limited (ACN 079 215 419) (Nitro)

Each person to whom offers were made under the takeover offer (in accordance with section 650D(1)(c)(ii) of the Corporations Act 2001 (Cth) (Corporations Act))

This notice is given by Technology Growth Capital LLC (**Bidder**) in relation to its off-market bid for ordinary shares in Nitro Software Limited (ACN 079 215 419) (ASX:NTO) (**Nitro**), on the terms of the offer (**Offer**) set out in the bidder's statement dated 28 October 2022 (**Bidder's Statement**). Capitalised terms in this notice have the same meaning as given in the Bidder's Statement, unless the context requires otherwise.

1 Extension of Offer Period

The Bidder gives notice under section 650D(1) of the Corporations Act that, pursuant to section 650C(1) of the Corporations Act:

- (a) the Offer is varied by extending the period during which the Offer will remain open for acceptance until **7.00pm (Sydney, Australia time) on 18 December 2022**, unless withdrawn or further extended in accordance with the Corporations Act; and
- (b) all references in the Bidder's Statement and Acceptance Form to '11 December 2022', or where '11 December 2022' is deemed to appear, are replaced with '18 December 2022' as the last day of the Offer Period.

2 New date for giving notice as to the status of conditions under the Offer

As a result of the extension of the Offer Period, the Bidder gives notice under section 630(2)(b) of the Corporations Act that:

- (a) the new date for giving notice as to the status of the Conditions of the Offer set out in section 10.3 of the Bidder's Statement, as required by section 630(3) of the Corporations Act, is 9 December 2022 (subject to variations in accordance with the Corporations Act). Accordingly, the reference to '2 December 2022' in the Bidder's Statement as the date for giving the notice on the status of the Conditions is replaced with '9 December 2022'; and
- (b) as at the date of this notice:
 - (i) the Offer and each contract resulting from acceptance of the Offer have not been freed from the Conditions set out in section 10.3 of the Bidder's Statement; and
 - (ii) so far as the Bidder is aware, the Conditions set out in section 10.3 of the Bidder's Statement are not fulfilled at the time of giving this notice.

3 No change to other terms of the Offer

Except for the variation to extend the Offer Period set out in this notice, the terms of the Offer made to you by the Bidder for your Nitro shares remains the same.

5 Date of lodgement with ASIC

A copy of this notice was lodged with ASIC on 2 December 2022. ASIC takes no responsibility for the contents of this notice.

Dated: 2 December 2022

Signed for and on behalf of **Technology Growth Capital LLC** pursuant to a resolution of the directors.



Andrew Gray
President
Technology Growth Capital LLC

Annexure 7 – Second Supplementary Bidder’s Statement

See next page.

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SECOND SUPPLEMENTARY BIDDER'S STATEMENT

ACCEPT

THE OFFER TO ACQUIRE YOUR SHARES IN

NITRO SOFTWARE LIMITED

ACN 079 215 419

BY

Potentia Capital Management Pty Ltd

ACN 630 264 210

potentia

THROUGH

Technology Growth Capital LLC

The Offer is dated 11 November 2022 and expires at 7:00pm (Sydney, Australia time) on 8 January 2023, unless extended or withdrawn

**THIS IS AN IMPORTANT DOCUMENT AND REQUIRES
YOUR IMMEDIATE ATTENTION**

Please call 1300 101 297 (for calls made within Australia) or +61 2 9068 1929 (for calls made from outside Australia) from Monday to Friday between 9:00am and 5:00pm (Sydney, Australia time) if you require assistance with your acceptance.

You should read this document in its entirety. If you are in doubt as to how to deal with this document, please consult your financial, legal or other professional adviser

Legal Adviser

Financial Adviser

JOHNSON | WINTER | SLATTERY

 **JARDEN**

8 December 2022

Potentia Capital's takeover offer for Nitro Software Limited: increase in cash offer price to \$2.00 per Nitro Share, scrip alternative and extension of Offer Period

Key highlights

- Potentia Capital is increasing the cash Offer Price in its Offer to \$2.00 per Nitro Share and declaring that price final (subject to the exceptions stated below)
- Potentia Capital will also add a new scrip alternative in its Offer for Nitro Shareholders who wish to retain their ownership in the Nitro business
- Potentia Capital believes that access to due diligence will provide the possibility for a further increase in the cash Offer Price beyond \$2.00 per Nitro share
- Potentia Capital expects to be immediately granted access to due diligence materials in accordance with the Board's fiduciary duties (as permitted under clause 13.5 of the Scheme Implementation Deed with Alludo)
- This revised proposal is superior to the Alludo Proposal, as it is subject to fewer conditions (including that it does not contain a minimum acceptance condition like the Alludo 50.1% minimum acceptance condition) and currently open for acceptance, meaning Shareholders could receive their consideration under the Offer this calendar year, which Potentia Capital believes is worth an extra 10c per Nitro Share to Nitro Shareholders
- Potentia Capital expects that the Nitro board will now immediately recommend this revised Offer to Shareholders, on the basis of its superiority
- If Potentia Capital ends up having relevant interests in less than 75% of Nitro Shares it will maintain Nitro's listing on ASX
- Potentia Capital confirms its intention to vote all the Nitro Shares it controls against any competing scheme of arrangement and to not accept any competing takeover bid
- Potentia Capital controls 19.31% of the Nitro Shares and consequently the competing Alludo scheme proposal, which will be voted on in February 2023, is unlikely to succeed.

Dear Nitro Shareholder,

New Offer Price

Potentia Capital announces today that it has increased the cash price offered in its takeover bid for Nitro (**Offer**) through Technology Growth Capital LLC (**Bidder**) to \$2.00 per Nitro Share (**New Offer Price**).

Potentia Capital has now matched Alludo's competing bid price of \$2.00 per Nitro Share and the Offer is now superior to the Alludo proposal due to its low conditionality (including that it does not contain a minimum acceptance condition like the Alludo 50.1% minimum acceptance condition), increased certainty and its potential to provide consideration under the Offer to Nitro Shareholders this year. The New Offer Price is now final and Potentia Capital will not consider increasing this price unless:

- a superior proposal for Nitro emerges; or
- Potentia Capital is granted access to information required to undertake full customary legal, financial, technical and tax due diligence on the business and assets of Nitro.

Scrip Alternative

Potentia Capital will add a scrip alternative form of consideration (**Scrip Alternative**).

The Scrip Alternative is intended to facilitate existing Nitro Shareholders' rollover into Potentia Capital's acquisition vehicle, including members of the Nitro management team and broader employee group. As specialist investors in the Australian technology sector with a strong track record of growing successful software businesses, Potentia Capital believes that it can help Nitro successfully deliver on its global growth plans as a standalone enterprise software leader and would welcome the participation of current Nitro Shareholders on that journey.

Potentia Capital will send Nitro Shareholders all required information concerning the Scrip Alternative as soon as possible.

In addition to offering the Scrip Alternative, if Potentia Capital ends up having relevant interests in less than 75% of the Nitro Shares at the end of the Offer Period, it has now also decided to maintain Nitro's listing on ASX.

Extension of Offer Period

Potentia has also varied its Offer by extending the Offer Period, and the Offer is now scheduled to close at **7.00 pm (Sydney time) on 8 January 2023**, unless extended or withdrawn.

Competing Scheme Proposal

Potentia Capital confirms its previous statements that it will vote all the Nitro Shares that it controls, at the relevant time, against any Competing Scheme Proposal, and that it will not accept any of those Nitro Shares into any Competing Takeover Proposal.

Given that Potentia Capital currently controls 19.31% of Nitro Shares, and that any Competing Scheme Proposal requires 75% of the votes cast by eligible Nitro Shareholders to be in support of the scheme, this will require at least 93% of all Nitro Shares not controlled by Potentia Capital to be voted in favour of the scheme for the scheme to succeed, assuming 100% voter turnout, and on the basis that Potentia Capital does receive any further acceptances of its Offer prior to the vote.

As a result, Potentia Capital is of the view that the Alludo Competing Scheme Proposal is unlikely to succeed.

Benefits of Potentia Capital's Offer compared to Alludo's proposal

Potentia Capital's Offer is a superior proposal to Alludo's proposal because it provides a number of key benefits relative to the competing Alludo proposal. In particular, the Offer:

- matches the \$2.00 per Nitro Share cash value under the Alludo proposal, but will also have the Scrip Alternative for Nitro Shareholders who wish to retain their ownership in the Nitro business;
- has fewer conditions than the Alludo proposal and in particular, no minimum acceptance condition (as compared to the Alludo proposal which has a 50.1% minimum acceptance condition);
- is already open for acceptance by Nitro Shareholders;
- offers a clean and certain exit for Nitro Shareholders electing to receive cash;

- would deliver consideration under the Offer to Nitro Shareholders on an accelerated timetable if the Offer conditions are satisfied, with the result that the cash proceeds could be received this calendar year, with no brokerage fees, which Potentia Capital believes is worth an extra 10c per Nitro Share¹; and
- does not require any Nitro Shareholder vote to proceed.

For these reasons, Potentia Capital expects that the Nitro board will now immediately recommend Potentia Capital's revised Offer to all Nitro Shareholders.

In addition, Potentia Capital also expects to be immediately granted access to due diligence materials in accordance with the Nitro board's fiduciary duties. Potentia Capital believes that access to due diligence materials will provide the possibility for a further increase in the cash Offer Price beyond \$2.00 per Nitro Share, which is in the best interests of all Nitro Shareholders.

Next steps

We encourage you to read this supplementary bidder's statement with the original bidder's statement and the first supplementary bidder's statement in full for further details about the Offer.

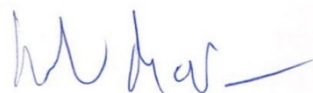
If you have any questions in relation to this document, the Offer or how to accept the Offer, please call the Offer Information Line on **1300 101 297** (for calls made within Australia) or **+61 2 9068 1929** (for calls made from outside Australia) Monday to Friday between 9:00am and 5:00pm (Sydney, Australia time).

If you are in doubt as to how to deal with this document, please consult your financial, legal or other professional adviser.

Yours sincerely,



Andrew Gray
Managing Director
Potentia Capital



Michael McNamara
Partner
Potentia Capital

¹ Based on a rate of return of 20-25% per annum (which is the rate of return typically sought in an investment of this nature), a price of \$2.00 per Nitro Share and three month delay in payment between the Potentia Offer and the Alludo offer. This implies a \$0.10 value per share at the midpoint of this range.

1 Introduction

This document is the second supplementary bidder's statement (**Second Supplementary Bidder's Statement**) given by Technology Growth Capital LLC (**Bidder**) in connection with its takeover offer for all shares in Nitro Software Limited (ACN 079 215 419) (**Nitro**).

A copy of this Second Supplementary Bidder's Statement was lodged with the Australian Securities and Investments Commission (**ASIC**) on 8 December 2022. Neither ASIC nor its officers take any responsibility for the contents of this Second Supplementary Bidder's Statement.

This Second Supplementary Bidder's Statement supplements, and must be read together with, the Bidder's original bidder's statement dated 28 October 2022 (**Original Bidder's Statement**) as supplemented by the first supplementary bidder's statement lodged with ASIC on 11 November 2022 (**First Supplementary Bidder's Statement**).

Unless the context otherwise requires, capitalised terms used in this Second Supplementary Bidder's Statement have the same meaning as given to them in the Original Bidder's Statement. This Second Supplementary Bidder's Statement will prevail to the extent of any inconsistency with the Original Bidder's Statement and First Supplementary Bidder's Statement.

2 Variation to the Offer

As explained in the letter from Potentia Capital set out on page 2 of this Second Supplementary Bidder's Statement (**Potentia Capital Letter**), the Bidder has varied its Offer by:

- (a) increasing the cash price offered per Nitro Share to \$2.00;
- (b) extending the Offer Period so that it will now close at **7.00 pm (Sydney time) on 8 January 2023**, as detailed further in section 5.

The formal notice of variation relating to these changes as required by the Corporations Act is attached in the Annexure to this Second Supplementary Bidder's Statement.

In addition, the Bidder is proposing to vary its Offer further by making available a scrip alternative, so that Nitro Shareholders can elect to receive scrip consideration (**Scrip Consideration**) in an Australian incorporated holding company, or a mixture of cash and Scrip Consideration for their Nitro Shares, instead of cash only.

The option to receive the all cash consideration will remain available to all Nitro Shareholders and is now \$2.00 per Nitro Share.

3 Sources of consideration for the Increased Offer Amount

As a result of the increase in the Offer Price from \$1.80 to \$2.00 per Nitro Share, the Offer Amount has increased from \$382.9 million to \$441.5 million (plus costs associated with the Offer) (**Increased Offer Amount**), calculated on the same basis as set out in the Original Bidder's Statement.²

The funds required by the Bidder to pay the Increased Offer Amount will be made available to the Bidder by Potentia Capital out of funds managed by Potentia Capital, as described in the Original Bidder's Statement and First Supplementary Bidder's Statement.

² Based on 245,066,360 ordinary shares (less 48,586,139 ordinary shares held by Potentia Capital) and 18,003,348 options, restricted shares awards and performance rights per latest disclosure from Nitro's Notification Regarding Unquoted Securities available on 16 November 2022, in addition to 6,283,923 unquoted and unallocated treasury shares as disclosed in the Nitro Target's Statement on 23 November 2022.

4 Further information about Scrip Consideration to be provided

The Bidder will provide Nitro Shareholders with further information regarding the Scrip Consideration as soon as possible by means of a formal variation to the Offer and a further supplementary bidder's statement.

This further information will include, among other things, information about:

- (a) the amount of Scrip Consideration to be offered per Nitro Share;
- (b) the value of the Scrip Consideration;
- (c) the entity that will issue the Scrip Consideration;
- (d) details of the rights attaching to the Scrip Consideration;
- (e) the benefits of accepting the Scrip Consideration;
- (f) the risks of accepting the Scrip Consideration; and
- (g) how to accept the Scrip Consideration.

5 Extension of Offer Period

As mentioned above, in accordance with section 650D of the Corporations Act, the Bidder has varied its Offer by extending the Offer Period so the Offer is now scheduled to close at **7.00 pm (Sydney time) on 8 January 2023** (unless extended or withdrawn in accordance with the Corporations Act).

The date for giving notice of the status of the Conditions as required by section 630(1) of the Corporations Act is consequently extended to **30 December 2022**. This is subject to any further variation in accordance with section 630(2)(b) of the Corporations Act in the event that the Offer Period is further extended.

The formal notice of variation of the Offer as required under sections 650D and 630(2)(b) of the Corporations Act is attached in the Annexure to this Second Supplementary Bidder's Statement.

6 Conclusion

The Bidder encourages you to consider all information that has been sent to you in connection with the Offer and to **ACCEPT** the Offer.

If you have any questions in relation to this document, the Original Bidder's Statement, the First Supplementary Bidder's Statement, the Offer or how to accept the Offer, please call the Offer Information Line on 1300 101 297 (for calls made within Australia) or +61 2 9068 1929 (for calls made from outside Australia) from Monday to Friday between 9:00am and 5:00pm (Sydney, Australia time).

If you are in doubt as to how to deal with this document or the Offer, please consult your financial, legal or other professional adviser.

Approval of the Second Supplementary Bidder's Statement

This Second Supplementary Bidder's Statement has been approved by a resolution of the directors of the Bidder.

Dated 8 December 2022

Signed for and on behalf of the Bidder by:



Andrew Gray
President
Technology Growth Capital LLC

ANNEXURE

NOTICE UNDER SECTIONS 650D AND 630(2)(B) OF THE CORPORATIONS ACT

See attached.

**NOTICE OF VARIATION OF OFFER – EXTENSION OF OFFER PERIOD
SECTIONS 650D AND 630(2)(b) OF THE CORPORATIONS ACT 2001 (CTH)**

OFF-MARKET TAKEOVER OFFER BY TECHNOLOGY GROWTH CAPITAL LLC

To: Australian Securities and Investments Commission (ASIC)

ASX Limited

Nitro Software Limited (ACN 079 215 419) (Nitro)

Each person to whom offers were made under the takeover offer in accordance with section 650D(1)(c)(ii) of the Corporations Act 2001 (Cth) (Corporations Act)

This notice is given by Technology Growth Capital LLC (**Bidder**) in relation to its off-market bid for ordinary shares in Nitro Software Limited (ACN 079 215 419) (ASX:NTO) (**Nitro**), on the terms of the offer (**Offer**) set out in the bidder's statement dated 28 October 2022 (**Bidder's Statement**). Capitalised terms in this notice have the same meaning as given in the Bidder's Statement, unless the context requires otherwise.

1 Increase of Offer Price

The Bidder gives notice under section 650B of the Corporations Act that:

- (a) the Offer is varied by increasing the Offer Price from A\$1.80 cash per Nitro Share to A\$2.00 cash per Nitro Share; and
- (b) all references in the Bidder's Statement and the Acceptance Form to 'A\$1.80', or where 'A\$1.80' is deemed to appear, are replaced with 'A\$2.00' as the Offer Price.

The increased Offer Price will apply to all Nitro Shareholders who accept the Bidder's Offer, including those Nitro Shareholders who have already accepted the Offer and to Nitro Shares that are issued during the Offer Period due to the conversion of any Nitro Options that exist at the Register Date which are accepted into the Offer.

2 Extension of Offer Period

The Bidder gives notice under section 650D(1) of the Corporations Act that, pursuant to section 650C(1) of the Corporations Act:

- (a) the Offer is varied by extending the period during which the Offer will remain open for acceptance until **7.00pm (Sydney, Australia time) on 8 January 2023**, unless withdrawn or further extended in accordance with the Corporations Act; and
- (b) all references in the Bidder's Statement and Acceptance Form to '11 December 2022', or where '11 December 2022' is deemed to appear, are replaced with '8 January 2023' as the last day of the Offer Period.

3 New date for giving notice as to the status of conditions under the Offer

As a result of the extension of the Offer Period, the Bidder gives notice under section 630(2)(b) of the Corporations Act that:

- (a) the new date for giving notice as to the status of the Conditions of the Offer set out in section 10.3 of the Bidder's Statement, as required by section 630(3) of the Corporations Act, is 30 December 2022 (subject to variations in accordance with the Corporations Act). Accordingly, the reference to '2 December 2022' in the Bidder's Statement as the date for giving the notice on the status of the Conditions is replaced with '30 December 2022'; and

(b) as at the date of this notice:

- (i) the Offer and each contract resulting from acceptance of the Offer have not been freed from the Conditions set out in section 10.3 of the Bidder's Statement; and
- (ii) so far as the Bidder is aware, the Conditions set out in section 10.3 of the Bidder's Statement are not fulfilled at the time of giving this notice.

5 Date of lodgement with ASIC

A copy of this notice was lodged with ASIC on 8 December 2022. ASIC takes no responsibility for the contents of this notice.

Dated: 8 December 2022

Signed for and on behalf of **Technology Growth Capital LLC** pursuant to a resolution of the directors.



Andrew Gray
President
Technology Growth Capital LLC



By E-Mail:
Takeovers@AutomicGroup.com.au



To Your Controlling Participant:
Return this from directly to your stockbroker



By Mail:
Automic Group
GPO Box 5193
Sydney NSW 2001



For all enquiries:
Phone:
(within Australia) 1300 101 297
(outside Australia) +61 2 9068 1929

«Registration Details Line 1»
«Registration Details Line 2»
«Registration Details Line 3»
«Registration Details Line 4»
«Registration Details Line 5»
«Registration Details Line 6»

ACCEPTANCE FORM – CHESS SPONSORED HOLDERS



Your acceptance must be received by no later than the end of the Offer Period, which is 7:00pm (Sydney, Australia time) on the last day of the Offer Period, being 31 March 2023 (unless extended or withdrawn by the Bidder).

- ☐ This form and the Bidder's Statement are important documents that require your immediate attention. This form relates to an offer (**Offer**) by Technology Growth Capital LLC (**Bidder**) to purchase some or all of your fully paid ordinary shares (**Nitro Shares**) in Nitro Software Limited ACN 079 215 419 (**Nitro**), the terms of which are set out in the Bidder's Statement dated 28 October 2022 as replaced or supplemented (**Bidder's Statement**). Capitalised terms used in this form have the same meaning as in the Bidder's Statement, unless otherwise defined.

If you are in doubt about how to deal with this Offer, please contact your financial or other professional advisor.

Note this form can only be used in relation to the Nitro Shareholding represented by the details printed above and overleaf.

Step 1: Registration name and Offer details

The consideration for your Accepted Shares will be paid to the name(s) as they appear on the Register, as provided to the Bidder. The current address recorded on the Bidder's copy of the Register is printed above and overleaf. If you have recently bought or sold Nitro Shares your holding may differ from that shown. If you have already sold all your Nitro Shares, do not complete or return this form.

Step 2: Accept the Offer

Only sign and return this form if you wish to accept the Offer for some or all of your Nitro Shares.

As your Nitro Shares are in a CHESS holding, you may contact your Controlling Participant directly (normally your stockbroker) with instructions to accept the Offer. If you do this, your Controlling Participant will provide you with details as to what they require in order to accept the Offer on your behalf. If you want the Bidder to contact your Controlling Participant on your behalf, sign and return this form to the address above so that it is received in sufficient time to allow your instruction to be acted upon by the close of the Offer Period. This will authorise the Bidder and Share Registry to request your Controlling Participant to initiate acceptance of the Offer on your behalf.

By signing this form, you represent and warrant to the Bidder, as set out in Section 10.8 of the Bidder's Statement, that both at the time of returning this acceptance form and at the time the transfer to the Bidder of the Nitro Shares to which this form relates is registered:

- all of those Nitro Shares are fully paid up and free from all mortgages, charges, liens and other Encumbrances of any kind and restrictions on transfer of any kind;
- that you have full power and capacity (whether legal or equitable) to sell and transfer the Accepted Shares; and
- that you have paid all amounts which at the time of acceptance have fallen due for payment in respect of the Accepted Shares.

You should allow sufficient time for your Controlling Participant or the Bidder to initiate the acceptance of the Offer on your behalf. Neither the Bidder nor Share Registry will be responsible for any delays incurred by the process of requesting your Controlling Participant to accept the Offer.

Step 3: Signing instructions

Individual: Where the Nitro Shareholding is in one name, the Nitro Shareholder must sign.

Joint holding: Where the Nitro Shareholding is in more than one name, all of the Nitro Shareholders must sign.

Power of Attorney: Where signing under a Power of Attorney (POA), you must attach an original certified copy of the POA to this form.

Companies: Where the Nitro Shareholding is in the name of a company, this form must be signed in accordance with the Corporations Act, either as:

- a sole director and a company secretary OR a sole director (if no company secretary exists), OR
- two directors, OR
- a director and a company secretary.

Overseas companies: Where the Nitro Shareholding is in the name of an overseas company (companies incorporated outside Australia) the form must be signed as above, or documentation must be provided showing that the company can sign in an alternate manner.

Deceased estate: All executors must sign and a certified copy of Probate or Letters of Administration must accompany this form.

Entering contact details is not compulsory but will assist us if we need to contact you.

If you have any queries about the terms of the Offer or how to accept, please call the Offer Information Line (Monday to Friday, between 9.00am and 5.00pm (Sydney Time) on 1300 101 297 (within Australia) and +61 2 9068 1929 (outside Australia).

Turn over to complete the form

Acceptance Form

TAKEOVER OFFER FOR SHARES IN NITRO SOFTWARE LIMITED

STEP 1 Registration name and Offer details

«Registration_Details_Line_1»
«Registration_Details_Line_2»
«Registration_Details_Line_3»
«Registration_Details_Line_4»
«Registration_Details_Line_5»
«Registration_Details_Line_6»

[BARCODE]

Holder Identification Number (HIN):

«HINSRN»

For your security keep your HIN confidential.

Number of Nitro Shares
held as at 7:00pm (AEDT) on 16 December 2022
(Register Date)

«MTM»

By accepting the Offer, you are accepting the Offer for some or all of your Nitro Shares as recorded by the Bidder as being held by you at the date your acceptance is processed (even if different to the number stated above).

STEP 2 Accept the Offer

Option A: Online acceptance (recommended)

Visit <https://investor.automic.com.au/#/home>

To accept the Offer online, simply scan the barcode to the right with your tablet or visit <https://investor.automic.com.au/#/signup> on your browser and follow the instructions below:

Please follow these instructions:

1. Select "Nitro Software Limited Takeover Offer" from the dropdown list in the Issuer Name Field
2. Enter your Holder Number (HIN) as shown on the top of this letter
3. Enter your postcode OR country of residence (only if outside Australia)
4. Tick the box "I'm not a robot" and then select "Next"
5. Complete the prompts to set up your username and password details



Once you are logged in, select "Offers" from the left-hand vertical menu and follow the prompts.

Option B: Paper acceptance

This section must be completed if you are NOT accepting the Offer online. Please complete section below and return by email or postal delivery.

If you correctly sign and return this form you will be deemed to have accepted the Offer for the number of your Nitro Shares stated below.

Please choose one of the options below to make your Election for the Scheme Consideration:

☐ **Option 1:** If you wish to receive the All Cash Consideration, please mark this box.

☐ **Option 2:** If you wish to receive the Mixed Consideration, please mark this box.

☐ **Option 3:** If you wish to receive the All Scrip Consideration, please mark this box.

Number of Nitro Shares accepted:

Signatory of Nitro Shareholder(s)

I/We accept the Offer made by the Bidder for the number of my/our Nitro Shares stated above and I/we agree to be bound by the terms and conditions of the Offer and transfer the accepted number of my/our Nitro Shares as per the above instruction.

Individual or Nitro Shareholder 1

Sole Director and Sole Company Secretary/ Sole Director (cross out titles as applicable)

Contact Name:

Individual or Nitro Shareholder 2

Director

Contact Daytime Telephone:

Individual or Nitro Shareholder 3

Director/Company Secretary (cross out titles as applicable)

Date

STEP 3 Payment Instructions (for Nitro Shareholders who chose Option B and All Cash Consideration or Mixed Consideration in Step 2)

Payment will be made by electronic transfer directly into your nominated bank account. Please provide your bank details below so that Automic can make the payment to your account. Note that all payments will be made in Australian dollars.

BSB

Account Number

Name of Australian Bank / Financial Institution

Name in which account is held (e.g.: John Smith)

Privacy Notice

Automic Pty Ltd (ACN 152 260 814) trading as Automic Group advises that Chapter 2C of the Corporation Act 2001 requires information about you as a securityholder (including your name, address and details of the securities you hold) to be included in the public register of the entity in which you hold securities. Primarily, your personal information is used in order to provide a service to you. We may also disclose the information that is related to the primary purpose and it is reasonable for you to expect the information to be disclosed. You have a right to access your personal information, subject to certain exceptions allowed by law and we ask that you provide your request for access in writing (for security reasons). Our privacy policy is available on our website – www.automic.com.au



By E-Mail:
Takeovers@AutomicGroup.com.au



By Mail
Automic Group
GPO Box 5193
Sydney NSW 2001



For all enquiries:
Phone:
(within Australia) 1300 101 297
(outside Australia) +61 2 9068 1929

«Registration_Details_Line_1»
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«Registration_Details_Line_4»
«Registration_Details_Line_5»
«Registration_Details_Line_6»

ACCEPTANCE FORM – ISSUER SPONSORED HOLDERS



Your acceptance must be received by no later than the end of the Offer Period, which is 7:00pm (Sydney, Australia time) on the last day of the Offer Period, being 31 March 2023 (unless extended or withdrawn by the Bidder).

This form and the Bidder's Statement are important documents that require your immediate attention. This form relates to an offer (**Offer**) by Technology Growth Capital LLC (**Bidder**) to purchase some or all of your fully paid ordinary shares (**Nitro Shares**) in Nitro Software Limited ACN 079 215 419 (**Nitro**), the terms of which are set out in the Bidder's Statement dated 28 October 2022 as replaced or supplemented (**Bidder's Statement**). Capitalised terms used in this form have the same meaning as in the Bidder's Statement, unless otherwise defined.

If you are in doubt about how to deal with this Offer, please contact your financial or other professional advisor.

Note this form can only be used in relation to the Nitro Shareholding represented by the details printed above and overleaf.

Step 1: Registration name and Offer details

The consideration for your Accepted Shares will be paid to the name(s) as they appear on the Register, as provided to the Bidder. The current address recorded on the Bidder's copy of the Register is printed above and overleaf. If you have recently bought or sold Nitro Shares your holding may differ from that shown. If you have already sold all your Nitro Shares, do not complete or return this form.

Step 2: Accept the Offer

Only sign and return this form if you wish to accept the Offer for some or all of your Nitro Shares.

By signing this form, you represent and warrant to the Bidder, as set out in Section 10.8 of the Bidder's Statement, that both at the time of returning this acceptance form and at the time the transfer to the Bidder of the Nitro Shares to which this form relates is registered:

- all of those Nitro Shares are fully paid up and free from all mortgages, charges, liens and other Encumbrances of any kind and restrictions on transfer of any kind;
- that you have full power and capacity (whether legal or equitable) to sell and transfer the Accepted Shares; and
- that you have paid all amounts which at the time of acceptance have fallen due for payment in respect of the Accepted Shares.

Step 3: Signing instructions

Individual: Where the Nitro Shareholding is in one name, the Nitro Shareholder must sign.

Joint holding: Where the Nitro Shareholding is in more than one name, all of the Nitro Shareholders must sign.

Power of Attorney: Where signing under a Power of Attorney (POA), you must attach an original certified copy of the POA to this form.

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- a sole director and a company secretary OR a sole director (if no company secretary exists), OR
- two directors, OR
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Overseas companies: Where the Nitro Shareholding is in the name of an overseas company (companies incorporated outside Australia) the form must be signed as above, or documentation must be provided showing that the company can sign in an alternate manner.

Deceased estate: All executors must sign and a certified copy of Probate or Letters of Administration must accompany this form.

Entering contact details is not compulsory but will assist us if we need to contact you.

If you have any queries about the terms of the Offer or how to accept, please call the Offer Information Line (Monday to Friday, between 9.00am and 5.00pm (Sydney Time) on 1300 101 297 (within Australia) and +61 2 9068 1929 (outside Australia).

Turn over to complete the form

Acceptance Form

TAKEOVER OFFER FOR SHARES IN NITRO SOFTWARE LIMITED

STEP 1 Registration name and Offer details

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«Registration_Details_Line_2»
«Registration_Details_Line_3»
«Registration_Details_Line_4»
«Registration_Details_Line_5»
«Registration_Details_Line_6»

[BARCODE]

Securityholder Reference Number (SRN):

«HINSRN»

For your security keep your SRN confidential.

Number of Nitro Shares
held as at 7:00pm (AEDT) on 16 December 2022
(Register Date)

«MTM»

By accepting the Offer, you are accepting the Offer for some or all of your Nitro Shares as recorded by the Bidder as being held by you at the date your acceptance is processed (even if different to the number stated above).

STEP 2 Accept the Offer

Option A: Online acceptance (recommended)

Visit <https://investor.automic.com.au/#/home>

To accept the Offer online, simply scan the barcode to the right with your tablet or visit <https://investor.automic.com.au/#/signup> on your browser and follow the instructions below:

Please follow these instructions:

1. Select "Nitro Software Limited Takeover Offer" from the dropdown list in the Issuer Name Field
2. Enter your Holder Reference (SRN) as shown on the top of this letter
3. Enter your postcode OR country of residence (only if outside Australia)
4. Tick the box "I'm not a robot" and then select "Next"
5. Complete the prompts to set up your username and password details



Once you are logged in, select "Offers" from the left-hand vertical menu and follow the prompts.

Option B: Paper acceptance

This section must be completed if you are NOT accepting the Offer online. Please complete section below and return by email or postal delivery.

If you correctly sign and return this form you will be deemed to have accepted the Offer for the number of your Nitro Shares stated below.

Please choose one of the options below to make your Election for the Scheme Consideration:

☐ **Option 1:** If you wish to receive the All Cash Consideration, please mark this box.

☐ **Option 2:** If you wish to receive the Mixed Consideration, please mark this box.

☐ **Option 3:** If you wish to receive the All Scrip Consideration, please mark this box.

Number of Nitro Shares accepted:

Signatory of Nitro Shareholder(s)

I/We accept the Offer made by the Bidder for the number of my/our Nitro Shares stated above and I/we agree to be bound by the terms and conditions of the Offer and transfer the accepted number of my/our Nitro Shares as per the above instruction.

Individual or Nitro Shareholder 1

Sole Director and Sole Company Secretary/ Sole Director (cross out titles as applicable)

Contact Name:

Individual or Nitro Shareholder 2

Director

Contact Daytime Telephone:

Individual or Nitro Shareholder 3

Director/Company Secretary (cross out titles as applicable)

Date

STEP 3 Payment Instructions (for Nitro Shareholders who chose Option B and All Cash Consideration or Mixed Consideration in Step 2)

Payment will be made by electronic transfer directly into your nominated bank account. Please provide your bank details below so that Automic can make the payment to your account. Note that all payments will be made in Australian dollars.

BSB

Account Number

Name of Australian Bank / Financial Institution

Name in which account is held (e.g.: John Smith)

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Automic Pty Ltd (ACN 152 260 814) trading as Automic Group advises that Chapter 2C of the Corporation Act 2001 requires information about you as a securityholder (including your name, address and details of the securities you hold) to be included in the public register of the entity in which you hold securities. Primarily, your personal information is used in order to provide a service to you. We may also disclose the information that is related to the primary purpose and it is reasonable for you to expect the information to be disclosed. You have a right to access your personal information, subject to certain exceptions allowed by law and we ask that you provide your request for access in writing (for security reasons). Our privacy policy is available on our website – www.automic.com.au