



## Notice of 2021 Annual General Meeting

Fremont, California 10 May 2021 — Pivotal Systems Corporation (ASX: PVS, “**Pivotal**” or the “**Company**”) advises the dispatch of the attached Notice of Annual General Meeting of Shareholders and Proxy Statement (“**Notice of Annual Meeting**”) to security holders of the Company (both holders of fully paid shares of common stock (“**Shareholders**”) and Chess Depositary Interests (“**CDIs**” and holders thereof, “**CDI Holders**”)) (together “**Security Holders**”) for its meeting to be held via webcast and an online voting platform (online at <https://agmlive.link/PVS21>) at 9:00 am on Friday, 21 May 2021 (AEST) (4:00 pm, Thursday, 20 May 2021 PDT).

**Due to ongoing circumstances relating to COVID-19 and associated government imposed restrictions and recommendations, the Annual Meeting is being held by way of a virtual meeting which will be held electronically via webcast and an online voting platform. Shareholders are urged to attend and vote at the meeting electronically or are encouraged to vote ahead of the meeting by lodging the proxy form and CHES Depositary Interest (“CDI”) Holders are encouraged to lodge a CDI Voting Form ahead of the meeting.**

A sample CDI Voting Form is attached with this Notice of Annual Meeting.

*THIS RELEASE DATED 10 May 2021 (PDT) HAS BEEN AUTHORISED FOR LODGEMENT TO ASX BY THE BOARD OF DIRECTORS OF PIVOTAL.*

- ENDS -

For further information, interview and photos:

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If investors wish to subscribe to Pivotal Systems’ email alert service for ASX Announcements, please follow this [link](#).

### About Pivotal Systems Corporation (ASX: PVS)

Pivotal Systems Corporation (ARBN 626 346 325), is a company incorporated in Delaware, USA, whose stockholders have limited liability. Pivotal Systems provides a best-in-class gas flow monitoring and control technology platform for the global semiconductor industry. The Company’s proprietary hardware and



software utilizes advanced machine learning to enable preventative diagnostic capability resulting in an order of magnitude increase in fab productivity and capital efficiency for existing and future technology nodes. For more information on Pivotal Systems Corporation, visit <https://www.pivotalsys.com/>.

**Notice to U.S. persons: restriction on purchasing CDIs**

Pivotal Systems is incorporated in the State of Delaware and its securities have not been registered under the U.S. Securities Act of 1933 or the laws of any state or other jurisdiction in the United States. Trading of Pivotal Systems' CHESS Depositary Interests ("CDIs") on the Australian Securities Exchange is not subject to the registration requirements of the U.S. Securities Act in reliance on Regulation S under the U.S. Securities Act and a related 'no action' letter issued by the U.S. Securities and Exchange Commission to the ASX in 2000. As a result, the CDIs are "restricted securities" (as defined in Rule 144 under the U.S. Securities Act) and may not be sold or otherwise transferred except in transactions exempt from, or not subject to, the registration requirements of the U.S. Securities Act. For instance, U.S. persons who are qualified institutional buyers ("QIBs", as defined in Rule 144A under the U.S. Securities Act) may purchase CDIs in reliance on the exemption from registration provided by Rule 144A. To enforce the transfer restrictions, the CDIs bear a FOR Financial Product designation on the ASX. This designation restricts CDIs from being purchased by U.S. persons except those who are QIBs. In addition, hedging transactions with regard to the CDIs may only be conducted in compliance with the U.S. Securities Act.



Dear Fellow Security Holder,

On behalf of the Board of Pivotal, I am pleased to invite you to attend the 2021 Annual General Meeting (“AGM” or “**Annual Meeting**”) of the Company. Enclosed is the Notice of Annual Meeting setting out the business of the AGM.

Pivotal’s 2021 AGM will be held via webcast and an online voting platform (online at <https://agmlive.link/PVS21>) on 9:00 am on Friday, 21 May 2021 (AEST) (4:00 pm, Thursday, 20 May 2021 PDT).

The health, safety and wellbeing of our staff and Security Holders is paramount. Due to restrictions relating to the ongoing COVID-19 global pandemic, Pivotal will again hold a virtual AGM, meaning that it will be webcast live using an online facility enabling Security Holders to attend and participate in the AGM using a smartphone, tablet or computer. Please note that Shareholders will be able to vote online during the AGM and ask questions of Directors, Management and the Company’s auditor. Holders of CDIs will not be able to vote online during the AGM but will be able to ask questions and will be able to submit a CDI Voting Form ahead of the meeting. CDI Holders must submit their properly completed CDI Voting Form and lodge it with the Company by the due date and in a manner as set out in this Notice of Annual Meeting, as detailed further below.

Whether or not you expect to virtually attend the AGM, please submit your Proxy Card or CDI Voting Form as soon as possible so that your applicable fully paid shares of common stock (“**Shares**”) and / or CDIs can be voted at the AGM. For specific instructions on voting, please refer to the instructions in the Notice of Annual Meeting and the Proxy Card or CDI Voting Form, as applicable. If you hold your Shares or CDIs through an account with a brokerage firm, bank, or other nominee, please follow the instructions you receive from them to vote your Shares or CDIs.

The Board encourages all Security Holders to participate in the virtual AGM using the online facility. The Online Facility Guide providing step-by-step instructions on how Security Holders may use the online facility is enclosed with this Notice of Annual Meeting.

The matters to be considered and voted on at the AGM are described in the Notice of Annual Meeting, Proxy Statement and CDI Voting Form.

If you are unable to attend the Annual Meeting via the virtual online facility and have a specific question that you would like to submit to the Chairman of the meeting, please send your question to the Company by email at [info@pivotalsys.com](mailto:info@pivotalsys.com) or by post to 48389 Fremont Blvd. Suite 100



Fremont, CA, 94538, USA, Attention: Dennis Mahoney, to be received no later than 9.00 am on Friday, 14 May 2021 (AEST) (being 4.00 pm Thursday, 13 May 2021 PDT).

Thank you for your continued support of Pivotal.

Yours faithfully,

A handwritten signature in black ink, appearing to read "John Hoffman". The signature is fluid and cursive, with a long horizontal stroke at the end.

John Hoffman  
Executive Chairman and Chief Executive Officer

*All capitalised terms used in the Notice of Annual Meeting, Proxy Statement or CDI Voting Form and not otherwise defined shall have the meaning ascribed in the Company's Annual Report, dated 26 February 2021 (AEDT), 25 February 2021 (PST) (the "**2020 Annual Report**").*

**NOTICE OF  
2021 ANNUAL GENERAL MEETING OF SHAREHOLDERS**

To be held on  
21 May 2021 (Australia)  
20 May 2021 (U.S.)

The 2021 Annual Meeting (the “AGM” or the “Annual Meeting”) of Shareholders of Pivotal Systems Corporation (“Pivotal” or the “Company”) will be held online at <https://agmlive.link/PVS21> on Friday, 21 May 2021 at 9.00 am (AEST) being (4.00 pm Thursday, 20 May 2021 PDT) for the following purposes:

**1. Ratification of appointment of BDO Audit Pty Ltd ACN 134 022 870 as Auditor for the financial year ending 31 December 2021**

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

*“That, BDO Audit Pty Ltd having consented in writing to act in the capacity of Auditor, be appointed, ratified and confirmed as the Auditor of Pivotal Systems Corporation for the financial year ending 31 December 2021.”*

The Board unanimously recommends Security Holders vote “FOR” this Item 1.

**2. Re-Election of Kevin Landis as a Director**

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

*“That Kevin Landis who retires in accordance with Article VIII of the Company’s Amended and Restated Certificate of Incorporation and clause 2.2 of the Company’s Amended and Restated Bylaws and, being eligible for re-election, is re-elected as a Director of the Company.”*

The Board, with Kevin Landis abstaining, unanimously recommends Security Holders vote “FOR” this Item 2.

**3. Re-Election of David Michael as a Director**

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

*“That David Michael who retires in accordance with Article VIII of the Company’s Amended and Restated Certificate of Incorporation and clause 2.2 of the Company’s Amended and Restated Bylaws and, being eligible for re-election, is re-elected as a Director of the Company.”*

The Board, with David Michael abstaining, unanimously recommends Security Holders vote “FOR” this Item 3.

**4. Issue of Options to Director, Ryan Benton**

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

*“That, for the purposes of ASX Listing Rule 10.14 and for all other purposes, the issue of 100,000 unquoted options to acquire fully paid ordinary shares of common stock in the Company to Ryan Benton under the 2012 Equity Incentive Plan on the terms described in the Proxy Statement which forms part of the Notice of Annual Meeting, is approved.”*

The Board, with Ryan Benton abstaining, unanimously recommends Security Holders vote “FOR” this Item 4.

**Voting Exclusion Statement**

In accordance with ASX Listing Rule 14.11, the Company will disregard any votes cast in favour of Item 4 by or on behalf of:

- a. a person referred to in ASX Listing Rule 10.14.1, 10.14.2 or 10.14.3 who is eligible to participate in the Company’s 2012 Equity Incentive Plan; or
- b. an associate of those persons.

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

- a. a person as proxy or attorney for a person who is entitled to vote on Item 4, in accordance with the directions given to the proxy or attorney to vote on Item 4 in that way; or
- b. the Chairman of the Annual Meeting as proxy or attorney for a person who is entitled to vote on Item 4, in accordance with a direction given to the Chairman to vote on the Item as the Chairman of the Annual Meeting decides; or
- c. a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:

- i. the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on Item 4; and
- ii. the holder votes on Item 4 in accordance with directions given by the beneficiary to the holder to vote in that way.

**5. Issue of Options to Director, Peter McGregor**

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

*“That, for the purposes of ASX Listing Rule 10.14 and for all other purposes, the issue of 100,000 options to acquire fully paid ordinary shares of common stock in the Company to Peter McGregor under the 2012 Equity Incentive Plan on the terms described in the Proxy Statement which forms part of the Notice of Annual Meeting, is approved.”*

The Board, with Peter McGregor abstaining, unanimously recommends Security Holders vote “FOR” this Item 5.

**Voting Exclusion Statement**

In accordance with ASX Listing Rule 14.11, the Company will disregard any votes cast in favour of Item 5 by or on behalf of:

- a. a person referred to in ASX Listing Rule 10.14.1, 10.14.2 or 10.14.3 who is eligible to participate in the Company’s 2012 Equity Incentive Plan; or
- b. an associate of those persons.

However, this does not apply to a vote cast in favour of Item 5 by:

- a. a person as proxy or attorney for a person who is entitled to vote on Item 5, in accordance with the directions given to the proxy or attorney to vote on Item 5 in that way; or
- b. the Chairman of the Annual Meeting as proxy or attorney for a person who is entitled to vote on Item 5, in accordance with a direction given to the Chairman to vote on the Item as the Chairman of the Annual Meeting decides; or
- c. a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:
  - i. the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on Item 5; and

- ii. the holder votes on Item 5 in accordance with directions given by the beneficiary to the holder to vote in that way.

**6. Approval to Issue Tranche 2 RBI Preferred Stock to Anzu RBI USA LLC**

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

*“That for the purposes of ASX Listing Rule 10.11 and for all other purposes, Shareholders approve the issue of up to 3,000 Tranche 2 RBI Preferred Stock to Anzu RBI USA LLC under the RBI Preferred Stock Purchase Agreement, on the terms and conditions described in the Proxy Statement which forms part of the Notice of Annual Meeting.”*

The Board, with David Michael abstaining given he is also a Managing Director of Anzu Partners LLC, unanimously recommends Security Holders vote “FOR” this Item 6.

**Voting Exclusion Statement**

In accordance with ASX Listing Rule 14.11, the Company will disregard any votes cast in favour of Item 6 by or on behalf of:

- a. the person who is to receive the Tranche 2 RBI Preferred Stock and any other person who will obtain a material benefit as a result of the issue of the Tranche 2 RBI Preferred Stock (except a benefit solely by reason of being a holder of common stock or CDIs in the Company); or
- b. an associate of any of those persons.

However, the Company need not disregard a vote cast on Item 6 if:

- a. it is cast by a person as proxy or attorney for a person who is entitled to vote on Item 6 in accordance with the directions given to the proxy or attorney on Item 6 in that way;
- b. it is cast by the person chairing the Annual Meeting as proxy or attorney for a person who is entitled to vote on Item 6, in accordance with a direction given to the chair to vote on Item 6 as the chair decides; or
- c. it is cast by a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:
  - i. the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting on Item 6; and
  - ii. the holder votes on Item 6 in accordance with directions given by the beneficiary to the holder to vote in that way.



**7. Ratification of Institutional Placement under Listing Rule 7.4**

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

*"That for the purposes of ASX Listing Rule 7.4 and for all other purposes, Shareholders ratify the previous issue by the Company of 6,124,786 CHESS Depositary Interests ("**Placement CDIs**") on 23 December 2020 to Viburnum Funds Pty Ltd ACN 126 348 990 as the investment manager for various accounts ("**Viburnum**") on the terms and conditions described in the Proxy Statement which forms part of the Notice of Annual Meeting."*

The Board unanimously recommends Security Holders vote "FOR" this Item 7.

**Voting Exclusion Statement**

In accordance with ASX Listing Rule 14.11, the Company will disregard any votes cast in favour of Item 7 by or on behalf of:

- a. a person who participated in the issue of Placement CDIs; or
- b. an associate of any of those persons.

However, the Company need not disregard a vote cast on Item 7 if:

- a. it is cast by a person as proxy or attorney for a person who is entitled to vote on Item 7 in accordance with the directions given to the proxy or attorney on Item 7 in that way;
- b. it is cast by the person chairing the Annual Meeting as proxy or attorney for a person who is entitled to vote on Item 7, in accordance with a direction given to the chair to vote on Item 7 as the chair decides; or
- c. it is cast by a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:
  - i. the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting on Item 7; and
  - ii. the holder votes on Item 7 in accordance with directions given by the beneficiary to the holder to vote in that way.

**8. Approval of 2012 Equity Incentive Plan**

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

*“That, for the purposes of ASX Listing Rule 7.2, exception 13 and all other purposes, the Pivotal Systems Corporation 2012 Equity Incentive Plan, as amended and described in the Proxy Statement accompanying and forming part of this Notice of Annual Meeting and the issue of securities under the Pivotal Systems Corporation 2012 Equity Incentive Plan (as amended) be approved.”*

#### Voting Exclusion Statement

In accordance with ASX Listing Rule 14.11, the Company will disregard any votes cast in favour of Item 8 by any person who is eligible to participate in the Pivotal Systems Corporation 2012 Equity Incentive Plan (as amended) and any of their associates.

Both Non-Executive and Executive Directors are eligible to participate in the Pivotal Systems Corporation 2012 Equity Incentive Plan (as amended) and accordingly, Directors and their associates will be excluded from voting on Item 8 together with all other eligible participants and their associates.

However, this does not apply to a vote cast in favour of Item 8 by:

- a. a person as proxy or attorney for a person who is entitled to vote on Item 8, in accordance with the directions given to the proxy or attorney to vote on Item 8 in that way; or
- b. the Chairman of the Annual Meeting as proxy or attorney for a person who is entitled to vote on Item 8, in accordance with a direction given to the Chairman to vote on Item 8 as the Chairman of the Annual Meeting decides; or
- c. a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:
  - i. the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on Item 8; and
  - ii. the holder votes on Item 8 in accordance with directions given by the beneficiary to the holder to vote in that way.

#### Record Date and Voting Rights

Shareholders may lodge a vote at the Annual Meeting if they are a Shareholder of record or are a beneficial owner of Shares held in Street Name (as defined below) on Monday 10 May 2021 at 9:00 am (AEST) (Sunday 9 May 2021 at 4:00 pm PDT) (the “**Record Date**”). This record date has been set in accordance with applicable law and Section 1.8 of the Company’s Bylaws, which provides that the Board may, subject to the ASX Listing Rules, fix, in advance, a record date, which shall not precede the date upon which the Item fixing the record date is adopted by the Board and which shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting, nor more than sixty (60) days prior to any other action and that if no record date is fixed by the Board, then the record date shall be as provided by applicable law.

Holders of CDIs at the close of business on the Record Date are entitled to receive the Notice of Annual Meeting and to attend the Annual Meeting or any adjournment or postponement of the Annual Meeting but are not entitled to vote at the Annual Meeting. Holders of CDIs may ahead of the Annual Meeting instruct our CDI depositary, CHESS Depositary Nominees Pty Ltd ("**CDN**"), to vote the Shares underlying their CDIs by following the instructions on the CDI Voting Form or by voting online at [www.linkmarketservices.com.au](http://www.linkmarketservices.com.au). CDN will vote the applicable Shares on behalf of each applicable CDI Holder at the Annual Meeting in accordance with the instructions received via the CDI Voting Form or online from each of the applicable CDI holders.

Any Shareholder may request access to the list of Shareholders of record entitled to vote at the Annual Meeting upon request to the Company's ASX Representative.

The Proxy Statement that accompanies and forms part of this Notice of Annual Meeting provides information in relation to each of the matters to be considered. This Notice of Annual Meeting and the Proxy Statement should be read in their entirety. If Security Holders are in doubt as to how they should vote, they should seek advice from their legal counsel, accountant, solicitor, or other professional advisor prior to voting.

Dated this 10 May 2021 (PDT)

By Order of the Board

A handwritten signature in black ink, appearing to read 'John Hoffman', with a stylized flourish at the end.

John Hoffman  
Executive Chairman and Chief Executive Officer



IMPORTANT NOTICE REGARDING THE AVAILABILITY OF  
PROXY MATERIALS FOR THE 2021 ANNUAL MEETING OF SHAREHOLDERS:

This Notice of Annual Meeting and Proxy Statement and the 2020 Annual Report are available at  
<https://www.pivotalsys.com/>.

**Proxy Statement**

**2021 ANNUAL MEETING OF SHAREHOLDERS  
TO BE HELD ON 21 MAY 2021 (Australia) and 20 MAY 2021 (U.S.)**

The Board of Pivotal Systems Corporation (“**Pivotal**” or the “**Company**”) is soliciting proxies for use at the 2021 Annual General Meeting of Shareholders (the “**Annual Meeting**”) to be held Friday, 21 May 2021 at 9.00 am (AEST) (being 4.00 pm Thursday, 20 May 2021 PDT) via a virtual online facility (online at <https://agmlive.link/PVS21>) and at any adjournment or postponement of the meeting. We expect to mail this proxy statement (this “**Proxy Statement**”) and the accompanying Notice of the 2021 Annual Meeting (the “**Notice of Annual Meeting**”) to Security Holders on or about 10 May 2021 (PDT).

QUESTIONS AND ANSWERS

*What is the purpose of the Annual Meeting?*

At the Annual Meeting, Security Holders are invited to act upon the items and proposals outlined in the Notice of Annual Meeting. At the Annual Meeting, the CEO will report on matters of current interest to Security Holders and respond to any questions. The matters outlined in the Notice of Annual Meeting include:

- ratification of the appointment of BDO Audit Pty Ltd as Auditor for the financial year ending 31 December 2021 (“Item 1”)
- the re-election of Kevin Landis as a Director of the Company (“Item 2”)
- the re-election of David Michael as a Director of the Company (“Item 3”)
- the issue of options to Director, Ryan Benton (“Item 4”)
- the issue of options to Director, Peter McGregor (“Item 5”)
- the approval to issue Tranche 2 RBI Preferred Stock to Anzu RBI USA LLC (“Item 6”)
- the ratification of the Institutional Placement dated 23 December 2020 under Listing Rule 7.4 (“Item 7”)
- the approval of the 2012 Equity Incentive Plan (as amended) (“Item 8”)

*Who is entitled to vote at the Annual Meeting?*

Only those Shareholders of record, or beneficial owners of Shares held in Street Name (as defined below), on Sunday 9 May 2021 at 4:00 pm PDT being Monday 10 May 2021 at 9:00 am AEST (the “**Record Date**”) will be entitled to vote at the meeting and any adjournment or postponement thereof.

As at the Record Date there are 120,361,031 Shares of common stock outstanding (equivalent to 120,361,031 CDIs), all of which are entitled to vote with respect to the items to be acted upon at the Annual Meeting, subject to applicable voting exclusions. Therefore, there is currently a total of 120,361,031 votes entitled to be cast at the Annual Meeting.

Each Share of common stock is entitled to one vote per Share. Each CDI represents 1 Share of common stock.

Votes for or against and abstentions will all be counted as present and entitled to vote for purposes of determining whether a quorum is present.

*Will any Shareholders be excluded from voting on any of the items?*

In accordance with ASX Listing Rule 14.11.1, the Company will disregard any votes cast on certain Items by certain persons.

“No” votes will be excluded for Items 1, 2 and 3.

Votes will be excluded for Items 4, 5, 6, 7, and 8 as set out in the Notice of Annual Meeting.

*How many Shares must be present for voting to hold the Annual Meeting?*

Pursuant to Section 1.5 of the Company’s Bylaws, at each meeting of stockholders, the holders of one-third of the shares of stock entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business, except if otherwise required by applicable law. Shares are counted as present at the Annual Meeting if:

- The Shareholder of record on the Record Date is present virtually at the Annual Meeting by registering their attendance via the virtual online facility; and
- The Shareholder of record on the Record Date, or the applicable beneficial owner, has properly submitted a proxy in a timely fashion as described in the Notice of Annual Meeting.

Abstentions and shares represented by “broker non-votes” are counted for the purpose of determining the presence of a quorum.

### *What is a proxy?*

If you designate another person or entity to vote Shares that you own, such other person or entity is referred to as your proxy. If you designate someone as your proxy in a written document, that document is also called a proxy or a proxy card. When you designate a proxy, you may also direct the proxy how to vote your Shares. This is referred to as your “proxy vote”.

### *What is the difference between a Shareholder of record and a “Street Name” holder?*

If you own Shares registered directly in your name with the Company’s U.S. share registrar, American Stock Transfer & Trust Company, LLC, you are considered the Shareholder of record with respect to those Shares. As a Shareholder of record, you have the right to grant your voting proxy directly to the Company or to vote in person at the Annual Meeting.

If your Shares are held in a stock brokerage account or by a bank, trust or other nominee, then the broker, bank, trust or other nominee is considered to be the Shareholder of record with respect to those Shares, while you are considered the beneficial owner of those Shares and your Shares are held in street name (“**Street Name**”). Street Name holders generally cannot vote their Shares directly and must instead instruct the broker, bank, trust or other nominee how to vote their Shares using the method described in the notice that such broker, bank, trust or other nominee sends to the Street Name holders. Since a Street Name holder is not the Shareholder of record, the Street Name holder may not vote their Shares in person at the Annual Meeting unless such holder obtains a “legal proxy” from their applicable broker, bank, trustee, or nominee giving such holder the right to vote the Shares at the meeting.

CDN is the Shareholder of record for all Shares beneficially owned by holders of CDIs. Holders of CDIs are entitled to receive the Notice of the Annual Meeting and attend and ask questions at the Annual Meeting and may direct CDN to vote at the Annual Meeting by using the method described in the CDI Voting Form or online.

### *What does it mean if I receive more than one printed set of proxy materials?*

If you receive more than one printed set of proxy materials, it means that you hold Shares or CDIs registered in more than one account. To ensure that all of your Shares are voted, please submit proxies or voting instructions for all of your Shares or CDIs.

### *Can I vote my Shares or CDIs in person at the Annual Meeting?*

Please Note: You may only vote your Shares at the Annual Meeting by registering and participating in the virtual online facility if you own shares of common stock and are a Shareholder of record on the Record Date. CDI Holders can participate in the AGM by registering and participating in the virtual online facility, however are unable to vote during the meeting. For votes to be counted, CDI Holders



must submit their properly completed CDI Voting Form and lodge it with the Company by the due date and in a manner as set out in this Notice of Annual Meeting.

Even if you currently plan to participate in the virtual online facility and vote your Shares at the Annual Meeting (if you are a Shareholder), we recommend that you submit a proxy so that your vote will be counted if you later decide not to participate at the virtual AGM. If you submit your vote by proxy and later decide to vote online during the Annual Meeting, the vote you submit via the virtual online facility will override your proxy vote.

If you are a Street Name holder of shares of common stock, you may vote your Shares via the virtual online facility only if you obtain and provide to the Company's Share Registry a signed letter or other form of proxy from your broker, bank, trust or other nominee giving you the right to vote the Shares at the meeting.

#### *How do I vote my Shares of common stock?*

Shareholders are entitled to vote if they are a Shareholder on the Record Date regardless of whether they attend the Annual Meeting via the online virtual AGM facility.

At the Annual Meeting, every holder of common stock present virtually (upon registering their attendance via the virtual online facility) or by proxy, is entitled to one vote for each Share of common stock held on the Record Date on all matters submitted to a vote of the Shareholders.

If you are a Shareholder of record, you can vote in any of the following ways:

<b>Proxy Forms</b> (US Common Stock – no online proxy voting available)	
<b>By email</b>	<a href="mailto:proxy@astfinancial.com">proxy@astfinancial.com</a>
<b>By mail</b>	6201 15 <sup>th</sup> Avenue, Brooklyn, New York 11219 United States
<b>In person</b> at the Annual Meeting (using the virtual online voting facility)	

#### *How do I vote if I hold CDIs?*

**Important:** If you are a CDI Holder, you must instruct CHESS Depository Nominees Pty Ltd. ("**CDN**"), as the Shareholder of record, to vote the Shares underlying your CDIs pursuant to your instructions in the CDI Voting Form provided to Link Market Services Limited or via the Internet option set forth below.

Each CDI represents 1 Share. Therefore, each CDI Holder will be entitled to one vote for every 1 CDI that they hold.

CDI Voting Forms (Australian Register)	
<b>Online</b>	<a href="http://www.linkmarketservices.com.au">www.linkmarketservices.com.au</a>
<b>By post</b>	Pivotal Systems Corporation C/ - Link Market Services Limited, Locked Bag A14, Sydney South, NSW 1235
<b>By facsimile</b>	02 9287 0309 (within Australia) +61 2 9287 0309
<b>By hand</b>	Link Market Services Limited, 1A Homebush Bay Drive, Rhodes NSW 2138

### How do I vote if I am a Street Name holder?

If you hold your Shares or CDIs in Street Name (as defined in the Proxy Statement), you must vote your Shares or CDIs in the manner set forth by your broker, bank, trust or other nominee, which is similar to the voting procedures for Shareholders of record or CDI holders. You will receive a voting instruction form (not a proxy card) to use in directing your applicable broker, bank, trust or other nominee how to vote your Shares or CDIs at the Annual Meeting.

### Voting Mechanics

#### *Proxy cards*

Valid, signed and dated proxy cards must be received by American Stock Transfer & Trust Company, LLC no later than Tuesday, 18 May 2021 at 4.00pm PDT (being Wednesday, 19 May 2021 at 9.00 am Sydney time).

#### CDI Voting Forms

Completed CDI Voting Forms must be provided to Link Market Services Limited no later than Monday, 17 May 2021 at 4.00 pm PDT (being Tuesday, 18 May 2021 at 9.00 am AEST), in accordance with the instructions on that form. The CDI voting deadline is one business day prior to the date that Proxy Cards are due so that CDN may vote the Shares underlying the applicable CDIs.

#### *In person (virtual attendance)*

Physical attendance at the AGM is not available due to health and safety concerns related to the COVID-19 global pandemic. Shareholders may attend the AGM using the virtual online facility and vote online using the facility during the meeting. CDI Holders may attend the virtual AGM but will not be able to lodge a vote using the virtual online facility and are therefore urged to complete and submit their CDI Voting Forms as described above, for their vote to be counted.



*What is the voting requirement to approve each of the items set forth in the Notice of Annual Meeting?*

Section 1.7 of the Company's Bylaws sets out that voting at meetings of stockholders need not be by written ballot unless such is demanded at the meeting before voting begins by a stockholder or stockholders holding shares representing at least one percent (1%) of the votes entitled to vote at such meeting, or by such stockholder's or stockholders' proxy; provided, however, that an election of directors shall be by written ballot if demand is so made by any stockholder at the meeting before voting begins.

Further to this, Recommendation 6.4 of the ASX Corporate Governance Council's Corporate Governance Principles and Recommendations (4<sup>th</sup> edition) and ASX guidance provide that a listed entity should ensure that all substantive resolutions at a meeting of security holders are decided by a poll rather than by a show of hands. In accordance with these recommendations, the resolutions under Items 1 to 10 will be decided by poll rather than by a show of hands.

A Director shall be re-elected under Items 2 and 3 in the Notice of Annual Meeting by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of Directors. Unless otherwise provided by applicable law, the Company's Amended and Restated Certificate of Incorporation or the Amended and Restated Bylaws, every matter (including the matters under Items 1 and 4 – 8 in the Notice of Annual Meeting) other than the re-election of Directors shall be decided by the affirmative vote of the holders of a majority of the shares of stock entitled to vote thereon that are present virtually or represented by proxy at the meeting and are voted for or against the matter (subject to the voting exclusion statements in respect of Items 4, 5, 6, 7 and 8 as set out in this Notice of Annual Meeting)

*Information on voting exclusions in respect of each of the items are set forth in the Notice of Annual Meeting.*

- ratification of the appointment of BDO Audit Pty Ltd as Auditor for the financial year ending 31 December 2021 ("Item 1")
- the re-election of Kevin Landis as a Director of the Company ("Item 2")
- the re-election of David Michael as a Director of the Company ("Item 3")
- the issue of options to Director, Ryan Benton ("Item 4")
- the issue of options to Director, Peter McGregor ("Item 5")
- the approval to issue Tranche 2 RBI Preferred Stock to Anzu RBI USA LLC ("Item 6")
- ratification of Institutional Placement dated 23 December 2020 under Listing Rule 7.4 ("Item 7")
- the approval of the 2012 Equity Incentive Plan (as amended) ("Item 8")

*Item 1 – Ratification of the appointment of BDO Audit Pty Ltd as Auditor for the financial year ending 31 December 2021*

You may vote “FOR”, “AGAINST” or “ABSTAIN” on the appointment of BDO Audit Pty Ltd as the Company’s auditor.

Abstentions are considered Shares present and entitled to vote for the purposes of determining a quorum, and will have the same effect as votes “AGAINST” the appointment of BDO Audit Pty Ltd as the Company’s auditor.

*Item 2 – Re-election of Kevin Landis as a Director of the Company*

You may vote “FOR” or “ABSTAIN” on the re-election of Kevin Landis.

Abstentions are considered Shares present and entitled to vote for the purposes of determining a quorum, but will have no effect on the re-election of director under Item 2 in the Notice of Annual Meeting.

*Item 3 – Re-election of David Michael as a Director of the Company*

You may vote “FOR” or “ABSTAIN” on the re-election of David Michael.

Abstentions are considered Shares present and entitled to vote for the purposes of determining a quorum, but will have no effect on the re-election of director under Item 3 in the Notice of Annual Meeting.

*Item 4 – Issue of Options to Ryan Benton*

You may vote “FOR”, “AGAINST” or “ABSTAIN” on the issue of options to Ryan Benton.

Abstentions are considered Shares present and entitled to vote for the purposes of determining a quorum, and will have no effect on the resolution to approve the issue of options under Item 4 in the Notice of Annual Meeting.

*Item 5 – Issue of Options to Peter McGregor*

You may vote “FOR”, “AGAINST” or “ABSTAIN” on the issue of options to Peter McGregor.

Abstentions are considered Shares present and entitled to vote for the purposes of determining a quorum, and will have no effect on the resolution to approve the issue of options under Item 5 in the Notice of Annual Meeting.

*Item 6 – Approval to Issue Tranche 2 RBI Preferred Stock to Anzu RBI USA LLC*

You may vote “FOR”, “AGAINST” or “ABSTAIN” on the approval to Issue Tranche 2 RBI Preferred Stock to Anzu RBI USA LLC.

Abstentions are considered Shares present and entitled to vote for the purposes of determining a quorum, but will have no effect on the resolution to approve the issue of Tranche 2 RBI Preferred Stock under Item 6 in the Notice of Annual Meeting.

*Item 7 – Ratification of Institutional Placement dated 23 December 2020 under Listing Rule 7.4*

You may vote “FOR”, “AGAINST” or “ABSTAIN” on the ratification of institutional placement under Listing Rule 7.4.

Abstentions are considered Shares present and entitled to vote for the purposes of determining a quorum, but will have no effect on the resolution to ratify the institutional placement under Listing Rule 7.4 under Item 7 in the Notice of Annual Meeting.

*Item 8 – Approval of 2012 Equity Incentive Plan*

You may vote “FOR”, “AGAINST” or “ABSTAIN” on the approval of 2012 Equity Incentive Plan (as amended).

Abstentions are considered Shares present and entitled to vote for the purposes of determining a quorum, but will have no effect on the resolution to approve the 2012 Equity Incentive Plan (as amended) under Item 8 in the Notice of Annual Meeting.

*Please Note:* *If you are not entitled to vote at the Annual Meeting and you do not submit your proxy or voting instructions to your broker, a “non-vote” occurs and your Shares will be counted for the purpose of establishing a quorum but will have no effect on the outcome of any of the items.*

*How do I change my vote or revoke my proxy?*

If you are a Shareholder of record, you may change your vote or revoke your proxy by:

- filing a written statement to that effect at or before the taking of the vote at the Annual Meeting in the manner specified below;
- submitting a properly signed proxy card with a later date that is received prior to the close of voting; or
- attending the Annual Meeting using the virtual online facility, revoking your proxy, and voting via the online facility.

If the written statement is not filed at the AGM, the written statement to the ASX Representative should be delivered by not later than 9:00 am on Wednesday, 19 May 2021 (Sydney time) being (4:00 pm on Tuesday, 18 May 2021 (PDT)). The written statement can be delivered to Company Matters Pty Ltd, Level 12, 680 George Street, Sydney NSW 2000 (PO Box 20547, World Square NSW 2002) Attention: Danny Davies, or hand delivered to such address.



If you are a beneficial owner and hold Shares through a broker, bank, or other nominee, you may submit new voting instructions by contacting your broker, bank, or other nominee. You may also change your vote or revoke your voting instructions in person (via the online facility) at the Annual Meeting if you obtain a signed proxy from the record holder (broker, bank, or other nominee) giving you the right to vote the Shares.

If you are a holder of CDIs and you direct CDN to vote by completing the CDI Voting Form, you may revoke those directions by delivering to Link Market Services, no later than Monday, 17 May 2021 at 4.00 pm PDT (being Tuesday, 18 May 2021 at 9.00 am AEST) a written notice of revocation bearing a later date than the CDI Voting Form previously sent.

If you are a CDI Holder and have lodged your vote via the online CDI Voting Form with Link Market Services, you may change your vote online by not later than 9:00 am on Monday, 17 May 2021 at 4.00 pm PDT (being Tuesday, 18 May 2021 at 9.00 am AEST) by accessing your holding online and change your vote by following the prompts.

*Who pays for the cost of proxy preparation and solicitation?*

The Company pays for the cost of proxy preparation and solicitation, including the reasonable charges and expenses of brokerage firms, banks, trusts or other nominees for forwarding proxy materials to Street Name holders and CDI holders. The Company is soliciting proxies by mail. In addition, the Directors, officers and regular employees of the Company may solicit proxies personally, telephonically, electronically or by other means of communication. The Company's Directors, officers and regular employees will receive no additional compensation for their services other than their regular compensation.

*How can I ask questions if I cannot attend the Annual Meeting via the virtual online facility?*

Only Shareholders and CDI Holders that attend the AGM via the virtual online facility will be able to ask questions at the Annual Meeting. If you have a specific question that you would like to submit to the Chairman of the meeting prior to the meeting, please send your question to the Company by email at [info@pivotalsys.com](mailto:info@pivotalsys.com) or by post to 48389 Fremont Blvd. Suite 100 Fremont, CA, 94538, USA, Attention: Dennis Mahoney no later than 9.00 am on Friday, 14 May 2021 (Sydney time) (being 4.00 pm Thursday, 13 May 2021 (PDT)).

## **Items of Business at the Annual Meeting**

### **ITEM 1 – RATIFICATION OF THE APPOINTMENT OF BDO AUDIT PTY LTD AS AUDITOR FOR THE FINANCIAL YEAR ENDING 31 DECEMBER 2021**

BDO has been the Company's auditor since February 27, 2018. BDO Audit Pty Ltd has consented and the Board has appointed BDO Audit Pty Ltd to act as external auditor of the Company for the fiscal year ending 31 December 2021.

Accordingly, the Company is seeking ratification by the Shareholders of the appointment of BDO Audit Pty Ltd for the fiscal year ending 31 December 2021.

#### **Board Recommendation and Chairman's voting intention for Item 1:**

The Board unanimously recommend Shareholders vote "FOR" this Item 1. The Chairman intends to vote undirected proxies in favour of this item.

### **ITEM 2 AND 3 – RE-ELECTION OF DIRECTORS OF THE COMPANY**

#### **Background**

Article VIII of the Company's Amended and Restated Certificate of Incorporation provides for a classified Board with the Class II Directors' initial terms expiring at this third annual meeting after the Company's ASX listing. The Director elected to fill the spot of the director whose term so expires shall be elected for a term of office to expire at the third succeeding annual meeting after their election.

Section 1.12(a)(i) of the Company's Bylaws provides that nominations of persons for election to the Board and the proposal of business to be considered by the stockholders shall be made at an annual meeting (A) pursuant to the Company's notice of such meeting, (B) by or at the direction of the Board or (C) if applicable, by any stockholder of the Company in accordance with the Company's Bylaws.

ASX Listing Rule 14.4 provides that a director of an ASX listed entity must not hold office (without re-election) past the third annual general meeting following the director's appointment or 3 years, whichever is longer. Even if no director is required to stand for election by rotation under ASX Listing Rule 14.4, the Company is still required to hold an election of directors at each annual general meeting under ASX Listing Rule 14.5.

#### **Item 2 – Re-election of Kevin Landis**

The Board appointed Kevin Landis as a Non-Executive Director of the Company in 2012. In accordance with Listing Rule 14.4, Kevin Landis will retire at the Annual Meeting and being eligible for re-election, submits himself for re-election as a director by Shareholders of the Company. If Shareholders do not



approve the re-election of Kevin Landis then Kevin Landis will cease to be a Director at the conclusion of the Annual Meeting.

Kevin is the CEO and CIO of Firsthand Capital Management, an investment management firm he founded in 1994. Firsthand Capital Management is the investment adviser to Firsthand Technology Value Fund, Inc. (NASDAQ: SVVC), a publicly traded venture capital fund which is a substantial shareholder of the Company. Kevin has over two decades of experience in engineering, market research, product management and investing in the technology sector.

Kevin is Firsthand's nominee director to the board of Pivotal Systems Corporation.

For the reasons noted above, Kevin is not considered an independent director of the Company.

#### *Committees*

Kevin is a member of the Company's Audit and Risk Management Committee and the Remuneration and Nomination Committee.

#### *Other directorships*

Kevin is a non-executive director of Revasum, Inc. (ASX: RVS), Hera Systems, Inc., IntraOp Medical Corp., QMAT, Inc. and Silicon Genesis Corp. and Wrightspeed, Inc.

#### **Board Recommendation and Chairman's voting intention for Item 2:**

The Board supports the re-election of Kevin Landis as a Director of the Company as he contributes to the Board's significant experience in the areas of engineering, market research and product management in the technology sector.

For the reasons stated above, the Board (other than Kevin Landis) recommends that Shareholders vote in favor of this item of business. The Chairman intends to vote undirected proxies in favor of this item.

#### **Item 3 – Re-election of David Michael**

The Board appointed David Michael as a Non-Executive Director of the Company in 2016. In accordance with Listing Rule 14.4, David Michael will retire at the Annual Meeting and being eligible for re-election, submits himself for re-election as a director by Shareholders of the Company. If Shareholders do not approve the re-election of David Michael then David Michael will cease to be a Director at the conclusion of the Annual Meeting.

David Michael is Managing Director at Anzu Partners, an investment partnership which invests in innovative industrial technology companies and is a substantial shareholder of the Company. He was formerly Senior Partner and Managing Director of The Boston Consulting Group (BCG), where his

career spanned numerous leadership roles across the firm. He formerly led BCG's Greater China business and their Asia Technology Practice. He served a range of clients in semiconductors, components, hardware, software, and services. He was based for 7 years in Silicon Valley and for 16 years in Greater China. He remains a Senior Advisor to the firm.

David is Anzu Partners' nominee director to the board of Pivotal Systems Corporation.

For the reasons noted above, David is not considered an independent director of the Company.

#### *Committees*

David is a member of the Company's Audit and Risk Management Committee and the Remuneration and Nomination Committee.

#### *Other directorships*

David is a non-executive director of Taiwan Cement Corporation (XTAI:1101), Nuburu (industrial lasers), Axsun, and Terapore (nanofiltration membranes for ultrapure water and other applications).

### **Board Recommendation and Chairman's voting intention for Item 3:**

The Board supports the re-election of David Michael as a Director of the Company as he contributes to the Board's significant leadership experience with global expertise in technology markets, particularly throughout Asia.

For the reasons stated above, the Board (other than David Michael) recommends that Shareholders vote in favor of this item of business. The Chairman intends to vote undirected proxies in favor of this item.

### **ITEMS 4 and 5 – ISSUE OF OPTIONS TO DIRECTORS**

#### **Background**

The purpose of the 2012 Equity Incentive Plan is to provide incentives to attract, retain and motivate eligible persons whose present and potential contributions are important to the success of the Company and its subsidiaries by offering eligible persons an opportunity to participate in the Company's future performance through the grant of awards covering Shares. Capitalized terms used but not defined in this section are defined within the 2012 Equity Incentive Plan which has been lodged with the ASX on 2 July 2018. Eligible persons include directors, employees and officers of the Company or its subsidiaries. A summary of the 2012 Equity Incentive Plan is attached as Attachment B which includes the amendment to the Plan as described in Item 8 (assuming that resolution is approved).

The 2012 Equity Incentive Plan has been established to:

- link the reward of eligible participants to performance and the creation of Shareholder value;
- align the interests of eligible participants more closely with the interests of Shareholders by providing an opportunity for eligible participants to receive Shares;
- provide eligible participants with the opportunity to share in any future growth in value of the Company; and
- provide greater incentive for eligible participants to focus on the Company's longer term goals.

The Board recognises the importance that Directors and management have “skin in the game” and to align their interests with that of Pivotal’s Shareholders.

The 2012 Equity Incentive Plan is a framework for the award of incentives. Any issue of securities under the 2012 Equity Incentive Plan must be made in accordance with the requirements of the Listing Rules, Delaware and other applicable laws.

ASX Listing Rule 10.14 requires Shareholder approval by ordinary resolution before any of the following persons can be issued securities under a listed entity’s employee incentive scheme:

- a director;
- an associate of a director; or
- a person whose relationship with the listed entity, or the entity’s directors or their associates is such that in the ASX’s opinion, the acquisition of securities should be approved by Shareholders.

#### **Item 4 – Issue of Options to Director, Ryan Benton**

It is proposed that the Company issue options under the 2012 Equity Incentive Plan to Ryan Benton, an independent Director of the Company providing him with the opportunity to exercise those options on payment of the exercise price, into fully paid Shares in the Company.

Pivotal is proposing to issue 100,000 unquoted options (**Options**) to acquire fully paid shares of common stock to Ryan Benton under its 2012 Equity Incentive Plan (**Issue**).

As Ryan Benton is a Director of Pivotal Systems Corporation, the Issue falls within Listing Rule 10.14.1 and therefore requires approval of the Company’s Shareholders under Listing Rule 10.14. As such, Item 6 seeks Shareholder approval for the issue of 100,000 Options to Ryan Benton under the 2012 Equity Incentive Plan for the purpose of ASX Listing Rule 10.14. Specific details of the proposed issue are set out below.



If Shareholders approve Item 4, the Company will be able to proceed with the issue of Options to Ryan Benton on the terms and conditions as set out in this Notice.

If Shareholders do not approve Item 4, the proposed issue of Options to Ryan Benton will not proceed. However, the Board considers it is important for Pivotal to offer incentives to its directors and executives that are in line with market practice. As such, the Board would need to consider alternative remuneration arrangements.

### **Additional Information**

For the purposes of ASX Listing Rule 10.15, the following additional information is provided for Shareholders.

- Ryan Benton is a Director of the Company and falls under the category of person in ASX Listing Rule 10.14.1 and accordingly, Shareholder approval for the issue of options to Ryan Benton under the 2012 Equity Incentive Plan is required.
- The proposed number of Options (and subsequently, the number of Shares) that may be acquired by Ryan Benton under the *Pivotal 2012 Equity Incentive Plan* and for which Shareholder approval is sought under this Item 4 is 100,000 Options.
- Ryan Benton's total remuneration package for 2021 comprises:
  - a fixed base salary of US\$85,000; and
  - a variable long term incentive of 100,000 options to acquire shares at a strike price of A\$1.50 per option with an aggregate value of US\$54,437 (based on a Black Scholes calculation as at the date of 1 May 2020), the subject of this Item.

Ryan Benton is also entitled to participate in the Company's long term incentive plan which provides for cash bonuses for certain senior executives subject to the satisfaction of various performance hurdles based on the Company achieving certain EBITDA targets for FY2021 to FY2023; the Company achieving a market capitalization and share price target at the end of 2023 or the Company closing a change of control transaction at or above the target share price. Testing against the performance hurdles will occur and payment of the long term incentive will take place in Q1 2024 unless a change of control transaction occurs which would trigger early payment if the applicable performance hurdle is reached.

*Further information regarding the remuneration of Ryan Benton is set out in the Company's Remuneration Report which forms part of the 2020 Annual Report.*

- The following options have been previously issued to Ryan Benton under Pivotal's 2012 Equity Incentive Plan:

Number of Options	Exercise Price (US\$)	Number Exercised	Number Cancelled	Number Outstanding
312,000	0.21	195,000	-	117,000
84,000	0.37	-	-	84,000
396,000		195,000	-	201,000

- The Options are considered by the Board to be an appropriate incentive for executives in line with market practice in the US, where the management team are based. The Options will be granted under the 2012 Equity Incentive Plan on the following key terms:
  - Each Option will entitle the holder to subscribe for one share of common stock in the Company
  - The Options are not quoted on the ASX and carry no voting or dividend rights.
  - Shares issued on vesting and exercise of the Options will rank equally with shares of common stock on issue.
  - The Options will vest and become exercisable in four equal tranches with each tranche vesting 25% per year on the anniversary of the grant date, subject only to Ryan Benton's continued employment with the Company as at the applicable vesting date.
  - The issue price for the Options is nil and an exercise price of A\$1.50, being the market value of a Share (based on the previous day's closing price on ASX) on the date that the Board approved the grant of Options.
  - The Options will expire on the tenth anniversary of the date of grant (**Expiry Date**).
  - The Options are exercisable from the date of vesting to the Expiry Date.
  - If a change of control event occurs to the Company (referred to in the 2012 Equity Incentive Plan as an "Acquisition" or "Other Combination"), any unvested Options will automatically vest.
- The Options will be issued to Ryan Benton on or about the date of the AGM (subject to Shareholders approving this Item 4), but in any event no later than 3 years after the date of the meeting.
- A summary of Pivotal's 2012 Equity Incentive Plan is attached as Attachment B which includes the amendment to the Plan as described in Item 8 (assuming that resolution is approved).
- No loans will be made in relation to the acquisition of the Options or Shares issued on exercise of the Options by Ryan Benton.
- Details of any securities issued under Pivotal's 2012 Equity Incentive Plan will be published in Pivotal's annual report relating to the period in which they were issued, along with a statement that approval for the issue was obtained under ASX Listing Rule 10.14. Any additional persons covered by ASX Listing Rule 10.14 who become entitled to participate in an issue of securities under Pivotal's 2012 Equity Incentive Plan after this Item 4 is approved and who are not named in this Notice will not participate until approval is obtained under that rule.

- A voting exclusion statement is set out in the Notice.

ASX Listing Rule 7.1 imposes a 15% cap on the number of equity securities that can be issued by Pivotal without approval of Shareholders in any rolling twelve month period. However, Pivotal is permitted to issue shares (or other securities) in excess of the 15% limit if those shares or securities are issued in reliance on an exception to ASX Listing Rule 7.1 or the issue is approved by Shareholders.

If Item 4 is passed, the issue of Options pursuant to this Item 4 and the issue of any Shares on vesting and exercise of those Options, will fall within an exception to the requirement to obtain Shareholder approval for the purpose of ASX Listing Rule 7.1 (ie. ASX Listing Rule 7.2, exception 14). Further to this, if approval is given under Listing Rule 10.14 for the purpose of this Item 4, approval is not required under ASX Listing Rule 7.1, in accordance with Exception 14 in ASX Listing Rule 7.2.

#### **Board Recommendation and Chairman's voting intention for Item 4:**

The Directors consider that the award of Options to Ryan Benton is an appropriate incentive and in the best interests of Pivotal and therefore recommends (with Ryan Benton abstaining from making a recommendation) that Shareholders vote in favour of Item 4. The Chairman intends to vote undirected proxies in favor of this item.

#### **Item 5 – Issue of Options to Director, Peter McGregor**

It is proposed that the Company issue options under the 2012 Equity Incentive Plan to Peter McGregor, an independent Director of the Company providing him with the opportunity to exercise those options on payment of the exercise price, into fully paid Shares in the Company.

Pivotal is proposing to issue 100,000 unquoted options (**Options**) to acquire fully paid shares of common stock to Peter McGregor under its 2012 Equity Incentive Plan (**Issue**).

As Peter McGregor is a Director of Pivotal Systems Corporation, the Issue falls within Listing Rule 10.14.1 and therefore requires approval of the Company's Shareholders under Listing Rule 10.14. As such, Item 5 seeks Shareholder approval for the issue of 100,000 Options to Peter McGregor under the 2012 Equity Incentive Plan for the purpose of ASX Listing Rule 10.14. Specific details of the proposed issue are set out below.

If Shareholders approve Item 5, the Company will be able to proceed with the issue of Options to Peter McGregor on the terms and conditions as set out in this Notice.

If Shareholders do not approve Item 5, the proposed issue of Options to Peter McGregor will not proceed. However, the Board considers it is important for Pivotal to offer incentives to its directors and executives that are in line with market practice. As such, the Board would need to consider alternative remuneration arrangements.

## Additional Information

For the purposes of ASX Listing Rule 10.15, the following additional information is provided for Shareholders.

- Peter McGregor is a Director of the Company and falls under the category of person in ASX Listing Rule 10.14.1 and accordingly, Shareholder approval for the issue of options to Peter McGregor under the 2012 Equity Incentive Plan is required.
- The proposed number of Options (and subsequently, the number of Shares) that may be acquired by Peter McGregor under the *Pivotal 2012 Equity Incentive Plan* and for which Shareholder approval is sought under this Item 5 is 100,000 Options.
- Peter McGregor's total remuneration package for 2021 comprises:
  - a fixed base salary of US\$85,000;
  - a variable long term incentive of 100,000 options to acquire shares at a strike price of A\$1.50 per option with an aggregate value of US\$54,437 (based on a Black Scholes calculation as at the date of 1 May 2020), the subject of this Item.

Peter McGregor is also entitled to participate in the Company's long term incentive plan which provides for cash bonuses for certain senior executives subject to the satisfaction of various performance hurdles based on the Company achieving certain EBITDA targets for FY2021 to FY2023; the Company achieving a market capitalization and share price target at the end of 2023 or the Company closing a change of control transaction at or above the target share price. Testing against the performance hurdles will occur and payment of the long term incentive will take place in Q1 2024 unless a change of control transaction occurs which would trigger early payment if the applicable performance hurdle is reached.

*Further information regarding the remuneration of Peter McGregor is set out in the Company's Remuneration Report which forms part of the 2020 Annual Report.*

- The following options have been previously issued to Peter McGregor under Pivotal's 2012 Equity Incentive Plan:

Number of Options	Exercise Price (US\$)	Number Exercised	Number Cancelled	Number Outstanding
100,000	1.33	-	-	100,000

- The Options are considered by the Board to be an appropriate incentive for executives in line with market practice in the US, where the management team are based. The Options will be granted under the 2012 Equity Incentive Plan on the following key terms:

- Each Option will entitle the holder to subscribe for one share of common stock in the Company
  - The Options are not quoted on the ASX and carry no voting or dividend rights.
  - Shares issued on vesting and exercise of the Options will rank equally with shares of common stock on issue.
  - The Options will vest and become exercisable in four equal tranches with each tranche vesting 25% per year on the anniversary of the grant, subject only to Peter McGregor's continued employment with the Company as at the applicable vesting date.
  - The issue price for the Options is nil and an exercise price of A\$1.50, being the market value of a Share (based on the previous day's closing price on ASX) on the date that the Board approved the grant of Options.
  - The Options will expire on the tenth anniversary of the date of grant (**Expiry Date**).
  - The Options are exercisable from the date of vesting to the Expiry Date.
  - If a change of control event occurs to the Company (referred to in the 2012 Equity Incentive Plan as an "Acquisition" or "Other Combination"), any unvested Options will automatically vest.
- The Options will be issued to Peter McGregor on or about the date of the AGM (subject to Shareholders approving this Item 5), but in any event no later than 3 years after the date of the meeting.
  - A summary of Pivotal's 2012 Equity Incentive Plan is attached as Attachment B which includes the amendment to the Plan as described in Item 8 (assuming that resolution is approved).
  - No loans will be made in relation to the acquisition of the Options or Shares issued on exercise of the Options by Peter McGregor.
  - Details of any securities issued under Pivotal's 2012 Equity Incentive Plan will be published in Pivotal's annual report relating to the period in which they were issued, along with a statement that approval for the issue was obtained under ASX Listing Rule 10.14. Any additional persons covered by ASX Listing Rule 10.14 who become entitled to participate in an issue of securities under Pivotal's 2012 Equity Incentive Plan after this Item 5 is approved and who are not named in this Notice will not participate until approval is obtained under that rule.
  - A voting exclusion statement is set out in the Notice.

ASX Listing Rule 7.1 imposes a 15% cap on the number of equity securities that can be issued by Pivotal without approval of Shareholders in any rolling twelve month period. However, Pivotal is permitted to issue shares (or other securities) in excess of the 15% limit if those shares or securities are issued in reliance on an exception to ASX Listing Rule 7.1 or the issue is approved by Shareholders.

If Item 5 is passed, the issue of Options pursuant to this Item 5 and the issue of any Shares on vesting and exercise of those Options, will fall within an exception to the requirement to obtain Shareholder

approval for the purpose of ASX Listing Rule 7.1 (ie. ASX Listing Rule 7.2, exception 14). Further to this, if approval is given under Listing Rule 10.14 for the purpose of this Item 5, approval is not required under ASX Listing Rule 7.1, in accordance with Exception 14 in ASX Listing Rule 7.2.

#### **Board Recommendation and Chairman's voting intention for Item 5:**

The Directors consider that the award of Options to Peter McGregor is an appropriate incentive and in the best interests of Pivotal and therefore recommends (with Peter McGregor abstaining from making a recommendation) that Shareholders vote in favour of Item 5. The Chairman intends to vote undirected proxies in favor of this item.

#### **ITEM 6 – APPROVAL TO ISSUE TRANCHE 2 RBI PREFERRED STOCK TO ANZU RBI USA LLC**

##### **Reason for approval**

On 30 January 2020 (PST), the Company and Anzu RBI USA LLC entered into an RBI Preferred Stock Investment Agreement ("**Preferred Stock Purchase Agreement**") whereby the Company agreed to issue up to 13,000 Revenue Based Preferred Stock ("**RBI Preferred Stock**") to Anzu RBI USA LLC ("**Anzu**" or "**Anzu RBI USA**") in consideration for up to US\$13 million in two tranches of US\$10 million and US\$3 million respectively, subject to the Company obtaining the required Shareholder approvals which were sought at the Company's Special Meeting held on 12 February 2020 (PDST) (being 13 February 2020 (Sydney time)). The key terms of the RBI Preferred Stock are set out in Attachment A to this Notice of Meeting.

Following Shareholder approval being obtained at the Special Meeting, Anzu RBI USA made its initial investment of US\$10 million in the Company for 10,000 shares of RBI Preferred Stock (US\$1000 per share) which were issued by the Company to Anzu RBI USA on 24 February 2020 (PDST) (being 25 February 2020 (Sydney time)).

Under the terms of the Preferred Stock Purchase Agreement, the Company may elect to receive a further investment of US\$3 million in a later tranche of up to 3,000 RBI Preferred Stock ("**Tranche 2 RBI Preferred Stock**") if the Company extinguishes its existing debt facility with Bridge Bank and maintains more than US\$15 million revenue in the trailing twelve (12) months.

The Company is considering, but has not yet made a determination, to elect to receive the further investment of US\$3 million in a later tranche of RBI Preferred Stock.

The original Shareholder approval under ASX Listing Rule 10.11 that was obtained for the issue of Tranche 2 RBI Preferred Stock at the Special Meeting, required under Listing Rule 10.13, that the Tranche 2 RBI Preferred Stock be issued to Anzu RBI USA no later than 1 month after the date of the Special Meeting.

Similarly, the second Shareholder approval under ASX Listing Rule 10.11 that was obtained for the issue of Tranche 2 RBI Preferred Stock at the 2020 Annual General Meeting of the Company held on

22 May 2020 (Sydney time) (**2020 AGM**), required under Listing Rule 10.13, that the Tranche 2 RBI Preferred Stock be issued to Anzu RBI USA no later than 1 month after the date of the 2020 AGM.

If Pivotal elects to draw down the second tranche of RBI Preferred Stock, the Tranche 2 RBI Preferred Stock will be issued later than 1 month after the date of the 2020 AGM, such that a fresh Shareholder approval is now being sought to approve the issue of the Tranche 2 RBI Stock ("**Tranche 2 RBI Issue**") on the same terms as the previous approvals other than the Tranche 2 RBI Preferred Stock will be issued within 1 month of this Annual Meeting.

### **Listing Rule 10.11**

Listing Rule 10.11 provides, that unless one of the exceptions in Listing Rule 10.12 applies, the Company must not issue or agree to issue securities to any of the following persons unless it obtains Shareholder approval:

- a related party of the Company;
- a person who is, or was at any time in the 6 months before the issue or agreement, a substantial (30%+) holder in the Company;
- a person who is, or was at any time in the 6 months before the issue or agreement, a substantial (10%+) holder in the Company and who has nominated a director to the Board of the Company pursuant to a relevant agreement which gives them a right or expectation to do so;
- an associate of a person referred to above; or
- a person whose relationship with the Company or a person referred to above is such that, in ASX's opinion, the issue or agreement should be approved by Shareholders.

ASX has advised that, in its opinion, Anzu is a person that falls within the category of persons in Listing Rule 10.11.3, on the basis that Anzu is a substantial holder (10%+) holder and had nominated a director (David Michael) to the board of the Company pursuant to a relevant agreement which gave Anzu the right to do so. ASX is of the view that notwithstanding the relevant agreement having been terminated, David Michael remains a director of the Company and this categorisation still applies such that the Tranche 2 RBI Issue should be approved by Shareholders. As the Tranche 2 RBI Issue falls within Listing Rule 10.11.3 and does not fall within any of the exceptions in Listing Rule 10.12, it therefore requires the approval of the Company's Shareholders under Listing Rule 10.11.

Item 6 seeks the required Shareholder approval to the Tranche 2 RBI Issue under and for purposes of Listing Rule 10.11.

If the resolution under Item 6 is passed, then the Company will be able (if it elects) to proceed with the Tranche 2 RBI Issue and will be entitled to further funding of up to US\$3 million under the Preferred Stock Purchase Agreement to be used by the Company to grow and expand its business.



If the resolution under Item 6 is not passed, the Company will not be able to proceed with the issue of Tranche 2 RBI Preferred Stock to Anzu and as a result the Company will not receive this additional funding from Anzu which may impact the Company's cash flow and future plans to grow and expand its business if it is required to repay its Bridge Bank funding. This may also result in the Company being required to seek alternative sources of funding which may result in further expenses and / or dilution for Shareholders.

### **Specific information required by Listing Rule 10.13**

In accordance with Listing Rule 10.13, information is provided to Shareholders for the purposes of obtaining Shareholder approval under Item 6 as follows:

- (a) if Pivotal elects to draw down the second tranche of the RBI Preferred Stock, the Tranche 2 RBI Preferred Stock will be issued to Anzu RBI USA LLC;
- (b) Anzu falls within the category of persons referred to in Listing Rule 10.11.3 on the basis that Anzu is a substantial holder (10%+) holder and had nominated a director to the board of the Company pursuant to a relevant agreement which gave Anzu the right to do so. ASX is of the view that notwithstanding the relevant agreement having been terminated, David Michael remains a director of the Company and this categorisation still applies;
- (c) if Pivotal elects to draw down the second tranche of this funding, the number of Tranche 2 RBI Preferred Stock that would be issued to Anzu is up to 3,000 shares of RBI Preferred Stock to be issued in a second tranche of RBI Preferred Stock at an issue price of US\$1,000 per RBI Preferred Stock to be issued under the Preferred Stock Purchase Agreement;
- (d) a summary of the material terms of the Tranche 2 RBI Preferred Stock are set out in Attachment A to this Proxy Statement;
- (e) if Pivotal elects to draw down the second tranche of this funding, the Tranche 2 RBI Preferred Stock in relation to the additional US\$3 million funding (if elected to be drawn by the Company) will be issued no later than 1 month after the date of this Annual Meeting;
- (f) if Pivotal elects to draw down the second tranche of this funding, the Company will (subject to the terms of the Tranche 2 RBI Preferred Stock) receive an aggregate of US\$3 million for the issue of 3,000 Tranche 2 RBI Preferred Stock to Anzu based on an issue price of US\$1,000 per RBI Preferred Stock. The Company has already received an amount of US\$ 10 million for the issue of 10,000 tranche 1 RBI Preferred Stock issued to Anzu;



- (g) the Tranche 2 RBI Preferred Stock will be issued under the terms of a Preferred Stock Purchase Agreement entered into between the Company and Anzu Partners LLC, the material terms of which are set out in Part A of Attachment A; and
- (h) a voting exclusion statement for Item 6 is set out in the Notice of Meeting.

**Board Recommendation and Chairman's voting intention for Item 6:**

The Board, with David Michael abstaining given he is also the Managing Director of Anzu Partners LLC, unanimously recommends that Shareholders vote in favour of the resolution in Item 6. The Chairman intends to vote all undirected proxies in favour of this resolution. This recommendation is on the basis that the Tranche 2 RBI Issue (to the extent the Company elects to receive this) will provide the Company with additional cash flow required to meet future growth and expansion plans for the business and is determined to be in the Company's best interests. The Board, having considered a range of financing alternatives including debt and equity offerings, concluded that the financing provided by the RBI Preferred Stock is the best option for the Company in its current circumstances particularly as repayment / redemption obligations are linked to the revenue generated by the Company and that the Company has flexibility to redeem all RBI Preferred Stock at any time.

**ITEM 7 – RATIFICATION OF INSTITUTIONAL PLACEMENT UNDER LISTING RULE 7.4**

**Background**

On 23 December 2020, the Company issued 6,124,786 CHESS Depositary Interests ("**Placement CDIs**") at an issue price of A\$0.86 per CDI to Viburnum Funds Pty Ltd ACN 126 348 990 as the investment manager for various accounts ("**Viburnum**") to raise US\$4,000,000. The Placement CDIs were issued under an agreement with Viburnum dated 16 December 2020 (**Viburnum Agreement**).

**ASX Listing Rule 7.1**

Subject to a number of exceptions, ASX Listing Rule 7.1 limits the amount of equity securities that a listed company can issue without the approval of its shareholders over any 12 month period to 15% of the fully paid ordinary securities it had on issue at the start of that 12 month period.

The issue of the Placement CDIs does not fit within any of these exceptions and, as it has not yet been approved by Shareholders, it effectively uses up part of the 15% limit in ASX Listing Rule 7.1, reducing the Company's capacity to issue further equity securities without Shareholder approval under ASX Listing Rule 7.1 for the 12 month period following the date of issue of the Placement CDIs.

**ASX Listing Rule 7.4**

ASX Listing Rule 7.4 allows the shareholders of a listed company to approve an issue of equity securities after it has been made or agreed to be made. If they do, the issue is taken to have been

approved under ASX Listing Rule 7.1 and so does not reduce the company's capacity to issue further equity securities without shareholder approval under that rule.

The resolution under Item 7, seeks Shareholder approval of the prior issue of Placement CDIs for the purposes of ASX Listing Rule 7.4.

If Resolution 7 is passed, the Placement CDIs will be excluded in calculating the Company's 15% limit under ASX Listing Rule 7.1, effectively increasing the number of equity securities the Company can issue without Shareholder approval over the 12 month period following the date of issue of the Placement CDIs.

If Resolution 7 is not passed, the Placement CDIs will be included in calculating the Company's 15% limit under ASX Listing Rule 7.1, effectively decreasing the number of equity securities the Company can issue without Shareholder approval over the 12 month period following the date of issue of the Placement CDIs.

### **ASX Listing Rule 7.5**

The Company provides the following information in accordance with ASX Listing Rule 7.5.

- a) The Placement CDIs were issued on 23 December 2020 pursuant to ASX Listing Rule 7.1 to Viburnum, a professional and sophisticated investor, utilising the Company's available placement capacity under Listing Rule 7.1. Accordingly, Shareholder approval was not required for the issue of the Placement CDIs. Viburnum is not a related party of the Company.
- b) 6,124,786 Placement CDIs were issued with each Placement CDIs being fully paid and issued on the same terms and conditions as the Company's existing CDIs and with one (1) CDI representing one (1) share of common stock of the Company.
- c) The Placement CDIs were issued by the Company at a price of A\$0.86 per CDI.
- d) The purpose of the issue of the Placement CDIs was to raise US\$4,000,000, which will be used principally to fund higher inventory based on an expected increase in product demand from customers, along with capital expenditures related to additional tooling required to manufacture Pivotal's next generation gas flow controllers (GFCs) to service the fast-growing atomic layer deposition and etch (ALD/ALE) markets.
- e) The Placement CDIs were issued on 23 December 2020 in accordance with the terms of the Viburnum Agreement, the material terms of which include:
  - i. Standard terms and conditions including standard representations and warranties for an institutional investor; and

- ii. each Placement CDI was issued to Viburnum in reliance on Regulation S of the United States Securities Act of 1933, as amended (**US Securities Act**) and therefore Viburnum has agreed not to sell or otherwise transfer the Placement CDIs (or the underlying shares of common stock) except in transactions exempt from, or not subject to, the registration requirements of the US Securities Act.
- f) A voting exclusion statement is included in this Notice of Meeting.

#### **Board Recommendation and Chairman's voting intention for Item 7:**

The Company wishes to retain as much flexibility as possible to issue additional equity securities in the future without having to obtain Shareholder approval for such issues under ASX Listing Rule 7.1. Accordingly, the Board unanimously recommends that Shareholders vote in favour of the resolution in Item 7. The Chairman intends to vote all undirected proxies in favour of this resolution.

#### **ITEM 8 – APPROVAL OF 2012 EQUITY INCENTIVE PLAN**

As noted above, ASX Listing Rule 7.1 provides that a listed company must not, without prior approval of its shareholders, issue or agree to issue securities if the number of securities issued or agreed to be issued, or when aggregated with the number of shares issued by the company during the 12 months immediately preceding the date of issue or agreement, exceeds 15% of the number of shares on issue at the start of that 12 month period.

Listing Rule 7.2, exception 13 provides an exception to ASX Listing Rule 7.1 such that an issue under an employee incentive scheme is not calculated as part of the 15% limitation if, within three years before the issue date of issue one of the following occurred:

- in the case of a scheme established before the entity was listed, a summary of the terms of the scheme and the maximum number of equity securities proposed to be issued under the scheme were set out in the Prospectus; or
- ordinary shareholders approved the issue of equity securities under the scheme as an exception to Listing Rule 7.1 in accordance with the Listing Rules.

A copy of Pivotal's 2012 Equity Incentive Plan (**Plan**) Rules was released to ASX on 2 July 2018 being the date that the Company listed on the ASX, and the Plan was last approved by Shareholders for the purpose of Listing Rule 7.2, exception 13 at the Company's 2020 AGM.

This exception under LR 7.2, exception 13 is only available to the extent that:

- any issue of equity securities under the Plan does not exceed the maximum number of securities proposed to be issued as set out in the Company's 2020 AGM notice of meeting; and
- there is no material change to the terms of the Plan.

In accordance with the terms of the Plan, the Board had approved (subject to Shareholder approval) an increase to the maximum number of Shares reserved for issuance under its Plan (**Share Cap**) by 3,344,778 Shares resulting in the Share Cap increasing from 23,620,222 Shares to 26,965,000 Shares. Given the proposed increase in the Share Cap, the Company is now seeking Shareholder approval for the purpose of Section 422(b)(1) of the U.S. Internal Revenue Code and Listing Rule 7.2, exception 13 to ensure this exception continues to apply to the Plan as amended and as per the summary attached as Attachment B to this Notice of Meeting (**Amended Plan**).

As at the date of this Notice of Meeting, 1,344,778 Shares remain reserved and available. The increased Share Cap was approved by the Board to ensure the Company was able to issue 100,000 options to each of Ryan Benton and Peter McGregor for which shareholder approval is being sought under Items 4 and 5 respectively, and to provide Pivotal with flexibility to issue options to existing and new employees in the future.

If Shareholders approve Item 8, any issue of securities under the Amended Plan during the 3 year period after the AGM will not use up any of Pivotal's 15% capacity on issuing equity securities without shareholder approval. However, exception 13 does not apply to Directors and their associates, who are deemed related parties of the Company, and issues to such persons will require separate approval under Listing Rule 10.14.

If shareholders do not approve Item 8, once the balance of the existing Share Cap is used up, the issue of securities under the Plan will be included in calculating Pivotal's 15% capacity in ASX Listing Rule 7.1, effectively decreasing the number of equity securities it can issue without shareholder approval over the 12 month period following the issue of the securities.

An approval under this Item 8 is only available to the extent that:

- any issue of equity securities under the Amended Plan does not exceed the maximum number of securities proposed to be issued as set out in this Notice under Item 8; and
- there is no material change to the terms of the Amended Plan.

For the purposes of ASX Listing Rule 7.2 exception 13 the following information is provided

- a summary of the Amended Plan is attached as Attachment B.
- a total of 2,910,000 options have been issued under the Plan since the Company obtained approval of the Plan at its last AGM.
- subject to shareholder approval, the maximum number of equity securities proposed to be issued under the Amended Plan is 26,965,000 of equity securities.

- a voting exclusion statement is included in the Notice of Annual Meeting.

**Board Recommendation and Chairman's voting intention for Item 8:**

In the interests of good governance, the Directors (who are all eligible to participate in the Plan) abstain from making a recommendation on this Item 8. The Chairman intends to vote undirected proxies in favour of this item.

## OTHER BUSINESS

The Company, being a company incorporated in the state of Delaware, United States, is not required to meet the *Corporations Act 2001 (Cth)* (**Corporations Act**) requirements to lay before the meeting the annual financial report and other related reports.

The Board of the Company has however decided to lay before the meeting the Company's audited financial statements and the reports for the year ended 31 December 2020.

The Corporations Act does not require a vote of Shareholders on the reports or statements. However, the Shareholders will be given ample opportunity to raise questions or comments in relation to the management of the Company.

Copies of the full financial report for consideration at the meeting can be accessed on the company's website: <https://www.pivotalsys.com/>.

If a Shareholder would like to receive a hard copy 2020 Annual Report, please contact the Company's share registry, American Stock Transfer & Trust Company, LLC.

If a CDI Holder would like to receive a hard copy 2020 Annual Report, please contact the Company's CDI Registry, Link Market Services Limited.

## Attachment A – Key terms of the RBI Preferred Stock

<b>Part A – Key terms of the RBI Preferred Stock set out in the Preferred Stock Purchase Agreement</b>	
Issue price per RBI Preferred Stock	US\$1,000 per RBI Preferred Stock
Payment of funding in tranches	<p>US\$13 million which can be drawn down in tranches by the Company as follows:</p> <ul style="list-style-type: none"> <li>• Tranche 1: US\$10 million - to be disbursed within ten (10) business days of Closing or at a later date as requested by the Company.</li> <li>• Tranche 2: US\$3 million – available to be disbursed in conjunction with the replacement of the Bridge Bank senior term loan currently held by the Company, with such issue being subject to any necessary ASX waiver or ASX required Shareholder approval.</li> </ul>
Anticipated Redemptions	<p>The Company is anticipated to redeem RBI Preferred Stock in an amount equal to a fixed percentage of net revenues paid:</p> <ul style="list-style-type: none"> <li>• on 1 March 2021 with respect to revenues attributable to the last 10 calendar months of 2020; and thereafter</li> <li>• within two months after the end of each financial quarter (ie. paid quarterly on the basis of the prior quarter),</li> </ul> <p>this being referred to as the “Anticipated Redemption Schedule”.</p> <p>The redemption amount is 4% of revenue for the initial \$10 million. This amount would increase to 6% of revenue, if the Company exercises its option to receive the additional funding of US\$3 million.</p>
Failure to make Anticipated Redemptions	<p>If the Company does not meet the Anticipated Redemption Schedule and such failure is not rectified within 30 days of the Company receiving a rectification notice, then, while it remains in default, the Redemption Price per share of RBI Preferred Stock increases to the greater of US\$3,000 per share or the then current RBI Redemption Price plus US\$1,000 per share, but only applicable to the past due redemption payments.</p>
Redemption prior to the first anniversary of Closing	<p>If the Company elects to redeem any RBI Preferred Stock prior to the first anniversary of Closing, then the Company must pay the Investor the Redemption Price of US\$1,200 per share plus any accrued redemption amounts at the time of early redemption.</p>

Protective covenants	<p>The Preferred Stock Purchase Agreement contains typical covenants to prevent the liquidation of the Company or distribution of proceeds without first redeeming the RBI Preferred Stock including that the Company will not, without the prior written consent of the investors who subscribed for RBI Preferred Stock under the Preferred Stock Purchase Agreement, do certain things including liquidate the Company, make any amendments to the constitutional documents of the Company in a manner adverse to the holders of the RBI Preferred Stock or incur any debt that is senior to the RBI Preferred Stock.</p> <p>There are no Financial Covenants associated with the RBI Preferred Stock.</p>
Non-transferable	The shares of RBI Preferred Stock are not transferable other than with the consent of the Company.

<b>Part B – Key terms of RBI Preferred Stock set out in the Amended Certificate</b>	
Par value	Each share of RBI Preferred Stock will have par value of US\$0.00001
Dividend	Holders of RBI Preferred Stock will be entitled to a non-cumulative preference dividend of 2% of the original issue price (of US\$1,000 per share), in priority to the rights of holders of Common Stock. Any dividend payment requires Board approval.
No Voting Rights other than in limited circumstances:	<p>RBI Preferred Stockholders will not be entitled to vote at any general meeting of the Company except in the following circumstances:</p> <ul style="list-style-type: none"> <li>• On a proposal: <ul style="list-style-type: none"> <li>○ that affects rights attached to RBI Preferred Stock;</li> <li>○ to wind up the Company; or</li> <li>○ for the disposal of the whole of the property, business and undertaking of the Company;</li> </ul> </li> <li>• On a resolution to approve: <ul style="list-style-type: none"> <li>○ the terms of a share buy-back agreement;</li> <li>○ a reduction of the share capital of the Company,</li> </ul> <p>other than a resolution to approve a buy-back or reduction of capital with respect to RBI Preferred Stock;</p> </li> <li>• During a period in which a dividend or part of a dividend in respect of an RBI Preferred Stock is in arrears; or</li> </ul>



	<ul style="list-style-type: none"> <li>During the winding-up of the Company.</li> </ul> <p>At a general meeting of the Company at which RBI Preferred Stockholders may vote, they are entitled:</p> <ul style="list-style-type: none"> <li>to one vote on a show of hands; and</li> <li>to one vote for each RBI Preferred Stock on a poll.</li> </ul> <p>RBI Preferred Stockholders will have the same rights as holders of shares of Common Stock/CDIs in the Company to receive notices, reports and audited accounts from the Company and to attend general meetings.</p>
<b>Redemption</b>	<p><b>Anticipated Redemptions</b> See Preferred Stock Purchase Agreement summary above.</p> <p><b>Optional Redemption</b> The RBI Preferred Shares can be redeemed by the Company at any time at the RBI Redemption Price (described further below).</p> <p><b>Mandatory Redemption</b> In the event any Redemption Event occurs, the Company must immediately redeem any outstanding RBI Preferred Stock at an amount equal to the then-applicable RBI Redemption Price (described further below).</p> <p>If any RBI Preferred Stock are not redeemed on the applicable redemption date, all such unredeemed RBI Preferred Stock shall remain outstanding and the Company shall (subject to applicable law) pay interest on the applicable Redemption Price at a rate of 17% per annum following the applicable mandatory redemption date until payment in full. All such amounts outstanding will be secured under the terms of a Security Agreement entered into between the Company and Anzu as a condition to the Preferred Stock Purchase Agreement.</p> <p>A Redemption Event will occur:</p> <ul style="list-style-type: none"> <li>upon any voluntary or involuntary insolvency, liquidation, or similar act of bankruptcy with respect to the Company;</li> <li>upon an Event of Default as defined in the Preferred Stock Purchase including failure to maintain a redemption accrual account during the first year, breach of the protective covenants in the Preferred Stock Purchase Agreement or a material unremedied breach by the Company of its arrangements with Bridge Bank;</li> </ul>

	<ul style="list-style-type: none"> <li>• on any occurrence of a person or entity (or affiliated persons or entities) becoming owner (directly or indirectly) of securities in the Company representing more than 50% of the voting power in the Company's securities;</li> <li>• where there is a merger, consolidation or other business combination involving the Company where, immediately after the consummation of such transaction, the stockholders of the Company immediately prior to the transaction do not continue to own either (i) voting securities representing more than 50% of the voting power of the surviving entity under the transaction or (ii) more than 50% of the combined outstanding voting power of the parent of the surviving entity under the transaction; or</li> <li>• on a sale or disposal of all or substantially all of the Company's assets, property or business.</li> </ul>
RBI Redemption Price	<p>The redemption price per share of RBI Preferred Stock starts at US\$1,200 (plus accrued redemption amounts up to the date of redemption) for the first year following closing, is US\$1,250 in year 2 then escalates by US\$250 per year up to a maximum of US\$3,000 per share while the Company meets the Anticipated Redemption Schedule plus in each case any dividends declared but unpaid on the RBI Preferred Stock.</p> <p>The RBI Redemption Price increases during the default period if the Company does not meet the Anticipated Redemption Schedule as described in Part A above.</p>
Term:	There is no fixed term to the redemption period on the RBI Preferred Stock.
Liquidation rights – Preferential payments	<p>In the event of a winding up of the Company, or the occurrence of a Liquidation Transaction, to the extent that the RBI Preferred Stock have not been redeemed, the Company shall first pay to holders an amount equal to the then-applicable Redemption Price per RBI Preferred Stock in priority to payment of any proceeds to holders of shares of Common Stock or Common Prime Stock with the balance of any proceeds to be distributed among the holders of Common Stock and Common Prime Stock pro rata based on the number of Common Stock and Common Prime Stock held by each.</p> <p>A Liquidation Transaction shall be deemed to occur if the Company (a) sells or disposes of all or substantially all of its assets, property or business (b) undertakes a merger or consolidation with another entity or (c) effects a liquidation, dissolution or winding up of the Company other than certain excepted circumstances such as (i) a merger effected exclusively for the</p>

	purpose of changing the domicile of the Company, (ii) a bona fide equity financing in which the Company is the surviving corporation or (iii) a transaction in which the stockholders of the Company immediately prior to the transaction have sufficient rights to elect 50% or more of the directors of the surviving or acquiring entity following the transaction
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## **Attachment B – Summary of 2012 Equity Incentive Plan**

The Company's current 2012 Equity Incentive Plan (**2012 Plan**) provides for the grant of incentive stock options to employees of the Company and for the grant of options, restricted stock unit, stock appreciation right or restricted stock awards to employees, officers, directors and consultants of the Company. The Board has approved (subject to Shareholder approval being obtained) an increase to the Share Cap by 3,344,778 so that the total number of shares permitted to be issued under the 2012 Plan is increased from 23,620,222 Shares to 26,965,000 Shares.

The 2012 Plan is administered by a committee created by the Board, or by the Board if no committee is created. Subject to the provisions of the 2012 Plan and the ASX Listing Rules, the administrator generally has the authority to, among other things, construe and interpret the 2012 Plan and modify or terminate rules and regulations relating to the 2012 Plan, approve persons to receive awards, approve the form and terms of awards and the terms of vesting, exercisability and payment of awards, determine the number of Shares subject to awards, grant waivers of any conditions, correct any defect or inconsistency or extend any vesting period under the 2012 Plan.

In the event of certain corporate events or changes in the Company's capitalisation, the administrator will make adjustments to the number of Shares reserved for issuance under the 2012 Plan, the exercise prices of and number of Shares subject to outstanding options and stock appreciation rights, and the purchase prices of and/or number of shares subject to other outstanding awards, subject to compliance with applicable rules and regulations including the ASX Listing Rules.

In the event of an acquisition or other combination, any or all outstanding awards may be assumed, converted or replaced by the successor or acquiring entity or may be substituted for equivalent awards granted by the successor or acquiring entity. Any awards not assumed or replaced in the acquisition or combination will terminate, without accelerating vesting, immediately prior to the consummation of such acquisition or combination at the time and upon the conditions as the committee determines.

Subject to compliance with applicable law including the ASX Listing Rules, the Board has the authority to amend or terminate the 2012 Plan or terminate awards upon a dissolution or liquidation of the Company, followed by the payment of creditors and the distribution of any remaining funds to the Company's stockholders. Certain amendments require the approval of the shareholders.

Unless earlier terminated, the 2012 Plan will terminate on the earlier of ten years from the date of Board approval or stockholder approval of the 2012 Plan.

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ADDRESS LINE 5  
ADDRESS LINE 6

### LODGE YOUR INSTRUCTION



ONLINE

[www.linkmarketservices.com.au](http://www.linkmarketservices.com.au)



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BY HAND

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1A Homebush Bay Drive, Rhodes NSW 2138



ALL ENQUIRIES TO

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X99999999999

## CDI VOTING INSTRUCTION FORM

STEP 1

### DIRECTION TO CHESS DEPOSITARY NOMINEES PTY LTD

I/We being a holder of CHESS Depositary Interests (CDIs) of Pivotal Systems Corporation (Company) hereby direct CHESS Depositary Nominees Pty Ltd (CDN) to vote the shares underlying my/our CDI holding at the Annual General Meeting of stockholders of the Company to be held at **4:00pm (PDT), Thursday 20 May 2021 (being 9:00am (AEST) Friday, 21 May 2021)**, (the Meeting) and at any adjournment or postponement of that Meeting, in accordance with the following directions. By execution of this CDI Voting Instruction Form the undersigned hereby authorises CDN to appoint such proxies or their substitutes in their discretion to vote in accordance with the directions set out below.

The Meeting will be conducted as a virtual meeting and you can participate by logging in: Online at <https://agmlive.link/PVS21> (refer to details in the Virtual Annual General Meeting Online Guide). Please note that CDI Holders will not be able to vote online during the AGM but will be able to ask questions, as set out in the Notice of Meeting.

STEP 2

### PROXY APPOINTMENT— this only needs to be completed if you wish to attend the Meeting or appoint another person to attend the Meeting

If you wish to appoint yourself as CDN's proxy to attend the Meeting in person or appoint another person or company as CDN's proxy, who need not be a stockholder, to attend and act on your behalf at the Meeting or any adjournment or postponement thereof, please insert their name(s) and email address in these boxes.

Name

Email

Link will then send you a legal form of proxy which will grant you or the person specified by you the right to be appointed as CDN's proxy to attend and vote at the Meeting. Please remember that a legal proxy is subject to all terms and conditions that apply to proxies as outlined in the *Notice of Annual Meeting* including any cut off time for receipt of valid proxies.

STEP 3

### VOTING INSTRUCTIONS

Voting instructions will only be valid and accepted by CDN if they are signed and received no later than **Tuesday, 18 May 2021 at 9.00 pm Sydney Time (being Monday, 17 May 2021 at 4.00 pm PDT)**.

Please read the voting instructions overleaf before marking any boxes with an ☒.

#### Resolutions

	For	Against	Abstain*		For	Against	Abstain*
1 Ratification of BDO Audit Pty Ltd as Auditor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	5 Issue of Options to Director, Peter McGregor	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2 Re-Election of Kevin Landis as a Director*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	6 Approval to Issue Tranche 2 RBI Preferred Stock to Anzu RBI USA	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3 Re-Election of David Michael as a Director*	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	7 Ratification of Institutional Placement under Listing Rule 7.4	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4 Issue of Options to Director, Ryan Benton	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	8 Approval of 2021 Equity Incentive Plan	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



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

STEP 4

### SIGNATURE OF CDI HOLDERS – THIS MUST BE COMPLETED

CDI Holder 1 (Individual)

Sole Director and Sole Company Secretary

Joint CDI Holder 2 (Individual)

Director/Company Secretary (Delete one)

Joint CDI Holder 3 (Individual)

Director

This form should be signed by the CDI Holder in accordance with the instructions overleaf.



## HOW TO COMPLETE THIS CDI VOTING INSTRUCTION FORM

### YOUR NAME AND ADDRESS

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

### DIRECTION TO CHESSE DEPOSITARY NOMINEES PTY LTD

Each CHESSE Depositary Interest (CDI) is evidence of an indirect ownership in the Company's shares of common stock (Shares). The underlying Shares are registered in the name of CHESSE Depositary Nominees Pty Ltd (CDN). As holders of CDIs are not the legal owners of the Shares, CDN is entitled to vote at the Meetings of stockholders on the instruction of the registered holders of the CDIs.

### APPOINTMENT OF A PROXY

If you wish to appoint yourself as CDN's proxy to attend the Meeting in person or appoint some person or company as CDN's proxy, who need not be a stockholder, to attend and act on your behalf at the Meeting or any adjournment or postponement thereof, please insert your name(s) and email address or the name and email address of your chosen appointee in the box in Step 2. Link will then send you a legal form of proxy which will grant you or the person specified by you the right to attend and vote at the Meeting. Please remember that a legal proxy is subject to all terms and conditions that apply to proxies as outlined in the *Notice of Annual Meeting* including any cut off time for receipt of valid proxies.

### SIGNING INSTRUCTIONS

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

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

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

**Power of Attorney:** to sign under Power of Attorney, you must lodge the Power of Attorney with Link. If you have not previously lodged this document for notation, please attach a certified photocopy of the Power of Attorney to this form when you return it.

**Companies:** with respect to an Australian company, where the company has a Sole Director who is also the Sole Company Secretary, this form must be signed by that person. If the company (pursuant to section 204A of the *Corporations Act 2001*) does not have a Company Secretary, a Sole Director can also sign alone. Otherwise this form must be signed by a Director jointly with either another Director or a Company Secretary. Please indicate the office held by signing in the appropriate place. With respect to a U.S. company or other entity, this form may be signed by one officer. Please give full name and title under the signature.

### LODGEMENT OF A CDI VOTING INSTRUCTION FORM

This CDI Voting Instruction Form (and any Power of Attorney under which it is signed) must be received at an address given below by **no later than Tuesday, 18 May 2021 at 9.00 pm Sydney Time (being Monday, 17 May 2021 at 4.00 pm PDT)**. Any CDI Voting Instruction Form received after that time will be invalid.

CDI Voting Instruction Forms may be lodged using the reply paid envelope or:



#### ONLINE

[www.linkmarketservices.com.au](http://www.linkmarketservices.com.au)

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



#### BY MAIL

Pivotal Systems Corporation.  
C/- Link Market Services Limited  
Locked Bag A14  
Sydney South NSW 1235  
Australia



#### BY FAX

+61 2 9287 0309



#### BY HAND

delivering it to Link Market Services Limited\*  
1A Homebush Bay Drive  
Rhodes NSW 2138

\* in business hours (Monday to Friday, 9:00am–5:00pm)



# Virtual Meeting Online Guide

## Before you begin

Ensure your browser is compatible.  
Check your current browser by going to the website: **[whatismybrowser.com](http://whatismybrowser.com)**

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Supported browsers are:

- Chrome – Version 44 & 45 and after
- Firefox – 40.0.2 and after
- Safari – OS X v10.9 & OS X v10.10 and after
- Internet Explorer 9 and up

**To attend and ask questions you must have your securityholder number and postcode.**

Appointed Proxy: Your proxy number will be provided by Link before the meeting.

**Please make sure you have this information before proceeding.**

## Step 1

Open your web browser and go to <https://agmlive.link/PVS21> and select the relevant meeting.

## Step 2

Log in to the portal using your full name, mobile number, email address, and company name (if applicable).

Please read and accept the terms and conditions before clicking on the blue **'Register and Watch Meeting'** button.

- On the left – a live video webcast of the Meeting
- On the right – the presentation slides that will be addressed during the Meeting
- At the bottom – buttons for 'Ask a Question' and a list of company documents to download

**Note:** If you close your browser, your session will expire and you will need to re-register. If using the same email address, you can request a link to be emailed to you to log back in.

## Contact us

### Australia

T 1300 554 474

E [info@linkmarketservices.com.au](mailto:info@linkmarketservices.com.au)

### New Zealand

T +64 9 375 5998

E [enquiries@linkmarketservices.co.nz](mailto:enquiries@linkmarketservices.co.nz)

## How to ask a question

**Note:** Only securityholders are eligible to ask questions.

You will be prompted to enter your securityholder number or proxy details before you can ask a question. To ask a question, click on the 'Ask a Question' button either at the top or bottom of the webpage.

The **'Ask a Question'** box will then pop up with two sections for completion.

In the **'Regarding'** section click on the drop down arrow and select the category/resolution for your question.

Click in the **'Question'** section and type your question and click on 'Submit'.

A **'View Questions'** box will appear where you can view your questions at any point. Only you can see the questions you have asked.

If your question has been answered and you would like to exercise your right of reply, you can submit another question.

Note that not all questions are guaranteed to be answered during the Meeting, but we will do our best to address your concerns.

## Downloads

View relevant documentation in the Downloads section.