

Form 603

Corporations Act 2001
Section 671B

Notice of initial substantial holder

To Company Name/Scheme Envirosuite Limited (EVS)

ACN/ARSN ACN 122 919 948

1. Details of substantial holder (1)

Name Envirosuite Limited and its associates listed in Annexure A

ACN/ARSN (if applicable) ACN 122 919 948

The holder became a substantial holder on 04 / 09 / 2024

2. Details of voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Fully paid ordinary shares	158,500,000	158,500,000	11.11%

3. Details of relevant interests

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
EVS	Relevant interest under sections 608(1)(b), 608(1)(c) and 608(9) of the <i>Corporations Act 2001</i> (Cth), being a relevant interest arising as a result of (i) having control over the exercise of power to dispose of shares held by Hitachi Construction Machinery Co., Ltd (Hitachi) under an 18 month standstill arrangement, and (ii) having control over the exercise of certain rights to vote attached to shares held by Hitachi in relation to EVS control transactions, each as set out in a Subscription Agreement between EVS and Hitachi dated 2 September 2024. EVS has no right to acquire the shares the subject of the Subscription Agreement. A copy of the Subscription Agreement is attached at Annexure B .	158,500,000 fully paid ordinary shares

4. Details of present registered holders

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holder of relevant interest	Registered holder of securities	Person entitled to be registered as holder (8)	Class and number of securities
EVS	Hitachi	Hitachi	158,500,000 fully paid ordinary shares

5. Consideration

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non-Cash	
EVS	4 September 2024	N/A	N/A	158,500,000 fully paid

				ordinary shares
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6. Associates

The reasons the persons named in paragraph 3 above are associates of the substantial holder are as follows:

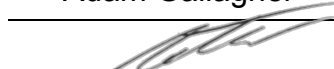
Name and ACN/ARSN (if applicable)	Nature of association
N/A	

7. Addresses

The addresses of persons named in this form are as follows:

Name	Address
EVS	Level 30, 385 Bourke Street, Melbourne, Victoria 3000
HCM	16-1, Higashiueno 2-chome, Taito-ku, Tokyo, 110-0015 Japan

Signature

print name **Adam Gallagher** capacity **Secretary**
 sign here  date **5 / 9 / 2024**

DIRECTIONS

- (1) If there are a number of substantial holders with similar or related relevant interests (eg a corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.
- (2) See the definition of "associate" in section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
- (6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (7) Include details of:
 - (a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
 - (b) any qualification of the power of a person to exercise, control the exercise of, or influence the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).

See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.
- (8) If the substantial holder is unable to determine the identity of the person (eg if the relevant interest arises because of an option) write "unknown".
- (9) Details of the consideration must include any and all benefits, money and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.

Annexure A – Associates of EVS

Country	EVS Entities
Australia	Envirosuite Operations Pty Ltd Envirosuite Holdings Pty Ltd Envirosuite Holdings No 2 Pty Ltd Envirosuite Australia No 2 Pty Ltd EMS Bruel & Kjaer Pty Ltd
Canada	Envirosuite Canada Inc
United States of America	EMS Bruel & Kjaer Inc dba Envirosuite Inc Envirosuite Corp
South America	Envirosuite Chile SpA Envirosuite Colombia S.A.S Envirosuite Brasil Comercializacao De Equipamentos Ltda
Spain	Envirosuite Ibérica S.A. Envirosuite Europe Sociedad Limitada
UK	Envirosuite UK Ltd
Denmark	Envirosuite Denmark APS
The Netherlands	Envirosuite BV
China	Beijing Envirosuite Environmental Science & Technology Co Beijing Hengliruiyuan Environmental Engineering Co Ltd
Taiwan	Envirosuite Taiwan Ltd
Korea	Envirosuite Korea Ltd
The Philippines	Envirosuite Philippines Inc.

KING & WOOD
MALLESONS
金杜律师事务所

Execution Version

Subscription Agreement

Dated 2 September 2024

Hitachi Construction Machinery Co., Ltd. (**Subscriber**)
Envirosuite Limited (**Company**)

King & Wood Mallesons

Level 27, Collins Arch
447 Collins Street
Melbourne VIC 3000
T +61 3 9643 4000
F + 613 9643 5999
DX 101 Melbourne
www.kwm.com

Subscription Agreement

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Subscription Agreement

Details

Parties	Subscriber and Company	
Subscriber	Name	Hitachi Construction Machinery Co., Ltd
	Formed in	Japan
	Address	16-1, Higashiueno 2-chome, Taito-ku, Tokyo, 110-0015 Japan
	Email	legal-sec@hitachi-kenki.com
	Attention	HCM Legal Div.
Company	Name	Envirosuite Limited
	ACN	122 919 948
	Formed in	Australian Capital Territory
	Address	Level 30, 385 Bourke Street, Melbourne, Victoria, 3000
	Email	legal@envirosuite.com
	Attention	EVS Legal Team
Governing law	Victoria	

Recitals	A	The Company has entered into the Collaboration Agreement with the Subscriber.
	B	In connection with the Collaboration Agreement, the Subscriber has agreed to subscribe for, and the Company has agreed to issue, the Subscription Shares for the Subscription Price, on the terms of this document.

Subscription Agreement

General terms

1 Definitions and interpretation

1.1 Definitions

Unless the contrary intention appears, these meanings apply:

Affiliates means:

- (a) for the Subscriber:
 - (i) Wenco International Mining Systems; and
 - (ii) any other entity in which the Subscriber continuously controls decision making, or in which the decision making is controlled by the Subscriber holding directly or indirectly more than 50% of the shares or the voting rights in the relevant entity; and
- (b) for the Company, any other entity which the Company continuously controls decision making, or the decision making is controlled by the Company holding directly or indirectly more than 50% of the shares or the voting rights in the relevant entity.

Associate has the meaning given in Division 2 of Part 1.2 of the Corporations Act as if section 12(1) of the Corporations Act included a reference to this agreement and the Company was the designated body.

ASX means ASX Limited or the market operated by it, as the context requires.

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

Authorised Officer means a director or secretary of a party or any other person nominated by a party to act as an Authorised Officer for the purposes of this document.

Business Day means a day on which banks are open for general banking business in both Melbourne, Victoria and Tokyo, Japan (not being a Saturday, Sunday or public holiday in that place).

Cleansing Statement means a written notice by the Company to ASX pursuant to section 708A(5) of the Corporations Act meeting the requirements of section 708A(6) of the Corporations Act.

Collaboration Agreement means the agreement of that name between the parties dated on or around the date of this document.

Company Warranties means the warranties set out in Schedule 2 and **Company Warranty** has a corresponding meaning.

Completion means the completion of the issue and allotment of the relevant Subscription Shares in accordance with this document and **Complete** has a corresponding meaning.

Completion Date means:

- (a) in relation to the Subscription Shares – Tranche 1, 4 September 2024 or any other date agreed in writing by the Company and the Subscriber; and
- (b) in relation to the Subscription Shares – Tranche 2, within 5 Business Days of receipt of Shareholder Approval or any other date agreed in writing by the Company and the Subscriber.

Confidential Information means all Information exchanged between the parties before, on or after the date of this document including:

- (a) information which, either orally or in writing is designated or indicated as being the proprietary or confidential information of a party or any of its Related Bodies Corporate;
- (b) information derived or produced partly or wholly from the Information including any calculation, conclusion, summary or computer modelling;
- (c) trade secrets or information which is capable of protection at law or equity as confidential information,

whether the Information was disclosed:

- (d) orally, in writing or in electronic or machine readable form;
- (e) before, on or after the date of this document;
- (f) as a result of discussions between the parties concerning or arising out of the subscription for the Subscription Shares; or
- (g) by a party or any of its Representatives, any of its Related Bodies Corporate, any Representatives of its Related Bodies Corporate or by any third person.

Constitution means the constitution of the Company.

Control means, with respect to any person other than an individual, the possession, directly or indirectly, of the power to:

- (a) determine the financial or operating policies of the person;
- (b) control the membership of the board or other governing body of the person; or
- (c) control the casting of more than one half of the maximum number of votes that may be cast at a general meeting of the person,

regardless of whether the power is in writing or not, expressed or implied, formal or informal or arises by means of trusts, agreements, arrangements, understandings, practices or otherwise.

Controller has the meaning it has in the Corporations Act.

Convertible Securities has the meaning given to that term in the ASX Listing Rules.

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

Costs means costs, charges and expenses, including those incurred in connection with advisers and any legal costs on a full indemnity basis.

Cut Off Date means 30 November 2024 or such other later date as may be agreed between the parties.

Details means the section of this document headed "Details".

Disclosure Letter means the letter agreed by the Company and the Subscriber at least two Business Days before the date of this document and which has been initialled by or on behalf of the Company and the Subscriber or acknowledged via email, in each case for the purposes of identification, which contains disclosures in respect of the Company Warranties, and includes all of its schedules and annexures (as relevant).

Disclosure Material means:

- (a) all of the information contained in the Disclosure Letter; and
- (b) all of the information disclosed by, or on behalf of, the Company to the Subscriber or any of its Affiliates or Related Bodies Corporate (or its or their Representatives) in connection with the Subscriber's proposed investment in the Company, including information requested in the Excel spreadsheet titled 'PJ Ozone_Information Request List v3' dated 6 July 2024 and information relating to the business, assets or affairs of the Company or any of its Related Bodies Corporate, and all past, current and prospective financial, accounting, legal, trading, marketing, technical and business information.

Dispose means, in respect of a security, sell, assign, transfer, create a trust or option over, alienate the right to exercise the vote attached to or decrease any economic interest in.

Encumbrance means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or (2) of the PPSA, or any agreement to create any of them or allow them to exist.

Entitlement has the meaning given in clause 9.1(a).

Equity Security has the meaning given to that term in the ASX Listing Rules.

Excluded Information means Confidential Information which:

- (a) is in or becomes part of the public domain other than through breach of this document or an obligation of confidence owed to a party or any Related Body Corporate of a party;
- (b) the party receiving the Confidential Information can prove by contemporaneous written documentation was already known to it at the time of disclosure by a party or its Related Bodies Corporate or Representatives (unless such knowledge arose from disclosure of information in breach of an obligation of confidentiality);
- (c) the party receiving the Confidential Information acquires from a source other than the party disclosing the Confidential Information or any Related Body Corporate or Representative of that party where such source is entitled to disclose it; or

- (d) is independently developed by the party receiving Confidential Information without violating this agreement.

Fairly Disclosed in relation to a matter means disclosed in sufficient detail so as to allow a reasonable and sophisticated investor to be (or be reasonably expected to be) aware of, identify or determine, the existence and nature of the matter.

Further Placement means any fundraising by way of the issue of any Equity Securities including, but not limited to, a placement, entitlement issue or Security Purchase Plan but excluding any issue of any Equity Securities:

- (a) under a dividend or distribution plan (as defined in the ASX Listing Rules);
- (b) under an employee or director equity incentive scheme operated by the Company from time to time (it being agreed that no Shares may be issued prior to 1 September 2025 pursuant to the Company's employee equity incentive scheme in respect of the financial year ending 30 June 2025);
- (c) to PfG in the form of warrants issued in connection with any new or amended debt finance facility provided by PfG to the Group (including Equity Securities issued upon conversion or exercise of those warrants); or
- (d) on conversion or exercise of any Convertible Securities which are on issue as at the date of this document.

Further Placement Notice has the meaning given in clause 9.1(b).

Government Agency means any government, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity in any part of the world.

Group means the Company and its Related Bodies Corporate.

Group Company means the Company and each of its subsidiaries (as that term is defined in the Corporations Act).

GST has the meaning given in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Immediately Available Funds means cash, bank cheque or telegraphic or other electronic means of cleared funds.

Information means all information, regardless of its material form, relating to or developed in connection with:

- (a) the business, technology or other affairs of a party or any Related Body Corporate of a party; or
- (b) any systems, technology, ideas, concepts, know-how, techniques, designs, specifications, blueprints, tracings, diagrams, models, functions, capabilities and designs (including computer software, manufacturing processes or other information embodied in drawings or specifications), intellectual property or any other information which is marked "confidential" or is otherwise indicated to be subject to an obligation of confidence owned or used by or licensed to a party or a Related Body Corporate of a party.

A person that is not an individual is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to its property;
- (c) it is subject to any arrangement (including a deed of company arrangement or scheme of arrangement), assignment, moratorium or compromise or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this document);
- (d) an application or order has been made (and in the case of an application which is disputed by the person, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, in respect of any of the things described in any of the above paragraphs;
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand;
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act;
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to any of the things described in the above paragraphs happens in connection with that person under the law of any jurisdiction.

Intellectual Property means:

- (a) all copyrights, trademarks, patents, licences; trade secrets; service marks, designs, business names, data base rights, domain names, inventions, know-how and other intellectual property rights and interests, whether registered or unregistered;
- (b) each applications therefor and reissues, extensions or renewals thereof; and
- (c) goodwill associated with any of the foregoing, together with rights to sue for past, present and future infringement of intellectual property and the associated goodwill.

Nominee Director has the meaning given in clause 8.1(a).

Official Quotation means official quotation by ASX in accordance with the ASX Listing Rules.

PfG means, as relevant, Partners for Growth Managers, LLC and/or its affiliates.

Pre-Issue Ownership has the meaning given in clause 9.2.

Related Body Corporate has the meaning given in the Corporations Act.

Relevant Interest has the meaning given in the Corporations Act.

Representative of a party includes an employee, agent, officer, director, adviser of that party or of a Related Body Corporate of that party.

Security Purchase Plan has the meaning given in the ASX Listing Rules.

Shares means fully paid ordinary shares in the Company.

Shareholder Approval means the approval of the Company's shareholders in a general meeting by the requisite majority for the issue of the Subscription Shares – Tranche 2 to the Subscriber for all purposes, including if applicable, under ASX Listing Rules 7.2 and 10.11.

Subscriber Control Transaction means:

- (a) a takeover bid under Chapter 6 of the Corporations Act made by the Subscriber (or one of its Affiliates) for 50% or more of all Shares (or such lesser number of Shares that when combined with the Shares that the Subscriber and its Associates already own will amount to 50% or more of all Shares);
- (b) a scheme of arrangement under Part 5.1 of the Corporations Act between the Company and its shareholders, which, if implemented, would result in the Subscriber and its Affiliates holding 50% or more of all Shares; or
- (c) any other transaction proposed, announced or commenced by the Subscriber or one of its Affiliates which, if implemented, would result in the Subscriber (and its Affiliates) holding 50% or more of all Shares or otherwise having Control of the Company's Board,

and, for the avoidance of doubt, includes any takeover offer, scheme of arrangement or other control transaction made or undertaken by the Subscriber (or its Affiliates).

Subscriber Warranties means the warranties given by the Subscriber in clause 6.

Subscription Price means A\$0.058 per Subscription Share.

Subscription Shares means collectively the Subscription Shares - Tranche 1 and the Subscription Shares - Tranche 2 or either, as the context requires or permits.

Subscription Shares – Tranche 1 means 158,500,000 Shares.

Subscription Shares – Tranche 2 means 13,913,793 Shares.

Superior or Similar Proposal means a Subscriber Control Transaction which the Company's Board, acting in good faith, and after taking advice from its legal and financial advisers believes is:

- (a) reasonably capable of being completed taking into account all aspects of the Subscriber Control Transaction, including its conditions; and
- (b) either:
 - (i) more favourable to the Company's shareholders than the Third Party Control Transaction, taking into account all aspects of the Subscriber Control Transaction, including the identity, reputation and financial condition of the Subscriber, legal, regulatory and financial matters; or

- (ii) a proposal on substantially similar terms to the relevant Third Party Control Transaction, as determined by the Company's Board in its absolute discretion.

Third Party means a person other than the Subscriber or its Affiliates.

Third Party Control Transaction means:

- (a) a takeover bid under Chapter 6 of the Corporations Act made by a Third Party for 20% or more of all Shares (or such lesser number of Shares that when combined with the Shares that the Third Party and its Associates already own will amount to 20% or more of all Shares);
- (b) a scheme of arrangement under Part 5.1 of the Corporations Act between the Company and its shareholders, which, if implemented, would result in a Third Party and its Associates holding 20% or more of all Shares; or
- (c) any other transaction proposed, announced or commenced by a Third Party which, if implemented, would result in the Third Party (and its Associates):
 - (i) holding 20% or more of all Shares; or
 - (ii) having the capacity to influence the outcome of decisions about the Company's financial and operating policies (having regard to the practical influence the Third Party and/or its Associates can exert, rather than the rights they can enforce), including as a result of an appointment to the Company's Board of one or more directors nominated by the Third Party (or its Associates).

Voting Power has the meaning given in the Corporations Act.

1.2 General interpretation

Headings are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this document:

- (a) labels used for definitions are for convenience only and do not affect interpretation;
- (b) the singular includes the plural and vice versa;
- (c) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (d) a reference to a document also includes any variation, replacement or novation of it;
- (e) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
- (f) a reference to "**person**" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (g) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

- (h) a reference to a time of day is a reference to Melbourne time;
- (i) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (j) a reference to “**law**” includes common law, principles of equity and legislation (including regulations);
- (k) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (l) a reference to “**regulations**” includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (m) a reference to any thing (including an amount) is a reference to the whole and each part of it;
- (n) a period of time starting from a given day or the day of an act or event, is to be calculated exclusive of that day;
- (o) if a party must do something under this document on or by a given day and it is done after 5.00pm on that day, it is taken to be done on the next day; and
- (p) if the day on which a party must do something under this document is not a Business Day, the party must do it on the next Business Day.

2 Condition precedent

2.1 Condition precedent to issue of Subscription Shares – Tranche 2

The obligations of the parties under clauses 3 and 4 in so far as they relate to the Subscription Shares -Tranche 2 are subject to and conditional on the Company obtaining Shareholder Approval.

2.2 Reasonable endeavours to satisfy conditions precedent

The Company must use reasonable endeavours to procure Shareholder Approval at the Company’s annual general meeting in November 2024 and, in any event, before the Cut Off Date.

2.3 Shareholder Approval

The Company will:

- (a) procure that each director on the Company's Board (other than the Nominee Director):
 - (i) recommends that the shareholders of the Company vote in favour of the resolution for the Shareholder Approval; and
 - (ii) votes, or procures the voting of, any Shares of that director in favour of the resolution for the Shareholder Approval;
- (b) include in its 2024 notice of annual general meeting (**NOM**) the resolution for the Shareholder Approval and:

- (i) consult in good faith with the Subscriber in relation to the form of the resolution for the Shareholder Approval and the content of explanatory material in relation to that resolution to be included in the NOM; and
- (ii) ensure that the NOM includes a unanimous recommendation by the Company's Board (with the exception of the Nominee Director) that members vote in favour of the required resolution and a statement that each member of the Board (with the exception of the Nominee Director) intends to vote, or procure the voting of, all of their Shares in favour of the resolution.

2.4 Waiver

The condition in clause 2.1 cannot be waived.

2.5 Cut Off Date

- (a) A party may, by not less than 2 Business Days' notice to the other party, terminate the effect of clauses 3 and 4 in respect of the Subscription Shares – Tranche 2 if the condition in clause 2.1 is not satisfied by the Cut Off Date.
- (b) To avoid doubt, termination of the effect of clauses 3 and 4 in respect of the Subscription Shares – Tranche 2 under this clause will not affect the parties' rights and obligations in respect of the Subscription Shares – Tranche 1 or any other clauses of this document.

3 Subscription Shares

3.1 Subscription and issue

The Subscriber agrees to subscribe for, and the Company agrees to issue and allot, the relevant Subscription Shares on the relevant Completion Date for the Subscription Price, on the terms and conditions of this document.

3.2 Agreement to serve as application

This document serves as an application by the Subscriber for the allotment of the Subscription Shares on the relevant Completion Date and accordingly it will not be necessary for the Subscriber to provide a separate (additional) application on or prior to the relevant Completion Date. The Subscriber consents to become a member of the Company and agrees to be bound by the Constitution upon the issue of the Subscription Shares – Tranche 1.

3.3 Rights attaching to Subscription Shares

The Subscription Shares will be issued by the Company fully paid and free of all security interests, be freely transferable on ASX, and rank equally in all respects with the existing Shares of the Company on issue when the Subscription Shares are issued (including as to voting rights, entitlement to dividends and upon winding up).

3.4 Use of subscription proceeds

The Company must use the aggregate Subscription Price for the industrial division (which includes the mining-related business of the Group) and otherwise in accordance with the Collaboration Agreement.

4 Completion

4.1 Obligations of the Subscriber

- (a) On the relevant Completion Date, the Subscriber must pay, or cause to be paid, the Subscription Price for the relevant Subscription Shares in Australian dollars in Immediately Available Funds to the Company's account, as notified to the Subscriber by the Company in writing.
- (b) The funds received by the Company from the Subscriber under clause 4.1(a) must be held by or on behalf of the Company in trust for the Subscriber pending the issue of the relevant Subscription Shares to the Subscriber.

4.2 Obligations of the Company

Subject to payment of the relevant Subscription Price by the Subscriber in accordance with clause 4.1(a), the Company must:

- (a) on the Completion Date:
 - (i) allot and issue the relevant Subscription Shares to the Subscriber; and
 - (ii) cause the Company's Share register to be updated to reflect registration of the Subscriber as the holder of the relevant Subscription Shares;
- (b) as soon as practicable after the Completion Date (and in any event within two Business Days of Completion):
 - (i) **(quotation)** apply for and use its best endeavours to obtain Official Quotation of the relevant Subscription Shares by ASX; and
 - (ii) **(holding statement)** deliver to the Subscriber a holding statement from the Company's share registry confirming that the name (and relevant details) of the Subscriber have been entered onto the Company's Share register as the holder of the relevant Subscription Shares; and
- (c) within five Business Days of the Completion Date execute and lodge with ASX in accordance with all applicable laws, a Cleansing Statement in respect of the relevant Subscription Shares in the form agreed by the parties prior to the date of this document.

4.3 Substantial holder notices

As soon as practicable after the Completion Date (and, in any event, within the time period required by section 671B(6) of the Corporations Act), each party must give the information required by section 671B of the Corporations Act.

4.4 Share moratorium

- (a) Subject to clause 4.4(b), the Company agrees that it will not issue new Shares between the date of this agreement and immediately prior to
 - (i) the date Shareholder Approval is sought; and

- (ii) if that approval is obtained, the Completion Date for the issue of the Subscription Shares – Tranche 2.
- (b) Notwithstanding clause 4.4(a), the Company may issue Shares between the date of this document and the relevant date specified in that clause:
 - (i) where those Shares are the Subscription Shares – Tranche 1; and
 - (ii) pursuant to any of the circumstances listed in paragraphs (a) to (d) in the definition of Further Placement in clause 1.1.

5 Company Warranties

5.1 Accuracy

The Company warrants to the Subscriber that each Company Warranty is accurate.

5.2 When Company Warranties given

Each of the Company Warranties is given as at the date of this document and immediately before Completion unless the relevant Company Warranty is expressed to be given only at a particular time in which case it is given as at that time only.

5.3 Separate Warranties

Each Company Warranty is a separate warranty. The interpretation of any Company Warranty made may not be restricted by reference to or inference from any other Company Warranty.

5.4 Company's disclaimer

Subject to any law to the contrary and except as provided in the Company Warranties, all terms, conditions, warranties and statements, whether express, implied, written, oral, collateral, statutory or otherwise, are excluded and the Company disclaims all liability in relation to these to the maximum extent permitted by law.

5.5 Reduction in purchase price

If payment is made for a breach of any Company Warranty, the payment is to be treated as an equal reduction in the price of each Subscription Share.

5.6 Warranty threshold

The Subscriber may not make any claim for breach of a Company Warranty unless the amount of the claim:

- (a) exceeds \$10,000 in respect of a particular matter or in respect of a number of similar or related matters taken together; and
- (b) exceeds \$100,000 in aggregate, in respect of all matters referred to in paragraph 5.6(a),

but once the amount of the claim exceeds \$100,000 in aggregate the Subscriber may claim for all of the liability or loss suffered except to the extent that the

Company's liability for the liability or loss is extinguished, exempted, limited or qualified under this document.

5.7 Warranty cap

If the Company breaches any Company Warranty subject to this clause 5, the Company will be liable for the resulting loss up to a maximum amount of \$10 million.

5.8 Time limit on claims

The Subscriber may not make any claim for breach of Company Warranty unless full details of the claim have been notified to the Company within 18 months from the Completion Date for the Subscription Shares – Tranche 1. A claim is not enforceable against the Company and is taken to have been withdrawn unless any legal proceedings in connection with the claim are commenced within 6 months after written notice of the claim is served on the Company.

5.9 Matters disclosed

Each Company Warranty is to be read down and qualified:

- (a) **(Transaction document)** by any matter set out in, required by or expressly permitted by this document or the Collaboration Agreement;
- (b) **(Disclosure Material)** by any matter Fairly Disclosed in the Disclosure Material;
- (c) **(Knowledge)** to the extent that the facts, matters or circumstances giving rise to a Company Warranty claim was within the actual knowledge of Eric Winsborrow, Motohiro Narao, Kouken Ou and Akio Hoshi (each a **Buyer Knowledge Individual**) before the date of this document; or
- (d) **(ASX announcements)** by any matter that was Fairly Disclosed in ASX announcements made by the Company within two years prior to the date of this agreement.

No amount will be recoverable by the Subscriber in respect of any breach of a Company Warranty and the Company will have no liability to the Subscriber under or in connection with any Company Warranty to the extent that the relevant matter is read down or qualified under this clause 5.9. The Subscriber must not make a claim in respect of any breach of a Company Warranty if the facts, matters or circumstances giving rise to such claim are disclosed or are deemed to be disclosed under this clause 5.9.

6 Subscriber Warranties

The Subscriber warrants to the Company that each of the following statements is accurate on the date of this document and immediately prior to Completion:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation or formation, is validly existing under those laws and has power and authority to own its assets and carry on its business as it is now being conducted;
- (b) **(power)** it has power to enter into this document, to comply with its obligations under it and exercise its rights under it;

- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this document does not and will not conflict with:
 - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;
 - (ii) any law or order, judgement or determination of a Government Agency which is binding on or applicable to it or its assets (including the *Foreign Acquisitions and Takeovers Act 1975* (Cth) and applicable laws in Japan); or
 - (iii) any Encumbrance or document binding on or applicable to it;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this document are valid and binding and are enforceable against it in accordance with its terms;
- (f) **(solvency)** it is not Insolvent;
- (g) **(sophisticated or professional investor)** it is a sophisticated investor within the ambit of section 708(8) of the Corporations Act or a professional investor within the ambit of section 708(11) of the Corporations Act;
- (h) **(purpose of subscription)** it is not subscribing for the Subscription Shares for the purposes of selling or transferring them, or granting, issuing or transferring interests in, or options or warrants over, them within the period of 12 months from the date of this document;
- (i) **(no Relevant Interest)** with the exception of any Subscription Shares, it does not (and none of its Affiliates) have:
 - (i) a Relevant Interest in any Shares or other securities in the Company;
 - (ii) Voting Power in the Company; or
 - (iii) any interest which would have the economic effect of being substantially equivalent to a Relevant Interest or Voting Power (including any cash-settled equity swap or contract for difference or other derivative).

7 Dealings with Shares

7.1 Standstill

Subject to clauses 7.2 and 7.4, the Subscriber agrees that it will not, and must procure that its Affiliates do not, directly or indirectly, for a period of 18 months from the Completion Date for the Subscription Shares – Tranche 1:

- (a) other than its subscription for the Subscription Shares – Tranche 2 under this document, acquire or agree to acquire in the Company:
 - (i) any Relevant Interest in any Shares or other securities;

- (ii) any rights or interests in relation to any Shares or other securities (including options, warrants or other forms of equity derivative), including any voting interest; or
- (iii) any interest which would have the economic effect of acquiring or holding any interest described in clauses 7.1(a)(i) or 7.1(a)(ii) (including via any form of equity swap, option or other derivative); or
- (b) solicit, enter into negotiations or discussions, arrange or agree with or become an Associate of a Third Party relating to or in connection with any of the matters listed in clause 7.1(a) or otherwise solicit proxies from the Company's shareholders; or
- (c) aid, abet, counsel, procure or induce another person to do, or announce or offer that it will do (including any announcement or offer which is conditional on the Company amending or waiving this clause 7.1) any of the acts referred to in clauses 7.1(a) or 7.1(b).

7.2 Standstill exceptions

Subject to clause 7.4, the prohibitions in clause 7.1 do not apply if:

- (a) the Subscriber exercises its rights to participate in a Further Placement under clause 9;
- (b) the Subscriber participates in a pro rata offer of Equity Securities in the Company;
- (c) the Subscriber undertakes a Subscriber Control Transaction permitted under clause 10(a);
- (d) the Subscriber otherwise undertakes an action to maintain its shareholding percentage in the Company as at the Completion Date for the Subscription Shares – Tranche 2 or for the Subscription Shares – Tranche 1 (whichever is higher);
- (e) the Subscriber's Voting Power increases due to a buy-back or other capital management initiative undertaken by the Company which reduces the number of Shares on issue, provided that any subsequent increase in the Subscriber's Voting Power will remain subject to clause 7.1; or
- (f) the Company provides prior written consent, in its absolute discretion.

7.3 Disposal restrictions

- (a) Subject to clauses 7.3(b) and 7.4, for a period of 18 months after the Completion Date for the Subscription Shares – Tranche 1 the Subscriber agrees that it will not Dispose of, or agree to Dispose, the Subscription Shares.
- (b) Clause 7.3(a) does not apply:
 - (i) if the Subscriber Disposes of its Subscription Shares (and all other Shares in which it has a Relevant Interest) in accordance with clause 11.2; or
 - (ii) if the Disposal occurs with the prior written consent of the Company, in its absolute discretion.

7.4 Compliance with applicable laws

The Subscriber must (and must ensure that its Affiliates do) comply with all applicable laws, the Constitution and the requirements of any Government Agency with respect to its Subscription Shares, or any increase in its Voting Power in the Company including, without limitation, the *Foreign Acquisitions and Takeovers Act 1975* (Cth).

8 Board position

8.1 Appointment of Nominee Director by the Subscriber

- (a) Subject to the execution of this agreement, and for so long as the Subscriber holds at least 10% of the total number of Shares on issue, the Company will appoint a representative of the Subscriber (nominated in writing by the Subscriber after consultation with the Company and otherwise in accordance with clause 8.1(b)) to the Company's Board as a non-executive director of the Company (**Nominee Director**).
- (b) The Subscriber agrees that the Nominee Director (and any alternate) will have appropriate commercial and professional experience to fulfil the role of non-executive director, satisfy any ASX Listing Rule requirements and agrees that the appointment of the Nominee Director (and their alternate) is subject to the Nominee Director (and their alternate):
 - (i) satisfactorily completing customary background checks;
 - (ii) each being acceptable to the Company's Board acting reasonably;
 - (iii) consenting in writing to their appointment as a non-executive director and alternate and (if required) applying for the Director Identification Number, respectively; and
 - (iv) entering into written agreements with the Company to enable the Company to comply with ASX Listing Rule 3.19B.
- (c) The Company agrees to use reasonable endeavours to encourage the Company's directors to unanimously recommend that the Company's shareholders vote in favour of the appointment of the Nominee Director when such person is up for election at the Company's annual general meeting, subject at all times to the directors' fiduciary duties.
- (d) If the Company's shareholders do not approve the appointment of the Nominee Director at the Company's annual general meeting, or if the Nominee Director resigns from the Company's Board, then the Subscriber may nominate a different Nominee Director in accordance with clause 8.1(a) subject to the Subscriber continuing to hold at least 10% of the total number of Shares on issue.
- (e) Subject to clause 8.1(f), the Subscriber's Board appointment rights under this clause 8 cease and expire as soon as the Subscriber holds less than 10% of the total number of Shares on issue. If the Subscriber's Board appointment rights under this clause 8 cease, the Subscriber must procure that its Nominee Director resigns as soon as practicable.
- (f) If within 12 months of the Completion Date for the Subscription Shares – Tranche 1:

- (i) the Subscriber's shareholding in the Company falls below 10% due to its election not to participate in a Further Placement; and
- (ii) the Subscriber continues to hold at least 8% of the total number of Shares on issue,

then the Nominee Director (and their alternate) may continue to hold office until the end of their term.

(g) The Company agrees that:

- (i) for so long as a Nominee Director is a director of the Company:
 - (A) that such person will be entitled to take into account the interest of the Subscriber, subject at all times to the director's fiduciary duties to the Company; and
 - (B) that the Company will consult in good faith with the Subscriber in relation to the appointment of the Nominee Director to any committee of the Company's Board;
- (ii) it will provide the Nominee Director with D&O insurance and a deed of indemnity and access consistent with what the Company provides to its other non-executive directors; and
- (iii) the reasonable costs of travel, including air fares and accommodation necessary for the Nominee Director to attend the Company's Board meetings and other meetings in connection with the Nominee Director's role as a director of the Board will be borne by the Company up to a maximum amount of A\$15,000 in any financial year.

(h) The Subscriber agrees that:

- (i) except for the reasonable costs of travel in clause 8.1(g)(iii), all other reasonable and customary costs, expenses and disbursements to the extent incurred by the Nominee Director in connection with the Nominee Director's role as a director of the Company's Board will be borne by the Subscriber;
- (ii) no director fees will be provided by the Company to the Nominee Director; and
- (iii) its Nominee Director must adhere to any protocols or other requirements of the Company and/or the Company's Board, in particular, it is agreed that the Nominee Director will not be entitled to be present and/or participate in any Company Board deliberations or discussions in the event of a conflict of interest or have access to any Company Board papers or minutes in connection with the relevant matter (unless the Company's non-conflicted directors determine otherwise, in their absolute discretion).

8.2 Re-election of Nominee Director

The Nominee Director will be subject to re-election as required by the ASX Listing Rules or the Constitution and the Company will use reasonable endeavours to encourage shareholders to support any such re-election subject to:

- (a) the Subscriber holding at least 10% of the total number of Shares on issue at any time; and
- (b) at all times, the directors' fiduciary duties.

8.3 Information access and sharing rights

- (a) The parties acknowledge and agree that specific information sharing protocols are to be adopted by the Company and the Subscriber to deal with the sharing of the Group's information by the Nominee Director with the Subscriber (**Information Sharing Protocol**).
- (b) The parties acknowledge and agree that the Nominee Director may share with the Subscriber on a confidential basis, relevant information disclosed in Company Board papers, to the extent permitted by law (including competition laws and directors' duties), and subject to:
 - (i) compliance with the Information Sharing Protocol adopted by the parties;
 - (ii) compliance with any third party confidentiality requirements;
 - (iii) clauses 12 and 13; and
 - (iv) the Nominee Director being entitled to receive the relevant information (noting the principles in clause 8.1(h)(iii)) and any applicable policies or protocols from time to time including as to conflicts of interests and share trading).

9 Anti-Dilution

9.1 Participation in a Further Placement

- (a) Subject to clause 9.3, if the Company undertakes a Further Placement prior to the third anniversary of the Completion Date for the Subscription Shares – Tranche 1, it must use reasonable endeavours to ensure that the Subscriber is given an opportunity to participate in the Further Placement on a basis that enables it to maintain its Pre-Issue Ownership and on equivalent terms to those offered to other potential subscribers, except as to timing if shareholder approval is required, and subject to the ASX Listing Rules and applicable law (**Entitlement**).
- (b) The Company must give the Subscriber at least five Business Days' written notice of its intention to undertake a Further Placement (**Further Placement Notice**). The Further Placement Notice must set out details of the purpose of the Further Placement, its material terms and the identity of its intended participants.
- (c) If the Subscriber elects to participate in the Further Placement, it must notify the Company in writing that it wishes to take up its Entitlement (which may be all or some of its Entitlement, at the Subscriber's election) within five Business Days after receipt of the Further Placement Notice.
- (d) If the Subscriber does not provide a written election to take up its Entitlement in accordance with clause 9.1(c), the Subscriber will be deemed to have elected not to take up its Entitlement.
- (e) Any election by the Subscriber to take up its Entitlement under clause 9.1(c) is irrevocable.

- (f) In the event that shareholder approval is required under law or the ASX Listing Rules for the Subscriber to participate in the Further Placement, then:
 - (i) the Company undertakes to hold a general meeting to approve the issue of Shares to the Subscriber under the Entitlement within 3 months of the Subscriber's election under clause 9.1(c); and
 - (ii) any issue of Shares under the Entitlement is subject to such member approval.
- (g) To the extent that the Further Placement involves an issue of Convertible Securities, the Entitlement will be determined on an "as converted" basis in respect of those Convertible Securities as at the date of the Further Placement Notice.

9.2 Pre-Issue Ownership

Pre-Issue Ownership means the percentage calculated according to the following formula:

$$A = B/C$$

where:

A = Pre-Issue Ownership

B = total number of Shares held by the Subscriber as at the date of the Further Placement Notice

C = total number of Shares on issue as at the date of the Further Placement Notice

9.3 Exceptions to Further Placement participation rights

Clause 9.1 does not apply to a Further Placement if:

- (a) the Subscriber holds less than 10% of the total number of Shares on issue;
- (b) the issuance of Equity Securities to the Subscriber under the Further Placement would constitute a breach of the ASX Listing Rules or other applicable laws; or
- (c) the Subscriber has given written notice to the Company that it does not wish to participate in the Further Placement.

For the avoidance of doubt, the Subscriber's rights to participate in Further Placements under this clause 9 will automatically cease and terminate upon the earlier of: (i) the Subscriber holding less than 10% of the total number of Shares on issue; and (ii) the third anniversary of the Completion Date for the Subscription Shares – Tranche 1.

10 Subscriber Control Transactions

- (a) For a period of 24 months after the Completion Date for the Subscription Shares – Tranche 1, the Subscriber and its Affiliates may (and the Subscriber must procure that its Affiliates comply) only propose to the shareholders of the Company a Subscriber Control Transaction, or take any steps that would or could result in public knowledge of a Subscriber

Control Transaction, if it has been publicly recommended by a majority of the directors of the Company who are entitled to vote on the matter in accordance with applicable laws and that recommendation has not been withdrawn or adversely changed.

- (b) The Subscriber acknowledges that the recommendations of the directors of the Company may be subject to the opinion in a report of an independent expert engaged by the Company to evaluate the Subscriber Control Transaction as to whether the Subscriber Control Transaction:
 - (i) is, in the case of a takeover bid, fair and reasonable to the shareholders of the Company (other than the Subscriber and its Associates);
 - (ii) is, in the case of a scheme of arrangement, fair and reasonable and in the best interests of the shareholders of the Company (other than the Subscriber and its Associates); and
 - (iii) is, in the case of any other transaction, fair and reasonable to the shareholders of the Company (other than the Subscriber and its Associates).

11 Third Party Control Transaction

11.1 Participation rights in Third Party Control Transaction

- (a) For a period of 24 months after the Completion Date for the Subscription Shares – Tranche 1, the Subscriber must not (and must procure that its Affiliates do not) participate in, support, or vote in favour of, a Third Party Control Transaction in respect of the Shares in which it has a Relevant Interest unless it is recommended by a majority of the directors of the Company who are entitled to vote on the matter in accordance with all applicable laws, and that recommendation has not been withdrawn or adversely changed.
- (b) Clause 11.1(a) does not prevent the Subscriber or its Affiliates from responding to enquiries to an unsolicited proposal or otherwise engaging in discussions with a Third Party provided it or an Affiliate does not express:
 - (i) encouragement or support for (or enter into any agreement, understanding or arrangement to encourage or support); or
 - (ii) any intention to accept or vote in favour of,

the relevant Third Party Control Transaction.

11.2 Participation obligations in Third Party Control Transactions

For a period of 24 months after the Completion Date for the Subscription Shares – Tranche 1, if the Subscriber and its Affiliates are entitled to participate in a Third Party Control Transaction in accordance with clause 11.1, then:

- (a) **(takeover bid)** in the case of a takeover bid, the Subscriber must (and must procure that its Affiliates also do) accept the takeover offer in all Shares in which it has a Relevant Interest if:
 - (i) the takeover bid is recommended by a majority of the directors of the Company who are entitled to vote on the matter in accordance

with applicable laws, and that recommendation has not been withdrawn or adversely changed; and

- (ii) an independent expert engaged by the Company to evaluate the Third Party Control Transaction opines in a report that the Third Party Control Transaction is fair and reasonable to the shareholders of the Company (other than the Third Party and its Associates); and
- (b) **(scheme of arrangement or other proposal)** in the case of a scheme of arrangement or any other proposal in respect of such Third Party Control Transaction requiring a shareholder vote (including, without limitation, under item 7 of section 611 of the Corporations Act), the Subscriber must (and must procure that its Affiliates also do) vote all Shares in which it has a Relevant Interest in favour of the scheme or other proposal if:
- (i) an independent expert engaged by the Company to evaluate the scheme or other proposal opines in a report that the scheme or other proposal is in the best interests of the shareholders of the Company or is fair and reasonable to the shareholders of the Company, as applicable, (other than the Third Party and its Associates); and
 - (ii) the scheme or other proposal is recommended by a majority of the directors of the Company who are entitled to vote on the matter in accordance with all applicable laws, and that recommendation has not been withdrawn or adversely changed,

unless the Subscriber (or its Affiliate) has publicly announced (or publicly announces, before the end of the relevant offer period for the takeover or the date of the shareholder vote for the scheme or other proposal) a Subscriber Control Transaction which either represents a Superior or Similar Proposal to the relevant Third Party Control Transaction, in which case the Subscriber and its Affiliates need not accept the takeover bid or vote in favour of the scheme or other proposal (as applicable).

12 No insider trading

- (a) The Subscriber acknowledges that from time to time information disclosed to the Subscriber and its Affiliates (and their respective Representatives) may be inside information within the meaning of Part 7.10, Division 3 of the Corporations Act.
- (b) Without limiting anything else in this document, each party must not do (and must ensure that none of its Affiliates or respective Representatives do) anything which results or could result in the Subscriber or its Affiliates or Representatives (or the Company) being in breach of any provision of Part 7.10, Division 3 of the Corporations Act, including by dealing or causing or procuring any person to deal in Shares or other securities of the Company.

13 Confidentiality

13.1 Disclosure of Confidential Information

All Confidential Information exchanged between the parties under this document or during the negotiations preceding this document is confidential to them and may not be disclosed to any person except:

- (a) Representatives of the party or its Related Bodies Corporate requiring the information for the purposes of this document;
- (b) with the prior written consent of the party who supplied the information which consent may be given or withheld in its absolute discretion;
- (c) if a party is required to do so by law, a stock exchange or any regulatory authority; or
- (d) if a party is required to do so in connection with legal proceedings relating to this document.

13.2 Use of Confidential Information

A party must not use any Confidential Information, except for the purpose of performing its obligations under this document or the Collaboration Agreement or as otherwise required by operation of law or as otherwise permitted under this document or the Collaboration Agreement.

13.3 Excluded Information

Clauses 13.1 and 13.2 do not apply to the Excluded Information.

14 Announcements

14.1 Announcements following execution of this document

Following execution of this document, each party will make one or more public announcements regarding the transaction under this document and the Collaboration Agreement, which will each be in a form that is agreed between them, acting reasonably.

14.2 Other public announcements

Except for the announcements contemplated by clause 14.1, neither party may, subject to clause 14.3, make or send any other public announcement, communication or circular concerning the transactions contemplated by this document unless it has first obtained the written consent of the other party, which consent is not to be unreasonably withheld or delayed.

14.3 Public announcements required by law

Clause 14.2 does not apply to a public announcement, communication or circular required by law, a securities exchange or Government Agency, if the party required to make or send it has, where reasonably practicable taking into account timing requirements of law or regulations of the relevant securities exchange, provided the other party with the draft text of the proposed disclosure prior to its release.

15 Costs

The parties agree to pay their own Costs in connection with the preparation, negotiation and execution of this document.

16 GST

16.1 Definitions and interpretation

For the purposes of this clause 16:

- (a) “**GST Act**” means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (b) words and phrases which have a defined meaning in the GST Act have the same meaning when used in this clause 16, unless the contrary intention appears; and
- (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies is to be treated as if it were a separate supply.

16.2 GST exclusive

Unless this document expressly states otherwise, all consideration to be provided under this document is exclusive of GST.

16.3 Payment of GST

- (a) If GST is payable, or notionally payable, on a supply made in connection with this document, the party providing the consideration for the supply agrees to pay to the supplier an additional amount equal to the amount of GST payable on that supply (**GST Amount**).
- (b) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.
- (c) This clause does not apply to the extent that the consideration for the supply is expressly stated to include GST, or the supply is subject to a reverse-charge.

16.4 Adjustment events

If an adjustment event arises for a supply made in connection with this document, the GST Amount must be recalculated to reflect that adjustment. The supplier or the recipient (as the case may be) agrees to make any payments necessary to reflect the adjustment and the supplier agrees to issue an adjustment note.

16.5 Reimbursements

Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this document which is calculated by reference to an amount paid by another party must be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a taxable supply, clause 16.3 applies to the reduced payment.

17 Notices and other communications

17.1 Form

Unless this document expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this document must be

- (a) in writing;
- (b) in English or accompanied by a certified translation into English;
- (c) signed by the sender (if an individual) or an Authorised Officer of the sender; and
- (d) marked for the attention of the person referred to in the Details (or, if the recipient has notified otherwise, then marked for attention in the way last notified).

17.2 Form – communications sent by email

Communications sent by email need not be marked for attention in the way stated in clause 17.1, however, they must state the first and last name of the sender and are taken to be signed by the named sender.

17.3 Delivery

Communications must be:

- (a) left at the address referred to in the Details;
- (b) sent by regular ordinary post (airmail if appropriate) to the address referred to in the Details; or
- (c) sent by email to the address referred to in the Details.

If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

17.4 When effective

Communications take effect from the time they are received or taken to be received under clause 17.5 (whichever happens first) unless a later time is specified in the communication.

17.5 When taken to be received

Communications are taken to be received:

- (a) if sent by post, 6 Business Days after posting (or 10 days after posting if sent from one country to another); or
- (b) if sent by email:
 - (i) when the sender receives an automated message confirming delivery; or
 - (ii) 4 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

17.6 Receipt outside business hours

Despite anything else in this clause 17, if communications are received or taken to be received under clause 17.5 after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

18 General

18.1 Calculation of minimum percentage holding

The parties acknowledge and agree that:

- (a) certain rights of the Subscriber under this document are conditional on it holding a minimum percentage of the total number of Shares on issue (for example, under clauses 8.1(a), 8.1(d), 8.1(e), 8.1(f), 8.2 and 9.3);
- (b) for the purpose of calculating whether those minimum percentage levels in respect of the Subscriber's interest in the Company are met, the following actions will be disregarded or taken into account (as the case requires):
 - (i) any Equity Securities issued by the Company to PfG on conversion or exercise of warrants issued to it, whether those warrants are on issue as at the date of this document or within the first three years after the date of this document; and
 - (ii) any Equity Securities issued by the Company on conversion or exercise of any other Convertible Securities which are on issue as at the date of this document or that are issued within the first six months after the date of this document.

18.2 Variation and waiver

A provision of this document, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party to be bound.

18.3 Consents, approvals or waivers

By giving any approval, consent or waiver a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

18.4 Discretion in exercising rights

Unless this document expressly states otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this document in its absolute discretion (including by imposing conditions).

18.5 Partial exercising of rights

Unless this document expressly states otherwise, if a party does not exercise a right, power or remedy in connection with this document fully or at a given time, they may still exercise it later.

18.6 Conflict of interest

Each party may exercise its rights, powers and remedies in connection with this document even if this involves a conflict of duty or they have a personal interest in their exercise.

18.7 Remedies cumulative

The rights, powers and remedies in connection with this document are in addition to other rights, powers and remedies given in any other document or by law independently of this document.

18.8 Indemnities and reimbursement obligations

Any indemnity, reimbursement, payment or similar obligation in this document:

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this document, any settlement or any other thing including Completion;
- (b) is independent of any other obligations under this document or any other document; and
- (c) continues after this document, or any obligation arising under it, ends.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this document.

18.9 Supervening law

Any present or future law which operates to vary the obligations of a party in connection with this document with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

18.10 Counterparts

This document may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document and the date on which the last counterpart is executed will be the date of the document.

18.11 Representations and undertakings clauses

Each representation, warranty and other clause in this document which is capable of having effect after Completion continues despite Completion.

18.12 Entire agreement

This document constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

18.13 Further steps

The parties agree to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed), reasonably necessary to:

- (a) bind the parties and any other person intended to be bound under this document; and

- (b) show whether the party is complying with this document.

18.14 Prompt performance

Each party agrees to perform its obligations under this document promptly unless a specific time for performance is expressly stated in this document. Time is of the essence in this document in respect of an obligation of a party to pay money.

18.15 Assignment or other dealings

A party may not assign or otherwise deal with its rights under this document or allow any interest in them to arise or be varied without the consent of the other party which consent must not be unreasonably withheld.

18.16 No liability for loss

Unless this document expressly states otherwise, a party is not liable for any loss, liability or Costs arising in connection with the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right, power or remedy in connection with this document.

18.17 Rules of construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this document or any part of it.

18.18 Provisions prohibited by law

If any provision of this document, or any obligation, right, power or remedy created by a provision:

- (a) is prohibited by a law;
- (b) does not comply with a law; or
- (c) is made unenforceable by a law,

the provision is to be interpreted so that to the extent the law permits, the provision, and any obligation, right, power or remedy created by it, is not prohibited, complies with the law and is enforceable.

19 Governing law and jurisdiction

19.1 Governing law and jurisdiction

The law in force in the place specified in the Details governs this document. The parties submit to the non-exclusive jurisdiction of the courts of that place.

19.2 Serving documents

Without preventing any other method of service, any document in an action in connection with this document may be served on a party by being delivered or left at that party's address for service of notices under clause 17.3 or with its process agent.

19.3 Appointment of process agent

Without preventing any method of service allowed under any relevant law, the Subscriber:

- (a) irrevocably appoints MinterEllison (Attention: Alberto Colla) as its process agent to receive any document in an action in connection with this document; and
- (b) agrees that failure by a process agent to notify the Subscriber of any document in an action in connection with this document does not invalidate the action concerned.

If for any reason MinterEllison ceases to be able to act as process agent, the Subscriber agrees to appoint another person acceptable to the Company (acting reasonably) as its process agent in the place referred to in clause 19.1 and ensure that the replacement process agent accepts its appointment and confirms its appointment to the Company.

The Subscriber agrees that service of documents on its process agent is sufficient service on it.

EXECUTED as an agreement

Subscription Agreement

Schedule 1 – Company Warranties

1 Incorporation and power

1.1 Status of Company

The Company has been incorporated or formed in accordance with the laws of its place of incorporation or formation, is validly existing under those laws and has power and authority to own its assets and carry on its business as it is now being conducted.

1.2 Power

The Company has power to enter into this document, to comply with its obligations under it, and to exercise its rights under it.

1.3 Authorisations

The Company has in full force and effect each authorisation necessary for it to enter into this document, to comply with its obligations and exercise its rights under it, and to allow them to be enforced.

1.4 No contravention

The entry by the Company into, its compliance with its obligations and the exercise of its rights under, this document does not and will not result in a breach of or constitute a default under:

- (a) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;
- (b) any law, or any order, judgement or determination of a Government Agency, binding on or applicable to the Company or its assets; or
- (c) any Encumbrance, document or obligation binding on or applicable to the Company.

1.5 Validity of obligations

The Company's obligations under this document are valid and binding and enforceable against it in accordance with its terms.

1.6 Not Insolvent

The Company is not Insolvent.

1.7 Capital structure

The capital structure of the Company is as stated below and there are no other Equity Securities on issue:

- (a) Shares: 1,268,272,203

- (b) Options expiring at 1 December 2025 with the exercise price of \$0.40 – 2,000,000
- (c) Options expiring at 19 December 2026 with the exercise price of \$0.20 – 2,000,000
- (d) Options expiring at 30 May 2025 with the exercise price of \$0.20 – 10,000,000
- (e) Performance rights – 17,467,227
- (f) Warrants expiring on 6 October 2028 with the exercise price of \$0.055 – 13,638,900, and put option in relation to these warrants at \$750,000 (conditional on change of control, liquidation or expiry)
- (g) Warrants expiring on 22 April 2029 with the exercise price of \$0.051 – 9,743,994, and put option in relation to these warrants at \$500,000 (conditional on change of control, liquidation or expiry)

2 Disclosure

2.1 Disclosure obligations

The Company has at all times been, and continues to be, in compliance with ASX Listing Rule 3.1 and the any information which the Company has withheld in reliance on the exemption in ASX Listing Rule 3.1A as at the date of this document has been disclosed to the Subscriber.

2.2 Accuracy of information

So far as the Company is aware, the Disclosure Material is accurate in all material respects and no information has been knowingly or recklessly omitted from the Disclosure Material that would render the Disclosure Material misleading in any material respect.

3 Subscription Shares

3.1 Proportion of capital

- (a) The Subscription Shares – Tranche 1 will, upon issue, comprise approximately 11% of the issued capital of the Company and will, upon issue, be fully paid.
- (b) The Subscription Shares – Tranche 2, will, upon issue, be fully paid.

3.2 Ranking

The Subscription Shares will rank equally in all respects with existing issued fully paid ordinary shares in the Company, including the payment of any distributions following allotment.

3.3 No Encumbrances

The Subscription Shares will be free from all Encumbrances.

3.4 No restriction

There is no restriction on issue of the Subscription Shares to the Subscriber.

3.5 No breach

The offer, issue and Official Quotation of the Subscription Shares complies with:

- (a) the Corporations Act and the ASX Listing Rules and will not (other than in respect of the Subscription Shares – Tranche 2) require the approval of the Company's shareholders under the ASX Listing Rules; and
- (b) all other obligations and agreements binding on the Company or its members.

3.6 On-sale of Subscription Shares

- (a) The Subscription Shares are not being issued by the Company with the purpose of selling or transferring the Subscription Shares or granting, issuing or transferring interests in, or options over, the Subscription Shares.
- (b) The Subscription Shares are in a class of securities:
 - (i) that were quoted securities (as defined in the Corporations Act) at all times in the 3 months before the relevant Completion Date; and
 - (ii) in which trading on ASX has not been suspended for more than a total of 5 days during the 12 month period prior to the relevant Completion Date (**Relevant Period**).

3.7 Cleansing Statement

As at the date of the Cleansing Statement, the Cleansing Statement complies with the requirements of section 708A(6) of the Corporations Act and the Company is able to rely on section 708A(5) of the Corporations Act for the purposes of the Subscription Shares.

4 Operational

4.1 Authorisations

As far as the Company is aware, each Group Company holds all material authorisations that are necessary to enable it to carry on its business as at the date of this document, and the Group Companies are complying, in all material respects, with any conditions to which any such authorisations are subject, which would, if breached, have a material adverse effect on the Group.

4.2 Share issues

As far as the Company is aware, there are no agreements, arrangements or understandings in force or securities issued which call for the present or future issue of, or grant to any person the right to require the issue of any shares or any other equity securities in the Company, other than the Convertible Securities set out in Warranty 1.7 of this Schedule 1.

5 Intellectual Property

5.1 Ownership

Each Group Company owns or otherwise has the right to use all material Intellectual Property required to operate the business of the Group as conducted as at the date of this document (**Material IPR**).

5.2 No infringement

- (a) As far as the Company is aware, no use of Intellectual Property by any Group Company infringes the valid Intellectual Property rights of others in any material respect.
- (b) As far as the Company is aware, no written claim has been made to a Group Company that any material part of the Intellectual Property violates the rights of any third party.
- (c) As far as the Company is aware, none of the Material IPR is the subject of any threatened in writing litigation or opposition proceedings that restricts in any material manner a Group Company's use, transfer, or licensing of, or that may affect the validity, use or enforceability of the Material IPR, and no Group Company has received any written notice of the threat of any such claim.

6 Compliance

6.1 Compliance with laws

As far as the Company is aware:

- (a) the Group Companies have complied in all material respects with all applicable laws and regulations including, but not limited to, the Corporations Act, the ASX Listing Rules, which would, if breached, have a material adverse effect on a Group Company; and
- (b) no Group Company has engaged, nor will it engage, with any public official or other person or entity either directly or indirectly in a manner that breaches applicable anti-bribery laws.

6.2 Litigation

No Group Company is involved in or the subject of any litigation, arbitration, administrative proceeding or investigation relating to claims, amounts or matters which are material in the context of the Group or the transaction under this document, nor to the knowledge of any Group Company, is any such litigation, arbitration, administrative proceeding or investigation pending or threatened.

Subscription Agreement

Signing page

EXECUTED by **ENVIROSUITE LIMITED** in accordance with section 127(1) of the *Corporations Act 2001* (Cth):

DocuSigned by:
Jason Cooper
.....
D36D51EA743A46F...
Signature of director

Jason Cooper
.....
Name of director (block letters)

Signed by:
David Johnstone
.....
9B3FE6A1495F43G...
Signature of director/company secretary

David Johnstone
.....
Name of director/company secretary (block letters)

If signed via audio visual link, by signing this document the witness states that they witnessed the signature of the signatory over audio visual link in accordance with s 12 of the Electronic Transactions (Victoria) Act 2000 (Vic)

Signed for Hitachi Construction Machinery Co., Ltd. by an authorised officer in the presence of

署名者:
Yuusuke Araki
.....
B8C3C09967B841C...

Signature of witness

Yuusuke Araki
.....
Name of witness (print)

2 September 2024
.....
Date (print)

DocuSigned by:
Motohiro Narao
.....
0D993A9A846A4C8...

Signature of officer

Motohiro Narao
.....
Name of officer (print)

Senior officer
.....
Office held (print)

2 September 2024
.....
Date (print)

