



28 December 2022

SECOND SUPPLEMENTARY TARGET'S STATEMENT

Nitro Software Limited (ASX:NTO) (Nitro or the Company) refers to Potentia Capital's (**Potentia**) Third Supplementary Bidder's Statement dated 23 December 2022.

The value of the cash consideration under Potentia's takeover offer remains unchanged at A\$2.00 per Nitro Share (**Potentia Takeover Offer**). However, Potentia has now:

- provided details of its scrip alternative consideration (**Scrip Consideration**); and
- formally extended the Offer Period to 7:00pm (AEDT) on 31 March 2023 (unless extended or withdrawn).

Potentia Offer Consideration

Potentia¹ is now offering Nitro Shareholders the option of receiving the following consideration alternatives under its takeover offer (with the default consideration being All Cash):

- **All Cash:** A\$2.00 cash per Nitro Share (the **All Cash Consideration**); or
- **All Scrip:** 70% of a HoldCo Ordinary Share and 30% of a HoldCo Redeemable Preference Share (together, **HoldCo Shares**) (the **All Scrip Consideration**); or
- **50% Cash and 50% Scrip:** 50% All Cash Consideration and 50% All Scrip Consideration (the **Mixed Consideration**).

HoldCo is an unlisted Australian public company, controlled by Potentia Capital.

Board Recommendation

The Nitro Board has reviewed the additional information in Potentia's Third Supplementary Bidder's Statement and reaffirms its determination that the Alludo Transaction is superior to the Potentia Takeover Offer.

The consideration of A\$2.15 cash per Nitro Share under the Alludo Transaction represents a premium of A\$0.15 (7.5%) per Nitro Share to the All Cash Consideration under the Potentia Takeover Offer.

¹ Technology Growth Capital LLC is the bidding entity, which is controlled by Potentia Capital.

Furthermore, Potentia's Third Supplementary Bidder's Statement included a limited scope opinion report independently prepared by accounting firm Grant Thornton, dated 22 December 2022, which sought to determine an appropriate illiquidity/marketability discount that should apply to the Nitro share value when determining the value of the Scrip Consideration (**Grant Thornton Report**).

The Grant Thornton Report concluded Potentia's Scrip Consideration should be valued at a discount of 20% – 25% to the assumed fair market value of A\$2.15 per Nitro Share (i.e., the Alludo Transaction value and not the A\$2.00 per Nitro Share All Cash Consideration option referenced in Potentia's Third Supplementary Bidder's Statement). This results in an implied value of A\$1.61 – A\$1.72 per Nitro Share for Potentia's All Scrip Consideration.

The Nitro Board continues to **unanimously recommend that Nitro Shareholders REJECT the Potentia Takeover Offer**. To do this, simply **DO NOTHING** in respect of the Potentia Takeover Offer.

The Nitro Board **unanimously recommends that Nitro Shareholders both:**

- **VOTE IN FAVOUR of the Alludo Scheme at the Alludo Scheme Meeting**, in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the scheme is in the best interests of Nitro Shareholders; and
- **ACCEPT the Alludo Takeover Offer**, in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the offer is fair and reasonable.

As noted in the Target's Statement and First Supplementary Target's Statement, if Nitro Shareholders accept the Potentia Takeover Offer, they will only have a right to withdraw their acceptance in certain limited circumstances. As such, unless the specific withdrawal rights are available, if Nitro Shareholders accept the Potentia Takeover Offer, they will give up the right to sell on market or to vote or otherwise deal with their Nitro Shares, including under the Alludo Transaction, which continues to represent a higher value of A\$2.15 per Nitro Share, or any another Superior Proposal that may emerge.

Scrip Consideration

The Nitro Board considers the Scrip Consideration to be significantly inferior to the Alludo Transaction cash consideration and unlikely to be attractive to most Nitro Shareholders given the following key factors:

- **Value:** The Grant Thornton Report concluded Potentia's Scrip Consideration should be valued at a discount of 20% – 25% to the assumed fair market value of A\$2.15 per Nitro Share (i.e., the Alludo Transaction value).
- **Illiquid investment:** The HoldCo Shares are expected to be highly illiquid and unsuitable for most investors. The HoldCo Shares will not be traded on the ASX (or any exchange for that matter), while the HoldCo Shareholders' Deed imposes extensive restrictions on the transfer of HoldCo Shares.
- **Redemption of Preference Shares:** Prior to the Maturity Date (24 months post issuance), HoldCo Redeemable Preference Shares can be redeemed at the issue price (i.e., what you would receive today) at the sole discretion of Potentia. No interest will be payable on this debt-like instrument. In practice, the ability for HoldCo Redeemable Preference Shares to participate in any potential upside generated by the future growth of the business is therefore at Potentia's unilateral discretion.
- **Limited governance rights and information rights as a minority shareholder:** Potentia maintains control over the decision-making of HoldCo, including director appointments. This means:
 - there is no avenue for minority shareholders to vote on director appointments;
 - Potentia chooses the desired exit mechanism and timing; and
 - beyond audited statutory financial reports each year, there is no obligation on HoldCo to provide any further information with respect to the performance of HoldCo's business or any other announcements that would typically be disclosed by a listed entity.

Further Information

Nitro's Second Supplementary Target's Statement is attached to this announcement in accordance with section 647(3)(b) of the *Corporations Act (2001)* (Cth) (**Second Supplementary Target's Statement**). A copy of the Second Supplementary Target's Statement will be served on Potentia and lodged with the Australian Securities and Investments Commission today.

Ends

Authorised for release to the ASX by the Nitro Board of Directors.

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Second Supplementary Target's Statement

1 Second Supplementary Target's Statement

This document is a supplementary target's statement under section 644 of the *Corporations Act 2001* (Cth) (**Corporations Act**). It is the second supplementary target's statement (**Second Supplementary Target's Statement**) issued by Nitro Software Limited (ACN 079 215 419) (**Nitro**) in relation to the off-market takeover bid made by Potentia Capital Management Pty Ltd (**Potentia Capital**) – via Technology Growth Capital LLC – for all the Nitro Shares in which Potentia Capital (and its Associates) do not hold a Relevant Interest.

This Second Supplementary Target's Statement has been prepared in response to the third supplementary bidder's statement lodged by Potentia Capital on 23 December 2022 (**Third Supplementary Bidder's Statement**), in which Potentia Capital has varied the Potentia Takeover Offer by including the Scrip Consideration (as defined below) and extending the Potentia Offer Period until 7:00pm (AEDT) on 31 March 2023 (unless extended or withdrawn). This document supplements, and should be read together with, Nitro's target's statement dated 23 November 2022 (**Target's Statement**) and Nitro's first supplementary target's statement dated 12 December 2022 (**First Supplementary Target's Statement**).

The Nitro Board has reviewed the additional information in Potentia's Third Supplementary Bidder's Statement and **reaffirms its determination that the Potentia Takeover Offer is INFERIOR to the Alludo Transaction** and therefore continues to **unanimously recommend that all Nitro Shareholders REJECT the Potentia Takeover Offer**. To do this, simply **DO NOTHING** in respect of the Potentia Takeover Offer.

2 Scrip Consideration under the Potentia Takeover Offer

Potentia Capital's Third Supplementary Bidder's Statement provides further details on the scrip alternative referenced in Potentia Capital's Second Supplementary Bidder's Statement dated 8 December 2022. Potentia Capital is now offering Nitro Shareholders the option of receiving equity in Oak Ridge Software Limited ACN 664 474 999 (**HoldCo**). HoldCo is an unlisted Australian public company, controlled by Potentia Capital.

The following consideration alternatives are now being offered under the Potentia Takeover Offer:

- (a) A\$2.00 cash per Nitro Share (unchanged) (**All Cash Consideration**); or
- (b) 70% of a HoldCo Ordinary Share and 30% of a HoldCo Redeemable Preference Share (together, **HoldCo Shares**) per Nitro Share (**All Scrip Consideration**); or

- (c) 50% All Cash and 50% All Scrip Consideration per Nitro Share (the **Mixed Consideration**),

with (b) and (c) above being the **Scrip Consideration**. Nitro Shareholders who do not make an election to receive the Scrip Consideration will receive the All-Cash Consideration as a default.

Although Potentia Capital has not provided meaningful details of its relationship with HarbourVest to date, it is likely that HarbourVest also has certain influence and control rights over HoldCo. Any Nitro Shareholder who elects to receive the Scrip Consideration will hold its HoldCo Shares through a third-party custodian subject to the terms of the Custodian Deed and HoldCo Shareholders' Deed, in each case, as defined in Potentia Capital's Third Supplementary Bidder's Statement.

3 **Material concerns with the Scrip Consideration**

The Nitro Board has several material concerns with the Scrip Consideration and views this as unlikely to be attractive to most Nitro Shareholders given the following key factors:

- (a) **The All Scrip Consideration is valued at a discount of 20% – 25% to the Alludo Transaction value of A\$2.15 cash per Nitro Share.**

Potentia Capital's Third Supplementary Bidder's Statement included a limited scope opinion report independently prepared by accounting firm Grant Thornton, dated 22 December 2022, which sought to determine an appropriate illiquidity/marketability discount that should apply when determining the value of the Scrip Consideration (**Grant Thornton Report**).

The Grant Thornton Report concluded Potentia's Scrip Consideration should be valued at a discount of 20% – 25% to the assumed fair market value of A\$2.15 per Nitro Share (i.e., the Alludo Transaction value). This results in an implied value of A\$1.61 – A\$1.72 per Nitro Share for Potentia's All Scrip Consideration.

- (b) **The Scrip Consideration is a speculative investment with minimal liquidity rights for minority shareholders.**

Nitro Shareholders should consider a number of risks associated with the Scrip Consideration that can be broadly classified as risks specific to an investment in HoldCo Shares and general risks relating to investing in unlisted securities. The risks that apply to an investment in HoldCo are materially higher than those that apply to your existing investment in Nitro. On that basis, an investment in HoldCo should be considered a speculative investment.

Since HoldCo is an unlisted public company, there will be no public market for the trading of HoldCo Shares, nor is there expected to be any such market in the future. There are extensive restrictions on the disposal of HoldCo Shares under the HoldCo

Shareholders' Deed that will restrict any prospective seller of HoldCo Shares from selling their HoldCo Shares without Potentia Capital's consent. This will result in HoldCo Shares being illiquid. This may also affect the value of HoldCo Shares in the future, as well as your ability to dispose of them, either at all or in a timely manner.

(c) **The potential economic upside on the HoldCo Redeemable Preference Shares is entirely at Potentia Capital's discretion.**

30% of the aggregate Scrip Consideration will be satisfied by HoldCo in the form of issuing HoldCo Redeemable Preference Shares. HoldCo Redeemable Preference Shares contain inferior legal and economic rights as compared to Nitro Shares.

Nitro Shareholders should be aware that HoldCo Redeemable Preference Shares may be redeemed by HoldCo (controlled by Potentia Capital) at its sole discretion within 24 months of their issuance for the amount equal to the price that the HoldCo Redeemable Preference Shares were issued under the Potentia Takeover Offer. This means that holders of HoldCo Redeemable Preference will be exposed to the risks of investing in unlisted securities without the potential benefit of receiving any upside (including capital appreciation, interest, or distributions). Nitro Shareholders should also be aware that the HoldCo Redeemable Preference Shares are unsecured debt-like instruments that would rank behind any secured obligations of HoldCo.

(d) **The HoldCo governance rights are inadequate for minority shareholders.**

HoldCo is an unlisted company and is required, under the terms of the HoldCo Shareholders' Deed, to not have more than 50 shareholders. As such, neither the ASX Listing Rules nor Australia's takeover regime (among other provisions of the Corporations Act) apply to HoldCo. This means that minority shareholders of HoldCo will not benefit from the investor protections currently available to Nitro Shareholders in respect of their Nitro Shares under the ASX Listing Rules and Chapter 6 of the Corporations Act. A summary of the key types of investor protections that will no longer apply is set out below:

- **Governance:** Potentia Capital is entitled to appoint, remove and replace all directors on the HoldCo Board. Nitro Shareholders who elect the Scrip Consideration will have no rights to appoint, remove, or replace any directors of HoldCo.
- **Lack of information:** Nitro Shareholders who elect the Scrip Consideration under the Potentia Takeover Offer will receive significantly less information and reports about their investment than Nitro Shareholders currently receive. Nitro Shareholders may request a copy of the most recent audited statutory financial annual accounts of HoldCo and its Related Bodies Corporate and HoldCo will

provide that information to HoldCo Shareholders. However, there will be no information on underlying business performance beyond that.

- **Continuous Disclosure:** HoldCo will not be required to comply with the extensive continuous disclosure obligations set out in Chapter 3 of the ASX Listing Rules and section 674 of the Corporations Act. HoldCo has no obligation to disclose material price sensitive information to HoldCo Shareholders.
- **Securities:** Chapter 6 of the ASX Listing Rules provides that each class of equity security must be appropriate and equitable in ASX's view. It also provides protections in relation to voting rights of holders of ordinary and preference shares. As the ASX Listing Rules do not apply to HoldCo, Nitro Shareholders who elect the Scrip Consideration will not receive the benefits of this protection. The terms of the HoldCo Shares are not subject to ASX's approval.
- **Transactions between HoldCo and Potentia Capital:** Potentia Capital has indicated that it expects to charge HoldCo an annual management fee equal to approximately 1% of the value of Nitro Shares held by Potentia Capital. In addition, HoldCo will likely be issuing further securities to Potentia Capital to fund its transaction costs of up to A\$12 million to the detriment of Nitro Shareholders who elect the Scrip Consideration.
- **Significant transactions:** Chapter 11 of the ASX Listing Rules requires a listed entity to obtain the approval of securityholders in certain circumstances (and where required by ASX) if it proposes to make a significant change to the nature or scale of its activities. As the ASX Listing Rules do not apply to HoldCo, Nitro Shareholders who elect the Scrip Consideration will not receive the benefits of this protection. A significant change to the operation of HoldCo may not require shareholder approval.
- **Exit:** Consistent with the usual private equity practice, Potentia Capital will seek to exit its investment in HoldCo at some time in the future. However, there is no guarantee that Potentia Capital will be able to achieve an exit in respect of its HoldCo Shares nor is the timeframe to attempt exit at all certain and remains solely within Potentia Capital's control. Even in the circumstances where Potentia Capital was to achieve an exit in respect of its investment in HoldCo, Chapter 6 of the Corporations Act, which sets out Australia's takeover regime (which is supplemented by ASIC Regulatory Guides and guidance notes issued by the Australian Takeovers Panel) will not apply to HoldCo. As such, there is a risk that a person may be able to acquire control of HoldCo in circumstances with less information than was disclosed to HoldCo shareholders or where less time is given to HoldCo shareholders to assess the offer. This process is entirely within Potentia Capital's control.

Having regard to the above factors, Nitro considers that the governance arrangements that apply to HoldCo are inadequate for minority shareholders.

4 Nitro Board's recommendation

The Nitro Board continues to unanimously recommend that Nitro Shareholders both VOTE IN FAVOUR of the Alludo Scheme and, at the same time, ACCEPT the Alludo Takeover, in the absence of a Superior Proposal and subject to the Independent Expert continuing to conclude that the Alludo Scheme is in the best interests of Nitro Shareholders and the Alludo Takeover is fair and reasonable.

5 Implication of accepting the Potentia Takeover Offer

The Potentia Takeover Offer has been extended and must remain open until 7:00pm (AEDT) on 31 March 2023 (unless extended or withdrawn).

As noted in the Target's Statement and First Supplementary Target's Statement, if Nitro Shareholders accept the Potentia Takeover Offer, they will only have a right to withdraw acceptance in certain limited circumstances.

As such, unless the specific withdrawal rights are available, if Nitro Shareholders accept the Potentia Takeover Offer, they will give up the right to sell or to vote or otherwise deal with their Nitro Shares, including under the Alludo Transaction or any another Superior Proposal that may emerge.

6 General

Unless otherwise specified, capitalised terms used, but not defined in this Second Supplementary Target's Statement, have the same meaning given to them in the Target's Statement.

This Second Supplementary Target's Statement prevails to the extent of any inconsistency with the Target's Statement or the First Supplementary Target's Statement.

A copy of this Second Supplementary Target's Statement is being lodged with ASIC today. Neither ASIC nor any of its officers take any responsibility for its contents. A copy of this Second Supplementary Target's Statement has also been provided to ASX. Neither ASX nor any of its officers takes any responsibility for the contents of this document.

Please consult a legal, financial, or other professional adviser if the contents of this Second Supplementary Target's Statement are not fully understood.

7 Authorisation

This Second Supplementary Target's Statement has been approved by a resolution passed by the Directors of Nitro Software Limited (ACN 079 215 419).



Kurt Johnson

Chairman

on behalf of the Board of Nitro Software Limited (ACN 079 215 419)

Dated 28 December 2022