

JOHNSON | WINTER | SLATTERY

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Our Ref: C9404

28 October 2022

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

FOR LODGEMENT ONLINE

Dear Sir/Madam

Takeover Offer in relation to Nitro Software Limited (ACN 079 215 419) (ASX:NTO) - Bidder's Statement enclosed

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

Potentia today announced an intention to make an off-market takeover bid through Technology Growth Capital LLC (**Bidder**) to acquire Nitro Software Limited (ACN 079 215 419) (ASX:NTO) (**Nitro**) at a price of \$1.80 per Nitro Share.

In accordance with section 633(1), item 5 of the *Corporations Act 2001* (Cth), we enclose, on behalf of the Bidder, a copy of the Bidder's Statement of the Bidder.

The Bidder's Statement has been lodged today with the Australian Securities and Investments Commission and given to Nitro.

Yours faithfully,



Johnson Winter Slattery

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SYDNEY NSW 2000
T +61 2 8274 9555 | F +61 2 8274 9500
www.jws.com.au

Liability limited by a scheme approved under Professional Standards Legislation

BIDDER'S STATEMENT

ACCEPT

THE OFFER TO ACQUIRE YOUR SHARES IN
NITRO SOFTWARE LIMITED
ACN 079 215 419

BY

Potentia Capital Management Pty Ltd
ACN 630 264 210



THROUGH

Technology Growth Capital LLC

FOR A CASH OFFER PRICE OF
\$1.80 PER NITRO SHARE

The Offer is dated [●] 2022 and expires at 7:00pm (Sydney, Australia time) on
[●] 2022, unless extended or withdrawn

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

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

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

Legal Adviser

Financial Adviser

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IMPORTANT INFORMATION

KEY DATES

Announcement Date	28 October 2022
Bidder's Statement lodged with ASIC and ASX	28 October 2022
Date of Offer	[●] 2022
Offer closes (unless extended or withdrawn in accordance with the Corporations Act)*	[●] 2022

**This date is indicative only and may be changed as permitted by the Corporations Act.*

BIDDER'S STATEMENT

This Bidder's Statement is given by Technology Growth Capital LLC to Nitro Software Limited ACN 079 215 419 under Part 6.5 of the Corporations Act and relates to the Offer.

This Bidder's Statement is dated 28 October 2022 and includes in Section 10 an Offer dated [●] 2022 to acquire Your Nitro Shares.

You should read this Bidder's Statement in its entirety.

AUSTRALIAN SECURITIES AND INVESTMENTS COMMISSION

A copy of this Bidder's Statement was lodged with ASIC on 28 October 2022. Neither ASIC nor any of its officers takes any responsibility for the contents of this Bidder's Statement.

FOREIGN JURISDICTIONS

The distribution of this Bidder's Statement and the making of the Offer in jurisdictions outside Australia may be restricted by law, and persons who come into possession of it should seek advice on and observe any such restrictions. Any failure to comply with such restrictions may constitute a violation of applicable securities laws. This Bidder's Statement does not constitute an offer in any jurisdiction in which, or to any person to whom, it would not be lawful to make such an offer.

IMPORTANT NOTICE TO US SHAREHOLDERS

The Offer is made for the shares of an Australian registered company. It is important that US shareholders understand that the Offer is subject to disclosure requirements in Australia that are quite different from those in the US.

DISCLAIMER REGARDING FORWARD LOOKING STATEMENTS

This Bidder's Statement contains certain forward looking statements which are based wholly or partly on expectations, opinions or predictions as at the date of this Bidder's

Statement about future events and results. These forward looking statements are subject to inherent risks and uncertainties. Such risks and uncertainties include factors and risks specific to the industries in which Nitro and the Bidder operate as well as general economic conditions, prevailing exchange rates and interest rates, conditions in the financial markets, government policies and regulation and competitive pressures. Actual events or results may differ materially from the expectations, opinions or predictions expressed or implied in such forward looking statements.

None of the Bidder, Potentia Capital nor any of their directors, officers and advisers, nor any other person named in this Bidder's Statement or involved in the preparation of this Bidder's Statement, makes any representation or warranty (express or implied) as to the accuracy or likelihood of fulfilment of any forward looking statement, or any events or results expressed or implied in any forward looking statement, except to the extent required by law. You are cautioned not to place undue reliance on any forward looking statement.

The forward-looking statements in this Bidder's Statement only reflect views held as at the date of this Bidder's Statement.

INVESTMENT DECISIONS

This Bidder's Statement does not take into account your individual investment objectives, financial situation or particular needs. You are advised to exercise caution in relation to the Offer and to seek independent financial and taxation advice before deciding whether or not to accept the Offer.

HOW DO I ACCEPT THE OFFER?

To accept the Offer, follow the instructions set out in Section 10.5 of the Bidder's Statement.

Your Acceptance Form must be received before the end of the Offer Period.

INFORMATION ON NITRO

Any information in this Bidder's Statement relating to Nitro (including its assets and securities) has been prepared using publicly available information. This information has not been commented on or verified by Nitro or independently verified by the Bidder or Potentia Capital for the purposes of this Bidder's Statement. Accordingly, neither the Bidder nor Potentia Capital make any representation, and/or warranty, express or implied, as to the accuracy or completeness of such information to the extent permitted by the Corporations Act.

The information on Nitro in this Bidder's Statement should not be considered comprehensive. In addition, the Corporations Act requires the directors of Nitro to provide a Target's Statement to Nitro Shareholders in response to this Bidder's Statement, setting out certain material information concerning Nitro.

EFFECT OF ROUNDING

A number of figures, amounts, percentages, prices, estimates, calculations of value and fractions in this Bidder's Statement are subject to the effect of rounding. The actual calculation of these figures, amounts, percentages, prices, estimates, calculations of value and fractions may differ from those set out in this Bidder's Statement. Any discrepancies between totals in tables or financial statements or in calculations graphs or charts are due to rounding.

ESTIMATES AND ASSUMPTIONS

Unless otherwise indicated, all references to estimates, assumptions and derivations of the same in this Bidder's Statement are references to estimates, assumptions and derivations of the same by the Bidder. Estimates reflect, and are based on, views as at the date of this Bidder's Statement, and actual facts or outcomes may materially differ from those estimates or assumptions.

PRIVACY

The Bidder has collected your information from the register of members of Nitro for the purposes of making the Offer and, if accepted, administering acceptances over your holding of Nitro Shares. The Corporations Act requires the names and addresses of Nitro Shareholders to be held in a public register. Your information may be disclosed on a confidential basis to Potentia Capital, and may be required to be disclosed to regulators, such as ASIC. If you would like details of information about you held by the Bidder, please contact the Bidder at the address set out in the Corporate Directory.

DEFINED TERMS AND INTERPRETATION

A number of defined terms are used in this Bidder's Statement. These terms are explained in the Glossary in Section 11 along with certain rules of interpretation which apply to this Bidder's Statement.

WEBSITE

References in this Bidder's Statement to the website of Potentia Capital (<https://potentiacap.com/>) or Nitro (<https://www.gonitro.com/>) are for your reference only.

Information contained in, or otherwise accessible through, these internet sites is not a part of this Bidder's Statement. All references in this Bidder's Statement to these internet sites are inactive textual references to these sites and are for your information only.

CURRENCIES AND TIME

In this Bidder's Statement, references to "Australian dollars", "AUD", "\$", "A\$" or "cents" are to the lawful currency of Australia, unless stated otherwise.

All references to time in this Bidder's Statement are references to Sydney, Australia time, unless stated otherwise.

OFFER INFORMATION LINE

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

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1 Letter from Potentia Capital

Potentia Capital Management Pty Ltd
ACN 630 264 210
Suite 38.01 – Gateway
1 Macquarie Place
Sydney NSW 2000



28 October 2022

Dear Nitro Shareholder,

Off-market offer to acquire 100% of Nitro for \$1.80 cash per Nitro Share (Offer)

On behalf of Potentia Capital Management Pty Ltd (**Potentia Capital**), we are pleased to enclose an offer from Technology Growth Capital LLC (the **Bidder**) to acquire some or all of Your Nitro Shares at an Offer Price of \$1.80 per Nitro Share.

The Offer Price is best and final except where a Competing Proposal emerges or Potentia Capital is provided with access to full customary legal, financial and tax due diligence on the business and assets of Nitro.

The Offer is cash only and subject to only two conditions:

- that during the Offer Period, a majority of the members of the Nitro Board recommend that Nitro Shareholders accept the Offer in the absence of a superior proposal; and
- that during the Bid Period, there are no Prescribed Occurrences.

Background

As you may be aware, Potentia Capital currently has Relevant Interests in 19.8% of Nitro Shares and submitted a non-binding proposal for the acquisition of all Nitro Shares on 30 August 2022 at an offer price of \$1.58 per Nitro Share (**Potentia NBIO**).

As part of the Potentia NBIO, we expressed our support for Nitro's Founder and CEO, Sam Chandler, and management, as well as our intention to help grow Nitro in an unlisted environment, both organically and through M&A. We believe we are particularly well positioned to support the business given Potentia Capital's experience and track record of helping software businesses scale globally.

As we have not been able to obtain access to diligence to further progress our proposal after initial discussions with the Nitro Board, we are reaching out directly to Nitro Shareholders in connection with the Offer. Our Offer Price is best and final, except where a Competing Proposal emerges or Potentia Capital is provided with access to full customary legal, financial and tax due diligence on the business and assets of Nitro.

We believe the Offer delivers Nitro Shareholders a material and attractive 59% premium relative to the last closing price of \$1.13 per Nitro Share (**Undisturbed Share Price**) on 29 August 2022, being the day prior to the submission of the Potentia NBIO (**Undisturbed Share Price Date**). Additionally, it delivers certainty of value in the form of cash consideration and an additional source of liquidity, without the need to incur brokerage costs. We have also committed to paying for Your Nitro Shares on an accelerated timetable.

In particular, we note that our increased Offer Price comes at a time of significant uncertainty in the global economic climate. Since the Undisturbed Share Price Date, key listed peers have

experienced further share price declines, with Adobe and DocuSign trading down 15% and 17% respectively.¹

The full terms of the Offer are set out in Section 10 of this Bidder's Statement.

Details of the Offer

As mentioned above, the Offer Price is \$1.80 per Nitro Share.

The Offer Price is best and final except where a Competing Proposal emerges or Potentia Capital is provided with access to information required to undertake a full customary legal, financial and tax due diligence on the business and assets of Nitro.

Based on the Undisturbed Share Price Date, the Offer represents a premium as follows:

Offer Price of \$1.80 per Nitro Share	
Premium to the Undisturbed Share Price of \$1.13 ²	59.3%
<hr/>	
Premium to 1-month VWAP on the Undisturbed Share Price Date of \$1.20 ³	50.4%
<hr/>	

The key attractions of the Offer are summarised below:

- the Offer provides Nitro Shareholders with a material premium to Nitro's Undisturbed Share Price in an environment where listed peers in the electronic document and e-signing sector globally remain challenged;
- as a 100% cash offer, the Offer provides Nitro Shareholders with certain value, with no brokerage fees; and
- the Offer provides liquidity to Nitro Shareholders that did not sell their Nitro Shares during the period between 23 May 2022 to 1 September 2022 when Potentia Capital was acquiring its current stake in Nitro.⁴

Competing Scheme Proposal or Competing Takeover Proposal

Noting Potentia Capital's Relevant Interests of 19.8% in Nitro Shares, and in accordance with truth in takeovers, if a Competing Scheme Proposal emerges for Nitro then Potentia Capital will vote all the Nitro Shares that it owns or controls, at the relevant time, against the Competing Scheme Proposal, and it will not accept any of those Nitro Shares into any Competing Takeover Proposal that is made.

As a Competing Scheme Proposal requires 75% of the votes cast by, and more than 50% in number of, eligible shareholders to vote in support of the scheme, and also recognising that voter turnout at scheme meetings is often substantially lower than 100%, there is consequently significant uncertainty that a Competing Scheme Proposal will meet the required approval thresholds.

¹ Represents the period from 30 August 2022 to 27 October 2022.

² Represents Nitro's Share Price at market close on 29 August 2022.

³ Market VWAP of \$1.20 calculated from 30 July 2022 to 29 August 2022.

⁴ 23 May 2022 to 1 September 2022 represents the period in which Potentia Capital acquired its Relevant Interests in Nitro Shares following entry into a cash-settled total return swap arrangement with Jarden, subsequent on-market acquisition of Nitro Shares and fully settling the cash-settled return swap to simplify its interests. As a result, Potentia Capital has Relevant Interests of 19.8% in Nitro Shares as at the date of this Bidder's Statement.

Next Steps

We encourage you to read this Bidder's Statement in full for further details about the Offer, its terms, the Bidder and Potentia Capital.

The Offer is open for your acceptance until 7.00 pm (Sydney, Australia time) on [●] 2022, unless extended or withdrawn. If you wish to accept the Offer, please follow the instructions in the Bidder's Statement and the enclosed Acceptance Form.

If you have any questions about the Offer, please call the Offer Information Line on **1300 101 297** (for calls made within Australia) or **+61 2 9068 1929** (for calls made from outside Australia) Monday to Friday between 9:00am and 5:00pm (Sydney, Australia time) or contact your legal, financial or other professional adviser.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'A Gray', with a large loop at the end.

Andrew Gray
Managing Director
Potentia Capital

A handwritten signature in blue ink, appearing to be 'M McNamara', with a long horizontal stroke at the end.

Michael McNamara
Partner
Potentia Capital

2 Summary of the Offer and how to accept the Offer

The following questions and answers are intended to assist in your understanding of the Offer. They are qualified by, and should be read in conjunction with, the detailed information contained in this Bidder's Statement. You should read the Bidder's Statement in full before deciding whether or not to accept the Offer. You should also read the Target's Statement which Nitro will send to Nitro Shareholders as required under the Corporations Act.

Question	Answer
What is the Offer?	<p>The Bidder is making an Offer to acquire Your Nitro Shares by way of an all cash off-market takeover bid.</p> <p>The Offer Price is \$1.80 per Nitro Share.</p> <p>The Offer is subject to only two conditions (as described in Section 10.3 of this Bidder's Statement):</p> <ul style="list-style-type: none"> (a) that during the Offer Period, a majority of the members of the Nitro Board recommend that Nitro Shareholders accept the Offer in the absence of a superior proposal; and (b) that during the Bid Period, there are no Prescribed Occurrences in relation to Nitro. <p>The Offer Price is best and final except where a Competing Proposal emerges or Potentia Capital is provided with the access to Nitro required to undertake a full customary legal, financial and tax due diligence on the business and assets of Nitro. However, even if either or both of those events occur, the Bidder may decide not to increase the Offer Price</p> <p>The Offer also extends to all Nitro Shares that are issued during the Offer Period due to conversion of any Nitro Options that exist at the Register Date.</p>
What is this Bidder's Statement?	<p>This Bidder's Statement was prepared by the Bidder for distribution to Nitro Shareholders. This Bidder's Statement describes the terms of the Bidder's Offer for Your Nitro Shares and information relevant to your decision whether or not to accept the Offer.</p> <p>This Bidder's Statement is an important document. Should you have any doubt as to how to deal with this document, you should consult your financial, legal or other professional adviser.</p>
Who is the Bidder?	<p>The Bidder is a limited liability company incorporated in Delaware, US, and is managed by Potentia Capital. The Bidder was established as a special purpose vehicle for the purposes of acquiring Nitro Shares in connection with the Offer.</p> <p>Further details of the Bidder are set out in Section 4.</p>

Question	Answer
What interest does the Bidder currently have in Nitro Shares?	The Bidder has Relevant Interests in 48,586,139 Nitro Shares, which represents 19.8% of the total number of Nitro Shares. ⁵
Who is Potentia Capital?	Potentia Capital is a Sydney-headquartered private equity and growth capital investment firm focused exclusively on technology, software and tech-enabled services businesses. Further details on Potentia Capital are set out in Section 4.2 of this Bidder's Statement.
How do I accept the Offer?	To accept the Offer you should follow the instructions set out in Section 10.5 of this Bidder's Statement and on the Acceptance Form. Your acceptance must be received before the end of the Offer Period.
Are there any conditions of the Offer?	<p>The Offer is subject to only two conditions (as described in Section 10.3 of this Bidder's Statement):</p> <ul style="list-style-type: none"> (a) that during the Offer Period, a majority of the members of the Nitro Board recommend that Nitro Shareholders accept the Offer in the absence of a superior proposal; and (b) that during the Bid Period, there are no Prescribed Occurrences in relation to Nitro.
How long is the Offer open?	The Offer opens on [●] 2022 and is scheduled to close at 7.00pm (Sydney, Australia time) on [●] 2022 (unless extended or withdrawn in accordance with the Corporations Act).
Do I have to pay any fees?	<p>If Your Nitro Shares are registered in an Issuer Sponsored Holding in your name and you deliver them directly to the Bidder, you will not incur any brokerage fees or be obliged to pay stamp duty in connection with your acceptance of the Offer.</p> <p>If Your Nitro Shares are registered in a CHESS Holding, or if you are a beneficial owner whose Nitro Shares are registered in the name of a broker, bank, custodian, or other nominee, you will not be obliged to pay stamp duty by accepting the Offer, but you should ask your Controlling Participant (usually your Broker) or that nominee whether it will charge any transaction fees or service charges in connection with acceptance of the Offer.</p>

⁵ On 2 September 2022, it was disclosed to ASX that Potentia Capital and its associates have Relevant Interests in 48,586,139 Nitro Shares, representing 19.8% of the Shares on issue.

Question	Answer
What should I do?	<p>You should:</p> <ul style="list-style-type: none"> (a) read this Bidder's Statement in full; (b) read Nitro's Target's Statement in full (when issued); (c) consult your Broker, legal, financial or other professional adviser if you are in any doubt as to what action to take or how to accept the Offer; and (d) to accept the Offer, follow the instructions set out in Section 10.5 and on the Acceptance Form. <p>If you have any queries about the Offer, you may also call the Offer Information Line on 1300 101 297 (for calls made within Australia) or +61 2 9068 1929 (for calls made from outside Australia) between 9.00am and 5.00pm (Sydney, Australia time) Monday to Friday.</p>
Can I accept the Offer for less than all of my Nitro Shares?	Yes.
If I accept the Offer, when will I receive consideration for my Nitro Shares?	If you accept the Offer and the Conditions are satisfied or waived, the Bidder will pay you the consideration under the Offer within 10 Business Days after the later of (i) receipt of your valid acceptance or (ii) the date on which the Conditions are satisfied or waived.
What happens if I accept the Offer?	Once you accept the Offer in respect of some or all of Your Nitro Shares you will not be able to sell those Nitro Shares or otherwise deal with the Rights attaching to those Nitro Shares, subject to your limited statutory rights to withdraw your acceptance in certain circumstances.
What happens if I do not accept the Offer?	<p>If you do not accept the Offer and you do not sell Your Nitro Shares on ASX, you will retain Your Nitro Shares and will not receive any cash consideration.</p> <p>In addition, as described in Section 6.4(c), if there is a limited number or spread of Nitro Shareholders remaining at the end of the Offer Period, the Bidder may seek to procure the removal of Nitro from the official list of ASX. In such event, your subsequent ability to trade Nitro Shares may be limited.</p> <p>If the Bidder becomes entitled to Compulsorily Acquire Your Nitro Shares, it intends to proceed with the Compulsory Acquisition. If Your Nitro Shares are Compulsorily Acquired by the Bidder, it will be on the same terms (including the same consideration for each Nitro Share acquired) as the Offer but you will receive payment for Your Nitro Shares much later than if you accept the Offer.</p>

Question	Answer
What are the tax implications of accepting the Offer?	<p>A general description of the Australian taxation treatment for certain Nitro Shareholders accepting the Offer is set out in Section 8.</p> <p>The description in Section 8 is a general description only and not advice. It does not take into account your particular circumstance or needs. You should not rely on that description as advice for your own affairs.</p> <p>You should consult your taxation adviser for detailed taxation advice before making a decision as to whether or not to accept the Offer for Your Nitro Shares.</p>

3 Why you should accept the Offer

The Bidder is offering to acquire 100% of Your Nitro Shares in an all-cash off-market offer.

The Offer Price to Nitro Shareholders is \$1.80 per Nitro Share.

The Offer is subject to only two conditions (as described in Section 10.3 of this Bidder's Statement):

- (a) that during the Offer Period, a majority of the members of the Nitro Board recommend that Nitro Shareholders accept the Offer in the absence of a superior proposal; and
- (b) that during the Bid Period, there are no Prescribed Occurrences in relation to Nitro.

The Offer Price is best and final except where a Competing Proposal emerges or Potentia Capital is provided with the access required to undertake a full customary legal, financial and tax due diligence on the business and assets of Nitro.

However, even if either or both of those events occur, the Bidder may decide not to increase the Offer Price.

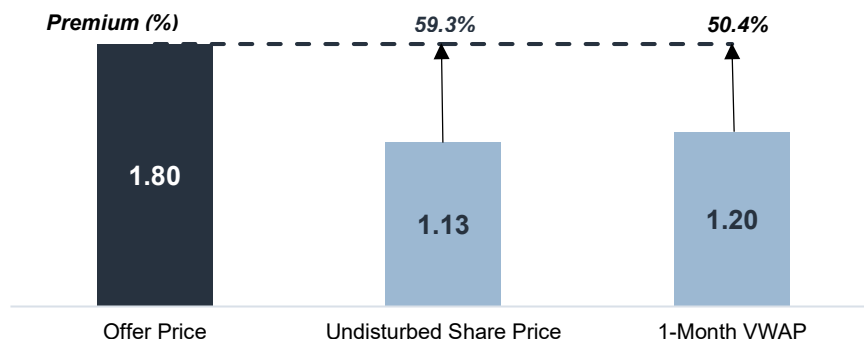
The key attractions of the Offer are summarised below.

- (a) **The Offer Price delivers a significant premium to Nitro's undisturbed historic share price:**

The all-cash consideration provides a compelling opportunity for Nitro Shareholders to realise full value for their Nitro Shares.

The Offer Price of \$1.80 per Nitro Share represents a premium of:

- (i) 59.3% to the closing price of A\$1.13 per Nitro Share on 29 August 2022, being the Undisturbed Share Price Date⁶
- (ii) 50.4% to Nitro Software's 1-month VWAP to 29 August 2022 of A\$1.20 per Nitro Share⁷



⁶ Represents Nitro's Share Price at market close on 29 August 2022

⁷ Market VWAP of \$1.13 calculated from 30 July 2022 to 29 August 2022

(b) The Offer provides cash certainty today

The consideration offered to Nitro Shareholders is 100% cash and is subject to only two conditions (as described in Section 10.3 of this Bidder's Statement):

- (i) that during the Offer Period, a majority of the members of the Nitro Board recommend that Nitro Shareholders accept the Offer in the absence of a superior proposal; and
- (ii) that during the Bid Period, there are no Prescribed Occurrences in relation to Nitro.

The Offer provides an opportunity for Nitro Shareholders to realise their investment for certain value.

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

- (i) 10 Business Days after the date the Conditions are satisfied or waived; or
- (ii) 10 Business Days after the date that you validly accept the Offer.

(c) The Nitro Share price may fall if the Offer is not successful

The Offer provides Nitro Shareholders with the opportunity to promptly realise certain cash value and mitigate external and company-specific risks that Nitro may be subject to, which may adversely affect the future trading price of Nitro Shares, such as:

- (i) a continuing challenging trading environment for technology stocks;
- (ii) regulatory risks;
- (iii) competitive threats; and
- (iv) global macroeconomic conditions.

If you accept the Offer and the Conditions are satisfied or waived you will no longer be exposed to the risks and uncertainties inherent in owning Nitro Shares.

(d) Risks of remaining as a minority shareholder in Nitro

If you do not accept the Offer and the Bidder acquires more than 50% of the Nitro Shares but less than 90% of Nitro Shares, you will be a minority shareholder in Nitro.

Being a minority shareholder in Nitro may have the following potential implications:

- (i) the price at which Nitro Shares are traded on ASX may fall and trade at a material discount to the Offer Price, which could cause Nitro's ASX index weighting to decrease;
- (ii) the market for Nitro Shares may become less liquid;

- (iii) Nitro's distribution policy, capital structure and board configuration may change; and
- (iv) Nitro may be delisted from the official list of ASX.

If the Bidder becomes entitled to compulsorily acquire your Nitro Shares, it intends to exercise those rights. If your Nitro Shares are compulsorily acquired, you will still receive the Offer Price per Nitro Share, but at a later time than you would have received it if you had accepted the Offer, which would have been paid by no later than 10 Business Days after the later of:

- (i) the date that the Conditions are satisfied or waived; and
- (ii) the date that you validly accept the Offer.

(e) **Likelihood of a Competing Proposal is low**

In the event of a Competing Scheme Proposal emerging, TGC has informed the Bidder that it will vote all Nitro Shares that it holds at the relevant time against a Competing Scheme Proposal. In addition, the Bidder will vote any Nitro Shares that it controls as a result of acceptances of the Offer against a Competing Scheme Proposal.

As a Competing Scheme Proposal requires 75% of the votes cast by, and more than 50% in number of, eligible shareholders to vote in support of the scheme, and also recognising that voter turnout at scheme meetings is often substantially lower than 100%, there is consequently significant uncertainty that a Competing Scheme Proposal will meet the required approval thresholds.

In the event of a Competing Takeover Proposal, TGC has informed the Bidder that it will not accept its Nitro Shares into the Competing Takeover Proposal.

(f) **No stamp duty or brokerage fees in accepting the Offer**

You will not be obliged to pay stamp duty if you accept the Offer.

If your Nitro Shares are registered in an Issuer Sponsored Holding in your name and you deliver them directly to the Bidder, you will not incur any brokerage in connection with your acceptance of the Offer.

If your Nitro Shares are registered in a CHESS Holding, or if you are a beneficial owner whose Nitro Shares are registered in the name of a broker, bank, custodian, or other nominee, you should ask your Controlling Participant (usually your Broker) or that nominee whether it will charge any transaction fees or service charges in connection with acceptance of the Offer.

4 Information on the Bidder and Potentia Capital

4.1 Overview of the Bidder

The Bidder is a limited liability company incorporated in Delaware, US, and is wholly owned by TGC, which in turn is wholly owned by TGF. TGF is wholly owned by TGP.

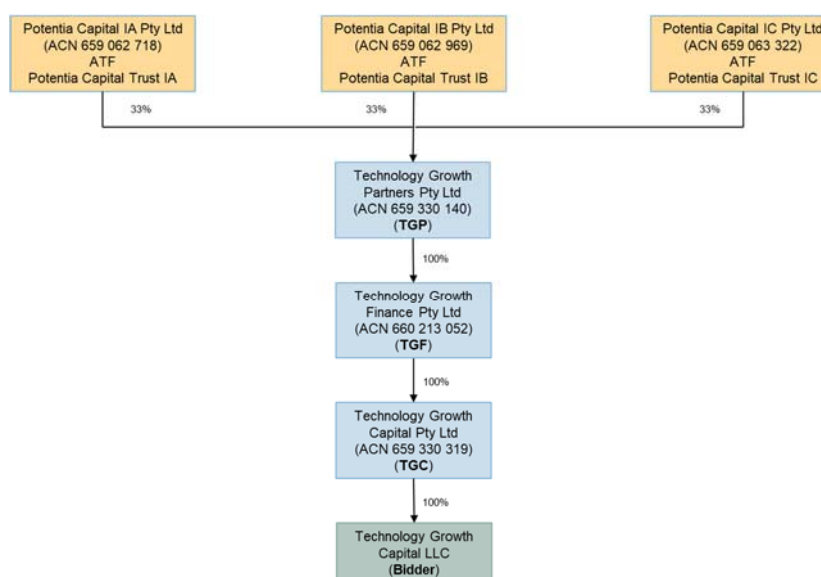
As a consequence of the funding arrangements described in Section 7.4, TGP will, if the Offer becomes unconditional, become partly owned by the Co-investor.⁸

TGC directly holds 19.8% of the Nitro Shares.

The Bidder was established as a special purpose vehicle for the purposes of acquiring Nitro Shares in connection with the Offer. Each of the Bidder, TGC, TGF and TGP are managed by Potentia Capital.

The Bidder has not traded since its incorporation and does not have any employees. The officers of the Bidder are Andrew Gray (President) and Michael McNamara (Secretary).

A high level diagram of the current ownership structure for the Bidder is set out below:



4.2 Overview of Potentia Capital

Potentia Capital is a Sydney-headquartered private equity and growth capital investment firm focused exclusively on technology, software and tech-enabled services businesses. Potentia Capital has over \$1.0bn of funds under management and is led by directors Andrew Gray (previously of US technology buyout firm Francisco Partners and Australian buyout firm Archer Capital) and Tim Reed (previously CEO of MYOB).

Potentia Capital has a strong track record of driving business transformations and has directly relevant experience in a range of B2B software businesses including:

⁸ As at the date of this Bidder's Statement, the Co-investor already has a Relevant Interest in TGP in connection with partial funding of the Bidder's Relevant Interest of 19.8% in Nitro Shares, as disclosed in the substantial shareholder notice announced to ASX on 2 September 2022.

- **Ascender (2015):** Potentia Capital backed the Ascender management team to create the leading pan-Asian payroll software and tech-enabled services platform servicing over 1,200 clients and 1.3m employees from 13 delivery centres. During Potentia Capital's ownership period, Ascender invested heavily in its software platforms as well as successfully completing three bolt-on acquisitions and over a dozen strategic partnerships in the HR tech space. Potentia Capital exited the Ascender business to NYSE-listed Ceridian in March 2021;
- **Micromine (2018):** Micromine is a leading global provider of general mine planning software. Potentia Capital has driven the shift of customers from a legacy perpetual license revenue model onto subscription pricing, broadened the product offering through investment in R&D and strategic acquisitions, and made material investment in salesforce effectiveness. Potentia Capital announced the sale of Micromine to NASDAQ-listed Aspen Technology in July 2022; and
- **Education Horizons (2019):** Education Horizons is a leading provider of education software in Australia, UK, South-East Asia and the Middle East. Potentia Capital's investment thesis was predicated on accelerating investment into the business' tech platform and building a global footprint.

More information on Potentia Capital is available on its website, <https://potentiacap.com/>.

5 Information on Nitro

5.1 Disclaimer

The Bidder has not had access to information to undertake due diligence on Nitro and the information in this Section 5 has been prepared based on a review of publicly available information concerning Nitro. It has not been independently verified and the Bidder does not make any representation or warranty, express or implied, as to the accuracy or completeness of the information. The information should not be considered comprehensive. Further information relating to Nitro's businesses and issued securities may be included in Nitro's Target Statement in relation to the Offer.

5.2 Overview of Nitro

Nitro is an Australian public company listed on ASX. Nitro's principal place of business is 150 Spear Street, Suite 1850, San Francisco, California, United States of America, with nine office hubs including in Toronto, Dublin, London, and Melbourne.

Nitro is a global document productivity and eSigning software company that aims to accelerate digital transformation in organisations around the world across multiple industries. Nitro's core solution, the Nitro Productivity Platform, provides integrated PDF productivity tools, eSignature and digital identity capabilities and analytics to customers. The solution allows knowledge workers to productively manage and process documents for many functions including editing, collaboration, storage, and electronic signing.

For the half year ended 30 June 2022, Nitro's revenue increased by 32% to US\$29.4 million. A loss of US\$17.32 million was reported in the same period, an increase of 103%, reportedly due to increases in sales and marketing expenses, research and development and general expenses arising out of increased headcount, including personnel added as a result of the acquisition of Connective in December 2021, and investments in Nitro's go-to-market strategy. For the nine months to 30 September 2022, Nitro's revenue increased by 33% to US\$49.1 million compared to the prior corresponding period.

Nitro has a market capitalisation of approximately \$424.0m (as at the close of trading on the last Trading Day before the date of this Bidder's Statement).

More information on Nitro is available on its website, <https://www.gonitro.com/>.

5.3 Directors of Nitro

As at the date of this Bidder's Statement, the directors of Nitro are:

Director	Position
Kurt Johnson	Executive Chairman
Sam Chandler	Co-Founder, Executive Director & Chief Executive Officer
Michael Brown	Non-Executive Director
Sarah Morgan	Independent Non-Executive Director and Chair of Audit & Risk Committee
Lisa Hennessy	Independent Non-Executive Director

Peter Navin	Independent Non-Executive Director and Chair of the Remuneration and Nomination Committee
Craig Scroggie	Independent Non-Executive Director

Profiles of Nitro's directors are available on its website,
<https://www.gonitro.com/about/our-story>.

5.4 Substantial holders

Based on publicly available information, the following persons have disclosed themselves as 'substantial shareholders' of Nitro (as at the close of trade on the last Trading Day prior to the Announcement Date):

Substantial holder	Number of Nitro Shares held ⁹	% of Nitro Shares held
Potentia Capital ¹⁰	48,586,139	19.8%
National Nominees Ltd ACF Australian Ethical Investment Limited	17,737,961	7.2%
Battery Ventures X, L.P. and Battery Investment Partners X, LLC	16,424,071	6.7%
Spheria Asset Management Pty Ltd	15,160,602	6.2%
AustralianSuper Pty Ltd	14,957,137	6.1%
Tiga Trading Pty Ltd	12,468,142	5.1%
Samuel James Chandler	12,183,662	5.0%

5.5 Dividend policy

Nitro has not paid a dividend since listing on ASX on 11 December 2019.

5.6 Capital Structure of Nitro

According to documents lodged by Nitro with ASX, (as at the close of trade on the last Trading Day prior to the Announcement Date), Nitro had:

- 245,066,360 Nitro Shares on issue; and
- 16,255,681 Nitro Options.¹¹

The Nitro Options are unlisted and therefore cannot be traded on ASX. The Offer extends to Nitro Shares that are issued on the exercise of Nitro Options during the period from the Register Date to the end of the Offer Period.

5.7 Nitro information

Nitro is a listed disclosing entity for the purposes of the Corporations Act and as such, is subject to regular reporting and disclosure obligations. Specifically, as a

⁹ The actual number of Nitro Shares held or voting power may differ from that shown as there is no obligation to publicly disclose changes if the change in voting power is less than 1%.

¹⁰ On 2 September 2022, it was disclosed to ASX that Potentia Capital and its Associates (including TGC) have Relevant Interests in 48,586,139 Nitro Shares, representing 19.8% of the Shares on issue.

¹¹ Based on Notification of Cessation of Securities announcement dated 12 October 2022.

listed company, Nitro is subject to the Listing Rules of ASX which require immediate disclosure of any information Nitro has concerning it that a reasonable person would expect to have a material effect on the price or value of its securities, subject to certain exceptions.

All information disclosed by Nitro and publicly released by ASX is available at ASX's website <https://www2.asx.com.au/> and at Nitro's website <https://ir.gonitro.com/investor-centre/?page=asx-announcements>.

A list of announcements made by Nitro to ASX since the lodgement of Nitro's FY21 Annual Report is contained in Annexure 1.

Nitro is also required to lodge various documents with ASIC. Copies of documents lodged with ASIC by Nitro may be obtained from, or inspected at, an ASIC office.

6 The Bidder's intentions

6.1 Introduction

This Section 6 sets out the Bidder's intentions in relation to the following:

- the growth of the business of Nitro;
- any major changes to be made to the business of Nitro, including any redeployment of the fixed assets of Nitro;
- the future employment of the present employees of Nitro;
- changes to the Nitro Board; and
- the Compulsory Acquisition of Nitro Shares and Nitro Options, and the removal of Nitro from the official list of ASX.

The intentions, knowledge, views, understandings and beliefs set out in this Section 6 are the same as those of Potentia Capital, so generally references to the Bidder should be read as including Potentia Capital.

6.2 Qualifications and disclaimers

The intentions set out in this Section 6 represent the current intentions of the Bidder as at the date of this Bidder's Statement formed on the basis of facts and information concerning Nitro and its business, and the general business environment, which are known to the Bidder at the time of preparing this Bidder's Statement.

The Bidder does not currently have full knowledge of all material information, facts and circumstances that are necessary to assess the operational, commercial, tax and financial implications of its current intentions. Final decisions regarding these matters will only be made by the Bidder in light of material information and circumstances at the relevant time, and once it has had an opportunity to undertake due diligence on Nitro. Accordingly, the statements set out in this Section 6 are statements of current intent only (based on publicly available information), which may change as new information becomes available to the Bidder or as circumstances change. Any changes in the Bidder's intentions will be disclosed to the extent and in the manner required by law.

As there is no minimum acceptance condition to the Offer, the Bidder will not know the extent of its ultimate shareholding in Nitro until after the close of the Offer. This means that the Bidder's ultimate voting power in Nitro could be anywhere between 19.8% and 100% at the close of the Offer. Accordingly, the precise circumstances surrounding the Bidder's ability to pursue the changes outlined in this Section 6 may not be known until after the close of the Offer, and are difficult to predict with any certainty at this stage.

The implementation of the Bidder's intentions in the event that the Bidder has a Relevant Interest in less than 100% of Nitro Shares will be subject to the level of voting power the Bidder has in Nitro and the Corporations Act (including, without limitation, those provisions intended for the protection of minority shareholders), the Listing Rules, Nitro's constitution and the statutory and fiduciary obligations of the Nitro Board at that time to act in the best interests of Nitro (**Shareholder Protections**).

For example:

- If the Bidder acquires 50% or less of all Nitro Shares, it may not be in a position to alone determine the outcome of ordinary resolutions (in respect of which it is entitled to vote) and so, for example, it may not be in a position to control the composition of the Nitro Board. This means that the Bidder's ability to undertake a detailed review of Nitro and its assets and liabilities may be limited, and (assuming it is able to undertake any such review) its ability to realise the proposed outcomes of that strategic review may be similarly constrained.
- If the Bidder acquires more than 50% of all Nitro Shares (but less than 90%), it will be able to alone determine the outcome of ordinary resolutions (in respect of which it is entitled to vote) and will be in a position to control the composition of the Nitro Board. However, in these circumstances, the Shareholder Protections will continue to apply and again may constrain the Bidder's ability to realise the proposed outcomes of the strategic review.
- If the Bidder acquires at least 75% of all Nitro Shares (but again less than 90%), it will also be able to determine alone the outcome of special resolutions (in respect of which it is entitled to vote). Such special resolutions could involve amendments to the Nitro constitution or a change to company type. However, again, the Shareholder Protections will continue to apply.
- If during, or at the end of, the Offer Period:
 - the Bidder and its Associates together have Relevant Interests in at least 90% (by number) of all Nitro Shares; and
 - the Bidder and its Associates have acquired at least 75% (by number) of all Nitro Shares for which Offers are made,

The Bidder will be entitled to Compulsorily Acquire all outstanding Nitro Shares and presently intends to do so. Following completion of such Compulsory Acquisition process, Nitro would become a wholly-owned subsidiary of the Bidder and the Bidder would be entitled to exercise its rights as the sole shareholder of Nitro.

Therefore, the Bidder's ability to achieve some of its intentions might not be able to be realised, either at all or without the approval of Nitro Shareholders in a general meeting.

As a result of the Shareholder Protections, the Bidder and its Associates may also be excluded from voting on certain resolutions in a general meeting, and any nominee directors appointed by the Bidder may potentially be precluded from voting at Nitro Board meetings, to the extent of any conflict of interest or material personal interest. Further, in circumstances where a minority shareholder maintains a "blocking stake" or other substantial holding in Nitro which provides them with a significant proportion of the Nitro Shares which are not held by the Bidder and its Associates, then that Nitro Shareholder's ability to determine the outcome of any such resolutions put to Nitro Shareholders in a general meeting may be disproportionate to its holding; for example, where that Nitro Shareholder's holding in Nitro is such that they alone could determine whether a resolution is

passed or not, in circumstances where the Bidder and its Associates are excluded from voting on that resolution.

6.3 Intentions upon acquiring 90% or more of Nitro Shares

Without limiting the qualifications and disclaimers in Section 6.2, this Section 6.3 describes the intentions of the Bidder if at the end of the Offer Period, the Bidder:

- receives valid acceptances of at least 75% (by number) of the Nitro Shares not held by the Bidder (and its Associates); and
- acquires Relevant Interests in at least 90% (by number) of the Nitro Shares then on issue.

(a) Compulsory Acquisition of Nitro Shares and removal from official list

If the Bidder and its Associates collectively have Relevant Interests in at least 90% of Nitro Shares during, or at the end of the Offer Period, the Bidder will give a notice pursuant to Part 6A.1 of the Corporations Act to Compulsorily Acquire all outstanding Nitro Shares, even if Nitro Shares to which those notices relate are issued:

- after the Offer closes but before notices are given (pursuant to Section 661A(4)(b) of the Corporations Act); or
- on exercise of Nitro Options, up to six weeks after the notices are given (pursuant to Section 661A(4)(c) of the Corporations Act).

If not all of the Nitro Options are exercised or otherwise acquired by the Bidder and the Bidder is entitled to Compulsorily Acquire any outstanding Nitro Options, the Bidder intends to Compulsorily Acquire any outstanding Nitro Options pursuant to Part 6A.2 of the Corporations Act, although it reserves the right not to do so.

Nitro Shareholders should consult their legal advisors for a determination of their legal rights with respect to any Compulsory Acquisition.

The income tax consequences to a Nitro Shareholder of a Compulsory Acquisition may differ from the income tax consequences to such Nitro Shareholder accepting the Offer. See Section 8 for further information on Australian taxation considerations for Nitro Shareholders who dispose of their Nitro Shares under the Offer.

(b) Nitro Board

After the Offer Period, the Bidder intends to seek Board representation in line with its proportional ownership of Nitro Shares. The identity of such nominee directors has not yet been finally determined, but it is expected they will be predominantly drawn from the current directors and management of Potentia Capital.

(c) General operational review

The Bidder is supportive of the strategy outlined by Nitro's Founder and CEO, Sam Chandler, and Nitro's management team. We believe this strategy can be accelerated in an unlisted environment.

After the Offer Period, the Bidder intends to undertake a general review of Nitro's operations covering strategic, financial and operating matters, with the objective to accelerate Nitro's presence as a global leader in document productivity and eSigning.

(d) **Impact on employees**

After the Offer Period, and as part of the general strategic and operational review described above, the Bidder intends to evaluate the future operations of Nitro and will seek to provide continued employment to Nitro's existing workforce.

6.4 Intentions upon acquiring 50.1% or more of Nitro Shares

This Section 6.4 describes the Bidder's intentions if it were to acquire Relevant Interests in at least 50.1%, but less than 90%, of Nitro Shares on issue.

The ability of the Bidder to implement the intentions set out in this Section 6.4 will be subject to the legal obligations of the Nitro Directors (including any nominees of the Bidder) to have regard to the interests of Nitro and Shareholder Protections. This may limit or modify the implementation of the intentions outlined below, and the approval of minority Nitro Shareholders may be required for the implementation of some of the intentions outlined below.

(a) **Nitro Board**

Subject to the Corporations Act and Nitro's constitution, the Bidder intends to seek to replace some of the members of the Nitro Board so that the Bidder nominees constitute at least a majority of the members of the Nitro Board. No decision has been made at this stage about the identity of the proposed nominees to the Nitro Board or which current Nitro Directors would be removed.

The Bidder will seek, to the extent possible through its nominees on the Nitro Board, to implement the intentions detailed in Section 6.3 where they are consistent with Nitro being a controlled entity of (but not wholly-owned by) the Bidder and are considered to be in the interests of Nitro Shareholders as a whole.

The Bidder would consider (but not necessarily comply with) the recommendations in ASX Corporate Governance Principles and Recommendations when determining the composition of the Nitro Board.

(b) **General operational review**

As mentioned above, the Bidder is generally supportive of Nitro's strategic direction and, after the Offer Period, will to the extent permitted undertake the general operation review and steps outlined in Section 6.3(c) and 6.3(d).

(c) **Removal of ASX listing**

The Bidder intends, subject to satisfying the relevant preconditions, to remove Nitro from the official list of ASX.

In relation to the removal of Nitro from the official list of ASX, ASX guidance indicates that the usual conditions that ASX would expect to be

satisfied in order for it to approve the removal of Nitro from the official list in the context of a successful takeover bid include:

- at the end of the Offer Period, the Bidder has a Relevant Interest in at least 75% of the Nitro Shares and the Offer has remained open for at least two weeks after the Bidder attained ownership or control of at least 75% of the Nitro Shares; and
- the number of Nitro shareholders (other than the Bidder) having holdings with a value of at least \$500 is fewer than 150,

and in such case, ASX will not usually require the Bidder to obtain Nitro Shareholder approval for Nitro's removal from the official list of ASX.

In addition, ASX may approve an application for Nitro to be removed from the official list of ASX with shareholder approval and, where such removal is sought later than one month after the close of the Offer, the Bidder would be entitled to vote on the resolution approving the removal.

If Nitro is removed from the official list of ASX, there may be risks related to remaining as a minority shareholder in Nitro. These include reduced or non-existent liquidity if shareholders wish to sell their Nitro Shares.

(d) **Further acquisition of Nitro Shares**

The Bidder may, at some later time, acquire further Nitro Shares in a manner consistent with the Corporations Act and any other applicable laws.

(e) **Subsequent acquisition of interest in Nitro**

It is possible that even if the Bidder is not entitled to proceed to Compulsory Acquisition of minority holdings after the end of the Offer Period under Part 6A.1 of the Corporations Act, it may subsequently become entitled to exercise rights of general Compulsory Acquisition under the Corporations Act; for example, as a result of acquisitions of Nitro Shares in reliance on the "3% creep" exception in item 9 of section 611 of the Corporations Act. If so, it may exercise those rights.

6.5 Intentions if the Bidder does not acquire 50.1% of Nitro

If the Offer closes and the Bidder has not acquired a Relevant Interest in at least 50.1% of Nitro Shares on issue:

- (a) the Bidder will seek to:
 - (i) obtain representation on the Nitro Board which is at least consistent with its proportionate shareholding; and
 - (ii) gain a more detailed understanding of the business' assets and operations in order to evaluate the performance, profitability and prospects of Nitro in light of the information then available to the Bidder;
- (b) the Bidder will, to the extent possible, procure the Nitro Board to follow the intentions set out in Sections 6.3 or 6.4; and

- (c) the Bidder would otherwise have regard to the circumstances at the time and consider the appropriate courses of action that are in the best interests of the Bidder.

6.6 Limitations on intentions

The intentions and statements of future conduct set out in this Section 6 must be read as being subject to:

- (a) the law (including the Corporations Act) and the Listing Rules, including in particular the requirements of the Corporations Act and the Listing Rules in relation to conflicts of interest and 'related party' transactions, given that if the Bidder obtains control of Nitro but does not acquire all of the Nitro Shares, it will be treated as a related party of Nitro for these purposes;
- (b) the legal obligation of the Nitro Board at the time, including any nominees of the Bidder, to act in good faith and in the best interests of Nitro for proper purposes and to have regard to the interests of all Nitro Shareholders; and
- (c) the outcome of the reviews referred to in this Section 6.

7 Funding

7.1 *Provision of consideration*

On the basis of the arrangements described in this Section 7, the Bidder is of the opinion that it has a reasonable basis for forming the view, and holds the view, that it will be able to provide 100% of the cash consideration required for the acquisition of the Nitro Shares pursuant to the Offer as and when it falls due for payment and will be able to satisfy its obligations under the Offer and will also meet the costs associated with the Offer.

7.2 *Consideration under the Offer*

The consideration for the acquisition of the Shares to which the Offer relates will be wholly satisfied by the payment of cash (in Australian dollars).

7.3 *Cash consideration*

As at the close of trading on the Announcement Date, according to documents provided by Nitro to ASX, there were 245,066,360 Nitro Shares on issue and 16,255,681 Nitro Options.¹²

In the event that acceptances are received for all Nitro Shares on issue as at the date of this Bidder's Statement (other than those Nitro Shares which TGC already holds, being 48,586,139 Nitro Shares), the aggregate amount of cash consideration that the Bidder would be required to pay based on the Offer Price would be \$353.7 million.¹³

If all Nitro Options are exercised and the resulting Nitro Shares are accepted into the Offer, approximately \$29.3 million¹⁴ additional cash consideration will be payable.

The total of the amounts above (being \$382.9 million) (plus costs associated with the Offer) is the **Offer Amount**.

7.4 *Sources of Offer Amount*

The funds required by the Bidder to pay the Offer Amount will be made available to the Bidder by Potentia Capital.

Potentia Capital has entered into a binding commitment with the Bidder obliging it to provide up to the full Offer Amount to the Bidder as and when required by the Bidder.

Potentia Capital will source the Offer Amount from a number of managed investment trusts (**MITs**) which have been established by and are managed exclusively by Potentia Capital.

Each MIT will be cash funded in various amounts which in aggregate will be in excess of the Offer Amount as a result of investments into the MITs from:

- (i) funds managed by Potentia Capital; and
- (ii) funds managed by the Co-investor,

¹² Based on Notification of Cessation of Securities announcement dated 12 October 2022.

¹³ Based on 196.5 million ordinary shares outstanding not currently owned.

¹⁴ Based on 16.3 million Nitro Options outstanding.

(each a **MIT Investor**), each of whom has committed to provide equity funding to one or other of the MITs (**MIT Equity Commitments**).

The MIT Equity Commitments are not subject to any conditions which the Bidder considers may not be satisfied. The commitment period under each MIT Equity Commitment exceeds the anticipated Offer Period.

The funds managed by Potentia Capital have sufficient available and uncommitted cash to meet their MIT Equity Commitment, and the Co-investor has satisfied Potentia Capital and the Bidder that it has sufficient available and uncommitted cash to meet the Co-investor's MIT Equity Commitment.

Potentia Capital as manager of each MIT will cause each MIT to provide cash funding to the Bidder as and when required by subscribing for convertible notes in the Bidder, which may be converted into shares in the Bidder at the election of the MIT.

8 Australian Taxation Considerations

8.1 Introduction

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

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

In addition, this summary does not apply to:

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

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

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

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

8.2 Nitro Shareholders who are Australian residents for tax purposes

- (a) CGT consequences of accepting the Offer or have their Nitro Shares acquired in Compulsory Acquisition.

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

If you are an Australian resident for Australian income tax purposes, the disposal of Your Nitro Shares pursuant to the Offer will constitute a CGT event.

The time of the CGT event is when you dispose of Your Nitro Shares for CGT purposes. If you accept the Offer, you should be taken to have disposed of Your Nitro Shares for CGT purposes when the contract to sell Your Nitro Shares comes into existence by accepting the Offer to dispose of Your Nitro Shares in

accordance with Section 10.8. However, if you do not ultimately dispose of Your Nitro Shares then no CGT event should happen to Your Nitro Shares.

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

The disposal of Your Nitro Shares will give rise to a capital gain or loss equal to the difference between:

- (i) the capital proceeds received for the disposal of Your Nitro Shares (i.e. the cash received under the Offer); and
- (ii) the cost base (or, in the case of a capital loss, reduced cost base) of Your Nitro Shares (which would generally include the amount paid to acquire the Nitro Shares plus any non-deductible incidental costs of acquisition, e.g. brokerage fees).

Each Nitro Share constitutes a separate asset for CGT purposes. You will need to separately consider the consequences of the disposal of Your Nitro Shares which were acquired in different parcels at different times.

Your net capital gain for the income year is included in your assessable income for the income year. Broadly, your net capital gain for an income year is the total of all of the capital gains made during the income year less capital losses made in the income year and available net capital losses made in previous income years. That amount may be reduced further by other concessions, particularly under the discount capital gains tax rules discussed below.

If you make a capital loss from the disposal of Your Nitro Shares, the capital loss may be used to offset capital gains made in the same or subsequent years of income (subject to satisfying any applicable carry forward loss conditions) but cannot be offset against ordinary income, nor carried back to offset net capital gains arising in earlier income years.

(b) Indexation for pre-21 September 1999 shares

If Your Nitro Shares that you dispose of were acquired at or before 11.45 am (ACT time) on 21 September 1999, for the purpose of calculating a capital gain (but not a capital loss), you may choose that the cost base of those shares be indexed for inflation to 30 September 1999 (which would only be of any practical effect if the shares were acquired prior to 1 July 1999). If you choose indexation to apply, the discount capital gains tax provisions discussed below will not apply.

If you choose the indexation option, capital losses are applied after calculating the capital gain using the indexed cost base.

The choice to apply indexation rather than the discount capital gain provisions must be made by you on or before the day you lodge your income tax return for the income year in which the disposal occurs. The manner in which you complete your income tax return is generally sufficient evidence of your making of a choice.

If you do not choose to apply indexation, the discount capital gain provisions may apply, provided you have held Your Nitro Shares for at least 12 months (as discussed further below).

(c) Discount capital gains

If you are an individual, or you hold Your Nitro Shares as trustee of a trust or a complying superannuation fund, and have held Your Nitro Shares for at least 12 months before disposal (and have not chosen for indexation to apply, should the choice be available), the discount capital gain provisions should apply as follows:

- (i) If you are an individual, one half of the capital gain (without any allowance for indexation in the cost base of the shares), after offsetting any applicable capital losses, will be included in your assessable income.
- (ii) If you are acting as a trustee of a trust (but not a superannuation fund), one half of the capital gain (without any allowance for indexation in the cost base of the shares), after offsetting any applicable capital losses, will be included in the "net income" of the trust. The discount capital gains provisions may also apply to capital gains to which beneficiaries in the trust (other than beneficiaries that are companies) are entitled. The CGT provisions applying to trustees and beneficiaries of trusts are complex and you should seek advice from your professional tax adviser in this regard.
- (iii) If you are a complying superannuation fund, two-thirds of the capital gain (without any allowance for indexation in the cost base of the shares) after offsetting applicable capital losses will be included in the fund's assessable income.

The discount capital gain provisions do not apply to companies.

Where the discount capital gain provisions apply, any available capital loss will be applied to reduce the nominal capital gain before discounting the resulting net amount by either one half or one third (as applicable) to calculate the net capital gain that is included in assessable income.

8.3 Nitro Shareholders who are not Australian residents for tax purposes

This Section 8.3 applies to Nitro Shareholders that are not Australian residents for tax purposes and hold their Nitro Shares on capital account. It does not apply to Nitro Shareholders who have held their Nitro Shares at any time in carrying on a business at or through a permanent establishment in Australia.

If you are not a resident of Australia for Australian income tax purposes, you will generally not be subject to CGT on the disposal of Your Nitro Shares unless Your Nitro Shares are an "indirect Australian real property interest" at the time you dispose of Your Nitro Shares for CGT purposes.

Broadly, Your Nitro Shares should not be an indirect Australian real property interest as at that time unless the following conditions are satisfied:

- (a) you and your associates (as defined for tax purposes) together have held at least 10% or more of the issued shares in Nitro at the time that you dispose of Your Nitro Shares for CGT purposes or for at least 12 months during the 24 months before you disposed of Your Nitro Shares for CGT purposes; and
- (b) the aggregate market value of Nitro's assets which are taxable Australian property (being direct and indirect interests in real property, including leases of land, situated in Australia and mining, quarrying or prospecting rights in respect of

materials situated in Australia) exceeds the aggregate market value of Nitro's assets which are not taxable Australian property.

If you are a non-resident of Australia for tax purposes and hold, or have held (either alone or together with associates) 10% or more of the total number of Nitro Shares on issue, you should seek professional advice with respect to the CGT consequences of disposing of Your Nitro Shares.

8.4 CGT Non-resident withholding tax

The CGT non-resident withholding tax regime (**CGT NRWT**) applies to off-market transactions entered into on or after 1 July 2016. Under this regime buyers of securities in certain companies and trusts from foreign residents who are subject to CGT are generally required to pay 12.5% of the purchase price to the ATO as a pre-payment of the seller's tax liability.

Where the provisions are enlivened a selling shareholder can apply to the ATO in advance to have the rate of withholding varied down (including down to zero).

The amount of CGT NRWT is required to be paid by the buyer to the ATO on or before completion of the transaction. The seller gets a credit against its Australian tax for the amount paid by the buyer to the ATO.

Where the Bidder considers that the provisions may be enlivened in respect of you, it will use reasonable endeavours to contact you so that you have the opportunity to provide a notice to the Bidder that:

- (a) you are a resident of Australia; or
- (b) Your Nitro Shares are not Taxable Australian Property.

If you do not provide such declaration or the Bidder knows it to be false it will withhold 12.5% of the consideration offered by it and remit that to the ATO.

8.5 GST

The disposal of Your Nitro Shares in return for cash under the Offer will not attract GST. To the extent that you incur GST on acquisitions which you make in connection with the Offer (such as adviser fees), you may not be entitled to an input tax credit or only be entitled to a reduced input tax credit for that GST, depending on your particular circumstances.

8.6 Stamp duty

You will not be liable for any stamp duty on the disposal of Your Nitro Shares in return for cash under the Offer. Any stamp duty payable on the disposal of Nitro Shares pursuant to the Offer will be paid by the Bidder.

9 Other material information

9.1 *Relevant Interests in Nitro Shares and voting power*

As at the date of this Bidder's Statement, the Bidder has Relevant Interests in 48,586,139 Nitro Shares representing a voting power in Nitro of 19.8%.¹⁵ The Relevant Interests noted above arise from on-market acquisitions by TGC (the sole shareholder of the Bidder) of Nitro Shares during the period commencing four months before the date of this Bidder's Statement. The maximum price paid for any of those Nitro Shares was \$1.58 on 31 August 2022 and 1 September 2022. Details of all of the on-market purchases have been disclosed in substantial shareholder notices lodged with ASX by Potentia Capital. Other than as disclosed, neither the Bidder nor any of its Associates has provided, or agreed to provide, consideration for a Nitro Share under a purchase or agreement to purchase during the four months before the date of this Bidder's Statement.

Immediately before the date of the Offer, the Bidder has Relevant Interests in [●] Nitro Shares representing a voting power in Nitro of [●]%.

9.2 *No collateral benefits*

During the period commencing four months before the date of this Bidder's Statement, and during the period from the date of this Bidder's Statement to the date before the date of the Offer, neither the Bidder nor any of its Associates gave, or offered to give, or agreed to give a benefit to another person which was likely to induce the other person, or an Associate of the other person, to:

- (a) accept the Offer; or
- (b) dispose of Nitro Shares,

and which is not offered to all Nitro Shareholders under the Offer.

9.3 *ASIC modifications*

ASIC has published various "Class Order" instruments providing for modifications and exemptions that generally apply to all persons including the Bidder, in relation to the operation of Chapter 6 of the Corporations Act.

Amongst others, the Bidder has relied on:

- (a) the modification to Section 636(3) of the Corporations Act set out in paragraph 5(d) of ASIC Class Order 13/521 "Takeover Bids" to include references to certain statements which are made or based on statements made in documents lodged with ASIC or ASX. Pursuant to Class Order 13/521, the consent of the relevant person is not required for the inclusion of such statements in this Bidder's Statement. As required by Class Order 13/521, the Bidder will make available a copy of these documents (or of relevant extracts from these documents), free of charge, to you and other Nitro Shareholders who request it during the Offer Period. To obtain a copy of these documents (or the relevant extracts), you may telephone the Offer Information Line on **1300 101 297** (for calls made within Australia) or **+61 2 9068 1929** (for calls made from outside Australia) from Monday to Friday between 9.00am and 5.00pm (Sydney, Australia time); and

¹⁵ On 2 September 2022, it was disclosed to ASX that Potentia Capital and its associates hold a Relevant Interest in 48,586,139 Nitro Shares, representing 19.8% of the Shares on issue.

- (b) the modification to Section 661A(2) of the Corporations Act set out in paragraph 4(a) of ASIC Class Order 13/522 to exclude the Nitro Shares which the Bidder and its Associates have a Relevant Interest in as at the beginning of the Offer Period from the calculation of the 75% of the Nitro Shares that the Bidder and its Associates must acquire under the Offer for Compulsory Acquisition to occur.

9.4 Dates for determining holders of Nitro Shares

For the purposes of Section 633(2) of the Corporations Act, the date for determining the persons to whom information is to be sent in items 6 and 12 of Section 633(1) of the Corporations Act is the Register Date.

9.5 No escalation agreements

Neither the Bidder nor any Associate of the Bidder has entered into any escalation agreement in respect of Nitro Shares that is prohibited by Section 622 of the Corporations Act.

9.6 Consents

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

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

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

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

Name of person	Named as
Johnson Winter Slattery	Legal adviser in respect of the Offer
Jarden	Financial adviser in respect of the Offer
Automic Pty Ltd	Share Registry

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

Each of the above firms and companies:

- (a) does not make, or purport to make, any statement in this Bidder's Statement, or any statement on which a statement in this Bidder's Statement is based, other than a reference to its name or a statement included in this Bidder's Statement with the consent of that person; and

- (b) to the maximum extent permitted by law, expressly disclaim and take no responsibility for any part of this document, other than a reference to its name or a statement included in this Bidder's Statement with the consent of that person.

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

9.7 Social security and superannuation implications of the Offer

Acceptance of the Offer may have implications under your superannuation arrangements or on your social security entitlements. If in any doubt, you should seek specialist advice before accepting the Offer.

9.8 Acceptance results in attorney being granted to the Bidder

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

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

9.9 No other material information

There is no other information that:

- (a) is material to the making of the decision by a holder of Nitro Shares whether or not to accept the Offer; and
- (b) which is known to the Bidder,
other than:
- (c) as set out or referred to elsewhere in this Bidder's Statement; or
- (d) information which would be unreasonable to require the Bidder to disclose because the information has previously been disclosed to holders of Nitro Shares.

10 The Offer

10.1 Offer

- (a) The Bidder offers to acquire from you on the terms and conditions of this Offer some or all of Your Nitro Shares together with all Rights attaching to those Nitro Shares.
- (b) This Offer is being made to each person registered as the holder of the Nitro Shares in the Register on the Register Date. It also extends to any person who becomes registered, or entitled to be registered, as the holder of the Nitro Shares during the Offer Period.
- (c) If, at the time the Offer is made to you, or at any time during the Offer Period, another person is, or is entitled to be, registered as the holder of some or all of the Nitro Shares to which this Offer relates:
 - (i) a corresponding offer on the same terms and conditions as this Offer will be deemed to have been made to that other person in respect of those Nitro Shares; and
 - (ii) a corresponding offer on the same terms and conditions as this Offer will be deemed to have been made to you in respect of any other Nitro Shares you hold to which the Offer relates; and
 - (iii) this Offer will be deemed to have been withdrawn immediately at that time.
- (d) If at any time during the Offer Period you are registered or entitled to be registered as the holder of one or more parcels of Nitro Shares as trustee or nominee for, or otherwise on account of, another person, you may accept as if a separate and distinct Offer on the same terms and conditions as this Offer had been made in relation to each of those distinct parcels and any distinct parcel you hold in your own right. To validly accept the Offer for each parcel, you must comply with the procedure in Section 653B(3) of the Corporations Act. If, for the purposes of complying with that procedure, you require additional copies of this Bidder's Statement and/or the Acceptance Form, please call the Offer Information Line on **1300 101 297** (for calls made within Australia) or **+61 2 9068 1929** (for calls made from outside Australia) between 9.00am and 5.00pm (Sydney, Australia time) Monday to Friday, to request those additional copies.
- (e) If Your Nitro Shares are registered in the name of a Broker, investment dealer, bank, trust company or other nominee, you should contact that nominee for assistance in accepting the Offer.
- (f) Offers on terms and conditions identical to those contained in this Offer have been dispatched or will be dispatched to all holders of Nitro Shares registered as such in the Register on the Register Date.
- (g) This Offer is dated [●] 2022.

10.2 Consideration for the Offer

Subject to the terms of this Offer, the consideration offered by the Bidder for the acquisition of each of Your Nitro Shares to which this Offer relates is \$1.80 per Nitro Share.

10.3 Conditions

The Offer is subject to the following Conditions:

(a) **Board recommendation**

During the Offer Period, a majority of the members of the Nitro Board recommend that Nitro Shareholders accept the Offer in the absence of a superior proposal.

(b) **No Prescribed Occurrences**

During the Bid Period, none of the following Prescribed Occurrences occur:

- (i) Nitro converts all or any of its shares into a larger or smaller number of shares under section 254H of the Corporations Act;
- (ii) Nitro or a subsidiary of Nitro resolves to reduce its share capital in any way;
- (iii) Nitro or a subsidiary of Nitro enters into a buy-back agreement or resolves to approve the terms of a buy-back agreement under section 257C(1) or 257D(1) of the Corporations Act;
- (iv) Nitro or a subsidiary of Nitro issues shares or grants an option over its shares, or agrees to make such an issue or grant such an option;
- (v) Nitro or a subsidiary of Nitro issues, or agrees to issue, convertible notes;
- (vi) Nitro or a subsidiary of Nitro disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
- (vii) Nitro or a subsidiary of Nitro charges, or agrees to charge, the whole, or a substantial part, of its business or property;
- (viii) Nitro or a subsidiary of Nitro resolves to be wound up;
- (ix) a liquidator or provisional liquidator of Nitro or of a subsidiary of Nitro is appointed;
- (x) a court makes an order for the winding up of Nitro or of a subsidiary of Nitro;
- (xi) an administrator of Nitro or of a subsidiary of Nitro is appointed under section 436A, 436B or 436C of the Corporations Act;
- (xii) Nitro or a subsidiary of Nitro executes a deed of company arrangement;
- (xiii) a restructuring practitioner for Nitro, or for a subsidiary of Nitro, is appointed under section 453B of the Corporations Act;
- (xiv) Nitro or a subsidiary of Nitro makes a restructuring plan under Division 3 of Part 5.3B of the Corporations Act; or
- (xv) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of Nitro or a subsidiary of Nitro.

The Bidder may choose to waive the Conditions in accordance with the Offer.

10.4 Offer Period

- (a) Unless the Offer Period is extended or the Offer is withdrawn, in either case in accordance with the requirements of the Corporations Act, this Offer will remain open for acceptance by you during the period commencing on the date of this Offer and ending at 7:00pm (Sydney, Australia time) on the later of:
 - (i) [●] 2022 (**Offer Period**); or
 - (ii) any date to which the Offer Period is extended.
- (b) Subject to the Corporations Act as modified by ASIC Class Order 13/521, the Bidder may extend the Offer Period.
- (c) In addition, if, within the last seven days of the Offer Period, this Offer is varied to improve the consideration offered, or the Bidder's voting power in Nitro increases to more than 50%, then the Offer Period will be mandatorily extended in accordance with Section 624(2) of the Corporations Act so that it ends 14 days after the relevant event.

10.5 Acceptance

- (a) You may accept this Offer in respect of some or all of Your Nitro Shares at any time during the Offer Period.
- (b) To accept this Offer in respect of Nitro Shares which, at the time of acceptance, are registered in your name in the issuer sponsored subregister operated by Nitro (in which case Your Nitro Shares are not in a CHESS Holding and your Securityholder Reference Number will commence with "I"), you may accept the Offer online at <https://investor.automic.com.au/#/signup> or by using the Issuer Acceptance Form sent with this Bidder's Statement.
 - (i) **Online Acceptance**
 - (A) To accept the Offer online, you must:
 - (1) login to <https://investor.automic.com.au/#/signup> and follow the instructions. You will need your SRN and postcode or country of residence (if your Nitro Shareholding is registered outside Australia) associated with Your Nitro Shares to log in; and
 - (2) follow the instructions and select the "Accept" option, and submit your acceptance of the Offer. You will receive on-screen confirmation of submission of your acceptance of the Offer, and a further confirmation via email to the email address you provided after you logged in.
 - (B) Where Your Nitro Shares are held in more than one name, a holder must have the authority of all other joint holders to act on their behalf to submit an online acceptance of the Offer in respect of the jointly held Nitro Shares.
 - (C) If you do not receive a confirmation message after attempting to accept the Offer online, please contact the Offer Information line on 1300 101 297 (for calls made within Australia) or +61 2 9068 1929 (for calls made from outside Australia)

between 9.00am and 5.00pm (Sydney, Australia time) Monday to Friday.

- (D) Your online acceptance of the Offer must be received before the end of the Offer Period.

(ii) **Physical Acceptance Form**

To accept the Offer using a physical Issuer Acceptance Form, you must complete and sign the Issuer Acceptance Form enclosed with this Bidder's Statement (which forms part of this Offer) in accordance with the instructions on it and return it together with all other documents required by those instructions (if any) at one of the addresses specified in Section 10.5(c) below so that it is received by no later than 7.00pm (Sydney, Australia time) on the last day of the Offer Period.

A reply paid envelope, which is valid if sent from within Australia, is enclosed for your use.

- (c) The mailing, fax and email addresses for completed Acceptance Form and any associated documents are as follows:

By mail: Automic Group
GPO Box 5193
Sydney NSW 2001

By email: Takeovers@AutomicGroup.com.au

- (d) To accept this Offer in respect of Nitro Shares which, at the time of acceptance, are held by you in a CHESS Holding (in which case your Holder Identification Number will commence with "X"), you must comply with ASX Settlement Operating Rules. To accept this Offer in accordance with ASX Settlement Operating Rules, you may accept the Offer online at <https://investor.automic.com.au/#/signup>, by instructing your Controlling Participant or by using the CHESS Acceptance Form sent with this Bidder's Statement:

(i) **Online Acceptance**

- (A) To accept the Offer online, you must:

- (1) login to <https://investor.automic.com.au/#/signup> and follow the instructions. You will need your HIN and postcode or country of residence (if your Nitro Shareholding is registered outside of Australia) associated with Your Nitro Shares to log in; and
- (2) follow the instructions and select the "Accept" option, and submit your acceptance of the Offer. You will receive on-screen confirmation of submission of your acceptance of the Offer, and a further confirmation via email to the email address you provided after you logged in. This will authorise the Bidder and the Share Registry to request your Controlling Participant to initiate acceptance of the Offer on your behalf.

- (B) Where Your Nitro Shares are held in more than one name, a holder must have the authority of all other joint holders to act on

their behalf to submit an online acceptance of the Offer in respect of the jointly held Nitro Shares.

- (C) If you do not receive a confirmation message after attempting to accept the Offer online, please contact the Offer Information line on 1300 101 297 (for calls made within Australia) or +61 2 9068 1929 (for calls made from outside Australia) between 9.00am and 5.00pm (Sydney, Australia time) Monday to Friday.
 - (D) If you are a CHESS holder, the Bidder strongly recommends that you submit your online acceptance of the Offer by no later than 4.00 pm (Sydney, Australia time) on the last day of the Offer Period. This is because the Share Registry will need to confirm with your Controlling Participant any online submission of your acceptance of the Offer before it can be taken as validly submitted. There may not be sufficient time to do so for any online acceptance submitted by CHESS holders after 4.00 pm (Sydney, Australia time) on the last day of the Offer Period. Your online acceptance is not a valid acceptance until your Controlling Participant confirms acceptance.
 - (E) Neither the Bidder nor the Registry will be responsible should your Controlling Participant not acknowledge and confirm your acceptance before the end of the Offer Period, after which time your submission will be deemed invalid.
- (ii) if you are the Controlling Participant, you must initiate acceptance of this Offer in accordance with Rule 14.14 of ASX Settlement Operating Rules before the end of the Offer Period; or
 - (iii) if you are not the Controlling Participant, you may either:
 - (A) **instruct** your Controlling Participant, in accordance with the sponsorship agreement between you and the Controlling Participant, to initiate acceptance of this Offer in accordance with Rule 14.14 of ASX Settlement Operating Rules, such initiation to occur before the end of the Offer Period. If you choose to accept this Offer in this way, your Controlling Participant will be obliged by Rule 14.14.1 of ASX Settlement Operating Rules to initiate the acceptance within the following timeframes:
 - (1) if you specify a time when, or by which, this Offer must be accepted, in accordance with those instructions; or
 - (2) otherwise, by End of Day (as defined in ASX Settlement Operating Rules) on the date that you instruct the Controlling Participant to accept this Offer or, if the Offer Period ends on the day you provide those instructions, before the end of the Offer Period; or
 - (B) otherwise, **complete** and **sign** the enclosed CHESS Acceptance Form in accordance with the instructions on the CHESS Acceptance Form and **return** it together with all other

documents required by those instructions to one of the addresses specified in Section 10.5(c) above or by using the enclosed reply paid envelope (which is valid if sent from within Australia), and as such authorise the Bidder to instruct your Controlling Participant to initiate acceptance of this Offer on your behalf in accordance with Rule 14.14 of ASX Settlement Operating Rules. For return of the CHES Acceptance Form to be an effective acceptance of the Offer under this Section 10.5(d)(iii)(B)), it must be received by the Bidder in time for the Bidder to give instructions to your Controlling Participant, and your Controlling Participant to carry out those instructions, before the end of the Offer Period.

- (e) An acceptance of this Offer under Section 10.5(b) or 10.5(d)(iii)(B) shall not be complete until the Acceptance Form, completed and signed in accordance with the instructions on it and all other documents required by those instructions, have been received at the address set out in Section 10.5(c). Notwithstanding the foregoing provisions of this Section 10.5, the Bidder may, in its absolute discretion, waive at any time prior to the end of the Offer Period all or any of the requirements specified in the Acceptance Form but payment of the consideration in accordance with this Offer may be delayed until any irregularity has been resolved and such other documents as may be necessary to procure registration of the Nitro Shares have been lodged with the Bidder.
- (f) The transmission of the Acceptance Form and other documents is at your own risk.

10.6 Online acceptances

When using the online facility available at <https://investor.automic.com.au/#/signup> to accept the Offer:

- (a) for your acceptance to be valid you must ensure that your acceptance is submitted before the end of the Offer Period. Neither the Bidder nor the Share Registry accept any responsibility or liability for any website downtime, delays or access failure that may occur due to any circumstances beyond its control, and which may delay or impede your ability to access <https://investor.automic.com.au/#/signup> or submit an acceptance online; and
- (b) in respect of any Nitro Shares in a CHES holding, you must ensure that the acceptance is submitted in time for the Bidder to instruct your Controlling Participant to initiate acceptance of the Offer on your behalf in accordance with Rule 14.14 of ASX Settlement Operating Rules before the end of the Offer Period. There may not be sufficient time to do so for any online acceptances submitted by you if you accept the Offer online too close to the end of the Offer Period. Neither the Bidder nor the Registry will be responsible should your Controlling Participant not acknowledge and confirm your acceptance before the end of the Offer Period, after which time your submission will be deemed invalid.

The use of <https://investor.automic.com.au/#/signup> to accept the Offer is at your own risk.

10.7 Entitlement to Offer

- (a) A person who:
 - (i) is able during the Offer Period to give good title to a parcel of Nitro Shares; and

- (ii) has not already accepted an Offer for those Nitro Shares;
 may, in accordance with Section 653B(1) of the Corporations Act, accept this Offer as if an offer on terms identical with the Offer had been made to that person in relation to those Nitro Shares.
- (b) If at any time during the Offer Period, and before you accept this Offer, Your Nitro Shares consist of one or more separate parcels within the meaning of Section 653B of the Corporations Act (for example, because you hold Nitro Shares on trust for, as nominee for, or on account of, another person or persons), then you may accept as if a separate offer in the form of this Offer had been made to you in relation to each of those parcels (including any parcel you hold in your own right). An acceptance by you of the Offer in respect of any such distinct portion of Your Nitro Shares will be ineffective unless:
 - (i) you have given the Bidder notice stating that Your Nitro Shares consist of separate and distinct parcels, such notice being:
 - (A) in the case of Nitro Shares not in a CHESS Holding, in writing;
or
 - (B) in the case of Nitro Shares in a CHESS Holding, in an electronic form approved by ASX Settlement Operating Rules;
and
 - (ii) your acceptance specifies the number of Nitro Shares in the distinct portions to which the acceptance relates; and
 - (iii) in circumstances where the parcel of Nitro Shares is held by you as trustee or nominee for, or otherwise on account of, another person, your acceptance specifies:
 - (A) the date that other person acquired an equitable interest in the parcel or, if that date is not known, the date that other person is reasonably believed to have acquired an equitable interest in the parcel; and
 - (B) where the date that other person acquired an equitable interest in the parcel is the Announcement Date – whether the equitable interest was acquired before the time the Offer was announced to ASX on the Announcement Date.
- (c) Beneficial owners whose Nitro Shares are registered in the name of a Broker, investment dealer, bank, trust company or other nominee should contact that nominee for assistance in having this Offer accepted in respect of the Nitro Shares which they beneficially own.

10.8 **Effect of acceptance**

- (a) By:
 - (i) submitting an online acceptance at **<https://investor.automic.com.au/#!/signup>** in accordance with Section 10.5(b)(i) or 10.5(d)(i);
 - (ii) completing, signing and returning an Acceptance Form in accordance with Section 10.5(b) or 10.5(d)(iii)(B); or

- (iii) causing this Offer to be accepted in accordance with ASX Settlement Operating Rules if Your Nitro Shares are in a CHESS Holding,
- you will, or will be deemed to, have:
- (iv) subject to Section 10.7 and 10.8(d), irrevocably accepted this Offer in respect of all Your Nitro Shares (**Accepted Shares**);
 - (v) agreed to transfer the Accepted Shares to the Bidder (even if the number of Nitro Shares on the Acceptance Form differs from the number of Your Nitro Shares);
 - (vi) represented and warranted to the Bidder as a fundamental condition going to the root of the contract resulting from your acceptance of this Offer that, both at the time of acceptance of this Offer and at the time the transfer of the Accepted Shares to the Bidder is registered, all of the Accepted Shares are and will upon registration be fully paid up and free from all mortgages, charges, liens and other Encumbrances of any kind and restrictions on transfer of any kind, and that you have full power and capacity (whether legal or equitable) to sell and transfer the Accepted Shares and that you have paid all amounts which at the time of acceptance have fallen due for payment in respect of the Accepted Shares;
 - (vii) irrevocably authorised the Bidder (by any of its directors, officers, secretary, nominee of the Bidder or agents), if necessary, to alter the Acceptance Form on your behalf by completing on the Acceptance Form correct details of the Accepted Shares, fill in any blanks remaining on the Acceptance Form and rectify any error in or omission from the Acceptance Form as may be necessary to make the Acceptance Form an effective acceptance of this Offer;
 - (viii) irrevocably appointed the Bidder and each of its directors, secretaries and officers from time to time jointly and each of them severally as your true and lawful attorney, with power to exercise all powers and rights which you could lawfully exercise as the registered holder of the Accepted Shares or in exercise of any right derived from the holding of the Accepted Shares, including, without limiting the generality of the foregoing, requesting Nitro to register the Accepted Shares in the name of the Bidder, attending and voting at any meeting of Nitro Shareholders (including any court convened meeting of Nitro), demanding a poll for any vote taken at or proposing or seconding any resolutions to be considered at any meeting of Nitro Shareholders, requisitioning any meeting of Nitro Shareholders, signing any forms, notices or instruments relating to the Accepted Shares and doing all things incidental or ancillary to any of the foregoing. You will, or will be deemed to, have acknowledged and agreed that in exercising such powers the attorney may act in the interests of the Bidder as the intended registered holder of the Accepted Shares. This appointment, being given for valuable consideration to secure the interest acquired in the Accepted Shares, is irrevocable and terminates upon registration of a transfer to the Bidder of the Accepted Shares;
 - (ix) agreed, and in the absence of a prior waiver of this requirement by the Bidder, not to attend or vote in person at any meeting of Nitro Shareholders (including any court convened meeting of Nitro) or to

exercise or purport to exercise any of the powers conferred on the Bidder or its nominee in Section 10.8(a)(viii);

- (x) irrevocably authorised and directed Nitro to pay to the Bidder or to account to the Bidder for all Rights in respect of the Accepted Shares, subject, however, to any such Rights received by the Bidder being accounted for by the Bidder to you in the event that this Offer is withdrawn or avoided;
- (xi) except where Rights have been paid or accounted for under Section 10.8(a)(x), irrevocably authorised the Bidder to deduct from the consideration payable in respect of the Accepted Shares, the value of any Rights paid to you in respect of the Accepted Shares which, where the Rights take a non-cash form, will be the value of those Rights as reasonably assessed by the Bidder;
- (xii) if, at the time of acceptance of this Offer, the Accepted Shares are in a CHESS Holding, irrevocably authorised the Bidder to cause a message to be transmitted in accordance with ASX Settlement Operating Rule 14.17.1 (and at a time permitted by ASX Settlement Operating Rule 14.17.1(b)) so as to transfer the Accepted Shares to the Bidder's Takeover Transferee Holding. The Bidder shall be so authorised even though at the time of such transfer it has not paid the consideration due to you under this Offer;
- (xiii) agreed to indemnify the Bidder in respect of any claim or action against it or any loss, damage or liability whatsoever incurred by it as a result of you not producing your Holder Identification Number or in consequence of the transfer of the Accepted Shares being registered by Nitro without production of your Holder Identification Number for the Accepted Shares;
- (xiv) represented and warranted to the Bidder that, if you are the legal owner but not the beneficial owner of the Accepted Shares:
 - (A) the beneficial holder has not sent a separate acceptance of the Offer in respect of the Accepted Shares;
 - (B) the number of Nitro Shares you have specified as being the entire holding of Nitro Shares you hold on behalf of a particular beneficial holder is in fact the entire holding; and
 - (C) that you are irrevocably and unconditionally entitled to transfer the Accepted Shares, and to assign all of the beneficial interest therein to the Bidder; and
- (xv) agreed to execute all such documents, transfers and assurances that may be necessary or desirable to convey the Accepted Shares and any Rights in respect of the Accepted Shares to the Bidder.
- (b) The undertakings and authorities referred to in Section 10.8(a) will remain in force after you receive the consideration for Your Nitro Shares and after the Bidder becomes registered as the holder of Your Nitro Shares.
- (c) If Your Nitro Shares are in a CHESS Holding and you either submitted an online acceptance at <https://investor.automic.com.au/#/signup> in accordance with Section 10.5(d)(i) or completed, signed and returned the Acceptance Form in accordance with Section 10.5(d)(iii)(B) (which you are not bound, but are

requested, to do), you will be deemed to have irrevocably authorised the Bidder and any of its directors, secretaries or officers to:

- (i) instruct your Controlling Participant to initiate acceptance of this Offer in respect of the Accepted Shares which are in a CHESS Holding, in accordance with Rule 14.14 of ASX Settlement Operating Rules if you have not already done so; and
 - (ii) give any other instructions in relation to the Accepted Shares to your Controlling Participant on your behalf under the sponsorship agreement between you and that Controlling Participant.
- (d) Once you have accepted this Offer, you will be unable to revoke your acceptance, the contract resulting from your acceptance will be binding on you and you will be unable to withdraw your acceptance of this Offer or otherwise dispose of Your Nitro Shares, except as follows:
- (i) if, by the end of the Offer Period, the Conditions have not been fulfilled or waived, this Offer will automatically terminate and Your Nitro Shares will be returned to you; or
 - (ii) if the Offer Period is extended for more than one month and the obligations of the Bidder to pay the consideration are postponed for more than one month and, at the time, this Offer remains subject to a Condition, you may be able to withdraw your acceptance and Your Nitro Shares in accordance with Section 650E of the Corporations Act. A notice will be sent to you at the time explaining your rights in this regard.

10.9 Dividends and other entitlements

- (a) The Bidder will be entitled to all Rights declared, paid, made, or which arise or accrue after the Announcement Date in respect of the Nitro Shares that it acquires pursuant to this Offer.
- (b) If any Rights are declared, paid, made or arise or accrue in cash after the Announcement Date in respect of the Nitro Shares to the holders of the Nitro Shares, the Bidder will (provided the same has not been paid to the Bidder) be entitled to reduce the consideration specified in Section 10.2 and payable by it to the holders of the Accepted Shares by an amount equal to the value of such Rights. If the Bidder does not, or cannot make such a reduction and you receive the Rights then you must pay the amount of those Rights to the Bidder.
- (c) If any non-cash Rights are issued or made or arise or accrue after the Announcement Date in respect of the Nitro Shares to the holders of the Accepted Shares, the Bidder will (provided the same has not been issued to the Bidder) be entitled to reduce the consideration specified in Section 10.2 and payable by it to holders of the Accepted Shares by an amount equal to the value (as reasonably assessed by the Chairman of ASX or his or her nominee) of such non-cash Rights.

10.10 Condition

- (a) The Offer is subject to the Conditions being fulfilled or waived

This Offer and the contract resulting from the acceptance of the Offer (and each other Offer and each contract resulting from the acceptance therefore) are subject to the Conditions being fulfilled or waived by the Bidder.

(b) The Conditions are for benefit of the Bidder

Each Condition, subject to the Corporations Act, operates only for the benefit of the Bidder and any breach or non-fulfilment of a Condition may be relied upon only by the Bidder.

(c) Nature of the Conditions

Each Condition is a condition subsequent to contract formation and does not prevent a contract to sell Your Nitro Shares resulting from your acceptance of this Offer but:

- (i) a breach of a Condition entitles the Bidder to rescind that contract by notice to you; and
- (ii) non-fulfilment of a Condition at the end of the Offer Period will have the consequences set out in this Section 10.10.

(d) Condition applies to multiple events

Where an event occurs that would mean at the time the event occurs the Condition to which this Offer or the contract resulting from your acceptance of this Offer is then subject would not be fulfilled, each of the occurrences outlined in the Condition affected by that event will become two separate Conditions on identical terms except that:

- (i) one of them relates solely to that event; and
- (ii) the other specifically excludes that event.

(e) Notice declaring Offers free of the Conditions

The Bidder may declare this Offer and any contract resulting from acceptance of this Offer free from the Conditions (or only part of them) by giving written notice to Nitro declaring this Offer to be free from the Condition in accordance with Section 650F of the Corporations Act. This notice may be given not later than:

- (i) if a Prescribed Occurrence occurs, no later than three Business Days after the end of the Offer Period; and
- (ii) in any other case, no less than seven days before the end of the Offer Period.

(f) Notice of status of the Conditions

The date for giving the notice on the status of the Conditions as required by Section 630(1) of the Corporations Act is [●] 2022 (subject to extension in accordance with the Corporations Act if the Offer Period is extended).

(g) Contract void if Conditions not fulfilled or waived

Your acceptance of the contract resulting from your acceptance of this Offer is void if at the end of the Offer Period the Conditions in this Section 10.10 has not been fulfilled or waived.

10.11 Obligations of the Bidder

- (a) Subject to this Section 10.11, the Corporations Act and ASIC Class Order 13/521, if the Offer becomes unconditional the Bidder will provide the consideration for the Accepted Shares by the later of 10 Business Days after the later of (i) receipt of

your valid acceptance or (ii) the date on which the Conditions are satisfied or waived. Under no circumstances will interest be paid on the consideration for the Accepted Shares under this Offer, regardless of any delay in making payment or any extension of this Offer.

- (b) Where the Acceptance Form or any subsequent request from the Bidder requires an additional document to be given with your acceptance (such as a power of attorney, grant of probate or letters of administration, or any other document reasonably requested by the Bidder to give better effect to your acceptance):
 - (i) if that document is given with your acceptance, the Bidder will provide the consideration in accordance with Section 10.11(a);
 - (ii) if that document is given after your acceptance and before the end of the Offer Period while the Offer is subject to the Conditions, the Bidder will provide the consideration 10 Business Days after the Offer becomes unconditional;
 - (iii) if the document is given after your acceptance and before the end of the Offer Period while the Offer is not subject to the Conditions, the Bidder will provide the consideration 10 Business Days after the document is received; or
 - (iv) if that document is received after the end of the Offer Period, the Bidder will provide the consideration within 10 Business Days after that document is received.
- (c) Where the Acceptance Form requires an additional document to be delivered with our Acceptance Form, you will not be able to submit an acceptance of the Offer online and you must use a physical Acceptance Form to accept the Offer.
- (d) If you accept this Offer, the Bidder is entitled to all Rights in respect of Your Nitro Shares. The Bidder may require you to provide all documents necessary to vest title to those Rights in the Bidder, or otherwise to give the Bidder the benefits or value of those Rights. If you do not give those documents to the Bidder, or if you have received the benefit of those Rights, the Bidder will deduct from the consideration otherwise due to you the amount (or value, as reasonably assessed by the Bidder) of those Rights.
- (e) Payment of any cash amount to which you are entitled under the Offer will be made in the following manner:
 - (i) if you have previously nominated account details to Nitro and these details are provided to the Bidder, payment will be made electronically to that account. You can verify and update any existing account details online at **<https://investor.automic.com.au/#/home>**. If you have not previously nominated account details to Nitro and want to be paid electronically, you must provide your details via **<https://investor.automic.com.au/#/home>** prior to accepting the Offer;
 - (ii) if you have not previously nominated account details to Nitro and do not nominate account details via **<https://investor.automic.com.au/#/home>** on or before the date of acceptance, or these details are not provided to the Bidder, you will be paid by cheque in Australian currency. Cheques will be posted to you at your risk by ordinary mail (or in the case of overseas shareholders, by airmail) at the address shown either, at the

discretion of the Bidder, on your Acceptance Form or the register copy supplied by Nitro from time to time; and

- (iii) if Your Nitro Shares are held in a joint name, any cheque issued will be in the name of the joint holders and forwarded to the address that appears in the register of Nitro.
- (f) If, at the time of acceptance of this Offer, any authority, clearance or approval is required for you to receive any consideration for Your Nitro Shares, including (but not limited to) any authority, clearance or approval of:
 - (i) the Reserve Bank of Australia (whether under the *Banking (Foreign) Exchange Regulations 1959* (Cth) or otherwise);
 - (ii) the Minister for Foreign Affairs (whether under the *Charter of the United Nations Act 1945* (Cth), the *Charter of the United Nations (Dealing with Assets) Regulations 2008* (Cth) or any other regulations made thereunder, or otherwise);
 - (iii) the ATO; or
 - (iv) any other person as required by any other law of Australia that would make it unlawful for the Bidder to provide any consideration payable under the Offers,

then you will not be entitled to receive any consideration for Your Nitro Shares until all requisite authorities, clearances or approvals have been received by the Bidder.

10.12 Withdrawal

- (a) In accordance with Section 652B of the Corporations Act, the Bidder may withdraw unaccepted Offers at any time with the written consent of ASIC which consent may be given subject to such conditions (if any) as are specified in the consent. Notice of any withdrawal will be given to ASX and Nitro and will comply with any other conditions imposed by ASIC.
- (b) If the Bidder withdraws this Offer, any contract resulting from its acceptance will automatically be void.

10.13 Variation

The Bidder may at any time, and from time to time, vary this Offer in accordance with the Corporations Act.

10.14 Costs, taxes and GST

All costs and expenses of the preparation of this Bidder's Statement and of the preparation and circulation of this Offer will be paid by the Bidder. No GST is payable by you as a consequence of acceptance of the Offer.

10.15 Notices

- (a) Any notices to be given by the Bidder to Nitro under the Offer may be given to Nitro by leaving them at, or sending them by pre-paid ordinary post to, the registered office of Nitro or by sending them by facsimile transmission to Nitro at its registered office.

- (b) Any notices to be given to the Bidder by you or by Nitro under the Offer may be given to the Bidder by leaving them at or sending them by pre-paid ordinary post to the Bidder at the address referred to in Section 10.5(c).
- (c) Any notices to be given by the Bidder to you under the Offer may be given to you by sending them by pre-paid ordinary post or courier, or if your address is outside Australia, by pre-paid airmail or courier, to your address as shown in the Register.

10.16 Governing law

This Offer and any contract that results from your acceptance of this Offer is governed by the laws in force in New South Wales.

10.17 Withholding

- (a) The Bidder will make all payments that become due under the Offer free and clear and without deduction of all present and future withholdings (including taxes or duties), unless the Bidder determines (acting reasonably) that it is required to by law or it is required to pay an amount to the Commissioner of Taxation pursuant to Subdivision 14-D of Schedule 1 to the Taxation Administration Act 1953 (in this Section, a **CGT Withholding Amount**).
- (b) If the Bidder determines (acting reasonably) that it is required to pay a CGT Withholding Amount with respect to the acquisition of Your Nitro Shares, the Bidder will:
 - (i) determine the amount of the CGT Withholding Amount;
 - (ii) remit the CGT Withholding Amount to the Commissioner within the time required under Subdivision 14-D of Schedule 1 to the Taxation Administration Act 1953; and
 - (iii) be deemed to have satisfied its obligations to pay the CGT Withholding Amount to you for the purposes of the Offer.

11 Definitions and interpretation

11.1 Glossary

The following terms have the meanings set out below unless the context requires otherwise:

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

Accepted Shares has the meaning given in Section 10.8(a)(iv).

Announcement Date means 28 October 2022.

ASIC means the Australian Securities and Investments Commission.

Associate has the meaning given to that term in Section 12 of the Corporations Act.

ASX means the Australian Securities Exchange or ASX Limited (ABN 98 008 624 691), as the context requires.

ASX Settlement means ASX Settlement Pty Ltd ABN 49 008 504 532, the body which administers the CHESS system in Australia.

ASX Settlement Operating Rules means the operating rules of ASX Settlement.

ATO means the Australian Taxation Office.

Bidder's Statement means this document, being the bidder's statement of the Bidder under Part 6.5 of the Corporations Act relating to the Offer.

Broker means a person who is a share broker and participant in CHESS.

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

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

CGT means Australian capital gains tax.

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

CHESS Acceptance Form means the Acceptance Form enclosed with this Offer and Bidder's Statement for Nitro Shareholders with a CHESS Holding.

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

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

Competing Proposal means any expression of interest, proposal (including a Competing Scheme Proposal or Competing Takeover Proposal), offer or transaction (or series of transactions) that would, if completely substantially in accordance with its terms, result in:

- (a) any person or persons other than the Bidder or one of its Associates acquiring:

- (i) an interest in all or a substantial part of the assets of Nitro or any of its subsidiaries;
 - (ii) a Relevant Interest in more than 15% of the voting shares of Nitro or any of its subsidiaries; or
 - (iii) control of Nitro or any of its subsidiaries within the meaning of section 50AA of the Corporations Act; or
- (b) Nitro and another person or persons (other than the Bidder or one of its Associates) operating under a dual listed company, or similar structure

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

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

Compulsory Acquisition means the compulsory acquisition by the Bidder of Nitro Shares pursuant to Chapter 6A of the Corporations Act.

Conditions means the conditions of the Offer set out in Section 10.3.

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

Corporations Act means the *Corporations Act 2001* (Cth) and any regulations made under that Act.

Encumbrance means:

- (a) a security interest;
- (b) an easement, restrictive covenant, caveat or similar restriction over property;
- (c) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property (including a right to set off or withhold payment of a deposit or other money);
- (d) a right of any person to purchase, occupy or use an asset (including under an option, agreement to purchase, licence, lease or hire purchase);
- (e) any other thing that prevents, restricts or delays the exercise of a right over property, the use of property or the registration of an interest in or dealing with property; or
- (f) an agreement to create anything referred to above or to allow any of them to exist.

GST means the goods and services tax imposed under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Holder Identification Number or **HIN** means the number used to identify a Nitro Shareholder on the CHESS subregister of Nitro.

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

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

Jarden means Jarden Australia Pty Ltd ACN 608 611 687.

Last Close Price means the price of Nitro Shares on ASX at the close of trading on 27 October 2022, the Trading Day prior to the Announcement Date, of \$1.73 per Nitro Share.

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

Nitro means Nitro Software Limited ACN 079 215 419.

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

Nitro Options means options, performance rights and any other instruments in Nitro which may be exercised or converted and result in the issuance of Nitro Shares.

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

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

NSW means New South Wales, Australia.

Offer or the Bidder's Offer means, as the context requires, the offer for Nitro Shares contained in Section 10, or the off-market takeover bid constituted by that offer.

Offer Amount has the meaning given in Section 7.3.

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

Offer Period means the period during which Offers will remain open for acceptance in accordance with Section 10.4.

Offer Price means the Offer price of \$1.80 for each Nitro Share, as varied in accordance with the Corporations Act.

Potentia Capital means Potentia Capital Management Pty Ltd.

Prescribed Occurrence means the occurrence of any of the matters set out in Section 10.3(b), being the prescribed occurrences listed in section 652C of the Corporations Act.

Prescribed Occurrence Condition means the Condition contained in Section 10.3(b).

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

Register Date means 8.00am (Sydney, Australia time) on [●] 2022, being the date set by the Bidder under section 633(2) of the Corporations Act.

Related Body Corporate has the meaning given in Section 50 of the Corporations Act.

Relevant Interest has the meaning given to that term in Sections 608 and 609 of the Corporations Act.

Rights means all accretions, rights or benefits of whatever kind attaching to or arising from or in respect of the Nitro Shares, whether directly or indirectly, including without limitation all rights to receive dividends (and any attaching franking credit), to receive or subscribe for shares, units, notes, options or other securities and to receive all other distributions or entitlements declared, paid, made or issued by Nitro or any subsidiary of Nitro after the Announcement Date.

Securityholder Reference Number or **SRN** means the number allocated by Nitro to identify a Nitro Shareholder on its issuer sponsored subregister.

Share Registry means Automic Pty Ltd.

Shareholder Protections has the meaning given in Section 6.2.

subsidiary has the meaning given in the Corporations Act.

Takeover Transferee Holding means the CHESS Holding to which Nitro Shares are to be transferred pursuant to acceptances of the Offer.

Target's Statement means the target's statement issued by Nitro in response to this Bidder's Statement in accordance with Part 6.5 Division 3 of the Corporations Act.

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

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

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

Trading Day has the meaning given to it in the Listing Rules.

VWAP means volume weighted average price.

Your Nitro Shares means subject to Section 10.1(c) and Section 10.1(d), the Nitro Shares (a) in respect of which you are registered or entitled to be registered as holder in the Register on the Register Date, or (b) to which you are able to give good title at the time you accept this Offer during the Offer Period.

11.2 Interpretation

- (a) Annexures to this Bidder's Statement form part of this Bidder's Statement.
- (b) Words and phrases to which a meaning is given by the Corporations Act, the Listing Rules or ASX Settlement Operating Rules have that meaning in this Bidder's Statement and in the Acceptance Form unless that meaning is inconsistent with the context in which the word or phrase is used.
- (c) Headings are for convenience only and do not affect the interpretation of this Bidder's Statement.
- (d) The singular includes the plural and vice versa and words importing any gender include the other gender, and references to persons include corporations.
- (e) References to Sections are to sections of this Bidder's Statement.
- (f) References to paragraphs are references to paragraphs within the Section in which the reference to the paragraph is made.

12 Approval of Bidder's Statement

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

Dated 28 October 2022

Signed for and on behalf of the Bidder by:

A handwritten signature in black ink, consisting of a stylized 'A' followed by a horizontal stroke.

Andrew Gray
President

CORPORATE DIRECTORY

Bidder

Technology Growth Capital LLC

C/- Potentia Capital Management Pty Ltd
Suite 38.01, Gateway, 1 Macquarie PI
Sydney NSW 2000

Potentia Capital

Potentia Capital Management Pty Ltd

Suite 38.01, Gateway, 1 Macquarie PI
Sydney NSW 2000

Legal adviser to the Bidder

Johnson Winter Slattery

Level 25
20 Bond Street
Sydney NSW 2000

Share Registry

Automic Pty Ltd

Level 5, 126 Phillip St
Sydney NSW 2000

Offer Information Line

1300 101 297 (for calls made within Australia) or
+61 2 9068 1929 (for calls made from outside Australia)
between 9.00am and 5.00pm (Sydney, Australia time) Monday to Friday.

Annexure 1 – Nitro ASX announcements

Nitro made the following ASX announcements during the period after lodgement of the Nitro FY21 Annual Report on 24 February 2022 and before the issue of this Bidder's Statement:

Date	Announcement
28/10/2022	Intention to make Takeover Bid
28/10/2022	Trading Halt
28/10/2022	Pause in trading
27/10/2022	Response to Media Speculation
27/10/2022	Nitro Q3 2022 Update
27/10/2022	Nitro Q3 2022 Quarterly Activities Report and Appendix 4C
26/10/2022	Becoming a Substantial holder – Tiga Trading Pty Ltd
26/10/2022	Becoming a substantial holder from TEK, Becoming a Substantial hold for NTO
13/10/2022	NTO Q3 FY22 Business Update and Investor Briefing
12/10/2022	Notification of cessation of securities – NTO
10/10/2022	Notification regarding unquoted securities – NTO
06/10/2022	Notification regarding unquoted securities – NTO
29/09/2022	Application for quotation of securities – NTO
19/09/2022	Change of Director's Interest Notices
13/09/2022	Notification of cessation of securities – NTO
12/09/2022	Notification regarding unquoted securities – NTO
08/09/2022	Letter to Shareholders
07/09/2022	Notification regarding unquoted securities – NTO
02/09/2022	Change in substantial holding
01/09/2022	Change in substantial holding
01/09/2022	Ceasing to be a substantial holder
31/08/2022	Becoming a substantial holder
31/08/2022	Nitro Unanimously Rejects Unsolicited Indicative Proposal
30/08/2022	Trading Halt
29/08/2022	1H 2022 Results Presentation
29/08/2022	1H 2022 Results Release
29/08/2022	Appendix 4D and Half Year Report
22/08/2022	Notification of cessation of securities – NTO
18/08/2022	Nitro Software 1H22 results briefing
17/08/2022	Notification regarding unquoted securities – NTO
02/08/2022	Change in substantial holding
26/07/2022	Correction to Appendix 4C
26/07/2022	Nitro Q2 2022 Update
26/07/2022	Nitro Q2 Quarterly Activities Report and Appendix 4C
25/07/2022	Application for quotation of securities – NTO
25/07/2022	Notification of cessation of securities – NTO
25/07/2022	Notification regarding unquoted securities – NTO
25/07/2022	Notification regarding unquoted securities – NTO
11/07/2022	Nitro Software Q2 FY22 Business Update and Investor Briefing
10/06/2022	Change in substantial holding
26/05/2022	Amended Constitution
26/05/2022	Results of Annual General Meeting
26/05/2022	Chairman's Address to Shareholders & AGM Presentation
24/05/2022	Application for quotation of securities – NTO
17/05/2022	Change in substantial shareholding from AEF
	Change in substantial shareholding for NTO
29/04/2022	Nitro Q1 2022 Update
29/04/2022	Nitro Q1 2022 Quarterly Activities Report and Appendix 4C
27/04/2022	Presentation at Goldman Sachs Emerging Leaders Conference
22/04/2022	NTO – Notice of Annual General Meeting/Proxy Form
21/04/2022	Notification of cessation of securities – NTO
21/04/2022	Notification regarding unquoted securities – NTO
14/04/2022	Nitro Software Q1 FY22 Business Update and Investor Briefing
14/03/2022	Change in substantial holding from AEF, Change in substantial holding for NTO
11/03/2022	Becoming a substantial holder
04/03/2022	Change of Director's Interest Notice
04/03/2022	Change of Director's Interest Notice
04/03/2022	Notification of cessation of securities – NTO
04/03/2022	Application for quotation of securities – NTO
04/03/2022	Notification regarding unquoted securities – NTO



By E-Mail:

Takeovers@AutomicGroup.com.au



To Your Controlling Participant:

Return this from directly to your stockbroker



By Mail:

Automic Group
GPO Box 5193
Sydney NSW 2001



For all enquiries:

Phone:
(within Australia) 1300 101 297
(outside Australia) +61 2 9068 1929

«Registration_Details_Line_1»
«Registration_Details_Line_2»
«Registration_Details_Line_3»
«Registration_Details_Line_4»
«Registration_Details_Line_5»
«Registration_Details_Line_6»

ACCEPTANCE FORM – CHESS SPONSORED HOLDERS



Your acceptance must be received by no later than the end of the Offer Period, which is 7:00pm (Sydney Time) on the last day of the Offer Period, being [XX MONTH 20XX] (unless extended by the Bidder).

This form and the Bidder's Statement are important documents that require your immediate attention. This form relates to an offer (**Offer**) by Technology Capital Growth LLC (**Bidder**) to purchase some or all of your fully paid ordinary shares (**Nitro Shares**) in Nitro Software Limited ACN 079 215 419 (**Nitro**), the terms of which are set out in the Bidder's Statement dated [28] October 2022.

If you are in doubt about how to deal with this Offer, please contact your financial or other professional advisor.

Note this form can only be used in relation to the Nitro Shareholding represented by the details printed above and overleaf.

Step 1: Registration name and Offer details

The consideration for your Accepted Shares will be paid to the name(s) as they appear on the Register, as provided to the Bidder. The current address recorded on the Bidder's copy of the Register is printed above and overleaf. If you have recently bought or sold Nitro Shares your holding may differ from that shown. If you have already sold all your Nitro Shares, do not complete or return this form.

Step 2: Accept the Offer

Only sign and return this form if you wish to accept the Offer for some or all of your Nitro Shares. The consideration applicable is that set out in the Bidder's Statement.

As your Nitro Shares are in a CHESS holding, you may contact your Controlling Participant directly (normally your stockbroker) with instructions to accept the Offer. If you do this, your Controlling Participant will provide you with details as to what they require in order to accept the Offer on your behalf. If you want the Bidder to contact your Controlling Participant on your behalf, sign and return this form to the address above so that it is received in sufficient time to allow your instruction to be acted upon by the close of the Offer Period. This will authorise the Bidder and Share Registry to request your Controlling Participant to initiate acceptance of the Offer on your behalf.

By signing this form, you represent and warrant to the Bidder that both at the time of returning this acceptance form and at the time the transfer to the Bidder of the Nitro Shares to which this form relates is registered:

- all of those Nitro Shares are fully paid up and free from all mortgages, charges, liens and other encumbrances of any kind and restrictions on transfer of any kind;
- that you have full power and capacity (whether legal or equitable) to sell and transfer the Accepted Shares; and
- that you have paid all amounts which at the time of acceptance have fallen due for payment in respect of the Accepted Shares.

You should allow sufficient time for your Controlling Participant or the Bidder to initiate the acceptance of the Offer on your behalf. Neither the Bidder nor Share Registry will be responsible for any delays incurred by the process of requesting your Controlling Participant to accept the Offer.

Step 3: Signing instructions

Individual: Where the Nitro Shareholding is in one name, the Nitro Shareholder must sign.

Joint holding: Where the Nitro Shareholding is in more than one name, all of the Nitro Shareholders must sign.

Power of Attorney (POA): Where signing under a Power of Attorney (POA), you must attach an original certified copy of the POA to this form.

Companies: Where the Nitro Shareholding is in the name of a company, this form must be signed in accordance with the Corporations Act, either as:

- a sole director and a company secretary OR a sole director (if no company secretary exists), OR
- two directors, OR
- a director and a company secretary.

Overseas companies: Where the Nitro Shareholding is in the name of an overseas company (companies incorporated outside Australia) the form must be signed as above, or documentation must be provided showing that the company can sign in an alternate manner.

Deceased estate: All executors must sign and a certified copy of Probate or Letters of Administration must accompany this form.

Entering contact details is not compulsory but will assist us if we need to contact you.

If you have any queries about the terms of the Offer or how to accept, please call the Offer Information Line (Monday to Friday, between 9.00am and 5.00pm (Sydney Time) on 1300 101 297 (within Australia) and +61 2 9068 1929 (outside Australia).

Turn over to complete the form

Acceptance Form

FULL CASH TAKEOVER OFFER FOR ALL SHARES IN NITRO SOFTWARE LIMITED

STEP 1 Registration name and Offer details

«Registration_Details_Line_1»
«Registration_Details_Line_2»
«Registration_Details_Line_3»
«Registration_Details_Line_4»
«Registration_Details_Line_5»
«Registration_Details_Line_6»

[BARCODE]

Holder Identification Number (HIN):

«HINSRN»

For your security keep your HIN confidential.

Number of Nitro shares
held as at 7:00pm (AEDT) on **XX MONTH** 2022
(Register Date)

«MTM»

By accepting the Offer, you are accepting the Offer for some or all of your Nitro Shares as recorded by the Bidder as being held by you at the date your acceptance is processed (even if different to the number stated above).

STEP 2 Accept the Offer

Option A: Online acceptance (recommended)

Visit <https://investor.automic.com.au/#/home>

To accept the Offer online, simply scan the barcode to the right with your tablet or visit <https://investor.automic.com.au/#/signup> on your browser and follow the instructions below:

Please follow these instructions:

1. Select "Nitro Software Limited Takeover Offer" from the dropdown list in the Issuer Name Field
2. Enter your Holder Number (HIN) as shown on the top of this letter
3. Enter your postcode OR country of residence (only if outside Australia)
4. Tick the box "I'm not a robot" and then select "Next"
5. Complete the prompts to set up your username and password details



Once you are logged in, select "Offers" from the left-hand vertical menu and follow the prompts.

Option B: Paper acceptance

This section must be completed if you are NOT accepting the Offer online. Please complete section below and return by email or postal delivery. If you correctly sign and return this form you will be deemed to have accepted the Offer for the number of your Nitro Shares stated below. The Offer Price applicable is that set out in the Bidder's Statement.

Number of Nitro Shares accepted:

Signatory of Nitro Shareholder(s)

I/We accept the Offer made by the Bidder for the number of my/our Nitro Shares stated above and I/we agree to be bound by the terms and conditions of the Offer and transfer the accepted number of my/our Nitro Shares as per the above instruction.

Individual or Nitro Shareholder 1

Sole Director and Sole Company Secretary/ Sole Director (cross out titles as applicable)

Nitro Shareholder 2

Director

Nitro Shareholder 3

Director/Company Secretary (cross out titles as applicable)

Contact Name:

Contact Daytime Telephone:

Date

STEP 3 Payment Instructions (for Nitro Shareholders who chose option B in Step 2)

Payment will be made by electronic transfer directly into your nominated bank account. Please provide your bank details below so that Automic can make the payment to your account. Note that all payments will be made in Australian dollars.

BSB

Account Number

Name of Australian Bank / Financial Institution

Name in which account is held (e.g.: John Smith)

Privacy Notice

Automic Pty Ltd (ACN 152 260 814) trading as Automic Group advises that Chapter 2C of the Corporation Act 2001 requires information about you as a securityholder (including your name, address and details of the securities you hold) to be included in the public register of the entity in which you hold securities. Primarily, your personal information is used in order to provide a service to you. We may also disclose the information that is related to the primary purpose and it is reasonable for you to expect the information to be disclosed. You have a right to access your personal information, subject to certain exceptions allowed by law and we ask that you provide your request for access in writing (for security reasons). Our privacy policy is available on our website – www.automic.com.au



By E-Mail:

Takeovers@AutomicGroup.com.au



By Mail

Automic Group
GPO Box 5193
Sydney NSW 2001



For all enquiries:

Phone:

(within Australia) 1300 101 297

(outside Australia) +61 2 9068 1929

«Registration_Details_Line_1»

«Registration_Details_Line_2»

«Registration_Details_Line_3»

«Registration_Details_Line_4»

«Registration_Details_Line_5»

«Registration_Details_Line_6»

ACCEPTANCE FORM – ISSUER SPONSORED HOLDERS



Your acceptance must be received by no later than the end of the Offer Period, which is 7:00pm (Sydney Time) on the last day of the Offer Period, being [XX MONTH 20XX] (unless extended by the Bidder).

This form and the Bidder's Statement are important documents that require your immediate attention. This form relates to an offer (**Offer**) by Technology Capital Growth LLC (**Bidder**) to purchase some or all of your fully paid ordinary shares (**Nitro Shares**) in Nitro Software Limited ACN 079 215 419 (**Nitro**), the terms of which are set out in the Bidder's Statement dated [28] October 2022.

If you are in doubt about how to deal with this Offer, please contact your financial or other professional advisor.

Note this form can only be used in relation to the Nitro Shareholding represented by the details printed above and overleaf.

Step 1: Registration name and Offer details

The consideration for your Accepted Shares will be paid to the name(s) as they appear on the Register, as provided to the Bidder. The current address recorded on the Bidder's copy of the Register is printed above and overleaf. If you have recently bought or sold Nitro Shares your holding may differ from that shown. If you have already sold all your Nitro Shares, do not complete or return this form.

Step 2: Accept the Offer

Only sign and return this form if you wish to accept the Offer for some or all of your Nitro Shares. The consideration applicable is that set out in the Bidder's Statement.

By signing this form, you represent and warrant to the Bidder that both at the time of returning this acceptance form and at the time the transfer to the Bidder of the Nitro Shares to which this form relates is registered:

- all of those Nitro Shares are fully paid up and free from all mortgages, charges, liens and other encumbrances of any kind and restrictions on transfer of any kind;
- that you have full power and capacity (whether legal or equitable) to sell and transfer the legal and beneficial ownership in the Accepted Shares; and
- that you have paid all amounts which at the time of acceptance have fallen due for payment in respect of the Accepted Shares.

Step 3: Signing instructions

Individual: Where the Nitro Shareholding is in one name, the Nitro Shareholder must sign.

Joint holding: Where the Nitro Shareholding is in more than one name, all of the Nitro Shareholders must sign.

Power of Attorney: Where signing under a Power of Attorney (POA), you must attach an original certified copy of the POA to this form.

Companies: Where the Nitro Shareholding is in the name of a company, this form must be signed in accordance with the Corporations Act, either as:

- a sole director and a company secretary OR a sole director (if no company secretary exists), OR
- two directors, OR
- a director and a company secretary.

Overseas companies: Where the Nitro Shareholding is in the name of an overseas company (companies incorporated outside Australia) the form must be signed as above, or documentation must be provided showing that the company can sign in an alternate manner.

Deceased estate: All executors must sign and a certified copy of Probate or Letters of Administration must accompany this form.

Entering contact details is not compulsory but will assist us if we need to contact you.

If you have any queries about the terms of the Offer or how to accept, please call the Offer Information Line (Monday to Friday, between 9.00am and 5.00pm (Sydney Time) on 1300 101 297 (within Australia) and +61 2 9068 1929 (outside Australia).

Turn over to complete the form

Acceptance Form

FULL CASH TAKEOVER OFFER FOR ALL SHARES IN NITRO SOFTWARE LIMITED

STEP 1 Registration name and Offer details

«Registration_Details_Line_1»
«Registration_Details_Line_2»
«Registration_Details_Line_3»
«Registration_Details_Line_4»
«Registration_Details_Line_5»
«Registration_Details_Line_6»

[BARCODE]

Securityholder Reference Number (SRN):

«HINSRN»

For your security keep your SRN confidential.

Number of Nitro shares
held as at 7:00pm (AEDT) on **XX MONTH** 2022
(Register Date)

«MTM»

By accepting the Offer, you are accepting the Offer for some or all of your Nitro Shares as recorded by the Bidder as being held by you at the date your acceptance is processed (even if different to the number stated above).

STEP 2 Accept the Offer

Option A: Online acceptance (recommended)

Visit <https://investor.automic.com.au/#/home>

To accept the Offer online, simply scan the barcode to the right with your tablet or visit <https://investor.automic.com.au/#/signup> on your browser and follow the instructions below:

Please follow these instructions:

1. Select "Nitro Software Limited Takeover Offer" from the dropdown list in the Issuer Name Field
2. Enter your Holder Reference (SRN) as shown on the top of this letter
3. Enter your postcode OR country of residence (only if outside Australia)
4. Tick the box "I'm not a robot" and then select "Next"
5. Complete the prompts to set up your username and password details



Once you are logged in, select "Offers" from the left-hand vertical menu and follow the prompts.

Option B: Paper acceptance

This section must be completed if you are NOT accepting the Offer online. Please complete section below and return by email or postal delivery. If you correctly sign and return this form you will be deemed to have accepted the Offer for the number of your Nitro Shares stated below. The Offer Price applicable is that set out in the Bidder's Statement.

Number of Nitro Shares accepted:

Signatory of Nitro Shareholder(s)

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Individual or Nitro Shareholder 1

Sole Director and Sole Company Secretary/ Sole Director (cross out titles as applicable)

Nitro Shareholder 2

Director

Nitro Shareholder 3

Director/Company Secretary (cross out titles as applicable)

Contact Name:

Contact Daytime Telephone:

Date

STEP 3 Payment Instructions (for Nitro Shareholders who chose option B in Step 2)

Payment will be made by electronic transfer directly into your nominated bank account. Please provide your bank details below so that Automic can make the payment to your account. Note that all payments will be made in Australian dollars.

BSB

Account Number

Name of Australian Bank / Financial Institution

Name in which account is held (e.g.: John Smith)

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