

Company Announcement  
ASX: HPC

DATE: 27/3/2024

## Execution of variation to Facility Agreement with PURE Asset Management, Company to seek a Sale Transaction

### KEY HIGHLIGHTS

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- Variation provides A\$1.7m in new funding, subject to the requirement of a waiver of ASX Listing Rule 10.1 in order to amend the Original PURE Facility
  - Variation includes the potential for two additional tranches valued at A\$1.5m each, which can be accessed at the discretion of PURE Asset Management
  - New funding will be used in order to seek to implement a sale of the Company or the Company's business ('Sale Transaction') for the benefit of stakeholders
  - HydraLyte to operate in the ordinary course of business as it progresses a Sale Transaction
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Hydration solutions company **The Hydration Pharmaceuticals Company Limited (ASX: HPC) (HydraLyte North America or the Company)** advises that today it has signed a variation to its facility agreement with boutique asset manager and existing substantial shareholder PURE Asset Management Pty Ltd as trustee for The Income and Growth Fund (**PURE or PURE Asset Management**) as previously announced to the market on 17 October 2022 (**Original PURE Facility**).

Under the terms of the variation (**Amended PURE Facility**), HydraLyte has secured A\$1.7m in new funding. The Amended PURE Facility also includes two additional tranches, valued at A\$1.5m each, which can be accessed at the discretion of PURE Asset Management. The Company notes that a condition precedent to the Amended PURE Facility becoming effective (and thus access to the \$1.7m of funding under the Amended PURE Facility becoming available), is the requirement of a waiver of ASX Listing Rule 10.1 in order to vary the Original PURE Facility. The Company will submit a waiver application to the ASX on or shortly after the date of this announcement in order to apply for the required waiver. The Company cautions that there is no certainty that this requirement will be met, in which case the Amended PURE Facility will not take effect (and the additional funding will not become available).

The Company intends to use the funding available under the Amended PURE Facility to progress a Sale Transaction.

While the Company advances opportunities associated with a Sale Transaction, it will continue to operate in the ordinary course of business. HydraLyte has sufficient inventory on hand to satisfy retail demand and remains actively engaged with existing and potential new stockists. The Board and management are continuing to review additional cost reductions measures, which will allow the Company to prolong its existing cash balance, which at 26 March 2024 is US\$1.2m.

A detailed summary of the terms of the Amended PURE Facility and the 'Second Warrant Deed' entered into between the Company and PURE is provided below.

### Company to seek a Sale Transaction

The Company is not expected to be cashflow positive in the near-term and requires significant additional capital to execute on its market opportunity in North America and Canada.

Market conditions are presently very challenging for emerging companies that are yet to become cash flow positive. The Company's leveraged balance sheet adds further complexity and difficulty in raising capital.

The Board engaged New York-based Two Roads Capital in 2H2023 in order to seek to procure a strategic equity investor, change of control transaction or asset divestment for the benefit of shareholders (refer Appendix 4E of 29 February 2024). The Company is currently in progressed discussions with certain potential acquirers, however no binding or non-binding offer has been received in writing and there is no guarantee that any Sale Transaction will eventuate. The Company will update the market as and when required in accordance with the Listing Rules.

The Company has assessed and sought to execute on a range of different funding options in order to capitalise the business. It has been unable to garner sufficient support from shareholders for an equity capital raising and has been unable to procure new equity investors.

The Board is of the view that the Company is unable to access the level of capital required to get the business to breakeven or better in a short period of time, resulting in the Board's decision to seek a Sale Transaction to maximise shareholder returns.

PURE Asset Management, which holds 11.4% of the Company's issued shares, has agreed to vary the Original PURE Facility in order to advance the Company an additional A\$1.7m (for a total of A\$8.2m of senior secured debt which would be owed to PURE), in order to fund the business while it seeks a Sale Transaction for the benefit of all stakeholders. The Amended PURE Facility requires a waiver of ASX Listing Rule 10.1 in order to take effect. If the Amended PURE Facility does not take effect then the Original PURE Facility will not be amended and the additional funding will not be available.

The Amended PURE Facility also includes two new additional tranches, valued at A\$1.5m each, which can be accessed at the discretion of PURE Asset Management. The Amended PURE Facility also provides for a 'Second Loan' of \$5.5m, which can be accessed at the discretion of PURE Asset Management until 31 December 2024. The Second Loan was provided for in the Original PURE Facility and the terms of the Second Loan were amended as announced on 3 August 2023.

Assuming drawdown of the \$1.7m, this amount, plus net cash at bank is expected to be exhausted in July 2024.

In the event that the Company is unable to procure a Sale Transaction by July 2024, additional debt or equity capital would be required in order for the Company to continue operations as a going concern. While the Amended PURE Facility contemplates two additional tranches of a total of A\$3.0m of debt available (in addition to the 'Second Loan' of \$5.5m), the availability of those additional tranches (and the Second Loan) is at PURE's discretion. If additional capital was required, there is no guarantee that the Company would be able to raise it.

The Company has chosen to obtain the debt from PURE (a 'Listing Rule 10.1 party' by virtue of its 11.4% shareholding in the Company) via the Amended PURE Facility because it is unable to raise any meaningful level of equity capital from existing shareholders or new investors in the time period required. After assessing a range of options, the Board considers that the debt being provided by PURE is the only funding available within the current time requirements.

Given the above comments including the lack of success with alternative funding, the Board considers that the terms of the Amended PURE Facility are fair and reasonable for shareholders.

#### **Waiver provided by PURE**

PURE Asset Management has granted the Company a waiver of rights that have accrued or which occur up until 30 June 2024 under the following provisions of the Original PURE Facility:

- (a) The requirement for the Company to maintain a cash balance of more than US\$750,000.

- (b) An event of default arising out of non-payment of amounts owing to PURE.
- (c) An event of default arising out of an insolvency event occurring.

### **Material terms of the Amended PURE Facility**

The key terms of the Amended PURE Facility are set out in the table below. As noted above, the amendments to the Original PURE Facility (and therefore the availability of the additional \$1.7m in funding), are conditional on the requirement of a waiver of ASX Listing Rule 10.1. There is no certainty that this requirement will be met (in which case the Original PURE Facility will not be amended).

The Amended PURE Facility continues to be secured by a first-ranking general security over all present and after-acquired property of the Company and each Group entity in all relevant jurisdictions. Certain changes to the General Security Deed between the parties have also been agreed – these are described below.

<b>Key Term</b>	<b>Original PURE Facility</b>	<b>Amended PURE Facility</b>
Commitment amount	First Loan of \$6.5 million (drawn-down on 10 November 2022).  Second Loan of \$5.5 million, available until 31 December 2024 at PURE's discretion.	First Loan of \$6.5 million (drawn-down on 10 November 2022).  Second Loan of \$5.5 million, available until 31 December 2024 subject to PURE's discretion.  Third Loan of \$1.7 million, available subject to the Amended PURE Facility taking effect.  Fourth and Fifth Loans, each of \$1.5 million, available subject to the Amended PURE Facility taking effect and subject also to PURE's discretion, available up until 31 December 2024.
Interest rate	Interest payable quarterly at a rate of 10.0% per annum.	Interest payable quarterly at a rate of 15.0% per annum.
Default interest rate	Default interest rate of 15.0%.	On and from the date of a 'Review Event' or 'Event of Default' (other than a Material Default), 15.0%.  If a Material Default occurs, an interest rate of 30.0% will apply on and from drawdown of the Third Loan.
Material Default	Not applicable.	Material Default comprises: <ul style="list-style-type: none"> <li>- non-payment of amounts owing under the Amended PURE Facility (provided that any non-payment prior to 30 June 2024 does not constitute a material default if PURE is satisfied that the Company has taken steps to progress a Sale Transaction;</li> <li>- insolvency of a member of the Company Group;</li> <li>- insolvency proceedings are initiated against a member of the Company Group; and</li> <li>- a creditor's process affects any asset or assets of the Company Group with an</li> </ul>



Key Term	Original PURE Facility	Amended PURE Facility
		aggregate value of \$250,000 or more and is not discharged within 5 business days.
Capitalisation of interest	Not applicable.	<p>The parties agree that:</p> <ul style="list-style-type: none"> <li>- 50% of the interest payable on the First Loan; and</li> <li>- 100% of the interest payable on the Third Loan,</li> </ul> <p>may be capitalised and added to the amount owing under the relevant Loan (<b>Capitalised Interest</b>), provided that there is no default or review event subsisting at the time.</p>
Right to convert Capitalised Interest	Not applicable.	<p>Subject to the ASX Listing Rules (including Listing Rule 7.1) and the Corporations Act, the Capitalised Interest must be converted into fully paid ordinary shares (<b>Shares</b>) on the last day of each interest period and issued to PURE (or nominee). This will cease to apply on the earlier of the occurrence of a Material Default and PURE giving written notice to the Company that the Capitalised Interest will not be so converted (at its discretion).</p> <p>Capitalised Interest will be converted to Shares at an effective issue price representing the volume weighted average price of Shares over the 10 trading days on which trades were recorded prior to the date of the conversion (<b>10 Day Trailing VWAP</b>).</p> <p>A total of approximately 12 months' worth of Capitalised Interest will be prepaid via the Interest Prepayment Amount to PURE or nominee (see directly below).</p> <p>Any further Capitalised Interest may only be settled via the issue of Shares:</p> <ul style="list-style-type: none"> <li>• provided that PURE's relevant interest in Shares does not exceed 19.99% as a result of the issuance (or to the extent permitted under the 'creep' provision in item 9 of section 611 of the Corporations Act); and</li> <li>• to the extent that the Company has available capacity under Listing Rule 7.1 at the time (or has sought shareholder approval for the issue under Listing Rule 7.1),</li> </ul> <p>failing which the Capitalised Interest will not be settled via the issue of Shares and the amount owing to PURE will increase accordingly.</p>
Prepayment of interest	Not applicable.	The Company is required to prepay PURE an amount of interest equal to \$742,500 ( <b>Interest Prepayment Amount</b> ).

Key Term	Original PURE Facility	Amended PURE Facility
		<p>Subject to the ASX Listing Rules (including Listing Rule 7.1) and the Corporations Act, the Company must satisfy the Interest Prepayment Amount via the issue of Shares to PURE (or nominee) at the 10 Day Trailing VWAP (failing which the Interest Prepayment Amount will capitalise).</p> <p>The Company may only issue Shares to PURE (or nominee) in satisfaction of the Interest Prepayment Amount such that PURE's relevant interest in Shares does not exceed 19.99%. PURE currently holds a relevant interest in 11.4% of the Company's issued Shares (being 30,284,252 Shares). The Company expects that it will have sufficient available capacity under Listing Rule 7.1 (current capacity – 39,771,270 Shares) to issue Shares to PURE up to the 19.99% cap. The balance of the Interest Prepayment Amount that is not able to be satisfied via the issue of Shares (without PURE's relevant interest exceeding 19.99%) will be capitalised.</p>
Minimum cash balance	US\$750,000.	AUD\$250,000.
Financial covenant	<p>Review Event: Gross Profit of the Group for a quarter is less than US\$1 million.</p> <p>Event of Default: Gross Profit of the Group for a quarter is less than US\$750,000.</p>	Unchanged.
Prepayment fee	Not applicable.	<p>The Company must pay a Prepayment Fee on the earliest to occur of:</p> <ul style="list-style-type: none"> <li>- the Amended PURE Facility being terminated;</li> <li>- the amount owing being repaid in full;</li> <li>- the amount owing becoming due and payable (including as a result of PURE exercising its rights).</li> </ul> <p>The Prepayment Fee is 12 months worth of interest on the Third Loan (and Fourth Loan and Fifth Loan, if applicable), less any interest actually paid on those Loans.</p>
Indemnification in relation to Second Warrant Deed	Not applicable.	If the Warrants are not issued under the Second Warrant Deed (see below) by 31 May 2024, or if there is a Material Default prior to the issue of the Warrants, PURE is indemnified for the full economic value of the Warrants (including the Warrant Cancellation Fee).
Repayment Date	48 months after utilisation of the First Loan (ie 10 November 2026).	Unchanged.

**Second Warrant Deed**

In conjunction with the Amended PURE Facility, a 'Second Warrant Deed' has been entered into between the Company and PURE.

The Second Warrant Deed provides as follows.

<b>Key Term</b>	<b>Detail</b>
Number of Warrants	The Company will issue 85,000,000 Warrants in connection with the Third Loan ( <b>Third Tranche Warrants</b> ). If drawn down, additional Warrants will be issued in connection with the Fourth and Fifth Loans.
Conditional on Shareholder approval	The issue of Third Tranche Warrants is conditional on shareholder approval for the purposes of Listing Rule 7.1.
Third Tranche Exercise Price	The Third Tranche Warrants will be exercisable for Shares at an exercise price ( <b>Third Tranche Exercise Price</b> ) representing the lower of: <ul style="list-style-type: none"> <li>- \$0.02;</li> <li>- a 20.0% discount to the price of any change of control transaction; and</li> <li>- an 'anti-dilution price adjustment' price (see below).</li> </ul>
Anti-dilution price adjustment	<p>If the Company makes an issue of equity securities (or a series of consecutive issuances of equity securities in any period not exceeding 12 months), and the diluted amount of those equity securities (in aggregate) exceeds 15% of the number of Shares on issue immediately before the announcement of the issue or first issuance, the anti-dilution price adjustment price of the Warrants will be calculated in accordance with the following formula:</p> <p><math>(A + B) / C</math>, where:</p> <p>A is the market capitalisation of the Company on the trading day prior to the announcement of the issue of equity securities;</p> <p>B is the number of equity securities the subject of the issue multiplied by their issue price; and</p> <p>C is the number of Shares on issue immediately before the announcement of the issue of equity securities plus the diluted amount of the issued equity securities.</p> <p>The anti-dilution price adjustment does not apply to the issue of Shares as a result of the exercise of a convertible security (or option) on issue as at the date of the Second Warrant Deed.</p>
Warrant Cancellation Fee	If a Material Default occurs under the Facility Agreement, PURE may elect to have the Company cancel the Third Tranche Warrants (and any Fourth and Fifth Tranche Warrants) for a Warrant Cancellation Fee of \$2 million. The Company must pay the Warrant Cancellation Fee within 5 business days of receipt of notice from PURE.
Expiry	The Third Tranche Warrants expire and lapse if not exercised by the 4 year anniversary of the date of the Second Warrant Deed (being 27 March 2024).
Other terms	<p>The Third Tranche Warrants:</p> <ul style="list-style-type: none"> <li>- do not confer any entitlement to dividends or other distributions, nor any right to attend or vote at a general meeting of the Company;</li> <li>- have no entitlement to participate in a new issue of capital offered to</li> </ul>



Key Term	Detail
	<p>shareholders without first being exercised;</p> <ul style="list-style-type: none"> <li>- will not be quoted on ASX, however the Company will apply for quotation of the Shares issued on exercise of the Warrants; and</li> <li>- contain standard adjustment terms, consistent with the ASX Listing Rules, in the event of a bonus issue, pro rata issue, reorganisation or reconstruction of capital.</li> </ul> <p>The Company may not issue any shares other than fully paid ordinary shares while the Warrants are on issue (absent PURE's consent).</p>

### **Amendments to General Security Deed**

In conjunction with entering into the Amended PURE Facility, the parties have agreed the following variations to the General Security Deed between PURE and each HydraLyte Group Company dated 15 October 2022 (**GSD**).

- (a) Security limited to amounts owing under Amended PURE Facility: a provision that expressly confirms that the 'Security' granted under the GSD is limited to amounts owing under the Amended PURE Facility (being the **Secured Moneys**) has been inserted.
- (b) Disposal of assets: a provision has been inserted which requires that, in the event that the 'Security' is enforced, the assets can only be disposed to PURE or an associate of PURE if the disposal is first approved by the Company's shareholders under Listing Rule 10.1.
- (c) Appointment of receiver: if PURE appoints a receiver, receiver and manager or analogous person to exercise any power of sale under the GSD, the assets must be sold to an unrelated third party on arm's length commercial terms and the net proceeds of sale distributed to PURE in accordance with its legal entitlements.

The GSD provides that the 'Security' will be discharged once the Secured Moneys have been repaid in full.

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An Appendix 3B will follow this announcement.

### **ENDS**

**This announcement was authorised for release by the Board of HydraLyte North America.**

For further information:

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### **Forward Looking Statements:**

This ASX release includes certain forward-looking statements that are based on information and assumptions known to date and are subject to various risks and uncertainties. Forward-looking statements are based on:

- assumptions regarding the Company's financial position, business strategies, plans and objectives of management for future operations and development and the environment in which the Company will operate; and

- current views, expectations, and beliefs as at the date they are expressed, and which are subject to various risks and uncertainties.

Actual results, performance or achievements could be significantly different from those expressed in, or implied by, these forward-looking statements. Such forward-looking statements are not guaranteeing of future performance and involve known and unknown risks, uncertainties, and other factors, many of which are beyond the control of HydraLyte. These factors may cause actual results to differ materially from those expressed in the statements contained in this announcement.

The Company disclaims any responsibility for the accuracy or completeness of any forward-looking statement. The Company disclaims any responsibility to update or revise any forward-looking statements to reflect any change in the Company's financial condition, status or affairs or any change in the events, conditions, or circumstances on which a statement is based, except as required by law. The projections or forecasts included in this announcement have not been audited, examined, or otherwise reviewed by the independent auditors of the Company.

You must not place undue reliance on these forward-looking statements.