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# **Board Charter**

Nitro Software Limited (ACN 079 215 419)

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## Contents

	Page
1 The Board and overview of its role	2
2 Functions of the Board	2
3 Powers delegated to management	5
4 Board structure	6
5 Board composition	6
6 Appointment and re-election of directors	6
7 Board, committee, individual director and Chief Executive Officer performance reviews	7
8 Board Chair	7
9 Company secretary	8
10 Keeping directors informed	8
11 Access to independent advice	8
12 Non-executive directors' meetings	9
13 Independence of non-executive directors	9
14 Conflict of interest	10
15 Board committees	10
16 Restrictions on share dealings by directors	11
17 Confidentiality	11
18 Code of Conduct	11
19 Review	11

### 1 The Board and overview of its role

- (a) Corporate governance describes the way Nitro Software Limited (ACN 079 215 419) (**Nitro**) is directed and controlled. Nitro's shareholders appoint directors and hold them accountable for the performance of the company. A key part of directors' responsibility is to ensure that an effective corporate governance structure operates in Nitro.
- (b) The governance structure should ensure that reasonable profit and growth targets are set and achieved and risk is properly managed, while taking into account the interests of Nitro's stakeholders. As well, Nitro's corporate governance culture and its way of doing business, including leadership by the board of directors (**Board**) and senior executives, is critical to Nitro's continuing success.
- (c) The Board of Nitro is responsible for, and oversees the governance of, Nitro.
- (d) This board charter sets out the functions of the Board by describing the structure of the Board and its committees, the need for independence and other obligations of directors.
- (e) The Board will meet regularly on such number of occasions each year as the Board deems appropriate.

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### 2 Functions of the Board

- (a) The Board strives to build sustainable value for shareholders whilst protecting the assets and reputation of Nitro. Its functions include but are not limited to:
  - (i) demonstrating leadership;
  - (ii) defining Nitro's purpose and setting its strategies, budgets and business plans;
  - (iii) approving Nitro's statement of values and code of conduct to underpin a culture of acting lawfully, ethically and responsibly;
  - (iv) satisfying itself that Nitro has in place an appropriate risk management framework (for both financial and non-financial risks) and setting the risk appetite within which the Board expects management to operate;
  - (v) satisfying itself that Nitro's remuneration policies are aligned with its purpose, values, strategic objectives and risk appetite;
  - (vi) overseeing management in its implementation of Nitro's strategic objectives, its role in instilling Nitro's values and performance generally;

- (vii) monitoring performance of senior management of the Nitro group (being the Chief Executive Officer and other individuals as determined from time to time by the Remuneration and Nomination Committee) (**Senior Management**);
- (viii) setting measurable objectives for achieving gender diversity in the composition of Nitro's Board, Senior Management and workforce generally;
- (ix) approving major borrowing and debt arrangements, the acquisition, establishment, disposal or cessation of any significant business of the company, any significant transaction or capital expenditure and the issue of any shares, options, equity instruments or other securities in Nitro;
- (x) approving Nitro's annual report including the financial statements, directors' report, remuneration report and corporate governance statement, with advice from the Remuneration and Nomination Committee and the Audit and Risk Management Committee, as appropriate;
- (xi) approving Nitro's half-yearly report and any quarterly reporting (when applicable);
- (xii) overseeing Nitro's process for making timely and balanced disclosure of all material information concerning Nitro that a reasonable person would expect to have a material effect on the price or value of the Nitro's securities;
- (xiii) satisfying itself that an appropriate framework exists for relevant information to be reported to the Board by management;
- (xiv) whenever required, challenging management and holding it to account;
- (xv) reviewing operating information to understand at all times the state of health of Nitro;
- (xvi) considering the economic, occupational health and safety, environmental and social sustainability risks of Nitro's activities;
- (xvii) ensuring that Nitro acts legally and responsibly on all matters and that the highest ethical standards are maintained;
- (xviii) developing an investor relations program to facilitate effective two-way communication with investors;
- (xix) maintaining a constructive and ongoing relationship with the Australian Securities Exchange (**ASX**) and regulators, and approving policies regarding disclosure and communications with the market and Nitro's shareholders; and
- (xx) monitoring the effectiveness of, and approving changes to, internal governance including delegated authorities, and monitoring resources available to Senior Management.

- (b) With the guidance of the Board's Remuneration and Nomination Committee, the Board is responsible for:
- (i) evaluating and approving the remuneration packages of the Chief Executive Officer, directors and other members of Senior Management;
  - (ii) evaluating and approving the remuneration arrangements for non-executive directors;
  - (iii) monitoring compliance with the non-executive director remuneration pool as established by the Constitution, or as subsequently amended by shareholders, and recommending any changes to the pool;
  - (iv) administering short- and long-term incentive plans (including any equity plans) and engaging external remuneration consultants;
  - (v) appointing and replacing the Chief Executive Officer and Chief Financial Officer, and approving the appointment and replacement of other members of Senior Management and the directors;
  - (vi) appointing, reviewing the performance of, remunerating and replacing the chair of the Board (**Board Chair**);
  - (vii) Nitro's induction program for new directors and periodic review and facilitation of ongoing professional development for directors;
  - (viii) regularly assessing the independence of all directors;
  - (ix) reviewing and implementing succession planning for directors and Senior Management; and
  - (x) monitoring the organizational capability and mix of skills, experience, expertise and diversity on the Board and, when necessary, appointing new directors, for approval by shareholders.
- (c) With the guidance of the Audit and Risk Management Committee, the Board is responsible for:
- (i) overseeing the establishment of and approving Nitro's risk management framework (for both financial and non-financial risks) including its strategy, policies, procedures and systems;
  - (ii) reviewing and monitoring the effectiveness of Nitro's risk management framework;
  - (iii) overseeing the integrity of Nitro's accounting and corporate reporting systems, including the external audit and Nitro's processes for verifying the integrity of any periodic corporate report Nitro releases to the market that is not audited or reviewed by an external auditor;

- (iv) reviewing and approving Nitro's financial statements and reports;
  - (v) overseeing Nitro's financial reporting, which, without limitation, includes:
    - (A) reviewing the suitability of Nitro's accounting policies and principles, how they are applied and ensuring they are used in accordance with the statutory financial reporting framework;
    - (B) assessing significant estimates and judgements in financial reports;
    - (C) assessing information from external auditors to ensure the quality of financial reports; and
    - (D) determining whether the financial and associated non-financial statements should be signed based on the Audit and Risk Management Committee's assessment of them;
  - (vi) the entry into, approval or disclosure of related party transactions (if any);
  - (vii) overseeing Nitro's financial controls and systems;
  - (viii) managing audit arrangements and auditor independence.
- (d) The functions listed are matters which the Board specifically reserves for itself and does not limit the Board's overall duties and responsibilities. The Board may delegate consideration to a committee of the Board specifically constituted for the relevant purpose.

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### **3 Powers delegated to management**

- (a) The Board will delegate to the Chief Executive Officer the authority and power to manage Nitro and its businesses within levels of authority specified by the Board from time to time. The Chief Executive Officer may delegate aspects of his or her authority and power but remains accountable to the Board for Nitro's performance and is required to report regularly to the Board on the progress being made by Nitro's business units.
- (b) The Chief Executive Officer's role includes:
  - (i) responsibility for the effective leadership of the management team;
  - (ii) the implementation of Nitro's strategic objectives and instilling and reinforcing its values;
  - (iii) the day-to-day management of Nitro's operations (including operating within the values, code of conduct, budget and risk appetite set by the Board); and
  - (iv) oversight of the provision by Senior Management to the Board of accurate, timely and clear information on Nitro's operations (including, but not limited

to, information about Nitro's financial performance, compliance with material laws and regulations and any conduct materially inconsistent with Nitro's values or code of conduct).

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## 4 Board structure

The composition, structure and proceedings of the Board are primarily governed by Nitro's constitution (a copy can be found on the company's website) (**Constitution**) and the laws governing corporations in jurisdictions where the company operates. The Board, with the assistance of the Remuneration and Nomination Committee, will regularly review the composition and structure and performance of the Board.

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## 5 Board composition

The Board aims to have a board of directors which has, at all times, the appropriate mix of skills, experience, expertise and diversity relevant to Nitro's businesses and the Board's duties and responsibilities.

The majority of the Board should, to the extent practicable given the size and composition of the Board from time to time, be comprised of independent directors as determined in accordance with clause 13.

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## 6 Appointment and re-election of directors

- (a) With guidance from the Remuneration and Nomination Committee and, where necessary, external consultants, the Board will identify candidates with appropriate skills, experience, expertise and diversity in order to discharge its mandate effectively and to maintain the necessary mix of expertise on the Board.
- (b) The Remuneration and Nomination Committee assesses nominations of new directors against a range of criteria including the candidate's background, experience, gender, professional skills, personal qualities and whether their skills and experience will complement the existing Board.
- (c) The criteria to assess nominations of new directors is reviewed annually and the Remuneration and Nomination Committee regularly compares the skill base of existing directors with that required for the future strategy of Nitro to enable identification of attributes required in new directors.
- (d) Before appointment to the Board, candidates must confirm that they will have sufficient time to meet their obligations to Nitro, in light of other commitments.
- (e) New directors are to be provided with a formal letter of appointment to the Board setting out the key terms and conditions of the appointment, together with any other documents that Nitro considers relevant to the appointment.

- (f) For shareholder meetings where directors are standing for election or re-election, the notice of meeting must include information to enable shareholders to make an informed decision on their election. This requirement is set out in detail in Nitro's Remuneration and Nomination Committee Charter.
  - (g) All directors (other than a managing director, if any) are subject to re-election by rotation at least every three years. Newly appointed directors must seek re-election at the first general meeting of shareholders following their appointment.
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## **7 Review of Board, committee and individual directors' performance**

- (a) With guidance from the Remuneration and Nomination Committee, the Board will regularly review the performance of the Board, its committees and each director, using where necessary an external consultant, against appropriate measures. Each year, Nitro will disclose in its annual report whether such a performance evaluation has been undertaken during or in respect of that period.
  - (b) Each year, the Board (with guidance from the Remuneration and Nomination Committee) will review the performance of the Chief Executive Officer and any other Senior Management against guidelines approved by the Board. Each year, Nitro will disclose in its annual report whether such a performance evaluation has been undertaken during or in respect of that period.
  - (c) Each year, (i) a statement detailing the mix of skills and diversity which the Board is looking to achieve in membership to the Board and (ii) details of the length of service of each director should be included in Nitro's annual report.
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## **8 Board Chair**

The Board Chair will be elected by the Board but should be an independent director. The Board Chair must not hold, and must not have held within the previous 3 years, the office of Chief Executive Officer of Nitro.

The Board Chair's role includes:

- (a) leading the Board;
- (b) facilitating effective contribution of all directors and promoting constructive and respectful relations among the directors and between the Board and management;
- (c) approving board agendas and ensuring adequate time is available for discussion of all agenda items, including strategic issues;
- (d) representing the views of the Board to the public; and
- (e) presiding over meetings of the Board and general meetings of shareholders.



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## 9 Company secretary

- (a) The Board appoints and removes the company secretary. All directors are to have direct access to the company secretary.
- (b) The company secretary is responsible for the day to day operations of the company secretary's office, including the administration of Board and committee meetings, overseeing Nitro's relationship with its share registrar and lodgments with the ASX and other regulators.
- (c) The company secretary is also responsible for communications with the ASX about listing rule matters, including making disclosures to the ASX in accordance with Nitro's Disclosure Policy.
- (d) The company secretary supports the effectiveness of the Board by monitoring that Board policy and procedures are followed and coordinating the completion and dispatch of Board agendas and briefing papers.
- (e) The company secretary is accountable to the Board through the Board Chair, on all matters to do with proper functioning of the Board.
- (f) The company secretary together with the guidance of the Board's Remuneration and Nomination Committee, and the assistance of the Board, shall organize the induction of new directors and facilitate ongoing professional development training for directors.

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## 10 Keeping directors informed

- (a) New directors are to be briefed on their roles and responsibilities and the minutes and papers of Board and committee meetings will be made available to them.
- (b) Board papers are distributed, where possible, within a reasonable period of time before each meeting.
- (c) Time is to be allocated at Board and committee meetings for continuing education on significant issues facing the company and changes to the regulatory environment. This is to include briefings by Senior Management and external consultants from time to time.

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## 11 Access to independent advice

Directors may obtain independent professional advice at Nitro's expense on matters arising in the course of their Board and committee duties, after obtaining the Board Chair's approval (which may not be unreasonably withheld). Whenever practicable, the advice must be commissioned in the joint names of the director and Nitro, and where appropriate a copy of any such advice should be provided to and for the benefit of the entire Board. The other directors must be advised if the Board Chair's approval is withheld.

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## 12 Non-executive directors' meetings

The non-executive directors are expected to meet periodically with no management present, to review management performance.

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## 13 Independence of non-executive directors

- (a) To be judged independent, a director must, in the opinion of the Board, be free of any interest, position or relationship that might influence, or reasonably be perceived to influence, his or her capacity to bring an independent judgement to bear on issues before the Board and to act in the best interests of Nitro as a whole rather than in the interests of an individual security holder or any other person.
- (b) Individuals would, in the absence of evidence or convincing argument to the contrary, not be characterized as independent if they were:
  - (i) employed, or had previously been employed in an executive capacity by Nitro or any of its subsidiaries in the three years prior to becoming a director;
  - (ii) receiving performance-based remuneration (including options or performance rights) from, or participates in an employee incentive scheme of Nitro;
  - (iii) within the last three years, in a material business relationship (e.g. as a supplier, professional adviser, consultant or customer) with Nitro or another group member, or is an officer of, or otherwise associated with, someone with such a relationship;
  - (iv) a substantial shareholder of Nitro, or a representative of, or an officer or employee within the last three years of, or professional adviser to, a substantial shareholder of Nitro;
  - (v) has close personal ties with any person who falls within any of the categories described above;
  - (vi) has been a director of Nitro for such a period that his or her independence from management and substantial shareholders may have been compromised;  
or
  - (vii) directly involved in the audit of Nitro or any of its subsidiaries.
- (c) Nitro will disclose the names of the directors considered by the Board to be independent directors in Nitro's annual report.
- (d) If a director has an interest, position or relationship of the type described in sub paragraph (b) above, but the Board is of the opinion that it does not compromise the independence of that director, Nitro may consider disclosing in Nitro's annual report the nature of the interest, position or relationship in question and an explanation of why the Board is of that opinion.

- (e) Any change in the nature of the independence status of a non-executive director must be promptly notified to the Board Chair and company secretary and the Board will review that director's independence status. If the Board determines that there has been a change to the independence status of a non-executive director, the Board will take steps to ensure that this change is disclosed and explained in a timely manner to the market.
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## **14 Conflict of interest**

- (a) Directors must keep the Board advised, on an ongoing basis, of any interests that could potentially conflict with those of Nitro and will advise the company secretary of all directorships or executive positions held in other companies.
  - (b) If a potential material conflict of interest or conflict of duty arises, the director concerned will advise the Board Chair prior to any Board meeting at which the conflicted matter is to be discussed. The director will not receive the relevant Board papers and will not be present or participate in the Board meeting while the relevant matter is considered unless the other directors approve that director's participation in the deliberation and voting on the relevant issue in accordance with the Corporations Act 2001 (Cth). Any potential conflict must be recorded in the Board minutes.
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## **15 Board committees**

- (a) The Board will operate two committees:
  - (i) Audit and Risk Management Committee; and
  - (ii) Remuneration and Nomination Committee.
- (b) When appointing members of each committee, the Board will take account of the skills and experience appropriate for that committee as well as any statutory or regulatory requirements.
- (c) Neither of the chairs of the:
  - (i) Audit and Risk Management Committee; or
  - (ii) Remuneration and Nomination Committee,can be the Board Chair and must be independent of management and Nitro.
- (d) The committees operated by the Board are to consider and determine the matters for which they are responsible in accordance with their charter. Copies of the charter of each committee are to be published on Nitro's website. The Board may establish other committees as and when required.

- (e) With respect to any Board committees, the Board will ensure that the following disclosures are made in the Nitro annual report:
    - (i) the current members of each committee and their professional qualifications and experience;
    - (ii) the number of times each committee met throughout a period; and
    - (iii) the individual attendances of the members of those meetings.
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## **16 Restrictions on share dealings by directors**

- (a) In accordance with Nitro's Securities Trading Policy, directors, senior management and other nominated parties may only buy or sell shares during certain periods set out in that policy. The policy contains other relevant restrictions.
  - (b) All Nitro share dealings by directors must be promptly notified to the ASX.
  - (c) A copy of the Nitro Securities Trading Policy will be published on the Nitro website.
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## **17 Confidentiality**

All proceedings of the Board, including Board papers, presentations and other information provided to the Board, must be kept confidential except as required by law or as agreed by the Board.

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## **18 Code of Conduct**

Nitro has a Code of Conduct which sets out the way Nitro conducts its business and guides the behavior of everyone in Nitro (including, employees, contractors and directors) by clearly stating Nitro's firm commitment to behaving honestly and fairly. A copy of the Nitro Code of Conduct will be published on the Nitro website.

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## **19 Review**

The Board will, at least once in each year, review this board charter to determine its adequacy for current circumstances and may amend it as necessary.