

FORM 5A



Rule 5.02(1)

**IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMERICAL COURT  
GROUP PROCEEDINGS LIST**

Case: S ECI 2021 04360

Filed on: 19/11/2021 04:08 PM

**No.**

**B E T W E E N**

**WILLIAM LAY**

Plaintiff

-and-

**NUIX LIMITED (ACN 117 140 235)**

Defendant

**WRIT**

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Date of Document:	19 November 2021	Solicitors Code:	106092
Filed on behalf of:	The Plaintiff	DX:	236 Sydney NSW 2000
Prepared by:	Shine Lawyers	Telephone:	(02) 8754 7270
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	Sydney NSW 2000	Email:	callsopp@shine.com.au

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**TO THE DEFENDANT**

**TAKE NOTICE** that this proceeding has been brought against you by the plaintiff for the claim set out in this writ.

**IF YOU INTEND TO DEFEND** the proceeding, or if you have a claim against the plaintiff which you wish to have taken into account at the trial, **YOU MUST GIVE NOTICE** of your intention by filing an appearance within the proper time for appearance stated below.

**YOU OR YOUR SOLICITOR** may file the appearance. An appearance is filed by—

- (a) filing a "Notice of Appearance" in the Prothonotary's office, 436 Lonsdale Street, Melbourne, or, where the writ has been filed in the office of a Deputy Prothonotary, in the office of that Deputy Prothonotary; and
- (b) on the day you file the Notice, serving a copy, sealed by the Court, at the plaintiff's address for service, which is set out at the end of this writ.

**IF YOU FAIL** to file an appearance within the proper time, the plaintiff may **OBTAIN JUDGMENT AGAINST YOU** on the claim without further notice.

**\*THE PROPER TIME TO FILE AN APPEARANCE** is as follows—

- (a) where you are served with the writ in Victoria, within 10 days after service;
- (b) where you are served with the writ out of Victoria and in another part of Australia, within 21 days after service;
- (c) where you are served with the writ in Papua New Guinea, within 28 days after service;
- (d) where you are served with the writ in New Zealand under Part 2 of the Trans-Tasman Proceedings Act 2010 of the Commonwealth, within 30 working days (within the meaning of that Act) after service or, if a shorter or longer period has been fixed by the Court under section 13(1)(b) of that Act, the period so fixed;
- (e) in any other case, within 42 days after service of the writ.

IF the plaintiff claims a debt only and you pay that debt, namely, \$ and \$ for legal costs to the plaintiff or the plaintiff's solicitor within the proper time for appearance, this proceeding will come to an end. Notwithstanding the payment you may have the costs taxed by the Court.

**FILED** *[insert date]*

Prothonotary

**THIS WRIT** is to be served within one year from the date it is filed or within such further period as the Court orders.

**IN THE SUPREME COURT OF VICTORIA  
AT MELBOURNE  
COMMERICAL COURT  
GROUP PROCEEDINGS LIST**

**No. S ECI**

**B E T W E E N**

**WILLIAM LAY**

Plaintiff

-and-

**NUIX LIMITED (ACN 117 140 235)**

Defendant

**STATEMENT OF CLAIM**

---

Date of Document:	19 November 2021	Solicitors Code:	106092
Filed on behalf of:	The Plaintiff	DX:	236 Sydney NSW 2000
Prepared by:	Shine Lawyers	Telephone:	(02) 8754 7270
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## **A THE PLAINTIFF AND GROUP MEMBERS**

1. This proceeding is commenced as a group proceeding pursuant to Part 4A of *Supreme Court Act 1986* (Vic) by the Plaintiff on his own behalf and on behalf of persons who or which:
  - (a) acquired an interest in ordinary shares in the Defendant (**Nuix Shares**) during the period from 18 November 2020 to 30 May 2021 (**Relevant Period**);
  - (b) have suffered loss or damage by reason of the conduct of the Defendant (**Nuix**) as pleaded in this Statement of Claim; and
  - (c) were not during the Relevant Period, and are not as at the date of the Statement of Claim, any of the following:
    - (i) a related party (as defined by s 228 of the *Corporations Act 2001* (Cth) (**Corporations Act**)) of Nuix;
    - (ii) a related body corporate (as defined by s 50 of the *Corporations Act*) of Nuix;
    - (iii) an associated entity (as defined by s 50AAA of the *Corporations Act*) of Nuix;
    - (iv) an officer or close associate (as defined by s 9 of the *Corporations Act*) of Nuix;
    - (v) a Chief Justice, Justice, Associate Justice or Registrar of the Supreme Court of Victoria or of the High Court of Australia,
2. The Plaintiff acquired an interest in Nuix Shares during the Relevant Period.

### **Particulars**

- i. The Plaintiff acquired 170 shares in Nuix on 15 February 2021.
3. Immediately prior to the commencement of this proceeding, the group, on whose behalf this proceeding is brought, comprised more than seven persons.

## **B THE DEFENDANT**

### **B.1 Nuix IPO**

4. At all material times, Nuix carried on business as a provider of investigative analytics and intelligence software.
5. On 18 November 2020, Nuix lodged with the Australian Securities and Investments Commission a prospectus for the purposes of Part 6D of the *Corporations Act* (**Prospectus**).
6. The Prospectus was:
  - (a) issued for the purposes of Chapter 6D of the *Corporations Act*;
  - (b) a disclosure document within the meaning of the *Corporations Act*;

- (c) issued in relation to the offer of Nuix Shares for the purposes of s 709 of the Corporations Act;
  - (d) subject to the requirement of s 710(1) of the Corporations Act, such that it was required to contain all information that investors and their professional advisers would reasonably require to make an informed assessment of, amongst other things, the financial position and performance, profits and losses and prospects of Nuix.
7. Under the terms of the Prospectus, it was proposed, amongst other things, that Nuix:
- (a) and Nuix SaleCo Limited would offer 179,479,144 Nuix Shares at a price of \$5.31 per Nuix Share which would bring the total number of Nuix Shares on issue to 317,304,794; and
  - (b) would be included in the official list of the financial market operated by the Australian Stock Exchange (**ASX**).
8. On 4 December 2020, Nuix was admitted to the official list of the financial market operated by the ASX.

## **B.2 Nuix's obligations**

9. Nuix is and was at all material times:
- (a) a company registered pursuant to the Corporations Act and capable of being sued;
  - (b) a person within the meaning of ss 728 and 1041H of the Corporations Act;
  - (c) a person within the meaning of s 12DA of the *Australian Securities and Investments Commission Act 2001* (Cth) (**ASIC Act**);
  - (d) a person within the meaning of s 18 of the *Australian Consumer Law* set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), as applicable pursuant to:
    - (i) s 12 of the *Australian Consumer and Fair Trading Act 2012* (Vic);
    - (ii) s 28 of the *Fair Trading Act 1987* (NSW);
    - (iii) s 16 of the *Fair Trading Act 1989* (Qld);
    - (iv) s 6 of the *Australian Consumer Law (Tasmania) Act 2010* (Tas);
    - (v) s 19 of the *Fair Trading Act 2010* (WA);
    - (vi) s 14 of the *Fair Trading Act 1987* (SA);
    - (vii) s 7 of the *Fair Trading (Australian Consumer Law) Act 1992* (ACT); and/or
    - (viii) s 27 of the *Consumer Affairs and Fair Trading Act* (NT),
 (individually, or together, **ACL**).

10. At all material times, Nuix was prohibited pursuant to s 728 of the Corporations Act from offering Nuix Shares under the Prospectus if:
- (a) there was a misleading or deceptive statement in the Prospectus;
  - (b) the Prospectus omitted information that investors and their professional advisers would reasonably require to make an informed assessment of the financial position and performance, profits and losses and prospects of Nuix; and/or
  - (c) a new circumstance had arisen since the Prospectus was lodged that investors and their professional advisers would reasonably require to make an informed assessment of the financial position and performance, profits and losses and prospects of Nuix.
11. At all material times from 4 December 2020:
- (a) Nuix was included in the official list of the financial market operated by the ASX;
  - (b) Nuix was a listed disclosing entity within the meaning of s 111AL(1) of the Corporations Act;
  - (c) Nuix was subject to and bound by the Listing Rules of the ASX (**ASX Listing Rules**);
  - (d) Nuix was obliged by ss 111AP(1) and/or 674 of the Corporations Act and/or ASX Listing Rules r 3.1 to, once it was, or became aware within the meaning of r 19.12 of the ASX Listing Rules, of any information concerning Nuix that a reasonable person would expect to have a material effect on the price or value of the Nuix Shares, tell the ASX that information immediately (unless the exceptions in ASX Listing Rules r 3.1A applied);
  - (e) the Nuix Shares were ED Securities within the meaning of s 111AE of the Corporations Act; and
  - (f) the Nuix Shares were quoted ED Securities within the meaning of s 111AM of the Corporations Act.
12. At all material times, Nuix was prohibited pursuant to:
- (a) s 1041H of the Corporations Act and s 12DA of the ASIC Act, from engaging in conduct in relation to Nuix Shares (being a financial product within the meaning of the Corporations Act and the ASIC Act); and
  - (b) s 18 of the ACL, from engaging in conduct in trade or commerce, that was misleading or deceptive or likely to mislead or deceive.

### **B.3 Relevant personnel**

13. Jeffrey Bleich (**Bleich**) was at all material times:

- (a) a director of Nuix;
  - (b) the Chairman of Nuix; and
  - (c) an officer of Nuix within the meaning of s 9 of the Corporations Act.
14. Rodney Vawdrey (**Vawdrey**) was at all material times:
- (a) an executive director of Nuix;
  - (b) the Group Chief Executive Officer of Nuix; and
  - (c) an officer of Nuix within the meaning of s 9 of the Corporations Act.
15. Ian Lobban (**Lobban**) was at all material times:
- (a) a director of Nuix;
  - (b) a member of Nuix's Audit and Risk Management Committee; and
  - (c) an officer of Nuix within the meaning of s 9 of the Corporations Act.
16. Daniel Phillips (**Phillips**) was at all material times:
- (a) a director of Nuix;
  - (b) a member of Nuix's Audit and Risk Management Committee; and
  - (c) an officer of Nuix within the meaning of s 9 of the Corporations Act.
17. Sue Thomas (**Thomas**) was at all material times:
- (a) a director of Nuix;
  - (b) the chair of Nuix's Audit and Risk Management Committee; and
  - (c) an officer of Nuix within the meaning of s 9 of the Corporations Act.
18. Stephen Doyle (**Doyle**) was at all material times:
- (a) the Chief Financial Officer of Nuix; and
  - (b) an officer of Nuix within the meaning of s 9 of the Corporations Act.
19. By reason of the matters pleaded in paragraphs 13 to 18 above, any information of which any or all of:
- (a) Bleich;
  - (b) Vawdrey;
  - (c) Lobban;
  - (d) Phillips;
  - (e) Thomas; and



(f) Doyle,

became aware, or which reasonably ought to have come into his or her possession, in the course of the performance of his or her respective duties as an officer of Nuix, was information of which Nuix was aware within the meaning of r 19.12 of the ASX Listing Rules.

## **C RELEVANT PUBLICATIONS, ANNOUNCEMENTS AND DISCLOSURES**

### **C.1 Prospectus**

20. On 4 December 2020, Nuix published the Prospectus to the ASX.

21. In the Prospectus, Nuix made the following statements:

- (a) Nuix's pro forma revenue for the year ending 30 June 2020 was \$175.9 million;
- (b) Nuix's forecasted pro forma revenue for the year ending 30 June 2021 was \$193.5 million;
- (c) Nuix's forecasted statutory revenue for the year ending 30 June 2021 was \$193.5 million;
- (d) "Annualised contract value is used by Nuix to assess the total contract value of its software contracts on an annualised basis (removing fluctuations from multi-year deals in Nuix's Total Revenue which results from its revenue recognition policies)";
- (e) Nuix's pro forma annualised contract value for the year ending 30 June 2020 was \$168.4 million; and
- (f) Nuix's forecasted pro forma annualised contract value for the year ending 30 June 2021 was \$199.6 million,

**(Prospectus Statements).**

### **C.2 Annual reports**

22. On 4 December 2020, Nuix published to the ASX its:

- (a) annual report for the year ending 30 June 2018;
- (b) annual report for the year ending 30 June 2019; and
- (c) annual report for the year ending 30 June 2020,

**(Historical Annual Reports).**

### **C.3 26 February 2021 Announcements**

23. On 26 February 2021, Nuix:

- (a) published to the ASX:

- (i) its appendix 4D and Consolidated Interim Financial Report for the half-year ended 31 December 2020;
- (ii) an announcement entitled “Nuix announces 1H FY21 results”; and
- (iii) a presentation entitled “1H FY21 Financial Results”,  
**(26 February 2021 Announcements)**; and

(b) held a call with investors and analysts **(26 February 2021 Call)**.

24. In the 26 February 2021 Announcements, Nuix made the following statements:

- (a) Nuix’s pro forma revenue for the six months ending 31 December 2019 was \$88,784,000;
- (b) Nuix’s pro forma revenue for the six months ending 31 December 2020 was \$85,326,000;
- (c) Nuix’s statutory revenue for the six months ending 31 December 2020 was \$85,326,000;
- (d) “Nuix affirms its previously released full year guidance as per the Prospectus of:
  - FY21 total revenue of \$193,500,000;
  - FY21 Annualised Contract Value of \$200,000,000 and
  - FY21pro forma EBITDA of \$63,600,000”;
- (e) “Operational Highlights
  - Successful ASX listing on 4 December 2020
  - Momentum building with new business up over 17% compared to 1H FY20, 49 new customers, and the number and dollar value of SaaS deals growing
  - Continued investment in R&D – 26% of 1H FY21 revenues, delivering product enhancements and progressing Cloud use cases for Nuix Engine
  - Attracting key new hires with a focus on salespeople and engineers”;
- (f) “Financial Highlights
  - Revenue (statutory and pro forma) at \$85.3m, down 4% yoy and 44% of FY21 forecast
  - ACV (12 months ended 31 December 2020) at \$162m, up 3% yoy
  - Pro forma EBITDA at \$31.6m, up 3% due to strong profit margins; EBITDA margin up at 37%
  - Pro forma NPAT at \$9.5m and 48% of FY21 forecast

- Statutory net loss after tax of \$16.6m, or \$0.06 on an EPS basis”;

- (g) “Comments from Nuix CEO Rod Vawdrey: ‘We are pleased to report a good first half result that demonstrates the diversity of our business and the stickiness of our customer base...

Over the past six months, we have added 49 customers to our order book including industry leading brands in the US, UK and Europe. Strong customer engagement, a maturing and growing pipeline, and low customer churn (4.2%) are expected to boost ACV for the second half of FY21 with a return to more certain operating conditions anticipated in Q4 FY21. This gives us confidence that we can meet FY21 forecasts set out in our IPO Prospectus”;

- (h) “Financial Analysis

1H FY21 revenue was buoyed by high recurring revenue and strong new business sales of \$13.1 million offset by a weaker US dollar (\$2.4 million impact), disruption in US Government procurement processes and deal slippage of \$2.4m (which were subsequently closed in January 2021).

Profit margins increased in the period because software licences generated 98% of 1H FY21 revenue and costs were kept under control. However, management expects to accelerate hiring initiatives in the second half to support initiatives such as product transition to the Cloud and add enterprise sales resources as the Company enters new geographies and strengthens its reach into the corporate sector in the USA and EMEA”; and

- (i) “Outlook

...

Based on the first half FY21 results, strong new business momentum, a growing pipeline and low customer churn, management reaffirms forecast as per the IPO Prospectus.

FY21 total revenue of \$193.5 million; ACV of \$200 million and pro forma EBITDA of \$63.6 million”,

**(26 February 2021 Statements).**

25. In the 26 February 2021 Call, Nuix made the following statements:

- (a) “...we measure [revenue] on a real time basis, the pipeline within sales force and we know by sales team, by industry team, by sale team, by geography team, and so on how each deal is flowing through the sales force pipe – ‘funnel’ as we call them or the ‘pipeline’ – and so we have a maturing pipeline. So what the first thing we do is, we look at how much of the qualifying pipeline is turning into likely and then moving

through into commit and obviously then subsequently closed and we're seeing a maturing of the pipeline";

- (b) "...you have a good understanding of the backlog or the deferred revenue and how much of the revenue that was created in past periods is going to deliver in this quarter";
- (c) "I guess mostly when you put (sic) all that together, an organisation that has a good historical, predictable activity in a way we manage our pipeline gives us pretty good confidence that we'll achieve that top line number",

**(Nuix Revenue Calculations Statements).**

- 26. The Nuix Revenue Calculations Statements were true and correct **(Nuix Revenue Calculations).**

**C.4 Price effect of the 26 February 2021 Announcements**

- 27. Following the release of the 26 February 2021 Announcements, the price of Nuix Shares fell substantially.

**Particulars**

- i. The price of Nuix Shares fell from a closing price of \$8.97 on 25 February 2021 to a closing price of \$6.06 on 26 February 2021 on a traded volume of 20,803,750.
- ii. Further particulars may be provided following service of the Plaintiff's expert evidence.

**C.5 8 March 2021 Announcement**

- 28. On 8 March 2021, Nuix published an announcement to the ASX entitled "Nuix responds to market commentary" **(8 March 2021 Announcement).**
- 29. In the 8 March 2021 Announcement, Nuix made the following statements:
  - (a) "[Nuix] is pleased to provide the following confirmations in light of market commentary, including an article in today's The Australian Financial Review";
  - (b) "Nuix re-affirmed its FY21 IPO prospects forecasts when it released its 1H FY21 results on 26 February 2021. This guidance is based on its internal procedure including an in-depth analysis by the management team and its sales channel of current orders and sales pipeline. The Company's order book for the six months ended 31 December 2020 was \$107 million and its sales pipeline is strong";
  - (c) "Both 1H FY21 revenue and 1H FY21 Annualised Contract Value (ACV) reported by Nuix on 26 February 2021 were in line with management's expectations when

considering the impact of currency headwinds and the timing of certain deals which subsequently completed in January. As noted in its prospectus, Nuix's contract completions are typically weighted towards the end of Nuix's financial half years. In 1H21 for example, more than 30% of that half's revenue was signed in December 2020";

- (d) "In the case of ACV, this also included a delay in spending with the US government associated with the US election, in particular the unexpected delay in transitioning the Administration which impacted access to government agencies and officials required for signing contracts. Given the strength of Nuix's government relationships, Nuix is well positioned to capture US government spend as it is released"; and
- (e) "The FY21 revenue forecast, prepared on a consistent basis with applicable accounting standards, is based on estimated renewals, upsell renewals and new business. Renewals and upsell renewals, in the form of additional cores, licenses and application add-ons, are forecast at \$164.1 million representing 85% of total revenue. New customer revenue, which has the longest sales cycle and provides opportunity for future renewals and upsell, is forecast at \$29.4 million representing 15% of FY21F revenue. In 1H FY21, renewals and upsell of \$72.2m was 85% of total revenue and new business at \$13.1 million was 15% of total revenue, both in line with the full year forecast mix",

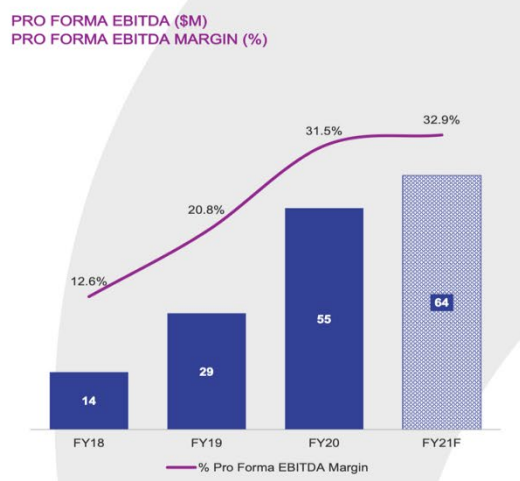
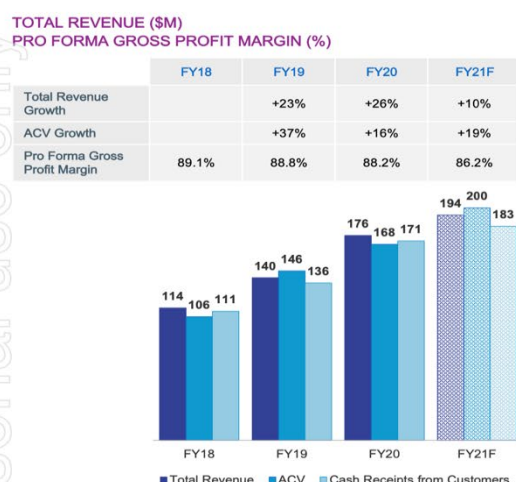
(8 March 2021 Statements).

## C.6 25 March 2021 Announcement

30. On 25 March 2021, Nuix published to the ASX a presentation entitled "Conference Presentation" (25 March 2021 Announcement).
31. In the 25 March 2021 Announcement, Nuix made the following statements (25 March 2021 Statements):

### Measuring success

Subscription revenues are driving growth and margin expansion.



## **C.7 21 April 2021 Announcement**

32. On 21 April 2021, Nuix published an announcement to the ASX entitled “Nuix revises FY21 forecasts” (**21 April 2021 Announcement**).
33. In the 21 April 2021 Announcement, Nuix made the following statements:
- (a) “[Nuix] provides an update to its IPO Prospectus FY21 forecasts, as noted below, and provides commentary on recent trading conditions following completion of an internal quarterly management review”;
  - (b) “Pro Forma Revenue of \$180m-\$185m (vs \$193.5 m forecast in the IPO Prospectus)”;
  - (c) “Annualised Contract Value (ACV) of \$168m-\$177m (vs \$199.6m)”;
  - (d) “Acceleration in customer transition to consumption and software as a service (SaaS) licenses impacts the revenue profile but delivers significant longer-term business model benefits”;
  - (e) “Current operating climate has reduced near-term upsell opportunities, while revenue from renewals and new business remain in line with expectations”;
  - (f) “Strong underlying business performance with substantial increases in new customers won, and total and average order values, compared to the same period in FY20”;
  - (g) “During April, a significant and larger than expected number of Nuix’s customers, including one of its largest, elected to transition from module-based subscription licences to consumption and SaaS licence models, resulting in a shift in both revenue and ACV profiles”;
  - (h) “Some of Nuix’s law firm, advisory and service provider customers have recently informed Nuix of a reduced add-on (upsell) requirement for existing licences. This is due to both their unutilised licence capacity in the current climate, as well as the recovery in legal case backlog being slower than anticipated”;
  - (i) “The accelerated switch to consumption licenses, including SaaS, is primarily driven by changing customer business models, caused in part by a shift from office settings to remote working environments and the need to have flexible global licensing to manage projects in line with data privacy and sovereignty requirements. It also reflects the attractiveness for many customers of a decision by Nuix to provide greater choice in deployment, including on-premise and in the cloud hybrid solutions, which assists customers as they evaluate their transition toward consumption licenses”;
  - (j) “The transition to consumption licenses, including SaaS deployments, has had a near-term negative impact on statutory revenue generation. It does not, however,

diminish Nuix's growth prospects which remain strong, as evidenced by ongoing increases in new customer acquisition and retention”;

- (k) “For the nine months ended 31 March 2021, the Company acquired more customers than in the same period in the previous year. The total order value and average order value from these new customers were significantly higher than the prior year period. An accelerating trend in customer preference is evidenced by more than 25 per cent of the total order value being derived from consumption licenses, including SaaS”;
- (l) “Over the last few months, customers have also continued to make longer-term commitments to Nuix, with a higher-than-expected level of multi-year contracts. While Nuix considers this to be a strong positive indicator of customer loyalty and retention, it also has a near-term impact on FY21 ACV growth”;
- (m) “The increase in projected EBITDA over forecast is in part reflective of lower headcount, reduced travel costs, and FX benefit from USD costs. There are further EBITDA benefits that accrue to Nuix from its prior investment in SaaS infrastructure and cost optimisation, which support the growing customer demand for consumption licensing and help maintain high gross margins through significant operating leverage”;
- (n) “Rod Vawdrey, CEO of Nuix commented, ‘Over the last 18 months, Nuix has enabled its customers to move from module-based subscription licenses to more flexible consumption-based licensing models. The increasing rate of adoption of consumption licenses has had a positive impact on new business and existing retention notwithstanding a transitory downward impact on FY21 revenue. Giving our customers the choice of how they consume Nuix is a key competitive advantage’”;
- and
- (o) “The fundamental revenue drivers for Nuix are strong and underpinned by growing order book and pipeline. It reflects the underlying strength of the Nuix software offering, a sticky, loyal customer base, strong growth in new business and an increase in order size. We look forward to shareholder participation in Nuix's Investor Day in May”,

**(21 April 2021 Statements).**

#### **C.8 Price effect of the 21 April 2021 Announcement**

- 34. Following the release of the 21 April 2021 Announcement, the price of Nuix Shares fell substantially.

## Particulars

- i. The price of Nuix Shares fell from a closing price of \$5.07 on 20 April 2021 to a closing price of \$4.29 on 21 April 2021 on a traded volume of 15,501,178.
- ii. Further particulars may be provided following service of the Plaintiff's expert evidence.

### C.9 31 May 2021 Announcement

35. At 8:30am on 31 May 2021, Nuix published an announcement to the ASX entitled "Nuix Revises FY21 Forecast Range" (**31 May 2021 Announcement**).
36. In the 31 May 2021 Announcement, Nuix made the following statements:
  - (a) "[Nuix] provides an update in relation to its FY21 forecasts, following recent developments in its new and existing customer contract revenue pipeline";
  - (b) "Pro forma revenue of \$173-182mm (vs \$180-185mm forecast provided on 21 April)";
  - (c) "Annualised contract value (ACV) of \$165-172mm (vs \$168-177mm forecast provided on 21 April)";
  - (d) "Several factors have affected the revised forecasts including the expected timing of closure of some upsell opportunities and new potential customers. In particular, there remains uncertainty in relation to both the structure and timing of a small number of large customer upsell opportunities, including whether these may result in multi-year deals during FY21";
  - (e) "[Vawdrey said] 'We understand the importance of meeting financial forecasts. There's a near-term level of uncertainty regard the precise timing, shape and scope of some large and anticipated customer contracts coming to fruition in the next few weeks. We expect to capture most of the revenue which remains under current negotiation with these customers either by financial year-end or early in our new financial year. We remain confident in the long-term outlook for the company'",  
(**31 May 2021 Statements**).

### C.10 Price effect of the 31 May 2021 Announcement

37. Following the release of the 31 May 2021 Announcement, the price of Nuix Shares fell substantially.



## Particulars

- i. The price of Nuix Shares fell from a closing price of \$3.37 on 28 May 2021 to a closing price of \$2.77 on 31 May 2021 on a traded volume of 20,061,292.
- ii. Further particulars may be provided following service of the Plaintiff's expert evidence.

### C.11 24 June 2021 Announcement

38. On 24 June 2021, Nuix published an announcement to the ASX entitled "Nuix Update" (**24 June 2021 Announcement**).
39. In the 24 June 2021 Announcement, Nuix made the following statements:
  - (a) "[Nuix] wishes to inform the market that a search warrant was today executed at Nuix's Sydney office seeking documents in relation to an investigation into the affairs of an individual"; and
  - (b) "Nuix understands that the warrant does not relate to any allegation of wrongdoing by the Company",**(24 June 2021 Statements)**.

### C.12 30 June 2021 Announcement

40. On 30 June 2021, Nuix published an announcement to the ASX entitled "ASIC update" (**30 June 2021 Announcement**).
41. In the 30 June 2021 Announcement, Nuix made the following statements:
  - (a) "Nuix has come to understand through an application made by ASIC that ASIC is conducting an investigation in relation to Nuix's former CFO, Stephen Doyle, Ross Doyle and Ronald Doyle";
  - (b) "Nuix Chair Jeffrey Belich said: 'We are genuinely disturbed by the allegations concerning Mr Doyle and will fully assist ASIC in getting to the bottom of that matter'; and
  - (c) "Nuix has also come to understand, through the application, that ASIC's Financial Reporting and Audit Enforcement Team (FREAT) has commenced a separate investigation into the affairs of Nuix, specifically, suspected contraventions of section 296, 344 and 1308 of the Corporations Act in relation to the financial statements of Nuix for the periods ending 30 June 2018, 30 June 2019 and 30 June 2020 lodged with ASIC and sections 1308 and 1309 of the Corporations Act, in relation to the Initial Public Offering Prospectus lodged by Nuix with ASIC and with the ASX. Nuix is not aware of the precise nature of the investigation beyond the information outlined above

and has not received any formal notification from ASIC in relation to any such investigation. Nuix is committed to cooperating in any such investigation”,

**(30 June 2021 Statements).**

### **C.13 30 August 2021 Announcements**

42. On 30 August 2021, Nuix published to the ASX:

- (a) an announcement entitled “Nuix announces FY21 results”;
- (b) its Appendix 4E for the financial year ended 30 June 2021; and
- (c) a presentation entitled “FY21 Financial Results Investor Presentation”,

**(30 August 2021 Announcements).**

43. In the 30 August 2021 Announcements, Nuix made the following statements:

(a)

	<b>FY21 Statutory \$m</b>	<b>FY20 Statutory \$m</b>	<b>Statutory Change</b>	<b>FY21 Pro forma \$m</b>	<b>FY20 Pro forma \$m</b>	<b>Pro forma Change</b>
Revenue	<b>176.1</b>	175.9	0.1%	<b>176.1</b>	175.9	0.1%
Gross Profit	<b>157.2</b>	155.2	1.3%	<b>157.2</b>	155.2	1.3%
EBITDA	<b>30.2</b>	62.9	-52.1%	<b>66.7</b>	55.5	20.2%
NPAT	<b>(1.6)</b>	23.6	-107.0%	<b>25.0</b>	18.8	33.2%

- (b) Nuix’s Annualised Contract Value for the financial year ending 30 June 2021 was \$165.6 million.

## **D THE TRUE POSITION**

### **D.1 Likely half year on half year revenue**

44. During the period from 18 November 2020 to 31 December 2020, it was likely that Nuix’s revenue for the half year ending 31 December 2020 would be less than Nuix’s revenue for the half year ending 31 December 2019 (**Likely Half Year on Half Year Revenue Information**).

### **D.2 Actual half year on half year revenue**

45. Nuix’s revenue for the half year ending 31 December 2020 was approximately 4% less than Nuix’s revenue for the half year ending 31 December 2019 (**Actual Half Year on Half Year Revenue Information**).

### **D.3 Likely tracking vs forecast revenue**

46. During the period from 18 November 2020 to 31 December 2020, it was likely that Nuix's statutory and pro forma revenue for the half year ending 31 December 2020 would be materially less than half of the forecasted statutory and pro forma revenue for the year ending 30 June 2021 disclosed in the Prospectus (**Likely Tracking vs Forecast Revenue Information**).

### **D.4 Actual tracking vs forecast revenue information**

47. Nuix's statutory and pro forma revenue for the half year ending 31 December 2020 was approximately 44% of the forecasted statutory and pro forma revenue for the year ending 30 June 2021 disclosed in the Prospectus (**Actual Tracking vs Forecast Revenue Information**).

### **D.5 Likely FY21 ACV compared to Prospectus**

48. During the Relevant Period, it was likely that Nuix's annualised contract value for the year ending 30 June 2021 would be materially less than \$199.6 million (**Likely FY21 ACV Compared to Prospectus Information**).

### **D.6 Likely FY21 revenue compared to Prospectus**

49. During the Relevant Period, it was likely that Nuix's statutory and pro forma revenue for the year ending 30 June 2021 would be materially less than \$193.5 million (**Likely FY21 Revenue Compared to Prospectus Information**).

### **D.7 Likely FY21 ACV compared to FY20**

50. During the Relevant Period, it was likely, alternatively there was a real risk, that Nuix's annualised contract value for the year ending 30 June 2021 would be less than its annualised contract value for the year ending 30 June 2020 (**Likely FY21 ACV Compared to FY20 Information**).

### **D.8 Likely FY21 Revenue compared to FY20**

51. During the Relevant Period, it was likely, alternatively there was a real risk, that Nuix's pro forma revenue for the year ending 30 June 2021 would be similar to its pro forma revenue for the year ending 30 June 2020 (**Likely FY21 Revenue Compared to FY20 Information**).

### **D.9 Unreliable forecasts**

52. During the Relevant Period, Nuix could not reliably forecast its revenue and annualised contract value for the current financial year (**Unreliable Forecast Information**).

### **Particulars**

- i. Nuix had not met its forecasts for the financial years ending 30 June 2018, 2019 and 2020.
- ii. Further particulars to be provided following discovery and the plaintiff's expert evidence.

## **E MISLEADING OR DECEPTIVE CONDUCT**

### **E.1 Prospectus Representations**

53. By reason of the matters pleaded in paragraphs 5 to 6 and 20 to 21 above, Nuix represented to the Affected Market that:

- (a) Nuix's forecasted pro forma revenue for the year ending 30 June 2021 was \$193.5 million;
- (b) Nuix's forecasted statutory revenue for the year ending 30 June 2021 was \$193.5 million;
- (c) Nuix's forecasted pro forma revenue for the year ending 30 June 2021 was \$17.6 million greater than Nuix's pro forma revenue for the year ending 30 June 2020;
- (d) Nuix's forecasted pro forma annualised contract value for the year ending 30 June 2021 was \$199.6 million; and
- (e) Nuix's forecasted pro forma annualised contract value for the year ending 30 June 2021 was \$31.2 million greater than Nuix's pro forma annualised contract value for the year ending 30 June 2020,

**(Prospectus Representations).**

### **Particulars**

- i. The Prospectus Representations were express and implied from the Prospectus Statements.

54. Further, by reason of the matters pleaded in paragraphs 5 to 6 and 20 to 21 above, Nuix represented to the Affected Market that:

- (a) Nuix had a reasonable basis for making the Prospectus Representations; and
- (b) Nuix was able, with the information available to it, to make a reasonably reliable assessment of its revenue and annualised contract value for the current financial year,

**(Prospectus Basis Representations).**

### Particulars

- i. The Prospectus Basis Representations were implied from the Prospectus Statements.

55. From 18 November 2020 until 21 April 2021, Nuix continued to make the Prospectus Representations.

### Particulars

- i. The continuing representation was expressed by the 26 February 2021 Statements, the 8 March 2021 Statements and/or the 25 March 2021 Statements.
- ii. The continuing representation was also implied by Nuix not saying anything during that period to modify, qualify or contract the Prospectus Representations.

56. From 18 November 2020 until 31 May 2021, alternatively until 21 April 2021, further in the alternative until 26 February 2021, Nuix continued to make the Prospectus Basis Representations.

### Particulars

- i. The continuing representation was also implied by Nuix not saying anything during that period to modify, qualify or contradict the Prospectus Representations.

57. The making and failing to correct and/or qualify the Prospectus Representations and/or the Prospectus Basis Representations was conduct engaged in by Nuix:

- (a) in trade or commerce; and
- (b) in relation to Nuix Shares.

58. As at and from 18 November 2020, Nuix did not have reasonable grounds for making the Prospectus Representations and/or the Prospectus Basis Representations in the circumstances pleaded in paragraphs 44, 45, 46, 47, 48, 49, 50, 51, 52, 70 and/or 71.

59. As at and from 18 November 2020, by making and/or failing to correct and/or qualify the Prospectus Representations and/or the Prospectus Basis Representations in the circumstances pleaded in paragraphs 44, 45, 46, 47, 48, 49, 50, 51, 52, 70 and/or 71, Nuix engaged in conduct which was misleading or deceptive or likely to mislead or deceive.

60. By reason of the matters pleaded in paragraphs 53 to 59 above, Nuix contravened:

- (a) s 728 of the Corporations Act (being a **Disclosure Document Contravention**);
- (b) s 1041H of the Corporations Act (being a **Misleading Conduct Contravention**);

- (c) s 12DA of the ASIC Act (being a **Misleading Conduct Contravention**); and/or
- (d) s 18 of the ACL (being a **Misleading Conduct Contravention**).

## **E.2 21 April 2021 Representations**

61. By reason of the matters pleaded in paragraphs 32 and 33 above, Nuix represented to the Affected Market that:

- (a) Nuix's forecasted pro forma revenue for the year ending 30 June 2021 was \$180 million to \$185 million;
- (b) Nuix's forecasted pro forma revenue for the year ending 30 June 2021 was between \$4.1 million and \$9.1 million greater than Nuix's pro forma revenue for the year ending 30 June 2020;
- (c) Nuix's forecasted pro forma annualised contract value for the year ending 30 June 2021 was between \$168 million and \$177 million; and
- (d) Nuix's forecasted pro forma annualised contract value for the year ending 30 June 2021 was between \$0.4 million less than and \$8.6 million greater than Nuix's pro forma annualised contract value for the year ending 30 June 2020,

**(21 April 2021 Representations).**

### **Particulars**

- i. The 21 April 2021 Representations were express and implied from the 21 April 2021 Statements.

62. Further, by reason of the matters pleaded in paragraphs 32 and 33 above, Nuix represented to the Affected Market that:

- (a) Nuix had a reasonable basis for making the 21 April 2021 Representations; and
- (b) Nuix was able, with the information available to it, to make a reasonably reliable assessment of its revenue and annualised contract value for the current financial year,

**(21 April 2021 Basis Representations).**

### **Particulars**

- i. The 21 April 2021 Basis Representations were implied from the 21 April 2021 Statements.

63. From 21 April 2021 until 31 May 2021, Nuix continued to make the 21 April 2021 Representations and the 21 April 2021 Basis Representations.

## Particulars

- i. The continuing representation was also implied by Nuix not saying anything during that period to modify, qualify or contract the 21 April 2021 Representations and/or the 21 April 2021 Basis Representations.
- 64. The making and failing to correct and/or qualify the 21 April 2021 Representations and/or the 21 April 2021 Basis Representations was conduct engaged in by Nuix:
  - (a) in trade or commerce; and
  - (b) in relation to Nuix Shares.
- 65. As at and from 21 April 2021, Nuix did not have reasonable grounds for making the 21 April 2021 Representations and/or the 21 April 2021 Basis Representations in the circumstances pleaded in paragraphs 48, 49, 50, 51, 52, 70 and/or 71 above.
- 66. As at and from 18 November 2020, by making and/or failing to correct and/or qualify the 21 April 2021 Representations and/or the 21 April 2021 Basis Representations in the circumstances pleaded in paragraphs 48, 49, 50, 51, 52, 70 and/or 71 above, Nuix engaged in conduct which was misleading or deceptive or likely to mislead or deceive.
- 67. By reason of the matters pleaded in paragraphs 61 to 66 above, Nuix contravened:
  - (a) s 1041H of the Corporations Act;
  - (b) s 12DA of the ASIC Act; and/or
  - (c) s 18 of the ACL,(each being a **Misleading Conduct Contravention**).

## F DISCLOSURE CONTRAVENTIONS

### F.1 Prospectus

- 68. The Prospectus did not contain:
  - (a) the Likely Half Year on Half Year Revenue Information;
  - (b) the Likely Tracking vs Forecast Revenue Information;
  - (c) the Likely FY21 ACV Compared to Prospectus Information;
  - (d) the Likely FY21 Revenue Compared to Prospectus Information;
  - (e) the Likely FY21 ACV Compared to FY20 Information;
  - (f) the Likely FY21 Revenue Compared to FY20 Information; and/or
  - (g) the Unreliable Forecast Information,

**(Non-Disclosed Material Information).**

69. The Non-Disclosed Material Information was information that investors and their professional advisers would reasonably require to make an informed assessment of the financial position and performance, profits and losses and prospects of Nuix.
70. By the time of issuing the Prospectus, Nuix was aware within the meaning of r 19.12 of the ASX Listing Rules of the Non-Disclosed Material Information by reason of Doyle's actual knowledge of the Non-Disclosed Material Information, alternatively that Doyle ought to have known the Non-Disclosed Material information.

**Particulars**

- i. From February 2011 to 15 June 2021, Doyle was the CFO of Nuix.
- ii. Doyle's responsibilities included Nuix's finance function.
- iii. Doyle had knowledge of and/or access to the Nuix Revenue Calculations.
- iv. Doyle had knowledge of and/or access to Nuix's forecasts for the 2018, 2019 and 2020 financial years.
- v. By reason of the matters set out in (i) to (iii), it can be inferred that Doyle knew of the Non-Disclosed Material Information, alternatively Doyle ought to have known of the Non-Disclosed Material Information.
- vi. In November 2020, Doyle and/or his brother, Ross Doyle (**Ross**), Black Hat Pte Ltd (**Black Hat**) was incorporated in Singapore.
- vii. Black Hat's officers and authorised representatives are Ross and a Singaporean local, Teh Chuang Kim.
- viii. Black Hat's sole shareholder is an entity registered in Lichtenstein, Black Knight Foundation (**Black Knight**).
- ix. Black Hat is a client of Moelis and holds trading account number Y1675913 (**Black Hat Trading Account**).
- x. Ross has authority to operate the Black Hat Trading Account.
- xi. Black Knight's beneficial owners are Doyle, Doyle's father, Ronald Doyle (**Ronald**), and Signa Consulting Treuunternehmen.
- xii. On a date prior to 30 November 2020, Doyle transferred his 2,000,000 Nuix Shares to Ross.



- xiii. On 30 November 2020, Ross transferred 2,000,000 Nuix Shares to Black Hat.
- xiv. On 4 February 2021, Ross transferred 200,000 Nuix Shares from Black Hat to himself.
- xv. During the period from 22 January 2021 to 12 February 2021, Ross and Black Hat sold their entire holdings of Nuix Shares.
- xvi. On 15 February 2021, Nuix announced that it would present its HY21 trading results on 26 February 2021.
- xvii. By reason of the matters set out in (vi) to (xvi) it can be inferred that from about November 2020 Doyle knew the Material Non-Disclosed Information as from that time he took steps for him and his brother to sell 2,000,000 Nuix Shares before the disclosure was made on 26 February 2021.
- xviii. Further particulars to be provided following discovery.

71. By the time of issuing the Prospectus, Nuix was aware within the meaning of r 19.12 of the ASX Listing Rules of the Non-Disclosed Material Information by reason of Vawdrey's actual knowledge of the Non-Disclosed Material Information, alternatively that Vawdrey ought to have known of the Non-Disclosed Material Information.

#### **Particulars**

- i. Since May 2017, Vawdrey was Nuix's Group Chief Executive Officer.
- ii. Vawdrey had knowledge of and/or access to the Nuix Revenue Calculations.
- iii. Vawdrey had knowledge of and/or access to Nuix's forecasts for the 2018, 2019 and 2020 financial years.
- iv. By reason of the matters set out in (i) to (iii), it can be inferred that Vawdrey knew of the Non-Disclosed Material Information, alternative Vawdrey ought to have known of the Non-Disclosed Material Information.
- v. Further particulars to be provided following discovery.

72. By reason of the matters pleaded in paragraphs 68 and 69 Nuix contravened s 728 of the Corporations Act (being a **Disclosure Document Contravention**).

## **F.2 Likely Half Year on Half Year Revenue Information**

73. By 4 December 2020, the Likely Half Year on Half Year Revenue Information was information:

- (a) of which Nuix was aware within the meaning of ASX Listing Rule 19.12; and
- (b) that Nuix knew would have a material effect on the price or value of Nuix Shares within the meaning of s 674(2)(d) of the Corporations Act; or
- (c) Nuix was negligent with respect to whether the information would have a material effect on the price or value of the Nuix Shares within the meaning of s 674(2)(d) of the Corporations Act.

### **Particulars**

- i. Prior to 4 December 2020, Nuix made the statements pleaded in paragraph 21 above.
- ii. Each of the statements set out in (i) above was published in a manner likely to bring what was said to the attention of the Affected Market.
- iii. By reason of (ii) above, the contents of those statements in (i) above were objectively likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares.
- iv. During the period from 4 December 2020 to 31 December 2020, the true position was as pleaded in Part D.1 but was not known to the Affected Market.
- v. Had the true position referred to in (iv) above been revealed to the Affected Market, this would have qualified or contradicted some or all of the statements set out in (i) above, and Nuix (and its directors and officers) acting reasonably would have considered that such qualifications or contradiction was objectively likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares.
- vi. Nuix's directors and officers knew that it made the statements set out in (i) above, that they had been made to the Affected Market as set out in (ii) above, and having regard to their inherent nature knew or ought reasonably to have known that the contents of those statements were objectively likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, as set out in (iii) above.

- vii. By 4 December 2020, some of Nuix's directors and officers had actual knowledge:
  - (a) of the Likely Half Year on Half Year Revenue Information and;
  - (b) that it would have a material effect on the price or value of Nuix Shares (the particulars to paragraphs 70 and 71 above are repeated).
- viii. Alternatively, having regard to (iv) above, Nuix's directors and officers who had the actual knowledge as set out in (vii(a)) above failed to:
  - (a) consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
  - (b) communicate their actual knowledge to all Nuix directors and officers (and those persons with responsibility for Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether the actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.
- ix. Alternatively, having regard to (vi) above, Nuix failed to ensure that its systems involved processes to ensure that those Nuix directors and officers who had actual knowledge as set out in (vii(a)) and/or (vii(b)) above:
  - (a) considered whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
  - (b) communicated their knowledge to all Nuix directors and officers (and those persons with responsibility for monitoring

Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.

- x. Alternatively, having regard to (iv) above, Nuix's directors and officers who did not have actual knowledge as set out in (vii(a)) and/or (vii(b)) above failed to obtain that information which they ought to have obtained in the course of their duties and:
  - (a) consider whether it qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
  - (b) communicate it to all Nuix's directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether it qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.
- xi. Alternatively, having regard to (vi) above, Nuix failed to ensure that its systems involved processes to ensure that those Nuix directors and officers who did not have actual knowledge as set out in (vii(a)) and/or (vii(b)) above obtained that information which they ought to have obtained in the course of their duties and:
  - (a) considered whether their knowledge so obtained qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and

- (b) communicated their knowledge so obtained to all Nuix directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.

- 74. The Likely Half Year on Half Year Revenue Information was information that until 26 February 2021 was not generally available within the meaning of s 674(2)(c) of the Corporations Act.
- 75. Pursuant to ASX Listing Rule 3.1, Nuix became obliged to tell the ASX the Likely Half Year on Half Year Revenue Information on and from 4 December 2020.
- 76. Nuix did not communicate the Likely Half Year on Half Year Revenue Information to the ASX before 26 February 2021.
- 77. By reason of the matters pleaded in paragraphs 73 to 76 above, Nuix contravened s 674(2) of the Corporations Act during the period from 4 December 2020 to 26 February 2021 (being a **Continuous Disclosure Contravention**).

### **F.3 Actual Half Year on Half Year Revenue Information**

- 78. By 1 January 2021, the Actual Half Year on Half Year Revenue Information was information:
  - (a) of which Nuix was aware within the meaning of r 19.12 of the ASX Listing Rules; and
  - (b) that Nuix knew would have a material effect on the price or value of Nuix Shares within the meaning of s 674(2)(d) of the Corporations Act; or
  - (c) Nuix was negligent with respect to whether the information would have a material effect on the price or value of the Nuix Shares within the meaning of s 674(2)(d) of the Corporations Act.

#### **Particulars**

- i. Prior to 1 January 2021, Nuix made the statements pleaded in paragraph 21 above.
- ii. Each of the statements set out in (i) above was published in a manner likely to bring what was said to the attention of the Affected Market.

- iii. By reason of (ii) above, the contents of those statements in (i) above were objectively likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares.
- iv. During the period from 1 January 2021 to 26 February 2021, the true position was as pleaded in Part D.2 but was not known to the Affected Market.
- v. Had the true position referred to in (iv) above been revealed to the Affected Market, this would have qualified or contradicted some or all of the statements set out in (i) above, and Nuix (and its directors and officers) acting reasonably would have considered that such qualifications or contradiction was objectively likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares.
- vi. Nuix's directors and officers knew that it made the statements set out in (i) above, that they had been made to the Affected Market as set out in (ii) above, and having regard to their inherent nature knew or ought reasonably to have known that the contents of those statements were objectively likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, as set out in (iii) above.
- vii. By 1 January 2021, some of Nuix's directors and officers had actual knowledge:
  - (a) of the Actual Half Year on Half Year Revenue Information and;
  - (b) that it would have a material effect on the price or value of Nuix Shares (the particulars to paragraphs 70 and 71 above are repeated).
- viii. Alternatively, having regard to (iv) above, Nuix's directors and officers who had the actual knowledge as set out in (vii(a)) above failed to:
  - (a) consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and

- (b) communicate their actual knowledge to all Nuix directors and officers (and those persons with responsibility for Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether the actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.
- ix. Alternatively, having regard to (vi) above, Nuix failed to ensure that its systems involved processes to ensure that those Nuix directors and officers who had actual knowledge as set out in (vii(a)) and/or (vii(b)) above:
  - (a) considered whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
  - (b) communicated their knowledge to all Nuix directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.
- x. Alternatively, having regard to (iv) above, Nuix's directors and officers who did not have actual knowledge as set out in (vii(a)) and/or (vii(b)) above failed to obtain that information which they ought to have obtained in the course of their duties and:
  - (a) consider whether it qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and

- (b) communicate it to all Nuix's directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether it qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.
- xi. Alternatively, having regard to (vi) above, Nuix failed to ensure that its systems involved processes to ensure that those Nuix directors and officers who did not have actual knowledge as set out in (vii(a)) and/or (vii(b)) above obtained that information which they ought to have obtained in the course of their duties and:
  - (a) considered whether their knowledge so obtained qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
  - (b) communicated their knowledge so obtained to all Nuix directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.

- 79. The Actual Half Year on Half Year Revenue Information was information that until 26 February 2021 was not generally available within the meaning of s 674(2)(c) of the Corporations Act.
- 80. Pursuant to ASX Listing Rule 3.1, Nuix became obliged to tell the ASX the Actual Half Year on Half Year Revenue Information on and from 1 January 2021.
- 81. Nuix did not communicate the Actual Half Year on Half Year Revenue Information to the ASX before 26 February 2021.



82. By reason of the matters pleaded in paragraphs 78 to 81 above, Nuix contravened s 674(2) of the Corporations Act during the period from 1 January 2021 to 26 February 2021 (being a **Continuous Disclosure Contravention**).

#### **F.4 Likely Tracking vs Forecast Revenue Information**

83. By 4 December 2020, the Likely Tracking vs Forecast Revenue Information was information:
- (a) of which Nuix was aware within the meaning of r 19.12 of the ASX Listing Rules; and
  - (b) that Nuix knew would have a material effect on the price or value of Nuix Shares within the meaning of s 674(2)(d) of the Corporations Act; or
  - (c) Nuix was negligent with respect to whether the information would have a material effect on the price or value of the Nuix Shares of Nuix Shares within the meaning of s 674(2)(d) of the Corporations Act.

#### **Particulars**

- i. Prior to 4 December 2020, Nuix made the statements pleaded in paragraph 21 above.
- ii. Each of the statements set out in (i) above was published in a manner likely to bring what was said to the attention of the Affected Market.
- iii. By reason of (ii) above, the contents of those statements in (i) above were objectively likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares.
- iv. During the period from 4 December 2020 to 31 December 2020, the true position was as pleaded in Part D.3 but was not known to the Affected Market.
- v. Had the true position referred to in (iv) above been revealed to the Affected Market, this would have qualified or contradicted some or all of the statements set out in (i) above, and Nuix (and its directors and officers) acting reasonably would have considered that such qualifications or contradiction was objectively likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares.
- vi. Nuix's directors and officers knew that it made the statements set out in (i) above, that they had been made to the Affected Market as set out in (ii) above, and having regard to their inherent nature knew or ought reasonably to have known that the contents of those

statements were objectively likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, as set out in (iii) above.

- vii. By 4 December 2020, some of Nuix's directors and officers had actual knowledge:
  - (a) of the Likely Tracking vs Forecast Revenue Information and;
  - (b) that it would have a material effect on the price or value of Nuix Shares (the particulars to paragraphs 70 and 71 above are repeated).
- viii. Alternatively, having regard to (iv) above, Nuix's directors and officers who had the actual knowledge as set out in (vii(a)) above failed to:
  - (a) consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
  - (b) communicate their actual knowledge to all Nuix directors and officers (and those persons with responsibility for Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether the actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.
- ix. Alternatively, having regard to (vi) above, Nuix failed to ensure that its systems involved processes to ensure that those Nuix directors and officers who had actual knowledge as set out in (vii(a)) and/or (vii(b)) above:
  - (a) considered whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix

Shares, so concluding and then causing a disclosure to be made; and

- (b) communicated their knowledge to all Nuix directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.

x. Alternatively, having regard to (iv) above, Nuix's directors and officers who did not have actual knowledge as set out in (vii(a)) and/or (vii(b)) above failed to obtain that information which they ought to have obtained in the course of their duties and:

- (a) consider whether it qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
- (b) communicate it to all Nuix's directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether it qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.

xi. Alternatively, having regard to (vi) above, Nuix failed to ensure that its systems involved processes to ensure that those Nuix directors and officers who did not have actual knowledge as set out in (vii(a)) and/or (vii(b)) above obtained that information which they ought to have obtained in the course of their duties and:

- (a) considered whether their knowledge so obtained qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential

investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and

- (b) communicated their knowledge so obtained to all Nuix directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.

- 84. The Likely Tracking vs Forecast Revenue Information was information that until 26 February 2021 was not generally available within the meaning of s 674(2)(c) of the Corporations Act.
- 85. Pursuant to ASX Listing Rule 3.1, Nuix became obliged to tell the ASX the Likely Tracking vs Forecast Revenue Information on and from 4 December 2020.
- 86. Nuix did not communicate the Likely Tracking vs Forecast Revenue Information to the ASX before 26 February 2021.
- 87. By reason of the matters pleaded in paragraphs 83 to 86 above, Nuix contravened s 674(2) of the Corporations Act during the period from 4 December 2020 to 26 February 2021 (being a **Continuous Disclosure Contravention**).

#### **F.5 Actual Tracking vs Forecast Revenue Information**

- 88. By 1 January 2021, the Actual Tracking vs Forecast Revenue Information was information:
  - (a) of which Nuix was aware within the meaning of r 19.12 of the ASX Listing Rules; and
  - (b) that Nuix knew would have a material effect on the price or value of Nuix Shares within the meaning of s 674(2)(d) of the Corporations Act; or
  - (c) Nuix was negligent with respect to whether the information would have a material effect on the price or value of the Nuix Shares within the meaning of s 674(2)(d) of the Corporations Act.

#### **Particulars**

- i. Prior to 1 January 2021, Nuix made the statements pleaded in paragraph 21 above.

- ii. Each of the statements set out in (i) above was published in a manner likely to bring what was said to the attention of the Affected Market.
- iii. By reason of (ii) above, the contents of those statements in (i) above were objectively likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares.
- iv. During the period from 1 January 2021 to 26 February 2021, the true position was as pleaded in Part D.4 but was not known to the Affected Market.
- v. Had the true position referred to in (iv) above been revealed to the Affected Market, this would have qualified or contradicted some or all of the statements set out in (i) above, and Nuix (and its directors and officers) acting reasonably would have considered that such qualifications or contradiction was objectively likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares.
- vi. Nuix's directors and officers knew that it made the statements set out in (i) above, that they had been made to the Affected Market as set out in (ii) above, and having regard to their inherent nature knew or ought reasonably to have known that the contents of those statements were objectively likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, as set out in (iii) above.
- vii. By 1 January 2021, some of Nuix's directors and officers had actual knowledge:
  - (a) of the Actual Tracking vs Forecast Revenue Information and;
  - (b) that it would have a material effect on the price or value of Nuix Shares (the particulars to paragraphs 70 and 71 above are repeated).
- viii. Alternatively, having regard to (iv) above, Nuix's directors and officers who had the actual knowledge as set out in (vii(a)) above failed to:
  - (a) consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors or potential

investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and

- (b) communicate their actual knowledge to all Nuix directors and officers (and those persons with responsibility for Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether the actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.

ix. Alternatively, having regard to (vi) above, Nuix failed to ensure that its systems involved processes to ensure that those Nuix directors and officers who had actual knowledge as set out in (vii(a)) and/or (vii(b)) above:

- (a) considered whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
- (b) communicated their knowledge to all Nuix directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.

x. Alternatively, having regard to (iv) above, Nuix's directors and officers who did not have actual knowledge as set out in (vii(a)) and/or (vii(b)) above failed to obtain that information which they ought to have obtained in the course of their duties and:

- (a) consider whether it qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
  - (b) communicate it to all Nuix's directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether it qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.
- xi. Alternatively, having regard to (vi) above, Nuix failed to ensure that its systems involved processes to ensure that those Nuix directors and officers who did not have actual knowledge as set out in (vii(a)) and/or (vii(b)) above obtained that information which they ought to have obtained in the course of their duties and:
  - (a) considered whether their knowledge so obtained qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
  - (b) communicated their knowledge so obtained to all Nuix directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.

89. The Actual Tracking vs Forecast Revenue Information was information that until 26 February 2021 was not generally available within the meaning of s 674(2)(c) of the Corporations Act.

90. Pursuant to ASX Listing Rule 3.1, Nuix became obliged to tell the ASX the Actual Tracking vs Forecast Revenue Information on and from 1 January 2021.
91. Nuix did not communicate the Actual Tracking vs Forecast Revenue Information to the ASX before 26 February 2021.
92. By reason of the matters pleaded in paragraphs 88 to 91 above, Nuix contravened s 674(2) of the Corporations Act during the period from 1 January 2021 to 26 February 2021 (being a **Continuous Disclosure Contravention**).

#### **F.6 Likely FY21 ACV Compared to Prospectus Information**

93. During the period from 4 December 2020 to 21 April 2021, the Likely FY21 ACV Compared to Prospectus Information was information:
- (a) of which Nuix was aware within the meaning of r 19.12 of the ASX Listing Rules; and
  - (b) that Nuix knew would have a material effect on the price or value of Nuix Shares within the meaning of s 674(2)(d) of the Corporations Act (as applicable during the period from 4 December 2020 to 23 March 2021);
  - (c) Nuix was negligent with respect to whether the information would have a material effect on the price or value of the Nuix Shares within the meaning of s 674(2)(d) of the Corporations Act (as applicable during the period from 4 December 2020 to 23 March 2021); and/or
  - (d) that a reasonable person in Nuix's position would expect to have a material effect on the price or value of Nuix Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act (as applicable during the Relevant Period from 23 March 2021).

#### **Particulars**

- i. Prior to 21 April 2021, Nuix made the statements pleaded in paragraphs 21, 24, 29 and 31 above.
- ii. Each of the statements set out in (i) above was published in a manner likely to bring what was said to the attention of the Affected Market.
- iii. By reason of (ii) above, the contents of those statements in (i) above were objectively likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares.
- iv. During the period from 4 December 2020 to 21 April 2021, the true position was as pleaded in Part D.5 but was not known to the Affected Market.



- v. Had the true position referred to in (iv) above been revealed to the Affected Market, this would have qualified or contradicted some or all of the statements set out in (i) above, and Nuix (and its directors and officers) acting reasonably would have considered that such qualifications or contradiction was objectively likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares.
- vi. Nuix's directors and officers knew that it made the statements set out in (i) above, that they had been made to the Affected Market as set out in (ii) above, and having regard to their inherent nature knew or ought reasonably to have known that the contents of those statements were objectively likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, as set out in (iii) above.
- vii. During the period 4 December 2020 to 21 April 2021, some of Nuix's directors and officers had actual knowledge:
  - (a) of the Likely FY21 ACV Compared to Prospectus Information and;
  - (b) that it would have a material effect on the price or value of Nuix Shares (the particulars to paragraphs 70 and 71 above are repeated).
- viii. Alternatively, having regard to (iv) above, Nuix's directors and officers who had the actual knowledge as set out in (vii(a)) above failed to:
  - (a) consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
  - (b) communicate their actual knowledge to all Nuix directors and officers (and those persons with responsibility for Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether the actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors or potential

investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.

- ix. Alternatively, having regard to (vi) above, Nuix failed to ensure that its systems involved processes to ensure that those Nuix directors and officers who had actual knowledge as set out in (vii(a)) and/or (vii(b)) above:
  - (a) considered whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
  - (b) communicated their knowledge to all Nuix directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.
- x. Alternatively, having regard to (iv) above, Nuix's directors and officers who did not have actual knowledge as set out in (vii(a)) and/or (vii(b)) above failed to obtain that information which they ought to have obtained in the course of their duties and:
  - (a) consider whether it qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
  - (b) communicate it to all Nuix's directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether it qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to

influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.

xi. Alternatively, having regard to (vi) above, Nuix failed to ensure that its systems involved processes to ensure that those Nuix directors and officers who did not have actual knowledge as set out in (vii(a)) and/or (vii(b)) above obtained that information which they ought to have obtained in the course of their duties and:

(a) considered whether their knowledge so obtained qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and

(b) communicated their knowledge so obtained to all Nuix directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.

94. The Likely FY21 ACV Compared to Prospectus Information was information that until 21 April 2021 was not generally available within the meaning of s 674(2)(c) of the Corporations Act.

95. Pursuant to ASX Listing Rule 3.1, Nuix became obliged to tell the ASX the Likely FY21 ACV Compared to Prospectus Information on and from 4 December 2020.

96. Nuix did not communicate the Likely FY21 ACV Compared to Prospectus Information to the ASX before 21 April 2021.

97. By reason of the matters pleaded in paragraphs 93 to 96 above, Nuix contravened s 674(2) of the Corporations Act during the period from 4 December 2020 to 21 April 2021 (being a **Continuous Disclosure Contravention**).

#### **F.7 Likely FY21 Revenue Compared to Prospectus Information**

98. During the period from 4 December 2020 to 21 April 2021, the Likely FY21 Revenue Compared to Prospectus Information was information:

- (a) of which Nuix was aware within the meaning of r 19.12 of the ASX Listing Rules; and
- (b) that Nuix knew would have a material effect on the price or value of Nuix Shares within the meaning of s 674(2)(d) of the Corporations Act (as applicable during the period from 4 December 2020 to 23 March 2021);
- (c) Nuix was negligent with respect to whether the information would have a material effect on the price or value of the Nuix Shares within the meaning of s 674(2)(d) of the Corporations Act (as applicable during the period from 4 December 2020 to 23 March 2021); and/or
- (d) that a reasonable person in Nuix's position would expect to have a material effect on the price or value of Nuix Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act (as applicable during the Relevant Period from 23 March 2021).

### **Particulars**

- i. Prior to 21 April 2021, Nuix made the statements pleaded in paragraph 21 above.
- ii. Each of the statements set out in (i) above was published in a manner likely to bring what was said to the attention of the Affected Market.
- iii. By reason of (ii) above, the contents of those statements in (i) above were objectively likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares.
- iv. During the period from 4 December 2020 to 21 April 2021, the true position was as pleaded in Part D.6 but was not known to the Affected Market.
- v. Had the true position referred to in (iv) above been revealed to the Affected Market, this would have qualified or contradicted some or all of the statements set out in (i) above, and Nuix (and its directors and officers) acting reasonably would have considered that such qualifications or contradiction was objectively likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares.
- vi. Nuix's directors and officers knew that it made the statements set out in (i) above, that they had been made to the Affected Market as set out in (ii) above, and having regard to their inherent nature knew or ought reasonably to have known that the contents of those

statements were objectively likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, as set out in (iii) above.

vii. During the period 4 December 2020 to 21 April 2021, some of Nuix's directors and officers had actual knowledge:

- (a) of the Likely FY21 Revenue Compared to Prospectus Information and;
- (b) that it would have a material effect on the price or value of Nuix Shares (the particulars to paragraphs 70 and 71 above are repeated).

viii. Alternatively, having regard to (iv) above, Nuix's directors and officers who had the actual knowledge as set out in (vii(a)) above failed to:

- (a) consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
- (b) communicate their actual knowledge to all Nuix directors and officers (and those persons with responsibility for Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether the actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.

ix. Alternatively, having regard to (vi) above, Nuix failed to ensure that its systems involved processes to ensure that those Nuix directors and officers who had actual knowledge as set out in (vii(a)) and/or (vii(b)) above:

- (a) considered whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix

Shares, so concluding and then causing a disclosure to be made; and

- (b) communicated their knowledge to all Nuix directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.

x. Alternatively, having regard to (iv) above, Nuix's directors and officers who did not have actual knowledge as set out in (vii(a)) and/or (vii(b)) above failed to obtain that information which they ought to have obtained in the course of their duties and:

- (a) consider whether it qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
- (b) communicate it to all Nuix's directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether it qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.

xi. Alternatively, having regard to (vi) above, Nuix failed to ensure that its systems involved processes to ensure that those Nuix directors and officers who did not have actual knowledge as set out in (vii(a)) and/or (vii(b)) above obtained that information which they ought to have obtained in the course of their duties and:

- (a) considered whether their knowledge so obtained qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential

investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and

- (b) communicated their knowledge so obtained to all Nuix directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.

- 99. The Likely FY21 Revenue Compared to Prospectus Information was information that until 21 April 2021 was not generally available within the meaning of s 674(2)(c) of the Corporations Act.
- 100. Pursuant to ASX Listing Rule 3.1, Nuix became obliged to tell the ASX the Likely FY21 Revenue Compared to Prospectus Information on and from 4 December 2020.
- 101. Nuix did not communicate the Likely FY21 Revenue Compared to Prospectus Information to the ASX before 21 April 2021.
- 102. By reason of the matters pleaded in paragraphs 98 to 101 above, Nuix contravened s 674(2) of the Corporations Act during the period from 4 December 2020 to 21 April 2021 (being a **Continuous Disclosure Contravention**).

#### **F.8 Likely FY21 ACV Compared to FY20 Information**

- 103. During the period from 4 December 2020 to 31 May 2021, the Likely FY21 ACV Compared to FY20 Information was information:
  - (a) of which Nuix was aware within the meaning of r 19.12 of the ASX Listing Rules; and
  - (b) that Nuix knew would have a material effect on the price or value of Nuix Shares within the meaning of s 674(2)(d) of the Corporations Act (as applicable during the period from 4 December 2020 to 23 March 2021);
  - (c) Nuix was negligent with respect to whether the information would have a material effect on the price or value of the Nuix Shares within the meaning of s 674(2)(d) of the Corporations Act (as applicable during the period from 4 December 2020 to 23 March 2021); and/or
  - (d) that a reasonable person in Nuix's position would expect to have a material effect on the price or value of Nuix Shares within the meaning of ASX Listing Rule 3.1 and

s 674(2)(c)(ii) of the Corporations Act (as applicable during the Relevant Period from 23 March 2021).

### **Particulars**

- i. Prior to 31 May 2021, Nuix made the statements pleaded in paragraphs 21 and 33 above.
- ii. Each of the statements set out in (i) above was published in a manner likely to bring what was said to the attention of the Affected Market.
- iii. By reason of (ii) above, the contents of those statements in (i) above were objectively likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares.
- iv. During the period from 4 December 2020 to 31 May 2021, the true position was as pleaded in Part D.7 but was not known to the Affected Market.
- v. Had the true position referred to in (iv) above been revealed to the Affected Market, this would have qualified or contradicted some or all of the statements set out in (i) above, and Nuix (and its directors and officers) acting reasonably would have considered that such qualifications or contradiction was objectively likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares.
- vi. Nuix's directors and officers knew that it made the statements set out in (i) above, that they had been made to the Affected Market as set out in (ii) above, and having regard to their inherent nature knew or ought reasonably to have known that the contents of those statements were objectively likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, as set out in (iii) above.
- vii. During the period 4 December 2020 to 31 May 2021, some of Nuix's directors and officers had actual knowledge:
  - (a) the fact that Nuix had not achieved its forecasts for the years ending 30 June 2018, 2019 and 2019;
  - (b) Nuix's actual and likely revenue as a result of the Nuix Revenue Calculation; and



- (c) that (a) and (b) have a material effect on the price or value of Nuix Shares.
- viii. Alternatively, having regard to (iv) above, Nuix's directors and officers who had the actual knowledge as set out in (vii) above failed to:
  - (a) consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
  - (b) communicate their actual knowledge to all Nuix directors and officers (and those persons with responsibility for Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether the actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.
- ix. Alternatively, having regard to (vi) above, Nuix failed to ensure that its systems involved processes to ensure that those Nuix directors and officers who had actual knowledge as set out in (vii) above:
  - (a) considered whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
  - (b) communicated their knowledge to all Nuix directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or

sell Nuix Shares, so concluding and then causing a disclosure to be made.

- x. Alternatively, having regard to (iv) above, Nuix's directors and officers who did not have actual knowledge as set out in (vii) above failed to obtain that information which they ought to have obtained in the course of their duties and:
  - (a) consider whether it qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
  - (b) communicate it to all Nuix's directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether it qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.
- xi. Alternatively, having regard to (vi) above, Nuix failed to ensure that its systems involved processes to ensure that those Nuix directors and officers who did not have actual knowledge as set out in (vii(a)) and/or (vii(b)) above obtained that information which they ought to have obtained in the course of their duties and:
  - (a) considered whether their knowledge so obtained qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
  - (b) communicated their knowledge so obtained to all Nuix directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence

investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.

104. The Likely FY21 ACV Compared to FY20 Information was information that until 31 May 2021 was not generally available within the meaning of s 674(2)(c) of the Corporations Act.
105. Pursuant to ASX Listing Rule 3.1, Nuix became obliged to tell the ASX the Likely FY21 ACV Compared to FY20 Information on and from 4 December 2020.
106. Nuix did not communicate the Likely FY21 ACV Compared to FY20 Information to the ASX before 31 May 2021.
107. By reason of the matters pleaded in paragraphs 103 to 106 above, Nuix contravened s 674(2) of the Corporations Act during the period from 4 December 2020 to 31 May 2021 (being a **Continuous Disclosure Contravention**).

#### **F.9 Likely FY21 Revenue Compared to FY20 Information**

108. During the period from 4 December 2020 to 31 May 2021, the Likely FY21 Revenue Compared to FY20 Information was information:
  - (a) of which Nuix was aware within the meaning of r 19.12 of the ASX Listing Rules; and
  - (b) that Nuix knew would have a material effect on the price or value of Nuix Shares within the meaning of s 674(2)(d) of the Corporations Act (as applicable during the period from 4 December 2020 to 23 March 2021);
  - (c) Nuix was negligent with respect to whether the information would have a material effect on the price or value of the Nuix Shares within the meaning of s 674(2)(d) of the Corporations Act (as applicable during the period from 4 December 2020 to 23 March 2021); and/or
  - (d) that a reasonable person in Nuix's position would expect to have a material effect on the price or value of Nuix Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act (as applicable during the Relevant Period from 23 March 2021).

#### **Particulars**

- i. Prior to 31 May 2021, Nuix made the statements pleaded in paragraphs 21 and 33 above.
- ii. Each of the statements set out in (i) above was published in a manner likely to bring what was said to the attention of the Affected Market.

- iii. By reason of (ii) above, the contents of those statements in (i) above were objectively likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares.
- iv. During the period from 4 December 2020 to 31 May 2021, the true position was as pleaded in Part D.8 but was not known to the Affected Market.
- v. Had the true position referred to in (iv) above been revealed to the Affected Market, this would have qualified or contradicted some or all of the statements set out in (i) above, and Nuix (and its directors and officers) acting reasonably would have considered that such qualifications or contradiction was objectively likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares.
- vi. Nuix's directors and officers knew that it made the statements set out in (i) above, that they had been made to the Affected Market as set out in (ii) above, and having regard to their inherent nature knew or ought reasonably to have known that the contents of those statements were objectively likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, as set out in (iii) above.
- vii. During the period 4 December 2020 to 31 May 2021, some of Nuix's directors and officers had actual knowledge:
  - (a) the fact that Nuix had not achieved its forecasts for the years ending 30 June 2018, 2019 and 2019;
  - (b) Nuix's actual and likely revenue as a result of the Nuix Revenue Calculation; and
  - (c) that (a) and (b) have a material effect on the price or value of Nuix Shares.
- viii. Alternatively, having regard to (iv) above, Nuix's directors and officers who had the actual knowledge as set out in (vii) above failed to:
  - (a) consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell Nuix

Shares, so concluding and then causing a disclosure to be made; and

- (b) communicate their actual knowledge to all Nuix directors and officers (and those persons with responsibility for Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether the actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.

ix. Alternatively, having regard to (vi) above, Nuix failed to ensure that its systems involved processes to ensure that those Nuix directors and officers who had actual knowledge as set out in (vii) above:

- (a) considered whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
- (b) communicated their knowledge to all Nuix directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.

x. Alternatively, having regard to (iv) above, Nuix's directors and officers who did not have actual knowledge as set out in (vii) above failed to obtain that information which they ought to have obtained in the course of their duties and:

- (a) consider whether it qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were

considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and

- (b) communicate it to all Nuix's directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether it qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.

xi. Alternatively, having regard to (vi) above, Nuix failed to ensure that its systems involved processes to ensure that those Nuix directors and officers who did not have actual knowledge as set out in (vii(a)) and/or (vii(b)) above obtained that information which they ought to have obtained in the course of their duties and:

- (a) considered whether their knowledge so obtained qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
- (b) communicated their knowledge so obtained to all Nuix directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.

- 109. The Likely FY21 Revenue Compared to FY20 Information was information that until 31 May 2021 was not generally available within the meaning of s 674(2)(c) of the Corporations Act.
- 110. Pursuant to ASX Listing Rule 3.1, Nuix became obliged to tell the ASX the Likely FY21 Revenue Compared to FY20 Information on and from 4 December 2020.
- 111. Nuix did not communicate the Likely FY21 Revenue Compared to FY20 Information to the ASX before 31 May 2021.

112. By reason of the matters pleaded in paragraphs 108 to 111 above, Nuix contravened s 674(2) of the Corporations Act during the period from 4 December 2020 to 31 May 2021 (being a **Continuous Disclosure Contravention**).

#### **F.10 Unreliable Forecast Information**

113. During the period from 4 December 2020 to 31 May 2021, the Unreliable Forecast Information was information:
- (a) of which Nuix was aware within the meaning of r 19.12 of the ASX Listing Rules; and
  - (b) that Nuix knew would have a material effect on the price or value of Nuix Shares within the meaning of s 674(2)(d) of the Corporations Act (as applicable during the period from 4 December 2020 to 23 March 2021);
  - (c) Nuix was negligent with respect to whether the information would have a material effect on the price or value of the Nuix Shares within the meaning of s 674(2)(d) of the Corporations Act (as applicable during the period from 4 December 2020 to 23 March 2021); and/or
  - (d) that a reasonable person in Nuix's position would expect to have a material effect on the price or value of Nuix Shares within the meaning of ASX Listing Rule 3.1 and s 674(2)(c)(ii) of the Corporations Act (as applicable during the Relevant Period from 23 March 2021).

#### **Particulars**

- i. Prior to 31 May 2021, Nuix made the statements pleaded in paragraphs 21 and 33 above.
- ii. Each of the statements set out in (i) above was published in a manner likely to bring what was said to the attention of the Affected Market.
- iii. By reason of (ii) above, the contents of those statements in (i) above were objectively likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares.
- iv. During the period from 4 December 2020 to 31 May 2021, the true position was as pleaded in Part D.9 but was not known to the Affected Market.
- v. Had the true position referred to in (iv) above been revealed to the Affected Market, this would have qualified or contradicted some or all of the statements set out in (i) above, and Nuix (and its directors and officers) acting reasonably would have considered that such

qualifications or contradiction was objectively likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares.

- vi. Nuix's directors and officers knew that it made the statements set out in (i) above, that they had been made to the Affected Market as set out in (ii) above, and having regard to their inherent nature knew or ought reasonably to have known that the contents of those statements were objectively likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, as set out in (iii) above.
- vii. During the period 4 December 2020 to 31 May 2021, some of Nuix's directors and officers had actual knowledge:
  - (a) the fact that Nuix had not achieved its forecasts for the years ending 30 June 2018, 2019 and 2019; and
  - (b) that (a) have a material effect on the price or value of Nuix Shares.
- viii. Alternatively, having regard to (iv) above, Nuix's directors and officers who had the actual knowledge as set out in (vii) above failed to:
  - (a) consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
  - (b) communicate their actual knowledge to all Nuix directors and officers (and those persons with responsibility for Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether the actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors or potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.



- ix. Alternatively, having regard to (vi) above, Nuix failed to ensure that its systems involved processes to ensure that those Nuix directors and officers who had actual knowledge as set out in (vii) above:
  - (a) considered whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
  - (b) communicated their knowledge to all Nuix directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.
- x. Alternatively, having regard to (iv) above, Nuix's directors and officers who did not have actual knowledge as set out in (vii) above failed to obtain that information which they ought to have obtained in the course of their duties and:
  - (a) consider whether it qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
  - (b) communicate it to all Nuix's directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether it qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.

- xi. Alternatively, having regard to (vi) above, Nuix failed to ensure that its systems involved processes to ensure that those Nuix directors and officers who did not have actual knowledge as set out in (vii(a)) and/or (vii(b)) above obtained that information which they ought to have obtained in the course of their duties and:
  - (a) considered whether their knowledge so obtained qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made; and
  - (b) communicated their knowledge so obtained to all Nuix directors and officers (and those persons with responsibility for monitoring Nuix's compliance with ASX Listing Rule 3.1) so that Nuix could properly consider whether their actual knowledge qualified or contradicted all or any of Nuix's statements set out in (i) above so as to be likely to influence investors and potential investors who were considering whether to buy or sell Nuix Shares, so concluding and then causing a disclosure to be made.

- 114. The Unreliable Forecast Information was information that until 31 May 2021, alternatively 21 April 2021, was not generally available within the meaning of s 674(2)(c) of the Corporations Act.
- 115. Pursuant to ASX Listing Rule 3.1, Nuix became obliged to tell the ASX the Unreliable Forecast Information on and from 4 December 2020.
- 116. Nuix did not communicate the Unreliable Forecast Information to the ASX before 31 May 2021, alternatively 21 April 2021.
- 117. By reason of the matters pleaded in paragraphs 113 to 116 above, Nuix contravened s 674(2) of the Corporations Act during the period from 4 December 2020 to 31 May 2021, alternatively 21 April 2021 (being a **Continuous Disclosure Contravention**).

## **G DISCLOSURE DOCUMENT CONTRAVENTIONS CAUSED LOSS**

### **G.1 Market based causation**

- 118. Some Group Members acquired an interest in Nuix Shares pursuant to the Prospectus in a market:
  - (a) regulated by, inter alia, Chapter 6D of the Corporations Act;

- (b) where Nuix had the obligations pleaded in paragraph 10 above;
- (c) where the offer price or value of Nuix Shares in the Prospectus would reasonably be expected by potential investors in Nuix Shares to have been reasonably determined by Nuix to represent fair market value for the Nuix Shares, based on:
  - (i) the anticipated number of Nuix Shares to be issued;
  - (ii) the value of Nuix;
  - (iii) Nuix's historical performance; and
  - (iv) Nuix's expected future financial performance;
- (d) where material information had not been disclosed in the Prospectus which, had it been disclosed, would have caused the issuance not to proceed, the offer price to be lower and/or there to be a material effect on the willingness of investors to accept the offer made pursuant to the Prospectus, whether at the price in the Prospectus or generally;
- (e) where misleading or deceptive statements had been made which, had they not been made, the offer price would have been lower and/or there would have been a material effect on the willingness of potential investors to accept the offer made pursuant to the Prospectus, whether at the price in the Prospectus or generally.

#### **Particulars**

- i. The extent to which the Disclosure Document Contraventions caused the price for Nuix Shares to be substantially greater than their true value and/or the market price that would otherwise have prevailed will be provided following expert evidence.

## **G.2 Direct reliance**

119. Some Group Members acquired Nuix Shares at the price and/or in the volumes that they were acquired in reliance on the Prospectus Representations and/or the Prospectus Basis Representations.

#### **Particulars**

- i. The identity of the Group Members which or who relied on any or all of the Prospectus Statements, the Prospectus Representations and the Prospectus Basis Representations are not within the current state of the Plaintiff's knowledge and cannot be ascertained unless and until those advising the Plaintiff take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Members' claims. Those instructions will be

obtained (and particulars of the identities of those Group Members will be provided) following opt-out, the determination of the Plaintiff's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of individual claims of those Group Members.

### **G.3 Loss and damage**

120. Some Group Members have suffered loss and damage resulting from the Disclosure Document Contraventions.

#### **Particulars**

- i. The extent to which the Disclosure Document Contraventions caused the price for Nuix Shares to be substantially greater than their true value and/or the market price that would otherwise have prevailed will be provided following expert evidence.
- ii. Particulars of the losses of Group Members are not within the current state of the Plaintiff's knowledge and cannot be ascertained unless and until those advising the Plaintiff take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Members' claims. Those instructions will be obtained (and particulars of the losses of those Group Members will be provided) following opt out, the determination of the Plaintiff's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

## **H SECONDARY MARKET CONTRAVENTIONS CAUSED LOSS**

### **H.1 Market based causation**

121. At all material times, Nuix Shares traded in a market of investors or potential investors in Nuix Shares:
- (a) operated by the ASX;
  - (b) regulated by, inter alia, the ASX Listing Rules and s 674(2) of the Corporations Act;
  - (c) where Nuix had the obligations pleaded in paragraphs 11 and 12 above;
  - (d) where the price or value of Nuix Shares would be informed or affected by information disclosed in accordance with the ASX Listing Rules and s 674(2) of the Corporations Act;
  - (e) where:

- (i) material information had not been disclosed which would have had a material effect on the price or value of Nuix Shares; and
- (ii) misleading or deceptive conduct had been engaged in which had a material effect on the price or value of Nuix Shares.

122. In the Relevant Period, the Disclosure Document Contraventions, the Continuous Disclosure Contraventions and/or the Misleading Conduct Contraventions (and each of them) (**Market Contraventions**) caused the market price for Nuix Shares to be, or materially contributed to the market price of Nuix Shares being, substantially greater than:

- (a) their true value; and/or
- (b) the market price that would have prevailed but for the Market Contraventions, from the respective dates that those Market Contraventions commenced as pleaded above.

#### **Particulars**

- i. The extent to which the Market Contraventions caused the price for Nuix Shares to be substantially greater than their true value and/or the market price that would otherwise have prevailed during the Relevant Period will be provided following expert evidence.

123. The declines in the price of Nuix Shares pleaded in paragraphs 27, 34 and 37 above:

- (a) were caused or materially contributed to by:
  - (i) the market's reaction to the 26 February 2021 Announcements, the 21 April 2021 Announcement and the 31 May 2021 Announcement; and
  - (ii) the Market Contraventions;
- (b) would, to the extent they removed inflation from the price of Nuix Shares, have occurred earlier, and/or have been of lesser magnitude when they in fact occurred, if Nuix had not engaged in the Market Contraventions.

#### **Particulars**

- i. The extent to which the decline in the price of Nuix Shares was caused or materially contributed to by these matters is a matter for evidence, particulars of which will be provided following expert evidence.

124. The Plaintiff and some Group Members acquired an interest in Nuix Shares:

- (a) in a market that had the features pleaded in paragraph 121 above;
- (b) at a price which was inflated by reason of the matters pleaded in paragraph 122 above.

## Particulars

- i. The identity of the Group Members which or who acquired an interest in Nuix Shares on the ASX are not within the current state of the Plaintiff's knowledge and cannot be ascertained unless and until those advising the Plaintiff take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Members' claims. Those instructions will be obtained (and particulars of the identities of those Group Members will be provided) following opt-out, the determination of the Plaintiff's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

125. Further or alternatively to paragraph 124 above, the Plaintiff and some Group Members retained an interest in Nuix Shares:

- (a) in a market that had the features pleaded in paragraph 121 above;
- (b) where they could, were it not for the Market Contraventions, have sold their Nuix Shares at a price which was:
  - (i) not inflated as pleaded in paragraph 122 above, but
  - (ii) not deflated to the extent which occurred, as pleaded in paragraph 123 above.

## H.2 Direct reliance

126. Further, or in the alternative:

- (a) some Group Members would not have acquired Nuix Shares at the price and in the volumes that they were acquired, if the Non-Disclosed Material Information had been disclosed to them and/or the ASX;
- (b) some Group Members acquired Nuix Shares at the price and in the volume that they were acquired in reliance upon some or all of the following representations and/or Nuix not having corrected or qualified such representations:
  - (i) the Prospectus Representations;
  - (ii) the Prospectus Basis Representations;
  - (iii) the 21 April 2021 Representations;
  - (iv) the 21 April 2021 Basis Representations,  
(together, **Contravening Representations**).

### **Particulars**

- i. The identity of the Group Members which or who relied on any or all of the Contravening Representations are not within the current state of the Plaintiff's knowledge and cannot be ascertained unless and until those advising the Plaintiff take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Members' claims. Those instructions will be obtained (and particulars of the identities of those Group Members will be provided) following opt-out, the determination of the Plaintiff's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of individual claims of those Group Members.

127. Further, or in the alternative, in the decision to retain an interest in Nuix Shares, some Group Members relied directly or indirectly upon some or all of the Contravening Representations and/or Nuix not having corrected or qualified such representations.

### **Particulars**

- i. The particulars to paragraph 126 above are repeated.

## **H.3 Loss and damage**

128. The Plaintiff and some Group Members have suffered loss and damage resulting from the Market Contraventions.

### **Particulars**

- i. Particulars of the losses of Group Members are not within the current state of the Plaintiff's knowledge and cannot be ascertained unless and until those advising the Plaintiff take detailed instructions from all Group Members on individual issues relevant to the determination of those individual Group Members' claims. Those instructions will be obtained (and particulars of the losses of those Group Members will be provided) following opt out, the determination of the Plaintiff's claim and identified common issues at an initial trial and if and when it is necessary for a determination to be made of the individual claims of those Group Members.

## **I ENTITLEMENT TO RELIEF**

129. The Plaintiff and some Group Members are entitled to pursuant to s 729 of the Corporations Act recover from Nuix the amount of loss and damaged suffered by them as a result of Nuix's contraventions of s 728 of the Corporations.

130. The Plaintiff and some of the Group Members are entitled pursuant to s 1041I of the Corporations Act, s 12GF of the ASIC Act and/or ss 236 and/or 237 of the ACL to recover from Nuix the amount of the loss and damage suffered by them as a result of Nuix's contraventions of s 1041H of the Corporations Act, s 12DA of the ASIC Act and s 18 of the ACL respectively alleged in this Statement of Claim.
131. Further or alternatively, pursuant to ss 1317HA and/or 1325 of the Corporations Act, the Plaintiff and each of the Group Members are entitled to recover from Nuix the amount of loss and damage suffered by them as a result of Nuix's contraventions of s 674(2) of the Corporations Act alleged in this Statement of Claim.

## **J COMMON QUESTIONS**

132. The questions of law or fact common to the claims of Group Members are:
- (a) Whether the Defendant contravened s 728 of the Corporations Act by reason of the Disclosure Document Contraventions.
  - (b) Whether the Defendant made and/or failed to correct or qualify:
    - (i) Prospectus Representations;
    - (ii) Prospectus Basis Representations;
    - (iii) 21 April 2021 Representations;
    - (iv) 21 April 2021 Basis Representations,and if so, whether, by doing so, the Defendant contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL.
  - (c) At what time the Defendant became aware within the meaning of r 19.12 of the ASX Listing Rules of the Non-Disclosed Material Information.
  - (d) Whether the Defendant through all or part of the Relevant Period contravened s 674(2) of the Corporations Act by not immediately telling the ASX the Non-Disclosed Material Information.
  - (e) Whether the Plaintiff and Group Members would have acquired an interest in the Nuix Shares were it not for the Disclosure Document Contraventions.
  - (f) Whether any and, if so, what contraventions of the Defendant had the effect that the prices for the Nuix Shares were higher during the Relevant Period and was higher than their true value and/or what the prices would otherwise have been.
  - (g) If the contraventions of the Defendant had that effect, whether compensation is recoverable by the Plaintiff and Group Members.



- (h) The correct measure of compensation for which the Defendant is liable to the Plaintiff and Group Members.

**AND THE PLAINTIFF CLAIMS, for himself and on behalf of the Group Members:**

133. Declarations that:

- (a) the Defendant has contravened s 728 of the Corporations Act by reason of the Disclosure Document Contraventions;
- (b) the Defendant has contravened s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL by reason of the Misleading Conduct Contraventions; and/or
- (c) the Defendant has contravened s 674 of the Corporations Act by reason of the Continuous Disclosure Contraventions.

134. An order pursuant to s 1317HA of the Corporations Act, that the Defendant compensate the Plaintiff and Group Members for the damage suffered by them which resulted from the Defendant's contravention of s 674(2) of the Corporations Act.

135. An order that the Defendant pay to the Plaintiff and Group Members compensation pursuant to:

- (a) s 1041I of the Corporations Act;
- (b) s 12GF of the ASIC Act; and/or
- (c) ss 236 and/or 237 of the ACL,

for the damage suffered by them which resulted from the Defendant's contraventions of s 1041H of the Corporations Act, s 12DA of the ASIC Act and/or s 18 of the ACL.

136. An order that the Defendant pay the Plaintiff and some Group Members compensation pursuant to s 729 of the Corporations Act for the damage suffered by them which resulted from the Defendant's contravention of s 728 of the Corporations Act.

137. Interest.

138. Costs.

139. Such further or other orders as the Court deems fit.

Dated: 19 November 2021



Signed by Craig Richard Allsopp  
Lawyer for the Plaintiff

This pleading was prepared by David Sulan SC and Ryan May with the assistance of Shine Lawyers

1. Place of trial: Melbourne.
2. Mode of trial: Judge alone.
3. This writ was filed for the plaintiff by Shine Lawyers of Level 6, 277 William Street, Melbourne VIC 3000.
4. The address of the plaintiff is 24 Leichardt Crescent, Reservoir VIC 3073.
5. The address for service of the plaintiff is Level 6, 277 William Street, Melbourne VIC 3000.
6. The email address for service of the plaintiff is callsopp@shine.com.au
7. The address of the defendant is Level 27, 1 Market Street, Sydney NSW 2000.