



## Enforceable Undertaking

### *Australian Securities and Investments Commission Act 2001*

#### Section 93AA

The commitments in this undertaking are offered to the Australian Securities and Investments Commission (**ASIC**) by:

NuSep Holdings Limited  
ACN 120 047 556  
30 Richmond Road  
HOMEBUSH NSW 2140

(**NuSep**)

#### 1. Definitions

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- 1.1 In addition to terms defined elsewhere in this enforceable undertaking, the following definitions are used:

**Act** means the *Corporations Act 2001* (Cth).

**ASIC Act** means the *Australian Securities and Investments Commission Act 2001* (Cth).

**ASX** means ASX Limited.

**BioInquire Transaction** means the details of conduct and circumstances surrounding the acquisition of BioInquire LLC referred to in section 3.1 of this Undertaking.

**Continuous Disclosure Obligations** means the continuous disclosure obligations of NuSep under section 674 of the *Corporations Act* and Listing Rule 3.1.

**Conversion of Share Options Transaction** means the details of conduct and circumstances surrounding the purchase, exercise and subsequent transfer of options for NuSep shares and related conduct referred to in section 3.4 of this Undertaking.

**Corporate Governance Statement** means the statement made by NuSep under Listing Rule 4.10.3 stating the extent to which it has followed the ASX Corporate Governance Principles and Recommendations as amended from time to time.

**Former Executive** means any of the immediate past Executive Chairman, Managing Director and Company Secretary/Chief Financial Officer/Chief Operating Officer of NuSep.

**Listing Rules** means the listing rules of ASX.

**SingaPharm Transaction** means the details of conduct and circumstances surrounding the acquisition of SingaPharm Pte Limited referred to in sections 3.2 and 3.3 of this Undertaking.

**Suspense Account** means a share account which recorded the shares held by NuSep in NuSep for nil consideration.

**Undertaking** means this enforceable undertaking.

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- 1.2 Except so far as the contrary intention appears in this Undertaking, the interpretation provisions in Part 1.2 of the Act and Part 1 Division 4 of the ASIC Act apply for the purposes of this Undertaking as if those provisions were provisions of this Undertaking.

## **2. Background**

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### **ASIC's Role**

- 2.1 Under section 1 of the ASIC Act, ASIC is charged with a statutory responsibility to perform its functions and to exercise its powers so as to promote the confident and informed participation of investors and consumers in the financial system.

### **NuSep Holdings Limited (NuSep)**

- 2.2 NuSep is a biotechnology company with subsidiaries operating in Australia, Singapore, and the USA. The 2013 and 2014 Annual Reports describe the principal activities of the consolidated group as the "development, manufacture and sale of pre-cast electrophoresis gels, separations equipment and consumables and other biological products for the life sciences market". NuSep was incorporated on 11 July 2006 and was listed on the ASX in May 2007. As at 30 September 2014 its market capitalisation was reported as \$13.4 million, based on a share price of 7.8 cents a share.
- 2.3 NuSep remains a research and development company which has yet to declare a dividend and relies on capital raisings to operate.
- 2.4 Relevantly, in November and December 2013 there were significant changes to the composition of the Board of Directors of NuSep, following the resignation of the Executive Chairman and Managing Director and the appointment of new directors.
- 2.5 NuSep notes that the conduct referred to in section 3 took place prior to the appointment of the current board. The facts outlined in section 3 have been determined predominantly through a review of documents and/or correspondence.

## **3. Details of conduct**

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### **3.1 Acquisition of interests in BioInquire LLC (BioInquire)**

#### *The December 2009 Share Placement*

- (a) On 9 and 10 December 2009, NuSep announced that it had placed 2.77 million shares, in order to raise \$830,000 to be used to bolster its balance sheet in the context of funding a proposed acquisition of BioInquire (**BioInquire Share Placement**), a privately-held bioinformatics software company incorporated in the United States. Also, NuSep announced that the shares were issued at a consideration of 30 cents per share, with one additional share (**free share**) for every ten shares issued.
- (b) On 11 December 2009, NuSep lodged an Appendix 3B "New Issue Announcement" with the ASX in which it stated that 3,135,000 shares had been issued pursuant to the BioInquire Share Placement.
- (c) The Appendix 3B did not provide an explanation for the discrepancy between the number of shares on placement and the number of shares issued. NuSep subsequently informed ASIC that the BioInquire Share Placement had been increased by a further 72,223 shares plus 7,223 free shares; a total increase of 79,446 shares. The total placement under the BioInquire Share Placement was, in fact, 3,135,000 shares, comprising the issue of 2,850,000 shares plus 285,000 free shares.

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- (d) As at 11 December 2009, NuSep had not received payment for all of the 2,850,000 shares. NuSep has advised ASIC that:
- (i) 772,170 of the shares that had not been paid for were held by NuSep in a NuSep Suspense Account;
  - (ii) the shares were transferred to shareholders upon payment, which was either in the form of cash or by set off of debt; and
  - (iii) all the shares had been transferred by 22 March 2010.

*The January 2010 Share Placement*

- (e) On 8 January 2010 NuSep lodged an Appendix 3B with the ASX advising placement of another 59,832 shares at 30 cents a share. The Appendix 3B stated that the shares had been issued under the BioInquire Share Placement.
- (f) However:
- (i) as at 8 January 2010, the 59,832 shares had not been paid for and were held by NuSep in a Suspense Account;
  - (ii) the shares were transferred to shareholders upon payment, which was either in the form of cash or by set off of debt; and
  - (iii) all the shares had been transferred by 22 March 2010.

*BioInquire Prospectus*

- (g) On 16 April 2010, NuSep issued a prospectus to raise funds, including for the acquisition of the BioInquire business (the **BioInquire Prospectus**). The BioInquire Prospectus provided for a fully underwritten 1 for 2 renounceable rights issue at 20 cents a share. On 4 May 2010 NuSep issued another prospectus (the **Replacement Prospectus**) reducing the amount to be raised under the rights issue from \$5 million to \$3.42 million.
- (h) On 26 May and 1 June 2010, NuSep announced that the rights issue had raised \$4.5 million which represented an oversubscription of approximately \$1 million above the \$3.42 million.
- (i) NuSep has since advised ASIC that this announcement was incorrect because not all the funds were raised pursuant to the Replacement Prospectus. In particular:
- (i) the Replacement Prospectus provided for the issue of 17,135,492 shares, for a total value of \$3.42 million. Of the shares issued, 4,651,153 shares were not subscribed for under the Replacement Prospectus and instead were taken up by underwriters and sub-underwriters pursuant to an underwriting agreement; and
  - (ii) additional shares to a value of approximately \$1.28 million were separately issued to underwriters and sub-underwriters on the same terms as referred to in the Replacement Prospectus, bringing the total amount raised to \$4.7 million, which NuSep advise was "rounded down" to \$4.5 million, as referred to in the 26 May and 1 June 2010 announcements.

*Acquisition of BioInquire*

- (j) Pursuant to an Asset and Ownership Interest Purchase Agreement, NuSep acquired an interest in BioInquire towards the end of the 2010 financial year. On 30 June 2010,

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NuSep lodged an Appendix 3B with the ASX which included notice of 4,642,857 shares having been issued at 35 cents a share to be used in satisfaction of contingent obligations in connection with the acquisition of BioInquire.

- (k) NuSep has advised ASIC that:
- (i) NuSep had no contractual or other obligation to issue shares as consideration for the acquisition of BioInquire before five Business Days after 31 December 2010. NuSep advised that it issued the shares in the financial year ending 30 June 2010 in order to reflect all of the expenditure which may be incurred by NuSep under the BioInquire transaction in its financial accounts in the financial year in which the acquisition occurred;
  - (ii) these shares were held by NuSep in a Suspense Account pending the contingent liability arising on the mistaken belief that it was permitted to do so in accordance with section 259A of the Act. When NuSep was eventually obliged to issue NuSep shares as part of the consideration of BioInquire, NuSep determined that the share entitlement was not 4,642,857 shares but only 2,139,048 shares;
  - (iii) the 2,139,048 shares continued to be held by NuSep in the Suspense Account until they were transferred to the persons who were entitled to the shares as a result of the acquisition of BioInquire; which share transfers occurred on 7 April 2011 and 25 November 2011. Based on a share price of 23 cents a share and the USA/Australia exchange rate as at 31 December 2010, the value of these shares at that time was approximately \$491,981; and
  - (iv) the remaining 2,503,809 shares, continued to be held by NuSep in the Suspense Account, until they were transferred in the period 30 May 2012 to 31 October 2012 to persons for cash or for services at a price of \$0.07 per share, excepting some nominal transfers at \$0.35 per share.
- (l) In addition, in relation to the issue of its shares in the period from December 2009 to June 2010, which included the issue of shares for non-cash consideration, NuSep did not lodge with ASIC, within 28 days after issuing the shares, notices in the prescribed form (forms 484 and 208) as is required by section 254X of the Act.

### 3.2 Acquisition of interests in SingaPharm Pte Limited (SingaPharm)

- (a) On 24 November 2010, NuSep announced to the market that it proposed to enter the Asian blood plasma market through a 38%, S\$4million investment in SingaPharm. Also, NuSep announced that as part of the arrangement NuSep agreed to grant a licence to SingaPharm to manufacture and sell certain plasma products for S\$9,500,000, payment of which was to be satisfied by conversion to equity in SingaPharm at a later date. The equity conversion was to result in NuSep holding a 51% interest in SingaPharm.
- (b) This transaction was to be funded by a Share Placement which would seek to raise \$1,900,000 from sophisticated investors (**SingaPharm Share Placement**).
- (c) NuSep did not give the ASX a notice under Class Order [CO 09/425] and section 708A(5)(e) of the Act (**a Cleansing Notice**) in respect of the SingaPharm Share Placement.
- (d) On 29 November 2010, NuSep announced to the market that it had completed the SingaPharm Share Placement with the issue of 8.9 million shares and advised that this money would be used to fund NuSep's commitment to SingaPharm and for working capital. As at 29 November 2011, NuSep had not received any payment for shares under the SingaPharm Share Placement.

- (e) On 9 and 13 December 2010, NuSep again announced that it had completed the SingaPharm Share Placement of 8.9 million shares at 21 cents per share. However, as at 9 December 2010 NuSep had only received \$277,725 for these shares and as at 13 December 2010 NuSep had only received \$347,725 for these shares.
- (f) Between 8 and 21 December 2010, NuSep received \$422,725 and issued shares pursuant to the SingaPharm Share Placement. On 23 December 2010, NuSep deposited the balance of the 6,901,918 shares at nil consideration in a Suspense Account.
- (g) By 27 December 2010, NuSep had not lodged with ASIC a prescribed form 484 and form 208 regarding the issue of shares under the SingaPharm Share Placement required by section 254X of the Act. A form 208 was required because the shares deposited in the Suspense Account had been issued for non-cash consideration.
- (h) Shares issued under the SingaPharm Share Placement were transferred from a Suspense Account to persons when the funds were received in the manner described in section 3.3 below.

### 3.3 SingaPharm: Share Purchase Plan

- (a) On 9 December 2010, NuSep announced a proposed Share Purchase Plan to offer each existing shareholder shares up to \$15,000 in value, to be issued at 21 cents a share (**SingaPharm Share Purchase Plan**). Funds raised under the SingaPharm Share Purchase Plan were to be used for working capital.
- (b) On 10 December 2010, in connection with the SingaPharm Share Purchase Plan, NuSep gave the ASX a Cleansing Notice which stated that NuSep had complied with the relevant continuous disclosure provisions in section 674 of the Act.
- (c) On 13 December 2010, NuSep announced the SingaPharm Share Purchase Plan and provided a copy of the SingaPharm Share Purchase Plan to the ASX.
- (d) On 18 January 2011, NuSep announced to the market that the SingaPharm Share Purchase Plan was oversubscribed.
- (e) On 24 January 2011, NuSep lodged an Appendix 3B with the ASX for 4,761,905 shares, being the total shares issued under the SingaPharm Share Purchase Plan, announcing to the market that 4,761,905 shares were issued at 21 cents raising \$1 million. NuSep's share price on 24 January 2011 was trading at 21 cents. Following the announcement, NuSep's share price increased to 23 cents.
- (f) On 27 January 2011, NuSep deposited 4,761,905 shares for nil consideration in a Suspense Account.
- (g) By 22 February 2011, NuSep had not lodged with ASIC the prescribed forms 484 and 208 which were required by section 254X of the Act because shares had been issued for non - cash consideration.
- (h) On 18 March 2011, NuSep announced the issuing of 3,888,890 options at 35 cents each associated with the SingaPharm Share Purchase Plan. 1,162,620 of these options were held in a Suspense Account.
- (i) Shares and options issued under the SingaPharm Share Placement and the SingaPharm Share Purchase Plan were transferred from NuSep's Suspense Account to persons when the funds were received. Between 22 March 2011 and 30 May 2012 the following transactions occurred:
  - (i) 7,361,438 shares were transferred from the Suspense Account for the consideration of \$0.21 per share;

- (ii) 2,000,000 shares were transferred from the Suspense Account for a consideration of \$0.15 per share;
- (iii) 2,302,385 shares were transferred from the Suspense Account for a consideration of \$0.07 per share;
- (iv) 20,405 options were transferred for nil consideration; and
- (v) the remaining 1,142,215 share options expired on 1 September 2012.

#### 3.4 Conversion of Share Options Transaction

- (a) In July 2011 NuSep issued a Share Purchase Offer Prospectus (**July 2011 Prospectus**) offering a bonus option for every two NuSep shares. The options were exercisable at 15 cents per share expiring on 31 March 2012. The July 2011 Prospectus provided that:
  - (i) to exercise the share options an Exercise Notice must be provided to NuSep with payment of 15 cents per option;
  - (ii) an Exercise Notice would not have effect until NuSep had received cleared payment for the full amount of 15 cents an option;
  - (iii) a waiver or variation of the conditions set out in the July 2011 Prospectus required a Board resolution;
  - (iv) NuSep proposed to use these funds as follows: the first \$1 million raised to fund the SpermSep clinical trials, the next \$500,000 to market the GelsIQSoftware and the balance to be invested in the Singapore plasma project and general working capital.
- (b) A number of options were obtained by a shareholder of NuSep pursuant to the July 2011 Prospectus and by transfers from other option holders. On or about 23 November 2011 that shareholder sold 11,342,691 options to an investor domiciled in Singapore (the **Singaporean Investor**), who was also a director of a subsidiary company of NuSep and who already held 3,090,000 NuSep Shares and some NuSep options.
- (c) On 24 November 2011 the Singaporean Investor exercised 12,092,691 NuSep options (the **NuSep Options**) at \$0.15 cents per share totalling A\$1.81 million. The Singaporean Investor gave NuSep incomplete Exercise Notices and a copy of a cheque which when converted from USA dollars was for approximately A\$1.81 million. The Singaporean Investor informed NuSep that he would provide the original conversion notices to NuSep on 29 November 2011; when he was due to attend the NuSep AGM.
- (d) On 25 November 2011 and prior to NuSep announcing that the exercise of the NuSep Options had raised \$1.81 million for NuSep, the Former Executives were informed by the Singaporean Investor that he did not have A\$1.81 million, had limited liquidity and was relying on funds from other sources to make the A\$1.81 million payment.
- (e) On 25 November 2011, NuSep announced that it had received a request to exercise 12,092,691 options and this had raised \$1.81 million for NuSep. Attached to the announcement was an Appendix 3B New Issue Announcement that recorded the issue of 12,092,691 fully paid shares at the price or consideration of \$0.15 cents per share. At this time, NuSep shares were trading at 9 cents a share. NuSep informed the ASX on 12 March 2012 that this was a material matter.
- (f) Some of the NuSep Options were issued under the July 2011 Prospectus. There is no record of the NuSep Board resolving to waive or vary the condition in the July 2011

Prospectus that in order to exercise the share options there must be cleared payment of 15 cents per option.

- (g) NuSep did not notify the market that it had not complied with the July 2011 Prospectus when options were exercised by the Singaporean Investor.
- (h) On 28 November 2011 the NuSep Board met. The minutes of that meeting record that the Managing Director reported to the Board that *"The Company had received payment by cheque for the exercise price and the shares had been issued as fully paid shares, but untradeable until the funds have cleared."*
- (i) During the 29 November 2011 NuSep AGM, the Chairman's presentation stated that the conversion of 15 cent options allowed NuSep to start clinical trials to develop a patented sperm separation system called SpermSep. The Chairman's presentation was lodged with the ASX on 29 November 2011.
- (j) On 29 November 2011, the Singaporean Investor attended the NuSep AGM and voted with the shares issued to him on exercise of the NuSep Options. On 29 November 2011 and after the AGM, NuSep was informed that the Singaporean Investor needed to arrange a loan in order to pay \$1.81 million for the exercise of the NuSep Options. NuSep has advised ASIC that was it verbally agreed to give the Singaporean Investor until 15 January 2012 to pay \$1.81 million.
- (k) On 30 November 2011, NuSep announced that it had received a Notice of Initial Substantial Holder and attached the prescribed form 603, which form was prepared by NuSep and was signed by the Singaporean Investor. Relevantly, subsections 671B(3) and (4)(b) of the Act requires a form 603 to include information about the consideration and a statement of any contract, scheme or arrangement that contributed to the situation giving rise to the person needing to provide the information.
- (l) The form 603 attached to the 30 November 2011 announcement recorded under 'consideration' that on 25 November 2011 cash of 15 cents per share had been paid.
- (m) On 13 December 2011, NuSep lodged with ASIC a Change to Company Details form (form 484) which stated that the amount paid per share was 15 cents and the amount unpaid for the shares was "0". NuSep did not notify ASIC of details of shares issued other than for cash (form 208), which is required by section 254X of the Act.
- (n) On 13 January 2012, the Singaporean Investor transferred the shares issued on exercise of the NuSep Options to DCS Healthcare Pte Ltd (**DCS Healthcare**), a newly registered Singaporean company associated with the Singaporean Investor. At this time there was no restriction (i.e. **trading block**) on the ability of the Singaporean Investor to trade the shares. NuSep agreed to this transfer of shares on the understanding that DCS Healthcare was finalising arrangements to borrow money to enable it to, amongst other things, pay \$1.81 million to NuSep for the shares.
- (o) DCS Healthcare did not lodge the required substantial shareholder notice (form 603) with the ASX and NuSep within the time required by section 671B of the Act.
- (p) The outstanding payment of \$1.81 million was not received by 15 January 2012.
- (q) On about 17 January 2012, the Singaporean Investor informed NuSep that DCS Healthcare expected to pay the \$1.81 million after 23 January 2012.
- (r) As a result of NuSep's auditor making enquiries whilst he was completing the 31 December 2011 half year review, a trading block was placed on the shares on about 8 February 2012.



- (s) On 17 February 2012, NuSep's auditor advised NuSep that he was concerned that NuSep may have contravened the Act, including the Continuous Disclosure Obligations.
- (t) On about 24 February 2012, DCS Healthcare provided NuSep with a promissory note for the \$1.81 million plus interest at 5% per annum, the full amount being payable on 31 March 2012.
- (u) On 28 February 2012, NuSep received an initial payment of \$50,000 towards the \$1.81 million.
- (v) On 29 February 2012, NuSep attached its financial report for the six months ending 31 December 2011 to an announcement, such report disclosing that NuSep had only received \$50,000 of the \$1.81 million for the shares.
- (w) During December 2011 to February 2012, the non-payment of the \$1.81 million caused NuSep to have cash flow problems which necessitated raising cash funds from other sources, including loans from directors.
- (x) NuSep did not keep complete records of the various conversations, agreements or arrangements between NuSep and the Singaporean Investor and DCS Healthcare dating from 24 November 2011 to 23 February 2012.
- (y) From March 2012 NuSep made various announcements to update the market on the status of the payment of the \$1.81 million plus interest.
- (z) On 24 September 2012, DCS Healthcare transferred the shares issued on exercise of the NuSep Options back to the Singaporean Investor who entered into a secured debt arrangement for the outstanding payment to be repaid by 21 March 2014.
- (aa) As at 30 June 2014, the Singaporean Investor had partly satisfied the debt to NuSep of \$1.81 million plus interest by:
  - (i) paying \$173,885.58 in cash;
  - (ii) permitting the sale of three million shares held by the Singaporean Investor for \$0.105 each to set off \$315,000;
  - (iii) setting off \$355,984.34 against director fees owed by NuSep to the Singaporean Investor in his capacity as a director of one of NuSep's wholly owned subsidiaries; and
  - (iv) setting off \$126,685.97 against expenses paid by the Singaporean Investor on behalf of NuSep.
- (bb) Despite the July 2011 Prospectus stating that NuSep proposed to use the first \$1 million raised by exercising the bonus options on clinical trials for SpermSep, the \$488,885.58 which was received in cash and referred to in paragraph 3.4(z)(i) and (ii) by NuSep was used as working capital.

### 3.5 30 June 2011: Executive Bonuses

- (a) Pursuant to contracts of employment entered into between NuSep and each Former Executive, NuSep agreed to pay each Former Executive a bonus based on the profitability of NuSep for the financial year ended 30 June 2010.
- (b) Significant bonuses were paid to each Former Executive during the financial year ended 30 June 2011.



### 3.6 13 October 2011: NuSep's Application for a No Action Letter.

- (a) By 8 September 2011, NuSep's auditor had informed NuSep that in his opinion there were grounds to suspect that there had been breaches of the Act dating from December 2009. In compliance with auditor obligations under section 311 of the Act, on 8 September 2011 the auditor of NuSep notified ASIC of the suspected contraventions in relation to the BioInquire Transaction and the SingaPharm Transaction.
- (b) ASIC Regulatory Guide 108 (**RG 108**) sets out ASIC policy in relation to requests for no-action letters. On 13 October 2011, in accordance with RG 108, NuSep applied to ASIC for a no action letter which amongst things:
  - (i) set out some of the facts referred to above at sections 3.1 to 3.3;
  - (ii) acknowledged that NuSep had breached Continuous Disclosure Obligations and section 259A of the Act; and
  - (iii) stated that NuSep had conducted an internal review to ensure Continuous Disclosure Obligations were met in the future and that NuSep was committed to obtaining external legal and accounting advice as appropriate to reduce the risk of breaching Continuous Disclosure Obligations.
- (c) A duly authorised delegate of ASIC rejected NuSep's request for a no-action letter.

### 3.7 NuSep Annual Reports

- (a) ASX Listing Rule 4.10.3 requires a listed entity to include a corporate governance statement in its annual report that must disclose the extent to which the entity has followed recommendations set by the ASX Corporate Governance Council during the reporting period. If the entity has not followed a recommendation for any part of the reporting period, the entity must separately identify the recommendation and the period it was not followed and state its reasons for not following the recommendation and what (if any) alternative governance practices it adopted in lieu of the recommendation for that period.
- (b) NuSep's 2011 Annual Report did not disclose it was NuSep's view that it had contravened Continuous Disclosure Obligations since at least December 2009 and during the financial year ending 30 June 2011. NuSep's 2012 Annual Report did not disclose that it was NuSep's view that it should have notified the ASX that the consideration had not been received for the Conversion of Share Options, referred to in section 3.4 above.
- (c) The Notes to the Financial Statements and/or Shareholder Information in the 2010 to 2012 Annual Reports recorded that NuSep held shares in itself. The Notes to the Financial Statements in the 2012 Annual Report recorded the debt owed by the Singaporean Investor to NuSep. There was no reference to these facts in the Directors' Report or Corporate Governance Statement.
- (d) The 2010 to 2012 Annual Reports stated in the Corporate Governance Statement that NuSep had fulfilled its disclosure responsibilities absolutely and was proud of its disclosure record. The Directors' Report also stated that NuSep Directors had adhered to the principles of corporate governance.

### 3.8 NuSep Member Register

- (a) Sections 168 and 169(1)(a) of the Act requires NuSep to maintain a register of members including a member's address. Members have a right to access the register and it is a source of information for contacting other members. Also, the register may

determine if a member is a resident or non-resident for the purpose of participating in share offers.

- (b) During September and October 2011, the register incorrectly recorded the Singaporean Investor's address at an address in Sydney, being the same address as the then Managing Director, when at the time the Singaporean Investor was resident in Singapore.

#### **4. ASIC's investigation**

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##### **4.1 Investigation**

Pursuant to Division 1 of Part 3 of the ASIC Act, ASIC is investigating suspected contraventions of the Act by NuSep and its former officers (the **Investigation**).

#### **5. ASIC's concerns**

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##### **5.1 Continuous Disclosure**

ASIC is concerned that in relation to:

- (a) the BioInquire Transaction;
- (b) the SingaPharm Transaction; and
- (c) the Conversion of Share Options Transaction;

NuSep may have contravened the Continuous Disclosure Obligations and section 1041H of the Act by failing to disclose information that NuSep was required to disclose to comply with Listing Rule 3.1 and by releasing, or causing to be released, inaccurate information.

##### **5.2 Self - acquisition of shares**

ASIC is concerned that in relation to:

- (a) the BioInquire Transaction; and
- (b) the SingaPharm Transaction;

in particular in relation to the conducted referred to in paragraphs 3.1(d), 3.1(f), 3.1(k), 3.2(f), 3.3(f) and 3.3(h);

NuSep, by placing NuSep shares in Suspense Accounts, may have contravened section 259A of the Act which prohibits a company from acquiring shares in itself except in limited circumstances.

##### **5.3 Notice to ASIC of share issue**

ASIC believes that in relation to the conduct referred to in section 3 of this Undertaking, in particular the conduct referred to in paragraphs 3.1(l), 3.2(g), 3.3(g) and 3.4(m), NuSep may have contravened section 254X of the Act. This section required NuSep to provide ASIC with certain information about issued shares in the prescribed form within 28 days after issuing shares, which relevantly, required NuSep to set out if the shares were issued for non-cash consideration and the amount unpaid, if any, on each of the shares.

#### 5.4 Substantial Holding Notice

- (a) ASIC believes that in relation to the conduct referred to in section 3.4 (k)–(l) of this Undertaking, NuSep may have been involved in contraventions of section 671B(1) of the Act. This section requires a person to give certain information to the relevant market operator and the listed company if the person begins to have or ceases to have a substantial holding in the company or the person has a substantial holding in the company and there is a movement of at least 1% in their holding.
- (b) Relevantly, sections 671B(3) and (4)(b) provide that this information includes the consideration for the shares and a statement of any contract, scheme or arrangement that contributed to the situation giving rise to the person needing to provide the information. This information must be given within two business days after the person becomes aware of the information.

#### 5.5 Sale Offers and Disclosure

- (a) ASIC is of the view that in relation to the conduct referred to in section 3.2(c) of this Undertaking, NuSep may have contravened section 708A(5)(e) of the Act because NuSep failed to give a Cleansing Notice to the ASX in connection with the SingaPharm Share Placement which was announced to the market on 29 November 2010.
- (b) ASIC Class Order 09/425 facilitates the offer of shares in certain circumstances. While sophisticated investors under the SingaPharm Share Placement did not receive a prospectus or Product Disclosure Statement, they had access to information about their investment through continuous disclosure and this should have been supplemented by a Cleansing Notice.

#### 5.6 NuSep Minute Books

- (a) As a result of the investigation, ASIC believes that NuSep may have contravened section 251A of the Act which requires NuSep to keep minute books in which it recorded within one month, proceedings and resolutions of directors' meetings, committee of directors meetings and meetings of members. NuSep may also have contravened section 1306 of the Act which requires NuSep to keep books required by the Act in a certain way and ensure the safety and physical integrity of these books.
- (b) NuSep's constitution clause 81(c) also provides that minutes of the proceedings and decisions of every committee shall be made, entered and signed in the same manner in all respects as minutes of proceedings of the Directors are required by the Act to be made, entered and signed, which ASIC believes NuSep may not have done.
- (c) ASIC is concerned that:
  - (i) the 14 April 2010 and 9 September 2011 NuSep General Meeting minutes were not kept;
  - (ii) various Audit Committee meeting minutes were not included in the minute book;
  - (iii) various Audit Committee meeting minutes were not signed and/or dated by the Audit Committee Chair;
  - (iv) various Board meeting minutes were approved by the Board and signed by the Chairman over one month after the Board meeting;
  - (v) there are no records of Board meetings approving some previous Board meeting minutes and the date Board minutes were signed by the Chairman;

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- (vi) Board minutes were not drafted immediately but sometimes one to three weeks after the meeting;
- (vii) Board minutes did not always record the Board receiving and considering Audit Committee and Board minutes;
- (viii) NuSep did not always keep a record of Board and Board committee agendas and papers, including those tabled at the meetings;
- (ix) some Board meeting agendas and minutes were not sequentially numbered and systems were not in place to prevent damage, destruction or substitution and falsification of NuSep's minutes; and
- (x) some Board minutes were signed by the Chair but did not record discussions of important matters.

#### **5.7 Contraventions by former Officers of NuSep**

ASIC is concerned that former officers of NuSep at the relevant times were directly or indirectly, knowingly concerned in, or were party to, the contraventions by NuSep identified in sections 5.1 to 5.6 of this Undertaking.

#### **5.8 Payment of bonuses to Former Executives**

ASIC is concerned that NuSep was contractually bound to pay bonuses to each Former Executive based on NuSep's profit results for the year ended 30 June 2010 when during the same period, NuSep had grounds to believe that NuSep and one or more Former Executives may have contravened its Continuous Disclosure Obligations and other provisions of the Act.

#### **5.9 Other Corporate Governance Matters**

As a result of the Investigation, ASIC believes that:

- (a) NuSep did not maintain a proper member register in accordance with the Act during September and October 2011 by knowingly recording the incorrect address of the Singaporean Investor;
- (b) the Corporate Governance Statements in NuSep's 2011 and 2012 Annual Reports did not accurately reflect that NuSep was aware of and had acknowledged contraventions of Continuous Disclosure Obligations and the Act during the financial years for which they reported; and
- (c) some provisions of NuSep's Board Charter were not regularly adhered to during 2010 to 2012, including the Company Secretary not giving the Board three clear days to read papers for the Board Meeting, non-executive directors not receiving letters of engagement and the Board and its members not being evaluated.

### **6. Acknowledgement of concerns**

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- (a) NuSep acknowledges ASIC's concerns and that they are reasonably held. ASIC acknowledges the co-operation and assistance of NuSep and its current officers in relation to this Undertaking. An example of NuSep's co-operation is that it has assisted the Investigation by withdrawing legal professional privilege claims.

## **7. Steps already taken by NuSep to address ASIC's concerns**

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ASIC acknowledges the action NuSep has already taken to address ASIC's concerns, including:

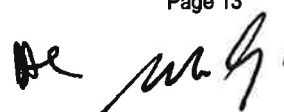
### **7.1 Change of Directors and Company Secretary**

- (a) changing the composition of its Board; and
- (b) appointing a Company Secretary who has the requisite qualifications, experience and time to perform the various functions and responsibilities required of a Company Secretary, which position now has:
  - (i) a direct reporting line to the Board through the Chairperson; and
  - (ii) terms of engagement that specifically provide that the person will be responsible for fulfilling the company secretarial tasks including but not limited to ensuring NuSep complies with the provisions of the Act as set out in sections 188(1), 251A and 1306 as well as attending and immediately drafting the minutes of the Board, Board committees and members meetings.

### **7.2 Meetings and Minutes**

Adopting procedures to ensure accurate minutes and compliance with the Act in relation to the recording of company meetings, NuSep's Constitution and NuSep's Board Charter, including:

- (a) immediately drafting minutes of the Board, Board committee and member meetings to ensure they are contemporaneous records that are more likely to be an accurate reflection of the proceedings of the meeting rather than a reconstruction of them;
- (b) recording in minutes, discussions of important matters and directors who abstain or vote for a resolution so as to ensure the minutes record the will of the directors;
- (c) distributing with the Board packs, the minutes of Board committees that have occurred since the previous Board meeting and the minutes of the previous Board meeting;
- (d) recording resolutions by directors without a meeting, by the directors signing the resolution as required by sections 251A(1)(d) and (3) of the Act and NuSep's Constitution;
- (e) reviewing draft minutes of Board and Board committee meetings by the relevant Chairperson so the minutes are signed and dated by the relevant Chairperson and entered into the minute book within 1 month of the Board or Board committee meeting, as required by sections 251A(2) and (3) of the Act;
- (f) taking reasonable precautions to prevent damage, destruction, substitution and falsification of the minute book by sequentially numbering the agendas, meetings and pages. Also, for an electronic version of the minute book, providing for limited secure access and a program that identifies unauthorised access so as to comply with section 1306(3) of the Act;
- (g) keeping a complete set of Board, Board committee and members' meetings agendas, papers previously circulated and documents tabled at these meetings for future reference so as to comply with section 1306(3) of the Act;



- (h) endeavouring to distribute the agenda and Board and Board committee packs at least three clear days prior to the relevant meeting, so as to comply with NuSep's Board Charter;
- (i) distributing a schedule of tasks arising from Board and Board committee meetings with details of who is to perform the tasks and by when, by the time the draft minutes are circulated to Board or Board committee members; and
- (j) amending terms of engagement and/or job descriptions to reflect who is responsible for the above occurring.

### 7.3 Record Keeping

Adopting effective record keeping practices including but not limited to keeping:

- (a) records of evaluating the Board, individual Board members and officers;
- (b) reports to the Board about governance issues;
- (c) records of the Board reviewing Continuous Disclosure Obligations;
- (d) records of drafting and approving ASX announcements so that these procedures may be monitored by the Audit Committee;
- (e) communications with the external auditor; and
- (f) records of communications with debtors to assist enforcing debts.

## 8. Undertakings

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- 8.1 Under section 93AA of the ASIC Act, NuSep has offered the undertakings in sections 8.2 to 8.10 and ASIC has agreed to accept those undertakings as an alternative to commencing civil proceedings directly against NuSep in relation to the concerns set out in section 5 of this Undertaking.

### Corporate Governance

#### 8.2 NuSep undertakes to:

- (a) continue the procedures implemented as set out above at section 7 of this Undertaking (the **Existing Procedures**);
- (b) adopt an executive remuneration policy consistent with the ASX Corporate Governance Principles and Recommendations that provides for the cancellation and clawback of performance based remuneration and disclose the policy and practices on NuSep's website;
- (c) ensure that the terms of engagement of any executives entered into after the commencement of this Undertaking will include provisions to the effect that any payment of performance based remuneration is subject to Board approval and complies with the Act, Listing Rules, NuSep's Constitution and NuSep's Board Charter;
- (d) ensure that the Corporate Governance Statements from 2015 to 2016 disclose the existence of this Undertaking and report on its implementation including the progress of the changes implemented pursuant to this Undertaking and any other initiatives implemented as a consequence of this Undertaking and prior to approving any Corporate Governance Statement the Board of Directors of NuSep will:

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- (i) consider whether information in the Corporate Governance Statement is consistent with the financial report and information known to the Audit Committee;
- (ii) review reports and communications to ASIC and ASX to ensure that all relevant matters are included in the Corporate Governance Statement;
- (iii) assess the accuracy of statements copied from the previous year's Corporate Governance Statement; and
- (iv) consider including references in the Corporate Governance Statement to any breaches of NuSep's Constitution, corporate governance policies, the Act or Listing Rules.

Together sections 8.2 (b) to (d) above are the **New Procedures**.

#### **Appointment of Independent Compliance Expert - Review of disclosure and corporate governance procedures**

8.3 NuSep undertakes to:

- (a) within 30 days from the date of this Undertaking, appoint an independent Compliance Expert to report to ASIC and to NuSep (the **Compliance Expert**). The Compliance Expert is to be nominated by ASIC and appointed by NuSep. The terms of engagement for any review by the Compliance Expert pursuant to this Undertaking are to be approved by ASIC. The terms of engagement may only be varied with the agreement of ASIC;
- (b) draft the terms of engagement of the Compliance Expert so as to require the Compliance Expert to:
  - (i) review the effectiveness of, and the compliance of NuSep with, the measures NuSep has implemented as referred to in section 8.2 of this Undertaking;
  - (ii) identify any deficiencies and recommend improvements which are consistent with industry best practice for a company of NuSep's size and kind concerning:
    - (A) the Existing Procedures, such as keeping essential records such as a register of members and minute books;
    - (B) the New Procedures;
    - (C) NuSep approving the issuing of securities;
    - (D) NuSep lodging documents with ASIC as required by the Act; and
    - (E) any NuSep assistance to be given to members to fulfil their obligations under section 671B of the Act;
  - (iii) identify any deficiencies in NuSep's disclosure systems and recommend amendments which are consistent with industry best practice for a company of NuSep's size and kind and that are reasonably required to ensure that they meet the requirements of Continuous Disclosure Obligations and disclosure when offering securities to potential investors and members;
  - (iv) make provision for the Compliance Expert to make recommendations to the NuSep Board as to how deficiencies identified by the Compliance Expert in accordance with the above section 8.3(b)(i) and (ii) are to be addressed by

NuSep in the context of the existing systems and procedures, which includes the New Procedures (collectively the **Compliance Procedures**); and

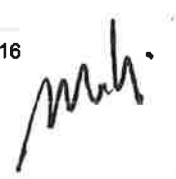
- (v) conduct the reviews and provide the reports referred to in clause 8.7.
- (c) provide all reasonable assistance to the Compliance Expert, including permitting the Compliance Expert to have access to books, interview officers and employees of NuSep and give the Compliance Expert any information, assistance or explanation reasonably requested to allow the Compliance Expert to complete its review and prepare a written report to the Board setting out the Compliance Procedures within 90 days of this Undertaking;
- (d) provide to ASIC a copy of the Compliance Procedures within 10 days of the Board's receipt of the Compliance Procedures; and
- (e) ensure that the Compliance Procedures will, as far as is reasonable, be in accordance with AS3806-2006, the Australian Standard on Compliance Programs and, having regard to Continuous Disclosure Obligations, will include, the following:
  - (i) a clear indication of NuSep's Continuous Disclosure Obligations and the consequences to NuSep and its officers if NuSep fails to comply with them;
  - (ii) procedures to ensure that each NuSep officer is made aware on an ongoing basis of NuSep's Continuous Disclosure Obligations;
  - (iii) procedures to require NuSep's officers immediately to report any material information or potentially material information to the Chief Executive Officer, the Chairman or the Responsible Officer (the person appointed by NuSep under Listing Rule 12.6 with responsibility for communication with the ASX in relation to Listing Rule matters) for assessment and consideration of immediate disclosure to the ASX;
  - (iv) procedures to ensure the accuracy of information released to the market;
  - (v) procedures to maintain accurate records of all disclosure or potential disclosure matters, including but not limited to external professional advice sought regarding disclosure; and
  - (vi) procedures for ensuring that NuSep's Compliance Procedures are updated from time to time to reflect changes in NuSep's business operations and changes in the law, the Act and the Listing Rules.

#### **Monitoring NuSep's compliance with this Undertaking**

##### **First Review**

8.4 NuSep undertakes to:

- (a) engage the Compliance Expert to commence a First Review within 180 days of the date of this Undertaking. The objective of the first review is to assess and make recommendations about the effectiveness and operation of the Compliance Procedures;
- (b) provide all reasonable assistance to the Compliance Expert, including permitting the Compliance Expert to have access to books, interview officers and employees of NuSep and give the Compliance Expert any information, assistance or explanation reasonably requested;
- (c) within 220 days of the date of this Undertaking, obtain from the Compliance Expert a written report to the Board about the effectiveness and operation of the Compliance

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Procedures including NuSep's adherence to the Compliance Procedures (the **First Review Report**);

- (d) within 10 days of receipt of the First Review Report, provide ASIC with a copy of the First Review Report; and
- (e) implement any recommendations from the Compliance Expert (except in situations as agreed to by ASIC) set out in the First Review Report as soon as practicable but in any event within 270 days of the date of this Undertaking.

#### **2015 Corporate Governance Statement review**

8.5 NuSep Undertakes to:

- (a) engage the Compliance Expert by 1 October 2015 to conduct a review of the Corporate Governance Statement prepared in respect of the financial year ended 30 June 2015 (**2015 Corporate Governance Statement**). The objective of this review is to:
  - (i) consider whether information in the 2015 Corporate Governance Statement is consistent with the financial report and information known to the Audit Committee;
  - (ii) review reports and communications to ASIC and ASX regulators to ensure that all relevant matters are included in the 2015 Corporate Governance Statement;
  - (iii) assess the accuracy of statements copied from the previous year's Corporate Governance Statement; and
  - (iv) include references to breaches to NuSep's Constitution, corporate governance policies, the Act or Listing Rules (if any).
- (b) provide all reasonable assistance to the Compliance Expert, including permitting the Compliance Expert to have access to books, interview officers and employees of NuSep and give the Compliance Expert any information, assistance or explanation reasonably requested to allow the Compliance Expert within 60 days of 1 October 2015 to complete a review and prepare a written report to the Board about the effectiveness and operation of the Compliance Procedures in respect of the 2015 Corporate Governance Statement.
- (c) within 10 days of receipt of the written report referred to above at section 8.5(b), provide ASIC with a copy of the written report.

#### **Ongoing reviews**

8.6 NuSep undertakes for a period commencing on 1 October 2016 and 1 October 2017, to engage the Compliance Expert to carry out an annual review of, and to produce a written report within 90 days to the Board about, NuSep's compliance with the Compliance Procedures. NuSep's Board will provide copies of such annual reports to ASIC within 10 days of receiving them from the Compliance Expert.

#### **Offering securities**

8.7 NuSep undertakes that on the first occasion it undertakes to offer securities pursuant to:

- (a) section 708 of the Act and give a notice under section 708A(5)(e) of the Act; or
- (b) section 708AA of the Act and give a notice under section 708AA(2)(f),

it will only do so after:

- (i) receiving legal advice; including but not limited to an explanation of the legal obligations of NuSep in connection with offering securities in reliance on section 708 or section 708AA, the procedures to be followed to meet such legal obligations (having regard to the circumstances which gave rise to this Undertaking) and the type of information that must be disclosed to the market;
- (ii) the Board obtains signed legal advice to the effect that:
  - 1. section 708A or s708AA (whichever is relevant) applies to the offer;
  - 2. the lawyer has advised NuSep of all necessary procedures (including the implementation of any due diligence processes or questionnaires) that a company in NuSep's position should undertake to ensure that the requirements of s708A(6) and s708AA(7) (whichever is relevant) are complied with;
  - 3. any notice issued by NuSep under s708A(5)(e) addresses each of the matters in s708A(6) and refers to this Undertaking;
  - 4. any notice issued by NuSep under s708AA(2)(f) addresses each of the matters in s708AA(7) and refers to this Undertaking;
- (iii) receiving a report addressed to the Board from the Compliance Expert stating that it has reviewed NuSep's implementation of the procedures (including any due diligence) referred to in subparagraph (ii) 2. above, and that it is satisfied that NuSep has followed each of the procedures ; and
- (iv) following receipt of the signed legal advice referred to in subparagraph 8.7(b)(ii) and the report referred to in subparagraph 8.7(b)(iii) above, the Board approves by resolution the issue by NuSep of any notice given under either s708A(5)(e) or s708AA(2)(f).

### **NuSep Subsidiaries**

#### **8.8 NuSep undertakes to:**

- (a) provide written notice to each subsidiary of NuSep that the subsidiary is required to comply with this Undertaking and implement the Compliance Procedures as if each subsidiary had given this Undertaking;
- (b) provide a copy of the notice referred to in paragraph (a) to the Compliance Expert; and
- (c) require each subsidiary of NuSep, in the notice referred to in paragraph (a), to report to NuSep's Board about that subsidiary's compliance with this Undertaking and the Compliance Procedures annually from the date of the First Review Report until such time as this Undertaking is concluded; NuSep undertakes, to the extent that NuSep holds a voting share in any other entity, not to exercise that vote in favour of the appointment of any Former Executive as an officer of that entity and if any Former Executive is employed or otherwise engaged under any agreement to provide services to NuSep or any subsidiary of NuSep, to publicise on NuSep's website the terms of engagement and the job description for the Former Executive.

### **Costs of compliance**

- 8.9 NuSep will pay the costs of its compliance with this Undertaking, including all remuneration and incidental costs of the Compliance Expert.

### **Provision of documents and information**

- 8.10 NuSep will provide all documents and information within 14 days of ASIC requesting such documents and information for the purpose of ASIC assessing NuSep's compliance with the terms of this Undertaking.

### **NuSep's publication of this Undertaking**

- 8.11 NuSep undertakes that upon signing this Undertaking (and in any event no later than one business day after signing this Undertaking) it will lodge an announcement attaching this Undertaking with the ASX.

## **9. Contact Officers**

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- 9.1 For the purpose of this Undertaking the contact person for NuSep is the Chairperson and NuSep will direct notifications to ASIC to the Senior Executive Leader, Corporations.

## **10. Acknowledgments**

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### **10.1 NuSep acknowledgment**

- (a) NuSep acknowledges that ASIC:


- (i) may issue a media release on execution of this Undertaking referring to its terms and to the concerns of ASIC which led to its execution;
- (ii) may from time to time publicly refer to this Undertaking;
- (iii) will make this Undertaking available for public inspection; and
- (iv) in relation to any of the reports provided to ASIC pursuant to this Undertaking, ASIC:
  - (A) may issue a media release referring to the content of any of the reports;
  - (B) may from time to time publicly refer to the reports; and
  - (C) will make available for public inspection a copy of the text of the reports, or a copy of the text of a statement that refers to the content of the reports,

but ASIC will delete, remove or not refer to any information that NuSep has asked it not to release if ASIC is satisfied:

- (1) it would or could reasonably be expected to unreasonably affect the business, commercial or financial affairs of NuSep and in ASIC's view would be unreasonable to release because the release of the information would or could be expected to unreasonably affect the business, commercial or financial affairs of NuSep otherwise than as contemplated by this Undertaking; or

- (2) otherwise that it should not be disclosed because it would be against the public interest to do so; or
- (3) consists of personal information of an individual.
- (b) NuSep acknowledges that this Undertaking has no operative force until accepted by ASIC, and NuSep and ASIC acknowledge that the date of this Undertaking is the date on which it is accepted by ASIC.
- (c) ASIC and NuSep acknowledge that this Undertaking ends on 31 December 2017.
- (d) NuSep acknowledges that:
- (i) ASIC's acceptance of this Undertaking does not affect ASIC's power to investigate, conduct surveillance, pursue a criminal prosecution or its power to lay charges in relation to any contravention of NuSep or its officers, whether the subject of ASIC's concerns in this Undertaking or arising from separate or future conduct;
  - (ii) ASIC's acceptance of this Undertaking does not affect ASIC's power to seek a pecuniary civil order against individuals in relation to any contravention of NuSep or its officers, whether the subject of ASIC's concerns in this Undertaking or arising from separate or future conduct; and
  - (iii) This Undertaking in no way derogates from the rights and remedies available to any other person or entity arising from any conduct described in this Undertaking or arising from future conduct.

Executed by NuSep Holdings Limited  
ACN 120 047 556 in accordance with  
section 127 of the Corporations Act 2001 (Cth)  
by:

  
Signature of Director

  
Signature of Director/Company Secretary

ALISON COURT  
Full name (print)

MICHAEL DAVID GRAHAM  
Full name (print)

Accepted by the Australian Securities and Investments Commission under s93AA of the ASIC Act  
by its duly authorised delegate:

  
George Stogdale

Delegate of Australian Securities and Investments Commission

18 December 2014