

Explanatory Statement

Ellume Limited (Subject to Deed of Company
Arrangement) ACN 141 767 660
(**Ellume**)

2 February 2023

Explanatory Statement to shareholders and Independent Expert's Report

This Explanatory Statement provides information to the shareholders (**Shareholders**) of Ellume Limited (Subject to Deed of Company Arrangement) ACN 141 767 660 (**Ellume**) in respect of the deed of company arrangement entered into by Ellume, Hough Consolidated Pty Ltd ACN 657 651 280 (**Hough**) and the Deed Administrators on 22 December 2022 (**DOCA**).

It is a condition to completion and effectuation of the DOCA that the Deed Administrators obtain a Court order pursuant to section 444GA(1)(b) of the *Corporations Act 2001* (Cth) (**Act**) granting leave to the Deed Administrators to transfer all of the Ellume Shares to Hough for nil consideration. The Deed Administrators have made an application for this order in the Federal Court of Australia (**Section 444GA Application**).

On 31 January 2023, the Federal Court of Australia made procedural orders in relation to the Section 444GA Application, which included timetabling directions for the filing of notices of appearance by any interested parties and confirmation of the final hearing date (**Procedural Orders**).

The Section 444GA Application has been listed for a final hearing on 22 February 2023 at 10:15am AEDT in the Federal Court of Australia.

If you wish to appear at the Court hearing and/or oppose the Section 444GA Application, you may do so by filing with the Court, and serving on the Deed Administrators and ASIC, a notice of appearance in the prescribed Court form indicating the grounds of opposition by no later than 4:00pm AEDT on 13 February 2023.

Shareholders should consider the Independent Expert's Report in full before deciding whether to take any action in relation to the Section 444GA Application. If you are in any doubt as to the action you should take, you are recommended to obtain your own personal legal or financial advice from your legal or other professional adviser(s).

A copy of the Explanatory Statement (including the Independent Expert's Report) has been provided to ASIC prior to the issuance of this Explanatory Statement. Neither ASIC nor any of its officers take any responsibility for its contents.

Key information for Shareholders

Capitalised terms used in this Explanatory Statement have the meanings defined in the Glossary in Schedule 1, unless the context requires otherwise or unless a term has been defined in the text of the Explanatory Statement, and a word importing the singular includes the plural (and vice versa).

1 Purpose of the Explanatory Statement

This document is an Explanatory Statement issued by Ellume in connection with the DOCA. If the Section 444GA Order is made and the DOCA is completed, all of your shares in Ellume will be transferred to Hough for no consideration and you will cease to own those shares.

Section 4 of this report contains further information regarding the DOCA.

This Explanatory Statement contains information about:

- (a) the Section 444GA Application to the Court for approval to transfer all of the Ellume Shares to Hough as part of the DOCA;
- (b) the steps that you need to take if you wish to appear at the Court hearing in respect of the Section 444GA Application, which has been listed for hearing on 22 February 2023 at 10:15am AEDT; and
- (c) the effect of the DOCA on you as a Shareholder, in order to assist you in deciding whether to take action in respect of the Section 444GA Application.

An Independent Expert's Report prepared by the Expert, which contains an objective valuation of the Ellume Shares, is attached to this document as **Attachment 1**.

2 Administration of Ellume

On 31 August 2022, John Park and Joanne Dunn were appointed as joint and several administrators (**Administrators**) of Ellume. None of Ellume's subsidiaries have been placed into any kind of external administration.

The Ellume group of companies is comprised of a parent company, Ellume, which is an unlisted public company (and which is the only entity in the Ellume Group that is subject to external administration) and two subsidiaries (**Ellume Subsidiaries**):

- (a) Ellume USA LLC, a limited liability company incorporated in the State of Delaware, USA (**Ellume USA**); and
- (b) Ellume NZ Pty Limited (NZBN 9429046688392),

(Ellume and the Ellume Subsidiaries are together the **Ellume Group**).

In the Administrators' Section 75-225 Report, the Administrators stated that, in their opinion, the earliest date on which Ellume was insolvent was from at least May 2022 and remained so until their appointment on 31 August 2022, and that the insolvency of Ellume was due to a recall of Ellume USA's Home Test products in September 2021, a material change in demand for those products in December 2021, and capital market conditions unfavourable to an initial public offering or recapitalisation. Further reasons as to Ellume's insolvency is summarised at sections 2.2, 4.9 and 14 of the Administrators' Section 75-225 Report.

When Ellume entered into voluntary administration, the amount owed to creditors exceeded AUD\$224.33 million to more than 971 creditors, including but not limited to secured creditors, priority employee creditors, and unsecured creditors.

Please refer to the Administrators' Section 75-225 Report Appendix 4 for the Administrators' Estimated Realisable Values as at 31 August 2022, and see items 11 – 13 for an overview of Ellume's creditors.

3 Sale process and formulation of the DOCA

Immediately after their appointment, the Administrators commenced a competitive and comprehensive sale process (**Sale Process**). In September 2022, the Administrators engaged Houlihan Lokey to assist in evaluating interest in, and proposals received in respect of, a potential recapitalisation and/or sale of Ellume for the purpose of the Sale Process. Houlihan Lokey maintained a comprehensive data room for the Sale Process and co-ordinated contacting, and responding to the enquiries and requests of, all interested parties.

The Sale Process occurred over a two month period and in the following four phases:

- (a) **Phase One (7 October 2022 – 17 October 2022)** - In Phase One, the Administrators provided the potential purchasers (which were identified by Houlihan Lokey) with an investment flyer, a non-disclosure agreement and sale process letter and invited expressions of interest for the sale and/or recapitalisation of Ellume;
- (b) **Phase Two (17 October 2022 – 7 November 2022)** - In Phase Two, 18 parties who had entered into non-disclosure agreements with the Administrators were given access to a virtual data room maintained by Houlihan Lokey and containing documents about the business and financial position of Ellume, and Houlihan Lokey conducted management presentations with certain interested parties. The Administrators subsequently received four non-binding indicative offers (**NBIO**) and, based on those offers, formed a shortlist of three preferred parties (**Shortlisted Bidders**);
- (c) **Phase Three (7 November 2022 – 30 November 2022)** - In Phase Three, the Shortlisted Bidders were invited to make best and final offers on 30 November 2022. The Administrators received 2 final NBIOs on that date. Following the Administrators' consideration and assessment of the 2 competing proposals, they selected one bidder on 6 December 2022, being Hough, to proceed to 'Phase Four' of the Sale Process. As part of reviewing each proposal, the Administrators assessed and considered the following:
 - (i) potential return to creditors, including priority employee claims, secured lenders' claims and unsecured creditor claims;
 - (ii) the time to complete each proposed transaction and the operational funding available as part of the offers;
 - (iii) the conditions attached to the offers and the ability to satisfy the conditions;
 - (iv) the ability of each party to complete the proposed transactions; and
 - (v) other commercial considerations relevant for the ongoing viability of the business.

- (d) **Phase Four (6 December 2022)** - In Phase Four, the Administrators and Hough negotiated the terms of and entered into a binding agreement with Hough for the transfer of all of the Ellume Shares through a deed of company arrangement and subsequent Creditors' Trust (subject to various conditions, including an order from the Court under section 444GA of the Act).

An overview of the Sale Process is provided in section 5.2 of the Administrators' Section 75-225 Report.

As set out in the Administrators' Section 75-225 Report, the Administrators recommended that creditors vote in favour of the DOCA proposed by Hough.

4 Key information in relation to the DOCA

4.1 Overview

At the Second Meeting, the creditors of Ellume resolved that Ellume enter into the DOCA and that the Administrators be appointed as joint and several deed administrators (**Deed Administrators**).¹

The DOCA was executed by all parties on 22 December 2022 and it is intended to compromise certain claims of creditors of Ellume that arose on or prior to 31 August 2022.

The DOCA contemplates that the Deed Administrators will transfer all of the Ellume Shares to Hough, free and clear of any encumbrances, on the condition that the orders sought by the Deed Administrators pursuant to the Section 444GA Application are made by the Court.

4.2 Conditions

Completion of the DOCA is conditional upon the satisfaction of certain Conditions, including:

- (a) the Deed Administrators obtaining ASIC Relief;
- (b) the Deed Administrators obtaining a Section 444GA Order;
- (c) transfer of the Ellume Shares to Hough; and
- (d) the Deed Administrators, the Trustees and Ellume executing the Trust Deed.

4.3 Key terms

The key terms of the DOCA include:

- (a) the establishment of the Ellume Creditors' Trust, whereby upon completion of the DOCA, all eligible creditors' claims against Ellume will transfer to the Ellume Creditors' Trust and a dividend will be paid in respect of those eligible creditor claims to satisfy those claims;
- (b) any Shareholder claims which are subordinated to the claims of other unsecured creditors under the Act will be extinguished, and Shareholders are not eligible to receive a dividend from the Creditors' Trust in respect of those claims;

¹ For completeness, we also note that a meeting of eligible employee creditors was held on 20 December 2022 whereby eligible employee creditors of Ellume passed a resolution agreeing to the non-inclusion of a provision in the DOCA proposed by Hough which, absent that resolution, would be required by section 444DA.

- (c) Hough would assume control and continue to trade the business as a going concern; and
- (d) Ellume will cease to comply with, and will not perform, certain of its contracts which were entered into by Ellume before the appointment of the Administrators and completion of the DOCA will therefore treat these contracts as coming to an end.

If the conditions precedent under the DOCA are satisfied and completion occurs under the DOCA, Hough will continue to operate the Ellume business as a going concern.

5 Independent Expert's Report

As noted above, the Section 444GA Application has been commenced by the Deed Administrators in the Federal Court of Australia seeking leave of the Court pursuant to section 444GA(1)(b) of the Act for the transfer of the Ellume Shares to Hough.

Under subsection 444GA(3) of the Act, the Court may only grant leave to transfer the Ellume Shares to Hough if it is satisfied that the transfer would not unfairly prejudice the interests of the Shareholders. The Deed Administrators intend to rely on the Independent Expert's Report when addressing the issue of unfair prejudice before the Court.

The Expert was engaged to provide an independent opinion on whether the Share Transfer would unfairly prejudice the Shareholders. This involved the Expert valuing the Ellume Shares on the liquidation value of the business of Ellume as a whole (see ASIC regulatory guide 111.77). Where there is a residual business that could be sold, the Expert is to consider the value of that business and not just the assets and other undertakings that comprise that business interest. The valuation by the Expert was assessed as at the date of the Report dated 25 January 2023 (**Report Date**).

The Independent Expert's Report will be relied upon by the Deed Administrators for the purpose of the Section 444GA Application and also for the purpose of applying for ASIC Relief. See **Attachment 1** for a full copy of the Independent Expert's Report. Shareholders (and their advisers and any other interested parties) should read the Independent Expert's Report carefully and in its entirety. By way of summary, the key findings of the Expert, as set out in Independent Expert's Report, are as follows:

- (a) There is a material shortfall of assets available to meet the claims against Ellume, with Ellume having a negative equity position of between \$186.5 million and \$229.5 million. Ellume Shares are therefore assessed as having nil value as at the Report Date;² and
- (b) The sale processes undertaken pre- and post-administration have tested the market's appetite for Ellume and its assets and the DOCA is the outcome of that process. It is logical to assume that any further process, for a company without ongoing operations, would be challenging and unlikely to succeed.³

6 Section 444GA Application

6.1 Overview

The Section 444GA Application has been filed in the Federal Court of Australia. A copy of the Originating Process filed by the Deed Administrators is provided as **Attachment 4**

² see Independent Expert's report at sections 2.1, 2.2, 5.1.

³ see Independent Expert's report at section 6.1, with the sales processes considered at sections 3.8.1 and 3.8.2.

of this Explanatory Statement. On 31 January 2023, the Court made the Procedural Orders pursuant to which:

- (a) a timetable was set for the preparation of the matter for final hearing, which includes the dates by which any interested person (including any Shareholder who wishes to oppose the Section 444GA Application) must file with the Court and serve on the Deed Administrators and ASIC a notice of appearance in the prescribed form and indicating the ground of opposition, being no later than 4:00pm AEDT on 17 February 2023; and
- (b) the final hearing date and time was set for 10:15am AEDT on 22 February 2023.

A copy of the Procedural Orders is provided as **Attachment 5** of this Explanatory Statement. If you wish to appear at and/or oppose the Section 444GA Application at the final hearing, you will need to file with the Court and serve on the Deed Administrators and ASIC a notice of appearance in the prescribed Court form and indicate your grounds of opposition. Pursuant to paragraph 4 of the Procedural Orders, any appearance and grounds of opposition must be filed and served by an interested party who wishes to oppose the Section 444GA Application at the final hearing by no later than 4:00pm AEDT on 13 February 2023.

The Deed Administrators will accept service of any appearance at Mills Oakley, Level 6, 530 Collins Street Melbourne, VIC 3000 (Attention: Ariel Borland and Dean Brayley) or aborland@millsoakley.com.au and dbrayley@millsoakley.com.au).

6.2 Important Dates

We draw your attention to the following key dates in relation to the Section 444GA Application

Event	Date
Notice of appearance and grounds of opposition to be served by any Shareholder (or other interested person) seeking to appear at the hearing of the Section 444GA Application	4:00pm AEDT on 13 February 2023
Hearing date for the Section 444GA Application	10:15am AEDT on 22 February 2023
Proposed date for the Share Transfer	10 March 2023

The dates, including the proposed hearing date, may be subject to any further directions made by the Court.

6.3 What will happen if the Section 444GA Order is not made?

As the Section 444GA Order is one of the Conditions (see section 4.2 above) to completion of the DOCA, the DOCA will not be effectuated if the Section 444GA Order is not made. In those circumstances, should the Deed Administrators elect not to appeal, or should any such appeal fail, the Deed Administrators will convene a meeting of the creditors of Ellume to determine the future of Ellume. If this occurs the Deed Administrators will require further funding in order to continue to operate the business of Ellume. In the absence of further funding, or an alternate transaction capable of completing, Ellume will be placed into liquidation.

6.4 Effect of the Section 444GA Order on Shareholders

If the Section 444GA Order is made and the DOCA is fully implemented, all of your shares in Ellume will be transferred by the Deed Administrators to Hough and you will not receive any money or form of consideration.

6.5 Australian income tax consequences

This section of the Explanatory Statement is provided as general information for Shareholders who are Australian resident taxpayers holding their Ellume Shares on capital account, not as trading stock, and who are not subject to the Taxation of Financial Arrangements rules in Division 230 of the *Income Tax Assessment Act 1997* (Cth) for the purposes of calculating any gains or losses arising from financial arrangements. It does not take account of the circumstances of any individual Shareholder. Each Shareholder should seek its own tax advice on the consequences for it of the DOCA being effectuated.

Upon the effectuation of the DOCA, the Share Transfer will trigger a capital gains event (**CGT Event**) for Shareholders and may crystallise a capital loss. Depending upon each individual taxpayer's financial position and tax profile, this capital loss may be available to offset against the taxpayer's capital gains (if any) derived in the same tax year, potentially reducing any net capital gain for the tax year or resulting in a net capital loss which may be available for carry forward and use in offsetting future capital gains.

The Australian resident Shareholders who hold their Ellume Shares on capital account will incur a capital loss to the extent the reduced cost base of the Ellume Shares transferred exceeds the capital proceeds received for the Ellume Shares.

The reduced cost base in the Ellume Shares includes:

- (a) the acquisition cost of the Ellume Shares;
- (b) incidental acquisition costs incurred to acquire and hold the Ellume Shares;
- (c) expenditure incurred to increase or preserve the value of the Ellume Shares; and
- (d) capital expenditure incurred to establish, preserve or defend their title to the Ellume Shares.

Given the transfer will occur by way of Court order, the time of the CGT Event for Shareholders will be when the Share Transfer takes effect in accordance with the DOCA.

7 ASIC Relief

As Ellume is a public company with more than 50 Shareholders, ASIC Relief will be required to enable completion of the Share Transfer.

The Deed Administrators have engaged with ASIC by providing a copy of this Explanatory Statement (in draft) along with additional information relevant to the relief being sought.

8 What do you need to do now?

Shareholders (and their advisers and any other interested parties) should read this Explanatory Statement (including the documents referred to in this Explanatory Statement) in its entirety before making a decision regarding whether or not to take any action in relation to the Section 444GA Application.

Please note that this Explanatory Statement does not constitute financial product advice and has been prepared without reference to the investment objectives, financial situation, taxation position or particular needs of any and every Shareholder. Whether or not to take any action in relation to the DOCA or in respect of the Section 444GA Application is a decision for each individual Shareholder and may depend, amongst other things, on an assessment of the relevant Shareholder's individual financial circumstances.

Accordingly, as the professional, financial, legal and taxation consequences of such a decision may be different for each particular Shareholder, each Shareholder should seek professional financial, legal and taxation advice before making a decision.

9 What information is available to assist you?

To assist you in deciding whether to take any action in relation to the Section 444GA Application, this Explanatory Statement attaches copies of the following documents:

- (a) Independent Expert's Report as **Attachment 1**;
- (b) DOCA and Trust Deed as **Attachment 2**;
- (c) Administrators' Section 75-225 Report to Creditors as **Attachment 3**;
- (d) Originating Process filed by the Deed Administrators in relation to the Section 444GA Application as **Attachment 4**; and
- (e) Procedural Orders as **Attachment 5**.

Should you have any queries regarding this Explanatory Statement, the Independent Expert's Report, the Section 444GA Application or the Procedural Orders, please email Ellume@fticonsulting.com.

Schedule 1 Glossary of terms

In this Explanatory Statement, capitalised terms have the meanings set out in the following table:

Act	<i>Corporations Act 2001</i> (Cth)
ASIC Relief	ASIC granting an exemption pursuant to section 655A(1)(a) of the Act from the application of section 606 of the Act to permit the transfer of all of the Ellume Shares to Hough
Administrators	John Park and Joanne Dunn of FTI Consulting
ASIC	Australian Securities and Investments Commission
Conditions	The conditions set out in clause 5 of the DOCA
Court	Federal Court of Australia
Deed Administrators	John Park and Joanne Dunn of FTI Consulting
DOCA	The deed of company arrangement entered into between Ellume, Hough and the Deed Administrators on 22 December 2022 annexed to this Explanatory Statement as Attachment 2
DOCA Completion	Completion of the DOCA in accordance with its terms
Ellume	Ellume Limited (Subject to Deed of Company Arrangement) ACN 141 767 660
Ellume Creditors' Trust	Has the meaning as defined in the DOCA
Ellume Group	Ellume and the Ellume Subsidiaries
Ellume Shares	All the issued share capital of Ellume
Ellume Subsidiaries	Has the meaning given to the term in section 2
Expert	Jennifer Nettleton of KordaMentha Pty Ltd as trustee for the KM Unit Trust (ABN 36 220 576 038)
Explanatory Statement	This document as described in section 1
Hough	Hough Consolidated Pty Ltd ACN 657 651 280
Independent Expert's Report	The report by the Expert as described in section 5 and as annexed to this Explanatory Statement as Attachment 1
NBIO	Non-binding indicative offer
Sale Process	The competitive and comprehensive sale process of Ellume undertaken by the Administrators from October to December 2022
Second Meeting	The second meeting of creditors of Ellume held on 20 December 2022 in accordance with section 439A of the Corporations Act
Section 75-225 Report	The report prepared by the Administrators in accordance with section 75-225 of the <i>Insolvency Practice Rules (Corporations) 2016</i> dated 12 December 2022 as annexed to this Explanatory Statement as Attachment 3
Section 444GA Application	The application by the Deed Administrators pursuant to section 444GA of the Corporations Act as described in section 6

Section 444GA Order	The orders sought by the Deed Administrators pursuant to the Section 444GA Application
Shareholders	Means the shareholders of Ellume as at the date of the Explanatory Statement
Share Transfer	The transfer of the Ellume Shares to Hough pursuant to the DOCA
Shortlisted Bidders	The parties selected by the Administrators to participate in Phase 2 of the Sale Process
Trustees	John Park and Joanne Dunn of FTI Consulting in their capacity as trustees of the Ellume Creditors' Trust
Trust Deed	The document entitled 'Ellume Creditors' Trust Deed' between Ellume, the Deed Administrators, the Trustees and Hough, substantially in form of that contained in Annexure A to the DOCA

Attachment 1 Independent Expert's Report



Ellume Limited

(Subject to Deed of Company Arrangement)

Independent Expert Report of Jennifer Nettleton

25 January 2023

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Glossary

Abbreviation	Definition
\$	Australian dollars
ABL	Asset backed loan
Act	The Corporations Act 2001 (Cth)
Administrators	John Park and Joanne Dunn of FTI Consulting in their capacity as Administrators or subsequent capacity as Deed Administrators of the Company (as the context requires)
ASIC	Australian Securities and Investments Commission
the Company	Ellume Limited (Subject to Deed of Company Arrangement)
Convertible Notes	The unsecured Convertible Notes issued by the Company from time to time to QIAGEN and high net worth individuals
Court	The Federal Court of Australia
DoCA	The deed of company arrangement for the Company proposed by Hough
EBITDA	Earnings before interest, tax, depreciation, amortisation
Ellume NZ	Ellume NZ Pty Ltd, a company incorporated in New Zealand
Ellume US	Ellume USA LLC, a company incorporated under the laws of Delaware, United States of America
FDA	US Food and Drug Administration
FYXX	Financial year ended 30 June 20XX
Group	The Company and the Subsidiaries
High Case	Assessment of a high or better outcome in a liquidation scenario, compared to the lesser or Low Case
Hough	Hough Consolidated Pty Ltd
IM	Information Memorandum issued by the Administrators and dated 17 October 2022
IPO	Initial Public Offering
Lender Group	Certain Noteholders who provided funding to the Administrators totalling \$5.0 million
Low Case	Assessment of the low or lesser outcome in a liquidation scenario, compared to the better or High Case
Management	Senior employees of the Company
NDA	Non-Disclosure Agreement
Noteholder Pool	Part of the Hough Contribution, being USD 12.5 million available to Participating Noteholders
Noteholders	Holders of the unsecured Convertible Notes issued from time to time
PPSR	Personal Property Securities Register
QIAGEN	QIAGEN GmbH and QIAGEN NV KvK
Regulatory Guide 111	Regulatory Guide 111 Content of Expert Reports published by ASIC in October 2020
Report	This independent expert report
ROCAP	Report of Company Activities and Property pursuant to section 507 of the Act
Subsidiaries	Ellume USA LLC, a company incorporated under the laws of Delaware, United States of America and Ellume NZ Pty Ltd, a company incorporated in New Zealand
Second Report to Creditors	The report of the Administrators pursuant to section 75-225 of the Insolvency Practice Rules (Corporations) 2016 dated 12 December 2022
Trading Security Holders	Creditors who have a security interest over assets of the Company, including creditors with Purchase Money Security Interests (PMSI)

Abbreviation	Definition
US	United States of America
USD	United States dollars
US Government	The Federal Government of the United States of America

USD has been converted to Australian dollars using an exchange rate of \$1 = USD 0.67.

1 Overview

1.1 Background

On 31 August 2022, John Park and Joanne Dunn were appointed Administrators of the Company pursuant to section 436A(1) of the Act.

On 13 September 2022, the Federal Court made orders extending the period in which the Administrators were required to convene the second meeting of the Company's creditors until 16 December 2022.

Following a sale and recapitalisation process, the Administrators received several offers to acquire the Company's business. Ultimately, the Administrators accepted a deed of company arrangement proposal from Hough. The terms of the DoCA facilitate a sale of the Company to Hough in return for a contribution to establish a Creditors' Trust, which will provide a return to creditors of the Company.

The Administrators issued their Second Report to Creditors on 12 December 2022 and the second meeting of creditors was held on 20 December 2022. At this meeting, creditors resolved that the Company execute the DoCA. The DoCA was executed on 22 December 2022 and the Administrators became the Deed Administrators.

1.1.1 Terms of the DoCA

The DoCA provides that Hough will contribute USD 38.0 million towards a Creditors' Trust which is to be established for the benefit of creditors of the Company, with funds to be distributed in accordance with the terms of the DoCA.

Hough will acquire the Company by way of a transfer of shares from existing shareholders, which will occur subject to the Administrators obtaining an order from the Court pursuant to section 444GA(1)(b) of the Act. The DoCA requires the Administrators to make an application to Court to allow the share transfer to occur as soon as practicable.

Section 444GA of the Act provides as follows:

- (1) *The administrator of a deed of company arrangement may transfer shares in the company if the administrator has obtained:*
 - a. *the written consent of the owner of the shares; or*
 - b. *the leave of the Court.*
- (2) *A person is not entitled to oppose an application for leave under subsection (1) unless the person is:*
 - a. *a member of the company; or*
 - b. *a creditor of the company; or*
 - c. *any other interested person; or*
 - d. *ASIC.*
- (3) *The Court may only give leave under subsection (1) if it is satisfied that the transfer would not unfairly prejudice the interests of members of the company."*

The transfer of the shares in the Company also requires ASIC to grant relief from the takeover provisions contained in section 606 of the Act. ASIC has set out in "Regulatory Guide 6 Takeovers: Exceptions to the general prohibition" that it will generally grant relief where:

1. explanatory materials have been provided to shareholders at least 14 days before the s444GA hearing including an independent expert report ('IER') prepared consistent with the guidance contained in Regulatory Guide 111
2. the IER is prepared by an expert other than the administrator or a member from the same firm as the administrator
3. the IER concludes that there is no residual equity value in the company for shareholders
4. the court grants leave under s444GA.

1.2 Scope of this report

I have been instructed by Mills Oakley, on behalf of the Administrators, to prepare an independent expert report for:

- a prospective application by the Administrators pursuant to section 444GA of the Act to implement the proposed DoCA in respect of the Company
- ASIC granting relief from section 606 of the Act, and
- inclusion in the explanatory statement to be made available to shareholders of the Company as part of the proposed sale and recapitalisation.

1.3 Requirements of Regulatory Guide 111

In accordance with ASIC Regulatory Guide 111, I am required to provide an independent opinion *“of the value, if any, of shareholders’ residual equity.”*¹ The residual value to shareholders is to be derived by *“assessing the value of the company’s assets and/ or business operations, less borrowings, other liabilities and creditor claims.”*² In accordance with ASIC’s guidance, experts should generally value *“shareholders’ residual equity in a company under administration on a ‘winding up’ or ‘liquidation’ basis where that is the likely or necessary consequence of the transfer of shares not being approved.”*³

1.4 Limitations, restrictions and reliance

This Report has been prepared, and may be relied on, solely for the purpose contemplated in section 1.2 of this Report. This Report, or any part of it, may only be published or distributed:

- as an annexure to the explanatory statement to be provided to the Company’s shareholders and others (including ASIC as part of the evidence in support of the application under section 444GA of the Act)
- for use in the proceedings before the Court relating to the application under section 444GA of the Act
- in accordance with any law or by order of a court of competent jurisdiction.

My express written consent, and the express written consent of KordaMentha, must be obtained prior to relying upon, publishing, or distributing this Report, or part of it, for any purpose other than that detailed above. Neither I nor KordaMentha accept responsibility to anyone if this Report is used for any other purpose.

My opinion is based on economic, market and other external conditions prevailing at the date of this Report. Such conditions can change over relatively short periods of time and these changes can be material.

The information used in this Report has been evaluated through analysis, enquiry and review for the purposes of forming an opinion as to the value of the assets and liabilities of the Company. While I do not warrant that my enquiries have identified all of the matters that an audit, or due diligence and/or tax investigation might disclose, I consider that the information is reasonable for the scope of my work set out in section 1.2 and that there are reasonable grounds for determining the residual value of the equity in the Company as set out in section 5.

The statements and opinions given in this Report are given in good faith and in the belief that such statements and opinions are not false or misleading.

This Report should be read in the context of the full qualifications, limitations and consents set out in this Report.

1.5 Curriculum vitae

I am a Partner with KordaMentha, a registered liquidator and have over 25 years’ experience across all aspects of corporate turnaround and restructuring. I am a Chartered Accountant and member of the Australian Restructuring Insolvency and Turnaround Association.

My curriculum vitae is attached at Appendix A.

¹ ASIC Regulatory Guide 111 at RG 111.70

² ASIC Regulatory Guide 111 at RG 111.71

³ ASIC Regulatory Guide 111 at RG 111.73

1.6 Assistance by colleagues

I have selected colleagues to assist me to arrive at my opinions in this matter. My colleagues carried out the work that I decided they should perform. I have reviewed their work and original documents to the extent considered necessary to form my opinions. The opinions expressed in this Report are my own.

1.7 Information

In the preparation of this Report, I have utilised information in respect of the Company from a variety of sources, including Company's books and records made available by the Administrators, information prepared by the Administrators as well as public sources. Documents utilised to support my opinions in this Report are noted in text or by way of footnote.

I have not conducted an audit of any information supplied to me. My colleagues and I have reviewed and made sufficient enquiries of the information made available to us and based on that review, believe that the information is reasonable for the scope of my work set out in section 1.2 and that there are reasonable grounds for the values set out in the Report.

A glossary of terms is set out at the beginning of this Report.

1.8 Statement regarding expert witness code

In accordance with the *Expert Evidence Practice Note* (GPN-EXPT) ('Practice Note') and the *Harmonised Expert Witness Code of Conduct* ('Code') of the Federal Court of Australia, I state that:

1. I have read, understood, complied with and agree to be bound by the Practice Note and the Code
2. To the best of my knowledge, each of the opinions which I express in this report is wholly or substantially based upon my specialised knowledge arising from my training, study or experience
3. I have made all the inquiries which I believe are desirable and appropriate. No matters of significance that I regard as relevant to my opinion have, to my knowledge, been withheld from the Court.

As an expert witness, I have the following general duties to the Court:

1. I have a paramount duty to the Court which overrides any duty to any party to the proceedings including my client
2. I have an overriding duty to assist the Court on matters relevant to my area of expertise
3. I have a duty not to be an advocate to any party to the proceedings including my client, even when giving testimony that is necessarily evaluative rather than inferential, and
4. I have a duty to make it clear to the Court when a particular question or issue falls outside my area of expertise.

1.9 Independence of expert and compliance with professional standards

I have read ASIC Regulatory Guide 112 on independence for experts and am of the opinion that:

- there is no actual, or perceived, conflict of interest
- there is no actual, or perceived, threat to independence
- there is no other reason for which the engagement could not be accepted.

I have complied with the requirements of APES 225 – Valuation Services, the professional code of practice of CPA Australia and the Institute of Chartered Accountants Australia and New Zealand.

Convertible notes held by entity associated with KordaMentha personnel

Before accepting this engagement, I became aware that an entity associated with a senior consultant to KordaMentha held convertible notes in the Company. The holding by this entity is not material in terms of the total due to convertible note holders, and I formed the opinion that the interest was not one which would impact my independence and would not preclude me from accepting the engagement.

1.10 Cost of this Report

KordaMentha will be remunerated on an hourly rates basis for the time spent preparing this Report. The fees payable to KordaMentha are not contingent on the conclusions of this Report, the outcome of the DoCA, or obtaining approval from ASIC or the Court.

2 Summary of findings

2.1 Residual equity value

The table below sets out my findings in relation to the value of the Company's assets, claims against those assets and the resulting negative equity position of between \$186.5 million and \$229.5 million.

Company assets	Section reference	Low Case (\$'000)	High Case (\$'000)
Business of the Company (goodwill)	6.1	-	-
Cash at bank	6.2	1,575	1,575
Accounts receivable	6.2	11	16
Prepayments	6.3	821	1,641
Other receivables	6.4	-	-
Related party receivable	6.5	-	-
Inventory	6.6	808	2,827
Plant and equipment	6.7	1,344	1,919
Shareholding in Ellume US	6.8	-	-
Shareholding in Ellume NZ	6.9	-	-
Intellectual property	6.10	-	-
Claims available to a liquidator	6.11	-	456
Total asset value		4,559	8,434
Claims against the assets			
Administration and liquidation costs and expenses	7.1	12,870	12,466
Administrators' fees for DOCA period	7.2	850	800
Priority employee claims	7.2	3,098	2,998
Secured creditor claims	7.4	634	284
Unsecured creditor claims	7.5	170,622	170,972
Intercompany claims	7.6	34,863	-
Lease liability	7.7	1,831	1,221
Lease liability - guarantee provided for Ellume US	7.7	9,333	6,222
Total claims against the assets of the Company		234,101	194,963
Surplus/(shortfall) of assets available to meet claims		(229,542)	(186,529)
Net equity value		-	-

My analysis of the Company's assets and liabilities is included in sections 6 and 7 of this Report.

2.2 Opinion on the value of the shares in the Company

Based on my assessment that there is a material shortfall of assets available to meet the claims against the Company, it is my opinion that the shares in the Company have nil value as at the date of this Report.

3 Industry and Company overview

3.1 Company overview

The Company was incorporated in February 2010 by Dr Sean Parsons. The Company was established following the 2009 swine flu pandemic to develop rapid testing products. Until 2018, the Company was purely involved in the research and development of nanoparticle technology to be used in rapid diagnostic testing.

The Company's aims are to develop, manufacture and commercialise products available through three segments:

- Consumer products: consists of over-the-counter home test kits
- Professional point of care products: digital diagnostic platform for primary care practitioners, doctors, nurses and pharmacists
- Professional high throughput testing products: large scale testing at the point of care and outside of a central laboratory.

In February 2019, Ellume US was incorporated in the state of Delaware. Ellume US is a wholly owned subsidiary of the Company and operates solely in the US. The Company also holds 100% of the shares in Ellume NZ, a dormant company incorporated in New Zealand.

In response to the outbreak of COVID-19 in early 2020, the Company pivoted to the development and manufacturing of digitally enabled diagnostic products with a focus on COVID-19 related products. On 15 December 2020, the Company received emergency approval from the US Food and Drug Administration for its COVID-19 home test. The commercialisation of the COVID-19 home test was supported by grants from the US Government totalling \$346.0 million.

To date, the Company has developed its nanoparticle technology to develop rapid tests for tuberculosis and COVID-19. The Company has a number of other products under development or undergoing clinical trials as part of regulatory approval processes which would, in due course (assuming success), form part of a suite of rapid testing products that would utilise the Company's existing technologies.

3.2 US Government funding

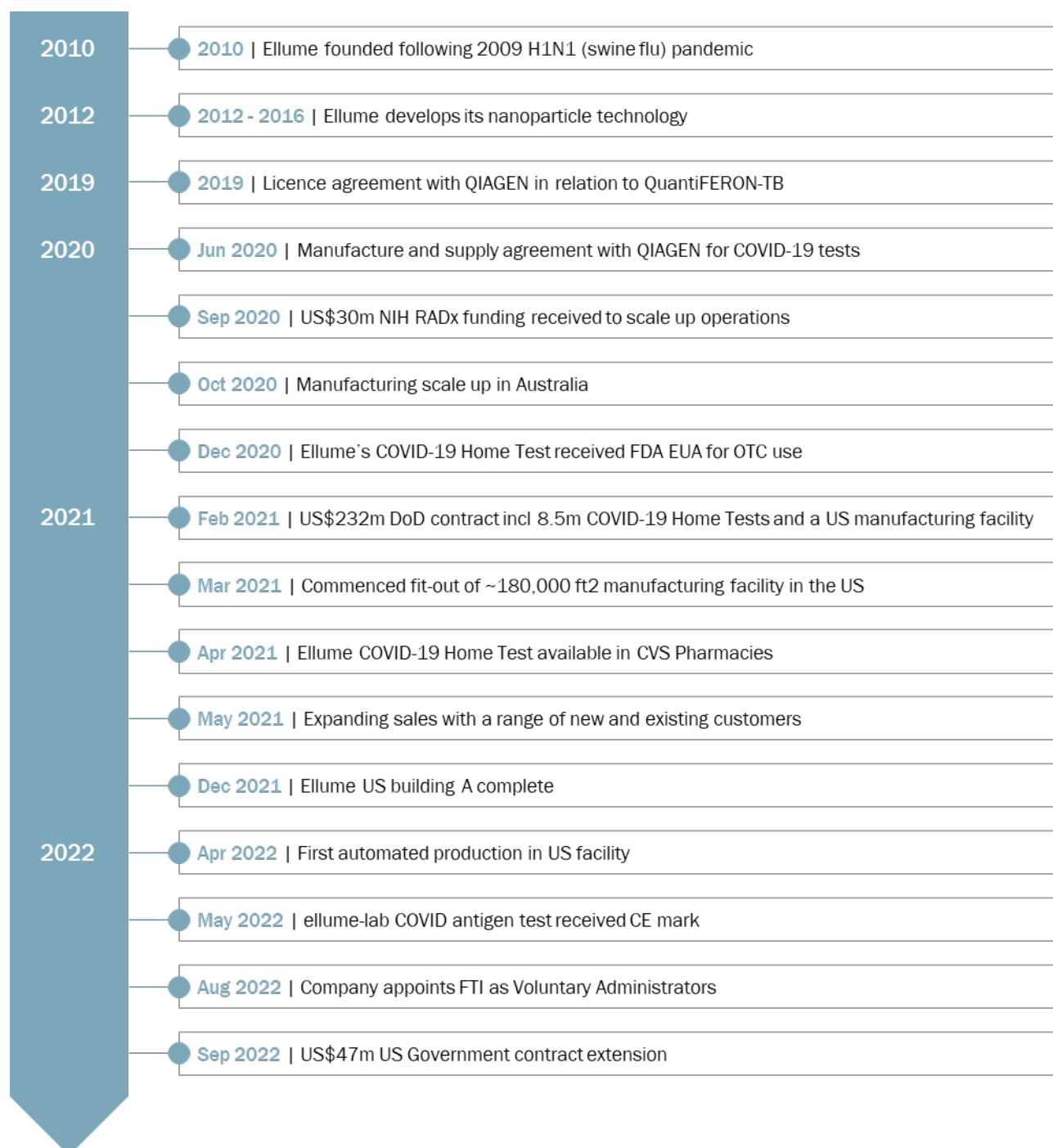
The US Government provided support to the Group to obtain emergency FDA approval as well as develop a manufacturing capability in the US. The funding from the US Government was as follows:

- \$41.0 million from the National Institute of Health for regulatory authorisation of the Company's COVID-19 home test kits and expansion of the Australian manufacturing facility
- \$118.0 million for the establishment of a US manufacturing facility
- \$187.0 million for 8.5 million COVID-19 tests.⁴

In May 2022 and September 2022, the US Government increased its support by a further USD 47.0 million to fund increased capital costs of the US manufacturing facility, by amending the terms of the supply agreement for the then remaining 3.1 million COVID-19 home tests. As at December 2022, the Group had supplied 7.0 million tests of the initial 8.5 million order to the US Government, and the remaining 1.5 million tests are forecast to be delivered by June 2023.

⁴ FY21 Annual Report at page 3

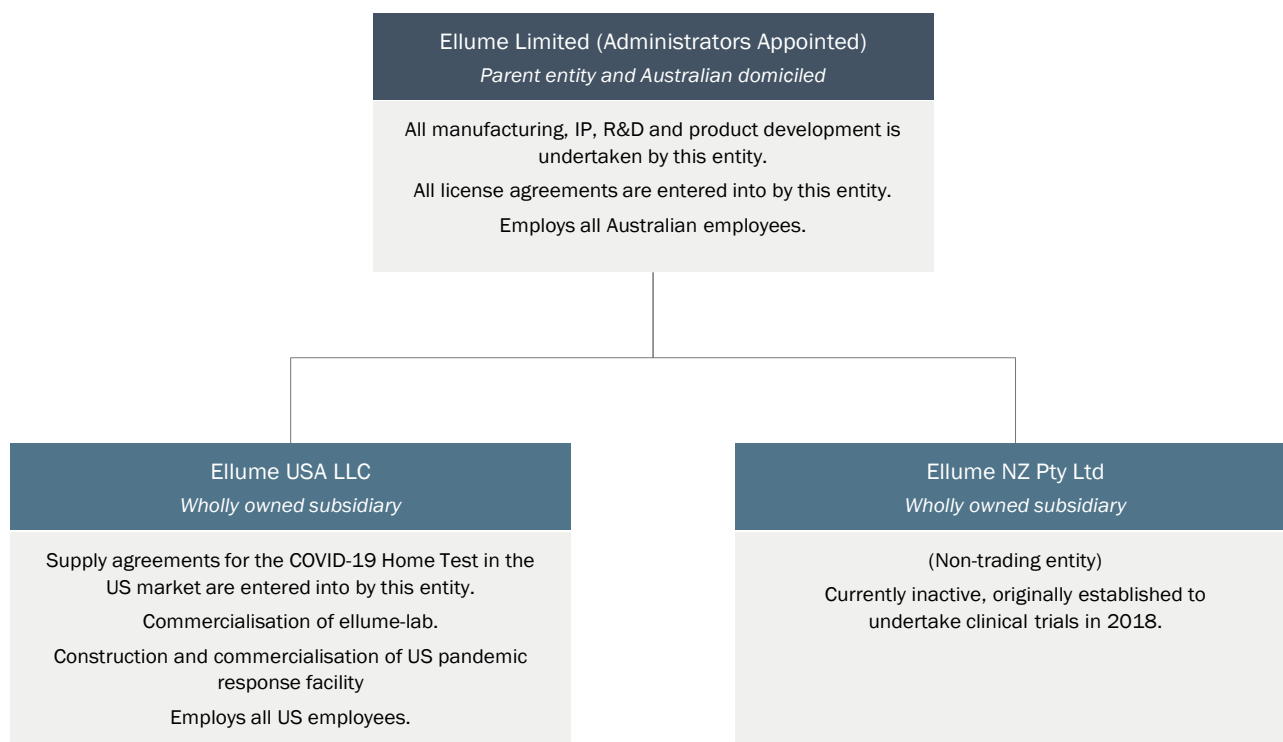
3.3 Corporate timeline⁵



⁵ IM at page 9

3.4 Corporate structure⁶

The Company has two wholly owned subsidiaries, Ellume US and Ellume NZ. The Administrators have advised that Ellume NZ has never traded, has no assets or liabilities and has no financial accounts.



3.4.1 Operations

The Company has operating facilities in Brisbane, Australia and Maryland, United States of America:

- **Brisbane:** three leasehold facilities, including a purpose-built manufacturing facility totalling 5,110 square metres.
- **US:** In 2021, the Company commenced construction of the fit out of its two leasehold premises in Maryland, supported by grant funding from the US Government. The US facility comprises two buildings totalling approximately 18,000 square metres. The smaller of the two buildings, Building A, was commissioned in December 2021 while the fit out of Building B remains under construction. Building B is unlikely to be required in the near term; however, the cost to operationalise Building B is estimated at between \$10.2 and \$16.0 million.⁷

While initially a highly manual operation, the Company has invested in automation technology to increase throughput capacity and reduce the unit cost of production. The automation of the Australian manufacturing in the first quarter of 2022 reduced staffing from its peak of approximately 1,000 to 793.⁸

The Group has continued to operate throughout the Administration period, with the US Government order being met from the Group's manufacturing facilities in Brisbane and the US (Building A).

⁶ Company searches and IM at page 22

⁷ IM at page 27

⁸ IM page 39

3.4.2 Product recall

In October 2021 the FDA issued a product recall of the Group's COVID-19 home test kits due to a high number of false positive results which had been experienced from late FY21, resulting in recall costs of \$43.0 million.⁹ The false positive tests were traced to an issue in the supply chain. The false positive tests sold to consumers have given rise to a number of claims for loss and damage. A class action against Ellume US was filed in March 2022 in the US District Court; however, I understand that the Court has not yet granted the claimants approval to proceed.¹⁰

3.5 Relationship with QIAGEN

QIAQEN is a Dutch company which specialises in molecular testing. QIAGEN is a supplier, customer, and funder to the Company.

In November 2018 the Company entered into licence agreements with QIAGEN in connection with tests for influenza and tuberculosis, with the Company licensing its technology to help develop the next generation of QIAGEN's QuantiFERON-TB test. QIAGEN provides certain technology assets under the licence agreements, while the Company has exclusive agreements for the supply of test cartridges for QuantiFERON-TB, which provides both a small manufacturing margin and ongoing revenue from the sale of tests by QIAGEN.

The Company also entered into a convertible note subscription deed in November 2018 whereby QIAGEN subscribed for 15 million notes at a value of USD 1.00, raising USD 15.0 million to fund commercialisation of its products and ongoing operations. QIAGEN subscribed for further convertible notes worth USD 10.0 million in August 2020. In December 2021, QIAGEN converted its USD 15.0 million Convertible Notes into a fully paid licence for the future sales of QAI Reach QuantiFERON-TB.¹¹

3.6 Industry

In 2021, the global in vitro diagnostic (IVD) market was valued at USD 55.3 billion¹². The rising incidence of chronic and infectious disease is anticipated to further increase the adoption of IVD testing techniques. The outbreak of COVID-19 saw demand for IVD products increase exponentially, including for self-administered tests. Favourable regulatory frameworks for IVD manufacturers contributed to market growth, with a significant expansion of point-of-care (in-home) tests that enabled prompt diagnoses in an easy-to-use format. The Company was able to develop, obtain approval and manufacture its COVID-19 at home test to capture a share of the US market, as demand was rising both from consumers and the US Government looking to secure test supply.

In early 2022, the global approach to the management of the COVID-19 pandemic changed. The rush by governments to secure tests abated and the market was flooded with cheap analogue tests (as compared to the Company's digital test products). Although the US Government does not maintain data on at-home testing, the number of laboratory processed tests declined from 2.5 million per day in mid-January 2022 to around 670,000 per day by March 2022. Whilst the US Government made 500 million free at-home COVID-19 tests available, only 300 million had been ordered at March 2022¹³.

Since the end of lockdowns, testing and other mandates, there has been a considerable decline in the demand for COVID-19 diagnostic devices. This is evident in the fall in the Group's revenue in Q4 FY22 and Q1 FY23 as detailed in section 3.9.2. Although the Group was developing other tests compatible with its existing technology to drive sales as the demand for COVID-19 tests declined, these new testing products are yet to be commercialised or approved for therapeutic use.

3.7 Events leading up to administration

Despite considerable revenue growth following US approval of its COVID-19 home test in December 2020, the Group incurred losses in FY21 and FY22 totalling \$121.8 million. These losses, combined with a material build in inventory levels and the costs of developing its facilities in the US, resulted in the Group being cash constrained.

⁹ Shareholder Update dated 10 March 2022

¹⁰ <https://www.sauderscheikopf.com/wp-content/uploads/2021/10/2022-03-22-001-Class-Action-Complaint-Kerschen-v-Ellume-03928657xA0413.pdf>

¹¹ Investor Updated dated 2 August 2022 at page 12

¹² US in vitro Diagnostic Market Size, Share Report, 2030. (<https://www.grandviewresearch.com/industry-analysis/us-in-vitro-diagnostics-market#:~:text=The%20U.S.%20in%20vitro%20diagnostics%20market%20is%20expected%20to%20grow,USD%2036.56%20billion%20by%202030.>)

¹³ Demand for Covid-19 testing is falling, but experts caution it's as important as ever (CNN). (<https://edition.cnn.com/2022/03/01/health/covid-testing-demand-decline/index.html>)

The Company's board engaged Deloitte as safe harbour advisers in December 2021 following unsuccessful recapitalisation attempts (discussed below).

The decision by the US Government to issue free tests saw US retail sales for home tests collapse from March 2022, and the Group's expected pipeline of orders and revenue largely evaporated.

Joanne Mass and Caroline Popper resigned as directors in August 2022, and on 31 August 2022, the Administrators were appointed.

3.8 Sale and recapitalisation processes

3.8.1 Pre-administration processes

The Company's minutes of its board meetings record that, in the 18 months prior to the appointment of the Administrators, the Company had attempted to solve its liquidity challenges through a number of processes, including:

- Undertaking a campaign to sell the business
- An initial public offering
- Raising debt from existing and new Noteholders
- Attempting to raise debt capital via an Asset Backed Loan facility (ABL).

In early to mid-2021, the Company's board minutes record that the Board considered the Company's longer term funding requirements and capital structure. In May 2021, the Company appointed Houlihan Lokey, an investment bank, to undertake a trade sale process. The process did not result in a transaction, with minutes from September 2021 noting that parties in the process had referenced the uncertainty of the future of home testing and the challenges of scale up. Notwithstanding this, it is evident discussions with some parties continued into early-mid 2022.

The board minutes record that the Company's Board was also considering an IPO, with Houlihan Lokey appointed as advisors, and Ord Minnett and Morgans Financial appointed as joint lead managers in October 2021. The Company's aim was to undertake this process in early-mid 2022, with significant effort being expended on preparatory vendor due diligence. However, in March 2022 the board determined that delays in securing US Government confirmation of a second order necessitated the process being deferred. At a board meeting in March 2022, the Company's advisors noted market volatility had increased and market comparators were trading down, resulting in an IPO for the Company becoming more difficult. Minutes from a June 2022 meeting referred to a dual track process (trade sale and IPO) being pursued; however, the IPO was further delayed until after the reporting season, due to the timing of finalisation of the audit.

From mid to late 2021, the minutes record that the Company was seeking to raise additional debt through the issue to new convertible notes to new and existing noteholders. A cornerstone investor was identified; however, this party withdrew. In December 2021, the Company closed a further convertible note issue, with \$49.7 million being raised against an target of \$80.0 million. The Company's advisors noted deal fatigue and the product recall as significant impediments to the success of the capital raising process.

From late 2021 through to August 2022, the Company was also in discussions with financiers for the provision of an ABL facility, secured against the assets of Ellume US. However, the minutes record that the terms of the facility required the approval of noteholders, which was not obtained.

Minutes from an August 2022 meeting noted that approaches to major shareholders had indicated there was no appetite for further investment.

3.8.2 Process undertaken by the Voluntary Administrators

After funding for the Administration period was secured from the Lender Group, and Ellume US obtained certainty around the continuation of the US Government contract, the Administrators engaged Houlihan Lokey as sale adviser to undertake a sale of business and/or recapitalisation. The key events in the Administrators' process are as follows:

- Teaser and NDA was issued to 145 parties
- 18 parties executed the NDA, receiving the information memorandum on 17 October 2022
- Four non-binding indicative offers were received and presented to the Administrators by 7 November 2022
- Three non-binding indicative offers were shortlisted, and further engagement occurred in preparation of the final binding offer due date (extended to 30 November 2022)
- One party submitted a final binding offer, with the remaining two parties jointly submitting a non-binding and non-conforming offer, which in the circumstances could not be considered further by the Administrators.

Having considered the two offers, the Administrators confirmed Hough as the preferred bidder on 6 December 2022 and entered into binding transaction documents, subject to creditor and other approvals. Details of the Hough DoCA are included in section 4.

3.9 Financial performance and position

3.9.1 Group consolidated profit and loss

The annual consolidated profit and loss statements for the Group for FY18 to FY22 are summarised in the table below. The results for FY18 to FY21 are based on audited annual accounts. The FY22 financial results are based on unaudited draft financial statements provided by the Administrators.

Annual Group consolidated statement of profit and loss

(\$'000)	FY18	FY19	FY20	FY21	FY22
Product sales	-	-	169	25,608	232,333
Product recall refund provision	-	-	-	(3,844)	(18,899)
Clinical trials and development services	-	7,192	4,956	121	(45)
Licence income	5,359	25	45	36	18,476
Grant income (Note 1)	2,149	2,115	9,905	8,592	20,163
Other revenue	33	394	586	4,042	108
Total revenue	7,541	9,726	15,660	34,554	252,136
Raw materials consumed	-	-	(2,492)	(25,417)	(134,826)
Inventory recall expense	-	-	-	(14,675)	-
Research and development expenses	(2,155)	(9,206)	-	-	-
Employee benefits expense	(3,239)	(6,086)	(13,743)	(17,605)	(25,292)
Depreciation expense	(257)	(451)	(1,333)	(4,682)	(6,700)
Professional fees	(450)	(1,845)	-	-	-
Travel expenses	(165)	(296)	-	-	-
Other expenses	(228)	(1,077)	(10,290)	(32,900)	(101,883)
Net change in fair value of financial liabilities	-	(25)	(760)	(695)	1,107
Foreign exchange gain/(loss)	-	-	-	-	(7,404)
Gain/(loss) on extinguishment of debt	(1,493)	-	-	-	4,052
Finance expenses	(624)	(903)	(1,914)	(3,695)	(14,645)
Profit/(loss) before income tax	(1,070)	(10,163)	(14,872)	(65,115)	(33,454)
Tax expense	(671)	-	(2,176)	(22,725)	(504)
Profit/(loss) after tax	(1,741)	(10,163)	(17,048)	(87,840)	(33,959)

Note 1: The substantial grants provided by the US Government are not brought to account as revenue when received. Rather, funds received are capitalised as a liability and amortised (brought to account as revenue) over the time period to which the grant relates.

Commentary on the financial performance of the Group

Consolidated revenue increased materially in the five years to FY22:

- In FY20, grant income of \$9.9 million was the largest component of total income of \$15.7 million. In this period, the Group also derived income from its agreement with QIAGEN as well as clinical trials.
- Total income was \$252.1 million in FY22, following the awarding of contracts by the US Government and increasing retail sales of the Group's COVID-19 home test kits. In FY22, sales comprised 2.8 million retail units sold through pharmacies and online in the US and 4.9 million units sold to the US Government.

Whilst revenue increased 16-fold between FY19 and FY22, the Group remained unprofitable due to high production costs, inventory obsolescence and the costs associated with the recall of defective tests in FY21 and FY22. 'Other costs' also increased considerably in FY22, which included the following:

- Subcontracting costs of \$26.3 million
- Storage and shipping costs of \$23.4 million
- Consulting and professional fees of \$19.1 million
- Royalties and commissions of \$16.6 million
- Various other expenses totalling approximately \$16.5 million.

Cumulative losses after tax for the five years to 30 June 2022 totalled \$150.8 million, of which \$121.8 million related to FY21 and FY22.

Normalised FY22 results

The Group estimates it would have been profitable in FY22 but for extraordinary costs associated with the product recall and inventory write downs. Adjustments to the FY22 profit and loss were presented in the IM¹⁴, detailing extraordinary costs of \$97.9 million and underlying EBITDA of \$80.5 million. This analysis is included at Appendix B. I note the normalised results do not reconcile to the draft FY22 financial report and are indicative only.

While it may be the case that had the product recall not occurred, the Company would have been profitable, the normalised earnings did not continue into FY23. Revenue in the first quarter of FY23 declined considerably.

3.9.2 Recent financial performance

Quarterly Group consolidated profit and loss statements through to 30 September 2022 (based on the Group's management accounts) are summarised in the table below.

Quarterly Group consolidated profit and loss statement

(\$'000)	Q1 FY22	Q2 FY22	Q3 FY22	Q4 FY22	FY22	Q1 FY23
Net sales	54,227	18,069	91,871	49,941	214,107	15,545
Gross profit	29,340	(15,217)	57,920	(31,299)	40,744	5,358
Gross profit %	54.1%	(84.2%)	63.0%	(62.7%)	19.0%	34.5%
Total operating expenses	(26,474)	(28,332)	(20,614)	(23,658)	(99,078)	(15,217)
EBITDA	2,866	(43,548)	37,305	(54,957)	(58,335)	(9,858)
EBIT	2,340	(44,101)	36,753	(56,569)	(61,577)	(12,809)
Net profit/(loss) after tax, before foreign currency translation	2,636	(22,085)	32,211	(45,834)	(33,072)	(10,193)
Less: foreign currency translation	(1,075)	244	(1,490)	3,208	887	
Net profit/loss after foreign currency translation	3,712	(22,329)	33,701	(49,042)	(33,959)	Note 1

¹⁴ IM page 24

Note 1: We have not been able to reconcile the Q1 FY23 consolidated profit and loss to the movement in retained earnings in the balance sheet, or to the entity profit and loss statements in Appendix C. This has not impacted my analysis.

Commentary on the recent financial performance of the Group

Sales declined in the fourth quarter of FY22, with a material decline in May 2022 following the release of 500 million free tests by the US Government around March 2022. Consumers were entitled to free tests through their health insurers or through reimbursement from the US Government. The reimbursement was capped at USD 12.00 per test, which is below the retail price of the Group's tests of approximately USD 25.00¹⁵, which negatively impacted revenue. Revenue in the first quarter of FY23 is almost exclusively comprised of sales to the US Government for part of the remaining 3.1 million contracted tests. The supply agreement with the US Government has not been extended beyond June 2023 and there is no certainty that a further order will be placed. The remaining tests in the order are currently being manufactured through the Administration period trading, and the order will be completed by June 2023.

The gross profit percentage recorded in the Company's management accounts varies materially month to month and quarter to quarter, with some months recording a large negative gross margin percentage and other months recording a large positive gross margin percentage. These gross margin changes do not align to revenue levels. The movements in gross profit percentage between quarters is reflective of a cost accounting system which does not properly reflect underlying gross profit. From discussions with the Company's staff, I understand changes are being made to improve the cost accounting process.

Consideration of performance on an entity basis

The performance of the Company and Ellume US on an entity basis (based on the Group's management accounts) for FY22 and Q1 FY23 is summarised in the table below, and profit and loss statements for the Company and Ellume US for the same period are included at Appendix C.

(\$'000)	Q1 FY22	Q2 FY22	Q3 FY22	Q4 FY22	FY22
Sales - Ellume Limited	25,180	22,666	28,049	14,294	90,189
Sales - Ellume US	54,730	17,240	93,793	46,662	212,426
Less: intercompany sales	(25,684)	(21,837)	(29,972)	(11,015)	(88,508)
Net consolidated Group sales	54,227	18,069	91,871	49,941	214,107
COGS - Ellume Limited	(18,720)	(26,852)	(33,136)	(55,792)	(134,499)
COGS - Ellume US	(31,851)	(28,270)	(30,787)	(36,464)	(127,372)
Add: intercompany COGS	25,684	21,837	29,972	11,015	88,508
Net consolidated Group COGS	(24,887)	(33,286)	(33,951)	(81,240)	(173,364)
Gross profit - Ellume Limited	6,461	(4,186)	(5,086)	(41,498)	(44,310)
Gross profit - Ellume US	22,879	(11,030)	63,006	10,199	85,054
Group gross profit	29,340	(15,217)	57,920	(31,299)	40,744
EBITDA - Ellume Limited	(16,422)	(26,127)	(21,206)	(63,342)	(127,097)
EBITDA - Ellume USA	19,288	(17,421)	58,512	8,384	68,763
Group EBITDA	2,866	(43,548)	37,305	(54,957)	(58,335)
Net profit after tax - Ellume Limited	(18,721)	(3,428)	(24,491)	(67,455)	(114,096)
Net profit after tax - Ellume US	22,433	(18,901)	58,192	18,413	80,137
Group net profit/(loss) after tax	3,712	(22,329)	33,701	(49,042)	(33,959)

In FY22, the Company reported a net loss of \$114.1 million, and Ellume US recorded a net profit of \$80.1 million (before intercompany eliminations). In my opinion, the performance of Ellume US cannot be separated from the performance of the Company; that is, the consolidated performance of the Group most appropriately reflects the profitability of the business. The reasons for this are as follows (as also discussed in other sections of this Report):

- The intellectual property, management and corporate knowledge required to operate the Group's business is provided by the Company. The results of Ellume US do not include the value or costs of these services. There are no intercompany

¹⁵ Online prices on www.walmart.com and www.target.com as at 13 January 2023

recharges for shared costs incurred by the Company, and no royalty is charged for the use of the Company's intellectual property.

- The revenue recorded for Ellume US includes the sale of COVID-19 home test kits, components for which were, up until recently, manufactured by the Company. These components were transferred between the Company and Ellume US at standard cost. The Company records no profit on internal sales, reducing its profit while inflating the earnings of Ellume US.

For the reasons set out above, it is my opinion that the financial results of Ellume US are not reflective of how that entity would perform separate to its parent and should not be considered as such. Based on the information available to me, it is not possible to determine the relative financial performance of each entity.

3.9.3 Group consolidated balance sheet

The Group consolidated balance sheets from June 2018 to June 2022 are summarised in the table below. The balances for June 2018 to June 2021 are based on audited annual accounts, while the June 2022 balance sheet is based on unaudited draft financial statements provided by the Administrators.

Group consolidated balance sheet

(\$'000)	Jun-18	Jun-19	Jun-20	June-21	Jun-22
<i>Current assets</i>					
Cash and cash equivalents	70	21,048	9,874	16,614	27,650
Trade receivables	7,462	2,474	6,716	16,034	548
Inventories	-	-	659	65,818	72,781
Lease receivable	-	-	-	4,406	-
Other assets	71	1,070	1,643	17,735	23,937
Total current assets	7,602	24,591	18,892	120,607	124,915
<i>Non-current assets</i>					
Contract assets	-	-	-	-	18,980
Other assets	-	-	-	82,755	8,398
Property, plant and equipment	571	2,404	6,161	59,426	251,578
Total non-current assets	571	2,404	6,161	142,181	278,956
Total assets	8,174	26,995	25,053	262,789	403,871
<i>Current liabilities</i>					
Trade payables	790	1,241	4,179	151,862	97,388
Current tax payable	671	-	732	22,990	25,090
Interest bearing liabilities	-	-	-	42,627	107,630
Other financial liabilities at fair value	-	-	-	5,362	-
Provisions	159	250	452	12,664	15,865
Lease liabilities	-	-	276	-	1,230
Contract liabilities	-	730	-	-	-
Current unearned income	-	-	-	-	28,446
Total current liabilities	1,620	2,221	5,639	235,505	275,648
<i>Non-current liabilities</i>					
Interest bearing liabilities	-	21,915	24,038	-	-
Other financial liabilities at fair value	-	501	1,260	-	-
Unearned income	-	-	-	86,411	173,944
Provisions	64	160	274	1,191	1,388
Lease liabilities (Note 1)	-	-	3,058	33,680	34,464
Total non-current liabilities	64	22,575	28,631	121,282	209,796

Total liabilities	1,683	24,796	34,269	356,787	485,444
Net assets	6,490	2,199	(9,216)	(93,998)	(81,573)
<i>Equity</i>					
Share capital	21,722	25,467	25,467	25,467	69,540
Share based payment reserve	-	2,127	7,914	10,940	12,364
Translation reserve	-	-	-	33	919
Accumulated losses	(15,231)	(25,395)	(42,597)	(130,437)	(164,396)
Total equity	6,490	2,199	(9,216)	(93,998)	(81,573)

Note 1: The FY19 financial statements were restated in FY20 due to changes in accounting standards. As a result, the movement in accumulated losses between FY19 and FY20 exceeds net profit in FY20 by \$155,061.

Comments on Group consolidated balance sheet

The Group's consolidated net asset position deteriorated from \$6.5 million at June 2018 to a net liability position of \$81.6 million at June 2022. The consolidated asset position of the Group increased through the four years to 30 June 2022 to \$403.9 million, with significant increases in property, plant and equipment (balance of \$251.6 million as at June 2022) corresponding with the construction of manufacturing facilities in Australia and the US and the growth in inventory (balance of \$72.8 million as at June 2022). The Group's liabilities increased to \$485.4 million by June 2022 as it sought debt funding to meet capital and operational requirements. The Group's share capital increased to \$69.5 million as at 30 June 2022 substantially due to convertible note conversions of \$43.5 million.

Assets

As at 30 June 2022, consolidated assets of \$403.9 million were primarily comprised of:

- Property plant and equipment of \$251.6 million, including substantial capitalised fit out and development costs for the manufacturing facilities in Australia and the US.
- \$27.7 million in cash and cash equivalents.
- \$72.8 million in inventories, with \$41.8 million in raw materials, \$5.7 million in work in progress, \$14.4 million in finished goods and \$10.9 million of goods in transit (all net of provisions for obsolescence of \$37.3 million).
- \$23.9 million of current other assets and \$8.4 million of non-current other assets (which comprises deposits and prepayments relating to grants and property, plant and equipment).
- \$19.0 million of contract assets, being receivables outstanding on goods already provided to customers.

Liabilities

As at 30 June 2022, the consolidated liabilities of the Group totalled \$485.4 million, substantially comprised of:

- Trade payables of \$97.4 million, comprised of trade payables, accrued expenses, contract liabilities and other payables.
- Current tax payable of \$25.1 million, which has been raised as a provision in the accounts of Ellume US.
- Interest bearing liabilities of \$107.6 million, being the liability pursuant to the convertible notes.
- Non-current unearned income of \$173.9 million, being deferred government grant income. As detailed above, grant receipts are initially recorded as unearned revenue, and amortised through the revenue account over time. I am informed that the unearned income, representing the unamortised portion of grants received from the US Government, is not repayable and does not represent a future cash liability.¹⁶
- Lease liabilities of \$34.5 million relate to property leases.

Convertible notes

Between November 2018 and December 2021, the Company issued Convertible Notes to QIAGEN and high net worth individuals in various tranches. Notes have been redeemed for new convertible notes, and in the case of QIAGEN, USD 15.0 million of notes have converted into a fully paid licence for the future sale of the Company's QAlreach Quantiferon Tuberculosis test product. The balance of the Convertible Notes as at 30 June 2022 was \$107.6 million and comprised:

- Face value of notes issued of \$74.1 million.

¹⁶ IM at page 25

- Accrued interest of \$5.6 million.
- Financial liability at fair value through profit and loss of \$27.9 million.

3.9.4 Recent financial position

Quarterly Group consolidated balance sheets for the five quarters through to 30 September 2022 (based on the Group's management accounts) are summarised in the table below.

Group consolidated balance sheet for the quarters ended 30 September 2021 to 30 September 2022

(\$'000)	Sep-21	Dec-21	Mar-22	Jun-22	Sep-22
Current assets	165,686	177,865	183,236	142,883	132,359
Non-current assets	163,007	202,189	225,723	260,668	285,821
Total assets	328,694	380,055	408,959	403,551	418,180
Current liabilities	175,581	220,848	181,096	169,086	178,315
Non-current liabilities	244,909	226,351	265,056	316,037	327,656
Total liabilities	420,490	447,198	446,152	485,124	505,971
Net assets/(liabilities)	(91,796)	(67,144)	(37,193)	(81,573)	(87,791)
<i>Equity</i>					
Contributed equity	25,467	69,956	70,037	69,540	69,540
Revaluation reserve	(1,043)	(799)	(2,289)	919	7,029
Share based payment reserve	10,940	13,427	14,488	12,364	12,769
Retained earnings/(accumulated losses) (Note 1)	(127,160)	(149,728)	(119,429)	(164,396)	(177,129)
Total equity	(91,796)	(67,144)	(37,193)	(81,573)	(87,791)

Note 1: I have been unable to reconcile the movement in retained earnings/(accumulated losses) to the net profit/(loss) for the corresponding periods in the quarterly Group consolidated profit and loss statement. The differences are not material to my analysis.

Entity balance sheets for the Company and Ellume US for the same period are included at Appendix D.

3.9.5 Group consolidated statements of cash flows

The annual consolidated cash flow statements for the Group for FY18 to FY22 are summarised in the table below. The results for FY18 to FY21 are based on audited annual accounts. The FY22 financial results are based on unaudited draft financial statements provided by the Administrators.

Group consolidated statement of cash flows for FY18 to FY22

(\$'000)	FY18	FY19	FY20	FY21	FY22
Net cash flows from operating activities	(3,526)	(1,291)	(9,263)	(25,077)	(67,137)
Net cash flows from investing activities, including grants	(158)	(2,234)	(1,676)	13,358	(43,730)
Net cash flows from financing activities	3,634	24,503	(237)	19,409	120,563
Net increase/(decrease) in cash and cash equivalents	(50)	20,978	(11,176)	7,690	9,696
Cash and cash equivalents at beginning of year	119	70	21,048	9,874	16,614
Effects of exchange rate changes	-	-	2	(950)	1,340
Cash and cash equivalents at end of year (Note 1)	70	21,048	9,874	16,614	27,650

Note 1: The FY19 financial statements were restated in FY20 due to changes in accounting standards. This resulted in classification of cash flows being changed. There was no impact on the closing cash balance. I have not included the restated FY19 classifications.

Comments on statement of cash flows

I make the following comments in relation to the statement of cash flows:

- The Company reported net operating cash outflows each year between FY18 and FY22, reflective of the build-up in inventory (a large amount of which was subsequently written off as obsolete) and substantial operating losses
- The investing inflows in FY21 relate to grants received in relation to the construction of the US manufacturing facility
- Net cash inflows from financing activities in FY21 relate to the second tranche of convertible notes issued to QIAGEN and the June 2021 convertible notes issued to high net worth investors
- The investing outflows in FY22 occur as the payments for property plant and equipment of \$128.5 million exceeded receipts from grants of \$84.7 million
- The FY22 financing inflows relate to proceeds of the convertible note raises (\$80.6 million), the conversion of QIAGEN's convertible notes into a fully paid licence agreement and amended notes (\$32.8 million), other fair value changes in the value of liabilities (\$6.8 million) and a gain on the extinguishment of debt (\$1.3 million).

3.9.6 Financial outlook

Management forecasts for FY23 and FY24 were included in the IM. The forecasts indicate the Group will continue to incur losses for the next two years and require substantial ongoing funding. I have not included the forecasts in this Report due to confidentiality. However, I note that the forecasts rely upon the continued sale of COVID-19 home tests to the US Government at current pricing, absent which its revenue would be minimal. There is currently no contract to support these sales post June 2023.

4 DoCA proposal

The outcome of the sale and recapitalisation process undertaken by the Administrators was that a DoCA proposal from Hough was recommended to creditors. The DoCA proposal was approved by creditors on 20 December 2022 and the DoCA was signed by the Company on 22 December 2022. In summary, the DoCA provides for the following:

- The transfer of all shares in the Company to Hough or its nominee pursuant to section 444GA of the Act
- The release of all claims against the Company (other than claims of continuing employees not settled through the DoCA)
- The payment of USD 38.0 million to constitute a trust in favour of the Company's creditors, with the payments in accordance with waterfall outlined below. Working capital amounts (including cash on hand and receivables as at the date of appointment) and trading liabilities incurred by the Administrators will also form part of the Creditors' Trust
- Interim funding of USD 5.0 million to be provided to the Administrators by Hough, repayable via the DoCA payment waterfall. This funding has/will allow for the continued trading of the Company for the period between acceptance of Hough's offer and effectuation of the DoCA, at which point control and risk passes to Hough
- Certain Noteholders, at their election (the Electing Noteholders) may continue to hold their Convertible Notes; however, the terms of the notes will be amended such that they mature five years after the date of the DoCA and are only redeemable for shares in the Company in the event of an initial public offering, with the Electing Noteholders' shareholding to collectively not exceed 5.0% of the shares issued in the IPO. Other noteholders (with the exception of QIAGEN) will be entitled to share in USD 12.5 million from the Creditor's Trust Fund, being the Noteholder Pool, and QIAGEN will receive a fixed return.

The DoCA will only involve the compromise of certain creditor claims against the Company and will not impact the creditors of Ellume US.

4.1 Conditions precedent to completion of the DoCA

Completion of the DoCA (and transfer of shares in the Company to Hough) will occur once the following conditions have been met:

1. The Lender Group releases all security granted to them by the Company and its subsidiaries
2. Release by the Trading Security Holders of their security unless otherwise agreed by Hough. The Trading Security Holders are suppliers who had registered securities against the Company on the PPSR
3. ASIC grants relief from section 606 of the Act
4. The court makes orders pursuant to section 444GA(1)(b) of the Act
5. Hough being satisfied that the Company is not contractually restricted from commercialising certain diagnostic products
6. Hough pays its contribution of USD 38.0 million to the Administrators
7. Execution of the Creditors' Trust Deed
8. The Interim Funding has been repaid to Hough (by way of a reduction to the Hough Contribution)
9. Termination by the Administrators of leases over two properties at East Brisbane, Queensland
10. The resignation, removal or appointment of certain directors at the direction of Hough
11. Retention of certain staff on terms acceptable to those staff and Hough, being no less favourable than existing terms
12. Binding commitments from certain landlords in relation to the ongoing use of certain premises.

4.2 Waterfall of payments under the DoCA and Creditors' Trust

The terms of the DoCA provide that the funds available (the Hough contribution of USD 38.0 million (\$56.7 million) plus working capital recoveries) will be applied in the following order:

Pool	Amount and creditor claims included
Pool A	Repayment of the interim funding provided by Hough to enable the continued trading of the Company in Administration
Pool B	Repayment of any amounts owing to the Lender Group and the Trading Security Holders up to a limit of USD 8.0 million
Pool C	Payments in accordance with the priorities set out in sections 556, 560 and 561 of the Act, as though those priorities were applied in the Creditors' Trust
Pool D	The lesser of \$285,000 or the amount require to fund a return of 50 cents in the dollar to all creditors whose admitted claim is less than \$20,000 (Small Claim Creditors)
Pool E	USD 7.0 million to fund a return to QIAGEN
Pool F	The balance of the Creditors' Trust fund (after funding all other pools) will then be utilised to pay a dividend to all admitted claims not included in the other pools.
Pool G	An equal and rateable distribution to Noteholders up to the amount of USD 12.5 million.

The estimated returns from the DoCA¹⁷ are set out below.

Distribution waterfall under DoCA proposal

Creditor pool	Low case		High case	
	(\$'000)	(cents/\$)	(\$'000)	(cents/\$)
Pool A – Repayment of interim funding from Hough	7,463	100 c/\$	3,516	100 c/\$
Pool B – Trading Security Holder and Lender Group claims	11,940	94 c/\$	5,522	100 c/\$
Pool C – Costs and priority creditors	14,613	100 c/\$	8,837	100 c/\$
Pool D – Small claim creditors	184	50 c/\$	184	50 c/\$
Pool E – QIAGEN	10,448	47 c/\$	10,448	47 c/\$
Pool F – Other unsecured creditors	-	Nil	11,144	20 c/\$
Pool G – Convertible Noteholder claims	13,655	15 c/\$	18,657	35 c/\$
Total	58,302		58,307	

4.2.1 Excluded creditors

- Hough will not receive any distributions under the DoCA or Creditors' Trust other than in respect of the repayment of the Interim Funding.
- Ellume US is an Excluded Creditor and will not receive a distribution from the Creditors' Trust.

4.3 Likely outcome in the event that the DoCA does not complete

In the event that the DoCA does not complete, either because Hough defaults, or the Administrators are unable to complete, it is likely that the following would occur:

- Owing to substantial ongoing trading losses, without additional funding being secured, the Administrators would need to cease trading the business of the Company
- Absent an alternate proposal, creditors would likely vote to place the Company into liquidation and the appointed liquidators would commence a process to realise the Company's assets

¹⁷ Second Report to Creditors at page 41

- It is likely that without any certainty as to its own outlook, including a further material order from the US Government or external investor funds, Ellume US would be placed into some form of bankruptcy process under US law
- The outcome for creditors and shareholders would, in my opinion, be in line with that set out in section 5.

5 Valuation of residual equity

I am required to assess the residual equity value in the Company on a liquidation basis in accordance with Regulatory Guide 111. Where there is a residual business that could be sold, I am to consider the value of that business and not just the assets and other undertakings that comprise that business interest.

In addition, liquidators have the ability to challenge transactions that were entered into prior to the commencement of an administration that were detrimental to the financial position of the Company and the outcome for creditors. Such claims, if successful, can void transactions and result in returns to the Company in liquidation. Any returns from claims that could be brought by a liquidator are also to be considered in the assessment of the residual equity value in the Company in accordance with Regulatory Guide 111.

Regulatory Guide 111 requires that I “consider valuation evidence provided by the sales process conducted by the administrator (if any)”. In forming my opinion, I have had consideration to the results of the Administrators sale process, which is discussed in section 3.8. Where the sale process provides guidance on the realisable value of assets of the Company, I have included commentary in my analysis.

5.1 Value of residual equity

In liquidation, I have assessed that there would be a deficiency of assets available to meet the claims against the Company of between \$186.5 million and \$229.5 million and nil residual equity, as outlined in the table below.

I have used the ROCAP provided by the Company’s directors to the Administrators, which records the position of the Company as at 31 August 2022, as the basis of my assessment and have cross checked this against the Company’s management accounts as at 31 August 2022. I have also incorporated information provided by the Administrators and third parties as required.

Assessment of residual equity in the Company

Company assets	Section reference	Low Case (\$'000)	High Case (\$'000)
Business of the Company (goodwill)	6.1	-	-
Cash at bank	6.2	1,575	1,575
Accounts receivable	6.2	11	16
Prepayments	6.3	821	1,641
Other receivables	6.4	-	-
Related party receivable	6.5	-	-
Inventory	6.6	808	2,827
Plant and equipment	6.7	1,344	1,919
Shareholding in Ellume US	6.8	-	-
Shareholding in Ellume NZ	6.9	-	-
Intellectual property	6.10	-	-
Claims available to a liquidator	6.11	-	456
Total asset value		4,559	8,434
Claims against the assets			
Administration and liquidation costs and expenses	7.1	12,870	12,466
Administrators’ fees for DOCA period	7.2	850	800
Priority employee claims	7.2	3,098	2,998
Secured creditor claims	7.4	634	284
Unsecured creditor claims	7.5	170,622	170,972
Intercompany claims	7.6	34,863	-
Lease liability	7.7	1,831	1,221
Lease liability - guarantee provided for Ellume US	7.7	9,333	6,222
Total claims against the assets of the Company		234,101	194,963
Surplus/(shortfall) of assets available to meet claims		(229,542)	(186,529)
Net equity value		-	-

6 Value of the Company's assets

I have assessed the value of the Company's assets in liquidation at between \$4.6 million and \$8.4 million, as set out in the table below and detailed further in this section.

Value of the Company's assets in liquidation

Company assets	Section reference	Book value as at 31 August 2022 (\$'000)	Low Case (\$'000)	High Case (\$'000)
Business of the Company (goodwill)	6.1	-	-	-
Cash at bank	6.2	1,573	1,575	1,575
Accounts receivable	6.2	-	11	16
Prepayments	6.3	31,416	821	1,641
Other receivables	6.4	1,179	-	-
Related party receivable	6.5	45,403	-	-
Inventory	6.6	40,384	808	2,827
Plant and equipment	6.7	37,139	1,344	1,919
Shareholding in Ellume US	6.8	-	-	-
Shareholding in Ellume NZ	6.9	-	-	-
Intellectual property	6.10	-	-	-
Claims available to a liquidator	6.11	-	-	456
Total asset value		155,916	4,559	8,434

Book values are based on the ROCAP submitted by the Company's directors to the Administrators. I have checked these balances against the management accounts as at 31 August 2022.

I have not attributed any value to:

- Carry-forward tax losses in liquidation, which may have been reflected in the Hough offer
- Right of use assets in relation to the Company's property leases. In liquidation, these assets would be surrendered.

6.1 Business of the Company

In the event that the DoCA is not completed, and the Company is placed into liquidation, it is unlikely that any value could be realised for the Company's business over and above the value of its assets.

As detailed in section 3.8.1, prior to the appointment of the Administrators, the Company engaged Houlihan Lokey to explore a trade sale. The process undertaken by Houlihan Lokey failed to find a buyer for the Company's business. As detailed in section 3.8.2, the subsequent sale process undertaken by Houlihan Lokey under instruction from the Administrators also resulted in limited offers, the best offer being the DoCA proposed by Hough.

In my opinion, the Hough offer would unlikely to be bettered if a liquidator was to undertake a further sale process for the Company's business and assets for the following reasons:

- A liquidator would likely be without funding to continue operating the business and retain key personnel, and on this basis, a liquidator would not trade the Company's business. It is relevant to note that the Administrators have secured funding from existing Noteholders and Hough to enable the business to continue operating through the administration period (at a substantial loss).
- If the Company was placed into liquidation, it is likely that Ellume US would be placed into a bankruptcy process in the US, crystallising substantial claims against it, and resulting in the potential termination of contracts with the US Government.
- It would be difficult to find a suitably qualified advisor to undertake another sale process without a substantial upfront retainer. Considering the Hough offer followed two sale processes run by Houlihan Lokey, a reputable mergers and acquisition advisor, it is unlikely that another firm would seek a success fee only mandate from a liquidator for another sale process.

The sale processes undertaken pre and post-administration have tested the market's appetite for the Company and its assets and the DoCA is the outcome of that process. It is logical to assume that any further process, for a company without ongoing operations, would be challenging and unlikely to succeed.

6.2 Cash and trade receivables

Cash at bank

As at 31 August 2022, the Company had \$1.6 million in cash. I have adopted this value in my assessment.

Trade receivables

The management accounts as at 31 August 2022 showed a nil balance for trade receivables. However, I have adopted the minor value deemed as recoverable by the Administrators in their estimated outcome statement detailed in the Second Report to Creditors, of which the low case represents actual amounts actually recovered.

6.3 Prepayments

The Administrators have not included any value for recovery of the prepayment balance of \$31.4 million as at 31 August 2022, which included the following amounts:

Supplier/group	Balance as at 31 August 2022 (\$'000)	Low Case (\$'000)	High Case (\$'000)
Hong Kong Supplier	18,980	821	1,641
US party	9,781	-	-
Other prepayments	2,656	-	-
Total	31,417	821	1,641

Hong Kong supplier

I am informed by the Administrators that the prepayment made to the supplier based in Hong Kong relates to a purchase of inventory. The prepayment is offset by a larger creditor claim. The Administrators have advised that settlement has been reached in respect to the claims and inventory which the supplier holds on behalf of the Company. The terms of the settlement are summarised below:

- The supplier's net creditor claim has been agreed at USD 2.7 million
- The supplier has been appointed as agent to realise inventory purchased by the Company for USD 4.4 million. The supplier is entitled to retain 50% of any proceeds, which will also reduce the quantum of its net creditor claim
- The supplier is to use its best endeavours to procure the sale of the Company's inventory by 31 January 2023.

I understand that no realisable value has been ascertained for the inventory held by the supplier. Considering that the Company is only entitled to 50% of the net proceeds, recoveries are unlikely to exceed USD 2.2 million (being 50% of the purchase price). I have assumed that the Company will receive 25% of its maximum entitlement in the low case and 50% in the high case, being USD 0.6 million and USD 1.1 million respectively (\$0.8 million and \$1.6 million when converted to Australian dollars).

US party

The Administrators have advised that the \$9.8 million prepayment represents a fee paid to a third party advisor, and that it is being amortised in line with the amortisation of grant funding received from the US Government. I am advised that the prepayment would not be recoverable, owing to offsetting creditor claims. Accordingly, I have attributed nil value to this asset.

Other prepayments

Other prepayments include amounts prepaid for software, insurance, rent and other expenses. In my experience, recoveries from prepayments are minimal in a liquidation where the business does not trade. Accordingly, I have not included any value for this component of the prepayment balance.

6.4 Other receivables

As at 31 August 2022, other receivables had a balance of \$1.2 million in the Company's management accounts. This compares to the balance contained in the ROCAP of \$91,219 for other receivables and \$1.1 million for other assets (\$1.2 million total).

Other receivables include security deposits paid in respect to the lease of the Brisbane manufacturing facility of \$0.2 million, prepaid inventory of \$0.7 million and other deposits and receivables totalling \$0.2 million.

I have not included any recoveries against other receivables owing to the fact that:

- The property security bond would be retained by the landlord in the event of liquidation and termination of the lease
- Prepayments for inventory and other items are likely to be of nil value in liquidation.

I note that \$121,000 of insurance refunds have been recovered by the Administrators, which the Administrators have included in the administration period trading income.¹⁸

6.5 Related party receivable

The ROCAP records a related party receivable owed by Ellume US of \$45.4 million. I understand that the balance is offset by a payable balance owing to Ellume US of \$80.3 million. I also understand from the Second Report to Creditors, that in the event of liquidation, further investigation would be required to reconcile the intercompany position. Given the Company is a net debtor to Ellume US, I have not assumed that an amount could be claimed against Ellume US.

6.6 Inventory

The Company held significant inventory as at the commencement of the administration. The Directors' ROCAP recorded inventory of \$40.4 million, net of \$37.3 million of inventory marked as obsolete as at 30 June 2022.

The inventory position as at 30 June 2022, which had a slightly lower balance of \$39.5 million, is summarised below.

Material	Book value as at 30 June 2022 (\$'000)
Raw materials	69,067
Components	2,036
Finished goods	2,833
WIP/ goods in transit	2,342
Quality assurance/ returns	993
Total	77,271
Less: provision for obsolete stock	(37,742)
Net inventory balance	39,528

The Administrators have assessed the recoverable value of the inventory at between two and seven cents in the dollar. The Administrators arrived at this assessment having regard to the fact that the inventory balance includes substantial raw materials and obsolete inventory. The Administrators have been unsuccessful in their attempts to sell down surplus inventory during the Administration which has provided an indication of the likely low resale value of the Company's inventory.

Furthermore, given the only market for the Group's finished goods is the US, if Ellume US is placed into bankruptcy as considered in section 6.8, the saleability of finished goods by the Company through its US subsidiary would be highly uncertain.

Without the benefit of an independent valuation of the inventory, it is difficult to determine if the Administrators' estimate is reasonable. However, in my experience, the sale of raw materials, particularly specialised raw materials, is difficult in a liquidation. Considering that the inventory largely comprises raw materials (approximately 90% before obsolescence), the Administrators' assumption appears reasonable, and I have adopted their high and low recovery rates. Even if the inventory could be sold at its book value, there would still be a material deficiency of assets to meet creditor claims.

¹⁸ As advised by the Administrators

6.7 Plant and equipment

The book value of the Company's plant and equipment was \$37.1 million as at 31 August 2022.¹⁹

The Administrators instructed Gordon Brothers, an independent valuation firm, to assess the value of the Company's plant and equipment in a forced sale scenario. I have adopted the Gordon Brothers valuation as the basis of my assessment.

The high case below reflects the forced liquidation value as determined by Gordon Brothers, net of the Administrators' estimated realisation costs of 20% for such expenses as rent, storage, transport, marketing, and sales commission. The estimated realisation costs are not unreasonable when considering that Gordon Brothers estimated that the main testing and manufacturing equipment would take between four to six weeks to decommission and package for transport. Accordingly, I have adopted the Administrators' estimated realisation cost percentage of 20%.

The Administrators' low case assumes a further 20% discount to the forced liquidation values. In my experience, it is reasonable to assume a discount to the valuation to account for uncertainty, particularly for specialised equipment which may prove challenging to sell. Accordingly, I have adopted the Administrators' 20% discount in my assessment of the low case.

Equipment sold during the administration for \$0.2 million²⁰ (which was not included in the valuation) is included below.

Value of plant and equipment²¹

Asset type	Forced Liquidation Value Low Case (\$'000)	Forced Liquidation Value High Case (\$'000)
Production equipment	879	1,098
Laboratory equipment	446	558
Automated assembly lines subject to Trading Security Holder claim	-	350
Office furniture and equipment	34	43
Other	109	137
Total asset value	1,468	2,186
Less: assumed realisation costs	(294)	(437)
Net estimated realisable value	1,174	1,749
Add: net proceeds from equipment sold in administration	170	170
Total value of plant and equipment	1,344	1,919

The disparity between the book value and forced liquidation values is explained by Gordon Brothers in its report as follows:

- Over the course of the COVID-19 pandemic, manufacturers developed off the shelf manufacturing systems for high-volume production of at-home lateral flow tests
- The Company's equipment is bespoke and while capable of manufacturing the Ellume home test kits, off the shelf manufacturing solutions are likely more attractive to competitors
- The demand for the Company's high cost test kit (which retail for USD 25.00 each) is low and the market is now flooded with Chinese manufactured tests selling at far lower prices
- Having regard to the above, the plant and equipment would likely be sold for research and development activities or decommissioned to salvage components.

For the reasons further explained in section 7.4, in the low case, I have assumed that certain assets with a forced liquidation value of \$0.4 million are retained by a Trading Security Holder, whereas in the high case, this creditor's claim is assumed to be invalid and the assets are available to the liquidator.

¹⁹ Second Report to Creditors at page 63

²⁰ Second Report to Creditors at page 47

²¹ Gordon Brothers valuation report and workings provided by the Administrators.

6.8 Shareholding in Ellume US

In the event that the DoCA does not complete, and the Company is placed into liquidation, a liquidator will need to take steps to determine if the shareholding in Ellume US has any value. At the same time, in my opinion, the directors of Ellume US would consider the financial position of that company, and the high degree of interdependence with the Company, and take steps to place Ellume US into a bankruptcy process in the US. The reasons for this assessment include:

- The Company owns the intellectual property needed by Ellume US to operate.
- The Company is recorded as owing Ellume US approximately \$35.0 million as at 31 August 2022, and this amount would likely be irrecoverable.
- There is unlikely to be any funding to support Ellume US. Further financial support from the US Government would be less likely if its shareholder was in a liquidation process.
- There is no certainty that Ellume US will be able to secure additional supply contracts beyond its current US Government contract. As its primary source of revenue, absent continued procurement by the US Government, Ellume US would have insufficient revenues to remain operational, as retail sales have collapsed following the introduction of free COVID-19 tests in the US, and there are currently no further supply contracts in place.

In a bankruptcy process for Ellume US, I estimate that there would be a deficiency of assets to meet creditor claims. Accordingly, there would be no value in the shares of Ellume US. My analysis is summarised in the table below and detailed in Appendix E.

In forming my opinion, I have relied on management accounts prepared by the Company for Ellume US as at 30 September 2022 as well as an independent valuation of Ellume US's plant and equipment. I also note that a bankruptcy process for Ellume US which resulted in the closure of its business would result in a default by Ellume US on its property lease, which would in turn result in an unsecured claim against the Company pursuant to the terms of a guarantee provided by the Company for the lease.

Estimate of residual value of equity in Ellume US in the event of liquidation

Ellume US assets	Section reference	Balance Sheet as at 30 September 2022 (\$'000)	Low Case (\$'000)	High Case (\$'000)
Business of Ellume US	E.1.1	-	-	-
Cash at bank	E.1.2	4,172	4,172	4,172
Accounts receivable	E.1.3	13,460	9,422	10,768
Inventory	E.1.4	36,878	5,052	7,578
Plant and equipment	E.1.5	249,055	13,430	10,366
Prepayments	E.1.6	32	-	-
Other receivables	E.1.6	89,306	-	-
Intellectual property	E.1.8	-	-	-
Total asset value		392,903	32,076	32,884
Claims against the assets of Ellume US				
Costs of bankruptcy administration	E.2.1	-	1,466	1,818
Trade payables	E.2.2	34,065	34,065	34,065
Accruals	E.2.2	15,431	15,431	15,431
Other payables and provisions	E.2.3	42,673	6,410	6,410
Payroll liabilities	E.2.4	653	653	653
Lease liability	E.2.5	31,110	9,333	6,222
Unearned Income	E.2.6	176,722	-	-
Provision for income tax	E.2.7	26,583	26,583	26,583
Borrowings	E.2.8	2,677	-	-
Contingent claims (class action)	E.2.9	-	-	-
Total claims against the assets of the Company		329,914	93,941	91,182
Net equity		62,989	(61,865)	(58,298)

6.9 Shareholding in Ellume NZ

Ellume NZ is a dormant entity that does not trade, nor have any assets or liabilities. It was established in 2018 for clinical trials; however, the company has never operated for this or any other purpose.

Given Ellume NZ has no assets, I have attributed nil value to the Company's shareholding.

6.10 Intellectual property

The Group's intellectual property assets are held by the Company (and not by Ellume US). Intellectual property values are difficult to determine outside of a sale process. It is reasonable to assume that the value placed on the Company's business by Hough (and other interested parties) properly considered the value of the intellectual property assets and that in the event of liquidation, no higher price would be obtainable. The shortfall to creditors is so significant (between \$186.5 million and \$229.5 million) that even if the intellectual property could be sold for value, it would be highly unlikely to result in the claims of all creditors being met and there being residual equity value in the Company.

6.11 Claims available to a liquidator

If the Company is placed into liquidation, a liquidator is required to undertake further investigations into the circumstances surrounding the insolvency of the Company. In certain circumstances, those investigations might give rise to claims available to the liquidator. The Administrators have formed a view, based on their investigations, that there may be voidable unfair preference recoveries relating to creditor payments totalling \$2.3 million. The Administrators have estimated a potential

recovery of these claims of between nil and \$456,443²², being 20% of total claims. A liquidator would need to weigh up the costs of pursuing any preference claims against risk of dissipating the Company's assets through legal fees.

In my opinion, the Administrators' estimated recovery of between nil and 20% of the face value of the claims is a reasonable estimate having regard to the costs and risks of litigating such claims, and I have adopted these values.

Claim	Low Case (\$'000)	High Case (\$'000)
Unfair preference recoveries	-	456

The Administrators did not identify any other potential claims that may be available to a liquidator, such as insolvent trading claims against the directors of the Company. I note that the Second Report to Creditors confirmed that the Company engaged safe harbour advisors on or about 28 September 2021. If the Company complied with and was in fact utilising the safe harbour provisions under 588GA of the Act, then the directors would potentially have a statutory defence against any insolvent trading claims. On this basis, it was reasonable for the Administrators to assume that it would be unlikely an insolvent trading claim would be successful.

²² Second Report to Creditors at page 26

7 Claims by creditors

In circumstances where the Company is placed into liquidation, the value of claims against its assets is estimated at between \$195.0 million and \$234.1 million as outlined below. I have used the Company's balance sheet, the ROCAP submitted by the directors and information provided by the Administrators in the Second Report to Creditors to estimate the claims against the Company.

Summary of claims in the event of liquidation

Claim	Section reference	Low Case (\$'000)	High Case (\$'000)
Administration and liquidation costs and expenses	7.1	12,870	12,466
Administrators' fees for DOCA period	7.2	850	800
Priority employee claims	7.2	3,098	2,998
Secured creditor claims	7.4	634	284
Unsecured creditor claims	7.5	170,622	170,972
Intercompany claims	7.6	34,863	-
Lease liability	7.7	1,831	1,221
Lease liability - guarantee liability for Ellume US	7.7	9,333	6,222
Total claims against the assets of the Company		234,101	194,963

7.1 Costs and expenses of the administration and liquidation

As detailed in the Second Report to Creditors, the Administrators have estimated that the total cost of the Administration and liquidation to be between \$12.9 million in the low case \$12.5 million in the high case.²³ This estimate includes the following costs and expenses:

Expense	Low Case (\$'000)	High Case (\$'000)
Trading loss (trading position and funding from the Lender Group)	8,858	8,821
Advisor fees (legal fees and retainer paid to Houlihan Lokey)	800	700
Administrators' remuneration	2,662	2,600
Liquidators' remuneration	550	345
Total	12,870	12,466

Having regard to the operations of the Company spanning two countries, the continued trading and complexity of the business, the above costs appear reasonable in the circumstances. Having regard to the time costs involved in realising the Company's assets in liquidation, completing the required statutory investigations and managing substantial creditor claims the estimated liquidation costs appear low and could result in a higher claim against the Company's assets.

7.2 DoCA fees

In the event that the DoCA does not complete, and the Company is placed into liquidation, the Administrators' will have a claim for their fees incurred during the DoCA period. Accordingly, I have included the estimated Deed Administrators' fees of between \$0.9 million in the low case and \$0.8 million in the high case.

7.3 Employee entitlement claims in liquidation

The Administrators' estimate of employee entitlements owing is between \$3.0 million (low case) and \$3.1 million (high case) and comprises:

- Wages and superannuation of \$0.3 million

²³ Second Report to Creditors at page 43

- Leave entitlements of \$1.2 million (low case) and \$1.1 million (high case)
- Redundancy and payment in lieu of notice of \$1.6 million.²⁴

As detailed in the Second Report to Creditors, the Administrators have estimated a nil return for employee entitlements, should the Company be placed into liquidation. In a liquidation scenario, employees will be eligible to claim for entitlements under the Federal Government's Fair Entitlements Guarantee (FEG) scheme. However, this does not extend to outstanding superannuation. The ATO will make a claim for any outstanding superannuation on behalf of employees in a liquidation scenario, and also make a subrogated claim for any amounts funded by the FEG scheme.

I have adopted the Administrators' estimates of employee claims.

7.4 Secured creditor claims

The Administrators have included secured claims of \$7.5 million in their analysis, relating to claims of six Trading Security Holders, being creditors who have a claim to certain property pursuant to registrations on the PPSR.

The claim of one Trading Security Holder is material at approximately \$7.2 million. If the claim is found to be valid, the creditor will have the right to take possession of and realise certain equipment (in its possession) which was valued by Gordon Brothers at \$0.4 million. I have assumed in the low case that the creditor's claim is valid, and its secured claim will only reflect the value of the security held, being the liquidation value of the assets.

If the claim is found to be invalid, the supplier will have an unsecured claim for the full \$7.2 million as shown below. I note that for the purpose of my assessment, the validity of the claim does not impact the net shortfall position as the claim is either secured or unsecured.

Disputed Trading Security Holder claim

Claim	Low Case (\$'000)	High Case (\$'000)
Trading Security Holder Claims		
Disputed claim	7,237	7,237
Value of security (secured claim)	(350)	-
Unsecured claim	6,887	7,237

Total secured creditor claims

Claim	Low Case (\$'000)	High Case (\$'000)
Disputed claim	350	-
Other claims	284	284
Total of secured claims	634	284

The Administrators have determined that the other five Trading Security Holders with claims of \$0.3 million have valid claims, which will be settled from the property to which they have title. The secured claims are therefore between \$0.3 million and \$0.6 million.

²⁴ Second Report to Creditors at page 43

7.5 Unsecured claims

Based on the Administrators' assessment of claims, and taking into account the shortfall claims of the secured creditors set out above, the unsecured claims are as follows:

Unsecured claim	Low Case (\$'000)	High Case (\$'000)
Shortfall of Trading Security Holders	6,887	7,237
Unsecured creditors, including convertible noteholder claims	179,874	164,307
Less: adjustment for settlement of Hong Kong supplier claim	(16,537)	(970)
Other related party claims	398	398
Total	170,622	170,972

The difference between the unsecured creditor balances under the high and low cases reflects assumptions made by the Administrators as to the value of supplier claims subject to negotiation, and in particular the claim of the Hong Kong based supplier which is detailed in section 6.3. I note that the unsecured creditor balance detailed in the Second Report to creditors included amounts owing to the Hong Kong supplier of between \$20.6 million (low case) and \$5.0 million (high case). I have adjusted the unsecured claims to reduce these debts to the settlement amount of USD 2.7 million.

7.6 Intercompany claims

In relation to the related party claims, the Administrators have outlined in the Second Report to Creditors that the claim against the Company by Ellume US would require further investigation in the event of liquidation owing to various head company charges not having been recorded against the intercompany loan account. For the purpose of my assessment, I have included the recorded value of the claim, offset by the intercompany receivable due from Ellume US.

Intercompany claim	Low Case (\$'000)	High Case (\$'000)
Intercompany loan due to Ellume US (per ROCAP)	80,267	80,267
Intercompany loan due from Ellume US (per ROCAP)	(37,832)	(37,832)
Intercompany accounts receivable due from Ellume US (per ROCAP)	(7,572)	(7,572)
Net liability to Ellume US	34,863	34,863

7.7 Lease liability

I note that the Administrators' estimates of creditor claims in a liquidation does not include any amounts that may be owed to the Company's landlords if the Company's three property leases are terminated in the event of the liquidation of the Company.

The landlords would likely claim for make-good costs as well as unpaid and future rent, less amounts recovered (or reasonably estimated) from the re-letting of the premises. I have estimated that 20% to 30% of the residual lease value recorded in the Company's management accounts as at 31 August 2022 would be lease claims. Depending on demand for the properties, the claims could be materially higher or lower.

Asset type	Low Case (\$'000)	High Case (\$'000)
Book value of lease liability as at 31 August 2022	6,104	6,104
Assumed claim	30%	20%
Adopted claim value	1,831	1,221

In addition, the Company has guaranteed the lease entered into by Ellume US for the Maryland property. I have included the lease liability amount calculated for Ellume US in section E.2.5 as a claim against the Company, as set out below.

Asset type	Low Case (\$'000)	High Case (\$'000)
Book value of lease liability	31,110	31,110
Assumed claim	30%	20%
Adopted claim value	9,333	6,222

Dated: 25 January 2023



Jennifer Nettleton
Partner

Level 5, Chifley Tower
2 Chifley Square
Sydney NSW 2000

Appendix A Curriculum vitae of Jennifer Nettleton



Jenny Nettleton

Partner | Restructuring | Sydney

jnettleton@kordamentha.com

+61 2 8257 3044

Jenny is motivated to help clients solve problems. She thrives on taking a hands-on approach, working as a team with the client and other stakeholders to achieve the best possible outcome.

Jenny has over 25 years' experience in the restructuring sector, working with Australia's major financiers and other stakeholders in formal insolvencies, financial review engagements and preparing expert's reports.

Jenny's strong attention to detail, project management skills and her passion for the technical aspects of restructuring mean that success can be achieved in the most complex of situations.

Expertise

- Financial reviews
- Business restructuring
- Formal insolvencies.

Education and accreditation

- Bachelor of Accounting (UNSW)
- Masters in Management (MGSM)
- Registered liquidator.

Significant engagements

- Ten Network
- Boart Longyear – Scheme expert report
- Quintis Limited
- Arrium
- K Care group
- Springsure Creek Coal
- Chassis Brakes
- Confidential consulting engagements.

Memberships

- Chartered Accountants Australia and New Zealand
- Australian Restructuring Insolvency and Turnaround Association.

Appendix B FY22 normalisation adjustments

The table below summarises managements' view of the FY22 profit and loss result, after adjusting for the impact of extraordinary events in FY22, as presented in the IM²⁵.

Normalised FY22 profit and loss

(\$'000)	FY22
Sales	234,306
Sales returns and allowances	(2,584)
Net sales	231,722
Non-operating income	38,995
Cost of goods sold	(119,947)
Gross profit	150,770
<i>Gross profit % of sales</i>	65.1%
Operating expenses	
Research and development	(6,499)
Sales and marketing	(26,322)
General & administrative	(31,271)
Other expenses	(6,162)
Total operating expenses	(70,254)
Underlying EBITDA	80,516
EBITDA adjustments (Note 1)	(97,876)
Depreciation and amortisation	(3,242)
EBIT	(20,602)
Interest and borrowing expenses	(9,037)
Net profit/(loss) before tax (Note 2)	(29,639)

Note 1:

Adjustments	\$'000
Sales return provision	(17,948)
Inventory impairment	(66,037)
Provision for product replacement costs	(4,897)
Fair value change in liabilities and unrealised foreign exchange losses	(1,066)
Share based payments	(1,511)
Transaction advisory services	(6,417)
Total	(97,876)

Note 2: The net loss before tax of \$29.6 million recorded in the table above is \$3.8 million lower than the loss before tax recorded in the FY22 unaudited draft financial statements.

²⁵ IM page 24

Appendix C Entity profit and loss statements

The entity level results are based on the Group's unaudited management accounts. All figures are presented in AUD and include intercompany transactions.

Ellume Limited profit and loss

(\$'000)	Q1 FY22	Q2 FY22	Q3 FY22	Q4 FY22	FY22	Q1 FY23
Sales	25,811	22,566	30,649	11,057	90,083	2,769
Sales returns and allowances	(631)	100	(2,600)	3,237	107	-
Net sales	25,180	22,666	28,049	14,294	90,189	2,769
Cost of goods sold	(18,720)	(26,852)	(33,136)	(55,792)	(134,499)	(2,934)
Gross profit	6,461	(4,186)	(5,086)	(41,498)	(44,310)	(165)
<i>Gross profit % of sales</i>	25.7%	(18.5%)	(18.1%)	(290.3%)	(49.1%)	(6.0%)
General & administrative	(18,144)	(20,684)	(17,519)	(13,189)	(69,535)	(7,825)
Other expenses	(4,739)	(1,257)	1,399	(8,655)	(13,252)	(7,100)
Total operating expenses	(22,883)	(21,941)	(16,120)	(21,844)	(82,787)	(14,924)
EBITDA	(16,422)	(26,127)	(21,206)	(63,342)	(127,097)	(15,090)
Depreciation and amortisation	(523)	(550)	(550)	797	(825)	(861)
EBIT	(16,945)	(26,676)	(21,756)	(62,545)	(127,923)	(15,950)
Non-operating income	50	22,800	(41)	129	22,939	382
Non-operating expenses	(1,826)	448	(2,634)	(4,701)	(8,713)	(1,828)
Net profit/(loss) before tax	(18,721)	(3,428)	(24,431)	(67,117)	(113,697)	(17,397)
Tax benefit/(expense)	-	-	(61)	(338)	(398)	(39)
Net profit/(loss) after tax	(18,721)	(3,428)	(24,491)	(67,455)	(114,096)	(17,436)

Comments:

- The decline in net sales through Q1 FY23 is consistent with the decrease in operations at Ellume US, as the US Government contract concludes in June 2023 and retail sales channels have declined.
- Gross profit percentage fluctuates considerably quarter to quarter, with no alignment to changes in sales volume.
- The net loss is likely overstated as overhead costs incurred by the Company, where Ellume US has benefited directly from the provision of services or supplies attributed to those costs, have not been charged to Ellume US.²⁶

²⁶ Second Report to Creditors at page 20.

Ellume US profit and loss

(\$'000)	Q1 FY22	Q2 FY22	Q3 FY22	Q4 FY22	FY22	Q1 FY23
Sales	65,668	54,387	89,114	25,221	234,389	13,880
Sales returns and allowances	(10,937)	(37,147)	4,679	21,442	(21,963)	1,454
Net sales	54,730	17,240	93,793	46,662	212,426	15,333
Cost of goods sold	(31,851)	(28,270)	(30,787)	(36,464)	(127,372)	(9,659)
Gross profit	22,879	(11,030)	63,006	10,199	85,054	5,674
<i>Gross profit % of sales</i>	<i>41.8%</i>	<i>(64.0%)</i>	<i>67.2%</i>	<i>21.9%</i>	<i>40.0%</i>	<i>37.0%</i>
General & administrative	(3,641)	(5,120)	(4,538)	(7,408)	(20,707)	(3,817)
Other expenses	51	(1,271)	43	5,594	4,416	3,525
Total operating expenses	(3,591)	(6,391)	(4,495)	(1,815)	(16,291)	(292)
EBITDA	19,288	(17,421)	58,512	8,384	68,763	5,382
Depreciation and amortisation	(3)	(3)	(3)	(2,408)	(2,417)	(2,091)
EBIT	19,285	(17,424)	58,509	5,976	66,346	3,291
Non-operating income	3,495	(950)	-	13,005	15,550	4,525
Non-operating expenses	(347)	(416)	(323)	(567)	(1,653)	(465)
Net profit/(loss) before tax	22,433	(18,790)	58,186	18,414	80,243	7,351
Tax benefit/(expense)	-	(111)	6	(1)	(106)	42
Net profit/(loss) after tax	22,433	(18,901)	58,192	18,413	80,137	7,393

Comments:

- Net sales declined to \$15.3 million in Q1 FY23 from \$46.7million in Q4 FY22 due to the decline in the volume delivered under the US Government contract and a continued suppression of retail market due to the US Government's free testing program (it is unclear why the sales returns are positive in Q3 FY22, Q4 FY22 and Q1 FY23, however I have assumed that this is sales revenue).
- Gross profit percentage fluctuates considerably quarter to quarter, with no alignment to changes in sales volume.
- Net profit is likely overstated as overhead costs incurred by the Company, where Ellume US has benefited directly from the provision of services or supplies attributed to those costs, have not been charged to Ellume US.

Appendix D Entity balance sheets

The entity level balance sheets are based on the Group's unaudited management accounts. All figures are presented in AUD and include intercompany balances.

Ellume Limited balance sheet

(\$'000)	Sep-21	Dec-21	Mar-22	Jun-22	Sep-22
<i>Current assets</i>					
Cash and cash equivalents	14,214	20,032	5,183	5,613	944
Inventory	89,178	88,713	81,986	39,528	40,098
Trade receivables	5,902	4,602	30,114	4,831	8,038
Prepayment	3,478	985	620	30,220	31,486
Other receivables	21,203	32,396	40,005	40,668	39,526
Total current assets	133,976	146,728	157,909	120,860	120,091
<i>Non-current assets</i>					
Property, plant and equipment	35,356	37,322	35,224	38,073	36,767
Total non-current assets	35,356	37,322	35,224	38,073	36,767
Total assets	169,331	184,051	193,132	158,934	156,858
<i>Current liabilities</i>					
Trade payables	51,569	45,809	19,866	19,549	20,354
Current borrowings	-	-	-	-	-
Lease liability	714	734	754	801	822
Other payables and provisions	27,807	27,374	74,206	75,550	85,935
Payroll liabilities	1,852	1,944	1,988	1,980	3,553
Accrued charges	3,323	8,406	12,906	41,269	42,623
Unearned income	16,664	15,012	13,100	8,404	10,199
Provision for income tax	-	-	-	-	-
Total current liabilities	101,929	99,279	122,820	147,553	163,486
<i>Non-current liabilities</i>					
Non-current borrowing	121,123	93,883	102,968	107,630	109,326
Lease liability	6,496	6,304	6,109	5,432	5,217
Unearned income	21,551	22,805	22,805	29,965	27,505
Total non-current liabilities	149,170	122,992	131,881	143,026	142,048
Total liabilities	251,099	222,271	254,701	290,580	305,534
Net assets	(81,768)	(38,220)	(61,569)	(131,646)	(148,676)
<i>Equity</i>					
Contributed equity	25,467	69,956	70,037	69,540	69,540
Revaluation reserve	-	-	-	-	-
Share based payment reserve	10,940	13,427	14,488	12,364	12,769
Retained earnings/(accumulated losses)	(118,175)	(121,603)	(146,094)	(213,549)	(230,985)
Total equity (Note 1)	(81,768)	(38,220)	(61,569)	(131,646)	(148,676)

Note 1: The sum of the Ellume Limited total equity at each balance date and the Ellume US total equity at each balance date does not equate to the consolidated equity position disclosed in section 3.9.4 due to consolidation entries.

Comments:

- The net liability position of the Company increased from \$82.8 million to \$148.7 million over the 12 months to 30 September 2022, as a result of increasing net losses, and despite a \$44.5 million increase in equity (substantially through a conversion of convertible notes of \$43.5 million) in the quarter ended 31 December 2021.
- The material decline in the inventory balance at 30 June 2022 from \$82.0 million to \$39.5 million reflects inventory adjustments made at year end, to recognise inventory obsolescence.
- Prepayments relates to deposits on inventory and plant and equipment
- Unearned income is the unamortised value of grants received from both the US Government and the Queensland Government
- The paid up value of the Company's shareholding in Ellume US does not appear in the management accounts.

Ellume US balance sheet

(\$'000)	Sep-21	Dec-21	Mar-22	Jun-22	Sep-22
<i>Current assets</i>					
Cash and cash equivalents	16,042	7,300	32,442	22,037	4,172
Inventory	5,532	22,523	39,503	35,279	36,878
Trade receivables	16,176	21,654	11,521	310	13,460
Prepayment	8,020	7,106	6,792	323	32
Other receivables	32,492	33,029	78,370	83,329	89,306
Total current assets	78,261	91,612	168,628	141,277	143,850
<i>Non-current assets</i>					
Property, plant and equipment	127,652	164,867	190,499	222,595	249,055
Total non-current assets	127,652	164,867	190,499	222,595	249,055
Total assets	205,913	256,480	359,127	363,872	392,904
<i>Current liabilities</i>					
Trade payables	22,783	35,213	63,438	31,842	34,065
Current borrowings	-	-	-	-	-
Lease liability	(4,870)	374	379	429	474
Other payables and provisions	24,125	76,156	75,729	51,955	42,673
Payroll liabilities	121	230	324	823	653
Accrued charges	274	1,764	985	2,021	15,431
Unearned income	52,435	41,881	31,005	26,659	24,427
Provision for income tax	23,986	23,821	23,101	25,090	26,583
Total current liabilities	118,854	179,440	194,961	138,818	144,306
<i>Non-current liabilities</i>					
Non-current borrowing	-	-	-	-	2,677
Lease liability	28,071	27,779	26,836	29,032	30,637
Unearned income	67,668	75,580	106,338	143,979	152,295
Total non-current liabilities	95,738	103,359	133,174	173,011	185,608
Total liabilities	214,592	282,799	328,135	311,829	329,914
Net assets	(8,679)	(26,319)	30,992	52,043	62,990
<i>Equity</i>					
Contributed equity	-	-	-	-	-
Revaluation reserve	(1,043)	(799)	(2,289)	919	7,029
Share based payment reserve	618	1,630	2,221	1,702	1,987
Retained earnings/(accumulated losses)	(8,255)	(27,151)	31,060	49,421	53,974
Total equity (Note 2)	(8,679)	(26,319)	30,992	52,043	62,990

Note 1: The change in retained earnings between quarters does not equate to the quarterly net profit shown in the table in Appendix C. The variance between quarters in FY22 are small (\$28,434 cumulatively). However, there is a \$2.8 million difference in Q1 FY23. The Company has not been able to reconcile the variance as at the time this Report was issued.

Note 2: The sum of the Ellume Limited total equity at each balance date and the Ellume US total equity at each balance date does not equate to the consolidated equity position disclosed in section 3.9.4 due to consolidation entries.

Comments:

- The net asset position improved to \$63.0 million at 30 September 2022 from a net liability position of \$8.7 million at 30 September 2021.
- Unearned income represents unamortised grants received, which increased over the four quarters as the US Government continued to fund construction of the US facility.
- At September 2022, Ellume US had only \$4.2 million of cash on hand. Its current ratio, net of intercompany balances and unearned income, was approximately 0.7, indicating it lacked liquid assets to meet its near-term liabilities.
- Other receivables comprise a security bond paid to the Ellume US's landlord and other deposits to suppliers.

Appendix E Residual equity value in Ellume US in the event of liquidation

Set out below is my assessment of the net equity value in Ellume US in the event that it was placed into a bankruptcy process under the US Bankruptcy Code. While I have not practiced in the US, the process of realising and assessing creditor claims across jurisdictions is generally similar. My assessment below is based on my experience as a registered liquidator in Australia.

For the purposes of my assessment, I have assumed that Ellume US is liquidated pursuant to Chapter 7 of the US Bankruptcy Code.²⁷

As set out below, I estimate that there would be a deficiency of assets to meet claims of between \$61.9 million (low case) and \$58.3 million (high case). There would be no equity value in Ellume US recoverable to the Company.

Ellume US assets	Section reference	Balance Sheet as at 30 September 2022 (\$'000)	Low Case (\$'000)	High Case (\$'000)
Business of Ellume US	E.1.1	-	-	-
Cash at bank	E.1.2	4,172	4,172	4,172
Accounts receivable	E.1.3	13,460	9,422	10,768
Inventory	E.1.4	36,878	5,052	7,578
Plant and equipment	E.1.5	249,055	13,430	10,366
Prepayments	E.1.6	32	-	-
Other receivables	E.1.6	89,306	-	-
Intellectual property	E.1.8	-	-	-
Total asset value		392,903	32,076	32,884
Claims against the assets of Ellume US				
Costs of bankruptcy administration	E.2.1	-	1,466	1,818
Trade payables	E.2.2	34,065	34,065	34,065
Accruals	E.2.2	15,431	15,431	15,431
Other payables and provisions	E.2.3	42,673	6,410	6,410
Payroll liabilities	E.2.4	653	653	653
Lease liability	E.2.5	31,110	9,333	6,222
Unearned Income	E.2.6	176,722	-	-
Provision for income tax	E.2.7	26,583	26,583	26,583
Borrowings	E.2.8	2,677	-	-
Contingent claims (class action)	E.2.9	-	-	-
Total claims against the assets of the Company		329,914	93,941	91,182
Net equity		62,989	(61,865)	(58,298)

E.1 Assets available to creditors of Ellume US

E.1.1 Business of Ellume US

In the event that Ellume US was placed into a bankruptcy process in the US, it is unlikely that there would be a going-concern business to realise for the following reasons:

- The intellectual property assets utilised by Ellume US are held by the Company and not Ellume US.
- The corporate and management services required to operate Ellume US are provided by the Company.

²⁷ Chapter 7 Liquidation, United States Code, 2018 Edition, Supplement 3, Title 11 - BANKRUPTCY

- Ellume US has a contract with the US Government to deliver a further 3.1 million COVID-19 tests by 30 June 2023. Absent a further contract from the US Government, at this stage it is highly uncertain there will be other ongoing revenue streams to support continued trading.

In such circumstances, it is difficult to see how Ellume US has any value other than that attributable to its assets on a breakup basis. I am advised by the Administrators that no offer for the shares in Ellume US was received during the sale and recapitalisation process.

FY22 financial performance and maintainable earnings

As detailed in Appendix C, Ellume US recorded a net profit of \$80.1 million in FY22. While material, for the reasons outlined in section 3.9.4, the result cannot be considered in isolation from the Company's result, a loss of \$114.1 million. On a consolidated basis, the Group recorded a loss after tax of \$34.0 million.

Critical to my assessment of the value of Ellume US is its financial outlook. Absent further material orders from the US Government, Ellume US does not currently have a source of revenue beyond FY23 and therefore, has no future maintainable earnings on which to determine value. Other products in development are not yet commercially viable and the Company's consolidated forecast for FY23 and FY24 did not assume any new products would be brought to market.

E.1.2 Cash at bank

Cash at bank as at 30 September 2022 was USD 2.7 million or approximately \$4.2 million. I have assumed that the balance is fully recoverable.

E.1.3 Accounts receivable

The Accounts receivable balance as at 30 September 2022 was \$13.5 million.

Approximately 91% of the accounts receivable balance is owing by the US Government.²⁸ In the event that Ellume US is placed into bankruptcy, I have assumed that the US Government would have potentially offsetting claims related to the recall. The low case assumes a 70% recovery of the book value of debtors as at 30 September 2022, and 80% recovery in the high case.

	Low Case (\$'000)	High Case (\$'000)
Accounts receivable balance as at 30 September 2022	13,460	13,460
Assumed recovery %	70%	80%
Estimated recoverable value	9,422	10,768

E.1.4 Inventory

The book value of inventory at 30 September 2022 was \$36.9 million, however no breakdown of inventory at this date is available.

I have been provided a breakdown of inventory as at 30 June 2022, being the most recent date that a stock reconciliation was completed. As at June 2022, the inventory held by Ellume US was as follows:

Material	Value as at 30 June 2022 (\$'000)
Raw materials	11,618
Components	3,063
Finished goods	31,902
Total value of inventory before obsolescence	46,583
Less: provision for obsolete stock	(21,509)
Net value of inventory	25,074
WIP/ goods in transit	10,205

²⁸ Based on information provided by the Company

Material	Value as at 30 June 2022 (\$'000)
Total	35,278

As at 30 June 2022, finished goods represented 68.5% of total inventory (before the obsolescence provision). For the purpose of my assessment, I have assumed that the same share of finished goods was in stock as at 30 September 2022. I have then assumed a recovery of between 20% and 30% of value as set out below. I have not assumed any recoverable value for raw materials, components, or goods in transit. In my experience, the realisation of raw materials, particularly specialised raw materials, is difficult and often unsuccessful in a liquidation.

	Low Case (\$'000)	High Case (\$'000)
Inventory as at 30 September 2022	36,878	36,878
Assumed finished goods (68.5%)	25,261	25,261
Assumed recovery %	20%	30%
Estimated recoverable value	5,052	7,578

I have assumed that there would be a substantial discount applied to the finished goods to realise them in a timely manner. The bankruptcy of Ellume US would likely impact the US Government's willingness to continue purchasing tests. Sales through retail channels would require heavy discounting given the price point of competitor products.

E.1.5 Plant and equipment

Ellume US instructed Tiger Valuation Services (Tiger) to undertake a valuation of its plant and equipment in October 2022. The instructions were to assess the value of the plant and equipment at Ellume US's premises. I have adopted Tiger's appraisal for the plant and equipment in my assessment as set out below.

Asset classification	Orderly Liquidation Value (USD '000)	Forced Liquidation Value (USD '000)
Custom production equipment	4,986	3,177
Production equipment	3,840	2,880
Laboratory test equipment	453	390
Support equipment	988	798
Gross value	10,266	7,246
Liquidation expenses	(1,268)	(301)
Net liquidation value	8,998	6,945
Net liquidation value (\$)	13,430	10,366

Similar to comments made by Gordon Brothers in respect to the assets located in Australia, Tiger has commented that the custom production equipment would likely transact at a significant discount as it cannot be readily redeployed for other purposes. Tiger notes that as at the date of its report, no such equipment has been sold to its knowledge. Other assets which have wider market appeal would require considerable labour costs to remove and transport, resulting in a low value against original cost.

Tiger has included realisation costs in both scenarios to account for ongoing rent, security, labour and realisation costs. These costs are assumed to be higher in the orderly sale scenario to facilitate a more extensive sale process.

E.1.6 Prepayments

Prepayments have a book value of \$32,000 at 30 September 2022.

Prepayments are typically unrecoverable in a winding up and I assume the recoverability of such amounts would be unlikely in a US bankruptcy process.

E.1.7 Other receivables

Other receivables have a book value of \$89.3 million at 30 September 2022. This balance includes an intercompany receivable from the Company of \$85.2 million (was \$80.3 million at 31 August 2022). The balance of the 'other receivables' of \$4.1 million includes the security bond paid to its landlord and other deposits to suppliers. Such amounts are unlikely to be recovered.

E.1.8 Intellectual property

The intellectual property used in the manufacture and distribution of products by Ellume US is held by the Company. Ellume US has no intellectual property assets of its own material to its business.

E.2 Claims against the assets of Ellume US

E.2.1 Costs of bankruptcy

I have estimated that the cost of winding up Ellume US under Chapter 7 of the Bankruptcy Code would be 5% of asset value, including trustee fees and other costs. From my own research, I understand that Bankruptcy Trustees in the US are entitled to charge the following percentages of funds disbursed:

- 25% of the first USD 5,000
- 10% of amounts exceeding USD 5,000 but not exceeding USD 50,000
- 5% of amounts exceeding USD 50,000 but not exceeding USD 1.0 million
- 3% of amounts exceeding USD 1.0 million.²⁹

Based on my assessment of recoverable assets, the costs are estimated at between \$1.5 million in the low case and \$1.8 million in the high case.

E.2.2 Trade payables and accruals

The trade payable balance of \$34.1 million as at 30 September 2022 includes \$8.0 million due to the Company (was \$7.6 million at 31 August 2022). As detailed earlier, the intercompany loan and payable position between Ellume US and the Company would need to be reconciled to determine the net position between the entities. For the purposes of my analysis I have assume the payable would be offset against the receivable, leaving an adjusted payable balance of \$26.1 million.

The accruals balance of \$15.4 million includes \$10.9 million owing to the builder of Ellume US's Maryland facility.

I have assumed that the trade payable balance (net of the intercompany balance) and accruals would be genuine claims against Ellume US in the event of its bankruptcy.

E.2.3 Other payables and provisions

The other payables and provisions balance of \$42.7 million includes an intercompany payable to the Company, which as at 30 September 2022 was \$36.3 million (\$37.8 million at 31 August 2022). This liability balance, together with the trade payable owing to the Company would offset the receivable balance, resulting in there being no claim against the Company.

As noted previously, the Administrators' detailed in the Second Report to Creditors that the intercompany position between the Company and Ellume US would need to be reconciled to confirm the true position between the entities.

The remaining 'other payables and provisions' balance of \$6.4 million includes an allowance of \$6.2 million for the replacement of defective tests issued to the US Government, a make good provision for the US facility of \$0.7 million, net of an accrual adjustment of \$0.5 million. I have assumed these claims will constitute a claim against Ellume US in the event of its bankruptcy.

²⁹ section 326, United States Code, 2018 Edition, Supplement 3, Title 11 - BANKRUPTCY

E.2.4 Payroll liabilities

Payroll liabilities represent accrued but unpaid wages as at 30 September 2022, including 401K contributions and unpaid leave balances. I have not been provided with further information to determine if severance amounts would be payable to employees, which may increase the total quantum of claims.

E.2.5 Lease liability

Under the terms of the lease of the two properties occupied by Ellume US, in the event of default, the landlord is entitled to claim for lost rent, less any amounts recovered from a new tenant it is able to procure. Ellume US entered into a lease in May 2021 for both its premises for a term of 10 years (ending May 2031). Given the lease term has eight more years, the Landlord is likely to lodge a substantial claim in the event of bankruptcy.

I have assumed that between 20% (in the high case) and 30% (in the low case) of the total lease liability will be claimed by the landlord in the event of the bankruptcy of Ellume US.

Asset type	Low Case (\$'000)	High Case (\$'000)
Book value of lease liability	31,110	31,110
Assumed claim	30%	20%
Adopted claim value	9,333	6,222

E.2.6 Unearned income

As noted in section 3.9 of this Report, Ellume US obtained grant funding from the US Government for the development of its US facilities. This funding is not recorded as income in the year received, but rather is being amortised over a period determined by management. The Administrators have advised that the funding is not repayable to the US Government. I have not sought to confirm this position. However, if the US Government does have a claim, it would only increase the claims against Ellume US and increase the shortfall position.

E.2.7 Provision for income tax

A provision for income tax of USD 17.3 million was recorded as at 30 September 2022. However, the actual tax payable has not yet been finalised and may be lower.³⁰ However, absent of a finalised tax return, I have adopted the book value of the provision.

E.2.8 Borrowings

I am advised by the Administrators that the borrowings of USD 1.7 million as at 30 September 2022 related to a sale and purchase agreement which has since been settled.

E.2.9 Contingent claims (class action)

A class action against Ellume US was filed in March 2022 in the US District Court in relation to tests sold to consumers which reported false positive results³¹. I understand that the prospects of a class action proceeding remain uncertain. As such, in the absence of an actual claim, I have not included a value for this claim. Given my estimated outcome statement shows a deficiency of assets to meet creditor claims, any actual or contingent liability arising from a class action would only worsen the position for creditors as a whole.

³⁰ IM at page 25

³¹ <https://www.sauderschelkopf.com/wp-content/uploads/2021/10/2022-03-22-001-Class-Action-Complaint-Kerschen-v-Ellume-03928657xA0413.pdf>

Attachment 2 DOCA

Deed of Company Arrangement

BETWEEN

Ellume Limited (Administrators Appointed)
ACN 141 767 660

AND

John Park and Joanne Dunn as administrators
of Ellume Limited (Administrators Appointed)
ACN 141 767 660

AND

Hough Consolidated Pty Ltd
ACN 657 651 280

MILLS OAKLEY

Level 7, 151 Clarence Street
SYDNEY NSW 2000

Telephone: +61 2 8289 5800

Facsimile: +61 2 9247 1315

DX 13025, SYDNEY MARKET STREET

www.millsoakley.com.au

Ref: LYRS/3633854

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Date 22 December 2022

Parties

Ellume Limited (Administrators Appointed) ACN 141 767 660

of c/- FTI Consulting, Level 20, CP1, 345 Queen Street, Brisbane QLD 4000

(Deed Company)

John Park and Joanne Dunn, each in their capacity as joint and several administrators of the Deed Company

of c/- FTI Consulting, Level 20, CP1, 345 Queen Street, Brisbane QLD 4000

(Deed Administrators)

Hough Consolidated Pty Ltd ACN 657 651 280

of c/- McCullough Robertson Lawyers, Level 11, 66 Eagle Street, Brisbane QLD 4000

(Deed Proponent)

Background

- A. On the Appointment Date, John Park and Joanne Dunn of FTI Consulting were appointed as joint and several administrators of the Deed Company pursuant to section 436A of the Corporations Act.
- B. At the meeting of Eligible Employee Creditors of the Company held on 20 December 2022 prior to the Second Meeting and convened under Section 444DA(2)(a) of the Corporations Act, the Eligible Employee Creditors of the Company passed a resolution agreeing to the non-inclusion of a provision in this Deed which, absent the resolution, would be required by section 444DA(1) of the Corporations Act.
- C. At a meeting held on 20 December 2022 and convened pursuant to section 439A of the Corporations Act (**Second Meeting**), the Creditors of the Deed Company resolved that the Deed Company enter into a deed of company arrangement substantially in the form of the DOCA Proposal under section 444B(2)(b) of the Corporations Act (**Section 439C Resolution**).
- D. The Deed Company, the Deed Administrators and the Deed Proponent have agreed to execute this Deed to give effect to the Section 439C Resolution.
- E. The Deed Administrators have consented to be the administrators of this Deed.
- F. Subject to the terms of this Deed, this Deed:
 - (a) binds all Creditors of the Deed Company, in accordance with section 444D of the Corporations Act, and also binds the Deed Company and its Officers and Members in accordance with section 444G of the Corporations Act; and
 - (b) will result in the transfer of all of the Ellume Shares in accordance with clause 6.3.

Operative provisions

1 Definitions and interpretation

1.1 Definitions

In this Deed:

Accounts Receivable means amounts payable to the Deed Company for work or services provided by the Deed Company to customers up to Completion and which were invoiced by the Deed Company on or before Completion.

Accrued Revenue means the amount of the proceeds received by the Deed Company in respect of work or services provided by the Deed Company to customers up to Completion which have not been invoiced at Completion.

Administration Debt means any:

- (a) debt referred to in sections 443A(1) or 443B(2) of the Corporations Act which was incurred by the Administrators during the Administration Period;
- (b) liability to the Commissioner of Taxation referred to in section 443BA(1); and
- (c) other debts or liabilities referred to in section 443D(aa) of the Corporations Act, in respect of which the Administrators are entitled to be indemnified under section 443D of the Corporations Act.

Administration Period means in respect of the Deed Company, the period of time commencing on the Appointment Date and concluding on the Commencement Date.

Administrators means, jointly and severally, John Park and Joanne Dunn in their capacities as administrators of the Deed Company and any successor to that office appointed pursuant to this Deed and/or the Corporations Act.

Appointment Date means 31 August 2022, being the date on which the Administrators of the Deed Company were appointed pursuant to section 436A of the Corporations Act.

ASIC means the Australian Securities and Investments Commission.

ASIC Relief means such exemptions and modifications from Chapter 6 of the Corporations Act granted by ASIC pursuant to section 655A of the Corporations Act as are necessary to permit the transfer of the Ellume Shares to the Purchaser.

Business Day means a day other than a Saturday, Sunday or public holiday and on which banks are open for business generally in Brisbane, Queensland, Australia.

Ceasing Leases means the:

- (a) lease between the Deed Company as lessee and YWCA Australia ACN 111 663 873 as lessor in relation to part of 936 Stanley Street, East Brisbane QLD 4169 more particularly described as Lot 223 on RP 11455; and
- (b) lease dated 12 July 2022 between the Deed Company as lessee and Darrouzet Investments Pty Ltd ACN 136 760 364 as lessor in relation to 57 Didsbury Street, East Brisbane QLD 4169, more particularly described as Lot 1 on RP 166321.

Ceasing Leases Notice means the notice substantially in the form set out in Schedule 2 confirming that the Ceasing Leases have been terminated or otherwise that counterparties to the Ceasing Leases have been notified that the Deed Company will

cease to comply with, and will not perform its obligations under, and treat the Ceasing Leases as at an end.

Claim means any claim, cost, damages, debt, income, expense, tax, royalty, liability, loss, obligation, allegation, suit, action, demand, cause of action, proceedings, penalty (civil, criminal or otherwise), order or judgment of any kind however calculated or caused, howsoever arising in law or equity or under statute against the Deed Company, and whether direct or indirect, future, contingent, consequential, incidental or economic, the agreement, circumstances or event giving rise to which occurred or arose before the Appointment Date, and includes:

- (a) any claim of any kind whatsoever under a Ceasing Lease including any claim for damages or loss in connection with the Deed Company's failure to comply with or perform or termination of, a Ceasing Lease;
- (b) any claim that in a winding up of the Deed Company would be a subordinated claim for purposes of section 563A of the Corporations Act;
- (c) any residual unsecured claim held by a Secured Creditor following realisation of its Security; and
- (d) without limiting (a) above, any warrant, option or similar instrument issued by the Deed Company in respect of any of the Ellume Shares,

save that a Claim does not include an Excluded Claim.

Commencement Date means the date this Deed is executed by all Parties.

Completion means the date after the CP Satisfaction Date and at a time that each of the Completion Steps have occurred.

Completion Steps has the meaning given to that term in clause 6.2(b).

Conditions means the conditions precedent contained in clause 5.1.

Continuing Employees means those Employees who were employed by the Deed Company (or an Ellume Subsidiary) as at the Commencement Date and who remain Employees as at Completion.

Continuing Directors means Jackson Hough, and at least two other directors nominated by the Deed Proponent in writing prior to Completion.

Contribution Amount means the amount of US\$38,000,000 inclusive of any applicable taxes.

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

Costs includes costs, charges, fees, government charges, taxes and expenses, including those incurred in connection with advisers, incurred in connection with the performance of the Administrators' and Deed Administrators' duties, obligations and responsibilities under the Corporations Act and this Deed during the Administration Period and the Deed Period and includes any Administration Debt.

Court has the meaning given to that term in section 58AA of the Corporations Act.

CP Satisfaction Date means 10 March 2023 unless extended to a date no later than the Long Stop Date by the Deed Proponent and the Deed Administrators, acting reasonably.

Creditor means any person who has a Claim against the Deed Company.

DOCA Proposal means the proposal for a deed of company arrangement annexed to this Deed as Schedule 3.

Deed means this deed of company arrangement as constituted pursuant to Part 5.3A of the Corporations Act as varied from time to time (unless the context otherwise requires) including any schedule or annexure to it.

Deed Administrators means, jointly and severally, John Park and Joanne Dunn in their capacities as administrators of this Deed and any successor to that office appointed pursuant to the Corporations Act.

Deed Administrators' Costs means costs, charges and expenses, including those incurred in connection with advisers, incurred in connection with the performance of the Deed Administrators' duties, obligations and responsibilities under the Corporations Act and this Deed during the Administration Period and the Deed Period.

Deed Period means the period commencing on the Commencement Date and ending on the Termination Date.

Directors has the meaning given to that term in section 9 of the Corporations Act.

Electing Noteholder means each of the Noteholders recorded in Schedule 4 and any other Noteholder notified to the Deed Administrators by the Deed Proponent.

Ellume Shares means all shares on issue (including ordinary shares, preference shares or otherwise) in the Deed Company as at the Appointment Date.

Ellume Subsidiaries means the subsidiaries of the Deed Company listed in Schedule 1 to this Deed, none of which are subject to any form of external administration process.

Employee means any person who was an employee of the Deed Company at or prior to the Appointment Date and any person whose debt or claim would, in a winding up of the company, be payable in priority to other unsecured debts and claims in accordance with paragraphs 556(1)(e), (g) or (h) or sections 560 or 561 of the Corporations Act.

End Date means, unless otherwise agreed between the Parties, three Business Days after the date each of the Conditions are satisfied or waived (as applicable) in accordance with this Deed.

Enforcement Process has the meaning given to that term in section 9 of the Corporations Act.

Excluded Claim means any:

- (a) Claim of Continuing Employees in their respective capacity as an Employee;
- (b) Claim of a Creditor who is an Ellume Subsidiary;
- (c) Claim (as that term is defined, but for the exception of Excluded Claim) in respect of which the Creditor:
 - (i) has agreed in writing with the Administrators or Deed Administrators to not participate in distributions in the Trust Fund; or
 - (ii) is an Electing Noteholder.

Excluded Creditor means any Creditor with an Excluded Claim.

Existing Directors and Secretary means Paul Darrouzet, Gary Hewett, Geoffrey Ronald Pearce, Sean Andrew Parsons and Mark Eric Harding Anning.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

IPO means the Deed Company carrying out an initial public offering of its Shares and being admitted to the official list of ASX or another recognised stock exchange.

Implementation Deed means the Implementation Deed dated 6 December 2022 between the Administrators, the Deed Company and the Deed Proponent, and any variation to the Implementation Deed agreed between the Administrators, the Deed Company and the Deed Proponent.

Interim Funding Amount means the amounts advanced by the Deed Proponent to the Administrators in accordance with the funding deed in letter format entered into by the Deed Proponent and the Administrators on 6 December 2022, and any variation to the funding deed agreed between the Deed Proponent and Administrators.

Insolvency Practice Rules means the *Insolvency Practice Rules (Corporations) 2016* (Cth).

Insolvency Practice Schedule means Schedule 2 of the Corporations Act.

Legal Personal Representative means a trustee or executor appointed to a Deed Administrator upon death, incapacity, insanity or any combination of them.

Long Stop Date means 28 April 2023.

Noteholder means a holder of a convertible note issued by the Deed Company.

Members has the meaning given to that term in the Corporations Act.

Notes means a convertible note issued by the Deed Company.

Noteholder Existing Rights means all existing rights of the Noteholder to redeem or convert the Notes.

Officers has the meaning given to that term in section 9 of the Corporations Act.

Parties means the Deed Company, the Deed Administrators and the Deed Proponent and **Party** means any one of them.

Payment Direction means a written payment direction in a form agreed between the Deed Administrators, the Deed Company and the Deed Proponent which contains details of the bank account for payment of the Contribution Amount and provides for:

- (a) deduction of the Interim Funding Amount from the Contribution Amount, in satisfaction of the obligation of the Deed Administrators to repay the Interim Funding Amount to the Deed Proponent; and
- (b) confirmation that the Deed Proponent accepts that deduction as discharging any rights that it has to recover the Interim Funding Amount from the Trust.

Prepaid Expenses means the amount of the unexpired term or proportionate term of expenses of the Deed Company that the Administrators or Deed Administrators have paid prior to Completion where the period of work or services extends beyond Completion.

Prescribed Provisions means the provisions set out in Schedule 8A to the Regulations.

Proportionate Post Wages means:

- (a) the proportionate amount incurred by the Deed Administrator up to Completion from the subsequent wage payment, inclusive of superannuation and any workers compensation or similar amounts of Continuing Employees after Completion and paid by the Deed Company; and

- (b) the respective payroll tax calculated from the proportionate wages as provided in paragraph (a) above.

Purchaser means the Deed Proponent and/or any other entity or person nominated by the Deed Proponent as a purchaser of any of the Ellume Shares.

QIAGEN means each of QIAGEN GmbH and QIAGEN NV Kvk.

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

Remuneration means the remuneration payable to the Administrators and Deed Administrators for acting as:

- (a) the administrators of the Deed Company under Part 5.3A of the Corporations Act; and
- (b) the Deed Administrators of the Deed Company under this Deed.

Richlands Facility means the premises located at 9-19 Macgregor Place, Richlands in the State of Queensland.

Richlands Landlord means Elcorp Services Pty Ltd ACN 069 142 847 and Treffiletti Siblings Pty Ltd ACN 627 266 586 as trustee under instrument 719121809.

Second Meeting has the meaning given to that term in Recital B.

Section 439C Resolution has the meaning given to that term in Recital B.

Section 444GA Order means an order of a Court granting leave to the Deed Administrators to transfer the Ellume Shares pursuant to section 444GA(1)(b) of the Corporations Act free from all Security.

Secured Creditor means any Creditor holding Security over all or any property of the Deed Company securing all or any part of the Creditor's Claim.

Security means a mortgage, charge, pledge, lien, security interest, title retention, preferential right, trust arrangement, contractual right of set-off, and any other encumbrance, security agreement or arrangement in favour of any person, including any Security Interest (as that term is defined in section 12 of the *Personal Property Securities Act 2009* (Cth)).

Share Transfer has the meaning given to it in clause 6.3.

Short Term Funders means each of:

- (a) Evangayle Pty Ltd ACN 615 224 256 as trustee for the Jones Family Trust No 3;
- (b) Glencairn Bay Investments Pty Ltd ACN 629 479 269 as trustee for the Glencairn Bay Investment Trust;
- (c) MA & KA Investments Pty Ltd ACN 600 309 626 as trustee for the MA & KA Investment Trust; and
- (d) Brand Brothers Holdings Pty Ltd ACN 637 303 952 as trustee for the Brand Brothers Holdings Trust.

Specific Releases means the agreement of each Short Term Funder and each Trading Security Holder to release:

- (a) all Security granted to them by the Deed Company and any Subsidiaries (as applicable);

- (b) any guarantees provided by the Subsidiaries for any indebtedness of the Deed Company;
- (c) in relation to the Short Term Funders, any borrowings provided by the Short Term Funder to a Subsidiary; and
- (d) in relation to each Trading Security Holder, on terms that provide for continuing trading and which are otherwise acceptable to the Deed Proponent acting reasonably,

in each case on and from Completion.

Staff means each of:

- (a) Chris Miller;
- (b) James Thygesen;
- (c) Maddison Bowyer;
- (d) Josh Gibbs;
- (e) Rush Gunatilake;
- (f) Harmony Douwes; and
- (g) Beau Bryant.

Termination Date means the date that this Deed is terminated pursuant to clause 7.1 or 7.2.

Trading Security Holders means, unless otherwise agreed by the Deed Proponent and the Deed Administrators in writing, each of:

- (a) Robert Bosch (Australia) Proprietary Limited;
- (b) Atlas Copco Australia Pty Ltd;
- (c) Crown Equipment Pty. Limited;
- (d) Retracom Holdings Pty Ltd;
- (e) Life Research Pty Ltd;
- (f) Print Management Facilities Australia Pty Ltd; and
- (g) any other entity notified by the Deed Proponent to the Deed Company prior to Completion (but excluding the US Landlord and the Richlands Landlord).

Trust means the Ellume Creditor's Trust to be established under the Trust Deed.

Trust Creditor means a Creditor who has a Claim except to the extent that that Claim is an Excluded Claim.

Trust Deed means the creditors' trust deed to be entered into between the Deed Company, the Deed Administrators and the Trustees, substantially in the form contained in Annexure A, which creates the Trust.

Trust Fund has the meaning given to that term in the Trust Deed.

Trustees means the trustees of the Trust established under the Trust Deed, being John Park and Joanne Dunn jointly and severally and any successor to that office appointed pursuant to the terms of the Trust Deed or the *Trusts Act 1973* (Qld).

US Facility means the premises located at buildings 201, 202 and 203, 4910 Executive Court, South Frederick, MD 21703.

US Landlord means WVS Parcel 200A, LLC and WVS Parcel 204 A, LLC, each a Maryland limited liability company.

Working Capital Amounts has the meaning given to it in clause 6.8.

1.2 Interpretation

In this Deed the following rules of interpretation apply unless the context requires otherwise:

- (a) headings are for convenience only and do not affect the interpretation of this Deed;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;
- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (iii) a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee and further includes any person claiming on behalf of or under or through a party to this Deed;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, schedule or annexure is a reference to a clause or term of, or schedule or annexure to this Deed;
 - (vi) this Deed includes all schedules and annexures to it;
 - (vii) a law includes:
 - (A) any constitutional provision, treaty, decree, statute, regulation, by-law, ordinance or instrument;
 - (B) any order, direction, determination, approval, requirement, licence or licence condition made, granted or imposed under any of them;
 - (C) any judgment; and
 - (D) any rule or principle of common law or equity,and is a reference to that law as amended, consolidated, replaced, overruled or applied to new or different facts;

- (viii) an agreement other than this Deed includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing;
- (ix) “AU\$” or “AUD” is to Australian dollars; and
- (x) “US\$” or “USD” is to United States dollars;
- (g) an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (h) if the day on which any act is to be done under this Deed is a day other than a Business Day, that act must be done on or by the immediately succeeding Business Day except where this Deed expressly specifies otherwise.
- (i) all references to time are to time in Brisbane, Queensland, Australia;
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Deed or any part of it; and
- (k) if there is any conflict between the body of this Deed and its schedules and annexures the terms of the main body of this Deed will prevail.

1.3 Inconsistency

- (a) If there is any inconsistency between the provisions of this Deed and the Corporations Act, the Regulations, the Insolvency Practice Schedule, or the Insolvency Practice Rules, this Deed prevails to the extent permitted by law.
- (b) If there is any inconsistency between this Deed and the constitution of the Deed Company or any other obligations binding on the Deed Company, then this Deed prevails to the extent of that inconsistency, and all persons bound by this Deed agree to sign all documents and do all things necessary to remove such inconsistency.

1.4 Bar to claims

Subject to section 444D of the Corporations Act, this Deed may be pleaded and tendered by:

- (a) the Deed Company or the Deed Administrators against any person having or asserting a Claim released, discharged and extinguished by clause 12.3; and
- (b) the recipient of any release or covenant contained in this Deed,

as an absolute bar and defence to any legal proceeding brought or made at any time in respect of a claim, release or covenant as the case may be.

1.5 Prescribed Provisions

The Prescribed Provisions are deemed to be incorporated in and form part of this Deed, save that to the extent of any inconsistency between the terms of this Deed and the Prescribed Provisions, the terms of this Deed will prevail.

1.6 Required provisions

To the extent that the Corporations Act requires any provision to be included in this Deed which is not expressly included in this Deed, such provision will be deemed to be included in this Deed.

2 Execution by all Parties

- (a) This Deed is subject to and conditional upon the execution of this Deed by each person named as a party to it.
- (b) If, as a result of clause 2(a), this Deed has not come into full force and effect on or prior to the expiration of 15 Business Days (or such further period as the Court allows) after the Section 439C Resolution is passed, then this Deed will terminate automatically.

3 Operation of this Deed

3.1 Commencement Date

Subject to clause 2(a), this Deed will commence and take effect on the Commencement Date.

3.2 Interim effect

To the extent that a person would be bound by this Deed if it had already been executed, the person must not, at any time after the Section 439C Resolution is passed but before this Deed is executed, do anything inconsistent with the terms of this Deed, except with the leave of the Court.

3.3 Termination

This Deed continues until it is terminated in accordance with this Deed.

4 Objective and effect

4.1 Objectives

Pursuant to section 435A(b) of the Corporations Act, this Deed seeks to achieve a better return to the Creditors of the Deed Company than would exist in a winding up and to maximise the chances of the Deed Company, or as much as possible of its business, continuing in existence.

4.2 Effect of the Deed on Officers of the Deed Company

- (a) The Directors of the Deed Company will remain in office throughout the Deed Period unless they resign or are removed by the Deed Administrators.
- (b) During the Deed Period, unless authorised in writing by the Deed Administrators, the Directors and Officers of the Deed Company cannot perform or exercise, and must not purport to perform or exercise, a right, function or power as a Director or Officer of the Deed Company.
- (c) For the avoidance of doubt, the Directors of the Deed Company will not pass a resolution to place the entity into voluntary administration or take any step to wind up the Deed Company except with the written approval of the Deed Administrators.
- (d) While they remain Directors of the Deed Company, the Directors of the Deed Company will not be relieved of their statutory duties as Directors of the Deed Company and for the avoidance of doubt, the Deed Administrators will not be responsible for such statutory obligations during the Deed Period.
- (e) During the Deed Period, the Directors of the Deed Company must:

- (i) co-operate with and assist the Deed Administrators in the performance by the Deed Administrators of their obligations under this Deed;
- (ii) carry out and perform such operations, functions, powers and other matters as may be delegated to them by the Deed Administrators; and
- (iii) perform their obligations pursuant to the Deed.

4.3 Effect of this Deed on Members

- (a) Until this Deed terminates, any Member, and any Creditor holding any Security over any Ellume Shares, must not without the prior written consent of the Deed Administrators deal with, or attempt to deal with any Ellume Shares or exercise shareholder rights over any Ellume Shares in a way that is contrary to this Deed or the purpose of the Deed.
- (b) The Deed Administrators must not, and must not allow:
 - (i) the Ellume Shares to be transferred or otherwise dealt with other than in accordance with a Section 444GA Order; or
 - (ii) further Ellume Shares of any class to be issued in the Deed Company.

5 Conditions to Completion

5.1 Conditions

Completion is conditional upon all of the following events taking place on or prior to the CP Satisfaction Date:

- (a) Execution and exchange of the Trust Deed by the Deed Administrators, the Trustees and the Deed Company.
- (b) Each of the Specific Releases being provided.
- (c) ASIC issuing the ASIC Relief.
- (d) The Deed Administrators obtaining the Section 444GA Order.
- (e) The Deed Proponent being reasonably satisfied that on Completion all Claims other than those subject to the Specific Releases, and expressed to be released under clause 12.3, will be fully and effectively released under all applicable laws.
- (f) The Deed Proponent being satisfied (acting reasonably) that:
 - (i) the Deed Company is not restricted under any existing contract to which it is a party from developing or producing dengue, malaria or HIV diagnostic products on and from Completion; and
 - (ii) no third party is entitled to acquire, or has acquired since the date of the Implementation Deed, any intellectual property rights developed by the Deed Company in connection with dengue, malaria or HIV diagnostic products.
- (g) The Deed Administrators executing the Ceasing Leases Notice.
- (h) The resignation or removal of the Existing Directors and Secretary and the appointment of the Continuing Directors;
- (i) The Staff and the Deed Company or its Subsidiary (as applicable) confirming that, upon Completion, the relevant Staff will continue to be employed by the Deed Company or its Subsidiary (as applicable) on terms acceptable to those

Staff and to the satisfaction of the Deed Proponent (acting reasonably), which terms must be no less favourable than each Staff member's terms and conditions of employment immediately prior to the entry into this Deed.

- (j) The US Landlord providing a binding commitment that it will not terminate the lease of the US Facility due to any fact, matter or circumstance arising prior to, or subsisting at, Completion.
- (k) The Richlands Landlord providing a binding commitment that it will not terminate the lease of the Richlands Facility due to any fact, matter or circumstance arising prior to, or subsisting at, Completion.

5.2 Obligation to satisfy Conditions and transparency

- (a) To the extent that it is within the relevant Party's control, that Party must (at its own cost) use reasonable endeavours to ensure that the Conditions are satisfied as soon as possible after the Commencement Date.
- (b) On and from the Commencement Date, the Parties must respond promptly to all reasonable requests for information from any other Party in relation to the status and expected timing for satisfaction of the Conditions.
- (c) Without limiting 5.2(a) and 5.2(b), as soon as possible following the Commencement Date, the Deed Administrators must finalise an application to the Federal Court of Australia seeking the Section 444GA Order.

5.3 Waiver of Conditions

- (a) The Condition in clauses 5.1(b), 5.1(e), 5.1(f), 5.1(g), 5.1(h), 5.1(i), 5.1(j) and 5.1(k) are for the benefit of the Deed Proponent and may only be waived in writing by the Deed Proponent.
- (b) The remaining Conditions are for the benefit of the Deed Company and the Deed Proponent and may only be waived in writing by each of them.

5.4 Consequence of non-satisfaction of the Conditions

- (a) Subject to clause 5.4(b), if:
 - (i) one or more of the Conditions is not satisfied or waived by the CP Satisfaction Date; or
 - (ii) the Deed Administrators and the Deed Proponent are of the opinion that one or more of the Conditions are incapable of being satisfied by the CP Satisfaction Date,then:
 - (iii) the Deed Proponent will cease to be bound by this Deed on and from the CP Satisfaction Date and will have no liability under it; and
 - (iv) the Deed Administrators will convene a meeting of the Creditors to determine the future of the Deed Company.
- (b) In circumstances where the Deed Proponent has reason to believe that it will not be able to satisfy the Conditions or otherwise effect Completion before the CP Satisfaction Date, the Deed Proponent may request an extension of the CP Satisfaction Date from the Deed Administrators for consideration (in their sole discretion).

- (c) In circumstances where the extension in clause 5.4(b) is not provided, or in circumstances where it is but the Long Stop Date has passed and the Conditions remain unsatisfied:
 - (i) the Deed Proponent will cease to be bound by this Deed on and from that date and will have no liability under it; and
 - (ii) the Deed Administrators will convene a meeting of the Creditors to determine the future of the Company.

6 Deed Period and Completion

6.1 Operation of the Deed Company during the Deed Period

- (a) During the Deed Period, the Parties agree that:
 - (i) the Deed Administrators will have stewardship and control of the Deed Company and will continue to manage the operations of the Deed Company; and
 - (ii) the Deed Proponent will not take part in the management or operations of the Deed Company, except in accordance with the terms of the Implementation Deed or as expressly consented to by the Deed Administrators in writing.
- (b) Upon Completion, management of the Deed Company will return to its Directors.

6.2 Completion and Completion steps

- (a) Completion must occur immediately after the CP Satisfaction Date, and in any event on or before the End Date.
- (b) On the Completion Date, Completion will occur in accordance with this clause 6 and the Parties must take the steps set out in clauses 6.3, 6.4, 6.5, 6.6 and 6.7 (**Completion Steps**).
- (c) The Completion Steps will be effected (or deemed to be effected) in the order set out below, or such other order as agreed by the Deed Administrators and Deed Proponent in writing.
- (d) The extinguishment and release of Claims pursuant to clause 12.3 will be deemed to occur on Completion immediately prior to the Completion Steps described in this clause 6.3
- (e) The Parties acknowledge and agree that the Completion Steps are inter-dependent. If one Completion Step does not occur, then the other Completion Steps are not to occur (and are to be taken as having not occurred). If any of the Completion Steps is not completed, the Parties must take such actions and steps as are necessary to put each of the Parties in the same position as if none of the Completion Steps had occurred.

6.3 Share transfer

First, following the CP Satisfaction Date, and in any event on or before the End Date, the Deed Administrators must, pursuant to the Section 444GA Order, transfer the Ellume Shares to the Purchaser(s), free from any Security, by:

- (a) delivering to the Purchaser(s) a duly completed share transfer form, executed on behalf of the Deed Company Members, for registration (**Share Transfer**);

- (b) each Purchaser duly executing the Share Transfer, attending to the stamping of the Share Transfer (if required) and delivering it to the Deed Administrators for registration; and
- (c) immediately following receipt of the executed Share Transfer from each Purchaser, entering, or procuring the entry of, the name of that Purchaser in the share register in respect of all Ellume Shares transferred to that Purchaser in accordance with this Deed.

6.4 Entry into the Trust Deed

On Completion, the Deed Administrators, the Trustees and the Deed Company must enter into the Trust Deed.

6.5 Payment of the Contribution Amount

On Completion, the Deed Proponent must, in accordance with the Payment Direction, pay the Contribution Amount to the Trustees to be administered under the Trust as the Trust Fund.

6.6 Ceasing Leases Notice

At Completion, the Deed Administrators or one of them must deliver the executed Ceasing Leases Notice to the Deed Proponent.

6.7 Reconstitution of board

Subject to receipt of signed consents to act and clause 5.1(h), the Deed Administrators must reconstitute the board of directors of the Deed Company in accordance with the Deed Proponent's directions, on and from Completion.

6.8 Payment of the Working Capital Amounts

- (a) The Parties acknowledge and agree that: :
 - (i) at Completion, any cash on hand for the Deed Company at Completion; and
 - (ii) after Completion, the amount of the proceeds received by the Deed Company in respect of Accounts Receivable and Accrued Revenue generated by the Administrators or Deed Administrators from the trading on of the Deed Company between the Appointment Date and Completion,

(the amounts in clauses 6.8(a)(i) and 6.8(a)(ii) being the **Working Capital Amounts**), will be transferred to the Trust to form part of the Trust Fund to be administered under the Trust, acknowledging that at all times the Deed Company must act reasonably and assist the Trustees in the collection of Accounts Receivable.
- (b) Within 10 Business Days after Completion, the Deed Company will provide the Trustees and the Deed Proponent a detailed listing of the:
 - (i) Accounts Receivable of the Deed Company as at the date of Completion;
 - (ii) Accrued Revenue of the Deed Company as at the date of Completion;
 - (iii) reconciliation of amounts received by the Deed Company for the period from Completion to the date which the listing in clauses 6.8(b)(i) and 6.8(b)(ii) above is provided; and

- (iv) Prepaid Expenses.
- (c) The Deed Proponent must pay (or will procure that the Deed Company pays) an amount to the Trust Fund, calculated as the aggregate of:
 - (i) within 12 Business Days after Completion:
 - (A) any funds held by the Deed Company at Completion that have not been transferred to the Trust Deed as provided in clause 6.8(a); and
 - (B) Prepaid Expenses as detailed in clause 6.8(b)(iv); and
 - (ii) within 10 Business Days after receipt:
 - (A) the amount of the proceeds received by the Deed Company in respect of Accounts Receivable of the Deed Company as at the date of Completion as detailed in clause 6.8(b)(i); and
 - (B) the amount of the proceeds received by the Deed Company in respect of Accrued Revenue of the Deed Company as at the date of Completion as detailed in clause 6.8(b)(ii),acknowledging that at all times the Deed Company must act reasonably and assist the Trustees in the collection of Accounts Receivable.
- (d) The amount payable by the Deed Proponent as calculated in clause 6.8(c), can be adjusted by agreement between the Deed Proponent and Trustees (such agreement not to be unreasonably withheld) for the following:
 - (i) any Proportionate Post Wages paid by the Deed Company after the date of Completion; and
 - (ii) any respective amounts specifically relating to invoices included in clauses 6.8(b)(i) and 6.8(b)(ii) which have been received by the Trustee after Completion and before the Deed Proponent pays the amount as provided in clause 6.8(c).
- (e) After the Deed Proponent makes the payment calculated in accordance with clauses 6.8(c) and 6.8(d), any amounts the Trustees receive which have either been paid to the Trustee in accordance with clause 6.8(c) or for work or services wholly performed after Completion will be remitted to the Deed Company by the Trustees.
- (f) Subject only to clause 6.8(g) below, any debts or liabilities incurred by the Deed Company during the period of its administration which:
 - (i) the Administrators have personal liability under sections 443A or 443B of the Corporations Act; and
 - (ii) remains unpaid at Completion,will be satisfied from the Trust Fund in accordance with the Trust Deed.
- (g) Any debts or liabilities of a kind mentioned in clause 6.8(f) that are owed to an Excluded Creditor who is an Employee will be paid by the Deed Company following Completion.
- (h) The obligations of the Parties under this clause 6.8 survive termination of this deed (pursuant to clause 7.1) following Completion.

6.9 Trust Creditors' Available Assets

The only property that is available to pay the Trust Creditors' Claims is the assets of the Trust Fund.

6.10 Consistency with the Corporations Act

- (a) Notwithstanding any other provision of this Deed, for the purposes of section 444DA of the Corporations Act, any Employee will retain a priority until Completion in respect of the assets of the Deed Company under the Deed Administrators' control, and thereafter, in respect of the assets of the Trust Fund at least equal to that which they would have been entitled to if the property of the Deed Company had been applied in accordance with sections 556, 560 and 561 of the Corporations Act.
- (b) For the purposes of section 444DB of the Corporations Act, the Deed Administrators (including in their capacity as Trustees) must determine that a debt (or part thereof) by way of superannuation contribution (**Superannuation Debt**) is not admissible to proof as a Claim or a Claim against the Trust Fund if:
 - (i) that debt (or that part of the debt) by way of superannuation guarantee charge:
 - (A) has been paid; or
 - (B) is, or is to be admissible against the Deed Company; and
 - (ii) the Deed Administrators are satisfied that the superannuation guarantee charge is attributable to the Superannuation Debt.
- (c) If the Deed Administrators make a determination in accordance with clause 6.10(b) above, the Superannuation Debt is to be treated as extinguished as against the Deed Company.

6.11 Continuing Employees

The Deed Proponent will procure that on and from Completion, the Deed Company or the Ellume Subsidiary that is the employer of the Continuing Employees will remain responsible for, and will recognise, honour and pay, the entitlements of any Continuing Employee, including any entitlements that accrued prior to or after the Appointment Date.

6.12 QIAGEN

The Deed Company will use its commercial reasonable endeavours to renegotiate with QIAGEN the agreements between the Deed Company prior to Completion, on terms satisfactory to the Deed Proponent, acting reasonably.

6.13 Electing Noteholders

- (a) Each Electing Noteholder may, prior to the CP Satisfaction Date, for any part of or the whole of the Notes held by the Electing Noteholder, elect to vary the terms of the Notes to the effect that:
 - (i) all Noteholder Existing Rights are extinguished;
 - (ii) the Maturity Date (as defined in the relevant Note), is extended to 5 years after the date of this Deed;
 - (iii) the Note is to be redeemed by conversion to shares in the Deed Company in the event of an IPO. Those shares are to be issued *pari passu* with other Electing Noteholders, and the total shareholding of all

- Electing Noteholders to not exceed 5% of the total shares issued in the IPO; and
- (iv) include such other amendments satisfactory to the Deed Proponent, acting reasonably.
 - (b) An Electing Noteholder shall not participate in the Trust Fund for the Notes the subject of the election, and are Excluded Creditors.

7 Termination

7.1 Termination after Completion

The Deed will terminate immediately after Completion, unless terminated earlier.

7.2 Termination on failure of Deed

This Deed automatically terminates in respect of the Deed Company upon the happening of any one of the following events:

- (a) the Conditions are not satisfied by the earlier of the CP Satisfaction Date and the Long Stop Date;
- (b) Completion does not occur on or before the End Date;
- (c) the Court makes an order terminating this Deed under section 445D of the Corporations Act; or
- (d) by a resolution of the Creditors passed at a meeting convened pursuant to Division 75-10 of the Insolvency Practice Schedule.

7.3 Notice of effectuation of Deed

Upon termination in accordance with the provisions of clause 7.1, the Deed Administrators or one of them must immediately certify, in writing that the terms of this Deed have been fulfilled and, as soon as practicable, must lodge with ASIC a notice substantially in the following form in respect of the Deed Company:

‘We, [*name of administrators*] of [*address*] as administrators of the deed of company arrangement executed on [*date*], CERTIFY that the deed has been wholly effectuated in respect to [*name of Deed Company*].’

and the execution of the notice terminates this Deed and all Claims of Creditors of the Deed Company other than Excluded Claims will be extinguished, discharged and released if not extinguished or released earlier under the Deed.

7.4 Effect of Termination

In accordance with section 445H of the Corporations Act, the termination or avoidance, in whole or in part, of this Deed does not affect the previous operation of this Deed.

7.5 Consequences of Termination of the Deed for non-performance

Upon termination of the Deed under clause 7.2, unless the Deed Administrators consider it appropriate to convene a further meeting of Creditors pursuant to Division 75-10 of the Insolvency Practice Schedule to consider a variation of the Deed:

- (a) the Deed Company will be taken to have passed special resolutions under section 491 of the Corporations Act that the Deed Company be voluntarily wound up and that the Deed Administrators be the Deed Company's liquidators; and
- (b) the Deed Company will be wound up.

7.6 Survival of clauses

Despite any other provision of this Deed, clauses 1 (*Definitions and interpretation*), 7 (*Termination*), 10 (*Remuneration and indemnity*), 12 (*Moratorium and release*), 13 (*Tax*), 14 (*Notices*) and 15 (*General*) survive the termination of this Deed.

8 Deed Administrators' appointment

8.1 Appointment

On the Commencement Date, the Deed Administrators are appointed joint and several administrators of the Deed.

8.2 Acceptance of appointment

The Deed Administrators:

- (a) accept the appointment as administrators of the Deed; and
- (b) agree to act as administrators of the Deed during the Deed Period or until the Deed Administrators retire or are removed from office in accordance with the Deed or the Corporations Act.

8.3 Deed Administrators are agents

In exercising the powers conferred by the Deed and carrying out the duties arising under the Deed, the Deed Administrators will act as agent for and on behalf of the Deed Company.

8.4 Management

The Deed Administrators will retain day to day management and control of the Deed Company until the Termination Date to the exclusion of the Directors of the Deed Company.

8.5 Joint and several

The rights, powers and privileges of the Deed Administrators may be exercised by them jointly and severally.

8.6 Deed Administrators' resignation

Any Deed Administrator may resign at any time by giving not less than 28 days' prior written notice to each of the Parties unless that resignation would result in there being no remaining Deed Administrator in which event the Deed Administrator must:

- (a) convene meetings of Creditors of the Deed Company in accordance with clause 9.4 for the purpose of nominating a replacement deed administrator;
- (b) assign to a replacement deed administrator nominated by the Creditors the Deed Administrators' rights, title and benefit under this Deed; and
- (c) do all things reasonably necessary to effect the assignment referred to in clause 8.6(b).

9 Powers of the Deed Administrators

9.1 Powers

For the purposes of administering this Deed, the Deed Administrators have the following powers:

- (a) all the powers set out in paragraph 2 of Schedule 8A of the Regulations, provided that the Deed Administrators must not, without the prior written consent of the Deed Proponent:
 - (i) bring an application for the winding up of a Deed Company;
 - (ii) exercise any of the powers set out in items (za), (zb), (zc) or (ze) of paragraph 2 of Schedule 8A of the Regulations; or
 - (iii) except in the ordinary course of business of the Deed Company, exercise any of the powers set out in items (h) or (s) of paragraph 2 of Schedule 8A of the Regulations;
- (b) to remove from office a Director or company secretary of the Deed Company;
- (c) to appoint a person as a Director of the Deed Company, whether to fill a casual vacancy or not;
- (d) to perform any function and exercise any power that the Deed Company or any of their Officers could perform or exercise if the Deed Company was not subject to this Deed;
- (e) in accordance with the Section 444GA Order, to transfer the Ellume Shares;
- (f) to do anything that is incidental to exercising a power set out in this clause 9.1; and
- (g) to do anything else that is necessary or convenient for the purpose of administering this Deed.

9.2 Calling for proofs of debt

The Deed Administrators may exercise any of the powers conferred on the Trustees under the Trust Deed for the purpose of commencing the process for the adjudication of Claims under the Trust Deed, which exercise will be treated for all purposes under the Trust Deed as if those powers had been exercised by the Trustees after the commencement of the Trust.

9.3 Solicitors, advisers and consultants

- (a) The Deed Administrators may engage the services of their partners, employees, directors, officers, contractors, advisers, delegates, solicitors and consultants to assist them in the performance or exercise of their duties, obligations, responsibilities and powers under this Deed, and the Deed Company will pay such Deed Administrators' Costs up to the maximum amount of the Deed Administrators' Costs.
- (b) The Deed Administrators may delegate their powers under this clause 9 including by way of appointing agents and authorising such agents to act on behalf of the Deed Administrators or the Deed Company.

9.4 Creditors' meetings

The Deed Administrators may convene a meeting or meetings of Creditors at any time, and except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of this Deed, Division 75 of Part 3 of the Insolvency Practice Rules applies, with such modifications as are necessary, to meetings of Creditors held under this Deed as if references to the 'external administrator' or chairperson, as the case may be, were references to the Deed Administrators.

9.5 Reporting

Except as required by law, the Deed Administrators are not required to report to Creditors. However, the Deed Administrators will advise all Creditors of the date of the termination of this Deed and may, in their absolute discretion, otherwise report to Creditors during the Deed Period at such times as the Deed Administrators consider appropriate and on matters which the Deed Administrators consider ought to be brought to the attention of Creditors.

9.6 Access to Records

The Deed Administrators, may at any time inspect and take copies of the books and records of the Deed Company at no cost, and the Deed Company authorise the Deed Administrators and Trustees and their staff to enter the Deed Company's premises on any Business Day between the hours of 9.00am and 5.00pm with no less than 24 hours' notice, for the purpose of conducting such an inspection and for the purpose of doing anything necessary or desirable in the exercise of their powers and discretions and the performance of their duties, obligations and responsibilities as Deed Administrators under this Deed, including to take photocopies or images of any books and records for that purpose.

10 Remuneration and indemnity

10.1 Remuneration

- (a) The Administrators and the Deed Administrators are entitled to:
 - (i) payment of Costs; and
 - (ii) receive in accordance with Division 60 of the Insolvency Practice Schedule their Remuneration on the basis of the time spent by the Administrators and Deed Administrators (as the case may be) themselves or any of their partners, employees, directors, officers, contractors, advisers, authorised agents or delegates in the performance of services in connection with or in relation to the administration of the Deed Company under Part 5.3A of the Corporations Act and this Deed and such time will be charged at the Administrators' and Deed Administrators' standard rates, from time to time, for work of that nature by the firm of which the Administrators and Deed Administrators are partners or employees.
- (b) The Deed Administrators acknowledge that their Remuneration and Costs will only be paid from the Trust Fund.
- (c) The Administrators and the Deed Administrators' Remuneration and Costs referred to in this clause 10 and all other costs must be reimbursed and/or paid out of the Trust Fund. The Administrators' and the Deed Administrators (whether or not they are still acting in either capacity) can request the Trustees to draw such amounts from the Trust Fund from time to time.

10.2 No personal liability

Subject to the Corporations Act and to the extent permitted by law, in the performance or exercise, or purported performance or exercise, of any of the Deed Administrators' functions, powers and duties in the Deed Period, the Deed Administrators will not be personally liable for:

- (a) any debts incurred or any claims, demands, actions, loss, damage, costs, charges, expenses or liabilities caused by any act, omission or default by or on behalf of the Deed Administrators in administering this Deed or exercising their duties and obligations under this Deed;
- (b) any debts incurred or any claims, demands, actions, loss, damage, costs, charges, expenses or liabilities caused by any act, omission or default by or on behalf of the Deed Company; or
- (c) any debts incurred or any claims, demands, actions, loss, damage, costs, charges, expenses or liabilities suffered or sustained or incurred by any directors, officers or Creditors of the Deed Company.

10.3 Indemnity

The Deed Administrators and Administrators (whether or not they are still acting in either capacity) are entitled to be indemnified by the Deed Company until Completion, and after Completion from the Trust Fund in respect of:

- (a) all debts, liabilities, actions, suits, proceedings, accounts, claims, damages, awards and judgments whatsoever arising out of or in any way connected to the administration of the Deed Company or their role as Administrators or Deed Administrators and incurred or sustained in good faith and without negligence;
- (b) any amount which the Administrators or Deed Administrators are, or but for the transactions contemplated by this Deed would be, entitled to be indemnified out of the assets of the Deed Company for, in accordance with the Corporations Act, at law or in equity, including any amounts payable pursuant to section 443A, section 443B or section 443BA of the Corporations Act;
- (c) any debts, liabilities, damages, losses and remuneration to which the statutory indemnity under section 443D of the Corporations Act applies;
- (d) any amount for which the Administrators and Deed Administrators are entitled to exercise a lien at law or in equity on the property of the Deed Company;
- (e) the Administrators' and Deed Administrators' Remuneration and Costs; and
- (f) all debts, liabilities, actions, suits, proceedings, accounts, claims, damages, awards and judgments arising out of or in the course of the Deed and incurred or sustained in good faith and without negligence.

10.4 Continuing indemnity

The indemnity in the Deed is a continuing indemnity and will endure for the benefit of the Legal Personal Representatives despite the removal of the Deed Administrators and the appointment of new Deed Administrators or the termination of the Deed for any reason whatsoever.

10.5 Indemnity not to be affected or prejudiced

The indemnities under clause 10.3 will not:

- (a) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Administrators or Deed Administrators and extends to cover any actions, suits, proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Administrators or Deed Administrators or defect in the approval or execution of the Deed or otherwise; or

- (b) affect or prejudice all or any rights that the Administrators or Deed Administrators may have against the Deed Company or any other person to be indemnified against the Costs and liabilities incurred by the Administrators or Deed Administrators in the performance of, or incidental to, any of the powers or authorities conferred on the Administrators or Deed Administrators by this Deed or otherwise.

10.6 Satisfaction of Claims

The Administrators and Deed Administrators are entitled to exercise the Administrators and Deed Administrators' right of indemnity conferred by clause 10.3 whether or not the Deed Administrators have paid or satisfied the Claims.

10.7 Administrators' and Deed Administrators' lien

Until Completion, the Deed Administrators and Administrators (whether or not they are still acting in either capacity) are entitled to exercise a lien over the Deed Company assets for all amounts in respect of which they are entitled to an indemnity from the Deed Company under clause 10.3 and otherwise at law and equity.

10.8 Priority

The Administrators' and Deed Administrators' right of indemnity under clause 10.3 and their lien under clause 10.7 have priority over the claims of any Creditor or all Creditors generally.

10.9 Statutory liability and indemnity

Nothing in this Deed will affect or limit the operation of Subdivision B of Division 9 of Part 5.3A of the Corporations Act, which is to apply with all necessary modifications to the Administrators voluntary administration of the Deed Company and Deed Administrators' subsequent administration of this Deed.

11 Application to Court

- (a) If any unforeseen circumstances arise that are not contemplated by the Deed, the Deed Administrators may, in their absolute discretion, if they think fit, apply to the Court for directions.
- (b) No person bound by the Deed (other than the Deed Administrators or the Deed Proponent) may make any application to the Court in relation to any matter arising under the Deed unless at least five Business Days' prior notice in writing has been given to the Deed Administrators. The notice must give particulars of the proposed application.

12 Moratorium and release

12.1 Binding effect

Without limiting sections 444D and 444G of the Corporations Act this Deed binds:

- (a) each Creditor;
- (b) each Member and Officer of the Deed Company; and
- (c) subject to clause 12.7, each Secured Creditor who voted in favour of the section 439C Resolution at the Second Meeting.

12.2 Moratorium

- (a) Subject to clause 12.2(b), during or after the Deed Period a Creditor may not, in relation to that Creditor's Claim:
- (i) make or proceed with an application for an order to wind up the Deed Company or for the appointment of a provisional liquidator or a court appointed receiver to the Deed Company and its property;
 - (ii) proceed with such an application (referred to in (i) above) made before this Deed became binding on such person;
 - (iii) begin, revive, continue or take any further steps in any action, suit, mediation or proceeding against the Deed Company or in relation to any of its property;
 - (iv) begin, revive or continue or take any further steps in respect of any Enforcement Process in relation to the Deed Company's property;
 - (v) commence, continue or take any additional step in any arbitration or Court proceeding against the Deed Company or to which the Deed Company is a party;
 - (vi) exercise any right of set-off or defence, cross-claim or cross action to which that Creditor would not have been entitled had the Deed Company been wound up on the Appointment Date;
 - (vii) take any action whatsoever to seek to recover any part of its Claim from the Deed Company; or
 - (viii) otherwise enforce any right it may have or acquire against the Deed Company,
- except to the extent of that Creditor's entitlement, if any, to participate in the Trust Fund in accordance with the terms of the Trust Deed.
- (b) Notwithstanding clause 12.2(a) or any other term of this Deed, the moratorium described in clause 12.2(a) does not restrict or otherwise prevent the Deed Proponent from taking enforcement action; which, for the avoidance of doubt, is expressly permitted.
- (c) For the purposes of this clause 12.2(a), "property" includes property used or occupied by, or in the possession of, the Deed Company except if the Administrators have issued a notice under section 443B of the Corporations Act in relation to that property.

12.3 Release upon Completion

Subject to clause 12.6, each Creditor agrees that on Completion, its Claims (other than any Excluded Claims) are extinguished and released.

12.4 Execution of all necessary documents

Each Creditor must, if required by the Deed Company or the Deed Administrators, execute and deliver to the Deed Administrators such form of acknowledgement or release of any Claim as reflects the release and discharge of that Claim pursuant to clause 12.3.

12.5 Bar to Creditors' Claims

Subject to section 444D of the Corporations Act, this Deed may be pleaded by the Deed Company or the Deed Administrators against any Creditor as an absolute bar and

defence to any Claim to the extent that the Deed Company's liability has been released and discharged in relation to that Claim pursuant to clause 12.3.

12.6 Conversion of Claims

- (a) Subject to clause 12.6(b), the Deed Administrators and the Creditors agree that, upon all Claims being released pursuant to clause 12.3, each Trust Creditor who had a Claim, will be entitled to make a claim against the Trust Fund, in accordance with the Trust Deed, which is equal in amount to their released Claim.
- (b) A Creditor is not entitled to make a claim against, participate in or receive any distribution from, the Trust Fund in respect of an Excluded Claim.

12.7 Secured Creditors

- (a) Other than as expressly provided for under this Deed, this Deed will not release:
 - (i) any Security held by Secured Creditors in respect of any Claim; and
 - (ii) any Security validly and effectively held by an owner or lessor in property of Deed Company.
- (b) Nothing in this Deed affects the liabilities of the Deed Company to the Secured Creditors or the contractual relations between them in respect of their Security to the extent permitted by section 444D(2) of the Corporations Act.
- (c) Subject to clause 12.7(d), each Secured Creditor who voted in favour of the Section 439C Resolution will be subject to the restrictions in clause 12.2.
- (d) The restrictions in clause 12.2 will cease to apply to a Secured Creditor who voted in favour of the Section 439C Resolution if this Deed terminates prior to Completion for any of the reasons set out in clause 7.2.

13 GST

13.1 Interpretation

The Parties agree that:

- (a) except where the context suggests otherwise, terms used in this clause 13 have the meanings given to those terms by the GST Act (as amended from time to time);
- (b) any part of a supply that is treated as a separate supply for GST purposes (including attributing GST payable to tax periods) will be treated as a separate supply for the purposes of this clause 13;
- (c) unless otherwise expressly stated, all consideration to be provided under any other provision of this Deed is exclusive of GST. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purpose of this clause 13;
- (d) a reference to the GST payable by an entity or the input tax credit entitlements of an entity will include a reference to the GST payable or input tax credit entitlements of the representative member of any GST group to which that entity may belong;
- (e) a reference to something done (including a supply made) by a party includes a reference to something done by any entity through which that party acts; and

- (f) if any value added tax, goods and services tax or other similar tax is payable pursuant to a law of another jurisdiction on any supply made under or in connection with this Deed, then the provisions of this clause 13 apply as if references to a word or expression defined in the GST Act were to the corresponding concepts in the law of that other jurisdiction.

13.2 Reimbursements and similar payments

Any reimbursement or similar payment required to be made under this Deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which an entity is entitled for the acquisition to which the cost, expense or amount relates plus an amount calculated in accordance with clause 13.3 where applicable.

13.3 GST payable

If GST is payable in relation to a supply made by a party (Supplier) under or in connection with this Deed then the party providing consideration for the supply (Recipient) must pay an additional amount to the Supplier equal to the amount of GST payable in relation to the supply at the same time as the other consideration is to be provided for that supply.

13.4 Tax invoice

The Supplier must issue a valid tax invoice to the Recipient for any taxable supply it makes under this Deed, except where the Recipient is required to issue the tax invoice.

13.5 Variation to GST payable

If the GST payable in relation to a supply made under or in connection with this Deed varies from the additional amount paid by the Recipient under clause 13.3 then the Supplier must promptly issue an adjustment notice to the Recipient and will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient. Any payment, credit or refund under this clause is deemed to be a payment, credit or refund of the additional amount payable under clause 13.3.

14 Notices

14.1 Notices

- (a) Unless expressly stated otherwise in this Deed and subject to clause 14.2, a notice, consent, approval, request, demand or other communication given under this Deed to or by a party to this Deed (**Notice**):
- (i) must be in legible writing and in English;
 - (ii) must be addressed to the party to whom it is to be given (**Addressee**) at the address or email address set out below or to any other address or email address as notified by the Addressee for the purposes of this clause:
 - (A) if to the Deed Company:

Address	c/- FTI Consulting, Level 20, CP1, 345 Queen Street, Brisbane QLD 4000
Attention	John Park and Joanne Dunn
Email	john.park@fticonsulting.com joanne.dunn@fticonsulting.com

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- (B) if to the Deed Administrators:
 - Address c/- FTI Consulting, Level 20, CP1,
345 Queen Street, Brisbane QLD 4000
 - Attention John Park and Joanne Dunn
 - Email john.park@fticonsulting.com
joanne.dunn@fticonsulting.com
 - (C) if to the Deed Proponent:
 - Address c/- McCullough Robertson Lawyers, Level 11,
66 Eagle Street, Brisbane QLD 4000
 - Attention David O'Farrell and Rachel Zagorskis
 - Email dofarrell@mccullough.com.au
rzagorskis@mccullough.com.au
 - (iii) must be signed by or on behalf of the sender by the solicitor for, or any attorney, director, secretary or authorised agent of, the sender;
 - (iv) must be either:
 - (A) delivered by hand or sent by pre-paid mail (by airmail if sent to or from a place outside Australia) to the Addressee; or
 - (B) sent by email to the Addressee's email address; and
 - (v) is deemed to be received by the Addressee in accordance with clause 14.1(c).
 - (b) If:
 - (i) a party changes its address and fails to notify the other parties of this change and the new address, delivery of Notices marked to the attention of the Addressee at that new address is deemed compliant with the notice obligations under this clause; and/or
 - (ii) an individual named in clause 14.1(a)(ii) ceases to work in the role specified or ceases to work for the Addressee and the Addressee fails to notify the other parties of an alternative individual, delivery of Notices marked to the attention of an individual in the same or equivalent role at the Addressee is deemed compliant with the notice obligations under this clause.
 - (c) Without limiting any other means by which a party may be able to prove that a Notice has been received by the Addressee, a Notice is deemed to be received:
 - (i) if delivered by hand, when delivered to the Addressee;
 - (ii) if sent by post, on the 3rd Business Day after the date of posting, or if to or from a place outside Australia, on the 7th Business Day after the date of posting; or
 - (iii) if sent by email:
 - (A) when the sender receives an automated message confirming delivery; or

- (B) 30 minutes after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered, whichever happens first,

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (Addressee's time) it is deemed to be received at 9.00am on the following Business Day.

14.2 Notices sent by email

- (a) Notices sent by email need not be marked for attention in the way stated in clause 14.1. However, the email must state the first and last name of the sender.
- (b) Notices sent by email are taken to be signed by the named sender.

15 General

15.1 Variation

- (a) Subject to the provisions of the Corporations Act, this Deed may only be varied:
- (i) by a resolution passed at a meeting of the Creditors convened in accordance with Division 75 of the Insolvency Practice Schedule, but only if the variation is not materially different from a proposed variation set out in a notice of meeting; and
- (ii) with written agreement of the Parties.
- (b) Nothing in any variation of this Deed will limit the operation of sections 445D and 445E of the Corporations Act.

15.2 Further assurances

Each Party and each person bound by this Deed must, at its own expense, do all things and execute all documents necessary to give full effect to this Deed and the transactions contemplated by it.

15.3 Severability and enforceability

- (a) Any provision of this Deed which is prohibited or unenforceable is ineffective to the extent of the prohibition or unenforceability but the validity or enforceability of the remaining provisions of this Deed will not be affected.
- (b) Clause 15.3(a) does not apply where enforcement of the provision of this Deed in accordance with clause 15.3(a) would materially affect the nature or effect of the Parties' obligations under this Deed.

15.4 Waiver

No failure to exercise and no delay in exercising any right, power or remedy under this Deed will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy. A power or right may only be waived in writing, signed by the Parties to be bound by the waiver.

15.5 Creditor's power of attorney

Each Creditor irrevocably appoints each of the Deed Administrators jointly and severally as its attorney to execute any document to give effect to the releases in clause 12.3.

15.6 Costs

- (a) Each Party must pay its own costs of negotiating, preparing and executing this Deed.
- (b) The Administrators' costs of and incidental to the preparation and execution of this Deed are taken to be costs, charges and expenses incurred by the Deed Administrators in connection with or incidental to the administration of this Deed.

15.7 Stamp duty

The Deed Proponent must pay all stamp duties and any related interest, fines and penalties in respect of this Deed, and must indemnify each other Party against any liability arising from failure to comply with this clause 15.7.

15.8 Cumulative rights

The rights, power and remedies provided by this Deed are cumulative and do not exclude any rights, powers, authorities, discretions or remedies provided by law.

15.9 Time

Time is of the essence of this Deed in all respects.

15.10 Consents

Unless this Deed expressly provides otherwise, a consent under this Deed may be given or withheld in the absolute discretion of the party entitled to give the consent and to be effective must be given in writing.

15.11 Entire agreement

This Deed contains everything that the Parties have agreed on in relation to the matters it deals with. No Party can rely on an earlier document, or anything said or done by another Party before this Deed was executed.

15.12 Further cooperation

Each Party must do anything (including executing a document) another Party reasonably requires in writing to give full effect to this Deed.

15.13 Relationship of the Parties

Except as expressly provided in this Deed:

- (a) nothing in this Deed is intended to constitute a fiduciary relationship, employment relationship or an agency, partnership or trust; and
- (b) no Party has authority to bind any other Party.

15.14 Assignment

Rights arising out of or under this Deed are not assignable by a Party, except if the assignor is required to make the assignment pursuant to clause 8.6(b) or makes the assignment with the prior written consent of the other Parties.

15.15 Counterparts

- (a) This Deed may be executed in any number of counterparts, each of which:
 - (i) may be executed electronically or in handwriting;

- (ii) will be deemed an original whether kept in electronic or paper form, and all of which taken together will constitute one and the same document; and
 - (iii) may be exchanged by email or other electronic means.
- (b) Without limiting clause 15.15(a), if the signatures on behalf of one party are on more than one copy of this Deed, this will be taken to be the same as, and have the same effect as, if all of those signatures were on the same counterpart of this Deed.

15.16 Governing law and jurisdiction

- (a) This Deed is governed by the laws of the State of Queensland, Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts in and of Queensland, Australia and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this Deed.
- (c) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within paragraph (b) above.

Schedule 1 Ellume Subsidiaries

1. Ellume USA LLC, a limited liability company incorporated in the State of Delaware, USA
2. Ellume NZ Pty Limited (NZBN 9429046688392)

Schedule 2 Ceasing Leases Notice

By Email

[Address]

Dear Sirs

1. This notice is given for the purposes of the Deed of Company Arrangement made in relation to Ellume Limited (subject to deed of company arrangement) (**DOCA**). Terms not defined in this notice have the meanings set out in the DOCA.
2. This notice concerns the Ceasing Leases.
3. By this notice, we as Deed Administrators confirm to Hough Consolidated Pty Ltd ACN 657 651 280 for the purposes of the DOCA that the Ceasing Leases have been terminated or otherwise that counterparties to those Ceasing Leases have been notified that the Company will cease to comply with, and will not perform its obligations under, and treat each Ceasing Lease at an end.

Yours sincerely

[Deed Administrators' sign-off]

Schedule 3 DOCA Proposal

Please see attached 16 pages.

**Proposal for Deed of Company Arrangement in relation to
Ellume Limited (administrators appointed) (ACN 141 767 660)**

Made by Hough Consolidated Pty Ltd (ACN 657 651 280)

The terms of this proposal must be read in conjunction with certain defined terms as set out in the Dictionary at the end of the proposal. This proposal is final (and subject to the terms of an executed Deed of Company Arrangement).

Item	Subject	Material Term
1.	Company	Ellume Limited (Administrators Appointed) (ACN 141 767 660) (Company) is the entity that is proposed to be the subject of the DOCA.
2.	Administrators	John Park and Joanne Dunn of FTI Consulting.
3.	Appointment Date	31 August 2022.
4.	Proponent	The proponent of the DOCA is Hough Consolidated Pty Ltd (ACN 657 651 280) (Hough).
5.	Purpose of proposal	The purpose of this proposal is to articulate the material terms of the DOCA that Hough proposes in respect of the Company and which Hough requests the Administrators present to the meeting of Creditors of the Company that is to be convened and held pursuant to Part 5.3A of the Act. The proposed DOCA for the Company is intended to satisfy the objectives of Part 5.3A of the Act, including to maximise the chances of the Company, or as much as possible of its operations, continuing in existence, or to achieve better outcomes for the Company, compared to the expected outcome were the Company to be immediately wound up and assets liquidated.
6.	Key terms of the Deed of Company Arrangement	Except as indicated, all amounts are expressed in US\$. In accordance with this proposal, the DOCA will contain the following key terms: (1) All of the Existing Shares in the Company will be transferred by the Administrators to Hough or its nominee, free and clear of any encumbrances as part of inter-conditional steps to occur at completion as set out in Clause 12 below. (2) Each Electing Noteholder may, for any part of or the whole of the Notes held by the Electing Noteholder, elect to vary the terms of the Notes to the effect that: (a) all Noteholder Existing Rights are extinguished; (b) the Maturity Date (as defined in the relevant Note), is extended to 5 years after the date of the DOCA;

		(c) the Note is to be redeemed by conversion to shares in the Company in the event of an IPO. Those shares are to be issued pari passu with other Electing Shareholders, and the total shareholding of all Electing Noteholders to not exceed 5% of the total shares issued in the IPO; and (d) include such other amendments satisfactory to Hough, acting reasonably. An Electing Noteholder shall not participate in the Deed Fund for the Notes the subject of the election. (3) All other Notes (including the Notes of any Electing Noteholder who does not make an election under (2) above) will be redeemed and the Noteholders (other than the Electing Noteholders who make an election under (2) above) will participate in the Deed Fund for the amount of the Noteholder Pool. (4) Hough will contribute the Hough Contribution to the Deed Administrators to be available for distribution to Creditors under the Creditors' Trust as part of the Creditors' Trust Fund. (5) The Hough Contribution (other than the Interim Funding) will be paid in a single tranche as part of inter-conditional steps at completion of the DOCA (as further set out at item 12 below). If the DOCA terminates and does not Complete in accordance with its terms, then the Hough Contribution will no longer be payable. The only assets of the Company to be available for distribution to Admitted Creditors under the DOCA (and Creditors' Trust) will be the Hough Contribution and the Working Capital Amounts. (6) The Creditors' Trust Fund will be available for distribution to Creditors under the Creditors' Trust in accordance with the priority waterfall contained in Item 15 below. (7) Notwithstanding paragraph (6) above, Small Claim Creditors will be paid under the Creditors' Trust immediately following priority Creditors as determined by application of sections 556, 560 and 561 of the Act and prior to remaining Admitted Creditors that are not Small Claim Creditors as provided by Item 15 below. (8) The DOCA will be Completed upon, among other things, payment of the Hough Contribution to the Deed Administrators (which payment will be done as an inter-dependent step with other completion steps contained in the DOCA set out at Item 12 below). At that time, the Creditors' Trust will be formed (with the Creditors' Trust Fund paid to the trustees of the Creditors' Trust) and Admitted Creditors will have rights to receive distributions as beneficiaries under the terms of the Creditors' Trust (in the same order of priority as applies under the DOCA). (9) The Company will cease to comply with, and will not perform the Pre-Administration Leases and will treat the Pre-Administration Leases as coming to an end.
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		(10) The Company will use its commercial reasonable endeavours to renegotiate with QIAGEN the agreements between the Company and QIAGEN on terms satisfactory to Hough, acting reasonably. (11) All claims against the Company will be released upon Completion under the DOCA.
7.	Proposed Deed Administrators	John Park and Joanne Dunn of FTI Consulting. The Proposed Deed Administrators are also the proposed Trustees.
8.	Commencement date for the DOCA	The date of execution of the DOCA contemplated by this proposal.
9.	Property of the Company available for distribution	The property of the Company available for distribution to Creditors pursuant to the Creditors' Trust to pay their Admitted Claims will be the Creditors' Trust Fund (being the Deed Fund) as paid to the Trustees under the Creditors' Trust Deed and to be held on trust for the benefit of the beneficiaries of the Creditors' Trust.
10.	Moratorium under the DOCA	During the period of operation of the DOCA, the moratoria in sections 440A, 440D, 440F and 444E of the Act will apply to all Creditors and members of the Company.
11.	Release of claims	Upon and subject to Completion of the DOCA, all claims against the Company (except for those due to Excluded Creditors) will be released and extinguished in full, in consideration for the Admitted Creditors becoming beneficiaries under the Creditors' Trust.
12.	Completion under the DOCA – formation of Creditors' Trust	The DOCA will only complete upon the below steps occurring (all of which are inter-dependent). (1) Release by each of the Short Term Funders of all security granted to it as at the date of this proposal by the Company and any Subsidiaries. (2) Release by each of the Trading Security Holders of any security granted to the entity by any Company and any Subsidiaries, unless otherwise agreed between the parties in writing not less than 20 Business Days prior to Completion (or such other period as agreed by the Administrators). (3) Each such release under paragraph (2) to be on terms that provide for continuing trading and which are otherwise acceptable to Hough, acting reasonably. (4) The making of the ASIC Relief. (5) The making of the 444GA Orders. (6) The transfer of the Shares to Hough or its nominee. (7) The Proponent being satisfied (acting reasonably) that: a. the Company is not restricted under any existing contract to which it is a party from developing or

		producing dengue, malaria or HIV diagnostic products on and from Completion; and b. no third party is entitled to acquire, or has acquired since the date of this proposal, any intellectual property rights developed by the Company in connection with dengue, malaria or HIV diagnostic products. (8) The payment by Hough to the Deed Administrators of the Hough Contribution (subject to Item 12(10) below). (9) Execution of the Creditors' Trust Deed (which is to take effect on and from Completion). (10) The Interim Funding (and, if relevant, any part of the Security Funding) will be nominally repaid by the Administrators, or Deed Administrators, to Hough and reflected in the Hough Contribution. (11) Receipt by Hough from the Administrators of evidence in writing (in the form set out in Schedule 3) that all Pre-Administration Leases listed in Schedule 2 have been terminated or otherwise that counterparties to those Pre-Administration Leases have been notified that the Company will cease to comply with, and will not perform its obligations under, and treat the Pre-Administration Leases at an end. (12) The resignation or removal of the Exiting Directors and Secretary and the appointment of the Continuing Directors. (13) Retention of the Staff by the Company on terms acceptable to those Staff and to the satisfaction of Hough (acting reasonably) and which terms must be no less favourable than each Staff member's terms and conditions of employment immediately prior to the DOCA. (14) A binding commitment from the US Landlord to the effect that the US Landlord will not terminate the lease of the US Facility due to any fact, matter or circumstance arising prior to, or subsisting at, Completion. (15) A binding commitment from the Richlands Landlord to the effect that the Richlands Landlord will not terminate the lease of the Richlands Facility due to any fact, matter or circumstance arising prior to, or subsisting at, Completion. Only Hough may waive the Conditions at paragraphs (1), (2), (3), (6), (7), (11), (12) (13), (14) and (15) above. All other remaining conditions may only be waived on agreement in writing between the parties (such agreement not to be unreasonably withheld). Each of the parties will (at their own cost) do all things necessary and within their power to satisfy the Conditions (including, without limitation, obtaining and implementing the ASIC Relief and the
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		444GA Orders). Following completion of the steps immediately above, the following will occur (with these events to be interdependent): (1) the Creditors' Trust Deed will take effect pursuant to the terms of the Creditors' Trust Deed; (2) the Deed Administrators will transfer (and will cause the Company to transfer) the Deed Fund to the Trustees of the Creditors' Trust (on trust for the beneficiaries of that trust) to form part of the Creditors' Trust Fund; and (3) following steps (1) and (2) above, the DOCA will be fully Completed and the Deed Administrators will publish notice to that effect under section 445FA of the Act. Consequence of non-satisfaction of the Conditions (1) Subject to clause (2) below, if: (a) one or more of the Conditions is not satisfied or waived by the CP Satisfaction Date; or (b) the Deed Administrators and the Deed Proponent are of the opinion that one or more of the Conditions are incapable of being satisfied by the CP Satisfaction Date, then: (c) the Parties will cease to be bound by the DOCA on and from the CP Satisfaction Date and will have no liability under it; and (d) the Deed Administrators will convene a meeting of the Creditors to determine the future of the Company. (2) In circumstances where the Deed Proponent has reason to believe that it will not be able to satisfy the Conditions or otherwise effect Completion before the CP Satisfaction Date, the Deed Proponent may request an extension of the CP Satisfaction Date from the Deed Administrators for consideration (in their sole discretion). (3) In circumstances where the extension in clause (2) is not provided, or in circumstances where it is but the Long Stop Date has expired and the Conditions remain unsatisfied: (a) the Parties will cease to be bound by the DOCA on and from that date and will have no liability under it; and (b) the Deed Administrators will convene a meeting of the Creditors to determine the future of the Company.
13.	Directors and Secretary	During the Deed Period, the parties agree that the Administrators and Deed Administrators must, at the request of Hough, either procure the resignation of, or remove, the Exiting Directors and

		Secretary and procure the appointment of the Continuing Directors (subject to receiving signed consents to act) to be effective on Completion.
14.	Termination of DOCA	The DOCA will continue in operation until the DOCA is terminated: (1) upon its Completion as set out in this proposal (see clause 12 above); (2) by an order of the Court under section 445D of the Act; (3) by a resolution of the Creditors at a meeting convened under Division 75 of Schedule 2 to the Act; or (4) automatically, if a Condition is not satisfied (or becomes incapable of being satisfied) or waived by the parties by the CP Satisfaction Date or the Long Stop Date (as applicable).
15.	Order of distribution of the Creditors' Trust Fund	Subject to the below provisions, distributions from the Creditors' Trust Fund (under the Creditors' Trust, once formed) are to be made in respect of Admitted Claims as follows: (1) (Pool A) first, in notionally repaying the Interim Funding, and notionally repaying any part of the Security Funding in accordance with paragraph (10) of Item 12; (2) (Pool B) second, in payment of any balance owing in respect of the Security Funding; (3) (Pool C) third, the Administrators' remuneration and costs, the Deed Administrators' remuneration and costs, the Trustees' remuneration and costs, and any other amounts payable in accordance with the priorities set out in sections 556, 560 and 561 of the Act as though those priorities were applied in the Creditors' Trust Deed in full; (4) (Pool D) fourth, Small Claim Creditors in respect of any Small Claim Dividend. (5) (Pool E) fifth, QIAGEN in an amount up to the QIAGEN Dividend. (6) (Pool F) sixth, equally and rateably up to a specified amount of the balance of the Creditors' Trust Fund [after deduction of the amounts payable under each of the other Pools] to all Admitted Creditors who do not enjoy priority under section 556 of the Act, in accordance with section 555 of the Act (and the other applicable provisions of Part 5.6, Division 6 of the Act, including section 563A of that Act). (7) (Pool G) separately, equally and rateably up to the amount of, and out of, the Noteholder Pool, the participating Noteholders. Hough will not receive any distributions under the DOCA or the Creditors' Trust other than in respect of the repayment of the Interim Funding.
16.	Prescribed Provisions	Except to the extent that they are inconsistent with the terms of the DOCA, the provisions of Schedule 8A of the Regulations will apply to the DOCA as well as the Creditors' Trust Deed

17.	Priority to eligible employee creditors	The DOCA will contain a provision as contemplated by s444DA of the Act.
18.	Superannuation contribution debts	Pursuant to section 444DB of the Act, for the DOCA (and the Creditors' Trust), the Deed Administrators (and Trustees of the Creditors' Trust) must determine that the whole, or any particular part, of a debt by way of superannuation contribution is not admissible to proof if a debt by way of superannuation guarantee charge: (1) has been paid; (2) is, or is to be, admissible to proof; and the Deed Administrators (or Trustees of the Creditors' Trust, as applicable) are satisfied that the superannuation guarantee charge is attributable to the whole, or that part, of the first- mentioned debt.
19.	Secured Creditors, and owners/ lessors of property	Other than as expressly provided for under the DOCA, the DOCA will not release: (1) any security held by a Creditor in respect of any claim, and (2) any security interest validly and effectively held by an owner or lessor in property of the Company.
20.	Control of the Company	(1) During the period of operation of the DOCA, the Deed Administrators will have stewardship of the Company and will continue to manage the operations of the Company. (2) During the period of operation of the DOCA, Hough will not take part in the management or operations of the Company, except in accordance with the terms of the Implementation Deed. (3) Stewardship of the Company will return to its directors upon Completion.
21.	Working Capital Amounts and trading liabilities during administration	(1) If any Working Capital Amounts are received by the Administrators or Deed Administrators, or the Company following completion of the DOCA as contemplated by clause 12, those amounts must be transferred to the Trustees to form part of the Creditors' Trust Fund. (2) Subject only to paragraph (3) below, any debts or liabilities incurred by the Company during the period of its administration (a) for which the Administrators have personal liability under section 443A or 443B of the Act, and (b) that remain unpaid at the time of completion of the DOCA, will be satisfied from the Deed Fund and Creditors' Trust Fund. (3) Any debts or liabilities of a kind mentioned in paragraph (2) that are owed to an Excluded Creditor who is an eligible employee creditor will be paid by the Company following completion of the DOCA.
22.	Administrators' and Deed Administrators' remuneration	The Administrators, Deed Administrators and the Trustees of the Creditors' Trust will be remunerated out of the Deed Fund and the Creditors' Trust Fund for their services at their usual hourly rates in accordance with Division 60 of Schedule 2 to the Act.
23.	Company records	The Deed Administrators and Trustees of the Creditors' Trust will be entitled to retain copies of (or to retain access to) the Company's records following completion of the DOCA, as is necessary or

		reasonably desirable for them to properly complete their roles.
24.	Variation of DOCA	The DOCA may only be varied by a resolution passed at a meeting of the Creditors of the Company convened in accordance with Division 75 of Schedule 2 to the Act, but only if the variation is not materially different from a proposed variation set out in a notice of meeting.
25.	Advance of Interim Funding	(1) Hough has agreed to provide the Interim Funding to the Administrators. (2) The Interim Funding will be documented and advanced as soon as practicable in accordance with the Funding Letter. (3) The Interim Funding will be repaid from the Deed Fund. Repayment will be made by direction by the Deed Administrators to Hough on Completion that a portion of the Hough Contribution be paid to Hough in repayment of the Interim Funding. (4) If the DOCA is terminated otherwise than upon completion of the DOCA in accordance with its terms, the Interim Funding will be repaid by the Administrators (subject always to the Administrators having sufficient available cash to make such repayment) subject to the terms of the Funding Letter.
26.	Governing law	This proposal and any DOCA (together with any Creditors' Trust) are governed by the laws of the State of Queensland.
27.	Dictionary	In this proposal: 444GA orders means orders made by a court of competent jurisdiction pursuant to and for purposes of section 444GA of the Act in relation to the Company, authorising the Deed Administrators to transfer all Shares in the Company to Hough for a nil consideration, in terms otherwise reasonably acceptable to Hough. Act means the <i>Corporations Act 2001</i> (Cth). Admitted Claim means a claim against the Company as adjudicated by the Deed Administrators under the DOCA (or by the Trustees of the Creditors' Trust), but excluding Excluded Creditors. Admitted Creditor means a Creditor who has (or who is entitled to have) an Admitted Claim. Appointment Date has the same meaning as defined in clause 3 of this proposal. ASIC means the Australian Securities and Investments Commission. ASIC relief means relief granted by ASIC for the purposes of section 606 of the Act, in substance relieving Hough (and the Company, to the extent relevant) from the application of section 606 of the Act with respect to Hough's acquisition of the Shares as contemplated by this proposal, substantially on the conditions contemplated at Part G of ASIC Regulatory Guide 6, and in terms otherwise reasonably acceptable to Hough. claim means any claim, cost, damages, debt, income, expense, tax, royalty, liability, loss, obligation, allegation, suit, action, demand,

	cause of action, proceedings, penalty (civil, criminal or otherwise), order or judgment of any kind however calculated or caused, howsoever arising in law or equity or under statute against the Company, and whether direct or indirect, future, contingent, consequential, incidental or economic, the circumstances giving rise to which occurred or arose before the Appointment Date, and includes (without limitation): (1) any claim of any kind whatsoever under a Pre-Administration Lease including without limitation any claim for damages or loss in connection with the Company's failure to comply with or perform or termination of, a Pre-Administration Lease; (2) any claim that in a winding up of the Company would be a subordinated claim for purposes of section 563A of the Act; (3) any residual unsecured claim held by a Secured Creditor following realisation of its security; and (4) without limiting (1) above, any warrant, option or similar instrument issued by the Company in respect of any of its Shares. Conditions means each of paragraphs (1) to (15) in Item 12. Completion means the date upon which each of the Conditions has been satisfied or waived in accordance with the DOCA, and for the avoidance of doubt, is when the DOCA is "wholly effectuated" for the purposes of certification under Schedule 8A of the Act. Continuing Contracts means any contract of any kind whatsoever made by the Company with third parties prior to the Appointment Date, except for the Pre-Administration Leases. Continuing Directors means Jackson Hough, Jonathon Dooley and at least one other director nominated by Hough in writing prior to Completion. CP Satisfaction Date means 10 March 2023, unless otherwise extended by agreement of Hough and the Administrators. Creditor means a person who has a claim against the Company. Creditors' Trust means a trust to be entitled the "Ellume Creditors Trust" (or another title agreed by the Deed Administrators and Hough), pursuant to which: (1) the Deed Administrators as trustees will hold the Creditors' Trust Fund as the trust estate, on trust for the beneficiaries described below; (2) persons who were (immediately prior to the Completion of the DOCA) Admitted Creditors will be beneficiaries; (3) the beneficiaries will have interests in the trust estate commensurate with their entitlements to participate as Admitted Creditors under the DOCA Creditors' Trust Deed means the trust deed to be entered into between the Company, the Deed Administrators, the Trustees and the Hough in accordance with the DOCA, which creates the Creditors' Trust. Creditors' Trust Fund is the Deed Fund.
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	Deed Fund is the Hough Contribution and any Working Capital Amounts as at the relevant time. Deed Period means the period commencing on the Commencement Date and ending on the earlier of the Termination Date or Completion. DOCA means a Deed of Company Arrangement for the Company in accordance with Part 5.3A of the Act to be entered into between the Company, Hough and the Deed Administrators. Electing Noteholders means each of the Noteholders recorded in Schedule 4 and any other Noteholder notified to the Administrator by Hough. eligible employee creditor has the meaning given to that term in the Act. Excluded Creditors means any Creditor who has a claim against the Company: (1) because he/she is an eligible employee creditor, where such Creditor has continued his/her employment with the Company (or a Subsidiary) following completion of the DOCA; or (2) where such Creditor is a Subsidiary. Existing Shares means all Shares in the Company on issue on the Appointment Date. Exiting Directors and Secretary means Paul Darrouzet, Gary Hewett, Geoffrey Ronald Pearce, Sean Andrew Parsons and Mark Eric Harding Anning. Funding Letter means a funding deed in letter format to be entered into on or about the date of this proposal between the Proponent and the Administrators. Hough Contribution means the sum of \$38,000,000. Implementation Deed means a Deed to be entered into on or about the date of this proposal between the Proponent, the Company and the Administrators. Interim Funding means a loan in the sum of up to \$5,000,000, plus any other amounts advanced by Hough to the Administrators, on the terms set out in the Funding Letter. IPO means the Company carrying out an initial public offering of its Shares and being admitted to the official list of ASX or another recognised stock exchange. Long Stop Date means 28 April 2023, unless otherwise extended by agreement of Hough and the Administrators. Notes means a convertible note issued by the Company. Noteholder means a holder of Notes, but excluding QIAGEN. Noteholder Existing Rights means all existing rights of the Noteholder to redeem or convert the Notes. Noteholder Pool means an amount of \$12,500,000 to be paid as part of the Hough Contribution.
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		Pre-Administration Lease means the leases specified in Schedule 2 to this proposal, but for the avoidance of doubt does not mean a Continuing Contract. QIAGEN means each of QIAGEN GmbH and QIAGEN NV Kvk QIAGEN Dividend means the amount of \$7,000,000. Regulations means <i>Corporations Regulations 2001</i> (Cth). Richlands Facility means the premises located at 9-19 Macgregor Place, Richlands in the State of Queensland. Richlands Landlord means Elcorp Services Pty Ltd ACN 069 142 847 and Treffiletti Siblings Pty Ltd ACN 627 266 586 as trustee under instrument 719121809. Secured Creditor means any Creditor who has valid and effective security from the Company for its claim against the Company. security means any security interest or encumbrance of any kind whatsoever, howsoever arising, and includes (without limitation) a security interest registrable under the <i>Personal Property Securities Act 2009</i> (Cth). Security Funding means an amount sufficient to pay out the claims of the Short Term Funders and the Trading Security Holders up to a limit of \$8,000,000. Shares means all shares in the Company of any kind whatsoever (and includes any preference shares, ordinary shares or otherwise). Short Term Funders means each of (1) Evangayle Pty Ltd ACN 615 224 256 as trustee for the Jones Family Trust No 3 (2) Glencairn Bay Investments Pty Ltd ACN 629 479 269 as trustee for the Glencairn Bay Investment Trust; (3) MA & KA Investments Pty Ltd ACN 600 309 626 as trustee for the MA & KA Investment Trust; and (4) Brand Brothers Holdings Pty Ltd ACN 637 303 952 as trustee for the Brand Brothers Holdings Trust. Small Claim means any Admitted Claim with a value of AU\$20,000 or less. Small Claim Creditor means a Creditor with a Small Claim. Small Claim Dividend means a payment from the Creditors' Trust Fund under the Creditors' Trust to each Small Claim Creditor, as beneficiaries, in the amount equal to 50% of that Small Claim Creditor's Small Claim, or where AU\$285,000 is insufficient to pay 50%, a lesser amount calculated on a pro rata basis. Staff means each of Chris Miller, James Thygesen, Maddison Bowyer, Josh Gibbs, Rush Gunatilake, Harmony Douwes and Beau Bryant. Subsidiaries means the entities described in Schedule 1 to this proposal. Termination Date means the date that the DOCA is terminated pursuant to clause 14 above. Trading Security Holders means each of:
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		(1) Robert Bosch (Australia) Proprietary Limited; (2) Atlas Copco Australia Pty Ltd; (3) Crown Equipment Pty. Limited; (4) Retracom Holdings Pty Ltd; (5) Life Research Pty Ltd; (6) Print Management Facilities Australia Pty Ltd; and (7) any other entity notified by Hough to the Company prior to Completion (but excluding the US Landlord and the landlord of the Richlands Facility). Trustee means the Trustee of the Creditors' Trust. Working Capital Amounts means at the time of completion of the DOCA as contemplated in clause 12 above: (1) cash on hand for the Company or Administrators; (2) accounts receivable due to the Company in respect of work done or services provided by the Company on or before that time. US Facility means the premises located at buildings 201, 202 and 203, 4910 Executive Court, South Frederick, MD 21703. US Landlord means WVS Parcel 200A, LLC and WVS Parcel 204 A, LLC, each a Maryland limited liability company.
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Dated: 6 December 2022

Contacts:	David O'Farrell Partner McCullough Robertson Lawyers P 07 3233 8899 E dofarrell@mccullough.com.au	Rachel Zagorskis Senior Associate McCullough Robertson Lawyers P 07 3233 8704 E rzagorskis@mccullough.com.au
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Schedule 1 – Subsidiaries

- (1) Ellume USA LLC, a Delaware limited liability company
- (2) Ellume NZ Pty Ltd

Schedule 2 – Pre-Administration Leases

- (1) Lease between Ellume as Lessee and YWCA Australia ACN 111 663 873 as Lessor in relation to part of 936 Stanley Street, East Brisbane QLD 4169 more particularly described as Lot 223 on RP 11455.
- (2) Lease between Ellume as Lessee and Darrouzet Investments Pty Ltd ACN 136 760 364 as Lessor in relation to 57 Didsbury Street, East Brisbane QLD 4169 more particularly described as Lot 1 on RP 166321 dated 12 July 2022.

Schedule 3 – Notice from Deed Administrators

This notice is given for the purposes of the Deed of Company Arrangement made in relation to Ellume Limited (subject to deed of company arrangement) (**DOCA**). Terms defined in this notice have the meanings set out in the DOCA.

This notice concerns the Pre-Administration Leases under the DOCA.

By this notice, we as Deed Administrators confirm to Hough for the purposes of the DOCA that all Pre-Administration Leases known to the Administrators have been terminated or otherwise that counterparties to those Pre-Administration Leases have been notified that the Company will cease to comply with, and will not perform its obligations under, and treat the Pre-Administration Leases at an end.

Schedule 4 – Electing Noteholders

Noteholder group*	Noteholders	
Group A	PURE Asset Management Pty Ltd ATF The Income and Growth Fund	
Group B	Speagrass Capital Limited Investment Holdings Pty Ltd Zahama P/L	

*For identification purposes only

Schedule 4 Electing Noteholders

Noteholder Group*	Noteholders	
Group A	PURE Asset Management Pty Ltd ATF The Income and Growth Fund	
Group B	Speagrass Capital Limited Investment Holdings Pty Ltd Zahama P/L	

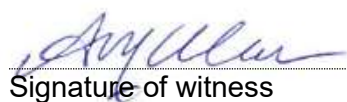
* For identification purposes only

Execution page

EXECUTED as a deed

Deed Company

Signed, sealed and delivered by Ellume Limited (Administrators Appointed) ACN 141 767 660 by its joint and several administrator in the presence of:



Signature of witness

Ashleigh Ubank

Name of witness



Signature of Deed Administrator

John Park

Name of Deed Administrator

Deed Administrators

Signed, sealed and delivered by **John Park** in
the presence of:



Signature of witness



Signature of **John Park**

Ashleigh Ubank

Name of witness

Signed, sealed and delivered by **Joanne Dunn**
in the presence of:



Signature of witness



Signature of **Joanne Dunn**

Ashleigh Ubank

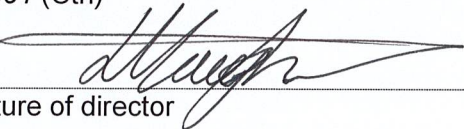
Name of witness

Deed Proponent

**Signed, sealed and delivered by Hough
Consolidated Pty Ltd ACN 657 651 280 in
accordance with section 127 of the Corporations
Act 2001 (Cth)**

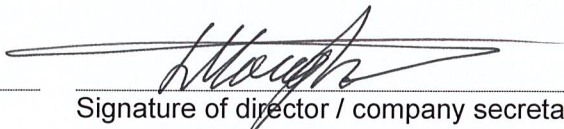
Signature of director

Name of director


Jackson Hough

Signature of director / company secretary

Name of director / company secretary


Jackson Hough

Annexure A Creditors' Trust Deed

Please see attached 28 pages.

Ellume Creditors' Trust Deed

BETWEEN

Ellume Limited (subject to deed of company arrangement) ACN 141 767 660

AND

John Park and Joanne Dunn as deed administrators of Ellume Limited (subject to deed of company arrangement)

AND

John Park and Joanne Dunn as trustees of Ellume Limited (subject to deed of company arrangement)

AND

Hough Consolidated Pty Ltd
ACN 657 651 280

MILLS OAKLEY

Level 7, 151 Clarence Street
SYDNEY NSW 2000
Telephone: +61 2 8289 5800
Facsimile: +61 2 9247 1315
DX 13025, SYDNEY MARKET STREET
www.millsoakley.com.au
Ref: LYRS/3633854

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Date ____ December 2022

Parties

Ellume Limited (subject to a deed of company arrangement) ACN 141 767 660

of c/- FTI Consulting, Level 20, CP1, 345 Queen Street, Brisbane QLD 4000

(Deed Company)

John Park and Joanne Dunn in their capacity as joint and several deed administrators of the Deed Company

of c/- FTI Consulting, Level 20, CP1, 345 Queen Street, Brisbane QLD 4000

(Deed Administrators)

John Park and Joanne Dunn in their capacity as joint and several trustees of the Deed Company

of c/- FTI Consulting, Level 20, CP1, 345 Queen Street, Brisbane QLD 4000

(Trustees)

Hough Consolidated Pty Ltd ACN 657 651 280

of c/- McCullough Robertson Lawyers, Level 11, 66 Eagle Street, Brisbane QLD 4000

(Deed Proponent)

Background

- A. On the Appointment Date, John Park and Joanne Dunn were appointed as administrators of the Deed Company pursuant to Part 5.3A of the Corporations Act.
- B. At the meeting of Eligible Employee Creditors of the Company held on 20 December 2022 prior to the Second Meeting and convened under Section 444DA(2)(a) of the Corporations Act, the Eligible Employee Creditors of the Company passed a resolution agreeing to the non-inclusion of a provision in the DOCA which, absent the resolution, would be required by section 444DA(1) of the Corporations Act.
- C. At a meeting held on 20 December 2022 and convened pursuant to section 439A of the Corporations Act, the Creditors of the Deed Company resolved that the Deed Company enter into a deed of company arrangement substantially in the form proposed by the Deed Proponent under section 444B(2)(b) of the Corporations Act.
- D. On or about 22 December 2022, the Deed Administrators, the Deed Company and the Deed Proponent executed the DOCA pursuant to section 444B(2)(b) of the Corporations Act.
- E. The DOCA provides for the establishment of a Creditors' Trust for the benefit of the Trust Creditors. The Contribution Amount and any Working Capital Amounts will be transferred to the Trustees to settle the Trust in accordance with the DOCA.
- F. The Deed Company and the Trustees enter into this Deed as contemplated by the DOCA in order to facilitate a distribution by the Trustees to the Trust Creditors in their capacity as beneficiaries of the Trust Fund.

Operative provisions

1 Interpretation

1.1 Definitions

In this Deed, terms defined in the DOCA have the same meaning when used in this Deed unless otherwise defined in this Deed or otherwise required by the context or the subject matter, and:

Administrators means, jointly and severally, John Park and Joanne Dunn in their capacity as administrators of the Deed Company and any successor to that office appointed pursuant to the Corporations Act.

Administrators' Costs means all Administration Debts and all other costs, charges and expenses, including those incurred under s443A, in connection with advisers, incurred in connection with the performance of the Administrators' or the Deed Administrators' duties, obligations and responsibilities under the Corporations Act and the DOCA during the Administration Period or the Deed Period.

Administration Debt means any:

- (a) debt referred to in sections 443A(1) or 443B(2) of the Corporations Act which was incurred by the Administrators during the Administration Period;
- (b) liability to the Commissioner of Taxation referred to in section 443BA(1); and
- (c) other debts or liabilities referred to in section 443D(aa) of the Corporations Act, in respect of which the Administrators are entitled to be indemnified under section 443D of the Corporations Act.

Administrators' Remuneration means the remuneration payable to the Administrators and Deed Administrators for acting as:

- (a) the administrators of the Deed Company under Part 5.3A of the Corporations Act; and
- (b) the Deed Administrators of the Deed Company under the DOCA.

Administration Period has the meaning given to it in the DOCA.

Admitted Claim means the Claim of any Trust Creditor admitted by the Trustees after adjudication in accordance with clause 8.

Appointment Date has the same meaning as in the DOCA.

Claim has the meaning given in the DOCA.

Completion has the meaning given in the DOCA.

Contribution Amount has the meaning given in the DOCA.

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

Court has the meaning given to that term in section 58AA of the Corporations Act.

Deed means this creditors' trust deed.

Deed Administrators means, jointly and severally, John Park and Joanne Dunn in their capacities as administrators of the DOCA and any successor to that office appointed pursuant to the Corporations Act.

Deed Period has the meaning given to it in the DOCA.

Directors has the meaning given to that term in section 9 of the Corporations Act.

Dividend means any amount paid to a Trust Creditor in respect of that Trust Creditors' Admitted Claim.

DOCA means the Deed of Company Arrangement, executed by the Deed Company, the Deed Administrators and the Deed Proponent on or about 22 December 2022.

Employee means any person who was an employee of the Deed Company at or prior to the Appointment Date and any person whose debt or claim would, in a winding up of the company, be payable in priority to other unsecured debts and claims in accordance with paragraphs 556 or sections 560 or 561 of the Corporations Act.

Employee Creditor means an Employee (other than a Continuing Employee) with a Priority Claim.

Final Dividend means the last Dividend payment to be made by the Trustees to any Trust Creditor under this Deed.

Interim Funding Letter means the funding deed in letter format entered into by the Deed Proponent and the Administrators on 6 December 2022, and any variation to the funding deed agreed between the Deed Proponent and the Administrators.

Noteholder has the meaning given in the DOCA.

Pool A Creditors means the Deed Proponent in respect of amounts owing by the Administrators to the Proponent under the Interim Funding Letter.

Pool A Amount means US\$5,000,000.

Pool B Creditors means each of the:

- (a) Short Term Funders; and
- (b) Trading Security Holders.

Pool B Amount means an amount of US\$8,000,000 less any amounts paid to any Short Term Funder and to any Trading Security Holder (other than in relation to a further supply) during the Administration Period or the Deed Period or otherwise out of the Pool A Amount.

Pool C Creditors means the Administrators, the Deed Administrators, the Trustees and all Trust Creditors who have an Admitted Claim who enjoy priority under section 556, 560 and 561 of the Act, and includes the Employee Creditors.

Pool D Creditors means Trust Creditors, other than Noteholders, with an Admitted Claim with a value of AU\$20,000 or less.

Pool D Amount means AU\$285,000.

Pool E Creditors means QIAGEN GmbH and QIAGEN NV Kvk.

Pool E Amount means US\$7,000,000.

Pool F Creditors means all other Trust Creditors with an Admitted Claim who do not fall into any of Pool A to Pool E, or Pool G, or enjoy priority under section 556 of the Act, in accordance with section 555 of the Act (and the other applicable provisions of Part 5.6, Division 6 of the Act, including section 563A of that Act).

Pool F Amount means the amount available for distribution to creditors after payment of the Admitted Claims of the Pool E Creditors, less the Pool G Fund Amount.

Pool G Creditors means the Noteholders who are not Electing Noteholders under the DOCA.

Pool G Amount means US\$12,500,000.

Priority Claim means a Claim of an Employee that would have been entitled to priority over the Claims of other unsecured creditors, pursuant to section 556(1), section 560 or section 561 of the Corporations Act, if the Deed Company had been wound up and the winding up was taken to have commenced on the Appointment Date.

Short Term Funders has the meaning given in the DOCA.

Superannuation Debt means the whole, or any particular part, of a debt by way of superannuation contribution if a debt by way of superannuation guarantee charge:

- (a) has been paid;
- (b) is, or is to be, admissible to proof; and
- (c) the Trustees are satisfied that the superannuation guarantee charge is attributable to the whole, or that part, of the first-mentioned debt.

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

Trading Security Holders has the meaning given in the DOCA.

Trust means the trust created by this Deed.

Trust Creditor's Claim means a Claim of a Trust Creditor.

Trust Creditor has the meaning given in the DOCA.

Trust Fund means the fund contemplated by clause 3.

Trust Termination Date means the date on which the Trust terminates in accordance with clause 16.1 or clause 16.3.

Trustee Act means the *Trusts Act 1973* (Qld).

Trustees' Costs means the costs, charges and expenses, incurred by the Trustees in connection with the performance of their duties, obligations and responsibilities as trustees of the Trust, including those incurred in connection with advisers.

Trustees' Remuneration means the remuneration of the Trustee as provided for in clause 13.1.

Working Capital Amounts has the meaning given in the DOCA.

1.2 Interpretation

In this Deed the following rules of interpretation apply unless the context requires otherwise:

- (a) headings are for convenience only and do not affect the interpretation of this Deed;
- (b) the singular includes the plural and vice versa;
- (c) words that are gender neutral or gender specific include each gender;
- (d) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) the words 'such as', 'including', 'particularly' and similar expressions are not used as, nor are intended to be, interpreted as words of limitation;

- (f) a reference to:
 - (i) a person includes a natural person, partnership, joint venture, government agency, association, corporation or other body corporate;
 - (ii) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
 - (iii) a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation and, in the case of a trustee, includes a substituted or an additional trustee and further includes any person claiming on behalf of or under or through a party to this Deed;
 - (iv) a document includes all amendments or supplements to that document;
 - (v) a clause, term, party, schedule or annexure is a reference to a clause or term of, or party, schedule or annexure to this Deed;
 - (vi) this Deed includes all schedules and annexures to it;
 - (vii) a law includes:
 - (A) any constitutional provision, treaty, decree, statute, regulation, by-law, ordinance or instrument;
 - (B) any order, direction, determination, approval, requirement, licence or licence condition made, granted or imposed under any of them;
 - (C) any judgment; and
 - (D) any rule or principle of common law or equity,and is a reference to that law as amended, consolidated, replaced, overruled or applied to new or different facts;
 - (viii) an agreement other than this Deed includes an undertaking, or legally enforceable arrangement or understanding, whether or not in writing;
 - (ix) "AU\$" or "AUD" is to Australian dollars; and
 - (x) "US\$" or "USD" is to United States dollars;
- (g) an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally;
- (h) if the day on which any act is to be done under this Deed is a day other than a Business Day, that act must be done on or by the immediately succeeding Business Day except where this Deed expressly specifies otherwise.
- (i) all references to time are to time in Brisbane, Queensland, Australia;
- (j) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Deed or any part of it; and
- (k) if there is any conflict between the body of this Deed and its schedules and annexures the terms of the main body of this Deed will prevail.

1.3 Inconsistency

- (a) If there is any inconsistency between the provisions of this Deed and the Corporations Act, Regulations, the Insolvency Practice Schedule or the Insolvency Practice Rules, this Deed prevails to the extent permitted by law.

- (b) If there is any inconsistency between the provisions of this Deed and the constitution of the Deed Company or any other obligations binding on the Deed Company, then the provisions of this Deed will prevail to the extent of the inconsistency, and all persons bound by this Deed agree to sign all documents and do all things necessary to remove such inconsistency, the costs of which shall be borne by the Deed Company.

2 Commencement of this Deed

The Trust will come into effect and the Deed Administrators will act as Trustees pursuant to the terms of this Deed immediately upon Completion occurring.

3 The Trust Fund

3.1 Trust Fund

The Trust Fund will comprise:

- (a) the Contribution Amount, to be paid to the Trustees on Completion in accordance with clause 6.5 of the DOCA;
- (b) the Working Capital Amounts which is to be transferred to the Trustees after Completion in accordance with clause 6.8 of the DOCA; and
- (c) such interest as may be earned on the Trust Fund.

3.2 Payment of Working Capital Amounts

Following Completion, the Parties acknowledge and agree that they will perform and observe the terms and obligations at clause 6.8 of the DOCA in respect of the Working Capital Amounts as if those terms and obligations had been repeated in full in this Deed, including that at all times the Deed Company must act reasonably and assist the Trustees in the collection of Accounts Receivable.

4 Declaration of Trust

4.1 Declaration

The Trustees acknowledge and declare that they will hold the Trust Fund on trust for the Trust Creditors on the terms of this Deed.

4.2 Name of the Trust

The trust constituted by this Deed will be called the Ellume Creditors' Trust.

4.3 Objects of the Trust

The Trustees shall receive and hold the Trust Fund on trust for the benefit of the Trust Creditors and will distribute the Trust Fund in accordance with the terms of this Deed.

5 Distribution of the Trust Fund

5.1 Distribution of the Trust Fund

Provided that each Trust Creditor has an Admitted Claim, the Trust Fund will be available for distribution to the Trust Creditors as follows:

- (a) First, an amount up to the Pool A Amount, for distribution to Pool A Creditors, as follows:
 - (i) first, to the Deed Proponent in discharge of the Administrators' obligations under the Interim Funding Letter and in accordance with the DOCA;
 - (ii) second, to the Short Term Funders in discharge of the Administrators' obligations under the General Security Deed dated 8 September 2022 as amended, varied or modified from time to time including by Deed of Variation dated 28 November 2022 and by Further Deed of Variation dated on or about 22 December 2022 in the amount of AU\$4,000,000, plus interest and costs; and
 - (iii) third, only in relation to any surplus Pool A Amount, to the Trading Security Holders on a pro rata basis in accordance with the dollar value of the Admitted Claims of the Trading Security Holders.
- (b) Second, an amount up to the Pool B Amount for distribution to Pool B Creditors, as follows:
 - (i) firstly, to the Trading Security Holders in accordance with the dollar value of the Admitted Claims of the Trading Security Holders.
 - (ii) second, to any residual balance to the Short Term Funders in discharge of the Administrators' obligations as set out in paragraph 5.1(a)(ii) above; and
- (c) Third, for distribution to Pool C Creditors, as follows:
 - (i) first, to the Administrators or Deed Administrators for any amounts which they are entitled to be paid or indemnified for under the DOCA (even though they may have ceased to be Administrators or Deed Administrators), including for the avoidance of doubt, the Administrators' Costs and the Administrators' Remuneration;
 - (ii) second, to the Trustees in satisfaction of the Trustees' Remuneration and the Trustees' Costs (which may include an amount of the Trustees' Remuneration and the Trustees' Costs which are estimated to be incurred by the Trustees up to the Trust Termination Date); and
 - (iii) third, to Employee Creditors in full.
- (d) Fourth, an amount up to the Pool D Amount, for distribution to Pool D Creditors:
 - (i) in an amount equal to 50% of each Pool D Creditor's Admitted Claim; or
 - (ii) if the Pool D Fund Amount is insufficient to allow for a distribution on the basis set out in clause 5.1(d), on a pro rata basis in accordance with the dollar value of the Admitted Claims of the Pool D Creditors.
- (e) Fifth, an amount up to the Pool E Amount, for distribution to Pool E Creditors on a pro rata basis in accordance with the dollar value of the Admitted Claims of the Pool E Creditors.

- (f) Sixth, an amount up to the Pool F Amount, for distribution to the Pool F Creditors on a pro rata basis in accordance with the dollar value of the Admitted Claims of the Pool F Creditors.
- (g) Seventh, an amount up to the Pool G Amount, for distribution to the Pool G Creditors on a pro rata basis in accordance with the dollar value of the Admitted Claims of the Pool G Creditors.
- (h) Notwithstanding any other provision of this Deed, for the purposes of section 444DA of the Corporations Act and clause 5.1(c)(iii), any Priority Claims of Employee Creditors will retain a priority in respect of the assets of the Trust Fund at least equal to that which they would have been entitled to if the property of the relevant Deed Company had been applied in accordance with sections 556, 560 and 561 of the Corporations Act.
- (i) The Trustees may distribute the Trust Fund in one or more instalments at such times as determined by the Trustees in their absolute discretion, including making distributions (whether interim or final) under any subclause of this clause 5.1 in advance of any other subclause of this clause 5.1 on the basis that the Trustees have retained sufficient funds to ensure that any payments to be made under a subclause of this clause 5.1 with a higher priority may be made when the time comes to do so.
- (j) No distributions will be made in respect of a Claim of a Trust Creditor unless the Trust Creditor's Claim is an Admitted Claim, or is a distribution to Pool B Creditors.

5.2 Postponement

Should proceedings be brought by any person in respect of the distribution of the Trust Fund, the Trustees are entitled at their sole discretion to postpone the payment of any entitlement until determined by the Trustees.

5.3 Unclaimed Moneys

In the event that the Trustees, for any reason, are unable to locate a Trust Creditor, or if any cheque sent by the Trustees to a Trust Creditor has not been presented within 6 months, then:

- (a) the Trustees shall stop payment of that cheque;
- (b) the moneys represented by that stopped cheque or held by the Trustees on behalf of the Trust Creditor shall be paid to ASIC; and
- (c) the provisions of sections 544(1) and 544(3) of the Corporations Act will apply, with such modifications as are necessary to such payment, as if references in those sections to 'liquidator' were references to the 'Trustees'.

6 Trustees' duties and powers

6.1 Trustees' duties

The Trustees must:

- (a) collect, sell or otherwise realise the property held on trust (including, to avoid doubt, any causes of action forming part of the Trust Fund), to the extent and in a manner the Trustees believe is appropriate; and
- (b) distribute the Trust Fund in accordance with clause 5.

6.2 Trustees' powers

- (a) Without limiting the Trustees' powers under the Trustee Act or under any law with respect to trustees, for the purpose of performing their duties under this Deed, the Trustees have all of the rights, powers, discretions and remedies granted by law to the Trustees including the power to:
- (i) to the extent that they have not done so already in their capacity as Deed Administrators, determine the Claims of Creditors and admit or reject Claims to proof in accordance with the terms of this Deed;
 - (ii) administer and distribute the Trust Fund in accordance with the terms of this Deed;
 - (iii) sell, reinvest or otherwise deal with the assets of the Trust Fund;
 - (iv) perfect title in any assets of the Trust Fund;
 - (v) insure any assets of the Trust Fund;
 - (vi) at any time, call meetings of the Trust Creditors for the purpose of considering the variation or termination of this Deed in accordance with the provisions of this Deed;
 - (vii) fulfil the Trustees' obligations under this Deed;
 - (viii) enforce compliance with the terms of this Deed and the DOCA including to take such legal proceedings or other steps as the Trustees think fit to enforce these obligations;
 - (ix) make interim or other distributions of the Trust Fund in accordance with the terms of this Deed;
 - (x) appoint agents to do any business or attend to any matter or affairs of the Trust that the Trustees are unable to do, or that it is unreasonable to expect the Trustees to do, in person;
 - (xi) appoint solicitors, accountants or other professionally qualified persons to assist the Trustees;
 - (xii) compromise any Claim on such terms as the Trustees see fit;
 - (xiii) accept the transfer of any shares, stocks, debentures, debenture stock, annuities, bonds, obligations or other securities of whatever nature that may at any time be transferred to the Trustees;
 - (xiv) to enter upon or take possession of the Trust Fund and to collect and distribute revenue or income from or interest on the Trust Fund and exercise any rights or powers to any part of the Trust Fund;
 - (xv) to bring, prosecute and defend any claim, action, suit or proceeding, which power includes the power to bring and defend any claim, counter-claim, set-off, action, suit or proceeding, to enforce any right, claim or cause of action that forms part of the Trust Fund, and to that end:
 - (A) to issue or accept service of any writ, summons or other legal process and to appear or be represented in any court and before all wardens, magistrates or judicial or other officers as the Trustees think fit and to commence or defend and conduct any action or other proceeding in any court of justice in relation to the Trust Fund and any claim, proceeding or action forming

- part of the Trust Fund and to prosecute, discontinue, compromise, stay, terminate or abandon that proceeding or action as the Trustees see fit;
- (B) to appoint any solicitor and/or counsel to prosecute or defend in those proceedings as the Trustees see fit; and
 - (C) to take any other lawful ways and means for the recovery or getting in any of the Trust Fund;
- (xvi) to convene and hold meetings of the Trust Creditors for any purpose as the Trustees see fit;
 - (xvii) to permit any person authorised by the Trustees to operate any account in the name of the Trust;
 - (xviii) to do all acts and execute in the name of and on behalf of the Trust all deeds, receipts and other documents;
 - (xix) to draw, accept, make or endorse any bill of exchange or promissory note in the name of or on behalf of the Trust;
 - (xx) subject to the Corporations Act, prove in the bankruptcy, winding up of or under any scheme of arrangement entered into by, or deed of company arrangement executed by, any contributory or debtor of the Trust;
 - (xxi) to bring or defend an application for the vesting or winding up of the Trust;
 - (xxii) to report to the Trust Creditors from time to time;
 - (xxiii) do anything that is incidental to exercising a power set out in this Deed;
 - (xxiv) pay amounts from the Trust Fund for which an indemnity exists under clause 14; and
 - (xxv) do anything else that is necessary or convenient for administering the Trust.
- (b) Without limiting the Trustees' powers under any law with respect to trustees or otherwise, the Trustees may deal with the property comprising the Trust Fund in any manner as if the Trustees were the legal and beneficial owners of that property, and may also exercise any power in respect of the property comprising the Trust Fund and the Trustees' functions under this Deed as the Deed Administrators are or were entitled to exercise under the terms of the DOCA.
 - (c) Without limiting subclauses 6.2(a) and 6.2(b):
 - (i) the Trustees also have, with respect to the property comprising the Trust Fund, all of the powers set out in paragraph 2 of Schedule 8A of the Regulations, with all modifications as are necessary to give effect to this Deed as if:
 - (A) the Trust were a company subject to a deed of company arrangement; and
 - (B) the Trustees were the deed administrators of that deed;
 - (ii) save to say that the Trustees will not be required to comply with clause 10 of Schedule 8A of the Regulations; and

- (iii) the Trustees may appoint any person to manage the property comprising the Trust Fund on terms determined by the Trustees.

6.3 Exercise of discretion and powers

- (a) The Trustees may exercise any discretion under this Deed in the Trustees' absolute and unfettered discretion.
- (b) The Trustees shall not be required to give any reason for the exercise of, or failure to exercise, any of the Trustees' powers.
- (c) None of the Trustees' powers shall limit the generality of any other of the Trustees' powers, and the Trustees shall have the power to do anything the Trustees consider incidental to any of the Trustees' powers.

7 Perpetuity period

Notwithstanding any other provision of this Deed, each:

- (a) interest in property; and
- (b) Trustee's power over or in connection with property,
created or granted by this Deed that, but for this provision, might vest, take effect, or be exercisable, after the expiry of 80 years commencing on the date of this Deed, but which has not vested or taken effect by that date,
- (c) will vest or take effect on the last day of that period; and
- (d) is exercisable only on or before the last day of that period.

8 Claims, Entitlements and Payments

8.1 Admissibility of Claims

- (a) Upon this Deed being settled, and in accordance with clause 12.6 of the DOCA, each Claim of a Trust Creditor against the Deed Company will convert to, and become, a claim against the Trust Fund under this Deed, equal in amount to the Trust Creditor's entitlement to a distribution in respect of the Trust Creditor's released Claim in accordance with clause 5.1.
- (b) Interest will not accrue or be payable on any Admitted Claim.

8.2 Trustees' discretion

The Trustees may, in their absolute discretion:

- (a) call for proofs of debt or Claim;
- (b) admit all or part of a Claim;
- (c) reject all or part of a Claim; or
- (d) pay any Admitted Claim,

in accordance with the provisions of this Deed.

8.3 Determination of Claims

- (a) Any costs or expenses incurred by a Trust Creditor in asserting a Claim under this Deed (including any application under clause 8.3(g)) will be borne by that Trust Creditor and will not form part of that Trust Creditor's Claim under this Deed.

- (b) Subdivisions A, B, C and E of Division 6 of Part 5.6 of the Corporations Act apply to the admission of Claims under this Deed as if references to the 'liquidator' were references to the 'Trustees' and references to 'winding up' were references to this Deed, and with such other modifications as are necessary to give effect to this Deed, except to the extent that those provisions are varied or excluded expressly or impliedly by this Deed.
- (c) Regulations 5.6.37, 5.6.39 to 5.6.43 (inclusive), 5.6.44 to 5.6.53 (inclusive) and 5.6.55 to 5.6.72 (inclusive) of the Regulations shall apply to this Deed and to the Trustee as if the references to the 'liquidator' were references to the 'Trustees' and references to 'winding up' were references to this Deed, and with such other modifications as are necessary to give effect to this Deed, except to the extent that those provisions are varied or excluded expressly or impliedly by this Deed.
- (d) The Trustees may make interim distributions of Trust property under this Deed.
- (e) The Trustees may make any distribution by cheque or by electronic funds transfer to a bank account nominated by the relevant Trust Creditor.
- (f) The Trustees must declare and distribute trust property under this Deed as soon as practicable after the Trust comes into effect under clause 4.1. However, subject to clauses 8.3(b) and 8.3(c), the Trustees have an absolute and unfettered discretion as to the admission of Claims, and the amount and timing of the distribution of Trust property in payment of Admitted Claims.
- (g) Where the Trustees propose to reject a Claim (whether in part or in full) the Trustees shall send a notice to the Creditor informing the Creditor of the proposed rejection and giving the party 14 days within which to make an application to the Court to determine the questions relating to the Claim.
- (h) The Trustees are entitled to rely upon any steps and determinations made by the Deed Administrators for the purposes of this clause in respect of whether a Claim asserted for the purposes of claiming under this Deed is an Admitted Claim, together with any information and proofs or particulars of debt provided to the Administrators or Deed Administrators.

8.4 Superannuation Debts not admissible

A Superannuation Debt is not admissible to proof against the Trust Fund.

8.5 Abandonment of Claims

A Trust Creditor will have abandoned, and will be taken for all purposes to have abandoned, all Claims and all other entitlements (if any) in the Trust Fund:

- (a) which are not the subject of a proof lodged with the Deed Administrators or the Trustees in the form required by the Trustees prior to the declaration of a Final Dividend; or
- (b) which have been rejected by the Trustees and which are not the subject of any appeal or application to the Court within the time allowed under clause 8.3(g).

8.6 Discharge of Claims

- (a) All persons having a Claim must accept their Admitted Claims under this Deed (if any) in full satisfaction and complete discharge of all debts, liabilities or claims which they have or claim to have against the Trustees or the Trust Fund, and each of them will, if called upon to do so, execute and deliver to the Trustees, such forms of release of any such claim as the Trustees require.

- (b) The Trustees must take all steps reasonably required by the Deed Proponent to obtain such releases from any Trust Creditors nominated by the Deed Proponent

8.7 Extinguishment of Claims

On payment of the Final Dividend to the Trust Creditors from the Trust Fund:

- (a) all obligations of the Trustees to the Trust Creditors under the Trust will be fully and finally discharge; and
- (b) all Claims against the Trustees and the Trust Fund are extinguished.

8.8 Bar

After distribution of the Final Dividend from the Trust Fund, the Trustees may plead this Deed in bar to any Claim.

8.9 Excluded Claims

No Creditor is entitled to participate in or receive any distribution from the Trust Fund in respect of an Excluded Claim.

9 GST on Claims

9.1 Definitions

Words and expressions used in this clause 9 which are defined in the GST Act have the same meaning in this clause 9.

9.2 GST credits on Claims which have been or will be claimed by the Deed Company

To the extent that input tax credits on Admitted Claims have been or will be claimed by the Deed Company, the Parties agree and acknowledge that following the payment of distributions to those Trust Creditors by the Trustees from the Trust Fund, the Deed Company by its Directors will be responsible for making any adjustment required by the provisions of the GST Act insofar as those adjustments relate to those Admitted Claims and Practice Statement PS LA 2012/1 (GA) will be applied by the Deed Company to calculate the impact of those adjustments.

9.3 GST credits for Administration Debts and Deed Administrators' Costs

To the extent that:

- (a) an input tax credit is available in respect of an Administration Debt or a Deed Administrators' Cost; and
- (b) neither the Administrators nor the Deed Administrators are able to claim that input tax credit because it is attributable to a tax period that arises after the date on which the GST registration of the Administrators or the Deed Administrators ends,

then, the Parties agree and acknowledge that the Deed Company is responsible for claiming that input tax credit.

9.4 GST credits during operation of Trust

The Parties agree and acknowledge that to the extent that an input tax credit is available in respect of any Trustees' Cost which is incurred and paid for by the Trustees during the operation of the Trust, the Trustees (acting in their capacity as Trustees of the Trust) will be responsible for the claiming those input tax credits.

10 Books and records

10.1 Access by Trustees

The Trustees will have the power to access all books and records of the Deed Company for the purposes of fulfilling their obligations under this Deed.

10.2 Deed Company's obligation

The Deed Company must provide the Trustees with all requested access to the Deed Company's books and records in its possession for the purposes of the Trustees' compliance with their obligations under this Deed at no cost (including the right to take copies of such books and records).

11 Meetings of Trust Creditors

11.1 Convening meetings by Trustees

The Trustees may at any time convene a meeting of Trust Creditors, and except to the extent (if any) they are excluded or modified by or are inconsistent with the terms of this Deed, Division 75 of Part 3 of the Insolvency Practice Rules applies, with such modifications as are necessary, to meetings of the Trust Creditors as if references to the 'external administrator' or chairperson, as the case may be, were references to one or more of the Trustees.

11.2 Convening meetings at the request of Trust Creditors

The Trustees must convene a meeting of Trust Creditors if so requested in writing by a Trust Creditor or Trust Creditors the value of whose Admitted Claims is not less than 25% of the value of the total of the Admitted Claims.

11.3 Manner of convening meetings

- (a) The Trustees may convene a meeting of Trust Creditors at any time in accordance with paragraph 75-10 of the Insolvency Practice Schedule and will be required to convene such a meeting when required to do so under paragraph 75-15 of the Insolvency Practice Schedule.
- (b) The Insolvency Practice Rules, Insolvency Practice Schedule and the Corporations Regulations applicable to creditors meetings in a liquidation will apply to any meeting of the Creditors of the Deed Company with such modifications as are necessary.

11.4 Right of Trust Creditors to attend meetings

Trust Creditors who have been paid the full amount of their entitlements under this Deed will no longer be entitled to attend and participate in meetings of Trust Creditors.

11.5 Instructions from Trust Creditors

In the exercise of the Trustees' powers, the Trustees:

- (a) may (if they see fit), but are not obliged to, seek from the Trust Creditors at a meeting convened in accordance with this clause 11, instructions, including (without limitation) approval in respect of variations to the terms of this Deed;
- (b) may, but shall not be obliged to, have regard to the instructions (if any) given by the Trust Creditors at a meeting so convened; and
- (c) in the absence of instructions given by the Trust Creditors at a meeting so convened, do what is, in the Trustees' opinion, in the best interests of Creditors.

11.6 Variation of Deed

This Deed may be varied:

- (a) with the consent of the Trustees by a resolution passed at a meeting of Trust Creditors by a majority of Trust Creditors (in value) attending the meeting, but only if the variation is not materially different from the proposed variation set out in the notice of that meeting and provided that the variation does not materially prejudice the interests of any class of Trust Creditors without the approval of a majority (in value) of that class of Trust Creditors attending the meeting; or
- (b) by the Court upon application of any of the Trust Creditors or the Trustees pursuant to the Trustee Act.

12 Limitation of Liability**12.1 Exclusion of liability**

- (a) Each Trustee, including his or her partners and employees, is not personally liable for any loss, damages, costs or expenses which may be occasioned to any trust property under this Deed (including the Trust Fund) or to any person by:
 - (i) the exercise of any discretion or power conferred by this Deed or by law on the Trustees, or any delay or failure to exercise any of those discretions or powers;
 - (ii) any breach of duty or trust, unless it is proved to have been committed, made or omitted in fraudulent bad faith by the Trustees, partner or employee; or
 - (iii) any disclosure by the Trustees of any document, matter or thing relating to the Trust, the Trust Fund or any Trust Creditor.
- (b) The recourse of any person against the Trustees in their capacity as trustees of the Trust, insofar as it is not excluded by subclause 12.1(a) above, shall be limited to, and may only be satisfied from, the balance of the Trust Fund from time to time.
- (c) All persons claiming any interest in the Trust Fund must be treated as taking it with and subject to notice of the protection conferred by this clause 12.

12.2 Proceedings against co-trustee

The Trustees are not bound to take any proceeding against a co-trustee for any breach or alleged breach of trust committed by the co-trustee.

12.3 Reliance on advice

Where the Trustees act in reliance upon the advice of any solicitor or barrister instructed on behalf of the Trust obtained in relation to the interpretation of the provisions of this Deed or any document or statute or any matter concerning the administration of the Trust, the Trustees are not liable to any person in respect of any act done or omitted to be done by the Trustees in accordance with the advice.

12.4 Conflicts

All powers and discretions of the Trustee may be exercised notwithstanding that any person being a partner, employee or related party of the Trustee is a beneficiary or may have been a beneficiary or has a direct, indirect or personal interest (in whatever

capacity) in the manner of, or as a result of exercising such power or discretion or may benefit directly or indirectly as a result of any such power or discretion.

13 Remuneration

13.1 Remuneration of Trustees

The Trustees:

- (a) are to be remunerated at the usual rates charged by FTI Consulting from time to time in respect of any work done by the Trustees, and any partner or employee of the Trustees, in connection with:
 - (i) the exercise of their powers and discretions and performance of their duties, obligations and responsibilities as Administrators and/or Deed Administrators, even though that remuneration has not been approved by the Creditors pursuant to Division 60 Subdivision B of the Insolvency Practice Schedule;
 - (ii) the calling for and adjudicating upon proofs of Claims;
 - (iii) the distribution of the Trust Fund; and
 - (iv) the exercise of their powers and discretions and performance of their duties, obligations and responsibilities as Trustees under this Deed, and
- (b) acknowledge that the Trustees' Costs, including costs, charges and expenses (including those incurred in connection with advisers) incurred in connection with the foregoing, including any stamp duty payable by them in respect of this Deed, will be payable from the Trust Fund.
- (c) The Trustees' Remuneration and the Trustees' Costs referred to in this clause 13.1 and all other costs shall be reimbursed and/or paid out of the Trust Fund. The Trustees shall be entitled to draw such amounts from the Trust Fund from time to time. For the avoidance of doubt, where the Trustees are liable to pay GST in respect of any taxable supply (within the meaning of the GST Act) they make under this Deed, the Trustees are entitled to recover an additional amount equal to the amount of that GST liability from the Trust Fund.

13.2 Acknowledgement

The Parties acknowledge that the Trustee's Remuneration as referred to in clause 13.1(a) includes remuneration and costs incurred by the Trustees in connection with or as a result of their duties, obligations and responsibilities as Administrators and/or Deed Administrators.

14 Indemnity

14.1 Scope of indemnity

The Trustees are entitled to be indemnified out of the Trust Fund for all actions, suits, proceedings, accounts, claims and demands arising out of or relating to this Deed which may be commenced, incurred by or made on the Trustees by any person and against all costs, charges and expenses incurred by the Trustees in respect of them, provided that the Trustees shall not be entitled to an indemnity in respect of any liabilities or demands to the extent that the indemnification contravenes the Corporations Act or the Trustee Act.

14.2 Continuing indemnity

This indemnity will take effect on and from the date of this Deed and will be without limitation as to time and will operate notwithstanding the removal of the Trustees (or any of them) and the appointment of any new trustee or the termination of the Trust for any reason.

14.3 Indemnity not to be affected or prejudiced

The indemnity under this clause will not:

- (a) be affected, limited or prejudiced in any way by any irregularity, defect or invalidity in the appointment of the Trustees and will extend to all actions, suits, proceedings, accounts, liabilities, claims and demands arising in any way out of any defect in the appointment of the Trustees, the approval, execution or amendment of this Deed, or otherwise; and
- (b) affect or prejudice all or any rights that the Trustees may have against any other person to be indemnified against the costs, charges, expenses and liabilities incurred by the Trustees incidental to the exercise or performance of any of the powers or authorities conferred on the Trustees by this Deed or otherwise.

14.4 Trustees' lien

The Trustees will be entitled to exercise a lien over the Trust Fund for all amounts in respect of which they are entitled to an indemnity from the Trust Fund.

15 Trustees not obliged to take action

The Trustees will not be obliged to take any action under this Deed until such time as there are sufficient funds in hand and immediately available to them to pay the Trustees' Remuneration and Trustees' Costs.

16 Termination**16.1 Termination of the Trust**

This Trust will terminate and the Trustees will resign as soon as reasonably practicable, on the earlier of:

- (a) distribution of the Final Dividend from the Trust Fund; and
- (b) upon the expiry of the perpetuity period referred to in clause 7.

16.2 Meeting to consider variation or termination of the Trust

The Trustees must convene a meeting of Trust Creditors to consider a resolution to vary this Deed or terminate this Trust if:

- (a) at any time prior to the termination of this Trust, the Trustees determine that it is no longer practicable or desirable to continue to implement or carry out this Deed; or
- (b) the Court so orders.

16.3 Termination of the Trust by Court order or resolution of Trust Creditors

- (a) This Trust will terminate if:
 - (i) a Court so orders; or

- (ii) the Trust Creditors pass a resolution terminating this Trust at a meeting duly convened pursuant to clause 11 or clause 16.2.
- (b) In the event the Trust terminates under this clause, the Trustees will apply to the Court for directions to be formulated in their sole discretion, depending on the relevant circumstances that have arisen at the time.

16.4 Report to Trust Creditors

Upon a meeting being convened pursuant to clause 11 or clause 16.2, the Trustees must send to each Trust Creditor prior to the meeting a report as to the state of affairs of the Trust accompanied by such financial statements as the Trustees thinks fit. The report must include:

- (a) a statement explaining the circumstances which have caused the Trustees to convene the meeting pursuant to clause 16.2; and
- (b) a statement that the Trust will be terminated if the Trust Creditors so resolve.

16.5 Previous operation of this Deed preserved

The termination or avoidance, in whole or in part, of this Trust does not affect the efficacy of any act done prior to the termination or avoidance.

16.6 Survival of clauses

Despite any other provision of this Deed, clauses 1 (*Definitions and interpretation*), 9 (*GST on Claims*), 12 (*Limitation of Liability*), 13 (*Remuneration*), 14 (*Indemnity*), 15 (*Trustees not obliged to take action*) 16 (*Termination*), 18 (*Notices*) and 19 (*General*) survive the termination of this Deed.

17 Resignation

A Trustee may resign at any time by giving not less than 5 Business Days' prior written notice to the Deed Company, unless the resignation would result in there being no remaining Trustees, in which event the Trustees must:

- (a) convene a meeting of Trust Creditors in accordance with clause 11 for the purpose of nominating a replacement trustee;
- (b) assign to a replacement trustee nominated by the Trust Creditors the Trustees' rights, title and benefit under this Deed; and
- (c) do all things reasonably necessary to effect the assignment referred to in clause 17(b).

18 Notices

18.1 Notices

- (a) Unless expressly stated otherwise in this Deed and subject to clause 18.2, a notice, consent, approval, request, demand or other communication given under this Deed to or by a party to this Deed (**Notice**):
 - (i) must be in legible writing and in English;
 - (ii) must be addressed to the party to whom it is to be given (**Addressee**) at the address or email address set out below or to any other address or email address as notified by the Addressee for the purposes of this clause:

- (A) if to the Deed Company:
 - Address c/- FTI Consulting, Level 20, CP1,
345 Queen Street, Brisbane QLD 4000
 - Attention John Park and Joanne Dunn
 - Email john.park@fticonsulting.com;
joanne.dunn@fticonsulting.com
- (B) if to the Deed Administrators:
 - Address c/- FTI Consulting, Level 20, CP1,
345 Queen Street, Brisbane QLD 4000
 - Attention John Park and Joanne Dunn
 - Email john.park@fticonsulting.com;
joanne.dunn@fticonsulting.com
- (C) if to the Trustees:
 - Address c/- FTI Consulting, Level 20, CP1,
345 Queen Street, Brisbane QLD 4000
 - Attention John Park and Joanne Dunn
 - Email john.park@fticonsulting.com;
joanne.dunn@fticonsulting.com
- (D) if to the Deed Proponent:
 - Address c/- McCullough Robertson Lawyers, Level 11,
66 Eagle Street, Brisbane QLD 4000
 - Attention David O'Farrell and Rachel Zagorskis
 - Email dofarrell@mccullough.com.au;
rzagorskis@mccullough.com.au
- (iii) must be signed by or on behalf of the sender by the solicitor for, or any attorney, director, secretary or authorised agent of, the sender;
- (iv) must be either:
 - (A) delivered by hand or sent by pre-paid mail (by airmail if sent to or from a place outside Australia) to the Addressee; or
 - (B) sent by email to the Addressee's email address; and
- (v) is deemed to be received by the Addressee in accordance with clause 18.1(c).
- (b) If:
 - (i) a party changes its address and fails to notify the other parties of this change and the new address, delivery of Notices marked to the attention of the Addressee at that new address is deemed compliant with the notice obligations under this clause; and/or

- (ii) an individual named in clause 18.1(a)(ii) ceases to work in the role specified or ceases to work for the Addressee and the Addressee fails to notify the other parties of an alternative individual, delivery of Notices marked to the attention of an individual in the same or equivalent role at the Addressee is deemed compliant with the notice obligations under this clause.
- (c) Without limiting any other means by which a party may be able to prove that a Notice has been received by the Addressee, a Notice is deemed to be received:
 - (i) if delivered by hand, when delivered to the Addressee;
 - (ii) if sent by post, on the 3rd Business Day after the date of posting, or if to or from a place outside Australia, on the 7th Business Day after the date of posting; or
 - (iii) if sent by email:
 - (A) when the sender receives an automated message confirming delivery; or
 - (B) 30 minutes after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered,whichever happens first,
but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (Addressee's time) it is deemed to be received at 9.00am on the following Business Day.

18.2 Notices sent by email

- (a) Notices sent by email need not be marked for attention in the way stated in clause 18.1. However, the email must state the first and last name of the sender.
- (b) Notices sent by email are taken to be signed by the named sender.

19 General

19.1 Waiver

No failure to exercise and no delay in exercising any right, power or remedy under this Deed will operate as a waiver. Nor will any single or partial exercise of any right, power or remedy preclude any other or further exercise of that or any other right, power or remedy. A power or right may only be waived in writing, signed by the Parties to be bound by the waiver.

19.2 Severability

If any provision in this Deed is invalid under the law of any jurisdiction:

- (a) it is to be read down, if possible, such that it is enforceable to the extent that it is not invalid; or
- (b) failing that, it is to be severed from this Deed to the extent of the invalidity, without affecting the remaining provisions of this Deed; and
- (c) it should not affect the validity or enforceability of that provision or the other provisions of this Deed in any other jurisdiction.

19.3 Stamp duty and GST

All stamp duty and GST payable on or in respect of this Deed or the transactions contained in this Deed may be paid out of the Trust Fund.

19.4 Costs

Each party must pay its own costs of negotiating, preparing and executing this Deed.

19.5 Entire agreement

Save that this Deed should be read together with the DOCA, this Deed is the sole and entire memorandum and agreement between the Parties to this Deed regarding the matters the subject of it. It supersedes any prior understandings, deeds, agreements, conditions and representations relating to those matters whether oral or written, express or implied.

19.6 Further assurances

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this Deed and the transactions contemplated by it.

19.7 Creditor's Power of Attorney

Each Trust Creditor irrevocably appoints each of the Trustees jointly and severally as its attorney to execute any document to give effect to the releases in clause 8.6.

19.8 Relationship of the Parties

Except as expressly provided in this Deed:

- (a) nothing in this Deed is intended to constitute a fiduciary relationship, employment relationship or an agency, partnership or trust; and
- (b) no Party has authority to bind any other Party.

19.9 Assignment

Unless expressed otherwise, rights arising out of or under this Deed are not assignable by a party without the prior written consent of the other parties.

19.10 Counterparts

- (a) This Deed may be signed in any number of counterparts and exchanged by email or other electronic means, and all those counterparts taken together constitute one and the same instrument.
- (b) An executed counterpart sent by email or other electronic means to a party is deemed to be a validly executed and exchanged counterpart as if it were the original.

19.11 Governing law and jurisdiction

- (a) This Deed is governed by the laws of the State of Queensland, Australia.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts in and of Queensland, Australia and the courts competent to determine appeals from those courts, with respect to any proceedings which may be brought at any time relating in any way to this Deed.
- (c) Each party irrevocably waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, where that venue falls within paragraph (b) above.

Execution page

EXECUTED as a deed

Deed Company

Signed, sealed and delivered for and on behalf of **Ellume Limited (ACN 141 767 660) (Subject to Deed of Company Arrangement)** by one of its joint and several Deed Administrators in the presence of:

.....
Signature of witness

.....
Signature of Deed Administrator

.....
Name of witness

.....
Name of Deed Administrator

Deed Administrators

Signed, sealed and delivered by **John Park** in
the presence of:

.....
Signature of witness

.....
Signature of **John Park**

.....
Name of witness

Signed, sealed and delivered by **Joanne Dunn**
in the presence of:

.....
Signature of witness

.....
Signature of **Joanne Dunn**

.....
Name of witness

Trustees

Signed, sealed and delivered by **John Park** in
the presence of:

.....
Signature of witness

.....
Signature of **John Park**

.....
Name of witness

Signed, sealed and delivered by **Joanne Dunn**
in the presence of:

.....
Signature of witness

.....
Signature of **Joanne Dunn**

.....
Name of witness

Deed Proponent

Signed, sealed and delivered by **Hough Consolidated Pty Ltd ACN 657 651 280** in accordance with section 127 of the *Corporations Act 2001* (Cth):

Signature of director

Signature of director / company secretary

Name of director

Name of director

Attachment 3 Administrators' Section 75-225 Report

12 December 2022



Ellume Limited
(Administrators Appointed)
ACN 141 767 660
("the Company")

Report to Creditors – Section 75-225 of the Insolvency Practice
Rules (Corporations) 2016

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1. About this report: a guide for creditors

1.1. Purpose of this report

- We are required to prepare this report under the Corporations Act 2001 (the Act) and provide creditors with information about the Company's business, property, affairs and financial circumstances.
- This report contains the information we are required by law to include, plus other information considered materially relevant to creditors to enable them to make an informed decision about the Company's future.
- This report and its attachments contain details about the forthcoming second meeting of creditors to be held on **Tuesday, 20 December 2022** and our opinion and recommendation about the future of the Company and what is considered to be in the creditors' interests. Creditors are required to decide whether:
 - the Company should execute a DOCA, or
 - the administration of the Company should end, or
 - the Company should be wound up.
- Alternatively, creditors can vote to adjourn the meeting for up to 45 business days to allow more time to make their decision.
- All details, forms and instructions relating to the meeting have been included with the covering letter and other documents attached to this report.

1.2. Key messages and recommendations

- John Park and Joanne Dunn were appointed as Voluntary Administrators of the Company on 31 August 2022.
- A DOCA has been proposed and is summarised at **Section 7** and **Appendix 6** of this report.
- **In our opinion it is in the creditors' best interests to enter into a Deed of Company Arrangement.**
- An eligible employee meeting is being held prior to the second meeting of creditors for employees to consider the proposed DOCA. Eligible employee creditors have received a separate notice for this meeting.
- **Section 2** of this report summarises the items considered to be the most important for creditors.

1.3. Second meeting of creditors

- The Administrators are required under law to convene a second meeting of creditors, at which time creditors will vote on the future of the Company.
- As mentioned above, the second meeting of creditors will be held on **Tuesday, 20 December 2022** using virtual meeting facilities at **2:00PM (AEST)**.

- Should you wish to attend the second meeting of creditors, please complete and return the relevant forms outlined below, to our office by no later than **2:00PM (AEST) Monday, 19 December 2022**.
- To register for the meeting, you **must** complete the online registration form via the link below:
Link to meeting registration form: [Meeting Registration Form Link](#)
- Proof of Debt and Proxy forms are also available to download from the FTI Consulting Creditor Portal: <https://www.fticonsulting.com/creditors/ellume-limited>

1.4. How to participate in the meeting

PLEASE READ CAREFULLY

- In order to attend the meeting, you must complete and return the below forms via email to Ellume@fticonsulting.com by no later than **2:00PM (AEST) Monday, 19 December 2022**.

1. Meeting Registration Form

You must complete this online form if you wish to attend the meeting of creditors, and vote at the meetings:

Link to meeting registration form: [Meeting Registration Form Link](#)

A unique creditor identifier will also be provided to be used for voting at the meeting.

2. Proxy Form

You must complete this form if you wish to appoint another person to attend the meeting on your behalf (corporate creditors must complete this form).

Non-individual creditors (corporate, trusts, etc.) who want to be represented must appoint an individual to act on its behalf by executing a proxy form.

Individuals may choose to appoint a proxy/representative to vote on their behalf by executing a proxy form.

3. Proof of Debt Form

You must complete this form in order to vote at the meeting.

This form is required to register your claim against the Company for voting purposes only (if not submitted already).

Documents to substantiate your claim (e.g. invoices) must also be provided.

1.5. Questions and help

Please contact us on (07) 3225 4900 or Ellume@fticonsulting.com if you are unsure about any of the matters raised in this report or the impact that any decision about the Company's future may have on you. Our postal address is:

Ellume Limited (Administrators Appointed)

C/- FTI Consulting

GPO Box 3127

Brisbane QLD 4001

2. Key messages

2.1. Overview of administration strategy

Administrators' Strategy and Major Actions

Strategy & trading	Stabilised operations and assessed trade-on viability.	Engagement with key stakeholders including management.	Engaged a specialist to undertake a workplace health and safety review to identify issues requiring actions.	Engaged Houlihan Lokey to undertake a sale and/or recapitalisation campaign for the Company's business.	■ Liaised with key stakeholders and Houlihan Lokey concerning the final offers and DOCA proposal.
Statutory matters & investigations	■ Secured funding to enable ongoing trade and pursuit of business sale or recapitalisation. ■ Attended to all required statutory obligations and requirements.	■ Undertook preliminary investigations into the performance and position of the Company leading up to our appointment.	■ Formed a preliminary opinion on the existence of voidable transactions and other potential claims or breaches of the Act.	■ Formed a preliminary opinion on the date of insolvency and events leading up to insolvency.	■ Applications to Court for approval of the Administration Funding and to extend the convening period.
Stakeholders	■ Frequent meetings with senior leadership team and department heads and ongoing engagement with staff. ■ Circular and correspondence with creditors, suppliers, and employees.	■ Facilitation of first meeting of creditors via electronic facilities	■ Calculated outstanding employee entitlements. ■ Liaised with employees and former employees regarding their entitlements and continued trading.	■ Reduction of headcount to right-size the business ■ Calculation of former employees' entitlements. ■ Issuing separation certificates to terminated employees.	■ Preparation of this report pursuant to Section 75-225 of the Insolvency Practice Rules (Corporations) 2016.

2.2. Key messages for creditors

Set out below is a summary of the key messages and recommendations that are detailed in this report. Please read this summary and the remainder of the report (including attachments) in conjunction with the glossary and terms of reference appearing at **Appendix 1**.

Key areas	Commentary	Analysis
Explanations for the Company's difficulties	Our investigations have identified the following reasons for the Company's failure: ■ Product recall of the COVID-19 Home Test products sold by Ellume USA LLC ("Ellume USA") in Sept 2021; ■ Material change in demand for Ellume's COVID-19 Home Test ("ECHT") in December 2021 following the release of free RAT tests to the public by the United States Government; ■ Substantial upfront capital expenditure in readiness for long-term future expansion of operations; ■ Issues in sourcing further funding in Ellume USA on terms suitable to the Company and its stakeholders; ■ Unfavourable capital market conditions leading to lack of appetite for an Initial Public Offering ("IPO") or recapitalisation.	Section 4.9
Administrators' actions and strategy	Our strategy for the administration has been to: ■ Preserve ongoing operational viability of the business and trade on a "business-as-usual" basis whilst a sale/recapitalisation process is undertaken by Houlihan Lokey; ■ Correspond with key stakeholders including creditors, employees and noteholders concerning the ongoing operation and critical timeframes for the sale and/or recapitalisation process; ■ Liaised with Houlihan Lokey regarding the various stages of the sale/ recapitalisation process and progression to a proposal for Deed of Company Arrangement.	Section 5
Estimated date of insolvency	Our preliminary view is the Company was likely insolvent from at least May 2022 and remained so until 31 August 2022, being the date of our appointment.	Section 6.3
Voidable transactions	It is our preliminary view there may be transactions a liquidator could pursue which may result in property or money being recovered for the benefit of creditors, however, further investigations would be required by a liquidator, if appointed.	Section 6.4

Key areas

Analysis

Offences by directors	Based on our investigations to date, whilst we consider the Directors may have committed a breach of section 588G of the Act, we understand they may elect to rely on the Safe harbour provisions pursuant to section 588GA of the Act. Should the Company be placed into liquidation, further investigations will be carried out.	Section 6.4																																			
Liability for insolvent trading	Based on our preliminary investigations, it is our view: ■ Whilst there may be a claim for insolvent trading against the Directors, they may be protected by the safe harbour provisions in section 588GA of the Act. The commerciality of an insolvent trading claim also needs to be considered by a liquidator, if appointed. ■ We are aware of a Director and Officer insurance policy held by the Directors, however, we are unable to comment on whether the policy would respond to an insolvent trading claim.	Section 6.3																																			
Proposal for a deed of company arrangement	A proposal for a DOCA has been received from Hough Consolidated Pty Ltd (“Hough”). The DOCA provides for ■ Payment of a USD \$38M contribution; ■ Transfer of 100% of shares in the Company to Hough; ■ Provision of interim funding to enable ongoing operations of the Company; and ■ Creation of a Creditors’ Trust to enable the transfer of shares in the Company and make distributions.	Section 7																																			
Estimated outcome for creditors	The estimates shown are based on the information presently available, our view of the Company’s estimated realisable value of assets and estimated claims of creditors: <table><tr><th colspan="4">Estimated returns to creditors</th></tr><tr><th rowspan="2">Creditor</th><th colspan="2">DOCA</th><th>Liquidation</th></tr><tr><th>Low return</th><th>High return</th><th>Return</th></tr><tr><td>Secured creditors</td><td>100 c/\$</td><td>100 c/\$</td><td>up to 24 c/\$</td></tr><tr><td>Priority creditors</td><td>100 c/\$</td><td>100 c/\$</td><td>Nil</td></tr><tr><td>QIAGEN</td><td>47 c/\$</td><td>47 c/\$</td><td>Nil</td></tr><tr><td>Small claim Creditors</td><td>50 c/\$</td><td>50 c/\$</td><td>Nil</td></tr><tr><td>Noteholder Creditors</td><td>15 c/\$</td><td>35 c/\$</td><td>Nil</td></tr><tr><td>Other Unsecured Creditors</td><td>Nil</td><td>20 c/\$</td><td>Nil</td></tr></table>	Estimated returns to creditors				Creditor	DOCA		Liquidation	Low return	High return	Return	Secured creditors	100 c/\$	100 c/\$	up to 24 c/\$	Priority creditors	100 c/\$	100 c/\$	Nil	QIAGEN	47 c/\$	47 c/\$	Nil	Small claim Creditors	50 c/\$	50 c/\$	Nil	Noteholder Creditors	15 c/\$	35 c/\$	Nil	Other Unsecured Creditors	Nil	20 c/\$	Nil	Section 8
Estimated returns to creditors																																					
Creditor	DOCA		Liquidation																																		
	Low return	High return	Return																																		
Secured creditors	100 c/\$	100 c/\$	up to 24 c/\$																																		
Priority creditors	100 c/\$	100 c/\$	Nil																																		
QIAGEN	47 c/\$	47 c/\$	Nil																																		
Small claim Creditors	50 c/\$	50 c/\$	Nil																																		
Noteholder Creditors	15 c/\$	35 c/\$	Nil																																		
Other Unsecured Creditors	Nil	20 c/\$	Nil																																		

Key areas

Commentary

Analysis

Timing of payments to creditors	The indicative (estimated) timing of dividends are set out below for each class of creditor under a DOCA and liquidation scenario: Estimated timing of returns to creditors from today's date			Section 8
	Creditor	DOCA Est. Timing	Liquidation Est. Timing	
	Secured creditors	3 months	3-6 months	
	Priority creditors	3-4 months	N/A	
	QIAGEN	3 months	N/A	
	Small claim Creditors	3-6 months	N/A	
	Noteholder Creditors	3-6 months	N/A	
	Other Unsecured Creditors	3-6 months	N/A	
Remuneration	Under s 449E of the Act, the remuneration of the Administrators (and either the Deed Administrators or Liquidators, if appointed) can be fixed at the second meeting of creditors. Details of our proposed remuneration and resolutions are included in our Remuneration Approval Report.			Appendix 8

3. Recommendation on the Company's future

In our opinion it is in the creditors' interests that the Company execute a deed of company arrangement in line with the terms proposed. Details about the estimated return to creditors and other information about what creditors can decide at the meeting are provided at sections 8 and 9 of this report.

Options available to creditors		Option 1: Execute a DOCA	Option 2: Administration ends	Option 3: Liquidation
Description		Whether it would be in the creditors' interests for the Company to execute a DOCA	Whether it would be in the creditors' interests for the administration to end	Whether it would be in the creditors' interests for the Company to be wound up
Key factors to consider		- On balance, there appears to be less uncertainty under the DOCA proposal compared to a liquidation scenario - Creditors will potentially receive a greater return under the DOCA proposal than they would if the Company was immediately wound up and within an earlier timeframe than liquidation	The Company is insolvent with no cash to pay all due debts and no confirmed prospects of obtaining external funding	The proposed DOCA will likely provide a higher cents in the dollar return for creditors than they may receive in an immediate winding up
Our opinion		Is in the creditors' interests that the Company execute a DOCA in line with the terms proposed	Not in the creditors' interests that the administration should end	Not in the creditors' interests that the Company be wound up
Recommended option		Recommended	Not recommended	Not recommended
Potential to adjourn the meeting to a future date		- Creditors may wish to adjourn the second meeting for up to 45 business days - It is a matter for creditors to decide if they wish to adjourn the meeting, however, creditors should note an adjournment will increase the risk of the transaction not completing due to the limit under the working capital funding.		

4. Background information

4.1. Appointment of Administrators

- On 31 August 2022 John Park and Joanne Dunn, were appointed joint and several Administrators of Ellume Limited in accordance with a resolution passed at a meeting of the Company's directors pursuant to section 436A of the Act.
- In a voluntary administration, the Administrators take control of a company and its affairs, superseding the powers of the directors and officers to make decisions and perform management functions.
- We also have a duty to investigate the Company's business, property, affairs and financial circumstances.

4.2. Outcome of the first meeting of creditors and Committee of Inspection meeting

- The first meeting of creditors was held on 12 September 2022 to consider the formation of a Committee of Inspection ("COI") and whether or not to appoint different persons to be the Administrators of the Company.
- Creditors resolved to form a COI and the following representatives were appointed to the committee:
 - Myriam Battistutta – Ellume Employee
 - James Thygesen – Ellume Employee
 - Jenny Chau – Ellume Employee
 - Pure Assessment Management – Mike Henshaw
 - Cardinal Bio Research Pty Ltd – John Cardinal
 - Qiagen – Nicholas Edwards/Hamilton Locke
- A COI meeting was held on 26 October 2022 to discuss the progress of the Administration and to obtain approval of remuneration and internal disbursements incurred in the period 31 August 2022 to 9 October 2022.
- Creditors are able to join the COI at the upcoming Second Meeting of Creditors. Should you be interested please notify this office in advance of the meeting.

4.3. Administrators' prior involvement and independence

- In accordance with section 436DA of the Act, a DIRRI was provided in our initial information for creditors and suppliers dated 2 September 2022. This DIRRI included the circumstances that led to our appointment as Administrators.
- A copy of our DIRRI was tabled at the first meeting of creditors held on 12 September 2022 and is available on the FTI Consulting Creditor Portal - <https://www.fticonsulting.com/creditors/ellume-limited-DIRRI>.
- There is no change to our assessment regarding our independence or to the information provided in the DIRRI.

4.4. Extension to the convening period

- Section 439A of the Act requires an administrator to hold the second meeting of creditors within five (5) days after the end of the 20-business day convening period unless the convening period is extended by the Court
- An application to the Federal Court of Australia was made seeking to extend the convening period for up to 55 business days to enable sufficient time for a sale of business process or recapitalisation of the Company via a deed of company arrangement.
- On 26 September 2022, the Federal Court of Australia made an order to extend the convening period to no later than 16 December 2022.

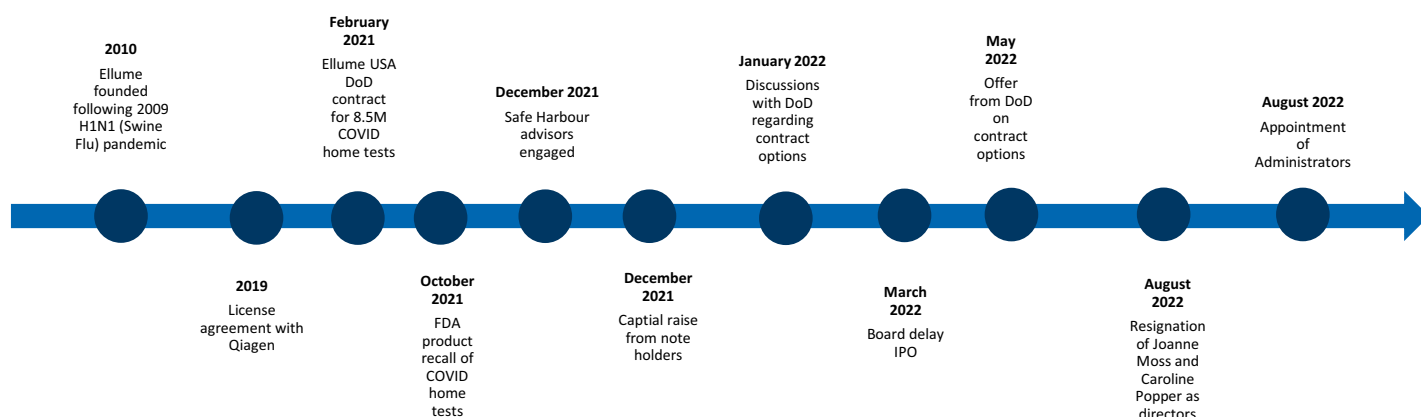
4.5. Company information and historical performance

Appendix 2 includes statutory information about the Company. **Appendix 3** contains a summary of the Company's historical performance and our preliminary analysis and comments about the existence and form of financial statements prepared by the Company.

4.6. History of the Company and events leading to our appointment

- The Company was incorporated on 1 February 2010, and operates in Australia.
- Between 2012 and 2016, the Company developed nanoparticle technology to be used in diagnostic testing, and in 2018, entered into licence agreements in connection with tests for influenza and tuberculosis.
- The Company now develops and manufactures digitally enabled medical diagnostic products, with a strong focus in COVID-19.
- The Company has products available through three (3) segments:
 - Consumer Products: consist of user friendly over the counter home test kits.
 - Professional Point of Care Products: digital diagnostic platform for primary care practitioners, doctors, nurses and pharmacists.
 - Professional High Throughput Testing products: large scale testing at the point of care and outside of a central laboratory.
- Ellume USA, incorporated on 26 February 2019, is a 100% wholly owned subsidiary of Ellume Limited which operates in the United States of America.
- The Company received approval for its COVID-19 home test (referred to as the Ellume COVID-19 Home Test or ECHT) from the Food and Drugs Administration in the USA in December 2020.
- In February 2021, Ellume USA entered into a contract with the USA Department of Defence ("DoD") for the supply of 8.5M ECHT and construction of a USA manufacturing facility.
- The Company has historical generated revenue through it license agreements with third parties, including QIAGEN.
- Substantial funding has been provided to the Company via unsecured noteholders, with further funding support from its subsidiary, Ellume USA.

4.7. Timeline of events leading up to appointment



4.8. Directors' explanation for the Company's difficulties

Whilst the Directors have not provided a written explanation for the Company's difficulties, they have verbally advised the key matters contributing to the Company's difficulties are the recall of the ECHT in late 2021; free RAT kits provided to the US public by the US Government in early 2022; inability to secure further modifications to the DoD contract; inability to secure further funding.

4.9. Administrators' observations of the Company's difficulties

From our investigations to date, we have identified the following possible causes which contributed to the insolvency of the Company:

- Lack of diversity in the Company's capabilities across a discrete customer base;
- Low levels of investment in non-COVID-19 related products following the pandemic in 2020, halting the progression of the development of non-COVID-19 products to be ready to market;
- Significant expenditure on large quantities of raw materials at the start of the COVID-19 pandemic to secure supply of inventory items to meet the forecasted production needs. High volumes of stock remains unused and in storage;
- Uncertainty of future demand for the Company's COVID-19 related products post the pandemic;
- Large inventory holdings unable to be readily converted to cash, resulting in large write downs to inventory values on account of obsolescence;
- Inability to achieve a trade sale, obtain alternative finance on suitable terms, and absence of further investor funding to meet short and long term operational requirements;
- Lack of adequate compensation to the Company for operational and infrastructure services provided to Ellume USA, overhead costs and use of the Company's intellectual property and authorisations ; and
- Loss of key personnel.

4.10. Opinion about books and records

Section 286(1) of the Act requires a company to keep written financial records that correctly record and explain its transactions and financial position and performance and would enable true and fair financial statements to be prepared and audited.

In considering compliance with this section, since our appointment we have:

- reviewed various financial reports to help us understand the Company's asset and liability positions;
- reviewed various correspondence files and documents relevant to the Company's financial position and performance of the Company;
- undertaken investigations and reviews incorporating financial records and data;
- discussed with the Company's finance function, processes and record keeping practices with its directors and management.

In our view, as at the date of our appointment the financial records of the Company appear to have been maintained in accordance with section 286 of the Act.

4.11. Outstanding winding up applications

Searches were conducted on the following shortly following our appointment:

- The Australian Securities & Investments Commission ("ASIC") Company register;
- The ASIC Insolvency Notices website; and
- State Court websites.

These searches confirmed no winding up applications or legal actions against the Company. Further, a review of the Company records and enquiries made with the Company's legal representatives did not identify any outstanding winding up applications or statutory demands issued against the Company.

5. Strategy and financial position

5.1. Actions and strategy to date

5.1.1. Summary of actions and strategy

On our appointment we elected to continue to operate “business as usual” whilst progressing the below key strategies and actions

5.1.2. Trading

- Continued to operate the business on a “business-as-usual” basis.
- Secured funding from Evangayle Pty Ltd, Glencairn Bay Investments Pty Ltd, MA & KA Investments Pty Ltd and Brand Brother Holdings Pty Ltd (together “the Lender Group”) to enable ongoing operations whilst Ellume USA obtained certainty over the DoD contract and to enable a sale or recapitalisation to be progressed.
- Circularised all suppliers, employees and applicable statutory bodies to notify them of our appointment.
- Established trading accounts with the Company’s suppliers as required during the voluntary administration.
- Implemented trading controls with Company personnel.
- Met with Qiagen to discuss status of supply arrangement and intentions.
- Maintained frequent communication with key staff to discuss the administration strategy, including with Ellume USA.
- Attended weekly meetings with staff concerning Ellume USA production plan and resourcing requirements
- Identified potential surplus assets, including inventory, able to be realised to generate cashflow for operations.
- Liaised with pre-appointment insurers to establish insurance cover where required in the voluntary administration.
- Engaged a consultant to conduct a workplace health and safety review to identify any action items at Company premises.
- Prepared and maintained a weekly cash flow forecast and closely monitored cash position throughout the administration.
- Varied the facility agreement with the Lender Group to provide for further funding to enable operations to continue beyond 31 October 2022 whilst the sale/recapitalisation process was finalised.

5.1.3. Funding agreement

- To enable operation of the Company during the voluntary administration up to 31 October 2022, the Administrators obtained initial funding from the Lender Group in the sum of \$3.5m.

- An application to the Federal Court of Australia was made to obtain directions that the Administrators were justified in entering into the funding agreement with the Lender Group. Orders were made justifying the Administrators' decision.
- The Administrators obtained an extension of the facility limit of \$1.5m under the agreement with the Lender Group on 28 November 2022, and made a further application to the Federal Court of Australia for an order that the Administrators were justified in varying the funding agreement to increase the facility limit. Orders were made justifying the Administrators' decision.
- The variation of the Lender Group funding enabled the Company to continue trade beyond 31 October 2022, whilst the sale/recapitalisation process was finalised.

5.1.4. Employees

- Wrote to all employees advising of their position as creditors of the Company.
- Reviewed Company records to quantify employee entitlements and notified employees regarding same.
- Following consultation with the Company's senior leadership team concerning staffing requirements for ongoing operations, the Administrators resized the workforce in order to improve operational performance and allow a sale/ recapitalisation process with the ultimate goal of preserving the business and employment of remaining employees.
- Calculation of terminated employee's entitlements and subsequently issuing entitlement letters and separation certificates to affected employees.
- Retention schemes implemented to retain key staff.
- Held all staff meetings to address any employee queries.
- Liaised directly with various employees regarding specific issues and queries.

5.1.5. Premises/landlords

- Liaised with landlords and their representatives concerning ongoing occupation of premises at:
 - 936 Stanley Street East, East Brisbane
 - 57 Didsbury Street, East Brisbane; and
 - 19 MacGregor Place, Richlands.
- Continued management of rental and outgoing obligations for the period of the voluntary administration.

5.1.6. Court applications – extension to convening period

- As discussed in **Section 4.4** of this report, we obtained Orders to extend the convening period to no later than 16 December 2022.
- Documents relating to the application to extend the convening period are available on [the FTI Consulting Creditors Portal](#).

5.1.7. Investigations

- Conducted and reviewed searches in relation to the Company and its Directors.
- Obtained relevant books and records of the Company.

- Organised access to and backup of Company's data centre.
- Met with Company representatives to facilitate access to data and systems, and to address queries in regards to documentation obtained.
- Reviewed and analysed the Company's financial books and records.
- Formed a preliminary view on any potential breaches of the Act or potential voidable transactions where money or property may be recoverable for the benefit of creditors.

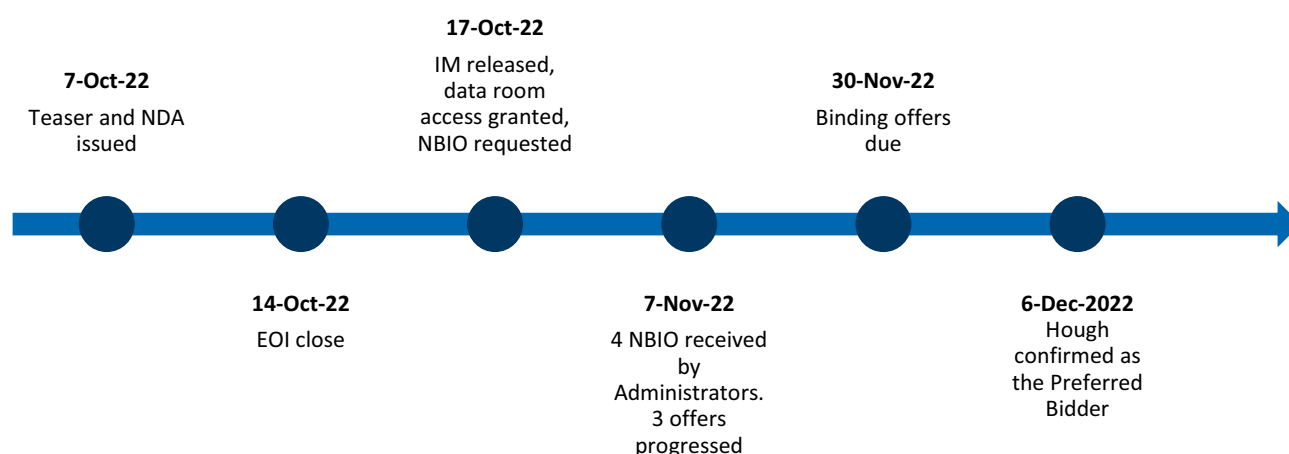
5.1.8. Statutory

- Notified applicable statutory and government bodies of our appointment.
- Prepared and issued our Initial Information for Creditors and Suppliers, which included our DIRRI.
- Held the first meeting of creditors of the Company.
- Prepared and attended to lodgement of required ASIC forms.
- Prepared this report pursuant to section 75-225 of the IPR.
- Sought and obtained an Order from the Federal Court of Australia to enter into (and vary) the funding agreement with the Lender Group.
- Corresponded with PPSR security holders concerning registrations and assets subject to security.

5.2. Sale and recapitalisation campaign

Once ongoing operational funding was secured via the agreement with the Lender Group, and Ellume USA obtained certainty around the continuation of the DoD contract with an additional order of 3.1m units, the Administrators engaged Houlihan Lokey as sale adviser to undertake the sale of the business and/or recapitalisation process for the Company.

A timeline of key events in the sale process is as follows:



Further detail concerning the sale and recapitalisation process is as follows:

- The teaser and Non-Disclosure Agreement ("NDA") was issued to 145 potentially interested parties.

- Eighteen (18) parties executed an NDA and from 17 October 2022, these parties were provided the Information Memorandum (“IM”) and virtual data room access to obtain further information about the business and financial position of the Company.
- Four (4) non-binding NBIOS were received and presented to the Administrators by 7 November 2022.
- Three (3) of the NBIOS were shortlisted and further engagement occurred between the parties in preparation of the final binding offer due date, which had been extended to 30 November 2022 to accommodate the Thanksgiving holidays for USA-based parties.
- By 30 November 2022, one (1) party had a submitted final binding offer, with the remaining two (2) parties jointly submitting a non-binding offer.
- The Administrators assessed the offers and considered the following:
 - potential returns to creditors and employees;
 - the time to complete each proposed transaction and the operational funding available as part of the offer;
 - the conditions attached to the offers and the ability to satisfy the conditions;
 - the ability of each party to complete the transaction; and
 - other commercial considerations relevant for the ongoing viability of the business.
- Having given consideration to the offers received for the business, on 6 December 2022, the Administrators confirmed Hough as the preferred bidder.
- A critical point of difference between the offers was that the Hough proposal was binding and was able to address the Company’s immediate funding needs which was absent from the competing offer.

On 6 December 2022, the Administrators and Hough entered into binding transaction documents being an Implementation Deed and Funding Agreement to set out the timing and obligations of the DOCA proposal for the transfer of shares in the Company. Before the DOCA is implemented, creditors will vote on Hough’s DOCA proposal, and if accepted, Hough will enter into a DOCA with the Company and its Administrators.

The key features of the Hough DOCA proposal are provided in **Section 7.4** of this report and a copy of the DOCA proposal is **attached** as **Appendix 6**. Details of the estimated return to creditors under the Hough DOCA proposal are provided in **Section 8** of this report.

5.3. Company’s financial position at appointment

5.3.1. Report on Company Activities and Property Part A by the Directors

On our appointment, we requested the Directors of the Company provide a statement about the Company’s business, property, affairs and financial circumstances in the form of a Report of Company Affairs & Property (“ROCAP”).

A ROCAP is split into two sections being:

1. Part A – a form which details the Company’s assets and liabilities; and
2. Part B – a questionnaire about the Company’s history, operations, books and records.

Part A of the ROCAP is lodged with ASIC and is publicly available for viewing, whereas Part B is a confidential document for the use of the Administrators in performing their duties.

Following an extension request granted by the Administrators, on 18 October 2022, we received the ROCAP Part A from each of the Company's Directors which disclosed information and estimated realisable values for the Company's assets.

A summary of the ROCAP Part A information is provided at **Appendix 4** along with the Administrators' comments.

5.3.2. Report on Company Activities and Property Part B by the Directors

Immediately after appointment, we requested the Directors of the Company complete a questionnaire about Company's history, operations and books and records in the form of a ROCAP Part B.

We received the ROCAP Part B from each of the Company's Directors which disclosed the information regarding the Company's operations, history and books and records.

5.3.3. Related party creditors and claims

In addition to information contained in the ROCAP Parts A and B, we have reviewed the Company's records (trade creditor listings, financials statements and other available documentation and correspondence) and spoken with key staff to review the existence and amount of any related party claims against the Company.

The following related party claims have been identified as at 31 August 2022:

Related Party Creditor	Notes	Directors' ROCAP (\$)	Administrators' Estimate (\$)
Darrouzet Investment Trust	1	130,595	130,595
Sean Parsons	2	185,694	199,509
Mirja Moenninghoff	3	68,223	68,310
Ellume USA LLC	4	35,082,787	35,082,787
Total related party creditors		\$ 35,467,299	\$ 35,481,201

Relationship between each party and the Company

1. *Darrouzet Investment Trust*

Paul Darrouzet, a Director of Ellume Limited, is the Trustee of Darrouzet Investment Trust. Darrouzet Investment Trust is the landlord of the Company's premises at 57 Didsbury Street, East Brisbane, Queensland.

2. *Sean Parsons*

Sean Parsons is a Director, the Founder and CEO of the Company. Sean Parsons also has a claim for entitlements although he is treated as an "Excluded Employee", which means his priority claim for entitlements is limited to \$2,000 (wages and superannuation) and \$1,500 (annual leave), with the remainder of his entitlements treated as unsecured.

3. *Mirja Moenninghoff*

Mirja is Sean Parsons' spouse and is also treated as an Excluded Employee in respect of her employee entitlements.

4. *Ellume USA LLC*

Ellume USA is the wholly owned subsidiary of the Company, and is based in the United States.

We make the following comments concerning the related party claim by Ellume USA :

- The Directors operated the Company and Ellume USA as a group.
- The Company recorded the intercompany transactions via a series of loan and receivable accounts in its management accounts. It is not uncommon for entities operating as a group to enter into various intercompany transactions to record mutual supply of materials or services, and loans.
- The Company had no documentation or agreements which formalised the related party debtor and creditor amounts owed or the terms on which those amounts were to be repaid.
- Our review of the related party loans against bank statements, purchase orders and other records of the Company identified:
 - There is no allocation in the intercompany accounts for any operating or overhead costs incurred by the Company where Ellume USA benefited directly from the provision of services or supplies attributed to those costs;
 - Considerable stock was transferred by the Company to Ellume USA where payment for stock was represented by way of non-cash journal entries into the intercompany accounts;
 - Where other assets were transferred by the Company to Ellume USA through raising a purchase order and invoice, consideration for the transfer of these assets were similarly recorded as a non-cash journal entry to the intercompany accounts.
 - Cash was moved between the Company and Ellume USA to ensure liabilities were paid on an ad hoc basis, e.g. accounts payable and payroll.
 - The Company, on occasions, would settle accounts payable on behalf of Ellume USA and vice versa.
 - The Company's record of the transactions in the intercompany accounts have little to no description to properly identify the nature or purpose of the transaction subject to the journal entry.
- As a result of the above, we consider the related party creditor loan of \$35,082,787 owed by the Company to Ellume USA is overstated. To date, however, Ellume USA has not submitted a POD.
- Should the Company be placed into liquidation, further investigations into the conduct of these intercompany accounts will be carried out.

The related party creditors are ordinary unsecured creditors and are entitled to submit a POD to claim and vote at the second meeting of creditors.

6. Investigations, offences and voidable transactions

6.1. Overview – voidable transactions and insolvency

6.1.1. Duty to investigate

The law requires us to investigate and specify whether there appear to be any voidable transactions in respect of which money, property or other benefits may be recoverable by a liquidator under Part 5.7B of the Act.

We have sought to ascertain whether the Company was insolvent at any particular point in time prior to our appointment as Administrators, in order to determine a point in time from which these provisions may apply.

6.1.2. Relevance of insolvency and liquidation

The ability to challenge voidable transactions and recover money/property for creditors is contingent on two elements:

- The Company being placed into liquidation, and
- A liquidator being able to establish that the Company was insolvent at the time it entered into any particular transaction, or that the Company became insolvent as a consequence of that transaction.

6.1.3. Relevance of liquidation versus DOCA

Voidable transactions and other actions that a liquidator can take are not available if the Company executes a DOCA.

As a result, creditors have to assess the advantages to them of a DOCA (and any benefits that may be available to them in this scenario), compared to the likely return in a liquidation (and any recoveries that may be available where a liquidator is appointed).

To help creditors, where a DOCA is proposed, the Estimated Return to Creditors section of this report will include a comparison between liquidation and any DOCA, highlighting the differences in estimated recoveries and outcomes. There may also be timing differences, and these too are discussed as applicable.

6.1.4. Work performed

We have made enquiries into the financial affairs of the Company. In this section, we set out our preliminary views and findings about:

- Offences that may have been committed.
- The solvency position of the Company.
- Existence of voidable transactions – including unfair preferences/loans, uncommercial transactions, arrangements to avoid employee entitlements, and unreasonable director related transactions.
- Charges that may be voidable.

- Whether there is the prospect of a claim for insolvent trading.

Please note the investigations we have undertaken are only indicative of the actions that may be possible in the event of liquidation.

6.2. General information and considerations

6.2.1. Date of insolvency

Our key workings and other analysis are contained in **Appendix 5**.

In the appendix we have also included some general comments and information about recoveries via voidable transactions, insolvent trading and common factors which indicate insolvency.

The summary of our findings and views on the Company's solvency position discussed in **Section 6.3.1**.

6.2.2. Creditors' information sheet and other explanations

Provided at **Appendix 7** are information sheets to assist creditors in understanding potential offences under the Act, recoverable transactions, and insolvent trading.

Creditors should read this information in conjunction with our comments in this section of the report.

6.3. Insolvency and liability for insolvent trading

6.3.1. Summary of findings

Our preliminary view is the Company was likely insolvent from at least 31 May 2022 and remained so up until the time of our appointment on 31 August 2022.

This view was formed as a result of the following:

- The Company failed to make a profit in all FY's reviewed from 1 July 2018 and accumulated losses in excess of \$146.48m between April 2020 and our appointment.
- The Company's auditors noted material uncertainty in the ability of Ellume Limited and Ellume USA LLC (together "the Group") to continue as a going concern in FY20 and FY21 audit reports.
- The Company had some difficulties in producing timely and accurate financial data with errors identified in recording of cash balances and inventory which were later rectified.
- In the eleven months prior to our appointment, the Company experienced staff retention issues which saw a major decline in overall headcount, including the loss of several key personnel with significant operational experience and legacy knowledge of the business.
- Although the Company was successful in conducting two rounds of convertible note funding in September 2021 and December 2021, after December 2021 the Company was unable to secure any further committed funding from existing [or additional] noteholders.
- In September 2021 the Company:
 - Discussed the adoption of safe harbour provisions in board meetings;
 - Considered appointing a restructuring officer;
 - Appointed Deloitte to undertake an initial assessment of the business; and

- Sought a deferment in payments to major equipment supplier.
- From September 2021 onwards, the Company in conjunction with advisors appears to be executing a restructuring plan by:
 - Extending payment terms with creditors;
 - Sourcing fixed asset and debtor financing through Fulton Bank (“Fulton”) and others;
 - Extending repayment terms of a sizeable convertible note; and
 - Negotiating with the DoD for a further capital injection for the US facility; and
 - Preparing to raise additional capital via an IPO.
- Finance staff raised solvency concerns from 24 December 2021 onwards.
- On 6 September 2021, the FDA raised concerns surrounding the level of reporting false positives from Ellume USA ECHT. On 2 October 2021, Ellume USA announced a Product recall. The Company undertook a capital raise in December 2021 to absorb the costs associated with the product recall. The Group attribute a total loss of \$37m in inventory as result of the recall.
- On 24 December 2021, the United States Government announced it would roll out free RATs for United States citizens, resulting in a decrease in demand for retail sales for Ellume USA.
- Following the depletion of noteholder funds received in January 2022 aged payables had an upwards trajectory, with creditors aged greater than 60 days accounting for 91% of total aged payables by appointment date.
- The Company’s lack of diversified customer base made it reliant on its subsidiary, Ellume USA and its contract with DoD for revenue. Without the DoD, the board stated the Company was not viable. An extension to the DoD contract was sought in March 2022 with regular requests for the DoD to exercise an option to purchase an additional 3.1m ECHTs, however confirmation from the DoD was not obtained until after the appointment of Administrators.
- Post May 2022, the Company’s current ratio dropped below 1 and remained so until the appointment of Administrators. A current ratio below 1 indicates the Company may be unable to meet current liabilities using current assets.
- The Company and Ellume USA sought funding from various sources, and Ellume USA progressed negotiations with Fulton. After refusal from capital note holders to provide consent to the Fulton facility, lack of appetite for the IPO to proceed and by existing noteholders to provide further investment, coupled with the DoD not extending their contract the Company was unable to obtain further funding and entered Administration.

Further analysis can be found at **Appendix 5**.

6.3.2. Preliminary view on liability for insolvent trading

From our preliminary investigations the Company appears to have become insolvent from May 2022. However, it is currently unclear whether the Directors would be liable for any insolvent trading claim on the basis of potential defences available to the Directors as will be discussed in **Section 6.3.3** of this report below.

Based on our estimated date of insolvency, the potential claim for insolvent trading may be in the order of c.\$6.13m, however the Directors may be protected from personal liability under the Safe Harbour laws.

If the Company were placed into liquidation, and a Liquidator were to challenge any Safe Harbour protections and pursue the Directors with an insolvent trading claim, it would be very likely a Liquidator

would need to obtain litigation funding to proceed with the claim. Litigation funders often provide funding if there is a strong chance of success, and their success fee would typically range from 25-40% of funds received. There would also be significant costs incurred by the Liquidator and their legal advisors in pursuing an insolvent trading claim.

However, in the event of a liquidation, further work would be performed regarding the solvency position of the Company to determine if there is a benefit to creditors in pursuing the Directors for insolvent trading.

Creditors should refer to **Appendix 5** for additional information regarding the insolvency of the Company.

6.3.3. Safe Harbour

Directors have a duty to prevent a company trading whilst insolvent and may be found personally liable for the debts the company incurs when there were reasonable grounds to suspect the company was insolvent.

Directors can, however, be protected from personal liability for insolvent trading if the company is undertaking a restructuring plan which is reasonably likely to result in a better outcome than immediately placing the company into external administration. This process and protection is referred to as *Safe Harbour*.

The eligibility requirements for Safe Harbour protection and our preliminary view on whether the criteria have been met, is based on our review of the Company board minutes and accompanied board presentations. We note the Directors have claimed privilege against the reports prepared by the safe Harbour advisors. To this end our view is set out in the below table:

Safe harbour eligibility criteria	Criteria met?	Act Reference
Are the Directors properly informing themselves of the Company's financial position?	Yes	588GA(2)(a)
Are the Directors taking appropriate steps to prevent any misconduct by officers or employees of the Company which could adversely affect the Company's ability to pay all its debt?	Yes	588GA(2)(b)
Are the Directors taking appropriate steps to ensure the Company is keeping appropriate financial records consistent with the size and nature of the Company?	Yes	588GA(2)(c)
Are the Directors obtaining advice from an appropriately qualified entity who was given sufficient information to give appropriate advice?	Unable to confirm	588GA(2)(d)
Are the Directors developing or implementing a plan for restructuring the Company to improve its financial position?	Unable to confirm	588GA(2)(e)
Has the Company met and continues to meet its employee entitlement obligations? This includes wages, leave entitlements and superannuation	Yes – subject to further review	588GA(2)(a)(i)
Has the Company complied and continues to comply with its tax reporting obligations? Includes returns, notices, statements, applications or other documents as required by taxation laws (within the meaning of the <i>Income Tax Assessment Act 1997</i> (Cth))	Yes – subject to further review	588GA(4)(a)(ii)

Our preliminary view is the Company was likely insolvent from at least 31 May 2022.

In terms of eligibility for Safe Harbour protection from insolvent trading liabilities, board minutes of the Company indicate the Directors engaged Deloitte initially to undertake a review of the Company in October 2021 and as Safe Harbour advisers in December 2021. Information on the timing for entering Safe Harbour as well as the better outcome plan being pursued was requested from both the Directors and Deloitte, all who have claimed the documentation is privileged and will not be provided to the Administrators.

We expect the Directors would seek to rely on Safe Harbour protection if the Company were to be placed into liquidation and an insolvent trading claim was pursued.

As we have not been provided with the information supplied to the Safe Harbour advisers, or the Safe Harbour advice, we are presently unable to form a definitive view as to the likely strength of such protections at this point in time. However, it appears the Safe Harbour advisers were engaged well prior to our appointment and we understand numerous avenues to restructure the business during this time were explored. Further investigation would be required to confirm this position should a liquidation occur.

6.3.4. Directors' capacity to pay claims by a liquidator

Whilst we have not received a statement of the Directors' assets and liabilities, we note the following searches were conducted on all five (5) current Directors and (2) two former Directors:

- An ASIC Personal Current and Historical Extract, disclosed shareholdings in other companies;
- Property searches performed indicate some Directors may own real property;
- Property searches on related entities indicated these entities may own real property;
- We have been unable to perform a motor vehicle search in the name of the Directors, due to privacy constraints; and
- They are not shown as bankrupt on ASIC's data base.

As the Administrators have no visibility of the potential equity in each property and any other shareholdings in the name of the Directors, we are unable to verify if the Directors would be able to meet a successful insolvent trading claim. Our view remains that the Directors are likely to be protected from any insolvent trading claim due to safe harbour provisions being in place. In the event a liquidator is appointed, further investigations would be required.

We understand a Directors and Officers insurance policy is held, however cannot confirm if the policy would respond to an insolvent trading claim.

6.4. Voidable transactions

We set out below our preliminary findings in relation to potential recoveries from voidable transactions in a liquidation scenario including our view on the likelihood of there being substantiated and supportable claims. Where applicable, we have included our estimate of possible recoveries along with any other pertinent information.

Appendix 7 contains an information sheet to assist creditors in understanding potential offences under the Act, recoverable transactions, and insolvent trading.

Area	Our view	Comments
Unfair preferences	Possible claims	■ We have reviewed the payments made by the Company during the period leading up to appointment, taking into account the potential date of insolvency of the Company. ■ We consider that there may be ten (10) preferential payments to trade creditors totalling \$2,282,215. However, this is subject to further investigation should the Company be placed into liquidation to determine if the payments to suppliers were made in good faith, or if the trade creditors were aware of the insolvency of the Company at the time payments were made.
Uncommercial transactions	No claims	■ We are not aware of any potential uncommercial transactions that would likely result in property being recovered for the benefit of creditors.
Unfair loans	No claims	■ We are not aware of any potential unfair loans which would likely result in property being recovered for the benefit of creditors.
Unreasonable payments to directors	No claims	■ Our investigations to date have not found any evidence of unreasonable payments to directors.
Related entity benefit	No claims	■ Our investigations to date have not revealed any transactions with related entities that would likely result in property being recovered for the benefit of creditors.
Arrangements to avoid employee entitlements	No claims	■ Our investigations to date have not revealed the existence of any such arrangements.
Voidable charges	None	■ Our investigations have not revealed any charges or registered security interests that would be void against a liquidator.
Offences by directors	Possible claims	■ Based on our investigations to date, whilst we consider the Directors may have committed a breach of section 588G of the Act, we understand they may elect to rely on the Safe harbour provisions pursuant to section 588GA of the Act. ■ Should the Company be placed into liquidation, further investigations will be carried out.

6.5. Capital Raise Funds

As creditors may be aware, the Company undertook pre-IPO capital raise to fund working capital. As part of our duties as Administrators we have examined the approved purpose for the funds and whether the Company has breached any of the terms.

In determining whether the funds were utilised per the approved purposes, we analysed the following resources:

- Pre – IPO presentations;
- Marketing and promotional materials put forward to investors; and
- Convertible note deed.

Noted within the materials mentioned above, the approval purpose for the funds were the following:

- To progress the Company manufacturing capability;
- Working capital purposes; and
- Costs associated with the transaction.

During the period of June 2021 to October 2021 and December 2021 to February 2022, the Company was predominately funded by capital raised by issuing convertible notes. Based on our investigations, we were able to trace where the funds were disbursed during these periods, of which the majority were either paid to Ellume USA, trade creditors or employees.

Although AUD \$3.7m was transferred to Ellume USA, we determined these funds were used to fund manufacturing capability and fall under the approved purpose of the notes. Pursuant to the above, we have determined the Company has not breached any of the requirements per the capital note conditions.

7. Proposal for a deed of company arrangement

7.1. What is a DOCA?

A DOCA is a formal agreement between a company, its creditors and the proponents of the DOCA.

The proponents are interested parties who wish the creditors to consider their proposal – usually involving a compromise of creditors' claims as opposed to either winding up the company (liquidation) or returning the company to its directors.

A DOCA may involve:

- Maximising the chance of the company continuing in existence; and/or
- Result in a better return for the company's creditors than in a winding up.

7.2. Proposal for a DOCA

A proposal for a DOCA has been received from Hough.

The sale and recapitalisation campaign resulted in the Administrators receiving two proposals to acquire and/or recapitalise the Group via a DOCA. In our view, the DOCA proposal which presents the best outcome for creditors is the Hough DOCA proposal.

A copy of the Hough DOCA proposal is **attached at Appendix 6**. Creditors should read the proposal and ask us before the meeting if they have any specific queries that are not addressed in this report.

The Hough DOCA proposal has not yet been drafted into a deed format. As a result, to assist creditors, we have highlighted below the key features and provided our comments on the operational aspects of the DOCA proposal.

7.3. Glossary of terms

Capitalised terms relevant to the Hough DOCA proposal are defined in the Glossary at **Appendix 1**.

7.4. Hough DOCA proposal

7.4.1. Key features

The key features of the Hough DOCA proposal are as follows:

- Restructure the Company's debts with Hough acquiring 100% of the issued shares in the Company.
- The Company enters a DOCA whilst the required approvals, consents or waivers are obtained from ASIC and the Court.
- Following all conditions precedent being met, the DOCA will effectuate, ownership of all shares in the Company will transfer to Hough (or its nominee) and a Creditors' Trust is established to satisfy the claims of creditors.

- The timeframe for completion of the transaction is subject to the timing of satisfaction of the conditions precedent discussed further at Section 7.4.2 of this report. We anticipate completion occurring by 10 March 2023, however this is subject to creditors' approval at the second meeting of creditors and the timing of receipt of ASIC relief and Court approval.
- Unsecured creditor claims will be released through the DOCA in return for the right to lodge a claim and receive a distribution in the Creditors' Trust.
- Hough will assume employee entitlements of continuing employees of the Company and the liabilities of Ellume USA.
- Certain noteholders at the direction of Hough may elect to not receive a distribution from the Creditors' Trust and amend the terms of the Notes to the satisfaction of Hough. All other Notes, including the Notes of any Electing Noteholder, who do not elect to amend the terms of the Notes can claim in the Pool G of the Creditors' Trust described below.
- The Company will use its commercial reasonable endeavours to renegotiate its agreements with QIAGEN to the satisfaction of Hough.
- The Contribution of USD \$38m is made by Hough to the Creditors' Trust on completion. Interim Funding in the amount of up to USD \$5m has been made available to the Administrators through to completion of the DOCA.
- Any Working Capital Amounts and trading liabilities incurred in the Administration and Deed Administration periods held by the Company at Completion will also be settled to the Creditors' Trust.
- Distributions from the Creditors' Trust will be made in the following order:
 - Pool A – repayment of the Interim Funding and, if relevant, any part of the Security Funding;
 - Pool B – repayment of any balance owing of the Security Funding
 - Pool C – in accordance with the priorities set out in sections 556, 560 and 561 of the Act, as though those priorities were applied in the Creditors' Trust;
 - Pool D – equally and rateably to Small Claim Creditors, with the total amount of the pool not to exceed the lesser of \$0.285m or 50 cents in the dollar;
 - Pool E – QIAGEN in the amount of USD \$7m;
 - Pool F – equally and rateably the balance of the Creditors' Trust Fund to all Admitted Claims not included in the other pools; and
 - Pool G – equally and rateably to the participating Noteholders up to the amount of USD \$12.5m.
- Hough will not receive any distributions under the DOCA or Creditors' Trust other than in respect of the repayment of the Interim Funding.
- Ellume USA as a subsidiary of the Company is an Excluded Creditor and will not receive a distribution from the Creditors' Trust.

7.4.2. Conditions precedent

The following are conditions precedent to the completion of the Hough DOCA and creation of the Creditors' Trust:

- Release by each of the Lender Group of all security granted;
- Release by certain holders of security granted pre-appointment, unless otherwise agreed and on terms that provide for continued trading;
- ASIC provision of relief pursuant to section 606 of the Act;

- The making of an order by the Court pursuant to section 444GA(1)(b) of the Act to transfer all shares in the Company to Hough, and the consequent transfer of the shares. Further detail on the Court application under section 444GA is outlined at Section 7.8 of this report;
- Hough being satisfied that the Company it is not contractually restricted from commercialising certain diagnostic products;
- Payment of the USD \$38m to the Deed Fund by Hough;
- Execution of the Creditors' Trust Deed;
- Repayment of the Interim Funding provided by Hough to the Deed Administrators;
- Termination by the Administrators of the Pre-Administration Leases or notification the counterparties to such contracts have been notified the Company will cease to comply with, and will not perform its obligations under, and treat the Pre-Administration Leases as being at an end;
- The resignation, removal or appointment of certain directors at the direction of Hough;
- Retention of certain staff on terms acceptable to those staff and Hough, being no less favourable than existing terms; and
- Binding commitments from certain landlords in relation to the ongoing use of certain premises.

7.4.3. DOCA implementation

Following satisfaction, or waiver of the above conditions precedent:

- The Creditors' Trust Deed will take effect pursuant to the terms of the Creditors' Trust Deed;
- The Deed Administrators will transfer the Deed Fund to the trustees of the Creditors' Trust to form the Creditors' Trust Fund; and
- The DOCA will then be fully effectuated.

7.4.4. Treatment of Related Party Claims

The DOCA proposal excludes the participation of Excluded Creditors in any distribution from the Creditors' Trust Fund which includes all subsidiaries of the Company.

7.4.5. Effects of the DOCA on employees' ability to access the FEG scheme

Current and former employees should note access to the FEG scheme for any outstanding entitlements, in particular leave and redundancy, is not available in a DOCA scenario as the FEG scheme is only available if a company goes into liquidation.

Outstanding superannuation entitlements are not covered by the FEG scheme. Superannuation entitlements outstanding for the period 1 August 2022 to 31 August 2022 will be paid from the Creditors' Trust Fund, from Pool C. Superannuation payable during the course of the voluntary administration is our liability and will be satisfied and paid no later than when due.

Continuing employees will retain their entitlements with the Company and all employee entitlements, which are due and payable in the ordinary course, will continue to be paid up until Completion.

7.4.6. Extinguishment of claims

Upon Completion of the DOCA, all claims (other than those which are not affected pursuant to section 444D of the Act and those of Excluded Creditors) will be released, discharged and extinguished in full, in consideration for the Admitted Creditors becoming beneficiaries under the Creditors' Trust.

Any claims will be deemed to be abandoned if, prior to the declaration of the final dividend or distribution, a creditor has failed to submit a formal POD or claim in accordance with the terms of the Creditors' Trust, or having submitted one which is rejected, fails to appeal against the rejection within the relevant timeframe set out in the Creditors' Trust Deed.

7.4.7. Termination of the DOCA

The DOCA will continue in operation until the DOCA is terminated:

- Upon its Completion;
- By an order of the Court under section 445D of the Act;
- By a resolution of creditors at a meeting convened under Division 75 of Schedule 2 to the Act; or
- Automatically, if a condition precedent is not satisfied (or becomes incapable of being satisfied) or if not waived by the parties by the condition precedent satisfaction date of 10 March 2023 (or to a date as otherwise agreed by the Deed Administrators and the Proponent).

7.4.8. Other relevant matters

- The proposed Deed Administrators and the proposed Trustees of the Creditors' Trust are John Park and Joanne Dunn.
- During the period of operation of the DOCA, the Deed Administrators will maintain control of the Company and will continue to manage the operations of the Company.
- Control of the Company will return to its directors upon Completion of the DOCA.
- During the operation of the DOCA, the moratoria in sections 440A, 440D, 440F and 444E of the Act will apply to all creditors and members of the Company.
- For claims to be admissible under the DOCA, and hence the Creditors' Trust, they must have arisen on or before the date of appointment of the Administrators, being 31 August 2022.

Upon termination of the DOCA due to the non-satisfaction of a condition precedent prior to the relevant date, Hough will cease to be bound by the DOCA and have no liability under it. In such circumstances, the Deed Administrators would immediately call a meeting of creditors to determine the Company's future.

7.5. Our comments on the proposal

7.5.1. Likely satisfaction of conditions precedent

Whilst there remains some conditionality in the Completion of the DOCA, the Proponent has undertaken to provide interim funding during the DOCA period.

Our comments regarding the likelihood of satisfaction of each of the conditions precedent is as follows:

- We expect to be provided with the release of security by the Lender Group subject to the settlement of amounts owed to these parties under the Administrators' funding agreement.

- We expect to be provided with the release of security and agree continued trading terms with these parties subject to the satisfaction of any valid claims by these parties.
- As we have not discussed the matter with ASIC, we are unable to comment regarding the provision of relief from section 606 of the Act by ASIC, however, we do expect the relief to be granted.
- Although the making of a 444GA Order is a matter for the Court, it is our opinion, due to there being no economic interest in the Company remaining for the benefit of shareholders, the criteria for making of such an order are satisfied.
- Based on our understanding of the current relevant commercial agreements of the Company, we do not expect that Hough will be contractually restricted from commercialising certain diagnostic products.
- Risk of non-payment of the Contribution has been mitigated through the transaction structure with Hough required to provide Interim Funding in line with the terms of the Funding Agreement through to Completion.
- The Creditors' Trust Deed is a matter within the direct control of the Administrators and as such the risk of non-execution is minimal.
- Based on the current financial forecast information, we do not consider there will be material impediments to repayment of the Interim Funding provided by Hough to the Administrators.
- We do not consider there will be material impediments to satisfaction of the condition precedent regarding Pre-Administration Leases as this is largely a procedural matter that can be attended to by the Administrators.
- We do not consider there will be material impediments to satisfaction of the condition precedent regarding the resignation, removal or appointment of certain directors at the direction of Hough as this is largely a procedural matter that can be attended to by the Administrators.
- We are in ongoing communication with the relevant staff and Hough intends to commence discussions with the relevant employees.
- We are in ongoing discussions with the relevant landlords and as a result do not consider there will be material impediments to procuring binding commitments from certain landlords in relation to the ongoing use of certain premises.

7.5.2. Return to creditors

The Hough DOCA proposal provides a return to priority creditors of 100 cents in the dollar, a return to Small Claims Creditors of up to 50 cents in the dollar, a return to Qiagen of up to 47 cents in the dollar, and a return to participating Noteholders up to 35 cents in the dollar, and a return to unsecured creditors of up to 20 cents in the dollar.

Our estimate of the return to the creditors of the Company is discussed separately at Section 8 of this report. In reviewing this information, creditors should review the detailed statement, our estimate of costs and the anticipated return compared to a liquidation scenario.

Whilst there were other offers, the Administrators selected the Hough DOCA proposal, taking into consideration the interests of creditors and other considerations as outlined in **Section 7.4** of this report.

If the Hough DOCA proposal is not accepted, and given the limited funding available, the only other realistic option would be for the Company to be placed into liquidation.

In forming their own views as to whether the Hough DOCA proposal is in their interests, creditors should consider the following items when comparing the Hough DOCA proposal to liquidation:

- The market for the business has been thoroughly tested as part of the Administrators' sale process and the current Hough offer is considered by the Administrators and Houlihan Lokey as the best option available to all creditors.
- Under the Hough DOCA proposal the business will continue as a going concern, with the employment of workforce preserved.
- Various unsecured creditors will gain the benefit of ongoing trade with the Company as well as the potential to receive a dividend in the Hough DOCA.
- Based on preliminary investigations, the Hough DOCA proposal is expected to provide a higher return to all classes of creditors than liquidation and will result in a more timely dividend to creditors of the Company than liquidation.
- The working capital and requirement to payment of trading liabilities are applicable under both the DOCA and liquidation scenario.
- The additional funds available in the Hough DOCA scenario which are not available in liquidation is the Contribution of USD \$38m.
- Voidable transactions identified in our investigations are only recoverable if the Company is placed in liquidation. Please refer to **Section 6** and **Appendix 5** for further details.
- Under the Hough DOCA, Ellume USA will not seek to claim against the Creditors' Trust Fund. In a liquidation, Ellume USA is entitled to make a claim as an unsecured creditor. However, there is unlikely to be a return to unsecured creditors in a liquidation.
- We have undertaken a review of the creditor position and the Hough DOCA proposal may provide a return for unsecured creditors which they would not receive in a liquidation.
- The FEG scheme, operated by the Commonwealth Government, pays certain entitlements of employees whose employment has been terminated as a result of an employer's liquidation. To be eligible for FEG, the Company must be in liquidation. There are also timing considerations between lodgement of a claim and receiving funds.
- On the other hand, the Hough DOCA proposal provides for ongoing employment and the payment of employee entitlements in the ordinary course following cessation of employment.
- Further, FEG does not extend to superannuation liabilities. The Hough DOCA proposal provides for the payment of superannuation liabilities as a priority claim under Pool C.
- The terms of the Hough DOCA proposal do not offer any security in respect of the Contribution from the Proponent. In the event the Proponent does not make payment of the Contribution, the Hough DOCA may be terminated and the Company will likely be placed in liquidation.
- The payment of the Contribution must occur prior to Completion of the Hough DOCA, prior to the Creditors' Trust becoming effective. The required timing of the payment alleviates any risk of the creditors' rights being extinguished without the terms of the Hough DOCA being fully satisfied.
- In the event the Hough DOCA terminates for reasons other than successful completion, we do not consider creditors will be worse off than if the Company were immediately placed in liquidation.

Based on the above, we consider the Hough DOCA to be in the best interests of creditors.

7.5.3. Company's operations following Completion of the DOCA

Hough, as part of the submission of their binding offer and DOCA proposal, have provided the Administrators with a comprehensive business plan for the restructure of the Company. A brief summary of the key features of the business plan are to refocus the business of the Company to maximise its existing products, research and intellectual property into new markets whilst also continuing to commercialise its growing product menu over an initial three-year period.

Having considered the Hough DOCA proposal and accompanying business plan, we are satisfied that the Company will be able to continue beyond the DOCA.

7.6. Expected timeline of events

If the proposed DOCA is approved by creditors at the forthcoming meeting, the following key events (in sequence) can be expected to occur:

- The Hough DOCA will be executed by the parties subject to the deed. This is to occur within two (2) business days after the forthcoming meeting of creditors. At law, there is a maximum time period of 15 business days after the meeting for the Hough DOCA to be executed. If the Hough DOCA is not executed within this time, the Company would be placed into liquidation.
- The Deed Administrators and Hough will endeavour to satisfy all conditions precedent outlined in the Hough DOCA. This will include an application by Deed Administrators to Court for the purposes of obtaining a 444GA Order.
- The Company will return to solvency, under the control and ownership of Hough.
- Under the Creditors' Trust, a dividend process (conducted in a manner consistent with the provisions of the Act) will be undertaken. This will involve creditors submitting a POD to the Trustees to substantiate their claim, the Trustees adjudicating on these claims and then paying a dividend in accordance with the terms of the Creditors' Trust.

If the Hough DOCA has not been effectuated prior to 10 March 2023, or any such later date agreed to by the Deed Administrators and the Proponent, the Deed Administrators are required to convene a meeting of creditors to decide the future of the Company.

7.7. Purpose of a creditors' trust

7.7.1. General Information on the purpose of a creditors' trust

- A creditors' trust is a mechanism for the distribution of a fund to creditors of a company or group of companies, which accelerates a company's exit from external administration. A trust is formed for the benefit of the relevant creditors, and the trust funds (usually contributed by the proponent of the DOCA) are paid to the trust for distribution to creditors in accordance with a trust deed.
- A creditors' trust is an arrangement pursuant to the Trusts Act rather than the Act.
- The DOCA proposal by Hough requires the use of a creditors' trust. The reason for a creditors' trust structure is to accelerate the Company's exit from external administration and to allow the transfer of all shares in the Company to Hough.

7.7.2. General Information on the purpose of a Creditors' Trust

- In December 2018, ASIC updated Regulatory Guide 82 in respect of Creditors' Trusts, entitled 'External Administrations: Deeds of company arrangement involving a creditors' trust'. A copy of Regulatory Guide 82 can be downloaded from the ASIC website [linked here](#), by searching at www.asic.gov.au/, or is available from our office upon request.
- Key considerations of the Creditors' Trust proposed by Hough, as required pursuant to Regulatory Guide 82, is at **Appendix 9** with a summary at **Section 7.7.4** below.

7.7.3. Rights of creditors

- The trust deed will incorporate many provisions of the Act, but creditors' rights will be governed by the Trusts Act and in equity.
- The terms of the proposed DOCA is in the preceding pages. Creditors' rights are altered in the DOCA proposal and creditors should take this into account in assessing the merits of the DOCA proposal put forward.
- Creditors should seek their own legal advice as to the implications to them.

7.7.4. Summary of key considerations

Typically, when a creditors' trust is created:

- The company's obligations to all creditors bound by the DOCA are compromised in accordance with the DOCA (typically upon satisfaction of certain conditions);
- The deed administrators of the DOCA become the trustees and the creditors become the beneficiaries of the creditors' trust;
- The company and/or third parties promise to make one or more payments (or transfer of property) to the trustees in satisfaction of the creditors' claims against the company. In return, the creditors' claims against the company are extinguished;
- The DOCA is 'effectuated' immediately upon the creation of the creditors' trust, which usually occurs after the DOCA is executed and any conditions precedent are satisfied;
- When the DOCA is 'effectuated', the company ceases to be externally administered, the directors regain full control of the company, the company is no longer required to use the notification 'subject to deed of company arrangement' on its public documents as it otherwise would be required by section 450E(2) of the Act; and
- The deed administrators (now trustees) then become solely responsible to the former creditors (now beneficiaries) for:
 - Ensuring the company and/or other third parties make their payments, transfer property and satisfy any other obligations to the trustees;
 - Determining how much each of the former creditors is entitled to receive from the trust; and
 - Making any distribution to those former creditors in their capacity as beneficiaries of the trust.

7.7.5. Termination and variation of the creditors' trust deed

The creditors' trust deed for the company will usually provide for the termination of the trust under certain conditions, such as:

- Complete distribution of the trust fund has been made in accordance with the terms of the creditors' trust deed; or
- The expiry of a perpetuity period (80 years).

The trustees may vary the creditors' trust deed by resolution passed at a meeting of creditors, but only if the variation is not materially different from the proposed variation set out in the notice of meeting.

7.7.6. Moratorium

A moratorium upon actions against the Company, as outlined in section 444E of the Act, applies during the period of the DOCA. Additionally, the creditors' trust deed will stipulate, subject to the terms of the creditors' trust deed and section 444D of the Act, creditors shall not take action or steps to enforce their rights to recover any of their entitlements whilst the trustees remain the trustees of the trust on the terms of the creditors' trust deed.

7.8. Share transfer to Hough

As discussed above, the Hough DOCA involves the transfer of 100% of the Company's shares to Hough. To enable the transfer of the shares, the Deed Administrators are required to make an application to the Court with a view to obtaining the 444GA Order.

The process to obtain the 444GA Order entails the following key steps:

- Preparation of:
 - Court application and supporting affidavit seeking the 444GA Order;
 - Explanatory statement; and
 - Independent expert's report
- The explanatory statement and independent expert's report provided to ASIC
- The explanatory statement and independent expert's report distributed to shareholders
- A Court hearing of the application
- A decision by the Court to grant leave to transfer the shares or otherwise
- ASIC relief to be granted

The Court will grant leave to transfer the shares where it will not 'unfairly prejudice' the interests of shareholders. Shareholders, stakeholders and interested parties will have the opportunity to be heard at the Court hearing.

If the Hough DOCA is approved at the second meeting of creditors, we anticipate the process to obtain the 444GA Order will take up to two (2) months due to the Court closure over the new year holiday period. The timeframe will depend upon Court availability, expert availability, and whether there are appearances from shareholders and other stakeholders who oppose the 444GA Order.

Should the Court refuse leave, then the Deed Administrators will convene another meeting of creditors to determine the future of the Company.

7.9. Effect on employees

7.9.1. Effect on employees – liquidation

Position as priority creditors

Employees are afforded a priority in the winding up of a company compared to ordinary unsecured creditors. The order of priority for typical employee claims is as follows:

Type of entitlement	
Tier 1	Amounts due in respect of wages, superannuation and superannuation guarantee charge outstanding as at the date of the appointment of Administrators, followed by
Tier 2	Amounts due in respect of leave of absence and other amounts due under the terms of an industrial instrument, followed by
Tier 3	Amounts due as a result of termination of employment, including redundancy and payment in lieu of notice

Return to employees if the Company is wound up

Section 8 includes details about the estimated return to creditors if the Company is wound up and a liquidator appointed.

Government assistance available if the Company is wound up

If there are insufficient funds available to satisfy employees' claims from the Company's property, eligible employees may be entitled to lodge a claim for their unpaid entitlements under the Federal Government's FEG scheme. FEG provides financial assistance to employees of companies in liquidation, subject to eligibility requirements being met, to pay unpaid wages, annual leave, long service leave, PILN and redundancy, up to prescribed limits.

The FEG scheme does not cover unpaid superannuation.

Further information is available here: www.ag.gov.au/industrial-relations/fair-entitlements-guarantee-feg.

7.9.2. Effect on employees – DOCA

Employees should note that the FEG Scheme is not available to employees in the event that the Company executes a DOCA.

The Hough DOCA proposal stipulates the entitlements of former employees will be paid from the Creditors' Trust Fund in Pool C. Continuing employees will retain their employment and their entitlements will be paid in the ordinary course e.g. when leave is taken or following termination/resignation.

The Hough DOCA proposal also stipulates any outstanding superannuation (irrespective of the continuation or cessation of employment) will be paid from the Creditors' Trust Fund in Pool C.

As the DOCA does not include the usual priority provision in relation to employee claims, either an Eligible Employee Meeting must be held, or the Court must make an order approving the exclusion of the priority provision before the DOCA can become effective.

Our comments on the impact on employees under a DOCA are provided at **Section 8.3.2** of this report.

A circular to eligible employee creditors has been issued to employees which explains how the DOCA impacts their entitlements and how the DOCA compares to a liquidation scenario.

7.10. Eligible employee meeting

Pursuant to section 444DA of the Act, the Administrators are required to hold an Eligible Employee Meeting prior to the second meeting of creditors, because the DOCA does not contain a provision for Eligible Employees to receive a priority at least equal to what they would have been entitled to under the priority of payment provisions (section 556 of the Act) in a liquidation.

The purpose of the Eligible Employee Meeting is for Eligible Employee creditors to consider and, if thought appropriate, approve the absence of the provision in the DOCA.

A circular has been separately issued to all Eligible Employee creditors explaining how the proposed DOCA impacts their entitlements and ongoing employment, and how the DOCA compares to a liquidation scenario.

The Eligible Employee Meeting will be held on **Tuesday 20 December 2022 at 11:30AM (AEST)** using virtual meeting facilities.

Should Eligible Employees wish to attend the Eligible Employee Meeting, please complete and return the relevant forms to our office by no later than **10:00AM (AEST) on Monday, 19 December 2022**.

Forms for the Eligible Employee Meeting are available to download from the FTI Consulting Creditor Portal: <https://www.fticonsulting.com/creditors/ellume-limited>

7.11. Effect on shareholders

7.11.1. Effect on shareholders – liquidation

In accordance with section 563A of the Act, in a liquidation, claims by shareholders are subordinated until all other debts payable by the Company have been satisfied. Our estimated return to creditors outlined at **Section 8** of this report demonstrates there will be no return to creditors in a liquidation. Accordingly, there would be no return to shareholders if the Company were liquidated.

7.11.2. Effect on shareholders - DOCA

A key aspect of the DOCA is the transfer of 100% of shares in the Company to Hough. The DOCA does not provide for any consideration to be paid to current shareholders in respect of this transfer.

Further, the DOCA incorporates section 563A of the Act such that shareholders are unable to participate in any dividend process in the DOCA.

7.12. Other matters relevant for consideration

Creditors should be aware of the following additional information when deciding whether to accept the Hough DOCA proposal instead of placing the Company into liquidation.

7.12.1. Liquidators' recoveries

Once executed, the Hough DOCA proposal binds all the Company's creditors in respect of claims arising on or prior to the date the DOCA is expressed to take effect. This includes unsecured creditors who may have voted against the DOCA. The DOCA also binds the Company, its officers, members, and the Deed Administrators.

If the DOCA is accepted by creditors, creditors will forgo any insolvent trading or voidable transaction recoveries as these recoveries are only available to the Company's liquidators (should the Company be placed into liquidation). As discussed in Section 6.4 of this report, although we have identified potential voidable transaction claims which could be pursued for the benefit of creditors, further investigations would be required to confirm the likelihood and quantum of recoveries.

A liquidator would need to complete all statutory investigations to determine if any recoveries are available, including those which may not have been identified by us to date. We note if the DOCA fails and the Company is wound up, our ability to seek recovery of voidable transactions (if subsequently identified) is retained.

7.12.2. Moratorium

Subject to section 444E of the Act, creditors bound by a DOCA cannot:

- Make an application for an order to wind up the Company;
- Proceed with an application in connection with the winding up of the Company made before the DOCA became binding on the creditors;
- Begin or continue any proceeding against the Company or in relation to any of its property (except with leave of the Court);
- Exercise any right of set-off or crossclaim against the Company;
- Begin or continue with any enforcement process in relation to the Company's property (except with leave of the Court); or
- Commence or proceed in arbitration against the Company or in which the Company is a party.

7.12.3. Taxation

Company and Trust

Whilst there may be taxation and stamp duty implications for the Company and the Creditors' Trust if the proposed DOCA is approved, we are not presently able to provide details of these implications (including any impact on the anticipated return to creditors/ beneficiaries). We recommend creditors obtain independent advice prior to voting at the second meeting of creditors if these implications are of concern.

Creditor and Beneficiary

We draw creditors' attention to the fact there may be potential taxation implications for a creditor in receiving distributions as a beneficiary of a trust rather than in their capacity as a creditor of the Company. In broad terms, the distribution of funds under a Deed (or in a liquidation scenario) is simply a payment in respect of a debt. Conversely, a distribution of money under a creditors' trust does not have the same character but involves the payment of amounts either on capital or revenue account, thereby creating potential income and capital gains tax consequences. We are not able to offer specific advice to creditors in respect of any taxation implications. Accordingly, we recommend you seek independent taxation advice on your individual circumstance prior to voting at the second meeting.

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8. Estimated return to creditors

8.1. Administrators' estimated statement of position

Below is the Administrators' estimated outcome statement in the event of a DOCA and liquidation. In the event of a liquidation, it is assumed insufficient funds are available to continue to operate the Company and the Company would cease to trade.

8.1.1. Summary of estimated return in DOCA and Creditors' Trust scenario

Administrators' estimated statement of position in a DOCA and Creditors' Trust scenario				
		DOCA		
AUD	Note	Low return	High return	
Circulating assets				
Cash at bank at appointment	1	1,575,259	1,575,259	
Pre-appointment debtors	2	10,652	15,604	
Inventory	3	Nil	Nil	
Total circulating assets		1,585,911	1,590,863	
Proponent contribution		4	56,716,418	56,716,418
Less: Interim DOCA funding (Pool A)	4, 5	(7,462,687)	(3,516,054)	
Net circulating assets/Net fund		50,839,642	54,791,227	
Pool B: Security funding				
Trading security holder claims	5, 16	(7,520,950)	(283,943)	
Voluntary Administrators' funding	6	(5,238,344)	(5,238,344)	
Pool B creditor fund		11,940,299	5,522,288	
Pool B distribution rate (c/\$)		94 c/\$	100 c/\$	
Pool C: Costs and priority creditors				
Projected trading position	7	(4,614,723)	Nil	
Voluntary Administrators' funding (shortfall after Pool B)	6	(818,996)	Nil	
Legal and advisor fees	8	(3,939,096)	(3,839,096)	
Voluntary Administrators' remuneration	8	(2,661,578)	(2,600,000)	
Deed Administrators' remuneration	8	(850,000)	(800,000)	
Creditors' Trustee remuneration	8	(400,000)	(300,000)	
Wages and superannuation	9	(217,786)	(217,786)	
Leave entitlements	9	(550,526)	(520,526)	
Redundancy and payment in lieu of notice	9	(559,798)	(559,798)	
Pool C creditor fund		14,612,503	8,837,206	
Pool C distribution rate (c/\$)		100 c/\$	100 c/\$	

Administrators' estimated statement of position in a DOCA and Creditors' Trust scenario			
AUD	Note	DOCA	
		Low return	High return
Pool D: Small claim creditors			
Small claim creditors	5	(367,182)	(367,182)
Pool D creditor fund		183,591	183,591
<i>Pool D distribution rate (c/\$)</i>		<i>50 c/\$</i>	<i>50 c/\$</i>
Pool E: Qiagen			
Qiagen claim	5	(22,425,909)	(22,425,909)
Pool E creditor fund		10,447,761	10,447,761
<i>Pool E distribution rate (c/\$)</i>		<i>47 c/\$</i>	<i>47 c/\$</i>
Pool G: Noteholders			
Noteholder claims	5	(91,824,171)	(53,886,202)
Pool G creditor fund		13,655,488	18,656,716
<i>Pool G distribution rate (c/\$)</i>		<i>15 c/\$</i>	<i>35 c/\$</i>
Pool F: Ordinary unsecured creditors			
Ordinary unsecured creditors	5, 17	(65,386,994)	(57,056,966)
Pool F creditor fund		Nil	11,143,664
<i>Pool F distribution rate (c/\$)</i>		<i>0 c/\$</i>	<i>20 c/\$</i>

*AUD/USD exchange rate of 0.67 applied to calculations.

8.1.2. Summary of estimated return in a liquidation scenario

Administrators' estimated statement of position in a Liquidation scenario			
AUD	Note	Liquidation	
		Low return	High return
Non-circulating assets			
Shares in related parties	10	Nil	Nil
Other assets	11	Nil	Unknown
Plant and equipment	12	1,805,972	2,223,507
Total non-circulating assets		1,805,972	2,223,507
<i>Less: secured creditor claims</i>	5, 16	<i>(7,520,950)</i>	<i>(283,943)</i>
Surplus/(shortfall) from non-circulating assets		(5,714,978)	1,939,564
Circulating assets			
Cash at bank at appointment	1	1,575,259	1,575,259
Pre-appointment debtors	2	10,652	15,604
Inventory	3	807,687	2,826,903
Total circulating assets		2,393,597	4,417,766
Liquidator claims			
Voidable recoveries	13	Nil	456,443
Insolvent trading actions	14	Nil	Nil
Total liquidator claims		Nil	456,443

Administrators' estimated statement of position in a Liquidation scenario			
		Liquidation	
AUD	Note	Low return	High return
Available funds/(shortfall) before costs		(3,321,380)	6,813,773
Trading and administration costs			
Projected trading position	7	(3,620,559)	(3,583,059)
Legal and advisor fees	8	(800,000)	(700,000)
Voluntary Administrators' remuneration	8	(2,661,578)	(2,600,000)
Liquidators' remuneration	8	(550,000)	(345,000)
Voluntary Administrators' funding	6	(5,238,344)	(5,238,344)
Total trading and administration costs		(12,870,481)	(12,466,403)
Available to priority creditors		Nil	Nil
Priority Creditors			
Wages and superannuation	9	(270,514)	(270,514)
Leave entitlements	9	(1,179,170)	(1,079,170)
Redundancy and payment in lieu of notice	9	(1,648,789)	(1,648,789)
Total priority creditors		(3,098,473)	(2,998,473)
<i>Priority creditors distribution rate (c/\$)</i>		<i>Nil</i>	<i>Nil</i>
Available to non-priority creditors		Nil	Nil
All unsecured claims	15	(179,873,663)	(171,543,634)
Secured creditor shortfall	16	(5,714,978)	Nil
Related party claims	17	(35,481,201)	(398,414)
Total unsecured claims		(221,069,841)	(171,942,048)

8.2. Notes to Estimated Statement of Position

1. Cash at bank at appointment

Cash at bank at appointment totalled \$1,575,258.80. The Company held monies in:

- Three (3) AUD transaction accounts;
- One (1) AUD term deposit account;
- One (1) USD account;
- One (1) GBP account; and
- One (1) NZD account.

All monies have remitted to the administration account and the respective pre-appointment bank accounts have been closed.

2. Pre-appointment debtors

The pre-appointment debtor balance comprises refunds collected and still owing from suppliers. The estimated high and low returns are subject to the likely recoverability of further amounts owed.

The Directors' ROCAPs identify Ellume USA as a pre-appointment debtor. However, since Ellume USA is a net creditor of the Company, the Administrators do not consider any pre-appointment debts owing from Ellume USA to be collectable.

3. *Inventory*

The Company lists its inventory at a book value of c.\$77.7 million, with an estimated \$37.3m of this balance to be obsolete and subject to write down as at 30 June 2022.

In a liquidation scenario, the realisable inventory is expected to be minimal relative to book value, in a range from 2% to 7%, given limited resale value in the market and costs to store and move from multiple third party storage locations.

4. *Proponent contribution*

Under the Hough DOCA proposal a cash contribution USD \$38.0 million will be provided on completion. Hough will provide a loan of up to USD \$5.0 million to the Administrators upon execution of the Implementation Deed and Funding Letter to support the Company's interim funding needs for continued trading through to completion of the sale. This interim funding amount will be repaid by the Administrators in first priority (Pool A) from distributions from the Creditors' Trust Fund.

There would not be a contribution in a liquidation scenario.

5. *Order of distribution of funds under DOCA proposal*

Under the Hough DOCA proposal, distributions from the Creditors' Trust Fund would be made in the following order of priority:

- Pool A – repayment of the Interim Funding;
- Pool B – repayment of the Security Funding up to the amount of USD \$8m;
- Pool C – in accordance with the priorities set out in sections 556, 560 and 561 of the Act, as though those priorities were applied in the Creditors' Trust;
- Pool D – equally and rateably to Small Claim Creditors, with the total amount of the pool not to exceed the lesser of \$285,000 or 50 cents in the dollar;
- Pool E – QIAGEN in the amount of USD \$7m;
- Pool F – equally and rateably the balance of the Creditors' Trust Fund to all Admitted Claims not included in the other pools; and
- Pool G – equally and rateably to the participating Noteholders up to the amount of USD \$12.5m.

In the high return DOCA scenario, it is assumed all Electing Noteholders, with combined debts of \$37.3m, agree to retain 100% of their convertible notes with a view to convert debt to equity in any future IPO.

6. *Voluntary Administrators' funding*

The Administrators have received AUD \$4.0m in funding from the Lender Group. This funding has been utilised in continuing to operate the business while a sale process has been conducted. This is a cost of the Administration and under a liquidation scenario this would need to be repaid in priority if funds permitted. Under the DOCA proposal, the funding would be repaid inclusive of the Lender Group's legal fees and interest, charged at a rate of 20% per annum, with an anticipated maturity date of 28 February 2022.

7. *Projected trading position*

We have considered high and low scenarios for both liquidation and DOCA scenarios. Both scenarios include forecast positions to either the completion of the transaction under the DOCA or cessation of trade in a liquidation.

As mentioned in Section 7.8 of this report, the Administrators would be required to obtain Court approval to transfer the shares where it will not 'unfairly prejudice' the interests of shareholders. Due to the timing of the court closures over the Christmas and New Year period, we suspect this would require the Administrators to operate the business through to the end of February 2022 until a requisite court determination can be made for transfer of the shares.

In a DOCA scenario, we have forecast revenue of up to c. \$4.0m from shipments of goods to the US during the Administration, which is payable by Ellume USA, subject to the availability of cash funds. Further, there are certain contingent liabilities of up to \$4.0m in connection with various licence agreements which may become payable as a result of the continued operations during the Administration.

In the liquidation scenario, given the limited funding available, we have assumed the Company will cease trading shortly after the second meeting of creditors.

The liquidation scenario assumes there would not be any further revenue from post-appointment shipments of goods as Ellume USA due to the impact of the Company's liquidation on its own business operations and the expectation it would have insufficient cash to make the payments.

8. *Remuneration, disbursements, and legal costs*

Legal fees

In a liquidation scenario, legal fees are estimated based on costs incurred to date and potential costs to pursue voidable recoveries. In the DOCA scenario, legal fees are estimated based on costs incurred to date and an allowance for finalisation of the deed documentation and completion of the process pursuant to section 444GA of the Act, including costs for an independent expert report.

Advisor fees

Advisor fees relate to the engagement of Houlihan Lokey as sale advisers and their fees incurred initially in the sale and recapitalisation campaign (totalling USD \$150,000) and a further USD \$1.85m in the event of a successful transaction. The latter payment is only due and payable once a Creditors' Trust is formed.

Remuneration and disbursements

The estimated remuneration and disbursements of the Administrators subject to the approval of creditors at the second meeting of creditors.

Please note the Administrators are not seeking approval for expected future costs of Deed Administrators, Liquidators or Creditors' Trustees. The amounts provided are based on estimates only for calculating the expected return to creditors.

Please refer to the Remuneration Approval Report contained at Appendix 8 for further details.

9. *Priority creditors*

The liquidation scenario considers a cessation of trade and ultimate termination of the Company's workforce. It is unlikely priority creditors would receive any return in either a high or low return liquidation scenario.

The DOCA scenario considers the continuation of the Company's workforce and 100 cents in the dollar return to priority creditors in both the high and low return scenarios. The Company owed priority entitlements at the date of appointment of Administrators as follows:

- SGC shortfall of \$203,215 in a DOCA scenario and \$251,579 in a liquidation scenario, inclusive of associated interest and administration charges.
- Leave entitlements owed in a DOCA scenario represent only leave entitlements for former employees who have resigned during the administration, or been terminated during the administration.
- Leave entitlements outstanding in a liquidation scenario include annual leave and long service leave currently accrued for all employees.
- Redundancy and PILN in the DOCA scenario represents payments to employees whose employment has been terminated during the Administration to date.
- Redundancy and PILN in the liquidation scenario estimates these liabilities based on service length of current staff assuming no notice periods are served.

10. *Shares in related parties*

The Company's shareholding in Ellume USA has been assessed at a nil realisable value in a liquidation scenario. If the Company were to cease trading it is unlikely a liquidator could realise any value for the shares given the impact of liquidation on key regulatory approvals required to preserve value for the business, such as FDA approval, which is essential to enable the Company to sell its products.

11. *Other Assets (Intellectual Property)*

This includes intellectual property and intangible assets such as patents, designs, systems, and trademarks. In assessing the estimated return to creditors, the Administrators have not considered the realisable value of these assets on a standalone basis in a liquidation scenario given the complexity involved in determining an accurate value.

A liquidator would likely have to test market interest in the assets to assess value. It has been assumed there would be nil return in the low case scenario, while the high return value is unknown at this stage.

12. *Plant and Equipment*

All plant and equipment owned by the Company was valued by an independent third-party valuer. The valuation appraises the plant and equipment at Fair Market Value in Continued Use (FMVICU) and Forced Liquidation Value (FLV).

Two items of plant and equipment have been sold during the Voluntary Administration for a combined value of \$0.170 million.

In the liquidation scenario, we have assumed the remaining plant and equipment on hand to be realised at:

- 100% of the FLV for the high return; and
- 80% of the FLV for the low return.

These realisable values would be subject to further estimated selling costs of 20%.

13. *Voidable recoveries*

The recoveries relate to preferential payments which are only available if the Company is placed into liquidation and is subject to further investigations and recovery actions. In the liquidation high return, we have assumed 20% recovery of the potential preferential payments. Further details regarding voidable transactions and possible recoveries are discussed in Section 6.4.

14. *Insolvent trading actions*

These recoveries are only available if the Company is placed into liquidation and is subject to further investigations and recovery actions. Further details regarding insolvent trading actions and possible recoveries available are discussed in Section 6.3.

15. *Unsecured creditors' claims*

In a liquidation scenario, this balance represents the value of all noteholders and other unsecured claims of the Company based on its records and PODs received to date.

The high return scenario assumes:

- Settlement of claims with certain key suppliers of raw materials; and
- The security interest of a key supplier is found to be defective and is classified as an unsecured claim.

16. *Secured creditors*

Under the high return scenario, it is assumed certain security interests of the Trading Security Holders are defective, reducing the amount required to be paid to the Pool B creditor fund. The low return DOCA scenario assumes all Trading Security Holders are paid out in full pursuant to valid security interests.

In the liquidation scenario, the secured creditor shortfall represents the deficiency in the value of assets specifically secured by the claims of the Trading Security Holders. In the high return liquidation

scenario, there is an assumption certain security interests are defective and the value of plant and equipment realised is sufficient to pay out Trading Security Holder claims.

17. *Related party claims*

Related party claims include claims of the director, landlord and Ellume USA.

In a DOCA scenario, Ellume USA is classified as an Excluded Creditor, meaning they do not receive a distribution from the Creditors' Trust Fund. Director and related party landlord claims are included as unsecured creditor claims in the DOCA scenario.

In a liquidation scenario it is unlikely there would be any return to related party creditors. If there was to be a distribution, the Liquidators would have to assess the validity of transactions between the Company and Ellume USA before paying a dividend.

8.3. Summary of estimated returns and timing

Below is a summary of the estimated returns to priority creditors and unsecured creditors in both a DOCA and liquidation scenario. Estimated returns are presented on a *cents in the dollar* basis.

Creditors must be aware there is always a degree of imprecision associated with forecasting returns in an external administration. The estimates have been prepared in good faith but must not be construed as an assurance as to the actual return to creditors.

Estimated returns and timing from today's date					
Creditor	Note	DOCA			Liquidation
		Low return	High return	Est. Timing	Return
Secured creditors	8.3.1	100 c/\$	100 c/\$	3 months	24 c/\$
Priority creditors	8.3.2	100 c/\$	100 c/\$	3-4 months	Nil
QIAGEN	8.3.3	47 c/\$	47 c/\$	3 months	Nil
Small claim Creditors	8.3.4	50 c/\$	50 c/\$	3-6 months	Nil
Noteholder Creditors	8.3.5	15 c/\$	35 c/\$	3-6 months	Nil
Other Unsecured Creditors	8.3.6	Nil	20 c/\$	3-6 months	Nil

The level of return for each of the categories of creditors in a DOCA depends on the value of claims submitted and quantum of costs incurred in trading the business until completion of the sale and transition to Creditors' Trust.

8.3.1. Secured creditors

Distributions to secured creditors may be made earlier if security registrations need to be discharged earlier.

In a liquidation scenario, the return to secured creditors with specific security interests will be limited to the value of the assets charged, while there will be insufficient funds available to repay the Lender Group.

8.3.2. Priority creditors

The DOCA scenario provides for the continuation of the Company's employees and a full return to priority creditors. Employee entitlements paid out in a DOCA scenario represents SGC shortfall amounts and amounts owing to employees terminated during the Administration.

In a liquidation scenario, there is unlikely to be any return to for priority claims given limited funds available for distribution. Section 7.9.1 provides details of the Federal Government's FEG scheme, which is available to employees once a company enters liquidation. However, FEG does not extend to outstanding superannuation.

8.3.3. QIAGEN

Under the DOCA, QIAGEN will receive a distribution of USD \$7m in Pool E. No return is expected in a liquidation scenario.

8.3.4. Small claim creditors

Under the DOCA, creditors with a claim of less than \$20,000 can claim from Pool D up to a cap of 50% of their claim or \$285,000 (the lesser of). This is only relevant in the DOCA scenario since no return is expected for unsecured creditors in a liquidation scenario.

8.3.5. Noteholder creditors

Under the DOCA, Noteholders will receive a distribution of USD \$12.5m in Pool G. No return is expected in a liquidation scenario.

In a liquidation scenario Noteholder creditors are not expected to receive a return.

8.3.6. Other unsecured creditors

Under the DOCA, all remaining creditors claim in Pool F. No return is expected in a liquidation scenario.

8.4. Administrators receipts and payments

A summary of receipts and payments since the date of our appointment to 27 November 2022 is **attached** at **Schedule E** in the Remuneration Approval Report.

8.5. Impact of related entity claims on dividend prospects

In a DOCA scenario:

- Ellume USA is classified as an Excluded Creditor, meaning they do not participate in the distribution from the Creditors' Trust Fund.
- Assuming Sean Parsons and Mirja Moenninghoff, who are classified as excluded employees, remain employed by the Company upon the Creditors' Trust being established, will be classified as a Small Claims Creditor in Pool D for any of their claims that do not relate to employee entitlements.

In the event their employment with the Company ceases during the DOCA period, their entitlements will crystallise and they will sit in the following pools:

- Pool C – Excluded employee limited priority for wages and superannuation (maximum of \$1,500) and leave entitlements (maximum of \$1,000);
- For any remaining entitlements and/or other claims against the company:
 - Pool D – Small Claims Creditor for any remaining entitlements and other claims if their claim is below \$285,000; or
 - Pool F – Admitted Creditor.
- The related party landlord is classified as an Admitted Creditor and their claim is included with Pool F.

In a liquidation, related parties are entitled to submit a claim but there is no expected return to creditors in this scenario.

9. Administrators' opinion and recommendation

9.1. Opinion and recommendation to creditors

9.1.1. What creditors can decide at the meeting

At the second meeting of creditors, creditors are required to decide whether:

- The Company should execute a DOCA
- The administration of the Company should end, or
- The Company should be wound up.

In accordance with the requirements of Section 75-225 of the Insolvency Practice Rules (Corporations) 2016, the Administrators must provide an opinion on each of the above options, and whether the option is in the creditors' interests.

9.1.2. Administrators' opinions on the options available to creditors

Execution of a deed of company arrangement

We consider that it would be in the creditors' interests for the Company to execute a DOCA on the terms proposed – on balance, there appears to be less uncertainty under the Hough DOCA proposal compared to a liquidation scenario and it is likely that creditors will potentially receive a greater return under the Hough DOCA proposal than they would if the Company was immediately wound up.

The Administration comes to an end

If the creditors vote for this alternative, control of the Company would revert to the directors following the forthcoming meeting of creditors.

The Company is insolvent with no cash to pay the Company's debts and no confirmed prospects of obtaining external funding. Therefore, we do not consider that it would be in the creditors' interests for the administration to end.

The Company is wound up

We do not consider it would be in the creditors' interests for the Company to be wound up as the proposed DOCA will likely provide a higher cents in the dollar return for creditors than they may receive in a winding up.

9.1.3. Administrators' opinion on voidable transactions

It is the opinion of the Administrators there may be payments made from the Company which could be considered voidable as against the liquidators. This has been discussed in **Section 6.4** of this report.

Dated: 12 December 2022



John Park

Administrator



Joanne Dunn

Administrator

Ph: (07) 3225 4900
Ellume@fticonsulting.com

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10. Appendix 1 – Glossary and terms of reference

Term	Definition
(\$)	Currency in Australian Dollars unless otherwise stated
Act	Corporations Act 2001 (Cth)
Administrators or Voluntary Administrators	Joanne Dunn and John Park
Administrators/Deed Administrators	John Park and Joanne Dunn
Admitted Claims	A claim against the Company as adjudicated by the Deed Administrators under the DOCA (or by the Trustees of the Creditors' Trust, but excluding Excluded Creditors).
AEST	Australia Eastern Standard Time
ASIC	Australian Securities and Investments Commission
ASX	Australian Securities Exchange
ATO	Australia Taxation Office (incorporating the Deputy Commissioner of Taxation, as applicable)
AUD	Australian Dollars
Bell Potter	Bell Potter Securities Limited
c.	Circa or approximately
CAPEX	Capital expenditure
CDC	Centers for Disease Control and Prevention
COI	Committee of Inspection
Company	Ellume Limited
Completion	The date upon which each of the conditions precedent has been satisfied or waived in accordance with the DOCA.
Continuing Contract	Any contract of any kind made by the Company with third parties prior to the Appointment Date, except for Pre-Administration Leases.
Contribution	The sum of USD \$38m
Creditors' Trust Fund	The Deed Fund
Deed Fund	The sum of the Contribution and any Working Capital Amounts as at the relevant time.
Deloitte	Deloitte Touche Tohmatsu Limited
Directors	Paul Darrouzet, Gary Hewett, Geoffrey Pearce, Sean Parsons, Jonathan Dooley
DIRRI	Declaration of Independence, Relevant Relationships and Indemnities
DOCA	Deed of company arrangement
DoD	United States Department of Defence
EBIT / EBITDA	Earnings before interest and tax / Earnings before interest, tax, depreciation and amortisation
ECHT	Ellume COVID-19 Home Test

Eligible Employee	Employees who are employed by the Company
Eligible Employee Meeting	Eligible employee will vote on the proposed DOCA which cover all employees pre appointment entitlements
Ellume	Ellume Limited A.C.N 141 767 660
Ellume USA	Ellume USA LLC
ERV	Estimated realisable value
Excluded Creditors	Any creditor who has a claim against the Company: Because he/she is an eligible employee creditor, where such creditor has continued his/her employment with the Company (or a subsidiary) following completion of the DOCA; or Where such creditor is a subsidiary.
Excluded Employee	A director (including a former director within the previous 12 months) of a company in external administration, including a partner or relative of a director. Excluded employees are limited to a priority claim for employee entitlements for \$2,000 for wages and super (combined), and \$1,500 for leave entitlements. All other claim amount are treated as unsecured claims.
FDA	U.S. Food and Drug Administration
FTE	Full time employee
Fulton	Fulton Bank
Fulton Bank	Fulton Financial Corporation
FY18, FY19, FY20, FY21, FY22	Financial years ended/ending 30 June 2018, 30 June 2019, 30 June 2020, 30 June 2021 and 30 June 2022
Group	Ellume
GST	Goods and Services Tax, as applicable in Australia
Hough	Hough Consolidated Pty Ltd, the DOCA proponent
IM	Information memorandum
Interim Funding	A loan in the sum of up to USD \$5m advanced by Hough to the Administrators
IPO	Initial public offering
Lender Group	Evangayle Pty Ltd, Glencairn Bay Investments Pty LTd, MA & KA Investments Pty Ltd and Brand Brothers Holdings Pty Ltd.
m	Million
Management	The senior officers, employees and advisors of the Company
NBIO	Non-binding indicative offers
NDA	Non-disclosure agreement
Noteholder	A holder of Notes, but excluding QIAGEN
Notes	A convertible note issued by the Company
Ord Minnett	Ord Minnett Pty Ltd.
PAYG	Pay As You Go withholding tax
POD	Proof of Debt
PPSR	Personal Property Securities Register
Pre-Administration Leases	The Company's lease agreements for the premises located at: 936 Stanley Street East, East Brisbane; and 57 Didsbury Street, East Brisbane.
Proponent	Hough Consolidated Pty Ltd
Qiagen	Qiagen GmbH, Qiagen N.V and Qiagen Sciences LLC
QIAGEN	Each of QIAGEN GmbH and QIAGEN NV KvK
R&D	Research and Development
RAT	Rapid Antigen Test
RATs	Rapid Antigen Tests
ROCAP	Report on Company Activities and Property

Security Funding	An amount sufficient to pay out the claims of the Lender Group and the Trading Security Holders up to a limit of US\$8 million.
Small Claim	Any Admitted Claim with a value of \$20,000 or less.
Small Claim Creditors	A creditor with a Small Claim.
the Group	Ellume Limited and Ellume USA LLC
Trading Security Holders	Creditors with security registrations granted against specific assets of the Company.
US/USA	United States of America
USD	United States Dollar
Working Capital Amounts	At the time of completion of the DOCA: Cash on hand for the Company or Administrators; and Accounts receivable due to the Company in respect of work done or services provided by the Company on or before that time.
YTD	Year to date

10.1. Terms of reference

This report has been prepared for the creditors of Company to assist them in evaluating their position as creditors and in deciding on the Company's future. None of the Administrators, FTI Consulting and its staff shall assume any responsibility to any third party to which this report is disclosed or otherwise made available.

This report is based on information obtained from the Company's records, the directors and management of the Company and from our own enquiries. While we have no reason to doubt the veracity of information contained in this report, unless otherwise stated we have proceeded on the basis that the information provided and representations made to us are materially accurate, complete and reliable. We have not carried out anything in the nature of an audit, review or compilation.

This report may contain prospective financial information, including estimated outcomes for creditors, and other forward looking information. As events and circumstances frequently do not occur as expected, there may be material differences between estimated and actual results. We take no responsibility for the achievement of any projected outcomes or events.

We reserve the right to alter any conclusions reached on the basis of any changed or additional information which may become available to us between the date of this report and the forthcoming meeting of creditors.

Creditors should seek their own advice if they are unsure how any matter in this report affects them.

11. Appendix 2 – Company information

11.1. Statutory Information

Incorporation Date	1 February 2010																
Registered Address	57 Didsbury Street, EAST BRISBANE QLD 4169																
Principal Place of Business	57 Didsbury Street, EAST BRISBANE QLD 4169																
Directors and Officers	Paul Darrouzet – Director Gary Hewett – Director Geoffrey Ronald Pearce – Director Sean Andrew Parsons – Director Jonathan Brett Dooley – Director Joanne Moss – Former Director (resigned 31 August 2022) Caroline Popper – Former Director (resigned 29 August 2022) Mark Eric Harding Anning – Secretary Simon Neill – Appointed Auditor																
Shareholders	According to an ASIC search undertaken on the date of appointment, the Company has \$24,258,302.00 in paid up capital and 84,160,377 shares on issue. The Company's share registry is managed by Computershare. Documentation obtained from Computershare indicate 99,242,456 shares are presently held. Enquiries made with Company personnel identify the discrepancy is a result of change to shareholding forms not having been lodged by the Company to reflect changes to shares where convertible noteholders converted notes to shares and where employees converted options into shares prior to leaving the Company. The discrepancy arose in the period 1 January 2022 to 31 August 2022. The 20 largest shareholders are as below: <table> <tr> <th>Name</th><th>Shares</th></tr> <tr> <td>Kensington Trust Singapore Ltd</td><td>26,278,275</td></tr> <tr> <td>Pondcote Pty Ltd</td><td>15,987,084</td></tr> <tr> <td>Sean Andrew Parsons & Mirja Moenninghoff</td><td>14,167,866</td></tr> <tr> <td>Becamal Pty Ltd</td><td>8,820,007</td></tr> <tr> <td>Speargrass Wealth Limited & Wakatipu Wealth Limited</td><td>7,036,943</td></tr> <tr> <td>Falcastle Pty Ltd</td><td>4,431,649</td></tr> <tr> <td>Tezuourrad Pty Ltd</td><td>4,344,534</td></tr> </table>	Name	Shares	Kensington Trust Singapore Ltd	26,278,275	Pondcote Pty Ltd	15,987,084	Sean Andrew Parsons & Mirja Moenninghoff	14,167,866	Becamal Pty Ltd	8,820,007	Speargrass Wealth Limited & Wakatipu Wealth Limited	7,036,943	Falcastle Pty Ltd	4,431,649	Tezuourrad Pty Ltd	4,344,534
Name	Shares																
Kensington Trust Singapore Ltd	26,278,275																
Pondcote Pty Ltd	15,987,084																
Sean Andrew Parsons & Mirja Moenninghoff	14,167,866																
Becamal Pty Ltd	8,820,007																
Speargrass Wealth Limited & Wakatipu Wealth Limited	7,036,943																
Falcastle Pty Ltd	4,431,649																
Tezuourrad Pty Ltd	4,344,534																

	Abberley Nominees Pty Ltd	3,330,000
	Egea Pty Ltd	2,584,992
	Pondcote Pty Ltd	1,600,000
	HSBC Custody Nominees	900,000
	Virtual Recruitment Pty Ltd	726,246
	Jackie Au Yueng	500,000
	Pondcote Pty Ltd	500,000
	Pondcote Pty Ltd	500,000
	Neil William Mittag	491,206
	Area Rule Pty Ltd	467,529
	Brian Harrison	461,249
	Emprja Pty Ltd	434,450
	Amaurel Pty Ltd	431,565
Related entities	The following related parties hold shares in the Company:	
	■ Paul Darrouzet – 296,490	
	■ Pondcote Pty Ltd – 18,972,874 (Related to Paul Darrouzet)	
	■ Tezourrad Pty Ltd – 4,344,534 (Related to Paul Darrouzet)	
	■ EMPRIA Pty Ltd – 434,460 (Related to Paul Darrouzet)	
	■ Sean Parsons & Mirjia Moenninghoff (joint holding) – 14,167,886	

11.2. Details of security interests and charges

Below are details the security interests registered on the PPSR, plus any other prima facie valid charges that the Administrators are aware of.

Registration Number	Secured Party	Date Registered	Collateral Class	Status
202102260036000	ADEPT TURNKEY PTY LTD	26/02/2021	Other Goods	Discharged
202102260036016	ADEPT TURNKEY PTY LTD	26/02/2021	Other Goods	Discharged
202108310073714	ATLAS COPCO AUSTRALIA PTY LTD	31/08/2021	Other Goods	Active
202102030026965	BUNZL OUTSOURCING SERVICES LIMITED	3/02/2021	Other Goods	Discharged
202011250044463	CROWN EQUIPMENT PTY. LIMITED	25/11/2020	Motor Vehicle	Active
202110190024801	CROWN EQUIPMENT PTY. LIMITED	19/10/2021	Other Goods	Discharged
202110050034406	CROWN EQUIPMENT PTY. LIMITED	5/10/2021	Other Goods	Discharged
202011250044471	CROWN EQUIPMENT PTY. LIMITED	25/11/2020	Other Goods	Active
202009280035094	Glyn Ltd	28/09/2020	Other Goods	Discharged
202101120010964	LABELMAKERS GROUP PTY. LTD.	12/01/2021	Other Goods	Discharged
202111110026434	LIFE RESEARCH PTY LTD	11/11/2021	Other Goods	Active
202007310011296	METECNO PTY LTD	31/07/2020	Other Goods	Discharged
202207110011804	PRINT MANAGEMENT FACILITIES AUSTRALIA PTY LTD	11/07/2022	Other Goods	Active

Registration Number	Secured Party	Date Registered	Collateral Class	Status
202105060015017	PRINT MANAGEMENT FACILITIES AUSTRALIA PTY LTD	6/05/2021	Other Goods	Discharged
202102080035228	PRINT MANAGEMENT FACILITIES AUSTRALIA PTY LTD	8/02/2021	Other Goods	Discharged
202106030040022	PUREBEAN PTY LTD	3/06/2021	Other Goods	Discharged
202104210031896	RETRACOM HOLDINGS PTY LTD	21/04/2021	Other Goods	Assets returned
202006290016283	ROBERT BOSCH (AUSTRALIA) PROPRIETARY LIMITED	29/06/2020	Other Goods	Active
202103090026470	SOUTH PACIFIC WELDING GROUP PTY LIMITED	9/03/2021	Other Goods	Discharged

12. Appendix 3 – Historical financial statements

12.1. Historical financial information

12.1.1. Balance Sheet Summary

Ellume Limited - Balance Sheet Summary						
AUD \$m	Notes	FY19	FY20	FY21	FY22	Aug-22
Current assets						
Cash & cash equivalents		20.96	9.80	4.64	5.61	1.57
Inventory	1	1.01	2.05	73.37	39.53	40.32
Trade receivables		0.10	0.36	0.54	5.01	7.57
Prepayment	2	0.06	0.18	3.39	30.22	31.42
Other receivables	3	2.69	7.30	21.77	40.67	41.12
Total current assets		24.82	19.69	103.71	121.04	122.00
Non-current assets						
Property, plant & equipment		5.82	6.16	35.15	38.07	37.14
Total non-current assets		5.82	6.16	35.15	38.07	37.14
Total assets		30.65	25.85	138.86	159.11	159.13
Current liabilities						
Trade payables	4	1.11	1.97	65.66	19.55	20.05
Lease liability		0.24	0.28	0.69	0.80	0.81
Other payables and provisions	5	0.92	2.62	18.02	81.30	88.40
Payroll liabilities		0.44	0.76	1.51	1.98	2.32
Accrued charges	6	-	1.09	3.49	41.27	41.37
Unearned Income		0.73	0.79	14.95	8.40	10.20
Provision for income tax		-	0.73	0.73	-	-
Total current liabilities		3.44	8.23	105.06	153.30	163.15
Non-current liabilities						
Non-current borrowing	7	21.51	22.61	41.13	102.06	102.03
Lease liability		3.33	3.06	6.68	5.43	5.29
Unearned income		-	-	21.10	29.96	27.51
Total non-current liabilities		24.85	25.67	68.92	137.45	134.82
Total liabilities		28.29	33.91	173.98	290.76	297.97
Net assets		2.36	(8.06)	(35.11)	(131.65)	(138.84)

Notes

1. *Inventory*

Significant inventory build-up from FY20 onwards a result of higher levels of production of RATs in demand to the COVID-19 pandemic. Inventory comprises finished goods ECHT & QIAreach and raw materials. FY22 and Aug-22 figures include a provision for the product recall in October 2021.

2. *Prepayment*

In FY22, there is a notable increase in prepayments on account of the requirement of the Company to prepay suppliers to secure materials to meet contractual requirements with the DoD.

3. *Other receivables*

The Ellume USA intercompany loan accounts for the majority of this balance. The loan relates to the Maryland manufacturing facility under construction in the US.

4. *Trade payables*

Due to production demand during FY21 in response to COVID-19 pandemic, additional credit was advanced by suppliers to allow the Company to meet its production requirements. In FY22, decline in trade payables balance primarily attributed to December 2021 noteholder funding being used to reduce supplier debt.

5. *Other payables and provisions*

The Company's balance sheet indicated other payables and provisions as at the date of our appointment of \$88.40m, however our analysis identified \$87.56m of this balance related to the intercompany loan with Ellume USA and interest not yet due.

6. *Accrued charges*

Comprised of accruals of future liabilities including, but not limited to, payroll tax, supplier costs and advisor fees.

7. *Non-current borrowing*

Non-current borrowings are funds owed to convertible noteholders including capitalised interest. As previously mentioned in this report, the Company conducted two (2) convertible note raises during 2021 to pay outstanding debt, fund working capital, and expand manufacturing capability.

12.1.2. Profit and Loss Summary

Ellume Limited - Profit and Loss Summary						
AUD \$m	Notes	FY19	FY20	FY21	FY22	Aug-22
Revenue						
Sales	1	7.22	5.17	38.48	90.19	2.77
Grants	2	2.11	9.90	-	4.44	-
Other revenue	3	0.26	(1.95)	6.28	18.10	0.34
Total Revenue		9.59	13.12	44.76	112.73	3.11
Expenses						
COGS	4	-	0.20	36.15	134.50	3.09
General & Admin	5	16.96	19.96	31.38	69.54	5.59
Other Expenses	6	1.81	7.83	3.83	21.97	1.76
Depreciation & amortisation	7	0.84	1.33	4.14	0.83	0.27
Total expenses		19.60	29.33	75.50	226.82	10.71
Net profit after tax		(10.01)	(16.20)	(30.74)	(114.10)	(7.60)
EBITDA		(8.77)	(14.49)	(29.17)	(127.10)	(5.87)

Notes

1. Sales

The Company's sales are representative of inventory sold to its subsidiary to produce its ECHT kits. The Company's increased production/inventory sale levels in response to the COVID-19 pandemic are observed over FY21 and FY22.

As discussed earlier in this report, the Company sought an extension of the DoD contract to purchase RATs beyond the contract expiry in May 2022 as well as requested the DoD exercise their option to purchase an additional 3.1m units. The contract was not extended and the option was not exercised, explaining the low sales figure in August 2022.

2. Grants

During FY19 and FY20, the Company received tax credits for research and development purposes. In FY22 financial assistance was also received from the Queensland Government to assist with the Company's manufacturing facilities within Queensland.

3. Other revenue

In October 2021, the Company completed its product development services to Qiagen, meeting the minimum product requirements per the license agreement. The revenue associated with the royalties was not recognised until this point as it was contingent on the Company to meet the requirements.

4. *Cost of Goods Sold (“COGS”)*

Cost of goods sold is representative of wages, machinery costs and other expenses directly attributable to the provision of manufacturing the Company goods. During FY22 the Company was required to purchase large quantities of key inventory and raw material inputs at premium prices due to impacts on the global supply chain caused by the pandemic to ensure it had the capability to meet its contractual requirements with the DoD. The result of same contributed to a \$44.3m gross margin loss during FY22.

5. *General & Admin*

Includes advisor services, employee expenses, insurance, and license fees. Due to the Company’s rapid growth during FY22 the Company required assistance from external advisors to execute capital raises, contracts with government bodies, and to provide other business advisory services. In addition to the above, the Company saw employed significant increase in headcount to fulfil its obligations under the contract.

6. *Other Expenses*

Other expenses include movements in foreign currency accounts due to the Company’s business dealings in both Australia and the United States of America.

13. Appendix 4 – Summary of ROCAP Part A

Summary of the ROCAP Part A and Administrators Estimated Realisable Values (“ERV”) as at 31 August 2022.

Summary of the ROCAP Part A					
(\$)	Notes	Book Value	Directors' ERV	Administrators' ERV (Low)	Administrators' ERV (High)
Assets					
Cash at bank	1	1,573,490	1,573,490	1,573,490	1,573,490
Inventory	2	40,384,333	40,384,333	807,687	2,826,903
Prepayments	3	31,416,419	18,980,019	-	-
Other receivables	4	91,219	-	131,652	136,604
Plant and equipment	5	37,139,207	37,139,207	1,839,930	2,257,465
Other assets	6	1,087,786	931,938	-	-
Investment in subsidiaries	7	2,039,221	2,039,221	Unknown	Unknown
Intangible assets	8	-	-	Unknown	Unknown
Related party receivables	9	45,403,944	-	-	-
Total assets		159,135,618	101,048,207	4,352,759	6,794,463
Liabilities					
Employee entitlements	10	(1,854,871)	(1,629,437)	(1,688,363)	(1,688,363)
Unsecured creditors	11	(215,281,304)	(183,479,868)	(179,873,663)	(171,543,634)
Secured creditors	11	-	-	(7,520,950)	(283,943)
Related party creditors	9	(80,397,422)	(130,655)	(35,481,201)	(35,481,201)
Total liabilities		(297,533,597)	(185,239,960)	(224,564,177)	(208,997,142)
Net assets		(138,397,979)	(84,191,753)	(220,211,418)	(202,202,679)

Notes

1. Cash

The Directors' ROCAP disclosed a balance of c.\$1.5m held in cash and cash equivalents as follows:

Cash at bank as at 31 August 2022

Item	No. of accounts	Balance (\$)
Main accounts	3	1,322,203
Foreign currency accounts	3	149,593
Trust deposits	1	100,700
Term account floats	1	994
Total	8	1,573,490

Upon our appointment, correspondence was issued to all major banking institutions notifying them of our appointment and instructing them to freeze all accounts held in the name of the Company.

2. *Inventory*

The Directors' ROCAP disclosed a balance of c.40.3m of inventory held. This was made up of:

Inventory as at 31 August 2022	
Item	Balance (\$)
Inventory at book value	77,716,204
Provision for obsolete stock	(37,331,871)
Total	\$ 40,384,333

It is our view the realisable inventory is expected to be minimal relative to book value, in a range from 2% to 7%, given limited resale value in the market and costs to store and move from multiple third party storage locations.

3. *Prepayments*

Amounts paid to suppliers in advance to secured production materials.

4. *Other Receivables*

Loan owed by Ellume USA LLC to the Company. The Directors' ERV assumes intercompany loans are forgiven. The Administrators' estimates is based on recoveries from third parties, with no further recoveries expected.

5. *Property, plant and equipment*

The Administrators organised for an independent valuation on the plant and equipment by Gordon Brothers. Predominantly office and laboratory plant and equipment and assets under construction.

6. *Other Assets*

Include rental bonds for leased premises, supplier deposits, investments in other Ellume entities and supplier inventory deposits.

7. *Investment in subsidiaries*

Relates to investments in Ellume USA and Ellume NZ Pty Ltd.

8. *Intangible assets*

Intellectual property including patents, designs, systems, and trademarks. Whilst the Directors' ROCAP does not provide a value for intangible assets, the Administrators believe any realisable value of these assets on a standalone basis would need to be tested on the open market, to ascertain any value.

9. *Related party receivables*

The Directors' ROCAP and records of the Company indicate Ellume USA owes the Company c.\$45m. However, the records also show the Company owes Ellume USA c.\$80m.

10. *Employee entitlements*

At the date of our appointment there were 217 employees. The Book Value and Directors' ERV include entitlements owed for accrued wages, superannuation, and leave entitlements.

All wages owed at the date of appointment have since been paid by the Administrators and are no longer owed.

A breakdown of the Administrators' ERV is provided in the table below and is based on Company records as at 31 August 2022.

Employee Entitlements	Amount (\$)
Wages	58,925
Superannuation	165,370
Annual leave	1,262,468
Long service leave	201,600
Total	1,688,363

The above represents claim data at our appointment, outstanding wages have since been paid during the trade on of the Company.

Superannuation is outstanding for August 2022. At the time of our appointment, the superannuation was not due and payable. The ATO will make a claim for outstanding superannuation on behalf of employees in either a liquidation or DOCA scenario.

11. *Unsecured creditors*

The Company's books and records reported the unsecured creditors in three separate categories summarised below.

Item	Book Value (\$)	Directors' ERV (\$)
Unsecured creditors		
Trade and other creditors	186,352,664	73,819,600
Noteholder	109,326,062	109,326,062
Subtotal: Unsecured creditors	\$ 295,678,726	\$ 183,145,662

Administrators' ERVs are based upon the Company's books and records and proofs of debt received. These claims are subject to change and have not been adjudicated.

12. *Secured creditors*

The Directors did not separately disclose amounts owed to secured creditors in their ROCAPs.

The Administrators ERVs are based on amounts owed to secured creditors at date of appointment, and also represents an assumption certain security interests are defective and the value of plant and equipment held may be sufficient to pay out claims.

13. *Related party creditors*

Summary of related party creditors is below, and further discussed in **Section 5.3.3**.

	Directors' ROCAP (\$)	Administrators' Estimate (\$)
Related party unsecured claims:		
Darrouzet Investment Trust	130,595	130,595
Sean Parsons	60	60
Ellume USA LLC	35,082,787	35,082,787
Total related party creditors (unsecured)	35,213,442	35,213,442
Related party employee entitlements:		
Sean Parsons	185,634	199,449
Mirja Moenninghoff	68,223	68,310
Total related party creditors (employee entitlements)	253,857	267,759

14. Appendix 5 – Investigations – analysis and information

14.1. Indicators of potential insolvency

14.1.1. Factors to take into account

We have considered the following usual indicia of insolvency in our analysis:

- The company is experiencing cash flow difficulties.
- The company is experiencing difficulties selling its stock, or collecting debts owed to it.
- Creditors are not being paid on agreed trading terms and/or are either placing the company on cash-on-delivery terms or requiring special payments on existing debts before they will supply further goods and services.
- The company is not paying its Commonwealth and state taxes when due (e.g. Pay As You Go (“PAYG”) instalments are outstanding, Goods and Services Tax (“GST”) is payable, or superannuation guarantee contributions are payable).
- Cheques are being returned dishonoured.
- Legal action is being threatened or has commenced against the company, or judgements are entered against the company, in relation to outstanding debts.
- The company has reached the limits of its funding facilities and is unable to obtain appropriate further finance to fund operations—for example, through:
 - negotiating a new limit with its current financier; or
 - refinancing or raising money from another party.
- The company is unable to produce accurate financial information on a timely basis that shows the company’s trading performance and financial position or that can be used to prepare reliable financial forecasts.
- Company directors have resigned, citing concerns about the financial position of the company or its ability to produce accurate financial information on the company’s affairs.
- The company auditor has qualified their audit opinion on the grounds there is uncertainty that the company can continue as a going concern.
- The company has defaulted, or is likely to default, on its agreements with its financier.
- Employees, or the company’s bookkeeper, accountant or financial controller, have raised concerns about the company’s ability to meet, and continue to meet, its financial obligations.
- It is not certain that there are assets that can be sold in a relatively short period of time to provide funds to help meet debts owed, without affecting the company’s ongoing ability to continue to trade profitably.
- The company is holding back cheques for payment or issuing post-dated cheques.

Source: ASIC Regulatory Guide 217 - Duty to prevent insolvent trading: Guide for directors

ASIC's view is that these are some of the factors that a reasonable person would take into account when determining whether a company is insolvent. The list of factors is not intended to be exhaustive. There may be other factors that would indicate to a reasonable person that a company may be insolvent.

14.2. Solvency analysis

14.2.1. Our approach to solvency

We have assessed the solvency of the Company by examining whether the Company:

- exhibited any of the usual indicia of insolvency; and
- was solvent under the cash flow or balance sheet tests of insolvency.

14.2.2. Solvency review – indicators of insolvency

Indicator	FY20	FY21	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22
Trading losses	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Insufficient cash flow	✗	✗	✗	✗	✗	✗	✓	✓	✓	✓
Difficulties in selling stock or collecting debts	✗	✗	✗	✗	✗	✗	✓	✓	✓	✓
Creditors paid outside terms / special arrangements	?	?	?	?	?	?	✓	✓	✓	✓
Arrears of statutory liabilities	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Cheques are being returned dishonoured / payments dishonoured	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Legal action threatened or commenced	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Inability to obtain new or alternative funding	✗	✗	✓	✓	✓	✓	✓	✓	✓	✓
Inability to produce accurate financial information	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Resignation of directors or other senior management	✗	✗	✓	✓	✓	✓	✓	✓	✓	✓
Qualified audit opinion	✓	✓	?	?	?	?	?	?	?	?
The Company has defaulted, or is likely to default, on its agreements with its financier	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗
Finance staff raise solvency concerns	✗	✗	✓	✓	✓	✓	✓	✓	✓	✓
Inability to sell surplus assets	✗	✗	✗	✗	✗	✗	✓	✓	✓	✓
Issuing post-dated cheques	✗	✗	✗	✗	✗	✗	✗	✗	✗	✗

Key

Item	Symbol
Indicator present	✓
Further investigation required	?
Indicator not considered present	✗

14.2.3. Solvency review - balance sheet test

The balance sheet test looks at whether the Company can service its current liabilities, irrespective of when they are due and payable from current assets. From a solvency standpoint, companies with a ratio of below 1 may be experiencing solvency issues.

For the purposes of this analysis, we have conducted two (2) current ratio tests. The first based on the Company's unaltered management accounts figures, whilst the second scenario has been adjusted to remove intercompany loans, prepayments and make good provisions. The reasons for these adjustments are as follows:

- Prepayments would not be able to be transferred into cash to meet due and payable liabilities.
- The Company leases all had greater than twelve (12) months remaining (ie a make good liability would not have been triggered within this time).
- Related entities would be unable to call upon the loans to be repaid in timely fashion therefore cannot be categorised a current liability.

Management Liquidity Ratio

\$m	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22
Current Assets	133.98	127.90	147.03	147.20	125.95	157.76	159.90	176.67	132.19	121.04	123.03	122.00
Current Liabilities	108.33	114.79	133.44	99.86	85.50	114.74	127.38	154.83	118.32	153.30	156.62	163.15
Current Ratio	1.24	1.11	1.10	1.47	1.47	1.37	1.26	1.14	1.12	0.79	0.79	0.75
Working Capital	25.64	13.12	13.59	47.33	40.46	43.02	32.52	21.84	13.87	(32.26)	(33.60)	(41.16)

Adjusted Liquidity Ratio

\$m	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22
Current Assets	119.28	84.71	92.15	94.86	77.16	94.27	94.54	108.43	61.19	53.03	53.63	52.74
Current Liabilities	79.81	87.38	93.28	71.54	62.37	57.57	51.56	58.35	63.71	78.50	76.04	82.58
Current Ratio	1.49	0.97	0.99	1.33	1.24	1.64	1.83	1.86	0.96	0.68	0.71	0.64
Working Capital	39.47	(2.67)	(1.13)	23.33	14.79	36.70	42.98	50.08	(2.52)	(25.47)	(22.41)	(29.83)

Source: Management Accounts

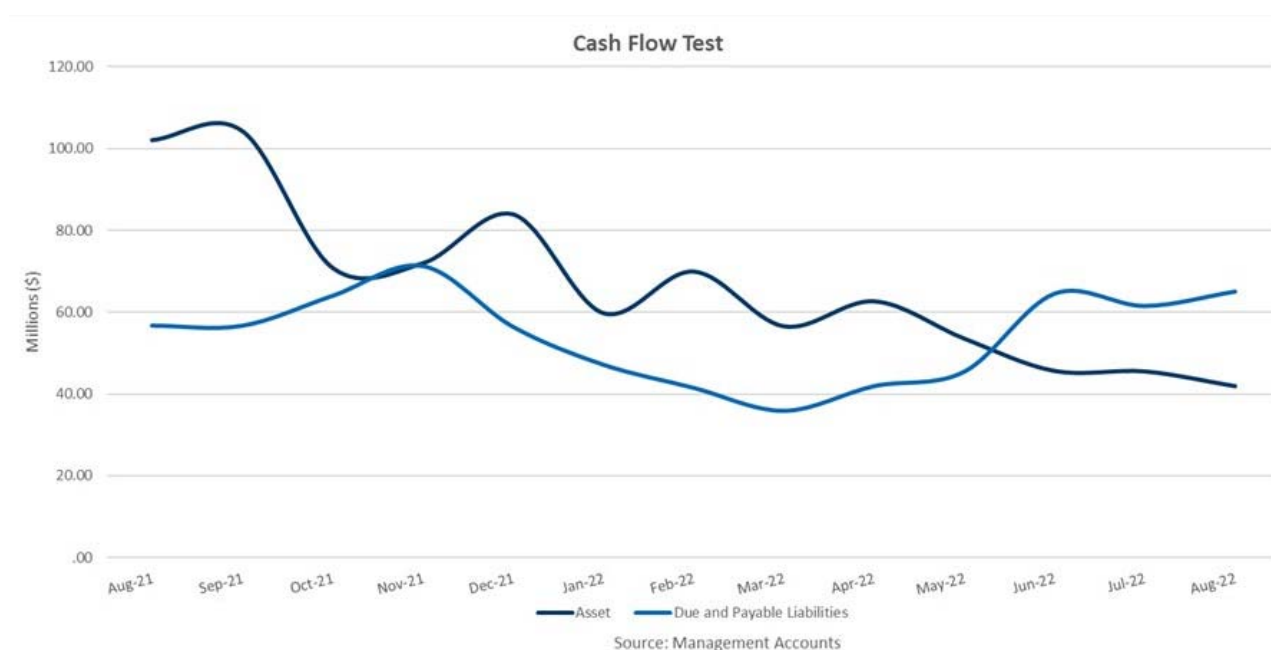
From the above analysis, both in the management and adjusted liquidity ratios the current ratio declined from May 2022 indicating an inability to meet current liabilities from current assets from May 2022 onwards.

14.2.4. Solvency review – cash flow test

The cash flow test involves assessing the Company's ability to meet its obligations as and when they fall due from liquid assets. A liquid asset is an asset which can easily be converted to cash in a short amount of time. In essence, when considering the statutory definition of insolvency, this is a key requirement a company is required to meet to remain solvent under law.

In our analysis, the following are considered liquid assets/current liabilities:

Assets	Liabilities
Cash at bank	Accounts payable
Inventory accounting for adjusted recall provision	Credit cards
Income tax receivable	Payroll liabilities
	GST & PAYG
	Accruals

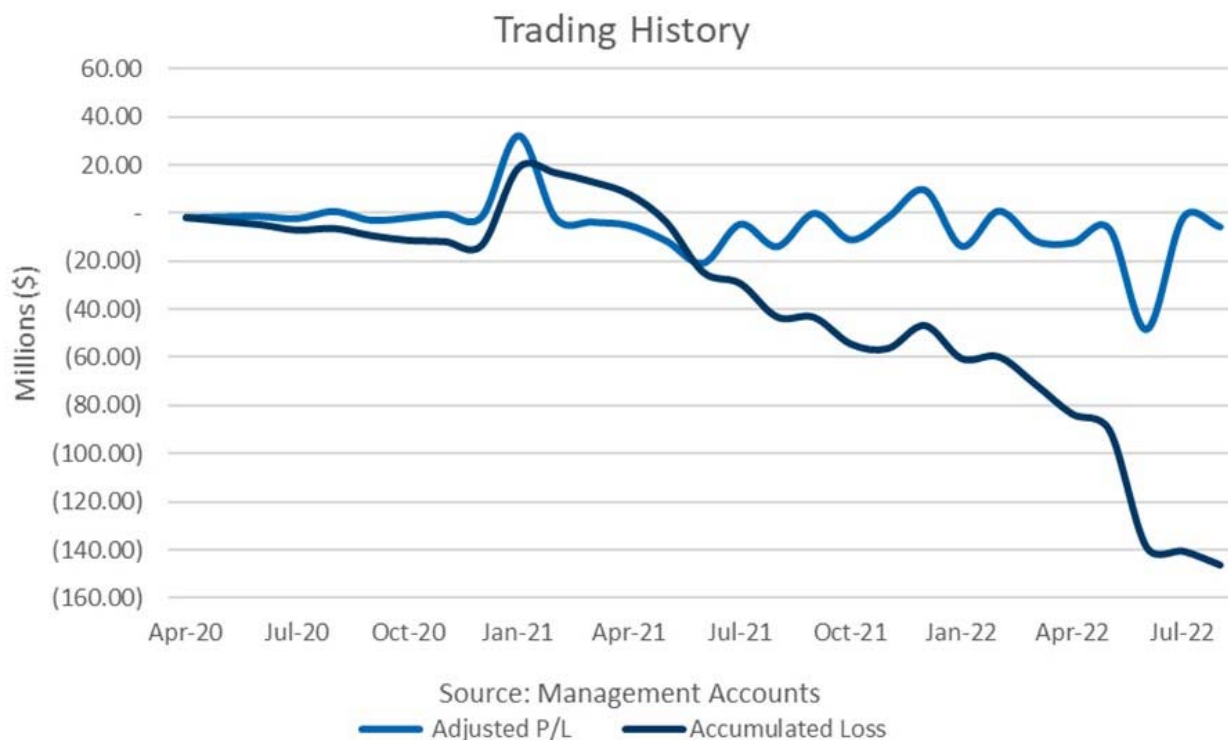


The above graph illustrates the Company's inability to meet due and payable liabilities from liquid assets from May 2022 onwards when the DoD failed to both exercise an option to purchase further RATs and to grant an extension of the contract beyond expiry. At this time the Company had no further commitments to orders.

As previously mentioned, the Company had failed to account for the full value of the recall within its management accounts. Our analysis has adjusted inventory assets between October 2021 to June 2022 to adequately reflect the write down to inventory as a result of the recall.

14.2.5. Solvency review – continued trading losses

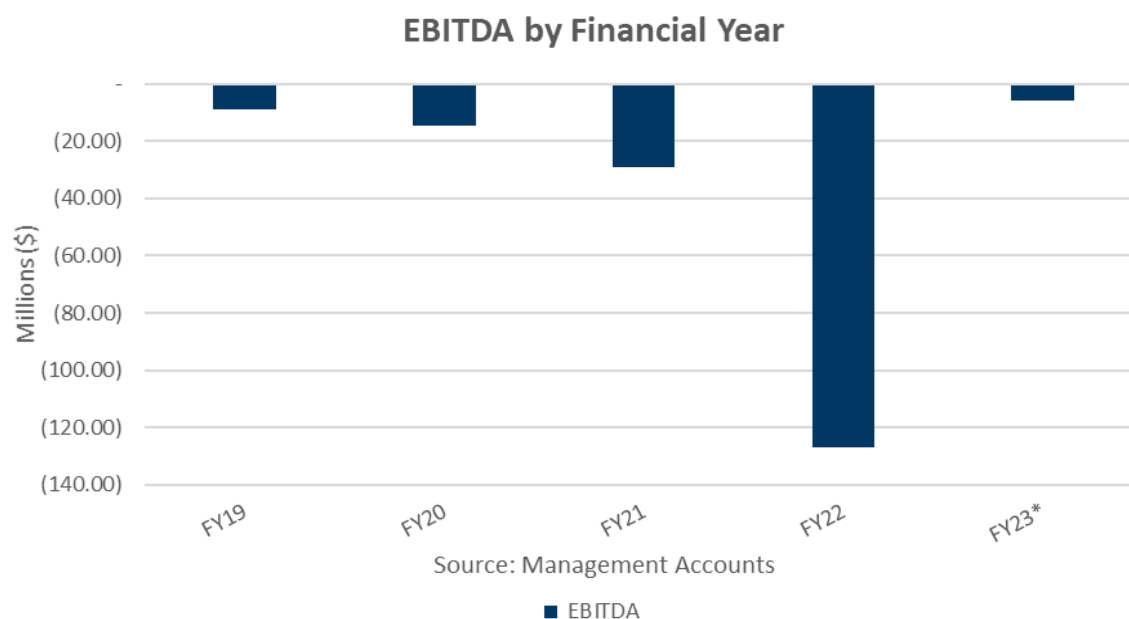
For the purposes of assessing the solvency of the Company, we have reviewed the earnings position over the period from April 2020 until our appointment. As illustrated below, the Company accumulated losses over the period, totalling c.\$161.51m.



With respect to the above, we note the following:

- Between May 2021 and Jun 2021, the Company had loaded inventory with the incorrect unit of measure within the management accounts. Our adjusted analysis excludes the identified error.
 - Prior to the adjustment, the Company's management accounts reported net profit of c. \$902m and (\$945)m in May and June 2021 retrospectively. The Company finance department attributed the error due to incorrect unit of measure applied to a stock code.
 - The removal was essential to correctly represent the Company financials during this period.
- The profitability pressures experienced by the Company during FY22 resulting from raw input price increase (44m gross profit loss observed) are visually apparent above.
- The significant drop in the adjusted profit and loss figure reflects the lack of revenue received in that month as a result of the DoD not purchasing the additional 3.1m RATs under contract whilst expenditure remained.

From a solvency perspective profitability or lack thereof is to be considered in the overall financial circumstances experienced by a company. A company which is unable to trade profitably will inevitably require cash support to continue in existence, in the Company's case final noteholder support was obtained in December 2021 and it was unable to raise further funding prior to our appointment.



***FY23 only accounts for July and August 2022**

The graphs above highlight the Company's EBITDA loss each financial year.

An EBITDA loss is present in all periods analysed. From our investigations, the considerable increase in the EBITDA loss between FY21 and FY22 can be attributed to:

- Realisation of the impacts from product recall in October 2021;
- Slow down for Ellume USA LLC retail sales, resulting on flow on affects for the Company;
- Costs associated with the development of the US Facility build fit out costs exceed original estimates.

The lack of a service agreement between the Company and Ellume USA LLC to purchase stock, other assets, or to otherwise reimburse the Company for shared overhead costs is also a primary contributing factor to the Company's inability to trade profitably.

14.2.6. Solvency review – Difficulties in selling stock

In the six (6) months leading up to our appointment, the board continuously raised concerns with the Company stock holdings and converting stock to cash, including:

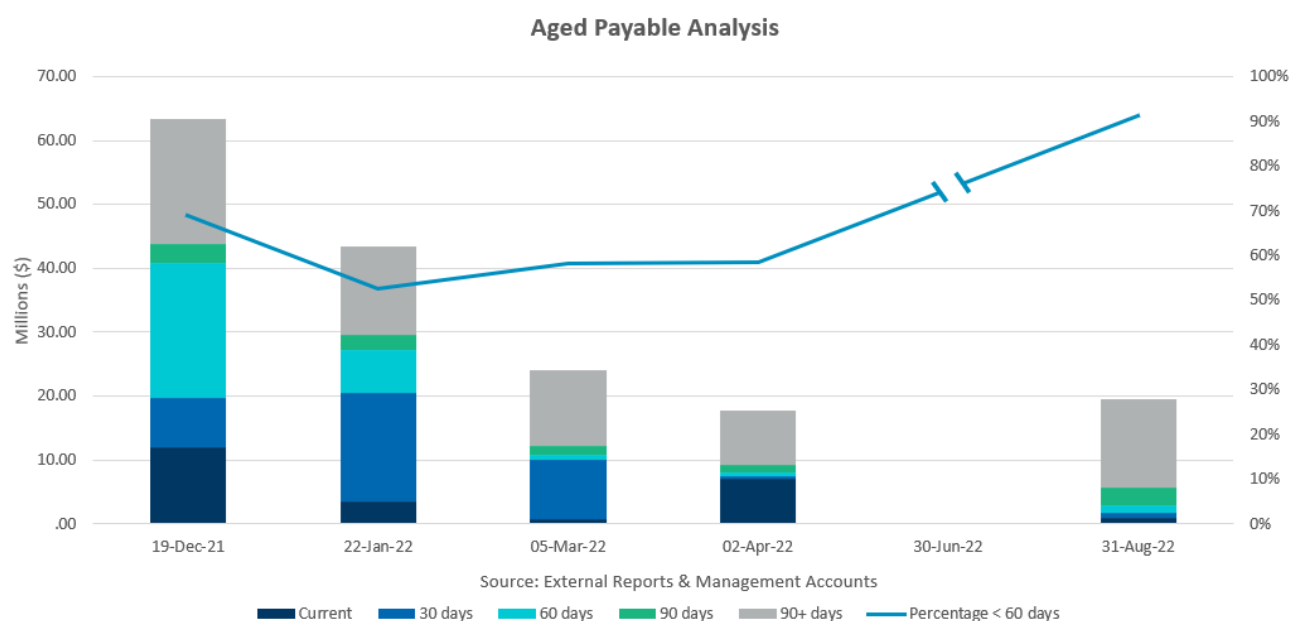
- January 2022 Target advised Ellume USA they do not expect to re-order ECHTs;
- March 2022 retail sales reduced due to US Government policy of providing free RAT tests to its citizens;
- April 2022, the Directors raised concerns of the amount of cash tied up in stock and instructed finance to convert stock to cash; and
- Post COVID-19 environment saw reduction in demand for the Company's inventory

14.2.7. Solvency review – Creditors paid out terms & special arrangements

Our investigations have identified the Company rearranged payment terms with two (2) creditors, the earliest of which occurred in June and July 2022.

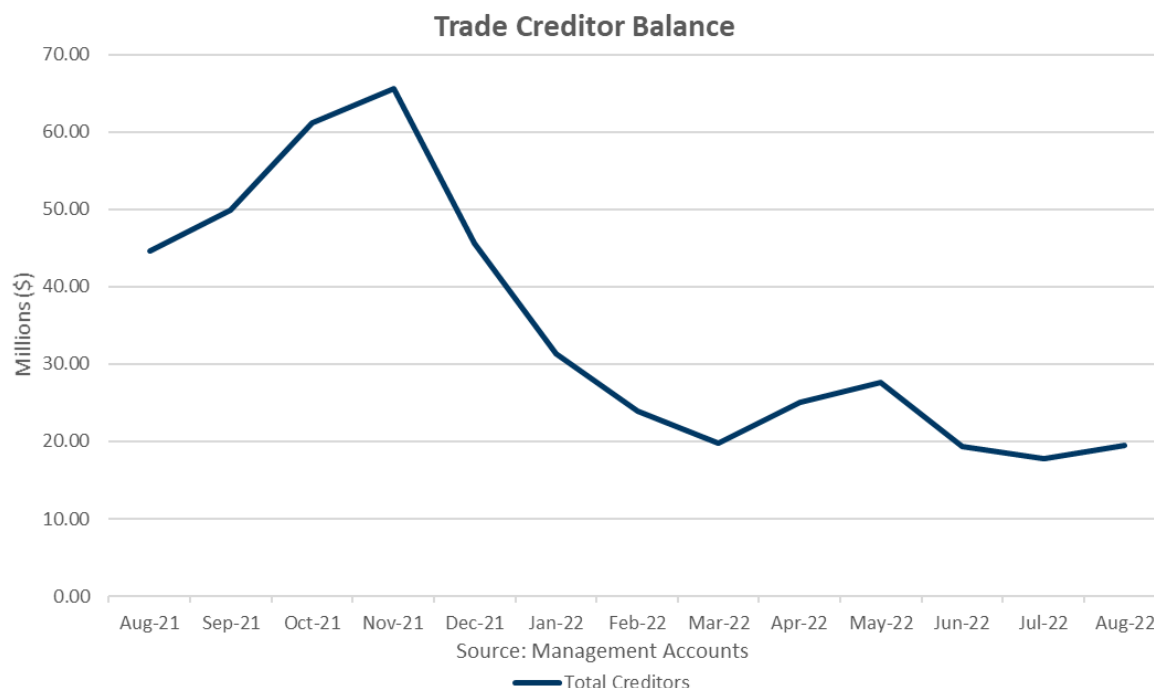
The following further evidence of creditors being paid outside of terms, or special arrangements have been obtained from board minutes:

- 28 September 2021 - Sought a deferment in payments to reflect the delays with regards to Bosch automation lines.
- Deloitte was engaged to assist in creditor negotiations. Improvements to existing payables to extend cash runway to end of December were noted in 25 November 2021 minutes.
- 2 March 2022 - Cash flagged as being lower than forecast due to timing difference on accounts payable and creditor releases. Liquidity noted as being “tight”.
- 26 May 2022 - Finance flagged as having stretched creditors
- No payment arrangement was entered into with the ATO.
- Our analysis into the Company’s aged payables has been hindered by the Company’s ERP software being unable to provide historical ageing profiles on reports. However, following appointment we have obtained cashflow reports prepared by Deloitte for the Company between 19 December 2021 to 2 April 2022, these reports disclosed the Company aged payable balances. The below graph shows the ageing of the Company’s creditors.



Funding from the noteholder capital raise in December 2021 was received in January 22 – as previously mentioned in this report one of the uses of this funding was to reduce the Company’s trade supplier debt which is observed from the data presented above.

However in the absence of further commitment from the DoD to place additional orders the Company was without a revenue source from which to service its trade suppliers moving forward without further capital advances, which we understand were non-existent.



As noted above, the Company's trade creditor balance peaked in November 2021. The timing correlates with the product recall and a time where the pandemic was ongoing requiring additional materials.

Our analysis into the Company records identified a large portion of the credit note holder funds were used to reduce outstanding trade supplier balances following the December 2021 capital raise.

As highlighted in the graph above, although creditor balances marginally moved during June to Aug 2022, this was during a time where manufacturing was paused from implications of the DoD contract.

14.2.8. Solvency review – Inability to obtain new or alternative funding

Over the twelve (12) month period preceding our appointment, we understand the Company and Ellume USA sought to obtain new or alternative funding via the following means:

1. Capital note raises.
2. Fulton sale and leaseback.
3. IPO on the Australia Stock Exchange ("ASX").
4. Other new or alternative funding initiatives.

We attribute the Company rapid expansion and continued growth model reliant on its ability to obtain funding or raising capital from investors. In this regard, it is crucial to note the following attempts the Company made to maintain this business model.

1. Capital Note Raises

Prior to our appointment the Company was able to obtain unsecured funding via capital note raises. We understand the Company undertook capital note raises in June 2021, September 2021, and December 2021.

The Company was successful in obtaining c.\$80m via the December 2021 note raise. The approved purpose for this funding pursuant to the note holder deeds was for capital investment in the Company's

manufacturing capability together with general working capital requirements and the retirement of existing debt. The noteholder funds were received between 29 December 2021 and 18 February 2022.

The Company's 16 December 2021 board minutes disclosed the raise had not progressed according to plan and the process took significantly longer than anticipated. Ord Minnett & Morgans, advised the raise proved difficult due to:

- Lack of institutional support;
- Inopportune timing of the capital raise leading to Christmas;
- Recall of Ellume products, followed by forecasts which in the immediate period the Company had failed to achieve.

Our analysis into capital note raises identified this avenue of funding was exhausted from February 2022.

2. *Fulton sale and leaseback*

Prior to our appointment, and to assist liquidity problems in both the Company and Ellume USA, both entities explored a potential sale and leaseback transaction with Fulton. It was apparent in March 2022, Ellume USA's ability to borrow the required amount from Fulton was insufficient to fulfill the shortfall. In May 2022 the Company put forward the agreement to noteholders, in which it only received support from 19% of noteholders. These negotiations continued until late July 2022, however, the deal was inevitably unsuccessful and contributed to the Company's insolvency.

3. *IPO on ASX*

Our investigations identified the Company had begun preparation of an IPO on or around 17 September 2021, when an ASX Principal Application was lodged. We note the following in relation to the Company IPO efforts.

- The target IPO timing was March/April 2022.
- Between September 2021 and March 2022, the Company continued preparation of the IPO despite the current difficulties micro and macro factors, including the future of DoD contract, continued market conditions and a diminishing balance sheet.
- In early March 2022 it was decided there was no market appetite for an IPO at that time.

4. *Other new and alternative funding initiatives*

In addition to the aforementioned attempts to raise capital or obtain finance, the Company pursued a number of new and alternative funding initiatives to meet ongoing working capital requirements for operations. The timing of these initiatives per the board minutes, and details of the initiatives and their success is summarised as follows:

Date	Event
24 September 2021	Attempt to sell lab electronics to free up capital.
13 November 2021	Sought debt restructuring of existing notes, deal unsuccessful due to debt ceiling on convertible notes.
25 November 2021	Company discussing and processing potential debtor financing

Date	Event
7 December 2021	Board discussed options available to the Company including; 1. Merger with Atomo; 2. Convertible notes raise with Ords & Morgans private clients 3. Asset backed lending transaction with Gordon Brother
7 July 2022	Engaged investments banks for potential sale or raise required capital whilst pursuing a potential IPO
24 August 2022	Pursued shareholders to make further investment

As highlighted above the Company made considerable attempts to obtain new or alternative funding to meet ongoing capital requirements.

Except for noteholder funds raised in December 2021, none of the above attempts to obtain new or alternative finance were successful.

14.2.9. Solvency review – Resignation of directors or other senior management

In the eleven months preceding our appointment the Company experienced attrition issues and general loss of support resulting from low morale and overwork. The loss of staff is summarised below.

Date	Notes
17 September 2021	Paul Darrouzet resigned as Chairman, replaced by Geoff Pearce.
14 October 2021	Head of Quality resigned & Scott Fry confirmed he no longer wanted the COO role.
27 October 2021	Board minutes indicate loss of support of employees (low morale and overworked).
16 December 2021	Anthony Radford resigned as Director.
January 2022	CFO, COO & Head of Professional Products all resigned.
14 January 2022	David Green resigned as Director.
7 February 2022	Melanie Davis Resigned as Director. Appointment date was 1 February 2022.
March 2022	Resignation of Sales Director.
24 March 2022	Afternoon shift production team let go.
Early April	Resignation of Production Engineering Team Leader.
April 2022	Wind down to base level of assembly and production line in Australia.
18 April 2022	Further headcount reduction of 26 production staff.
29 August 2022	Caroline Popper resigned as Director.
31 August 2022	Joanne Moss resigned as Director

The lack of historical knowledge and knowledge of the various internal systems used by the Company, as a result of high attrition rates, resulted in longer lead times required to generate financial reports and have these presented to managers and the Board.

The board minutes regularly flagged delays and/or issues in being able to provide external parties with financial data. Similarly, with little historical knowledge of the Company, the reports were often voiced as not having enough detail to allow for in-depth analysis to occur.

14.2.10. Solvency review – Qualified audit opinion

In general, auditors are required to consider the appropriateness of management’s going concern assumption for a period of at least twelve (12) months from the date of the financial statements.

As noted in the Group’s audited FY21 financial report, its auditors in their opinion noted there was material uncertainty which may cast significant doubt on the Group’s ability to continue as a going concern. They formed this conclusion based on analysis they conducted:

- The Company’s ability to raise sufficient funding from existing and new investors, as well as government grant programs where available;
- Its ability to return to appropriate production capacity incorporating the post recall quality measures; and
- Generate positive cash flows from operations through increasing sale and production

Based on the above, there were material concerns regarding the Company’s solvency from an audit perspective since FY21.

14.2.11. Solvency review – Finance staff raise solvency concerns

Since our appointment, we have obtained evidence the Company’s employees raising issues with the ability to meet future its financial obligations.

- 24 December 2021 Board minutes discuss the Company’s production and sales numbers had materially declined on previously anticipated numbers.
 - The Company reported sales of \$20m for December 2021 and \$17m for November 2021, materially lower than the forecast \$67m for the combined months.
 - The Board advised this was an ongoing concern as the business continued to under deliver on budgeted performance. As mentioned previously, the board raised concerns if the DoD contract were to fail the Company would not have a path to ongoing viability.
- The Company’s Board highlighted in its meeting minutes in March 2022 (page 5), liquidity of the company was tight.
- Safe harbour is also discussed intermittently from 21 September 2021 in Board meetings, along with the appointment of a restructuring officer.
- Deloitte was engaged as safe harbour adviser on, or around 28 September 2021 with the Board seemingly seeking safe harbour relief from 7 December 2021 onwards whilst it pursued avenues to obtain new or alternate funding discussed above.

14.2.12. Product recall

In the 12 months leading up to our appointment the Company was negatively impacted by product recall issued by the U.S Food and Drug Administration (“FDA”) against Ellume USA.

- 6 September 2021 – FDA raised concerns about the level of reporting of false positives.
- 2 October 2021 –product recall announced.

- 14 October 2021 – as at this date 1,249 customers had requested replacement ECHTs.
- 21 October 2021 – Management confirmed, of the batch retention c.65% of batches had failed.
- 22 November 2021 – Management declared the recall was now behind them and they were now comfortably positioned with heightened focus on quality systems.

We understand the Company sought additional liquidity via capital notes to ease the stress caused by the product recall. In December 2021, after the completion of the capital raise the Company had secured approximately USD \$50m. Our analysis of the Company's records identified the cost of the recall was c.\$37m. Whilst the recall resulted in short term liquidity troubles, the Company was able to absorb the costs and remain solvent.

14.2.13. Conclusion

Based on the above analysis, our preliminary view is the Company became insolvent from at least May 2022.

The primary reasons for this view are:

- The Company experienced trading losses from as early as FY19
- The Company's auditors had noted there was material uncertainty related to the Group's ability to continue as a going concern in their audit reports FY20 and FY21.
- On 6 September 2021, the FDA raised concerns surrounding the level of reporting false positives from Ellume USA LLC's ECHTs. On 2 October 2021, the Group announced a Product recall. The Company undertook a capital raise in December 2021 to absorb the costs associated with the product recall.
- In September 2021 the Company engaged a Safe Harbour advisor to consider the financial position and a restructuring plan for the Company.
- Our analysis indicated finance staff raised solvency concerns from 24 December 2021 and continued until our appointment on 31 August 2022.
- Upon completion of noteholder funds raised in December 2021, the Company was unable obtain new or alternative finance.
- In early 2022, the Company sought to raise additional capital via an IPO or arrange working capital with Fulton via Ellume USA. After refusal from capital note holders and failed IPO prospects the Company was unable to raise additional funding/raise equity.
- As early as 26 February 2022, greater than 50% of trade creditors were paid outside trading terms.
- In the six (6) months leading up to our appointment, the Company continuously had difficulties with converting stock into cash. In addition, retail sales of its subsidiary's product had significantly decreased due to the release of free RAT tests by the US Government in early 2022.
- Insufficient liquid assets were held to meet current liabilities since May 2022 to our appointment. At this point liquidity steadily declines until our appointment on the 31 August 2022.
- The board packs note the Company contract with the DoD was set to expire on 31 May 2022, with the option for additional 3.1m ECHTs. At the timing of our appointment, the DoD had not exercised its option for the additional tests. Accordingly, from 31 May 2022 to our appointment, the Company had been making minimal revenue whilst at the same time incurring substantial costs to progress manufacturing and R&D.
- We have been made ware of at least two (2) creditors which the Company had rearranged payment terms with since June 2022.
- In the eleven months preceding our appointment the Company experienced attrition issues and loss of key personnel.

15. Appendix 6 – DOCA proposal

**Proposal for Deed of Company Arrangement in relation to
Ellume Limited (administrators appointed) (ACN 141 767 660)**

Made by Hough Consolidated Pty Ltd (ACN 657 651 280)

The terms of this proposal must be read in conjunction with certain defined terms as set out in the Dictionary at the end of the proposal. This proposal is final (and subject to the terms of an executed Deed of Company Arrangement).

Item	Subject	Material Term
1.	Company	Ellume Limited (Administrators Appointed) (ACN 141 767 660) (Company) is the entity that is proposed to be the subject of the DOCA.
2.	Administrators	John Park and Joanne Dunn of FTI Consulting.
3.	Appointment Date	31 August 2022.
4.	Proponent	The proponent of the DOCA is Hough Consolidated Pty Ltd (ACN 657 651 280) (Hough).
5.	Purpose of proposal	The purpose of this proposal is to articulate the material terms of the DOCA that Hough proposes in respect of the Company and which Hough requests the Administrators present to the meeting of Creditors of the Company that is to be convened and held pursuant to Part 5.3A of the Act. The proposed DOCA for the Company is intended to satisfy the objectives of Part 5.3A of the Act, including to maximise the chances of the Company, or as much as possible of its operations, continuing in existence, or to achieve better outcomes for the Company, compared to the expected outcome were the Company to be immediately wound up and assets liquidated.
6.	Key terms of the Deed of Company Arrangement	Except as indicated, all amounts are expressed in US\$. In accordance with this proposal, the DOCA will contain the following key terms: (1) All of the Existing Shares in the Company will be transferred by the Administrators to Hough or its nominee, free and clear of any encumbrances as part of inter-conditional steps to occur at completion as set out in Clause 12 below. (2) Each Electing Noteholder may, for any part of or the whole of the Notes held by the Electing Noteholder, elect to vary the terms of the Notes to the effect that: (a) all Noteholder Existing Rights are extinguished; (b) the Maturity Date (as defined in the relevant Note), is extended to 5 years after the date of the DOCA;

		(c) the Note is to be redeemed by conversion to shares in the Company in the event of an IPO. Those shares are to be issued pari passu with other Electing Shareholders, and the total shareholding of all Electing Noteholders to not exceed 5% of the total shares issued in the IPO; and (d) include such other amendments satisfactory to Hough, acting reasonably. An Electing Noteholder shall not participate in the Deed Fund for the Notes the subject of the election. (3) All other Notes (including the Notes of any Electing Noteholder who does not make an election under (2) above) will be redeemed and the Noteholders (other than the Electing Noteholders who make an election under (2) above) will participate in the Deed Fund for the amount of the Noteholder Pool. (4) Hough will contribute the Hough Contribution to the Deed Administrators to be available for distribution to Creditors under the Creditors' Trust as part of the Creditors' Trust Fund. (5) The Hough Contribution (other than the Interim Funding) will be paid in a single tranche as part of inter-conditional steps at completion of the DOCA (as further set out at item 12 below). If the DOCA terminates and does not Complete in accordance with its terms, then the Hough Contribution will no longer be payable. The only assets of the Company to be available for distribution to Admitted Creditors under the DOCA (and Creditors' Trust) will be the Hough Contribution and the Working Capital Amounts. (6) The Creditors' Trust Fund will be available for distribution to Creditors under the Creditors' Trust in accordance with the priority waterfall contained in Item 15 below. (7) Notwithstanding paragraph (6) above, Small Claim Creditors will be paid under the Creditors' Trust immediately following priority Creditors as determined by application of sections 556, 560 and 561 of the Act and prior to remaining Admitted Creditors that are not Small Claim Creditors as provided by Item 15 below. (8) The DOCA will be Completed upon, among other things, payment of the Hough Contribution to the Deed Administrators (which payment will be done as an inter-dependent step with other completion steps contained in the DOCA set out at Item 12 below). At that time, the Creditors' Trust will be formed (with the Creditors' Trust Fund paid to the trustees of the Creditors' Trust) and Admitted Creditors will have rights to receive distributions as beneficiaries under the terms of the Creditors' Trust (in the same order of priority as applies under the DOCA). (9) The Company will cease to comply with, and will not perform the Pre-Administration Leases and will treat the Pre-Administration Leases as coming to an end.
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		(10) The Company will use its commercial reasonable endeavours to renegotiate with QIAGEN the agreements between the Company and QIAGEN on terms satisfactory to Hough, acting reasonably. (11) All claims against the Company will be released upon Completion under the DOCA.
7.	Proposed Deed Administrators	John Park and Joanne Dunn of FTI Consulting. The Proposed Deed Administrators are also the proposed Trustees.
8.	Commencement date for the DOCA	The date of execution of the DOCA contemplated by this proposal.
9.	Property of the Company available for distribution	The property of the Company available for distribution to Creditors pursuant to the Creditors' Trust to pay their Admitted Claims will be the Creditors' Trust Fund (being the Deed Fund) as paid to the Trustees under the Creditors' Trust Deed and to be held on trust for the benefit of the beneficiaries of the Creditors' Trust.
10.	Moratorium under the DOCA	During the period of operation of the DOCA, the moratoria in sections 440A, 440D, 440F and 444E of the Act will apply to all Creditors and members of the Company.
11.	Release of claims	Upon and subject to Completion of the DOCA, all claims against the Company (except for those due to Excluded Creditors) will be released and extinguished in full, in consideration for the Admitted Creditors becoming beneficiaries under the Creditors' Trust.
12.	Completion under the DOCA – formation of Creditors' Trust	The DOCA will only complete upon the below steps occurring (all of which are inter-dependent). (1) Release by each of the Short Term Funders of all security granted to it as at the date of this proposal by the Company and any Subsidiaries. (2) Release by each of the Trading Security Holders of any security granted to the entity by any Company and any Subsidiaries, unless otherwise agreed between the parties in writing not less than 20 Business Days prior to Completion (or such other period as agreed by the Administrators). (3) Each such release under paragraph (2) to be on terms that provide for continuing trading and which are otherwise acceptable to Hough, acting reasonably. (4) The making of the ASIC Relief. (5) The making of the 444GA Orders. (6) The transfer of the Shares to Hough or its nominee. (7) The Proponent being satisfied (acting reasonably) that: a. the Company is not restricted under any existing contract to which it is a party from developing or

		producing dengue, malaria or HIV diagnostic products on and from Completion; and b. no third party is entitled to acquire, or has acquired since the date of this proposal, any intellectual property rights developed by the Company in connection with dengue, malaria or HIV diagnostic products. (8) The payment by Hough to the Deed Administrators of the Hough Contribution (subject to Item 12(10) below). (9) Execution of the Creditors' Trust Deed (which is to take effect on and from Completion). (10) The Interim Funding (and, if relevant, any part of the Security Funding) will be nominally repaid by the Administrators, or Deed Administrators, to Hough and reflected in the Hough Contribution. (11) Receipt by Hough from the Administrators of evidence in writing (in the form set out in Schedule 3) that all Pre-Administration Leases listed in Schedule 2 have been terminated or otherwise that counterparties to those Pre-Administration Leases have been notified that the Company will cease to comply with, and will not perform its obligations under, and treat the Pre-Administration Leases at an end. (12) The resignation or removal of the Exiting Directors and Secretary and the appointment of the Continuing Directors. (13) Retention of the Staff by the Company on terms acceptable to those Staff and to the satisfaction of Hough (acting reasonably) and which terms must be no less favourable than each Staff member's terms and conditions of employment immediately prior to the DOCA. (14) A binding commitment from the US Landlord to the effect that the US Landlord will not terminate the lease of the US Facility due to any fact, matter or circumstance arising prior to, or subsisting at, Completion. (15) A binding commitment from the Richlands Landlord to the effect that the Richlands Landlord will not terminate the lease of the Richlands Facility due to any fact, matter or circumstance arising prior to, or subsisting at, Completion. Only Hough may waive the Conditions at paragraphs (1), (2), (3), (6), (7), (11), (12) (13), (14) and (15) above. All other remaining conditions may only be waived on agreement in writing between the parties (such agreement not to be unreasonably withheld). Each of the parties will (at their own cost) do all things necessary and within their power to satisfy the Conditions (including, without limitation, obtaining and implementing the ASIC Relief and the
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		444GA Orders). Following completion of the steps immediately above, the following will occur (with these events to be interdependent): (1) the Creditors' Trust Deed will take effect pursuant to the terms of the Creditors' Trust Deed; (2) the Deed Administrators will transfer (and will cause the Company to transfer) the Deed Fund to the Trustees of the Creditors' Trust (on trust for the beneficiaries of that trust) to form part of the Creditors' Trust Fund; and (3) following steps (1) and (2) above, the DOCA will be fully Completed and the Deed Administrators will publish notice to that effect under section 445FA of the Act. Consequence of non-satisfaction of the Conditions (1) Subject to clause (2) below, if: (a) one or more of the Conditions is not satisfied or waived by the CP Satisfaction Date; or (b) the Deed Administrators and the Deed Proponent are of the opinion that one or more of the Conditions are incapable of being satisfied by the CP Satisfaction Date, then: (c) the Parties will cease to be bound by the DOCA on and from the CP Satisfaction Date and will have no liability under it; and (d) the Deed Administrators will convene a meeting of the Creditors to determine the future of the Company. (2) In circumstances where the Deed Proponent has reason to believe that it will not be able to satisfy the Conditions or otherwise effect Completion before the CP Satisfaction Date, the Deed Proponent may request an extension of the CP Satisfaction Date from the Deed Administrators for consideration (in their sole discretion). (3) In circumstances where the extension in clause (2) is not provided, or in circumstances where it is but the Long Stop Date has expired and the Conditions remain unsatisfied: (a) the Parties will cease to be bound by the DOCA on and from that date and will have no liability under it; and (b) the Deed Administrators will convene a meeting of the Creditors to determine the future of the Company.
13.	Directors and Secretary	During the Deed Period, the parties agree that the Administrators and Deed Administrators must, at the request of Hough, either procure the resignation of, or remove, the Exiting Directors and

		Secretary and procure the appointment of the Continuing Directors (subject to receiving signed consents to act) to be effective on Completion.
14.	Termination of DOCA	The DOCA will continue in operation until the DOCA is terminated: (1) upon its Completion as set out in this proposal (see clause 12 above); (2) by an order of the Court under section 445D of the Act; (3) by a resolution of the Creditors at a meeting convened under Division 75 of Schedule 2 to the Act; or (4) automatically, if a Condition is not satisfied (or becomes incapable of being satisfied) or waived by the parties by the CP Satisfaction Date or the Long Stop Date (as applicable).
15.	Order of distribution of the Creditors' Trust Fund	Subject to the below provisions, distributions from the Creditors' Trust Fund (under the Creditors' Trust, once formed) are to be made in respect of Admitted Claims as follows: (1) (Pool A) first, in notionally repaying the Interim Funding, and notionally repaying any part of the Security Funding in accordance with paragraph (10) of Item 12; (2) (Pool B) second, in payment of any balance owing in respect of the Security Funding; (3) (Pool C) third, in accordance with the priorities set out in sections 556, 560 and 561 of the Act as though those priorities were applied in the Creditors' Trust Deed in full; (4) (Pool D) fourth, Small Claim Creditors in respect of any Small Claim Dividend. (5) (Pool E) fifth, QIAGEN in an amount up to the QIAGEN Dividend. (6) (Pool F) sixth, equally and rateably up to a specified amount of AU\$ to all Admitted Creditors who do not enjoy priority under section 556 of the Act, in accordance with section 555 of the Act (and the other applicable provisions of Part 5.6, Division 6 of the Act, including section 563A of that Act). (7) (Pool G) separately, equally and rateably up to the amount of, and out of, the Noteholder Pool, the participating Noteholders. Hough will not receive any distributions under the DOCA or the Creditors' Trust other than in respect of the repayment of the Interim Funding.
16.	Prescribed Provisions	Except to the extent that they are inconsistent with the terms of the DOCA, the provisions of Schedule 8A of the Regulations will apply to the DOCA as well as the Creditors' Trust Deed
17.	Priority to eligible employee creditors	The DOCA will contain a provision as contemplated by s444DA of the Act.
18.	Superannuation contribution debts	Pursuant to section 444DB of the Act, for the DOCA (and the Creditors' Trust), the Deed Administrators (and Trustees of the

		Creditors' Trust) must determine that the whole, or any particular part, of a debt by way of superannuation contribution is not admissible to proof if a debt by way of superannuation guarantee charge: (1) has been paid; (2) is, or is to be, admissible to proof; and the Deed Administrators (or Trustees of the Creditors' Trust, as applicable) are satisfied that the superannuation guarantee charge is attributable to the whole, or that part, of the first- mentioned debt.
19.	Secured Creditors, and owners/ lessors of property	Other than as expressly provided for under the DOCA, the DOCA will not release: (1) any security held by a Creditor in respect of any claim, and (2) any security interest validly and effectively held by an owner or lessor in property of the Company.
20.	Control of the Company	(1) During the period of operation of the DOCA, the Deed Administrators will have stewardship of the Company and will continue to manage the operations of the Company. (2) During the period of operation of the DOCA, Hough will not take part in the management or operations of the Company, except in accordance with the terms of the Implementation Deed. (3) Stewardship of the Company will return to its directors upon Completion.
21.	Working Capital Amounts and trading liabilities during administration	(1) If any Working Capital Amounts are received by the Administrators or Deed Administrators, or the Company following completion of the DOCA as contemplated by clause 12, those amounts must be transferred to the Trustees to form part of the Creditors' Trust Fund. (2) Subject only to paragraph (3) below, any debts or liabilities incurred by the Company during the period of its administration (a) for which the Administrators have personal liability under section 443A or 443B of the Act, and (b) that remain unpaid at the time of completion of the DOCA, will be satisfied from the Deed Fund and Creditors' Trust Fund. (3) Any debts or liabilities of a kind mentioned in paragraph (2) that are owed to an Excluded Creditor who is an eligible employee creditor will be paid by the Company following completion of the DOCA.
22.	Administrators' and Deed Administrators' remuneration	The Administrators, Deed Administrators and the Trustees of the Creditors' Trust will be remunerated out of the Deed Fund and the Creditors' Trust Fund for their services at their usual hourly rates in accordance with Division 60 of Schedule 2 to the Act.
23.	Company records	The Deed Administrators and Trustees of the Creditors' Trust will be entitled to retain copies of (or to retain access to) the Company's records following completion of the DOCA, as is necessary or reasonably desirable for them to properly complete their roles.
24.	Variation of DOCA	The DOCA may only be varied by a resolution passed at a meeting of the Creditors of the Company convened in accordance with Division 75 of Schedule 2 to the Act, but only if the variation is not

		materially different from a proposed variation set out in a notice of meeting.
25.	Advance of Interim Funding	(1) Hough has agreed to provide the Interim Funding to the Administrators. (2) The Interim Funding will be documented and advanced as soon as practicable in accordance with the Funding Letter. (3) The Interim Funding will be repaid from the Deed Fund. Repayment will be made by direction by the Deed Administrators to Hough on Completion that a portion of the Hough Contribution be paid to Hough in repayment of the Interim Funding. (4) If the DOCA is terminated otherwise than upon completion of the DOCA in accordance with its terms, the Interim Funding will be repaid by the Administrators (subject always to the Administrators having sufficient available cash to make such repayment) subject to the terms of the Funding Letter.
26.	Governing law	This proposal and any DOCA (together with any Creditors' Trust) are governed by the laws of the State of Queensland.
27.	Dictionary	In this proposal: 444GA orders means orders made by a court of competent jurisdiction pursuant to and for purposes of section 444GA of the Act in relation to the Company, authorising the Deed Administrators to transfer all Shares in the Company to Hough for a nil consideration, in terms otherwise reasonably acceptable to Hough. Act means the <i>Corporations Act 2001</i> (Cth). Admitted Claim means a claim against the Company as adjudicated by the Deed Administrators under the DOCA (or by the Trustees of the Creditors' Trust), but excluding Excluded Creditors. Admitted Creditor means a Creditor who has (or who is entitled to have) an Admitted Claim. Appointment Date has the same meaning as defined in clause 3 of this proposal. ASIC means the Australian Securities and Investments Commission. ASIC relief means relief granted by ASIC for the purposes of section 606 of the Act, in substance relieving Hough (and the Company, to the extent relevant) from the application of section 606 of the Act with respect to Hough's acquisition of the Shares as contemplated by this proposal, substantially on the conditions contemplated at Part G of ASIC Regulatory Guide 6, and in terms otherwise reasonably acceptable to Hough. claim means any claim, cost, damages, debt, income, expense, tax, royalty, liability, loss, obligation, allegation, suit, action, demand, cause of action, proceedings, penalty (civil, criminal or otherwise), order or judgment of any kind however calculated or caused, howsoever arising in law or equity or under statute against the Company, and whether direct or indirect, future, contingent, consequential, incidental or economic, the circumstances giving rise

	to which occurred or arose before the Appointment Date, and includes (without limitation): (1) any claim of any kind whatsoever under a Pre-Administration Lease including without limitation any claim for damages or loss in connection with the Company's failure to comply with or perform or termination of, a Pre-Administration Lease; (2) any claim that in a winding up of the Company would be a subordinated claim for purposes of section 563A of the Act; (3) any residual unsecured claim held by a Secured Creditor following realisation of its security; and (4) without limiting (1) above, any warrant, option or similar instrument issued by the Company in respect of any of its Shares. Conditions means each of paragraphs (1) to (15) in Item 12. Completion means the date upon which each of the Conditions has been satisfied or waived in accordance with the DOCA, and for the avoidance of doubt, is when the DOCA is "wholly effectuated" for the purposes of certification under Schedule 8A of the Act. Continuing Contracts means any contract of any kind whatsoever made by the Company with third parties prior to the Appointment Date, except for the Pre-Administration Leases. Continuing Directors means Jackson Hough, Jonathon Dooley and at least one other director nominated by Hough in writing prior to Completion. CP Satisfaction Date means 10 March 2023, unless otherwise extended by agreement of Hough and the Administrators. Creditor means a person who has a claim against the Company. Creditors' Trust means a trust to be entitled the "Ellume Creditors Trust" (or another title agreed by the Deed Administrators and Hough), pursuant to which: (1) the Deed Administrators as trustees will hold the Creditors' Trust Fund as the trust estate, on trust for the beneficiaries described below; (2) persons who were (immediately prior to the Completion of the DOCA) Admitted Creditors will be beneficiaries; (3) the beneficiaries will have interests in the trust estate commensurate with their entitlements to participate as Admitted Creditors under the DOCA Creditors' Trust Deed means the trust deed to be entered into between the Company, the Deed Administrators, the Trustees and the Hough in accordance with the DOCA, which creates the Creditors' Trust. Creditors' Trust Fund is the Deed Fund. Deed Fund is the Hough Contribution and any Working Capital Amounts as at the relevant time. Deed Period means the period commencing on the Commencement Date and ending on the earlier of the Termination Date or
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		Completion. DOCA means a Deed of Company Arrangement for the Company in accordance with Part 5.3A of the Act to be entered into between the Company, Hough and the Deed Administrators. Electing Noteholders means each of the Noteholders recorded in Schedule 4 and any other Noteholder notified to the Administrator by the Representative named in Schedule 4. eligible employee creditor has the meaning given to that term in the Act. Excluded Creditors means any Creditor who has a claim against the Company: (1) because he/she is an eligible employee creditor, where such Creditor has continued his/her employment with the Company (or a Subsidiary) following completion of the DOCA; or (2) where such Creditor is a Subsidiary. Existing Shares means all Shares in the Company on issue on the Appointment Date. Exiting Directors and Secretary means Paul Darrouzet, Gary Hewett, Geoffrey Ronald Pearce, Sean Andrew Parsons and Mark Eric Harding Anning. Funding Letter means a funding deed in letter format to be entered into on or about the date of this proposal between the Proponent and the Administrators. Hough Contribution means the sum of \$38,000,000. Implementation Deed means a Deed to be entered into on or about the date of this proposal between the Proponent, the Company and the Administrators. Interim Funding means a loan in the sum of up to \$5,000,000, plus any other amounts advanced by Hough to the Administrators, on the terms set out in the Funding Letter. IPO means the Company carrying out an initial public offering of its Shares and being admitted to the official list of ASX or another recognised stock exchange. Long Stop Date means 28 April 2023, unless otherwise extended by agreement of Hough and the Administrators. Notes means a convertible note issued by the Company. Noteholder means a holder of Notes, but excluding QIAGEN. Noteholder Existing Rights means all existing rights of the Noteholder to redeem or convert the Notes. Noteholder Pool means an amount of \$12,500,000 to be paid as part of the Hough Contribution. Pre-Administration Lease means the leases specified in Schedule 2 to this proposal, but for the avoidance of doubt does not mean a Continuing Contract. QIAGEN means each of QIAGEN GmbH and QIAGEN NV KvK
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	QIAGEN Dividend means the amount of \$7,000,000. Regulations means <i>Corporations Regulations 2001</i> (Cth). Richlands Facility means the premises located at 9-19 Macgregor Place, Richlands in the State of Queensland. Richlands Landlord means Elcorp Services Pty Ltd ACN 069 142 847 and Treffiletti Siblings Pty Ltd ACN 627 266 586 as trustee under instrument 719121809. Secured Creditor means any Creditor who has valid and effective security from the Company for its claim against the Company. security means any security interest or encumbrance of any kind whatsoever, howsoever arising, and includes (without limitation) a security interest registrable under the <i>Personal Property Securities Act 2009</i> (Cth). Security Funding means an amount sufficient to pay out the claims of the Short Term Funders and the Trading Security Holders up to a limit of \$8,000,000. Shares means all shares in the Company of any kind whatsoever (and includes any preference shares, ordinary shares or otherwise). Short Term Funders means each of (1) Evangayle Pty Ltd ACN 615 224 256 as trustee for the Jones Family Trust No 3 (2) Glencairn Bay Investments Pty Ltd ACN 629 479 269 as trustee for the Glencairn Bay Investment Trust; (3) MA & KA Investments Pty Ltd ACN 600 309 626 as trustee for the MA & KA Investment Trust; and (4) Brand Brothers Holdings Pty Ltd ACN 637 303 952 as trustee for the Brand Brothers Holdings Trust. Small Claim means any Admitted Claim with a value of AU\$20,000 or less. Small Claim Creditor means a Creditor with a Small Claim. Small Claim Dividend means a payment from the Creditors' Trust Fund under the Creditors' Trust to each Small Claim Creditor, as beneficiaries, in the amount equal to 50% of that Small Claim Creditor's Small Claim, or where AU\$285,000 is insufficient to pay 50%, a lesser amount calculated on a pro rata basis. Staff means each of [REDACTED] Subsidiaries means the entities described in Schedule 1 to this proposal. Termination Date means the date that the DOCA is terminated pursuant to clause 14 above. Trading Security Holders means each of: (1) Robert Bosch (Australia) Proprietary Limited; (2) Atlas Copco Australia Pty Ltd;
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		(3) Crown Equipment Pty. Limited; (4) Retracom Holdings Pty Ltd; (5) Life Research Pty Ltd; (6) Print Management Facilities Australia Pty Ltd; and (7) any other entity notified by Hough to the Company prior to Completion (but excluding the US Landlord and the landlord of the Richlands Facility). Trustee means the Trustee of the Creditors' Trust. Working Capital Amounts means at the time of completion of the DOCA as contemplated in clause 12 above: (1) cash on hand for the Company or Administrators; (2) accounts receivable due to the Company in respect of work done or services provided by the Company on or before that time. US Facility means the premises located at buildings 201, 202 and 203, 4910 Executive Court, South Frederick, MD 21703. US Landlord means WVS Parcel 200A, LLC and WVS Parcel 204 A, LLC, each a Maryland limited liability company.
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Dated: 8 December 2022

Contacts:	David O'Farrell Partner McCullough Robertson Lawyers P 07 3233 8899 E dofarrell@mccullough.com.au	Rachel Zagorskis Senior Associate McCullough Robertson Lawyers P 07 3233 8704 E rzagorskis@mccullough.com.au
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Schedule 1 – Subsidiaries

- (1) Ellume USA LLC, a Delaware limited liability company
- (2) Ellume NZ Pty Ltd

Schedule 2 – Pre-Administration Leases

- (1) Lease between Ellume as Lessee and YWCA Australia ACN 111 663 873 as Lessor in relation to part of 936 Stanley Street, East Brisbane QLD 4169 more particularly described as Lot 223 on RP 11455.
- (2) Lease between Ellume as Lessee and Darrouzet Investments Pty Ltd ACN 136 760 364 as Lessor in relation to 57 Didsbury Street, East Brisbane QLD 4169 more particularly described as Lot 1 on RP 166321 dated 12 July 2022.

Schedule 3 – Notice from Deed Administrators

This notice is given for the purposes of the Deed of Company Arrangement made in relation to Ellume Limited (subject to deed of company arrangement) (**DOCA**). Terms defined in this notice have the meanings set out in the DOCA.

This notice concerns the Pre-Administration Leases under the DOCA.

By this notice, we as Deed Administrators confirm to Hough for the purposes of the DOCA that all Pre-Administration Leases known to the Administrators have been terminated or otherwise that counterparties to those Pre-Administration Leases have been notified that the Company will cease to comply with, and will not perform its obligations under, and treat the Pre-Administration Leases at an end.

Schedule 4 – Electing Noteholders

Noteholder group*	Noteholders	Representative
Group A	[REDACTED]	[REDACTED]
Group B	[REDACTED]	[REDACTED]

*For identification purposes only

16. Appendix 7 – Creditor Information Sheet

Voluntary Administration

Creditor Information Sheet

Offences, Recoverable Transactions and Insolvent Trading



Offences

A summary of offences under the Corporations Act that may be identified by the administrator:

180	Failure by company officers to exercise a reasonable degree of care and diligence in the exercise of their powers and the discharge of their duties.
181	Failure to act in good faith.
182	Making improper use of their position as an officer or employee, to gain, directly or indirectly, an advantage.
183	Making improper use of information acquired by virtue of the officer's position.
184	Reckless or intentional dishonesty in failing to exercise duties in good faith for a proper purpose. Use of position or information dishonestly to gain advantage or cause detriment. This can be a criminal offence.
198G	Performing or exercising a function or power as an officer while a company is under administration.
206A	Contravening a court order against taking part in the management of a corporation.
206A, B	Taking part in the management of corporation while being an insolvent, for example, while bankrupt.
206A, B	Acting as a director or promoter or taking part in the management of a company within five years after conviction or imprisonment for various offences.
209(3)	Dishonest failure to observe requirements on making loans to directors or related companies.
254T	Paying dividends except out of profits.
286	Failure to keep proper accounting records.
312	Obstruction of an auditor.
314-7	Failure to comply with requirements for the preparation of financial statements.
437D(5)	Unauthorised dealing with company's property during administration.
438B(4)	Failure by directors to assist administrator, deliver records and provide information.
438C(5)	Failure to deliver up books and records to the administrator.
588G	Incurring liabilities while insolvent
588GAB	Officer's duty to prevent creditor-defeating disposition
588GAC	A person must not procure a company to make a creditor-defeating disposition
590	Failure to disclose property, concealed or removed property, concealed a debt due to the company, altered books of the company, fraudulently obtained credit on behalf of the company, material omission from Report as to Affairs or false representation to creditors.
596AB	Entering into an agreement or transaction to avoid employee entitlements.

Recoverable Transactions

Preferences

A preference is a transaction, such as a payment by the company to a creditor, in which the creditor receiving the payment is preferred over the general body of creditors. The relevant period for the payment commences six months before the commencement of the liquidation. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Where a creditor receives a preference, the payment is voidable as against a liquidator and is liable to be paid back to the liquidator subject to the creditor being able to successfully maintain any of the defences available to the creditor under the Corporations Act.

Creditor-defeating disposition

Creditor-defeating dispositions are the transfer of company assets for less than market value (or the best price reasonably obtainable) that prevents, hinders or significantly delay creditors' access to the company's assets in liquidation. Creditor-defeating dispositions are voidable by a liquidator.

Uncommercial Transaction

An uncommercial transaction is one that it may be expected that a reasonable person in the company's circumstances would not have entered into, having regard to the benefit or detriment to the company; the respective benefits to other parties; and any other relevant matter.

To be voidable, an uncommercial transaction must have occurred during the two years before the liquidation. However, if a related entity is a party to the transaction, the period is four years and if the intention of the transaction is to defeat creditors, the period is ten years. The company must have been insolvent at the time of the transaction, or become insolvent because of the transaction.

Unfair Loan

A loan is unfair if and only if the interest was extortionate when the loan was made or has since become extortionate. There is no time limit on unfair loans – they only must be entered into before the winding up began.

Arrangements to avoid employee entitlements

If an employee suffers loss because a person (including a director) enters into an arrangement or transaction to avoid the payment of employee entitlements, the liquidator or the employee may seek to recover compensation from that person or from members of a corporate group (Contribution Order).

Unreasonable payments to directors

Liquidators have the power to reclaim '*unreasonable payments*' made to directors by companies prior to liquidation. The provision relates to payments made to or on behalf of a director or close associate of a director. The transaction must have been unreasonable, and have been entered into during the 4 years leading up to a company's liquidation, regardless of its solvency at the time the transaction occurred.

Voidable charges

Certain charges over company property are voidable by a liquidator:

- circulating security interest created within six months of the liquidation, unless it secures a subsequent advance;
- unregistered security interests;
- security interests in favour of related parties who attempt to enforce the security within six months of its creation.

Insolvent trading

In the following circumstances, directors may be personally liable for insolvent trading by the company:

- a person is a director at the time a company incurs a debt;
- the company is insolvent at the time of incurring the debt or becomes insolvent because of incurring the debt;
- at the time the debt was incurred, there were reasonable grounds to suspect that the company was insolvent;
- the director was aware such grounds for suspicion existed; and
- a reasonable person in a like position would have been so aware.

The law provides that the liquidator, and in certain circumstances the creditor who suffered the loss, may recover from the director, an amount equal to the loss or damage suffered. Similar provisions exist to pursue holding companies for debts incurred by their subsidiaries.

A defence is available under the law where the director can establish:

- there were reasonable grounds to expect that the company was solvent and they did so expect;
- they did not take part in management for illness or some other good reason; or
- they took all reasonable steps to prevent the company incurring the debt.

The proceeds of any recovery for insolvent trading by a liquidator are available for distribution to the unsecured creditors before the secured creditors.

Important note: This information sheet contains a summary of basic information on the topic. It is not a substitute for legal advice. Some provisions of the law referred to may have important exceptions or qualifications. This document may not contain all of the information about the law or the exceptions and qualifications that are relevant to your circumstances.

Queries about the voluntary administration should be directed to the administrator's office.

17. Appendix 8 – Remuneration Approval Report

12 December 2022



Remuneration Approval Report

Ellume Limited
(Administrators Appointed)
141 767 660

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Summary

This remuneration approval report provides you with the information the Corporations Act 2001 (Act) and the Code of Professional Practice published by the Australian Restructuring Insolvency and Turnaround Association ("ARITA") requires creditors to receive to make an informed decision regarding the approval of our remuneration for undertaking the Voluntary Administration of Ellume Limited (Administrators Appointed) ACN 141 767 660 ("the Company").

On 26 October 2022, the Committee of Inspection ("COI") approved our remuneration and disbursements as follows:

Appointment type/Period	Remuneration (excl GST)	Disbursements (excl GST)
Voluntary Administration – 31 August 2022 to 9 October 2022	\$778,484.00	\$505.75

We are asking creditors to further approve our incurred and unapproved remuneration and disbursements as follows:

Appointment type/Period	Remuneration (excl GST)	Disbursements (excl GST)
Voluntary Administration – 31 August 2022 to 27 November 2022	\$933,054.50	\$831.80
Voluntary Administration - 28 November 2022 to finalisation of the Administration	\$700,000.00	\$0.00
Total	\$1,633,054.50	\$831.80

We estimate the total cost of this Voluntary Administration will be \$2,425,000, excluding GST. This has increased from our previous estimate for the following reasons:

- Application to Court for directions pertaining to the funding deed entered into by the Administrators to continue to trade the business whilst a sale and/ or recapitalisation of the Company is achieved;
- The extension of the convening period to 16 December 2022 to allow sufficient time for the sale process. This resulted in following additional work:
 - Application to the Court for the extension to the convening period; and
 - Draft and issue additional correspondence to creditors and employees of the Company concerning the application and outcomes thereof.
- Additional correspondence to creditors concerning the applications to Court for directions and to extend the convening period;
- Trading of the Company for up to an additional three months to conclude a sale or recapitalisation process via deed of company arrangement.

Creditors will note we are not seeking any remuneration for future work past the execution of the DOCA or in the event we are appointed as liquidators. We expect further remuneration approval request will be made following the appointment as either Deed Administrators or Liquidators.

Declaration

We, John Park and Joanne Dunn, of FTI Consulting, have undertaken a proper assessment of the claims for remuneration for the appointment as Administrators of the Company in accordance with the law and applicable professional standards. We are satisfied the remuneration and disbursements claimed is in respect of necessary work, properly performed, or to be properly performed, in the conduct of this appointment and further, the disbursements have been incurred in the conduct of the external Administration are necessary and proper.

Remuneration sought

The remuneration we are asking creditors to approve is summarised as follows:

For	Period	Amount \$ (excl GST)	Applicable rates	Timing of payment
Work unapproved and already completed	31 August 2022 to 27 November 2022	\$933,054.50	As per the attached hourly rates	When funds are available
Future work to finalisation of the Administration	28 November 2022 onwards	\$700,000.00	As per the attached hourly rates	When funds are available
Total		\$1,633,054.50		

Details of the work already done and future work we intend to do are **enclosed** at **Schedule A**.

Schedule B includes a breakdown of time spent by staff members on each major task for work we have already done.

Actual resolutions to be put to the meeting are included at **Schedule C** for your information. These resolutions also appear in the proxy form for the meeting provided to you.

Disbursements

We are not required to seek creditor approval for costs paid to third parties or where we are recovering a cost incurred on behalf of the administration, but we must provide details to creditors. Details of these amounts are included in the attached Receipts and Payments.

We are, however, required to obtain creditors' approval for the payment of a disbursement where we, or a related entity, may directly or indirectly obtain a profit. On 26 October 2022, the COI approved our disbursements in the amount of \$505.75, exclusive of GST.

We are seeking creditor approval for further disbursements in the amount of \$831.80, exclusive of GST.

Schedule D includes a breakdown of the disbursements incurred as at 27 November 2022.

For more information about disbursements, please refer to the Initial Remuneration Notice sent to you on 2 September 2022.

Previous remuneration approvals

As noted earlier in this report, the following remuneration approvals have previously been provided by the COI:

Period	For	Approving body	Approved amount \$ (excl GST)	Amount paid \$
31 August 2022 to 9 October 2022	Work already completed	COI	778,484.00	\$0.00
Total remuneration previously approved			\$778,484.00	\$0.00

We are now seeking approval of a further \$1,633,054.50, exclusive of GST, in remuneration which will bring total remuneration claimed in this Administration to \$2,411,538.50, exclusive of GST.

Likely impact on dividends

The Act sets the order for payment of claims against the Company, and it provides for remuneration of the Administrator to be paid in priority to other claims. This ensures when there are sufficient funds, the Administrator receives payment for the work done to recover assets, investigate the Company's affairs, report to creditors and ASIC and distribute any available funds.

Based on:

- realisations to date;
- estimated future realisations;
- estimated remuneration to complete the voluntary administration;
- the estimated total of creditor claims based on the Company's records and claims lodged.

The estimated dividend is subject to the outcome of the second meeting of creditors and the quantum of claims Admissible. Please refer to **Section 8** of the Report to Creditors for further detail.

Funding received for remuneration and disbursements

As noted in previous correspondence to creditors, we entered into a funding agreement to meet ongoing operational costs and costs of the Administration, with a facility limit of \$3.5M. We also obtained an extension of this facility limit for a further \$1.5M. To date, the Administrators have utilised \$4M under this funding agreement to meet operational costs. No funding has been used to meet payment of remuneration incurred. At this stage, the Administrators do not expect to draw any further funds under this agreement.

Receipts and payments

A summary of the receipts and payments for the voluntary administration as at 27 November 2022 is **enclosed** at **Schedule E** to this report.

Queries

Further supporting documentation for our remuneration claim can be provided to creditors on request.

You can also access information which may assist you on the following websites:

- ARITA at www.arita.com.au/creditors
- ASIC at www.asic.gov.au (search for INFO 85).

If you have any queries in relation to the information in this report, please contact this office on 07 3225 4900 or by email at ellume@fticonsulting.com.

Yours faithfully



Joanne Dunn
Administrator

Attachments:

Schedule A – Details of work

Schedule B – Time spent by staff on each major task (work already done)

Schedule C – Resolutions

Schedule D – Disbursements

Schedule E – Summary of receipts and payments

Schedule F – FTI Consulting schedule of rates effective 31 July 2022

Schedule A – Details of work incurred and unapproved

Task area/General description		Work already done	Future work up to finalisation of the Administration
Period	31 August 2022 to 27 November 2022	28 November 2022 to finalisation of the Administration	
Amount \$ (excl GST)	\$933,054.50	\$700,000.00	
Assets	266 hours \$175,679.00	\$140,000.00	
Sale of business	■ Liaised with Company staff concerning information required for the sale ■ Prepared and reviewed flyer ■ Attended to interested party queries and maintenance of data room ■ Internal meetings to discuss/review offers received ■ Liaising with management and staff in relation to the provision of documents for the data room ■ Attended site Ellume USA LLC site in Frederick to meet with potential buyer and bankers	■ Corresponded with interested parties to clarify terms offers ■ Work with the DOCA proponent to conduct confirmatory due diligence processes ■ Liaise with the DOCA proponent on sale and transition related items	
DOCA Proposal/execution of DOCA	■ Held discussions with DOCA proponent regarding DOCA proposal ■ Received and reviewed DOCA proposal and considered impact on creditors ■ Drafted DOCA specific information for report to creditors ■ Discussions with our Lawyers and the DOCA proponent on entering into binding documents for the DOCA proposal ■ Considered working capital adjustments required for the DOCA proposal	■ Discussions with our lawyers and the DOCA proponent on entering into binding documents for the DOCA proposal ■ Ongoing discussions with DOCA proponent in relation to transaction completion steps ■ Finalisation and signing of DOCA and Creditors Trust Deed	
Plant & Equipment	■ Liaising with valuers and interested parties ■ Reviewing asset listings		
Assets subject to specific charges	■ Liaising with charge holders in relation to their security interests	■ Liaising with charge holders in relation to their security interests	

Task area/General description

Work already done

Future work up to finalisation of the Administration

Stock	■ Held discussions with suppliers surrounding stock levels ■ Reviewing stock values	■ Discussions with suppliers surrounding stock levels ■ Review of stock values
Leased assets	■ Reviewing leasing documents ■ Liaising with owners/lessors ■ Tasks associated with disclaiming leases	■ Reviewing leasing documents ■ Liaising with owners/lessors ■ Tasks associated with disclaiming leases
Creditors	149.30 hours \$75,281.00	\$245,000.00
Creditor Enquiries, Requests & Directions	■ Receive and respond to creditor enquiries ■ Maintaining creditor request log ■ Set up and monitored email inboxes ■ Prepared FAQs to assist in responses to creditor queries ■ Created and maintained creditor call register ■ Review and prepare correspondence to creditors and their representatives	■ Receive and respond to creditor enquiries ■ Maintaining creditor request log ■ Prepared FAQs to assist in responses to creditor queries ■ Created and maintained creditor call register ■ Attending to enquiries relating to the second creditors' meeting ■ Review and prepare correspondence to creditors and their representatives
Secured creditor reporting	■ Notifying PPSR registered creditors of appointment ■ Responding to secured creditor's queries	■ Responding to secured creditor queries
Creditor reports	■ Finalising Voluntary Administrators' report, investigation, and associated meeting documentation ■ Prepared separate correspondence, including FAQs specific to each group of creditors including employees and suppliers ■ Distribution of correspondence via email	■ Finalising Voluntary Administrators' report, investigation, and associated meeting documentation ■ Preparing circulars to creditors in relation to court orders obtained by Administrators ■ Detailed information provided to all employee and trade creditors on meeting process via virtual facilities ■ Distribution of correspondence via email
Dealing with proofs of debt	■ Receipting and filing POD when not related to a dividend	■ Receipting and filing POD when not related to a dividend ■ Contacting creditors to assist in meeting registration and attendance process where POD not lodged

Task area/General description	Work already done	Future work up to finalisation of the Administration
Meeting of Creditors	■ Preparation of meeting notices, proxies and advertisements ■ Held meeting of the COI ■ Preparation and lodgement of minutes of meetings with ASIC ■ Discussions with the COI surrounding the upcoming meeting ■ Sent meeting minutes to creditors on request ■ Responded to stakeholder queries and questions immediately following meeting	■ Preparation of meeting notices, proxies and advertisements ■ Preparation of detailed process document for requirements to attend meeting ■ Forward notice of meeting to all known creditors ■ Preparation of meeting file, including agenda, certificate of postage, attendance register, list of creditors, reports to creditors, advertisement of meeting and draft minutes of meeting, meeting slides, polling spreadsheet is required ■ Prepare and test webinar parameters for conduct of electronic meeting of creditors
Employees	95.40 hours \$48,069.00	\$35,000.00
Employee enquiries	■ Received and followed up employee enquiries ■ Reviewed and prepared correspondence to priority creditors ■ Liaised with employees concerning their entitlements ■ Liaised with legal representatives of employees and the Company to resolve outstanding employee matters ■ Reviewed Company records to quantify employee entitlements ■ Reviewed employee contracts and awards ■ Worked closely with HR and payroll staff concerning employee issues ■ Conducted several town hall meeting with employees to discuss employee issues and answer queries	■ Receive and follow up employee enquiries via telephone ■ Maintain employee enquiry register ■ Work with HR and payroll staff concerning employee issues ■ Conduct town hall meeting with employees to discuss employee issues and answer queries
Calculation of entitlements	■ Calculating employee entitlements ■ Reviewing employee files and company's books and records ■ Reconciling superannuation accounts ■ Reviewing awards ■ Liaising with solicitors regarding entitlements	■ Calculating employee entitlements ■ Reviewing employee files and company's books and records ■ Liaising with solicitors regarding entitlements

Task area/General description	Work already done	Future work up to finalisation of the Administration
Workers compensation	■ Issuing communications to all employees concerning their entitlements as per company records at appointment ■ Corresponded with insurer regarding initial and ongoing workers compensation insurance requirements ■ Discussions with human resources team concerning claims relevant to the Administration	■ Ongoing liaison with insurers and solicitors regarding claims
Other employee issues	■ Bi-weekly meetings with payroll and human resources ■ Preparation of Group employee Proof of Debt	■ Preparing all documents and forms for eligible employee meeting ■ Preparation of Group employee Proof of Debt
Trade On	791.10 hours \$403,725.00	\$210,000.00
Trade on management	■ Liaising with suppliers and arranging new accounts for trading during Administration ■ Attended frequent meetings with executive leadership team ■ Coordinating transport of goods from Australia to US ■ Authorising purchase orders and attendance at bi-weekly purchase requisition meetings ■ Liaising with management and staff ■ Attendance on site ■ Maintaining purchase order registry ■ Preparing and authorising receipt vouchers ■ Preparing and authorising payment vouchers ■ Liaising with superannuation funds regarding contributions, termination of employees' employment	■ Liaising with suppliers ■ Liaising with management and staff ■ Attendance on site ■ Authorising purchase orders ■ Maintaining purchase order registry ■ Preparing and authorising receipt vouchers ■ Preparing and authorising payment vouchers

Task area/General description	Work already done	Future work up to finalisation of the Administration
Budgeting and financial reporting	■ Reviewing company's budgets and financial statements ■ Preparing and maintain weekly cash flow forecast to monitor cash position during trading period ■ Preparing weekly estimated statement of position ■ Meetings to discuss trading position	■ Preparing cashflow on a daily and forecasted basis ■ Preparing at least weekly updates on trading status and critical issues ■ Meetings to discuss trading positions ■ Preparing funding draw down requests for submission to financier
Real Estate	■ Reviewed lease documents ■ Held discussions with landlords and their representatives concerning arrears	
Investigations	239.40 hours \$112,676.50	\$35,000.00
Conducting investigation	■ Collection of company books and records ■ Accessing the Company systems and contacting multiple external and internal parties ■ Conducted and summarised statutory search results received including property searches, company searches, PPSR searches, personal name searches and motor vehicle searches. ■ Reviewing company's books and records ■ Review and preparation of company nature and history ■ Preparation of financial analysis from Company books and records ■ Arranged viewing access to pre-appointment bank accounts and obtain statements ■ Reviewed board minutes and group financials to provide context to position of the Company and its reasons of failure ■ Preparation of estimated statement of position based on Company records and Administrators' investigations ■ Preparation of investigation file ■ Extensive analysis into convertible note funds received by the company	■ Preparation of investigation file ■ Reviewing company's books and records ■ Finalise preliminary investigations for the purposes of issuing the second report to creditors

Task area/General description	Work already done	Future work up to finalisation of the Administration
Litigation / Recoveries	■ Court searches to ascertain any statutory demands or other proceedings on foot at appointment date ■ Internal meetings to discuss status of litigation ■ Extensive analysis for any potential recoveries under liquidation scenario	
Administration	194.10 hours \$96,031.50	\$17,500.00
Correspondence	■ General correspondence with various parties	■ General correspondence with various parties
Management of matter	■ Matter oversight	■ Matter oversight
Shareholder enquiries	■ Responded to any shareholder enquiries	■ Responding to any shareholder queries
Document maintenance/file review/checklist	■ First month, then six-monthly administration reviews ■ Filing of documents ■ File reviews ■ Updating checklists	■ First month, then six-monthly administration reviews ■ Filing of documents ■ File reviews ■ Updating checklists
Insurance	■ Identification of potential issues requiring attention of insurance specialists ■ Correspondence with insurer regarding ongoing insurance requirements ■ Reviewing insurance policies ■ Correspondence with previous brokers	■ Ongoing insurer correspondence as required for trade and to manage claims and payments required ■ Dealing with any insurance issues arising in proposed DOCA
Funds handling	■ Entering receipts and payments into accounting system ■ Requesting bank statements ■ Bank account reconciliations ■ Correspondence with bank regarding specific transfers	■ Entering receipts and payments into accounting system ■ Bank account reconciliations ■ Correspondence with bank regarding specific transfers
ASIC Forms and lodgements	■ Preparing and lodging ASIC forms including 505, 5011, 911 etc. ■ Correspondence with ASIC regarding statutory forms	■ Preparing and lodging ASIC forms including 505, 5011, 911 etc. ■ Correspondence with ASIC regarding statutory forms

Task area/General description	Work already done	Future work up to finalisation of the Administration
ATO and other statutory reporting	■ Preparing BAS ■ Completing STP reporting obligations	■ Preparing BAS ■ Completing STP reporting obligations
Planning / Review	■ Discussions regarding status of administration ■ Ongoing review of checklist ■ Internal planning and review meetings	■ Discussions regarding status of administration ■ Ongoing review of checklist ■ Internal planning and review meetings
Books and records / storage	■ Obtaining books and records from the Company	
Other Professional Services	37.50 hours \$21,592.50	\$17,500.00
Strategic Communications	■ Monitored media concerning the Company	■ Liaising and monitoring media concerning the Company
Due Diligence	■ Review of corporate filings and research into interested parties in the sale/recapitalisation process	

Schedule B – Time spent by staff on each major task (work already done)

The below table sets out work performed by professional services provided by the firm for the period 31 August 2022 to 27 November 2022 for fees incurred and unapproved:

Employee	Position	\$ /hour (excl GST)	Total actual hours	Total \$ (excl GST)	Task Area											
					Assets		Creditors		Employees		Trade on		Investigation		Administration	
					Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$	Hrs	\$
John Park	Senior Managing Director	\$ 740	125.90	\$ 93,166.00	71.00	\$ 52,540.00	1.90	\$ 1,406.00	-	\$ -	29.00	\$ 21,460.00	-	\$ -	24.00	\$ 17,760.00
Joanne Dunn	Senior Managing Director	\$ 740	155.60	\$ 115,144.00	39.00	\$ 28,860.00	12.70	\$ 9,398.00	1.30	\$ 962.00	79.80	\$ 59,052.00	13.90	\$ 10,286.00	8.90	\$ 6,586.00
Joseph Hansell	Senior Managing Director	\$ 740	28.40	\$ 21,016.00	26.40	\$ 19,536.00	-	\$ -	-	\$ -	1.60	\$ 1,184.00	-	\$ -	0.40	\$ 296.00
Renee Lobb	Managing Director	\$ 680	112.70	\$ 76,636.00	1.10	\$ 748.00	40.80	\$ 27,744.00	-	\$ -	1.90	\$ 1,292.00	67.20	\$ 45,696.00	1.70	\$ 1,156.00
Carla Fairweather	Managing Director	\$ 680	8.20	\$ 5,576.00	8.20	\$ 5,576.00	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -
Claire Packer	Managing Director	\$ 680	204.50	\$ 139,060.00	21.40	\$ 14,552.00	12.70	\$ 8,636.00	0.20	\$ 136.00	105.50	\$ 71,740.00	8.50	\$ 5,780.00	56.20	\$ 38,216.00
Neil Dempster	Senior Director	\$ 620	102.60	\$ 63,612.00	-	\$ -	0.10	\$ 62.00	44.70	\$ 27,714.00	57.80	\$ 35,836.00	-	\$ -	-	\$ -
Jack McGrath	Director	\$ 550	96.20	\$ 52,910.00	96.20	\$ 52,910.00	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -
Jeremy Dalais	Director	\$ 550	3.10	\$ 1,705.00	-	\$ -	2.20	\$ 1,210.00	-	\$ -	-	\$ -	-	\$ -	0.90	\$ 495.00
Marco Bozzetto	Director	\$ 550	0.40	\$ 220.00	-	\$ -	-	\$ -	0.40	\$ 220.00	-	\$ -	-	\$ -	-	\$ -
Julian Gowdie	Senior Consultant II	\$ 500	168.90	\$ 84,450.00	-	\$ -	2.50	\$ 1,250.00	0.20	\$ 100.00	166.20	\$ 83,100.00	-	\$ -	-	\$ -
Brooke Petersen	Consultant II	\$ 405	136.60	\$ 55,323.00	-	\$ -	-	\$ -	42.60	\$ 17,253.00	93.30	\$ 37,786.50	-	\$ -	0.70	\$ 283.50
Nicholas Hawthorne	Consultant I	\$ 375	197.50	\$ 74,062.50	2.10	\$ 787.50	-	\$ -	-	\$ -	195.40	\$ 73,275.00	-	\$ -	-	\$ -
Sam Rayner	Associate II	\$ 350	163.60	\$ 57,260.00	-	\$ -	45.90	\$ 16,065.00	-	\$ -	0.60	\$ 210.00	106.50	\$ 37,275.00	10.60	\$ 3,710.00
Anisa Jaffar	Associate I	\$ 315	16.90	\$ 5,323.50	0.30	\$ 94.50	4.80	\$ 1,512.00	-	\$ -	-	\$ -	-	\$ -	11.80	\$ 3,717.00
Tobias Robinson	Associate I	\$ 315	66.40	\$ 20,916.00	-	\$ -	22.20	\$ 6,993.00	-	\$ -	0.10	\$ 31.50	43.30	\$ 13,639.50	0.80	\$ 252.00
Beau Lyndon	Associate I	\$ 315	99.10	\$ 31,216.50	-	\$ -	2.00	\$ 630.00	1.70	\$ 535.50	57.20	\$ 18,018.00	-	\$ -	38.20	\$ 12,033.00
Isabella Jansen	Associate I	\$ 315	2.50	\$ 787.50	-	\$ -	-	\$ -	1.50	\$ 472.50	1.00	\$ 315.00	-	\$ -	-	\$ -
Various Staff	Treasury	\$ 300	31.20	\$ 9,360.00	-	\$ -	-	\$ -	-	\$ -	-	\$ -	-	\$ -	31.20	\$ 9,360.00
Various Staff	Administration II	\$ 250	14.20	\$ 3,550.00	0.30	\$ 75.00	1.50	\$ 375.00	2.20	\$ 550.00	1.70	\$ 425.00	-	\$ -	8.50	\$ 2,125.00
Various Staff	Administration I	\$ 210	0.80	\$ 168.00	-	\$ -	-	\$ -	0.60	\$ 126.00	-	\$ -	-	\$ -	0.20	\$ 42.00
Total (ex GST)				\$ 911,462.00	\$ 175,679.00	\$ 75,281.00	\$ 48,069.00	\$ 403,725.00		\$ 112,676.50		\$ 96,031.50				
GST			\$	\$ 91,146.20												
Total (Incl GST)			\$	\$ 1,002,608.20												
Total hours			1,781.50	266.30	150.80	98.20	792.80	239.40				234.00				
Avg hourly rate (ex GST)			\$	\$ 511.63	\$ 659.70	\$ 499.21	\$ 489.50	\$ 509.24		\$ 470.66		\$ 410.39				

The below table sets out work performed by other professional services provided by the firm for the period 31 August 2022 to 27 November 2022 for fees incurred and unapproved:

Employee	Position	\$ /hour (excl GST)	Total actual hours	Total \$ (excl GST)	Non Insolvency Services			
					Strategic Comms		Due Diligence	
					Hrs	\$	Hrs	\$
Shahin Shamsabadi	Managing Director	680	1.60	1,088.00	-	\$ -	1.60	\$ 1,088.00
Stuart Carson	Managing Director	680	22.00	14,960.00	16.00	\$ 10,880.00	-	\$ -
Carla Liedtke	Managing Director	680	0.40	272.00	-	\$ -	0.40	\$ 272.00
Leicha Stewart	Consultant II	405	7.00	2,835.00	7.00	\$ 2,835.00	-	\$ -
Calvin Lu	Consultant	375	6.50	2,437.50	6.50	\$ 2,437.50	-	\$ -
Total (ex GST)				\$ 21,592.50		\$ 16,152.50		\$ 1,360.00
GST				\$ 2,159.25				
Total (Incl GST)				\$ 23,751.75				
Total hours			37.50		29.50		2.00	
Avg hourly rate (ex GST)				\$ 575.80		\$ 547.54		\$ 680.00

Schedule C – Resolutions

Resolution 1- Remuneration for the period 31 August 2022 to 27 November 2022

“The remuneration of the Administrators and their staff for time incurred during the period from 31 August 2022 to 27 November 2022 and not yet approved, at a sum equal to the cost of time spent, calculated at the hourly rates as detailed in the Initial Remuneration Notice dated 2 September 2022 provided to creditors, is approved for payment in the amount of \$933,054.50, exclusive of GST, and the Administrators can draw the remuneration from available funds immediately or as funds become available.”

Resolution 2 – Remuneration for the period 28 November 2022 to finalisation of the Administration

“The future remuneration of the Administrators and their staff for time incurred and to be incurred from 28 November 2022 to finalisation of the Administration, at a sum equal to the cost of time spent, calculated at the hourly rates as detailed in the Initial Remuneration Notice dated 2 September 2022 provided to creditors, is approved for payment up to a capped amount of \$700,000, exclusive of GST, and the Administrators can draw the remuneration from available funds as time is incurred on a monthly basis or as funds become available”.

Resolution 3 – Disbursements for the period 10 October 2022 to 27 November 2022

“The disbursements of the Administrators and their staff, for the period from 10 October 2022 to 27 November 2022, calculated at cost detailed in the Initial Remuneration Notice dated 2 September 2022 provided to creditors, is approved for payment in the amount of \$831.80, exclusive of GST, and the Administrators can draw the disbursements from available funds immediately or as funds become available.

Schedule D - Disbursements

Period	Disbursements already incurred	Cost (\$)
	10 October 2022 to 27 November 2022	
Disbursements not charged at cost		\$831.80
Mileage	■ <i>Mileage reimbursement at x cents per kilometre</i>	\$435.00
Mail out	■ <i>20 cents per email sent</i>	\$396.80
Disbursements charged at cost		\$29,149.87
Data Searches	■ <i>Equifax searches at cost</i> ■ <i>Dye & Durham searches at cost</i>	\$348.85
Debit Card	■ <i>Trading costs incurred at cost</i>	\$4,713.54
Mail Out	■ <i>Postage at cost</i>	\$1.45
Meals	■ <i>Meals at cost</i>	\$269.69
Motor Vehicle Costs	■ <i>Parking</i> ■ <i>Gas</i>	\$215.29
Taxi	■ <i>Taxi at cost</i>	\$842.91
Travel Associated Costs	■ <i>Travel agent fees</i> ■ <i>Airfares</i> ■ <i>Visa Application Fees</i> ■ <i>Hotel & Lodging fees at cost</i>	\$22,758.14

Schedule E – Summary of receipts and payments

Receipts		\$
Administration Funding		3,500,000.00
ASIC Levy Refund		204.60
Cash at Bank		100,951.75
Cash on Hand		902.75
Foreign Currency Gain (Loss)		19,862.32
GST Paid		85,197.00
Interest Income		230.90
Plant and Equipment		170,014.48
Pre-appointment Cash at Bank		1,453,541.98
Pre-appointment Debtor		10,651.75
Trading Receipts		776,060.90
Total Receipts		\$ 6,117,618.43
Payments		
Allowances	-	6,844.11
Bank Charges	-	467.13
Cleaning & Waste Management	-	62,137.43
Consulting & Subcontractor Fees	-	144,669.64
Freight	-	1,658.59
Hire & Leasing	-	42,426.59
Insurance	-	258,980.48
Legal Fees	-	189,782.71
Licence Fees	-	2,390.30
Motor Vehicle Expenses	-	578.99
Office Supplies	-	325.50
PAYG Withholding	-	648,246.00
Payroll Tax	-	137,759.10
Property Lease Costs	-	397,296.89
Raw Materials & Quality Control	-	2,649.48
Repairs & Maintenance	-	26,747.48
Sale of Business Expense	-	149,429.22
Security	-	4,121.51
Software & Subscriptions	-	335,818.88
Staff Expense Reimbursements	-	20,063.71
Storage Expense	-	106,036.66
Telephone & Utilities	-	74,999.54
Travel Expense	-	26,058.25
Treasury	-	31,625.00
Valuation Fees	-	24,200.00
Wages & Salaries	-	2,492,813.76
Total Payments	-\$	5,188,126.95
Net Receipts/(Payments)	\$	929,491.48

Schedule F – FTI Consulting schedule of rates effective 1 July 2022

Typical classification	Standard Rates \$/hour	General guide to classifications
Senior Managing Director/Appointee	740	Registered Liquidator and/or Trustee, with specialist skills and extensive experience in all forms of insolvency administrations. Alternatively, has proven leadership experience in business or industry, bringing specialist expertise and knowledge to the administration.
Managing Director	680	Specialist skills brought to the administration. Extensive experience in managing large, complex engagements at a very senior level over many years. Can deputise for the appointee. May also be a Registered Liquidator and/or Trustee. Alternatively, has extensive leadership/senior management experience in business or industry.
Senior Director	620	Extensive experience in managing large, complex engagements at a very senior level over many years. Can deputise for the appointee, where required. May also be a Registered Liquidator and/or Trustee or have experience sufficient to support an application to become registered. Alternatively, has significant senior management experience in business or industry, with specialist skills and/or qualifications.
Director	550	Significant experience across all types of administrations. Strong technical and commercial skills. Has primary conduct of small to large administrations, controlling a team of professionals. Answerable to the appointee, but otherwise responsible for all aspects of the administration. Alternatively, has significant senior management experience in business or industry, with specialist skills and/or qualifications.
Senior Consultant 2	500	Typically an Australian Restructuring Insolvency & Turnaround Association professional member. Well developed technical and commercial skills. Has experience in complex matters and has conduct of small to medium administrations, supervising a small team of professionals. Assists planning and control of medium to larger administrations.
Senior Consultant 1	450	Assists with the planning and control of small to medium-sized administrations. May have the conduct of simpler administrations. Can supervise staff. Has experience performing more difficult tasks on larger administrations.
Consultant 2	405	Typically Institute of Chartered Accountants in Australia qualified chartered accountant (or similar). Required to control the tasks on small administrations and is responsible for assisting with tasks on medium to large-sized administrations.
Consultant 1	375	Qualified accountant with several years' experience. Required to assist with day-to-day tasks under the supervision of senior staff.
Associate 2	350	Typically a qualified accountant. Required to assist with day-to-day tasks under the supervision of senior staff.
Associate 1	315	Typically a university graduate. Required to assist with day-to-day tasks under the supervision of senior staff.
Treasury	300	Typically, qualified accountant and/or bookkeeper with at least 4 years' experience working in a treasury function in a professional services setting. Undertakes treasury activities and is skilled in bookkeeping, funds handling, banking, payroll, tax compliance, accounts receivable and accounts payable. May be responsible for the management of discreet, medium-complexity accounts services relating to business trade on activities.
Junior Associate	250	Undergraduate in the latter stage of their university degree.

Typical classification	Standard Rates \$/hour	General guide to classifications
Administration 2	250	Well developed administrative skills with significant experience supporting professional staff, including superior knowledge of software packages, personal assistance work and/or office management. May also have appropriate bookkeeping, accounting support services or similar skills.
Administration 1	210	Has appropriate skills and experience to support professional staff in an administrative capacity. May also have appropriate bookkeeping, accounting support services or similar skills.
Junior Accountant	210	Undergraduate in the early stage of their university degree.

The FTI Consulting Standard Rates above apply to the Corporate Finance & Restructuring practice and are subject to periodical review.

18. Appendix 9 – Information about creditors' trusts

18.1. Introduction on creditors' trusts

- The use of a creditors' trust involves potential risks and disadvantages when compared with the Company remaining subject to a DOCA. We explain those potential risks and disadvantages below.
- We also provide the additional information required by ASIC in accordance with Regulatory Guide 82 entitled "External Administrations: Deeds of company arrangement involving a creditors' trust". A copy of the regulatory guide is available from the ASIC website at <https://download.asic.gov.au/media/4966380/rg82-published-17-december-2018.pdf> or from FTI Consulting on request.

18.2. Risks and disadvantages

The Trustees will have a limited role under the Creditors' Trust. Their role is to:

- Adjudicate and make a final determination on claims; and
- Distribute the Creditors' Trust Fund to priority and ordinary creditors.

In those circumstances, and for the reasons set out below, the Administrators do not consider any potential risks associated with the proposed Creditors' Trust will have a material adverse effect on creditors in this case.

The risks of a Creditors' Trust compared to a company remaining subject to a DOCA can include:

- Creditors' claims against a company may be extinguished before the amount available for distribution to creditors has been ascertained. In this case, however, the actual amount of the Creditors' Trust Fund is ascertained at USD \$38m.
- Creditors' claims against a company may be extinguished before all or some of the trust funds are received. In this case, funds of USD \$38m will be received by the Trustees prior to extinguishment of the creditors' claims against the Company. In addition, upon extinguishment of the claims against the Company, new rights are created, as beneficiaries under the Creditors' Trust.
- The trustees may not have any right to terminate or vary the DOCA should the company not perform its contractual obligations under the DOCA. In this case, all contractual obligations of the Company under the DOCA will be fulfilled prior to the creation of the Creditors' Trust.
- Creditors forgo their statutory rights under the Act to seek the assistance of the Court, including the right to seek orders to terminate or vary the DOCA and to appeal against the adjudication of claims. Creditors do however have rights as beneficiaries under the Trusts Act and as outlined in the DOCA proposal, the Trustees will have the power to convene a meeting of beneficiaries to vary the Trust.

- Creditors may agree to the DOCA proposal without being aware of the implications of a creditors' trust. In this case, this report provides disclosure of material information about the DOCA and the Creditors' Trust.
- The additional complexity of the legal and documentary arrangements needed to support the use of a creditors' trust under a DOCA. This report provides disclosure of the legal and documentary information about the DOCA and the Creditors' Trust.
- The trustees' identity, skills, remuneration and insurance arrangements may not be commensurate with those of a deed administrator; these factors are addressed in the table below. For the reasons set out in the table, we do not believe the Trustees' identity, skills, remuneration and insurance arrangements pose a risk to creditors.
- Non-uniformity of the State and Territory Trustee Acts governing trusts and trustees; the Creditors' Trust will be governed by the Trusts Act. We do not believe the application of the act poses any risk for creditors.
- Differences in the ways trustees and registered liquidators are regulated and supervised, which may cause potential difficulties for ASIC and creditors to monitor and enforce proper conduct of the trustee. In a DOCA, creditors have the right to seek ASIC or court assistance under the Act. In a creditors' trust, the creditors (as beneficiaries) would not have those statutory rights and instead would have rights under the trust deed, in law or in equity. As the proposed Trustees are registered liquidators, creditors will still be able to seek assistance from ASIC and the supervisory jurisdiction the Court has over trustees. Accordingly, we do not believe this difference creates a material risk for creditors.

Item	Detail
Reasons for the Creditors' Trust	The Creditors' Trust is required to: 1. Expedite the return of the Company to trading without the stigma of the administration process. Placement of the Company into administration has potentially impacted trading performance. The Proponent has structured the transaction via a Creditors' Trust to minimise any further impact to trading performance; 2. Enable control of the Company to pass to its new governance structure; and 3. Provide the Company the best prospect of negotiating a return to usual trading terms with suppliers.
Key events	If creditors vote in favour of the DOCA proposal at the Second Meeting: 1. Within 15 business days of the second meeting of creditors, a DOCA and a trust deed which conform materially to the DOCA proposal, will be executed; 2. Relief from section 606 of the Act to be obtained from ASIC for the acquisition of 100% of the shares of the Company; 3. The Deed Administrators will obtain the leave of the Court pursuant to section 444GA of the Act to transfer the shares in the Company to the Proponent (or its nominee); 4. The Proponent will make payment of USD \$38M to establish the Deed Fund;

Item	Detail
	5. The DOCA will be effectuated, the Creditors' Trust will be settled, and the Deed Administrators will become the Trustees of the Creditors' Trust; 6. The Deed Fund will be transferred to the Trustees of the Creditors' Trust and will become the Creditors' Trust Fund. The Trustees will hold the Creditors' Trust Fund in accordance with the terms of the trust deed; 7. Following Completion of the DOCA, the Company will no longer be subject to external administration and will not be required to use the notification 'Subject to Deed of Company Arrangement' on public documents; 8. Upon Completion of the DOCA and the creation of the Creditors' Trust, the claims of all participating creditors who are bound by the DOCA will be converted from a claim against the Company and a right to prove as creditor in the DOCA, to the right to participate as a beneficiary of the Creditors' Trust. The effect being all creditors' rights against the Company are released and creditors' only recourse are as a passive beneficiary of the Creditors' Trust; 9. As soon as practicable, dividends will be paid to admitted priority and ordinary creditors, unless any creditor appeals the adjudication of its submitted POD. Any dividend payment may be delayed if an appeal is commenced against an adjudication; and 10. On payment of the final dividend, the Creditors' Trust will then be dissolved.
Return to creditors	The forecast return to creditors under the Creditors' Trust is discussed in Section 8 of this report.
Trustee particulars	The Administrators will be the Trustees of the Creditors' Trust. The Administrators are registered liquidators and have the relevant skills and experience to perform the required duties and functions as trustees of Creditors' Trusts. The Administrators consider there is no conflict of interest in them acting as Trustees and they have adequate civil liability insurance (including professional indemnity and fidelity) which will cover conduct by them in their capacity as Trustees of the Creditors' Trust. ASIC has certain supervisory powers (including the power to direct a registered liquidator to do certain things and disciplinary powers) in relation to the conduct of the Trustees. The Administrators will require any replacement trustee (if required) to also be a registered liquidator.
Remuneration and costs	The Creditors' Trust will provide for payment of the following from Creditors' Trust Funds in priority to any distribution to creditors: 1. Any approved remuneration owing to the Deed Administrators and the Administrators which remains unpaid as at the date of the DOCA being terminated and the Creditors' Trust coming into effect. 2. Remuneration and costs due to the Trustees. The Trustees' remuneration will be based on the hours spent by the Trustees, calculated in accordance with the FTI Consulting Standard Rates effective 1 July 2022, which is enclosed as Schedule 4 of the Remuneration Approval Report found in Appendix 8 of this report. We have estimated the remuneration and costs of the Trustees to be between \$300,000 and \$400,000. This estimate assumes the adjudication of creditor claims does not require

Item	Detail
	litigation or protracted negotiations and the distributions from the Creditors' Trust Fund occur in the timeframes proposed. It is not possible to estimate the quantum of Trustee fees which may otherwise be incurred. We do not consider additional professional fees will be incurred as a result of the use of the Creditors' Trust, compared with the position if the Company remains subject to DOCA. In a DOCA, the Deed Administrators' remuneration must be agreed by the COI or approved by resolution of creditors or by the Court. A creditor (among other parties) may apply to the Court to review the remuneration. In a Creditors' Trust, there is no equivalent statutory procedure in the Trusts Act pursuant to which beneficiaries, the Committee of Creditors or the Court must agree or approve the Trustees' remuneration. A beneficiary can seek to review or challenge the Trustees' remuneration by application to the Supreme Court of Queensland, including pursuant to Part 54 of the Uniform Civil Procedure Rules 2005.
Indemnities	The Creditors' Trust will provide the Trustees are entitled to be indemnified out of the Creditors' Trust Fund for all actions, suits, proceedings, accounts, claims and demands arising out of or relating to the Administration, DOCA or Creditors' Trust which may be commenced, incurred by or made on the Trustees by any person and against all costs, charges and expenses incurred by the Trustees in respect of them, provided the Trustees shall not be entitled to an indemnity in respect of any liabilities or demands to the extent the indemnification contravenes the Act or the Trusts Act or if the Trustees, or any partner, employee, authorised agent or delegate of the Trustees have acted negligently, in breach of fiduciary duty or in breach of trust. Accordingly, fees and costs of the Trustees, and costs associated with any legal actions which are required to be defended or taken will be a cost of the Creditors' Trust Fund. These fees and costs may diminish the return to creditors. Given the Trustees' limited role (being to adjudicate claims and distribute the Creditors' Trust Fund) we do not envisage any material legal actions. The indemnity is continuing and takes effect from the commencement date of the Creditors' Trust. No other indemnity has been or is to be provided to the Trustees by any related or third party.
Powers	The Trustees will have all the powers of a natural person or a corporation in connection with the exercise of their rights and compliance with their obligations under the Creditors' Trust. The Trustees may exercise their rights and comply with their obligations under the Creditors' Trust in any manner they think fit. A deed administrator is governed by the Act whilst a trustee is governed by the Trust Deed and the Trusts Act. The proposed role of the Trustees here is limited to calling for and adjudicating on claims and distributing the Creditors' Trust Fund. The Administrators will require the Trust Deed to incorporate the same powers which would usually apply to a Deed Administrator. There are unlikely to be any deficiencies in the power of the Trustees to perform their limited functions, which may lead to applications to Court.
Claims of priority and ordinary creditors	The claims of priority and ordinary creditors will be dealt with in accordance with the terms of the DOCA and the Creditors' Trust. The values of the claims are to be determined by the Trustees. The Trustees will have unrestricted and free access to all the books and records of the Company necessary to determine claims. The creditors' priorities (as beneficiaries of the trust) will follow the priorities set out in section 556 of the Act, subject to the terms of the DOCA.

Item	Detail
	Upon creation of the Creditors' Trust all participating creditors' claims which were bound by the DOCA will be converted from claims against the Company and a right to prove as creditors in the DOCA to the right to participate as a beneficiary of the Creditors' Trust. The effect of this is all creditors' rights against the Company are extinguished and creditors' only recourse is as a passive beneficiary of the trust fund.
Other creditor / beneficiary differences	The Creditors' Trust will provide some differences for creditors compared to a DOCA, which include: 1. Any appeal to the Trustees' decision to reject a claim must be made within 14 days of the Trustees giving notice of rejection, or such longer period as the Trustees permit. In a liquidation, the Act (Regulation 5.6.54(1)(b)(i)) stipulates the appeal must be made within 14 days of the liquidator giving notice of rejection, or such longer period as the court permits. Beneficiaries of a creditors' trust do not have statutory powers to call creditor meetings like they do in a DOCA. However, the Trust Deed will stipulate the requirements of the Act and Regulations relating to creditors' meetings, and the ability of the creditors to require a meeting to be held, will also apply to the Creditors' Trust. 2. In a DOCA, creditors have rights to call a meeting of creditors, or apply to the court to vary or terminate the DOCA. In a creditors' trust, creditors do not have this right. However, the Trust Deed will stipulate the requirements of the Act and Regulations relating to creditors' meetings, and the ability of the creditors to require a meeting to be held, will also apply to the Creditors' Trust. 3. Beneficiaries of the Creditors' Trust will have the same ability to report the conduct of the Trustees to ASIC as they would in a DOCA, as the Trustees are registered liquidators. We do not consider these differences will have a material adverse effect on creditors.
FEG	Current and former employees should note effectuation of the DOCA will prohibit their ability to access the FEG scheme for any outstanding entitlements, in particular leave and retrenchment, as the FEG scheme is only available if a company goes into liquidation. Through the DOCA and Creditors' Trust, a return is anticipated for outstanding superannuation, which is not covered by the FEG scheme. Continuing employees will retain their leave and retrenchment entitlements with the Company through the DOCA and Creditors' Trust.
Compliance opinion	The key area of third-party risk is in relation to Hough's obligations to transfer cash funding into the Creditors Trust. We note the Hough DOCA will not be effectuated until these funds have been received.
Solvency statement	The Deed Administrators have formed the opinion the Company will be solvent at the date of effectuation of the DOCA, if the DOCA is wholly effectuated on the terms proposed, as all claims of creditors will be extinguished against the Company and will be transferred to the Creditors' Trust. Proponent will provide the necessary financial support to enable debts to be paid as and when they fall due and we consider that sufficient resources are available for ongoing viable trading.
Tax (company / trust)	The creation of a creditors' trust creates the potential for some taxation issues to arise, as compared to an ordinary DOCA proposal. These may mean the funds available to creditors are reduced in order to account for any taxation liabilities associated with the

Item	Detail
	administration of the distribution process under a trust structure. The Trustees will ensure the DOCA provides for the costs of any forecast taxation liability to be paid into the Deed Fund. We do not expect there will be any material changes to the funds available for distribution as a result of the Creditors' Trust structure, or any taxation, capital gains or stamp duty liabilities will arise.
Tax (creditor / beneficiary)	There may be some implications for admitted creditors as a result of receiving a distribution from a trust in respect of a bad or doubtful debt, rather than from the debtor company being administered under a DOCA. Creditors are advised to seek their own tax advice as to their particular tax position. The Administrators are unable to provide advice on this issue.
Other	We have not identified any other material aspects or implications of the Creditors' Trust.

Attachment 4 Originating Process

NOTICE OF FILING AND HEARING

Filing and Hearing Details

Document Lodged:	Originating process (Rule 2.2): Federal Court (Corporations) Rules 2000 form 2
Court of Filing:	FEDERAL COURT OF AUSTRALIA (FCA)
Date of Lodgment:	23/01/2023 2:35:09 PM AEDT
Date Accepted for Filing:	23/01/2023 2:59:08 PM AEDT
File Number:	NSD54/2023
File Title:	IN THE MATTER OF ELLUME LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT) (ACN 141 767 660)
Registry:	NEW SOUTH WALES REGISTRY - FEDERAL COURT OF AUSTRALIA
Reason for Listing:	To Be Advised
Time and date for hearing:	To Be Advised
Place:	To Be Advised



A handwritten signature in blue ink that reads "Sia Lagos".

Registrar

Important Information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Court and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

The date of the filing of the document is determined pursuant to the Court's Rules.



Form 2 Originating process

(rules 2.2 and 15A.3)

Federal Court of Australia

District Registry: New South Wales

Division: Commercial and Corporations List

IN THE MATTER OF ELLUME LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 141 767 660

JOHN RICHARD PARK AND JOANNE EMILY DUNN IN THEIR CAPACITIES AS
JOINT AND SEVERAL DEED ADMINISTRATORS OF ELLUME LIMITED (SUBJECT
TO DEED OF COMPANY ARRANGEMENT)

First Plaintiffs / First Applicants

ELLUME LIMITED (SUBJECT TO DEED OF COMPANY ARRANGEMENT) ACN 141
767 660

Second Plaintiff / Second Applicant

A. DETAILS OF APPLICATION

This application is made under sections 444GA and 447A of the *Corporations Act 2001* (Cth) (**Corporations Act**) and section 90-15 of the *Insolvency Practice Schedule (Corporations)* set out in Schedule 2 of the *Corporations Act (IPS)* for orders, among other things, that the First Plaintiffs, John Richard Park and Joanne Emily Dunn, in their capacities as joint and several administrators (**Deed Administrators**) of the Second Plaintiff, Ellume Limited (Subject to Deed of Company Arrangement) (ACN 141 767 660) (**Company**), be granted leave to transfer all of the existing shares in the Company to, Hough Consolidated Pty Ltd (ACN 657 651 280) (**Hough**), or its nominees.

On the facts stated in the supporting affidavit of John Richard Park to be sworn on 20 January 2023, the Plaintiffs seek the following orders:

Procedural orders

1. An order that prayers 2-7 of this Originating Process be returnable *instanter*.
2. An order, pursuant to section 447A of the *Corporations Act 2001* (Cth) (**Corporations Act**) and section 90-15 of the *Insolvency Practice Schedule (Corporations)* set out in Schedule 2 of the *Corporations Act (IPS)*, that the First Plaintiffs (**Deed Administrators**) would be justified in providing an Explanatory Memorandum (**Explanatory Statement**) for distribution to each of the creditors and members of the Second Plaintiff, Ellume Limited (Subject to Deed of Company Arrangement) (ACN 141 767 660) (**Company**).
3. An order that the Plaintiffs each give notice to each of the creditors and members of the Company of:
 - (a) the Originating Process;
 - (b) the Explanatory Statement;
 - (c) the affidavit of John Richard Park to be sworn on 20 January 2023;
 - (d) any supplementary affidavits filed by the Plaintiffs in this proceeding;

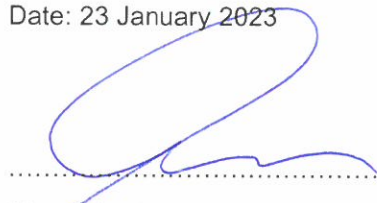
- (e) the orders made by the Court,
within 3 business days of the date of the orders, by the following methods:
 - (f) where the Deed Administrators have an email address for a creditor or member (including from the books and records maintained by the Company), by notifying each such creditor and member, via email;
 - (g) where the Deed Administrators do not have an email address for a creditor or member (or have received notification of non-delivery of a notice sent by email in accordance with paragraph (f) above) but the Deed Administrators have a postal address for that creditor or member (including from the books and records maintained by the Company), by sending the materials to each such creditor or member, via post; and
 - (h) by placing scanned, sealed copies on the website maintained by the Deed Administrators at <https://www.fticonsulting.com/creditors/ellume-limited>.
- 4. An order that any interested person wishing to appear at the hearing of this application is to file and serve on the Plaintiffs and the Australian Securities and Investments Commission a Notice of Appearance in the prescribed form and indicating the grounds of opposition by 4:00pm on 13 February 2023.
- 5. An order that any interested person who is entitled to oppose this application pursuant to section 444GA(2) of the Corporations Act may apply to be joined as a respondent to this application by no later than 4:00pm on 13 February 2023.
- 6. An order that the Plaintiffs file any further evidence upon which they intend to rely on the application, including any supplementary affidavits deposing as to any correspondence or communications received by the Deed Administrators from any interested person who is entitled to oppose this application pursuant to section 444GA(2) of the Corporations Act and any responsive correspondence or communication from the Deed Administrators, by 4:00pm on 15 February 2023.
- 7. This application be listed for hearing on 17 February 2023 at 10:00am or such other date as the Court considers appropriate.

Substantive orders

- 8. An order, pursuant to section 444GA(1)(b) of the Corporations Act, that the Deed Administrators be granted leave to transfer all of the existing shares in the capital of the Company (**Shares**) from the members (as defined in the Corporations Act) of the Company to Hough or its nominee in accordance with clause 6.3 of the deed of company arrangement dated 22 December 2022, entered into by the Deed Administrators, the Company and Hough (**Deed**).
- 9. An order pursuant to section 447A(1) of the Corporations Act and section 90-15(1) of the IPS that any of the Deed Administrators may, jointly or severally, in their capacity as Deed Administrators:
 - (a) execute share transfer forms and any other documents ancillary or incidental to effecting the transfer of the Shares referred to in Order 0; and
 - (b) enter or procure the entry of the name of Hough or its nominee into the share register of the Company in respect of all Shares transferred to Hough or its nominee in accordance with Order 0.
- 10. An order that the Plaintiffs' costs of and incidental to this application be costs and expenses in the deed administration of the Company.
- 11. An order that the Court's orders be entered forthwith.
- 12. Such further or other orders or directions as the Court considers appropriate.



Date: 23 January 2023


Signed by Ariel Borland
Solicitor for the Plaintiffs

B. NOTICE TO DEFENDANT(S) (IF ANY)

N/A

C. FILING

Date of filing:

.....
Registrar

This originating process is filed by Mills Oakley, solicitors for the Plaintiff.

D. SERVICE

The Plaintiffs' address for service is:

Attention: Dean Brayley
C/- Mills Oakley
Level 7, 151 Clarence Street, Sydney NSW 2000
Email: dbrayley@millsoakley.com.au

It is intended that a copy of this interlocutory process will be provided to each of the persons listed below:

Australian Securities and Investments Commission

Creditors of the Company

Members of the Company

Attachment 5 Procedural Orders



Federal Court of Australia

District Registry: New South Wales

Division: General

No: NSD54/2023

**JOHN RICHARD PARK AND JOANNE EMILY DUNN IN THEIR CAPACITIES AS
JOINT AND SEVERAL DEED ADMINISTRATORS OF ELLUME LIMITED** and
another named in the schedule
Plaintiff

ORDER

JUDGE: JUSTICE MARKOVIC

DATE OF ORDER: 31 January 2023

WHERE MADE: Sydney

THE COURT ORDERS THAT:

1. Pursuant to s 447A of the *Corporations Act 2001* (Cth) and s 90-15 of the *Insolvency Practice Schedule (Corporations)* set out in Schedule 2 of the Corporations Act (**IPS**), that the first plaintiffs (**Deed Administrators**) would be justified in providing the explanatory statement annexed to the second affidavit of John Richard Park sworn 30 January 2023 (as amended to reflect these Orders) for distribution to each of the creditors and members of the second plaintiff, Ellume Limited (Subject to Deed of Company Arrangement) (ACN 141 767 660) (**Company**).
2. That the plaintiffs give notice to each of the creditors and members of the Company of:
 - (a) the originating process;
 - (b) the explanatory statement;
 - (c) the affidavits of John Richard Park sworn on 20 January 2023 and 30 January 2023; and
 - (d) the Orders made by the Court,within three business days of the date of these Orders, by the following methods:
 - (e) where the Deed Administrators have an email address for a creditor or member (including from the books and records maintained by the Company), by notifying each such creditor and member, via email attaching the explanatory statement and stating that the originating process, affidavits, annexures and



- orders are available at the website maintained by the Deed Administrators at <https://www.fticonsulting.com/creditors/ellume-limited>, or upon request;
- (f) where the Deed Administrators do not have an email address for a creditor or member (or have received notification of non-delivery of a notice sent by email in accordance with sub-paragraph (e) above) but the Deed Administrators have a postal address for that creditor or member (including from the books and records maintained by the Company), by sending the a letter to each such creditor or member, via post, enclosing a copy of the explanatory statement and stating that the originating process, affidavits, annexures and orders are available at the website maintained by the Deed Administrators at <https://www.fticonsulting.com/creditors/ellume-limited>, or upon request; and
- (g) by placing scanned, sealed copies of the materials listed in sub-paragraphs (a)-(d) on the website maintained by the Deed Administrators at <https://www.fticonsulting.com/creditors/ellume-limited>.
3. Any interested person wishing to appear at the hearing of this application is to file and serve on the plaintiffs and the Australian Securities and Investments Commission a notice of appearance in the prescribed form and indicating the grounds of opposition by 4.00 pm on 13 February 2023.
 4. Any interested person who is entitled to oppose this application pursuant to s 444GA(2) of the Corporations Act may apply to be joined as a respondent to this application by no later than 4.00 pm on 13 February 2023.
 5. The plaintiffs are to file any further evidence upon which they intend to rely on the application, including any supplementary affidavits deposing as to any correspondence or communications received by the Deed Administrators and written submissions, from any interested person who is entitled to oppose this application pursuant to s 444GA(2) of the Corporations Act and any responsive correspondence or communication from the Deed Administrators and their submissions, not exceeding ten pages in length, by 4.00 pm on 17 February 2023.
 6. Subject to Order 7 below, this application be listed for hearing before the Commercial and Corporations Duty Judge on 22 February 2023 at 10.15 am.
 7. If it is anticipated that the hearing will take more than half a day the plaintiffs are to approach the Chambers of the Commercial and Corporations Duty Judge for the



purposes of determining whether there will need to be any change to the hearing date or, subject to the attitude of any interested persons, to list the proceeding for case management hearing.

Date that entry is stamped: 31 January 2023

Sia Lagos
Registrar



Schedule

No: NSD54/2023

Federal Court of Australia

District Registry: New South Wales

Division: General

Second Plaintiff

ELLUME LIMITED (SUBJECT TO DEED OF COMPANY
ARRANGEMENT) (ACN 141 767 660)