

23 August 2019

Ms Penelope Reid  
Advisor, Listings Compliance (Perth)  
ASX Limited  
Level 40  
152 St Georges Terrace  
PERTH WA 6000

Dear Ms Reid

**Response to ASX Query in relation to disclosures to market**

Nuheara Limited ([ASX: NUH](#)) ("**Nuheara**") is pleased to respond as follows to the questions set out in ASX's letter to Nuheara dated 15 August 2019.

1. With reference to the 28 November 2018 announcement entitled "IQbuds BOOST™ achieves breakthrough world first as a prescribed hearable through government contract":

*1.1. Which hearing category was NUH informed its IQbuds BOOST™ ("IQbuds") was selected for? In answering this question please refer to who informed NUH, the date of the advice, the relevant tender document and "Lot number" where applicable.*

The Company did not lodge a tender application and had no direct relationship with NHS.

As previously outlined to ASX, and as described in the Company's announcements, the Company's tender came through its appointed UK distributor, Puretone Ltd ("Puretone"). The Company understands that the application included a number of products that Puretone were the supplier for and able to provide under a successful tender. The only one of those products that was related to the Company were the IQbuds.

As such, the Company did not have Lot numbers or copies of the tender application or final contract.

*1.2. What information did NUH receive from Puretone ("Puretone") regarding the classification of IQbuds?*

The Company did not receive any direct confirmation as to the classification of the IQbuds. The Company was made aware that Puretone had been a successful tender applicant and that IQbuds were included on the list of prescriptible products.

Prior to the release of the announcement on 28 November 2018, given the Company was not the contractor, the Company sought approval of the announcement from both Puretone and the NHS to ensure it represented the proper facts.

*1.3. What was the basis for the anticipated value of purchases included in the announcement ("Anticipated Value")? Please include specific references to source documents and "Lot number" allocations.*

The figures referred to in the announcement came from the original tender advice. The quoted figure related to all "hearing device solutions" expected to be purchased by NHS not just IQbuds.

The Company did not state in its announcement on 28 November 2018 any anticipated value of purchases to the Company at all.

1.4. *Please confirm the nature of the agreement between NUH and Puretone ("Puretone Agreement")*

Puretone Ltd is a third-party distributor under contract with NUH formalised by a Distribution Agreement entered into between the parties on or around November 2017.

1.5. *With respect to the Puretone Agreement:*

1.5.1. *Does it stipulate any guaranteed revenues or minimum product sales?*

No

1.5.2. *Does it contain and/or guarantee minimum orders for NUH's products? If so, please provide details.*

No

1.5.3. *What is the current status of the Puretone Agreement?*

Puretone remains a distributor for the Company's products in the UK. However, the Company and Puretone are in the process of completing a revised contract that encompasses territories rather than specific customers.

2. With reference to the 25 March 2019 announcement entitled "Update to government contract – re-categorisation of hearables":

2.1. *Does NUH consider that the information contained within the announcement is information that a reasonable person would expect to have a material effect on the price or value of NUH's securities?*

No

2.2. *If the answer to question 2.1 is "no", please advise the basis for that view.*

The contract arising out of the tender award to Puretone was scheduled to commence in April 2019. The contract did not guarantee any level of orders for the Company's products and did not compel the NHS to order or pay the Company for any quantity of products.

2.3. *When was NUH made aware of the re-categorisation of the IQbuds to a "hearable under the niche innovation category" ("re-categorisation")?*

21 March 2019 (UK time). However, meetings seeking further clarification were conducted on 22 March 2019 (UK time).

2.4. *Please outline what NUH was told and by whom, regarding the re-categorisation prior to the 25 March 2019 Announcement. In your response, please comment specifically on whether advice was received regarding any change to the Anticipated Value and any change to the relevant "Lot number".*

In responding to this question, ASX needs to understand that at no point did the Company make any announcement at any time regarding the value of the award to the Company as it was not the contracting party and was not guaranteed any revenues or orders under the tender award to Puretone.

Thursday, 21 March 2019 (UK time) – Nuheara executives met with Puretone executives at their offices in the UK. At this meeting, Puretone advised Nuheara that NHS had removed IQbuds from the Puretone contract. At this point Nuheara was also advised that a process of re-categorisation had commenced and was expected to be complete by May 2019, as per the detail of the release on 25 March 2019 which was the next available trading day (Australian time) post meetings held on 22 March 2019 (UK time). For clarity on the matter, Nuheara requested that Puretone arrange an immediate meeting with NHS to confirm specific details.

Friday, 22 March 2019 (UK time) – Nuheara and Puretone representatives met with NHS. NHS confirmed the removal of IQbuds from the Puretone contract and the process of re-categorisation under a “Niche Innovation” category. This was noted as a process change within NHS, with a projected May 2019 conclusion (still ongoing), that could see IQbuds added back into the same contract.

As outlined above, at no point was NUH advised of any contract values, and as a result did not announce any contract values for the Company.

*2.5. Given that the announcement refers to a re-categorisation as a hearable under the “niche innovation category”, please comment on whether NUH was referencing the “Niche Hearing Aids Lot No: 5” in 2018/S 140-319871 (as outlined in Background Fact B), noting that 2018/S 140-319871 states there is an estimated value of that item of 10,000,000.00 GBP excluding VAT. If not please clarify the source document, referencing the “niche innovation category” and provide ASX with a copy.*

No. Hearables are not hearing aids. We were advised that there would be a re-categorisation process under a category that could incorporate hearables – “Niche Innovation”. References to Lot Numbers in relation to the re-categorisation were not provided nor are relevant.

*2.6. In the 28 November 2018 Announcement, it appears that NUH may have used the figure of 138,000,000 GBP from the 2018/S 140-3198/71 for the anticipated value for purchases made by NHS for hearing device solutions to support “mild to moderate hearing”. Please clarify why NUH did not update the market with respect to the anticipated value for purchases to be made by NHS following the re-categorisation.*

The 138,000,000 GBP figure come from the anticipated value for purchases as specified in the tender advice. No anticipated value for purchases in the niche innovation category was provided by NHS nor discussed in meetings.

*2.7. Please confirm that the announcement contained all material information known to NUH.*

Yes, we confirm that the announcement contained all material information known to NUH.

3. *Was NUH ever told that IQbuds would be assigned to a particular “Lot” category (for example, as outlined in 2018/S 140-319871)? Please provide details.*

No

4. *Has NUH ever been told that its IQbuds have been removed from an NHS Supply award, framework agreement, contract or the like that it was originally told that it was allocated to? Please provide details.*

Yes. Refer details provided above and per the 25 March 2019 announcement.

5. *Please confirm that NUH is in compliance with the listing rules and in particular listing rule 3.1.*

Yes, we confirm that Nuheara is in compliance with the listing rules and in particular listing rule 3.1. At all times during the notification of the award, the duration of the standstill period and the re-classification of the Company's products subsequently announced on 25 March 2019, the Company has been very cognisant of its obligations under the Listing Rules and took all steps to ensure that it remained in compliance with Listing Rule 3.1.

6. *Please confirm that NUH's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of NUH with delegated authority from the board to respond to ASX on disclosure matters.*

Yes, we confirm that NUH's responses to the questions above have been authorised and approved.

Yours sincerely



**SUSAN HUNTER**  
Company Secretary

15 August 2019

Reference: ODIN04992

Ms Susan Hunter and Ms Jean-Marie Rudd  
Joint Company Secretaries  
Nuheara Limited  
190 Aberdeen Street  
Northbridge Western Australia 6003

By email: [shunter@huntercorporate.com.au](mailto:shunter@huntercorporate.com.au) and [jean-marie.rudd@nuheara.com](mailto:jean-marie.rudd@nuheara.com)

Dear Ms Hunter and Ms Rudd

**Nuheara Limited ('NUH'): Query in relation to disclosures to market**

ASX refers to the following:

- A. The document entitled 'United Kingdom-Normanton: Hearing aids - 2017/S 121-244497', available to view at <https://ted.europa.eu/udl?uri=TED:NOTICE:244497-2017:TEXT:EN:HTML> and released on 28 June 2017 which states in section VI that, 'The purpose of this notice is to draw attention to a procurement that NHS Supply Chain intends to commence during the subsequent 12 months. The invitation to tender will be the subject of a separate notice and it is that notice to which potential suppliers will need to respond at the appropriate time.' It includes, inter alia, the following information:
- (a) That the estimated total value excluding VAT is 270 000 000.00 GBP.
  - (b) That the procurement is divided into lots:
    - (1) 'Hearing Aids for Adults with Mild to Moderate Hearing Loss (wireless) Lot No: 1'
    - (2) 'Hearing Aids for Adults with Mild to Moderate Hearing Loss (NON WIRELESS) Lot No: 2'
    - (3) 'Hearing Aids for Adults for Severe To Profound Hearing Loss (wireless) Lot No: 3'
    - (4) 'Hearing Aids for Adults for Severe To Profound Hearing Loss (non wireless) Lot No: 4'
    - (5) 'Paediatric Hearing Aids (wireless) Lot No: 5'
    - (6) 'Paediatric Hearing Aids (non wireless) Lot No: 6'
    - (7) 'Niche & Innovation Lot No: 7'
    - (8) 'Audiology Accessories Lot No: 8'
    - (9) 'Custom products Lot No: 9'
- ('2017/S 121-244497')
- B. The tender document entitled 'United Kingdom-London: Hearing aids - 2018/S 140-319871', available to view at <https://ted.europa.eu/udl?uri=TED:NOTICE:319871-2018:TEXT:EN:HTML&tabId=1> and released on 24 July 2018, which includes, inter alia, the following information:
- (a) That the estimated total value excluding VAT is 270 000 000.00 GBP.
  - (b) That the procurement is divided into lots:
    - (1) 'Adult Moderate Power Hearing Aids Lot No: 1' – Estimated value excluding VAT: 138 000 000.00 GBP;

- (2) 'Adult High/Super Power Hearing Aids Lot No: 2' – Estimated value excluding VAT: 48 800 000.00 GBP;
  - (3) 'Adult Multiple Power Hearing Aids Lot No: 3' – Estimated value excluding VAT: 5 200 000.00 GBP;
  - (4) 'Paediatric Specific Hearing Aids Lot No: 4' – Estimated value excluding VAT: 48 000 000.00 GBP;
  - (5) 'Niche Hearing Aids Lot No: 5' – Estimated value excluding VAT: 10 000 000.00 GBP;
  - (6) 'Accessories and Parts for Hearing Aids Lot No: 6' – Estimated value excluding VAT: 16 000 000.00 GBP; and
  - (7) 'Custom Ear Moulds Lot No: 7' – Estimated value excluding VAT: 4 000 000.00 GBP.
- ('2018/S 140-319871')

- C. NUH's announcement entitled 'IQbuds BOOST™ achieves breakthrough world first as a prescribed hearable through government contract' released on the ASX Market Announcements Platform ("MAP") on 28 November 2018 (and marked sensitive) in which NUH disclosed:

*Nuheara Limited...is pleased to announce that IQbuds BOOST™ has been selected by the United Kingdom's (UK) National Health Service (NHS) through a formal Tender process, to provide hearing solutions to adults and children with mild to moderate hearing loss.*

*In a world first, IQbuds BOOST™ was selected as a smart hearing bud (Hearable) to be prescribed alongside traditional hearing aids. Commencing in April 2019, the contract will be for an initial two year period with provision for a further two-year extension. The anticipated value for purchases made by NHS for hearing device solutions to support this mild to moderate hearing category is circa £34.5m in the first 12 months and £138m for the full term of 48 months (if extended). The total contract value of devices to support all forms of hearing loss is circa £270m.*

...

*The tender application was submitted in partnership with Nuheara's UK based hearing healthcare distributor, Puretone Ltd, which will supply and support IQbuds BOOST™ to NHS.*

(the '28 November 2018 Announcement').

- D. NUH's announcement entitled 'Update to government contract – re-categorisation of hearables' released on MAP on 25 March 2019 (and marked non sensitive) in which NUH disclosed:

*Nuheara Limited...has been advised of a revised contractual process for IQBuds BOOST™ by the Company's UK distributor Puretone, in their contract with the England's National Health Service (NHS).*

*Following the announcement in November 2018 of a successful tender process, the Company has been advised that IQBuds BOOST™ has been removed as a hearing aid/accessory and will now be recategorised as a hearable under the niche innovation category.*

*Commenting on this decision, Nuheara CEO Justin Miller said: "Having met with our distributor and NHS, we understand the regulatory direction of the NHS for category separation of traditional hearing aids and hearables. This is something that the Scottish NHS has also recently implemented.*

*"We have been advised this new categorisation process will commence in May 2019 and we look forward to working with our distributor Puretone, and the NHS to deliver self-care innovative hearing solutions to their customers."*



(the '25 March 2019 Announcement').

- E. Section 3.1 of Chapter 3 of the Listing Rules, which states:

*Once an entity is or becomes aware of any information concerning it that a reasonable person would expect to have a material effect on the price or value of the entity's securities, the entity must immediately tell ASX that information.*

- F. Section 4.2 of Guidance Note 8, which states:

*The test for determining whether information is market sensitive and therefore needs to be disclosed under Listing Rule 3.1 is set out in section 677 of the Corporations Act. Under that section, a reasonable person is taken to expect information to have a material effect on the price or value of an entity's securities if the information "would, or would be likely to, influence persons who commonly invest in securities in deciding whether to acquire or dispose of" those securities.*

- G. Section 4.3 of Guidance Note 8, which states:

*In assessing whether or not information is market sensitive and therefore needs to be disclosed under Listing Rule 3.1, the information needs to be looked at in context, rather than in isolation, against the backdrop of:*

- *the circumstances affecting the entity at the time;*
- *any external information that is publicly available at the time; and*
- *any previous information the entity has provided to the market (eg, in a prospectus or PDS, under its continuous or periodic disclosure obligations or by way of earnings guidance).*

...

*The need to assess information in context also means that new information may need to be disclosed because of its impact on information previously disclosed. For example, information that an entity has investigated and decided not to pursue a particular material business opportunity may not be market sensitive, if the market has no knowledge or expectation that the entity has been considering the opportunity. However, if the entity has previously announced that it was intending to pursue the opportunity, the fact that it has changed its mind may well be market sensitive and therefore need to be disclosed under Listing Rule 3.1. Example H5 in Annexure A is a further illustration of this point. The fact that the drill cores from holes drilled by a mining exploration entity on part of its tenement have returned negative assay results, by itself, may not be market sensitive if the market has no particular expectation about the results from those holes. However, if the entity has previously announced very positive drill results in that part of its tenement and the latest negative drill results cast real doubts about the size and economic viability of the mineral deposit, then that information may be market sensitive and may need to be disclosed under Listing Rule 3.1.*

- H. Section 4.15 of Guidance Note 8, which states:

*Wherever possible, an announcement under Listing Rule 3.1 should contain sufficient detail for investors or their professional advisers to understand its ramifications and to assess its impact on the price or value of the entity's securities.*

- I. Section 5.8 of Guidance Note 8, which states:

*Whether information has the quality of being confidential is a question of fact, not one of the intention or desire of the listed entity. Accordingly, even though an entity may consider information to be confidential and its disclosure to be a breach of confidence, if it is in fact disclosed by those who know it, then it ceases to be confidential information for the purposes of this rule.*

J. Section 6.1 and 6.2 of Guidance Note 8, which states:

*The term “false market” refers to a situation where there is material misinformation or materially incomplete information in the market which is compromising proper price discovery. This may arise, for example, where:*

- an entity has made a false or misleading announcement;*
- there is other false or misleading information, including a false rumour, circulating in the market; or*
- a segment of the market is trading on the basis of market sensitive information that is not available to the market as a whole.*

*Under Listing Rule 3.1B, if ASX considers that there is or is likely to be a false market in an entity’s securities, it may require the entity to give ASX any information it asks for to correct or prevent the false market.*

*To correct or prevent a false market, ASX may require an entity to disclose market sensitive information, even if the entity considers that the information falls within Listing Rule 3.1A and therefore does not require immediate disclosure under Listing Rule 3.1. It may also require an entity to disclose information that of itself is not market sensitive and therefore not required to be disclosed under Listing Rule 3.1 (eg, to correct a false rumour that the entity is about to enter into a market sensitive transaction when it is not).*

K. The definition of “aware” in Chapter 19 of the Listing Rules, which states that:

*an entity becomes aware of information if, and as soon as, an officer of the entity (or, in the case of a trust, an officer of the responsible entity) has, or ought reasonably to have, come into possession of the information in the course of the performance of their duties as an officer of that entity.*

L. The change in closing price of NUH’s securities from a close of \$0.079 on Tuesday 27 November 2018 to a close of \$0.088 on Wednesday 28 November 2018.

M. The change in closing price of NUH’s securities from a close of \$0.069 on Friday 22 March 2019 to a close of \$0.059 on Monday 25 March 2019.

#### **Request for Information**

Having regard to the above, ASX asks NUH to respond separately to each of the following questions and requests for information:

1. With reference to the 28 November 2018 Announcement:

- 1.1 Which hearing category was NUH informed its IQbuds BOOST™ (“IQbuds”) was selected for? In answering this question please refer to who informed NUH, the date of the advice, the relevant tender document and “Lot number” where applicable.
- 1.2 What information did NUH receive from Puretone (“Purementone”) regarding the classification of IQbuds?
- 1.3 What was the basis for the anticipated value of purchases included in the announcement (“Anticipated Value”)? Please include specific references to source documents and “Lot number” allocations.
- 1.4 Please confirm the nature of the agreement between NUH and Puretone (“Purementone Agreement”).
- 1.5 With respect to the Puretone Agreement:
  - 1.5.1 Does it stipulate any guaranteed revenues or minimum product sales?



- 1.5.2 Does it contain and/or guarantee minimum orders for NUH's products? If so, please provide details.
- 1.5.3 What is the current status of the Puretone Agreement?
2. With reference to the 25 March 2019 Announcement:
- 2.1 Does NUH consider that the information contained within the announcement is information that a reasonable person would expect to have a material effect on the price or value of NUH's securities?
- 2.2 If the answer to question 2.1 is "no", please advise the basis for that view.
- 2.3 When was NUH made aware of the re-categorisation of the IQbuds to a 'hearable under the niche innovation category' ("Re-categorisation")?
- 2.4 Please outline what NUH was told and by whom, regarding the Re-categorisation prior to the 25 March 2019 Announcement. In your response, please comment specifically on whether advice was received regarding any change to the Anticipated Value and any change to the relevant "Lot number".
- 2.5 Given the announcement refers to a re-categorisation as a hearable under the "niche innovation category", please comment on whether NUH was referencing the "Niche Hearing Aids Lot No: 5" in 2018/S 140-319871 (as outlined in Background Fact B), noting that 2018/S 140-319871 states there is an estimated value for that item of 10 000 000.00 GBP excluding VAT.
- If not, please clarify the source document, referencing the "niche innovation category" and provide ASX with a copy.
- 2.6 In the 28 November 2018 Announcement, it appears that NUH may have used the figure of 138 000 000 GBP from 2018/S 140-319871 for the anticipated value for purchases made by NHS for hearing device solutions to support "mild to moderate hearing". Please clarify why NUH did not update the market with respect to the anticipated value for purchases to be made by NHS following the Re-categorisation.
- 2.7 Please confirm that the announcement contained all material information known to NUH.
3. Was NUH ever told that IQbuds would be assigned to a particular "Lot" category (for example, as outlined in 2018/S 140-319871)? Please provide details.
4. Has NUH ever been told that its IQbuds have been removed from an NHS Supply award, framework agreement, contract or the like that it was originally told that it was allocated to? Please provide details.
5. Please confirm that NUH is in compliance with the listing rules, and in particular listing rule 3.1.
6. Please confirm that NUH's responses to the questions above have been authorised and approved in accordance with its published continuous disclosure policy or otherwise by its board or an officer of NUH with delegated authority from the board to respond to ASX on disclosure matters.

#### When and where to send your response

This request is made under Listing Rule 18.7. Your response is required as soon as reasonably possible and, in any event, by no later than **8:00 AM AWST Thursday, 22 August 2019**.

ASX reserves the right to release a copy of this letter and your response on the ASX Market Announcements Platform under Listing Rule 18.7A. Accordingly, your response should be in a form suitable for release to the market.

Your response should be sent to me by e-mail at [ListingsCompliancePerth@asx.com.au](mailto:ListingsCompliancePerth@asx.com.au). It should not be sent directly to the ASX Market Announcements Office. This is to allow me to review your response to confirm that it

is in a form appropriate for release to the market, before it is published on the ASX Market Announcements Platform.

If you have any questions in relation to any of the above, please contact me.

Yours sincerely

---

**Penelope Reid**

Adviser, Listings Compliance (Perth)