



## UNILIFE MEDICAL SOLUTIONS LIMITED INFORMATION MEMORANDUM

For schemes of arrangement between Unilife Medical Solutions Limited (ABN 14 008 071 403) and the holders of shares and options in Unilife Medical Solutions Limited in relation to the proposed redomiciling of the Unilife Group in the United States of America.

Your directors unanimously recommend that you vote in favour of the schemes of arrangement.

This document comprises:

- an explanatory statement and notices of meeting in relation to the schemes of arrangement; and
- an information memorandum in relation to the listing of Unilife Corporation on ASX.

This Information Memorandum is dated 27 November 2009. Copies of this Information Memorandum will be sent to shareholders and optionholders of Unilife Medical Solutions Limited on or about this date.

This document is important and requires your immediate attention. It should be read in its entirety. If you are in doubt as to how to deal with it, you should consult your legal, financial or other professional adviser.



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## Important Dates

Key Event	Date
Latest time and date for lodgement of completed proxy forms for Share Scheme Meeting	10.00am on 6 January 2010
Latest time and date for lodgement of completed proxy forms for Option Scheme Meeting	10:30am on 6 January 2010
Latest time and date for lodgement of completed proxy forms for the EGM	11.00am on 6 January 2010
Time and date for determining eligibility to vote at Scheme Meetings	7.00pm on 6 January 2010
Time and date for determining eligibility to vote at the EGM	7.00pm on 6 January 2010
Share Scheme Meeting	10.00am on 8 January 2010
Option Scheme Meeting	10.30am on 8 January 2010
EGM	8 January 2010
Court hearing for approval of the Schemes	14 January 2010
Effective Date of Schemes	15 January 2010
Suspension of Unilife Shares from trading on ASX	15 January 2010
Unilife Corporation CDIs commence trading on ASX on a deferred settlement basis	16 January 2010
Scheme Record Date	22 January 2010
Implementation Date for Schemes	27 January 2010
Despatch of holding statements and transmittal letters	29 January 2010
CDIs commence trading on normal T+3 basis	1 February 2010
Listing on NASDAQ commences	3 February 2010 (subject to SEC review of Form 10 and approval of NASDAQ listing application)

All dates after the Scheme Meetings and EGM are indicative only and, amongst other things, are subject to the Court approval process and ASX approval. All dates and times are Australian Eastern Daylight Time.

## Chairman's Letter

Dear Shareholders and Optionholders

As a Shareholder or Optionholder of Unilife Medical Solutions Limited (**Company**), you should be aware that the Company has recently announced its intention to redomicile the Unilife Group in the United States and undertake a listing on NASDAQ.

I believe we should all be proud of what our Company has achieved during the seven years in which we have been listed on the Australian Securities Exchange (**ASX**). These achievements have been detailed in the ASX announcements that we have made during that period, however in summary our key achievements have been:

- we have developed a portfolio of syringes which we believe have best-in-class safety features;
- we have built a strong relationship with the one of the world's largest purchasers of prefilled syringes, sanofi-aventis who have paid us a €10 million (approximately A\$16.4 million) fee for the exclusive right to negotiate for the purchase of our Unifill™ syringe.
- we have secured ISO 13485 certification of our Pennsylvania facility and quality procedures, the global benchmark for the medical device industry. We have also secured FDA-certification of our Unitract™ 1mL Syringes and commenced their commercial production at our own US based FDA-registered medical device manufacturing facility;
- we have grown to be a company employing almost 100 people, with a senior management team comprising recognised medical device and pharmaceutical industry professionals who have extensive experience in this industry; and
- we are now one of the top 20 companies specialising in healthcare equipment and related services listed on ASX by market capitalisation.

We believe the redomiciliation of the Unilife Group in the United States and the proposed listing of Unilife Corporation on NASDAQ represents an obvious and natural progression for the Company. It will allow us to fully capitalise upon our achievements to date and we believe it will position us to become a global leader in the design, development and supply of innovative safety medical devices.

The United States represents the largest and most mature market for our products and services. Many of the pharmaceutical manufacturers and healthcare industry leaders with whom we are seeking to do business are either headquartered in the United States or have a significant market presence there. We have already transitioned virtually all of our commercial and operational functions, including the office of the CEO, to our headquarters and manufacturing facilities in Central Pennsylvania.

Since we completed the transition of key commercial and operational functions to our Central Pennsylvania facilities earlier this year, we have received significant interest from global pharmaceutical and healthcare companies as well as major US-based investment groups. The Directors are aware that a number of these US-based institutions have policies in place which

restrict them from investing in non-US based companies. By redomiciling in the US and listing on NASDAQ, we are confident that we will build a strong base of institutions that recognise our business potential and share our long term objectives. It is our intention that these steps would increase US-based demand and liquidity for Unilife Corporation's securities.

Following a successful capital raising in the fourth quarter of this year, the Company is now well financed, with a cash balance at 25 November 2009 of approximately A\$50 million. We believe that the improvement in our capital position, available cash reserves and balance sheet should make us a stronger candidate to secure US institutional support in the open market, particularly after the proposed NASDAQ listing.

The Proposed Transaction will also better align our corporate structure with our operational capabilities and target markets. As a result, we anticipate being able to better harness the full commercial value of the significant business opportunities that we have generated to date as an emerging global medical device supplier.

While we believe that the redomiciliation of the Unilife Group in the United States and the proposed listing of Unilife Corporation on NASDAQ represents an obvious and natural progression for the Company and will produce long term benefits for the Unilife Group and its Shareholders, the Board also recognises and acknowledges that there are some potential disadvantages or risks associated with the redomiciliation and these are described in section 4.3 of this Information Memorandum. In addition, you should be aware that while we expect Unilife Corporation to list on NASDAQ in February 2010 (subject to NASDAQ approving the listing application and the Form 10 becoming effective following SEC review), there is no guarantee as to when a NASDAQ listing will occur or that it will occur at all.

This Information Memorandum sets out the Board's rationale for our decision to redomicile the Unilife Group in the United States (by way of the Proposed Transaction described in this document), together with a description of the steps required to complete this process.

If Shareholders approve the redomiciliation, Unilife Corporation will become the ultimate parent company of the Unilife Group and will be the entity that is listed on the ASX and ultimately on NASDAQ. In simple terms, Unilife Corporation, which is incorporated in the State of Delaware in the United States, will acquire all of the ordinary shares in the Company and, in return, will issue shares in Unilife Corporation to Shareholders. Shareholders may choose to receive these shares in Unilife Corporation in the form of CHESS Depositary Interests (**CDIs**) (which will be quoted on ASX) or common stock (which we will apply to be quoted on NASDAQ). Each CDI will, in general terms, be equivalent to one existing ordinary share in the Company (see section 3.12 for further details). Likewise, all existing Options in the Company will be replaced with equivalent options in Unilife Corporation.

Approval of the Proposed Transaction will be sought from Shareholders and Optionholders at meetings which will be held at The Westin Hotel, No. 1 Martin Place, Sydney NSW 2000 on 8 January 2010.

The Board has appointed PKF Corporate Advisory as an independent expert to review and opine on the merits of the Proposed Transaction and I am pleased to confirm that PKF Corporate Advisory has formed the view that the Proposed Transaction is 'fair and reasonable' to, and hence, 'in the best interest' of the Shareholders as a whole and also in respect of the Optionholders as a whole. The full report of the Independent Expert is set out in Appendix 2 to this Information Memorandum and should be read in full.



I strongly encourage you to read this Information Memorandum carefully and recommend that you seek professional advice in relation to the Schemes in light of your personal financial, investment and taxation circumstances.

I sincerely hope that you will vote in favour of the redomiciliation by attending the Scheme Meetings and EGM or, if you are unable to attend, by completing and returning the relevant proxy forms. My fellow Directors and I unanimously recommend that you vote in favour of the Proposed Transaction.

Thank you for your continued support of the Unilife Group.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Jim Bosnjak', with a stylized flourish at the end.

**Jim Bosnjak OAM**

**Non-Executive Chairman**

## What is the Proposed Transaction?

- A transaction to redomicile the Unilife Group in the United States of America.
- Unilife Corporation (a new company incorporated in the United States of America) will become the parent company of the Unilife Group and you will hold Shares or Options in this company following the redomiciliation.
- Two separate schemes of arrangement will be implemented in relation to Unilife Shares and Options:
  - Share Scheme - Shares in the Company will be exchanged for Unilife Corporation Shares or CDIs<sup>1</sup>.
  - Option Scheme - Options in the Company will be exchanged for options in Unilife Corporation.
- Standalone Options in the Company will be exchanged for equivalent options in Unilife Corporation.
- Unilife Corporation will replace Unilife Medical Solutions Limited as the ASX listed entity.
- Unilife Corporation will seek a new listing on NASDAQ.
- Following implementation of the Proposed Transaction Shareholders will be able to trade Unilife Corporation CDIs on ASX and, after NASDAQ approves the listing application and the Form 10 becomes effective (following SEC review), Shareholders will be able to trade Unilife Corporation common stock on NASDAQ.

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<sup>1</sup> A detailed description of CDIs is contained in Appendix 9.



## Your vote on the Proposed Transaction

### Scheme meetings and EGM

The Proposed Transaction requires the approval of Shareholders and Optionholders. The resolutions which you are being asked to vote on to approve the Schemes are set out in full in the Notices of Meeting in Appendix 11 and Appendix 12 to this Information Memorandum. Shareholders are also being asked to approve the Resolutions which will be proposed at the EGM to approve the Unilife Corporation 2009 Stock Incentive Plan, the issue of Options to certain Directors under the Company's Employee Share Option Plan and the grant of a new incentive package to the Company's Chief Executive Officer, details of which are set out in the Notice of EGM which accompanies this Information Memorandum.

In summary:

**Shareholders** are being asked to approve the Share Scheme under which all of the Shares will be transferred to Unilife Corporation in exchange for the issue of Unilife Corporation Shares. Shareholders are also being asked to approve the Resolutions proposed at the EGM, which will take place on the same day as the Scheme Meetings.

Under the Share Scheme, Shareholders may elect to receive their Unilife Corporation Shares in the form of CDIs (which will trade on ASX) or as Common Stock (which will trade on NASDAQ)<sup>2</sup>. If Shareholders do not make an election they will receive their Unilife Corporation Shares in the form of CDIs.

### *What are CDIs*

The electronic transfer system used on ASX, known as CHESS, cannot be used directly for the transfer of securities of foreign companies. Accordingly, to enable companies such as Unilife Corporation to have their securities cleared and settled electronically through CHESS, depositary instruments called CDIs are issued.

CDIs confer a beneficial interest in securities traded on ASX and CDI holders will receive all of the economic benefits of actual ownership of the underlying Unilife Corporation Shares. A more detailed description of CDIs is set out in Appendix 9 of this Information Memorandum.

If Shareholders wish to trade on NASDAQ (if approval for listing is obtained) they may wish to elect to take their Unilife Corporation Shares in the form of Common Stock. Alternatively, if Shareholders wish to trade on ASX they may wish to elect to receive their Unilife Corporation Shares in the form of CDIs. However, Common Stock will be able to be converted into CDIs and vice versa following implementation of the Proposed Transaction so that Shareholders may choose to trade on either exchange going forward (provided that a NASDAQ listing is obtained). In the event that you are unsure whether to elect to take Common Stock or CDIs under the Share Scheme you should consult your legal, financial or other professional adviser.

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<sup>2</sup> Subject to NASDAQ approving the listing application and the Form 10 becoming effective following SEC review.

**Optionholders** are being asked to approve the Option Scheme under which all of the existing Options will be cancelled in exchange for the issue of Unilife Corporation Options.

### **Your Directors' recommendation**

Your Directors unanimously recommend that you vote in favour of all of the resolutions to be proposed at the Scheme Meetings.

### **What should you do?**

- Step 1: Carefully read this Information Memorandum, the Notices of Meeting and all other documents you have been provided with.
- Step 2: If you have any queries concerning the Schemes or the Resolutions, please consult your legal, financial or other professional advisor or contact the enquiry line on 1800 632 680 (Australia toll free), +1 866 496 5819 (US toll free) or +61 2 8256 3394 (International).
- Step 3: Attend and vote at the Scheme Meetings and the EGM or, if you are unable to attend, vote by proxy, attorney or corporate representative.

### **Your vote is important**

#### **Who can vote?**

If you are registered as a Shareholder or an Optionholder at 7.00pm on 6 January 2010, you will be entitled to vote at the relevant Scheme Meetings and EGM, as the case may be. Optionholders on the register at that time will be entitled to vote whether or not their Options have vested.

#### **How to vote**

You may vote:

- in person by attending the Meetings;
- by proxy;
- by attorney; or
- where the Shareholder or Optionholder is a body corporate, by a representative of that body corporate,

each of which is described in more detail below.

#### **Voting in person**

Two separate meetings to approve the Proposed Transaction will be held on 8 January 2010 at The Westin Hotel, No. 1 Martin Place, Sydney NSW 2000, at the following times:

- Share Scheme Meeting - 10:00am; and

- Option Scheme Meeting - 10:30am or immediately following the Share Scheme Meeting (if later).

In addition, the Company's EGM will be held on the same day at 11:00am or immediately following the Option Scheme Meeting (if later) at which resolutions will be proposed to adopt the new Unilife Corporation 2009 Stock Incentive Plan, to approve the issue Options to certain Directors under the Company's Employee Share Option Plan and to approve the grant of a new incentive package to the Company's Chief Executive Officer.

### **Voting by proxy**

If you are entitled to vote and wish to do so by proxy, you must complete and return your personalised proxy form accompanying this Information Memorandum (together with any power of attorney or other authority under which the proxy form is signed or a certified copy of that power or authority, and a declaration or statement by the proxy that he or she has not received any notice of revocation of appointment) so that it is received by the Company's share registry by no later than 10:00am (Sydney time) for the Share Scheme Meeting, 10.30am (Sydney time) for the Option Scheme Meeting and 11.00am (Sydney time) for the EGM, in each case on 6 January 2010.

Please read the instructions on the proxy form carefully when completing the form.

You may return your proxy form (and any supporting documents) by delivering, posting or faxing them to the Company's share registry at:

Computershare Investor Services Pty Limited

Delivery address:	Postal address:
Level 2, 45 St George's Terrace	GPO Box 242
PERTH WA 6000	MELBOURNE VIC 3001

Telephone number: + 61 3 9415 5000

Facsimile number: +61 3 9473 2368

Additional or replacement proxy forms may be obtained from the Company's share registry at the address above.

Completing and returning a proxy form will not preclude you from attending and voting at the Meetings. You may revoke your proxy at any time prior to the start of the relevant Meeting by:

- (a) providing a written notice of revocation to the Company's share registry at the above address before the relevant Meeting; or
- (b) properly executing and delivering a later dated proxy to the Company's share registry; or
- (c) attending the relevant Meeting and voting in person at that Meeting provided that you have requested a return of your lodged proxy before the start of the Meeting.

### **Voting by attorney**

If you wish your attorney to attend and vote at a Meeting on your behalf, the original or a certified copy of the power of attorney authorising your attorney to attend and vote at the

Meeting, and a declaration or statement by the attorney that he or she has not received any notice of revocation of appointment, must be lodged with the Company's share registry by the cut-off time for receipt of proxies for the Meeting set out above.

You may lodge the power of attorney (and any supporting documents) by delivering, posting or faxing it to the Company's share registry at the address above.

### **Voting by corporate representative**

A body corporate may attend and vote at a Meeting by corporate representative. The appointment of the corporate representative must comply with the requirements of section 250D of the Corporations Act and an instrument purporting to appoint a corporate representative, including any authority under which the appointment is signed, must be lodged with the Company's share registry by the closing time for receipt of proxies for the Meeting set out above. A form of the certificate used to appoint a corporate representative can be obtained from the Company's share registry.

### **Questions**

Further information concerning the resolutions and the voting procedures for the Meetings is set out in the Notices of Meeting in Appendix 11 and Appendix 12 to this Information Memorandum.

If you have any further questions about the Meetings or about the Proposed Transaction, please call the enquiry line on 1800 632 680 (Australia toll free), +1 866 496 5819 (US toll free) or +61 2 8256 3394 (International).

## Important notices

### Defined terms and interpretation

Capitalised terms used in this Information Memorandum are defined in the Glossary set out in section 11 of this Information Memorandum. The Glossary also sets out some rules of interpretation which apply to this Information Memorandum.

### Purpose of this Information Memorandum

This Information Memorandum:

- contains the explanatory statement required under Part 5.1 of the Corporations Act in relation to the Schemes. It explains the terms of the Schemes and the manner in which they will be implemented (if approved) and provides information material to the decision of Shareholders and Optionholders as to whether to approve the Schemes; and
- is an information memorandum for the listing of Unilife Corporation on ASX and for the CDIs to be granted official quotation on the financial market operated by ASX.

This Information Memorandum complies with Australian disclosure requirements and Australian and US accounting standards (to the extent relevant). These requirements and standards may be different from those in other countries.

A Notice of EGM and explanatory statement in relation to the Resolutions which will be proposed at the EGM accompanies this Information Memorandum.

### Read this document

This document is important. You should read this document in its entirety before you decide whether to vote in favour of the resolutions to be considered at the Meetings. If you are in doubt as to what you should do, you should consult your legal, financial or other professional adviser.

### Investment decisions

This Information Memorandum does not take into account your individual investment objectives, financial situation and needs. The information in this document is not financial product advice and should not be relied upon as the sole basis for any

investment decision in relation to your Shares or Options.

You should seek independent financial and tax advice before making any investment decision in relation to your Shares or Options.

### Responsibility statement

The information contained in this Information Memorandum has been prepared by the Company and Unilife Corporation and is the responsibility of the Company and Unilife Corporation other than:

- the Independent Expert's Report in relation to the Proposed Transaction (contained in Appendix 2 to this Information Memorandum), which has been prepared by PKF which takes responsibility for that Appendix;
- the information in sections 1.3.3, 2 (Question 30), 4.5 and 9.1 of this Information Memorandum with respect to Australian tax consequences of the Proposed Transaction, which have been prepared by DLA Phillips Fox which takes responsibility for those sections; and
- the information in sections 1.3.3, 2 (Question 30), 4.5 and 9.2 to this Information Memorandum with respect to the US tax consequences of the Proposed Transaction, which have been prepared by DLA Piper LLP (US) which takes responsibility for those sections.

Neither the Company, Unilife Corporation nor any of their respective directors, officers or advisers (other than as referred to above), assumes any responsibility for the accuracy or completeness of any of the information in the Appendices and sections referred to above.

### Role of ASIC and ASX

A copy of this Information Memorandum has been given to ASIC pursuant to section 411(2) of the Corporations Act and registered with ASIC pursuant to section 412(6) of the Corporations Act. ASIC has been requested to provide a statement, in accordance with section 411(17)(b) of the Corporations Act, that it has no objection to the

Schemes. If ASIC provides the statement, then it will be produced to the Court at the time of the Second Court Date. Neither ASIC nor any of its officers takes any responsibility for the contents of this Information Memorandum.

A copy of this Information Memorandum has been lodged with ASX. Neither ASX nor any of its officers takes any responsibility for the contents of this Information Memorandum.

### **Role of the Court**

A copy of this Information Memorandum has been lodged with the Court to obtain an order of the Court approving the convening of the Scheme Meetings. Orders made by the Court pursuant to section 411(1) of the Corporations Act convening the Scheme Meetings to approve the Schemes do not constitute an endorsement by the Court of, or any expression of opinion on, the Schemes.

If Shareholders and Optionholders approve the Schemes at the required meetings, the Court will be asked to approve the Schemes. The Federal Court Rules provide a procedure for Shareholders and Optionholders to oppose the approval by the Court of the Share Scheme and Option Scheme, respectively. If you wish to oppose the approval of the Schemes by the Court at the Second Court Hearing, you may do so by filing with the Court, and serving on the Company, a notice of appearance in the prescribed form, together with any affidavit on which you wish to rely at the hearing. The notice of appearance and affidavit must be served on the Company at least one day before the Second Court Date. The Second Court Date is currently expected to be 14 January 2010. Any change to this date will be announced through ASX and notified on the Company's website.

### **Notice to Shareholders resident in New Zealand**

This Offer is being made to the Company's New Zealand resident shareholders without a New Zealand registered prospectus or an investment statement in accordance with the New Zealand Securities Act (Overseas Companies) Exemption Notice 2002. Accordingly, this Information Memorandum may not contain all of the information that a New Zealand investor may require to make a decision as to whether to subscribe for shares and does not contain all the information that would otherwise be required by New Zealand law to be disclosed in a registered prospectus and an investment statement.

### **Notice to Shareholders resident in France**

No offering document (including any amendment, supplement or replacement thereto) has been prepared in connection with the offering of the shares that has been approved by the Autorité des marchés financiers or by the competent authority of another State of the European Economic Area and notified to the French Autorité des marchés financiers; no shares have been offered or sold nor will be offered or sold, directly or indirectly, to the public in France; neither this Information Memorandum nor any other offering material relating to the Shares or Unilife Corporation Shares has been distributed or caused to be distributed and will not be distributed or caused to be distributed to the public in France; such offers, sales and distributions have been and shall only be made in France to (i) persons licensed to provide the investment service of portfolio management for the account of third parties; (ii) qualified investors (*investisseurs qualifiés*) or (iii) fewer than 100 natural or legal persons (other than qualified persons), in all cases investing for their own account, all as defined in Articles L. 411-2, D. 411-1, D. 411-2, D.744-1, D. 754-1 and D. 764-1 of the French Code monétaire et financier. The direct or indirect distribution to the public in France of any so acquired shares may be made only as provided by Articles L. 411-1, L. 411-2, L. 412-1 and L. 621-8 to L. 621-8-3 of the French Code monétaire et financier and applicable regulations thereunder.

### **Notice to Shareholders resident in Hong Kong**

#### **WARNING**

The contents of this document have not been reviewed by any regulatory authority in Hong Kong. You are advised to exercise caution in relation to the offer of Unilife Corporation Shares under the Share Scheme. If you are in any doubt about any of the contents of this document, you should obtain independent professional advice.

The Unilife Corporation Shares allotted to you are not to be further distributed by you in any event.

You represent, warrant and agree that (i) you have not offered or sold and will not offer or sell Unilife Corporation Shares or CDIs in Hong Kong, by means of any documents other than to "professional investors" as defined in the Securities and Futures Ordinance (Cap 571 of the Laws of Hong Kong) and any rules made under that ordinance, or in other circumstances which do not result in the document being a "prospectus" as

defined in the Companies Ordinance (Cap 32 of the Laws of Hong Kong) or which do not constitute an offer to the public within the meaning of that ordinance, and (ii) you have not issued or had in your possession for the purpose of issue, and will not issue or have in your possession for the purposes of issue, whether in Hong Kong or elsewhere, any advertisement, invitation or document relating to the Unilife Corporation Shares or CDIs, which is directed at, or the contents of which are likely to be accessed or read by, the public of Hong Kong (except if permitted to do so under the securities laws of Hong Kong) other than with respect to the Unilife Corporation Shares or CDIs which are or are intended to be disposed of only to persons outside Hong Kong or only to "professional investors" as defined in the Securities and Futures Ordinance and any rules made under that ordinance.

#### **Notice to Shareholders resident in the Republic of Ireland**

This document and the information contained herein is confidential and has been prepared and is intended for use on a confidential basis solely by those persons in the Republic of Ireland to whom it is sent. It may not be reproduced, redistributed or passed on to any other person in the Republic of Ireland or published in whole or in part for any purpose. No person receiving a copy of this document, other than the addressee may treat it as constituting an invitation or a solicitation to them to subscribe for or purchase Unilife Corporation Shares.

The offer of Unilife Corporation Shares under the Share Scheme made by or contained in this document to persons in the Republic of Ireland will be restricted to an offer of Unilife Corporation Shares addressed to existing Shareholders of the Company, of whom there are fewer than 100 in the Republic of Ireland. Accordingly, the offer is an excluded offer within the meaning of Article 3.2 of Directive 2003/71/EC (the "Prospectus Directive") and Regulation 9 of the Prospectus (Directive 2003/71/EC) Regulations 2005 (the "Prospectus Regulations"). This document has, therefore, not been prepared in accordance with the requirements of the Prospectus Directive or the Prospectus Regulations nor has it been reviewed or approved, prior to its being issued, by any regulatory authority in the Republic of Ireland.

If any advice is given to residents of the Republic of Ireland in relation to the offer of Unilife Corporation Shares under the Share Scheme by any intermediary, such intermediary should be

authorised or exempted under the European Communities (Markets in Financial Instruments) Regulations 2007, as amended.

#### **Notice to Shareholders resident in Malta**

This Information Memorandum, and the information contained therein, is for the exclusive use of the persons in Malta to whom it is addressed and their advisers (if any) in connection with the Proposed Transaction. Distribution of this Information Memorandum, or disclosure of any of its contents to any person in Malta other than the persons to whom it is addressed and their advisers (if any), is unauthorised, and any disclosure of any of its contents, without the prior written consent of Unilife Corporation, is prohibited. This Information Memorandum does not constitute and may not be used for or in connection with, any offer or invitation to, or solicitation by, any person to whom it is not addressed.

This Information Memorandum does not constitute an offer to the public, and may not be used as an offer or invitation to the public to subscribe for or otherwise acquire Unilife Corporation Shares. No application for admission of Unilife Corporation Shares to trading on a regulated market situated or operating within Malta is intended to be made. The offer of Unilife Corporation Shares under the Share Scheme is restricted to an offer of Unilife Corporation Shares addressed to existing Shareholders of the Company, of whom there are less than one hundred (100) in Malta. Accordingly, the offer of Unilife Corporation Shares under the Share Scheme to existing Shareholders in Malta, is not subject to the obligation to publish a prospectus, in terms of article 3.2 of Directive 2003/71/EC (the "Prospectus Directive"), as transposed into Maltese law. This Information Memorandum has, therefore, not been prepared and approved by the Registrar of Companies, nor has a prospectus which has been approved by the regulatory authority of another EU or EEA Member State or a certificate of such approval, been provided to the Registrar of Companies, in accordance with the requirements of the Prospectus Directive, as transposed into Maltese law.

No broker, dealer, salesman or other person has been authorised by the Company or Unilife Corporation to issue any advertisement or to give any information or to make any representations in connection with the offering Unilife Corporation Shares other than those contained in this Information Memorandum, including any supplements thereto, and in the documents



referred to herein and therein, in connection with the offer hereby made, and if given or made, such advertisements, information or representations must not be relied upon as having been authorised by Company or Unilife Corporation.

With reference to Sections 1.3.3, 4.5 and 9 of this Information Memorandum, Shareholders are advised that the tax treatment depends on the individual circumstances of each Shareholder and may be subject to change in the future.

Where any information given in this Information Memorandum relates to future performance, Shareholders are advised that such forecasts are not a reliable indicator of future performance. Where any information given in this Information Memorandum contains an indication of past performance of Shares, Shareholders are advised that such information refers to the past and that past performance is not a reliable indicator of future results.

#### **Notice to Shareholders and Optionholders resident in the US**

The Unilife Corporation Shares and Unilife Corporation Options which will be issued pursuant to the Schemes and the Unilife Corporation Standalone Options have not been, and will not be, registered under the US Securities Act or the securities laws of any state in the US. The Unilife Corporation Shares and Unilife Corporation Options issued pursuant to the Schemes will be issued in reliance on the exemption from the US Securities Act registration requirements provided by Section 3(a)(10) of the US Securities Act based on the Court's approval of the Schemes. These shares and options will accordingly not be "restricted securities" within the meaning of the US Securities Act. However, Unilife Corporation Shares held by Affiliates of Unilife Corporation at the time of issue will be subject to certain restrictions on resale described below. Unilife Corporation Options will not be transferable by their terms (except in limited circumstances).

Unilife Corporation will register under the US Securities Act the Unilife Corporation Shares to be issued pursuant to the exercise of options issued under the Unilife Corporation Employee Stock Option Plan and, on registration, Unilife Corporation Shares issued pursuant to such plan, will be freely transferable, subject to US federal securities laws and the Unilife Corporation stock trading policy, except for Unilife Corporation Shares issued to Affiliates of Unilife Corporation

which will be subject to certain restrictions on resale described below.

Unilife Corporation Shares issued to Affiliates of Unilife Corporation under the Share Scheme and upon exercise of the Unilife Corporation Options will be subject to certain restrictions on resale in a public market including:

- sales may be made only if Unilife Corporation has been a US reporting company for at least 90 days and has complied with its US reporting obligations;
- the volume of securities that can be sold in any three month period is limited to an amount equal to the greater of 1% of Unilife Corporation's Shares on issue and 1% of the average weekly trading volume of Unilife Corporation's Shares (measured over the previous four weeks); and
- sales must be conducted by way of unsolicited broker's transactions and a Form 144 filed with the SEC.

Such limitations on the ability of an Affiliate to sell Unilife Corporation securities will cease three months after the person ceases to be an Affiliate. Persons who are Affiliates solely because they are directors or officers of Unilife Corporation may also sell shares under Rule 904 of Regulation in compliance with that exemption and so long as that exemption is available to them.

The Unilife Corporation Shares and Unilife Corporation Options issued pursuant to the Schemes have neither been approved nor disapproved by the SEC, or by any other securities regulatory authority of any state of the US or of any international jurisdiction. Neither the SEC nor any other securities regulatory authority has approved or disapproved the adequacy or accuracy of this Information Memorandum, and any representation to the contrary will be a criminal offence under applicable US law.

US Shareholders should note that the Schemes will be conducted in accordance with the laws in force in Australia and the Listing Rules. As a result, it may be difficult for you to enforce your rights, including any claim you may have arising under US federal securities laws, as the Company is presently located in countries outside the US and some of its officers and directors may be residents

of a foreign country. As such, you may not be able to take legal action against the Company or its officers and directors in Australia for violations of US securities laws and it may be difficult to compel the Company and its officers and directors to subject themselves to a US court's judgement.

**Notice to Shareholders in jurisdictions outside Australia, New Zealand, United States, Hong Kong, United Kingdom, Republic of Ireland, France, Croatia and Malta**

As an investigation of, and compliance with, the potential securities law restrictions in every country in which the Company has Shareholders would be prohibitively costly, Shareholders whose addresses are recorded in the Share Register as outside Australia, New Zealand, US, Hong Kong, United Kingdom, Republic of Ireland, France, Croatia and Malta will not receive Unilife Corporation Shares under the Share Scheme unless (without being obliged to conduct any investigations into the matter) the Company is satisfied that Unilife Corporation Shares can lawfully be issued to such persons pursuant to the Share Scheme.

Instead, CDIs which would otherwise have been issued to Ineligible Overseas Shareholders will be issued to a Nominee appointed by Unilife Corporation, who will procure the Nominee to sell those CDIs on ASX at such price and on such terms as the Nominee determines. The Nominee will then distribute to those Ineligible Overseas Shareholders the net proceeds received (calculated on an averaged basis so that all Ineligible Overseas Shareholders receive the same price per CDI, subject to rounding to the nearest whole cent) after deduction of any brokerage, taxes or other costs of sale (such amounts to be paid in A\$). Further details with respect to the treatment of Shares held by Ineligible Overseas Shareholders are set out in section 8.10 of this Information Memorandum.

**Forward looking statements**

Certain statements in this Information Memorandum are about the future and are forward looking in nature. Generally, you can identify forward-looking statements by terms such as “may”, “will”, “should”, “could”, “would”, “expects”, “plans”, “anticipates”, “believes”, “estimates”, “projects”, “predicts”, “potential” and other similar expressions that are intended to identify forward-looking statements, which are generally not historical in nature.

You should be aware that there are a number of risks (both known and unknown), uncertainties, assumptions and other important factors, some of which are beyond the control of the Company and Unilife Corporation that could cause the actual conduct, results, performance or achievements of the Company or Unilife Corporation to be materially different from those expressed or implied by such statements or that could cause future conduct or results to be materially different from the historical conduct or results. Deviations as to future conduct, results, performance and achievements are both normal and to be expected.

The following are some examples of factors which could affect the results and performance of the Company:

- problems or delays in the finalisation of the design and completion of the industrialisation of the Unilife syringe;
- termination or material breach of existing agreements between sanofi-aventis and the Company;
- inability to enter into supply relationships with other pharmaceutical companies;
- inability to market and sell safety syringes successfully until the Company is able to offer clinical syringes in a full range of sizes;
- inability to obtain regulatory approval or gain market acceptance for the Company's products;
- inability to raise capital when needed, which may result in the Company delaying, reducing or eliminating its future product development programs or commercialisation efforts;
- the loss of executive officers or other key personnel, or the inability to hire, retain and motivate additional qualified personnel in the future;
- the Company having limited sales, marketing and distribution experience;
- the ability of third-party contractors to provide systems according to specifications required by the Company in a timely manner;
- disruptions in the supply of key raw materials and difficulties in the supplier qualification process;

- increased competition in the medical device industry;
- litigation and product liability;
- inability to protect and maintain the Company's intellectual property;
- fluctuations in foreign currency exchange rates; and
- an active trading market for Unilife Corporation's shares of Common Stock in the US may not develop and the trading price of its shares of Common Stock may fluctuate significantly.

Neither the Company, Unilife Corporation, their respective directors, officers and advisers, nor any other person makes any representation, or gives any assurance or guarantee that the occurrence of the events expressed or implied in any forward looking statements in this Information Memorandum will occur. In particular, neither the Company, Unilife Corporation, nor their respective directors, officers or advisers is responsible for any forward looking statement in the Independent Expert's Report or any forward looking statement contained in section 9 of this Information Memorandum. Investors are cautioned about relying on forward looking statements included in this Information Memorandum. The forward looking statements in this Information Memorandum reflect views held as at the date of this Information Memorandum, unless otherwise specified. Subject to the Corporations Act, the Listing Rules and any other applicable laws or regulations, the Company and Unilife Corporation disclaim any duty to update these statements other than with respect to information that the Company and Unilife Corporation respectively become aware of prior to the:

- Share Scheme Meeting, which is material to the making of a decision by a Shareholder regarding whether or not to vote in favour of the Share Scheme; or
- Option Scheme Meeting, which is material to the making of a decision by an Optionholder regarding whether or not to vote in favour of the Option Scheme.

#### **No offer in jurisdictions where not permitted**

This Information Memorandum does not constitute an offer to issue or sell to you, or an offer to buy

from you, any securities in the Company or Unilife Corporation in any jurisdiction in which such an offer would be illegal.

#### **Privacy and personal information**

The Company will need to collect personal information to implement the Schemes. The personal information may include the names, contact details and details of the holdings of Shareholders and Optionholders and their proxies, body corporate representatives or attorneys at the Meetings. The collection of some of this information is required or authorised by the Corporations Act.

Shareholders and Optionholders who are individuals, and other individuals in respect of whom personal information is collected, have certain rights to access the personal information collected about them and may contact the Company if they wish to exercise those rights.

This personal information may be disclosed to the Company's share registry, Computershare Investor Services Pty Ltd, and to print and mail service providers and to the Company's advisers to the extent necessary to effect the Schemes and convene the EGM.

If the information outlined above is not collected, the Company may be hindered in, or prevented from, conducting the Meetings or implementing the Schemes effectively, or at all.

Shareholders and Optionholders who appoint an individual as their proxy, corporate representative or attorney to vote at the Scheme Meetings and/or EGM should inform that individual of the matters outlined above.

You should also note that all persons are entitled, under section 173 of the Corporations Act, to inspect and obtain a copy of the Share Register and Option Register. These Registers contain personal information about the Company's Shareholders and Optionholders.

**If you have any questions in relation to the Meetings or the Schemes, please contact your legal, financial or other professional adviser or contact the Company's enquiry line on 1800 632 680 (Australia toll free), +1 866 496 5819 (US toll free) or +61 2 8256 3394 (International).**

# 1 Summary of the Proposed Transaction

This summary highlights selected information that is described in greater detail elsewhere in this Information Memorandum. This summary does not contain all of the important information contained in this Information Memorandum. Shareholders and Optionholders should carefully read this entire Information Memorandum and other documents referred to in or accompanying this Information Memorandum for a more complete understanding of the Proposed Transaction.

## 1.1 The Proposed Transaction

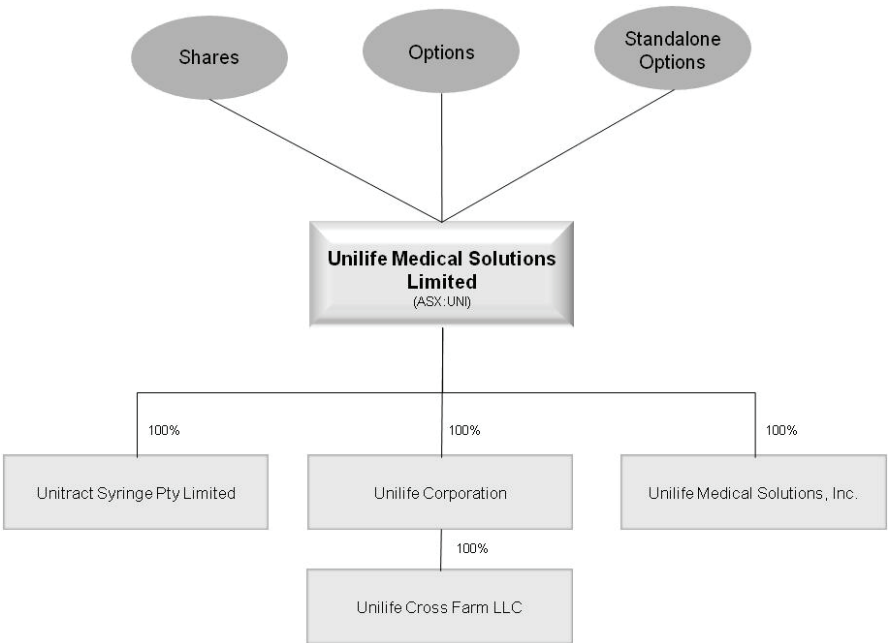
### 1.1.1 Overview of the Proposed Transaction

This Information Memorandum outlines the Proposed Transaction, as a result of which the Unilife Group will redomicile in the US. The Proposed Transaction will be implemented by the establishment of a new corporate structure under which Unilife Corporation (a new company incorporated in the US) will become the ultimate parent company of the Unilife Group. The current Shareholders of the Company will own all of the shares in Unilife Corporation following implementation of the Proposed Transaction.

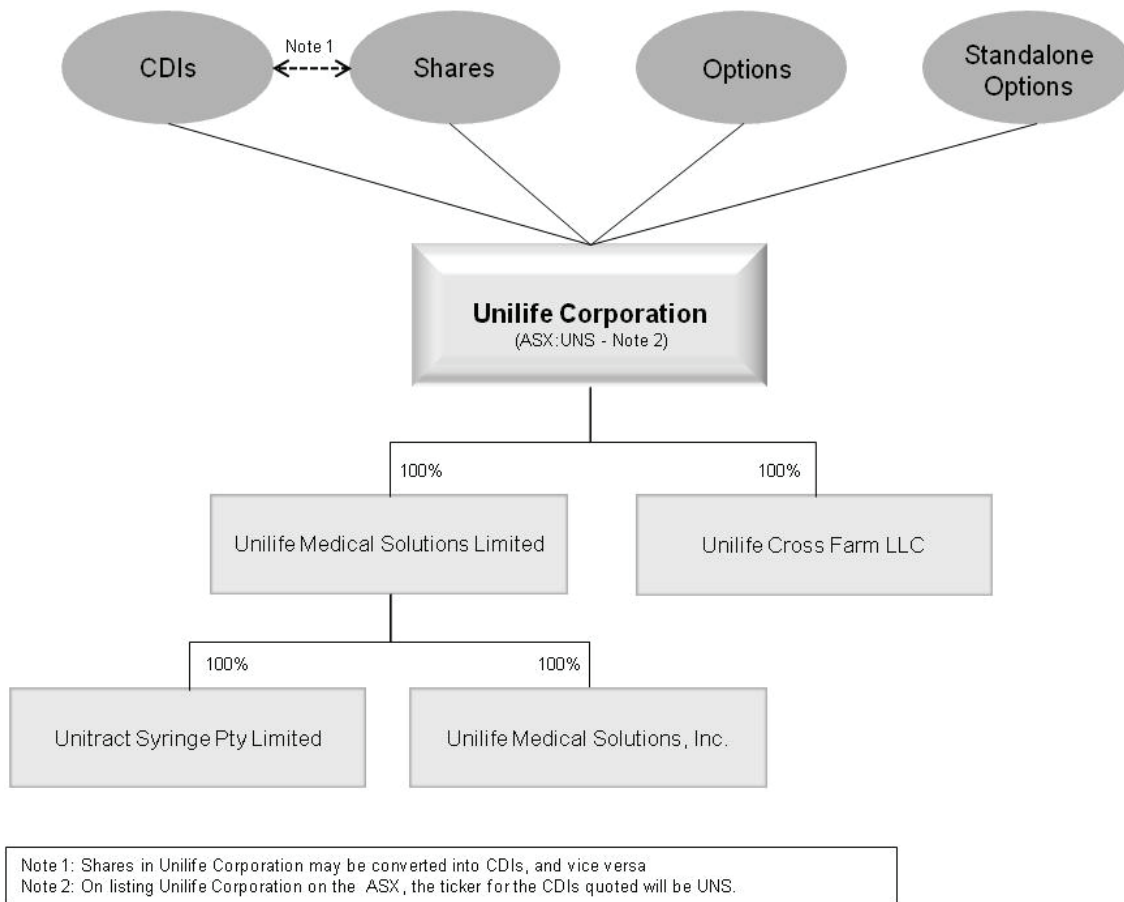
The Proposed Transaction will take place under Australian law and will be implemented by way of two separate schemes of arrangement in relation to the Shares and Options. The terms of the Schemes are set out in full at Appendix 3 and Appendix 4.

Following implementation of the Schemes, Unilife Corporation will seek a listing on ASX and NASDAQ.

### 1.1.2 Current Unilife Group Structure



### 1.1.1 Group Structure following implementation of the Proposed Transaction



### 1.1.2 Effect of the Proposed Transaction

As a result of the Proposed Transaction:

- all of the existing Shares of the Company will be transferred to Unilife Corporation with the result that it will become a wholly-owned subsidiary of Unilife Corporation;
- in consideration for Shareholders transferring their Shares to Unilife Corporation, Shareholders will be issued Unilife Corporation Shares. Shareholders may elect to receive their Unilife Corporation Shares in the form of CDIs<sup>3</sup>, which will be able to be traded on the ASX, or Common Stock which Unilife expects to be listed on NASDAQ. Ineligible Overseas Shareholders will not receive Unilife Corporation Shares, but will instead be entitled to the net proceeds of sale of the Unilife Corporation Shares to which they would have otherwise been entitled (please see section 8.10 on page 116 for further details);
- all existing options issued under the Company's Employee Share Option Plan will be cancelled in exchange for the issue of new options in Unilife Corporation to Optionholders;

<sup>3</sup> A detailed description of CDIs is contained in Appendix 9.

- the existing Standalone Options (which were issued to certain consultants and advisers to the Company and other third parties outside the Company's Employee Share Option Plan) will be cancelled in exchange for equivalent option in Unilife Corporation;
- the Shares and Options will effectively be consolidated on a 6:1 basis on their replacement under the Schemes;
- Unilife Corporation will seek a listing and quotation of the CDIs<sup>4</sup> on ASX thereby effectively replacing the Company as the ASX listed entity in the Unilife Group and will seek a new listing on NASDAQ. While Unilife Corporation expects the listing on NASDAQ to commence in February 2010 (subject to NASDAQ approving the listing application and the Form 10 becoming effective following SEC review), there is no guarantee as to when a NASDAQ listing will occur or that it will occur at all; and
- the Company will eventually be converted into a proprietary company.

#### **1.1.3 Potential advantages**

The Board believes that some of the key advantages that may result from the Proposed Transaction are to:

- align the corporate structure of the Unilife Group with its operating business in the US particularly given that the US represents one of the Unilife Group's largest target markets for its products;
- provide easier access to capital for the Unilife Group by enhancing access to the world's largest capital market;
- increase the potential US-based demand and liquidity for the Unilife Group's securities by having an SEC compliant and NASDAQ listed entity heading the Unilife Group (assuming a NASDAQ listing is achieved) and allowing potential US investors who are currently precluded from investing in non-US listed companies such as the Company to invest in Unilife Corporation's Shares. Please see section 4.2 on page 47 for further information.
- enhance the Company's visibility in the US and internationally;
- enhance the Unilife Group's potential for further growth and realisation of shareholder value by providing greater access to opportunities for corporate transactions such as mergers and acquisitions in line with the Unilife Group's strategic plans; and
- enable the Unilife Group to retain an Australian listing as it facilitates further growth internationally.

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<sup>4</sup> A detailed description of CDIs is contained in Appendix 9.

Further details of the key advantages which the Board believes may result from the Proposed Transaction are set out in section 4.2 on page 47 of this Information Memorandum.

#### **1.1.4 Potential disadvantages and risks**

The Board also recognises and acknowledges that some of the key potential disadvantages or risks of the Proposed Transaction may include:

- increased reporting requirements and compliance costs due to the NASDAQ listing (if obtained) in addition to the ASX listing. Unilife Corporation expects the increased compliance costs to be in the region approximately \$US195,000 per annum;
- that there is no guarantee as to when Unilife Corporation will obtain a listing on NASDAQ if at all. If a NASDAQ listing is not obtained, there will not be any public market in the US for Unilife Corporation Shares and Shareholders will only be able to trade Unilife Corporation Shares in the form of CDIs on ASX;
- the potential impact of having to comply with different legal regimes (which may be advantageous or disadvantageous) and the differences in Shareholders' rights in Unilife Corporation as a Delaware corporation when compared to their rights as Shareholders of the Company (please see section 1.2 and Appendix 10 for further details);
- the potential reduced access to management for Australian investors and the different style of reporting (to comply with US requirements);
- the lost benefit of potential dividend franking credits in Australia if Unilife Corporation makes a dividend payment in the future (please refer to section 9 of the Information Memorandum);
- increased complexity and monitoring of the preservation and ongoing availability of the carried forward tax losses of the Australian tax consolidated group, including compliance with the alternative tax loss utilisation tests - the Continuity of Ownership Test and the Same Business Test. This is currently an issue of broader ATO attention;
- the potential loss of demand for the Unilife Group's securities from Australian investors and potential reduction in liquidity of the Unilife Group's securities when traded on ASX in the form of CDIs;
- increased exposure to US law and the more litigious environment in the US; and
- exposure to US estate taxes under certain circumstances.

Further details of the potential disadvantages and risks of the Proposed Transaction are set out in section 4.3 on page 48 of this Information Memorandum.



## **1.2 What are the differences between Australian and US/Delaware corporations and securities laws?**

If the Proposed Transaction is implemented, Shareholders and Optionholders will exchange their existing Shares and Options in an Australian company for common stock or CDIs and options in a US corporation. Appendix 10 of this Information Memorandum sets out a comparison of the differences between US/Delaware and Australian corporations and securities laws.

Some of the differences could be viewed as advantageous to Shareholders and Optionholders, while others could be viewed as disadvantageous. In particular, the Company, as an Australian listed company, is subject to the takeover provisions of the Corporations Act that are designed to protect minority shareholders on a change of control and to restrict the Board's ability to take defensive steps that could impact competition for control of the Company. Delaware law provides different protections and also allows the directors of Unilife Corporation to implement takeover defences that the Company is not permitted to implement under Australian law.

Shareholders and Optionholders should carefully consider the differences between these regimes to ensure they understand the differing rights attaching to Unilife Corporation Shares and Unilife Corporation Options from their existing holdings of Shares and Options.

The Independent Expert has also considered the differences between Australian and US/Delaware corporations and securities laws and highlighted what it considers to be the key differences in Appendix 5 of the Independent Expert's Report set out in Appendix 2 to this Information Memorandum.

## **1.3 What will Shareholders and Optionholders receive under the Schemes?**

As a result of the Proposed Transaction, Shareholders and Optionholders will receive Unilife Corporation Shares and Unilife Corporation Options respectively.

### **1.3.1 Share Scheme Consideration**

Under the Share Scheme, Scheme Shareholders will receive:

**One Unilife Corporation Share for every six Shares or one Unilife Corporation CDI for every Share held on the Scheme Record Date (subject to rounding).**

Scheme Shareholders may elect to receive their Unilife Corporation Shares in the form of CDIs (which will be tradable on ASX) or Common Stock (which Unilife expects to be listed on NASDAQ).

CDIs confer a beneficial interest in securities of foreign companies traded on ASX and CDI holders will receive all of the economic benefits of actual ownership of the underlying Unilife Corporation Shares. A more detailed description of CDIs is set out in Appendix 9 of this Information Memorandum.

If Shareholders wish to trade on NASDAQ (if approval for listing is obtained) they may wish to elect to take their Unilife Corporation Shares in the form of Common Stock.

Alternatively, if Shareholders wish to trade on ASX they may wish to elect to receive their Unilife Corporation Shares in the form of CDIs. However, Common Stock will be able to be converted into CDIs and vice versa following implementation of the Proposed Transaction so that Shareholders may choose to trade on either exchange going forward (provided that a NASDAQ listing is obtained).

Each CDI will be equivalent to an interest in one sixth of a Unilife Corporation Share. Accordingly, Scheme Shareholders will be entitled to receive six CDIs for every Unilife Corporation Share to which they are entitled under the Share Scheme.

Fractional entitlements to Share Scheme Consideration will be rounded down to the nearest whole number of Unilife Corporation Shares (if a Shareholder has elected to receive Unilife Corporation Shares) or to the nearest multiple of six CDIs (if a Shareholder has elected to receive CDIs), after aggregating all holdings of the relevant Shareholder.

**Example:**

**Number of Shares held on Scheme Record Date:**  
581,900

**Entitlement to Share Scheme Consideration:**  
96,983 Unilife Corporation Shares or 581,898 CDIs.

Ineligible Overseas Shareholders will not receive Unilife Corporation Shares, but will instead be entitled to the net proceeds of sale of the Unilife Corporation Shares to which they would have otherwise been entitled. Please see section 8.10 on page 116 for further details.

In conjunction with the implementation of the Proposed Transaction, Unilife Corporation is seeking a listing of Unilife Corporation Shares on NASDAQ. Unilife Corporation expects the listing on NASDAQ to commence in February 2010 (subject to NASDAQ approving the listing application and the Form 10 becoming effective following SEC review). However, there is no guarantee as to when a NASDAQ listing will occur or that it will occur at all. Accordingly, you should be aware that, unless and until such NASDAQ (or another) listing occurs, the only market for trading Unilife Corporation Shares following implementation of the Schemes will be ASX, where they will only trade in the form of CDIs.

Shareholders holding CDIs will be able to convert their CDIs into Unilife Corporation Common Stock and vice versa on a 6:1 basis at any time following implementation of the Proposed Transaction so that they will be able to choose to trade their Unilife Corporation Shares on ASX or NASDAQ (assuming approval for such listing is obtained).

### **1.3.2 Option Scheme Consideration**

Under the Option Scheme, Scheme Optionholders will receive:

**One Unilife Corporation Option for every six Options held  
at the Scheme Record Date.**

Each Unilife Corporation Option will be issued under the new Unilife Corporation Employee Stock Option Plan and will be on essentially the same terms as the current Options including having an exercise period equal to the unexpired exercise period of, and a vesting schedule identical to, the Options it replaces. However, the exercise price per Unilife Corporation Option will be equal to six times the exercise price of the Options that the Unilife Corporation Option replaces, to reflect the effective 6:1 consolidation of Shares into Unilife Corporation Shares under the Share Scheme. The exercise price will remain in Australian dollars.

Fractional entitlements to Option Scheme Consideration will be rounded down to the nearest whole number of Unilife Corporation Options after aggregating all holdings of the relevant Optionholder.

### **1.3.3 Tax consequences**

#### *Australian Tax consequences*

The Company has been advised that the exchange of Shares and Options for Unilife Corporation Shares and Unilife Corporation Options (as relevant) under the Schemes will not cause any Australian tax to be paid by Shareholders or Optionholders that are eligible for and elect capital gains tax rollover or are eligible for Division 13A employee share/option tax rollover.

In addition, class ruling applications have been lodged with the ATO seeking confirmation that the conditions for capital gains scrip for scrip rollover relief and Division 13A employee share/option scheme rollover relief are satisfied and that rollover relief is available in relation to the transfer of Shares to Unilife Corporation under the Share Scheme and the cancellation of Options under the Option Scheme. Shareholders and Optionholders will be advised of the outcome of the ruling process once the final rulings have been issued. There is, however, no guarantee that the ATO will provide its rulings prior to the Scheme Meetings and the receipt of final ATO rulings is not a condition to the implementation of the Schemes.

#### *US Tax consequences*

Subject to the limitations and qualifications set forth in section 9 of this Information Memorandum, the Company has also been advised that:

- the exchange of Shares for Unilife Corporation Shares should not cause any US federal income tax to be paid by Shareholders; and
- the exchange of Options or Standalone Options for Unilife Corporation Options or Unilife Corporation Standalone Options, respectively, should not cause any US federal income tax to be paid by Optionholders or Standalone Optionholders.

Further information on the Australian and US tax implications for Shareholders and Optionholders under the Proposed Transaction is set out in section 9 of this Information Memorandum. However, this Information Memorandum only provides general information and, accordingly, you should consult with your own tax adviser regarding the consequences of acquiring, holding or disposing of Unilife Corporation

Shares, Unilife Corporation Options or Unilife Corporation Standalone Options in light of current tax laws and your particular investment circumstances.

#### 1.4 Structure of the Unilife Group if the Schemes become Effective

As set out in section 1.1.1, the Company will, as a result of the Proposed Transaction, become a wholly owned subsidiary of Unilife Corporation and will be delisted from ASX. Unilife Corporation will apply for admission and for quotation of the CDIs<sup>5</sup> on ASX and will, subject to obtaining the necessary approvals, replace the Company as the ASX listed entity in the Unilife Group. It is expected that on listing on ASX, the stock ticker for Unilife Corporation will be 'UNS'.

In conjunction with the implementation of the Proposed Transaction, Unilife Corporation is also seeking a listing of Unilife Corporation Shares on NASDAQ. Unilife Corporation expects the listing on NASDAQ to commence in or around February 2010 (subject to NASDAQ approving the listing application and the Form 10 becoming effective following SEC review). However, there is no guarantee as to when this will occur or that it will occur at all. Accordingly, you should be aware that unless and until such NASDAQ (or another) listing occurs, the only market for trading Unilife Corporation Shares following implementation of the Schemes will be ASX, where they will only trade in the form of CDIs.

The board of Unilife Corporation will be the same as the existing Board of the Company. Details of the board members are set out in section 5 of this Information Memorandum.

Once the Schemes become Effective, all Shareholders and Optionholders will hold Unilife Corporation Shares or CDIs<sup>6</sup> and Unilife Corporation Options respectively and the current Shareholders of the Company will own Unilife Corporation.

#### 1.5 Independent expert's opinion

The Independent Expert has concluded that the Proposed Transaction is **fair and reasonable to, and hence, in the best interest of the Shareholders as a whole and also in respect of the Optionholders as a whole.**

#### 1.6 Resolutions to be proposed at the EGM

In conjunction with the Schemes, the Company will hold an EGM at which the Resolutions will be proposed to approve:

- the new 2009 Stock Incentive Plan for Unilife Corporation for use following implementation of the Proposed Transaction;
- the issue of Options to certain Directors under the Employee Share Option Plan; and

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<sup>5</sup> A detailed description of CDIs is contained in Appendix 9.

<sup>6</sup> A detailed description of CDIs is contained in Appendix 9.

- the grant of a new incentive package to the Company's Chief Executive Officer, Alan Shortall.

For further information on the Resolutions to be proposed at the EGM, please see the Notice of EGM and explanatory statement which accompanies this Information Memorandum.

#### **1.7 Directors' recommendation**

The Directors believe that the Proposed Transaction is in the best interests of the Unilife Group and that the Schemes are in the best interests of Shareholders and Optionholders respectively.

**The Directors unanimously recommend that:**

- **Shareholders vote in favour of the Share Scheme at the Share Scheme Meeting; and**
- **Optionholders vote in favour of the Option Scheme at the Option Scheme Meeting.**

All Directors who hold or control the right to vote Shares or Options intend to vote all such Shares and Options in favour of the Schemes.

#### **1.8 Other information**

This overview does not contain all of the information that is material to a Shareholder or Optionholder in deciding how to vote on the Proposed Transaction or the Resolutions. You are urged to read this Information Memorandum in its entirety and, if you have any concerns, seek advice from your legal, financial or other professional adviser.

## 2 Frequently asked questions

This section sets out frequently asked questions that Shareholders and Optionholders may have in relation to the Proposed Transaction. The answers to these questions should be read in conjunction with this entire Information Memorandum and, if you are in any doubt, please seek advice from your legal, financial or other professional adviser.

Question	Answer	Relevant Section of Information Memorandum
<b>The Proposed Transaction</b>		
1 Why have I received this Information Memorandum?	The Information Memorandum has been sent to you because you are a Shareholder and/or Optionholder of the Company. The Information Memorandum contains information relevant to your consideration of the Proposed Transaction. Its purpose is to assist you in making a decision as to how to vote on the Schemes.	3
2 Why have I received the Notice of EGM?	The Notice of EGM has been sent to you because you are a Shareholder of the Company. The Notice of EGM contains information relevant to your decision as to how to vote on the Resolutions being proposed at the EGM.	-
3 What is the Proposed Transaction?	The Proposed Transaction is a transaction to redomicile the Unilife Group in the US so that the new parent company of the Unilife Group will be a US company.	1 & 3

Question	Answer	Relevant Section of Information Memorandum
<p>4     How will the Proposed Transaction be implemented?</p>	<p>The Proposed Transaction will be implemented by:</p> <ul style="list-style-type: none"> <li>• a new US company, Unilife Corporation, acquiring all of the existing Shares from Shareholders in exchange for the issue of new Unilife Corporation Shares or CDIs to Shareholders under the Share Scheme;</li> <li>• all of the existing Options being cancelled in exchange for Unilife Corporation issuing Unilife Corporation Options to Optionholders under the Option Scheme; and</li> <li>• all of the existing Standalone Options being cancelled in exchange for Unilife Corporation issuing Unilife Corporation Standalone Options.</li> </ul>	<p>1 &amp; 3</p>
<p>5     What is the effect of approving the Schemes?</p>	<p>If the Schemes are approved by Shareholders, Optionholders and the Court, the Proposed Transaction will be implemented and the Unilife Group will redomicile in the US with Unilife Corporation becoming the ultimate parent company of the Unilife Group. Shareholders and Optionholders (other than Ineligible Overseas Shareholders) will receive new Unilife Corporation Shares or CDIs and Unilife Corporation Options respectively and Unilife Corporation will become the listed entity on ASX.</p> <p>Following implementation of the Schemes, Unilife Corporation will also seek a new listing on NASDAQ.</p>	<p>4</p>
<p>6     Is the Proposed Transaction subject to any conditions?</p>	<p>The Proposed Transaction is subject to Shareholder, Optionholder and Court approvals, as well as a number of regulatory and other approvals, including with respect to the listing of Unilife Corporation on ASX.</p> <p>While Unilife Corporation is also seeking a NASDAQ listing, this is not a condition of the Proposed Transaction.</p>	<p>1</p>



Question	Answer	Relevant Section of Information Memorandum
<p>7      What is Unilife Corporation?</p>	<p>Unilife Corporation is a newly incorporated Delaware company which is presently a Subsidiary of the Company and which, if the Share Scheme becomes Effective, will become the ultimate parent company of the Unilife Group. Subject to the Share Scheme becoming Effective and to ASX approval, Unilife Corporation will be the entity listed on ASX and Unilife Corporation will also seek a listing on NASDAQ.</p> <p>Upon completion of the Proposed Transaction, Unilife Corporation will own the Company and the current business and assets of the Company and its Subsidiaries will remain essentially unchanged.</p>	<p>6</p>
<p>8      Who will be the directors of Unilife Corporation following implementation of the Share Scheme?</p>	<p>The board of Unilife Corporation will be the same as the existing board of the Company. Details of the board of Unilife Corporation are set out in Section 5.</p>	<p>6</p>
<p>9      Why is Unilife Corporation incorporated in Delaware?</p>	<p>Over 50% of all US publicly listed companies are incorporated in the State of Delaware.</p>	<p>6</p>

Question	Answer	Relevant Section of Information Memorandum
<p>10 Will there be changes to the operations or strategy of the Unilife Group as a result of the Proposed Transaction?</p>	<p>Following the Proposed Transaction, the Unilife Group will continue to have the same assets and liabilities. As the Company's management team and key operations are already located in the US, the Directors expect very few changes to the Unilife Group's operations as a result of the Proposed Transaction. It is the intention of the Directors that the business of the Unilife Group will largely remain the same as before the Proposed Transaction and the Unilife Group does not intend to change its strategy as a result of the Proposed Transaction.</p> <p>Following implementation of the Proposed Transaction, the Directors will convert the present Company to a proprietary company limited by shares.</p>	<p>5</p>
<p>11 Will the Company's Shares continue to trade on ASX? When will they be suspended from quotation on the ASX?</p>	<p>The Company's Shares will continue to trade on the ASX until the Share Scheme is approved by Shareholders and the Court. If the Proposed Transaction is approved, the Company's Shares will be suspended from quotation on the day following the Second Court Hearing Date and Unilife Corporation CDIs will commence trading on a deferred settlement basis the following day.</p> <p>If the Share Scheme is not approved, there will be no suspension of the Company's Shares on ASX.</p>	
<p>12 Where will Unilife Corporation's annual meetings be held in the future?</p>	<p>Unilife Corporation intends to hold its annual meetings in the US with these meetings to be webcast for Australian and other overseas investors.</p>	<p>-</p>

Question	Answer	Relevant Section of Information Memorandum
13 What are the additional ongoing compliance costs resulting from being a dual listed entity?	While Unilife Corporation will not be required to continue to prepare its financial statements under AIFRS, it will be required to comply with financial reporting requirements under the ASX Listing Rules in addition to reporting requirements imposed by the SEC and NASDAQ. Further, Unilife Corporation will be required to pay two sets of listing fees if the dual listing on NASDAQ is obtained. Unilife Corporation anticipates that the additional ongoing costs resulting from being a dual listed entity will be in the region of US\$195,000 per annum.	
<b>NASDAQ listing</b>		
14 What is NASDAQ?	The NASDAQ Stock Market, known as NASDAQ, is an American stock exchange and is the largest electronic screen-based equity securities trading market in the US. Many companies listed on NASDAQ are focused in the technology, financial services, resources and biotech sectors.	-
15 Why was NASDAQ selected as the exchange for the US listing?	The Company considers that a NASDAQ listing is likely to provide increased liquidity for Unilife Corporation's securities and have the potential to attract new US investors to the Unilife Group.	-
<b>Scheme Consideration</b>		
16 What will I receive if the Share Scheme becomes Effective?	Shareholders will be entitled to receive one Unilife Corporation Share for every six Shares held on the Scheme Record Date (subject to rounding of fractional entitlements). Shareholders may elect to receive Unilife Corporation Shares in the form of CDIs or Common Stock. If Shareholders do not make such an election, they will receive their Unilife Corporation Shares in the form of CDIs. Each CDI will be equivalent to an interest in one sixth of a Unilife Corporation Share.	1 & 3

Question	Answer	Relevant Section of Information Memorandum
17 What are CDIs?	<p>The electronic transfer system used on ASX, known as CHESS, cannot be used directly for the transfer of securities of foreign companies. Accordingly, to enable companies such as Unilife Corporation to have their securities cleared and settled electronically through CHESS, depositary instruments called CHESS Depositary Interests (<b>CDIs</b>) are issued.</p> <p>CDIs confer beneficial interests in securities traded on ASX. CDI holders receive all of the economic benefits of actual ownership of the underlying shares.</p> <p>Each CDI will represent an interest in one sixth of an underlying Unilife Corporation Share.</p> <p>A more detailed description of CDIs is set out in Appendix 9 to this Information Memorandum.</p>	Appendix 9
18 What will I receive if the Option Scheme becomes Effective?	If you hold Options and the Option Scheme becomes Effective, you will receive one Unilife Corporation Option in exchange for every six Options you hold as at the Scheme Record Date (subject to rounding of fractional entitlements).	3 & 8
19 When will I receive Unilife Corporation Shares or Unilife Corporation Options if the Schemes become Effective?	If the Schemes become Effective, it is expected that implementation of the Proposed Transaction will take place approximately 15 days after the Scheme Meetings. The Unilife Corporation Shares and Unilife Corporation Options will be issued on the Implementation Date and holding statements and transmittal letters will be mailed shortly thereafter.	8

Question	Answer	Relevant Section of Information Memorandum
<p>20 Can I trade Unilife Corporation Shares and Unilife Corporation Options on the ASX and NASDAQ?</p>	<p>Subject to ASX approval, after the Share Scheme becomes Effective, Unilife Corporation will be listed and Unilife Corporation Shares will be able to be traded on ASX in the form of CDIs. As is the case with the current Options, Unilife Corporation Options will not be quoted and will not be able to be traded on ASX.</p> <p>In conjunction with the Proposed Transaction. Unilife Corporation is also seeking a NASDAQ listing and, if the listing is successful, Unilife Corporation Common Stock will be able to be traded on NASDAQ.</p> <p>While Unilife Corporation expects the listing on NASDAQ to commence in February 2010 (subject to NASDAQ approving the listing application and the Form 10 becoming effective following SEC review), there is no guarantee as to when a NASDAQ listing will occur or that it will occur at all.</p> <p>Unless and until Unilife Corporation Shares are listed for trading on NASDAQ or another exchange, there may be no US public market for Unilife Corporation Shares. Unilife Corporation Options will not be listed for trading on any exchange.</p>	<p>8</p>
<p>21 Are there differences between my Shares and the Unilife Corporation Shares I will receive under the Share Scheme?</p>	<p>Yes. While the rights attaching to Unilife Corporation Shares are based on the rights of the existing Shares, there are certain important differences. In addition, there are a number of significant differences between US/Delaware law and Australian law. A summary of these differences is set out in Appendix 10 to this Information Memorandum.</p>	<p>6 Appendix 10</p>

Question	Answer	Relevant Section of Information Memorandum
<p>22 If I elect to receive CDIs under the Share Scheme, can I exchange them for Common Stock at a later date in order to trade on NASDAQ?</p>	<p>Yes. CDIs can be exchanged for Common Stock and vice versa on a six for one basis at any time after implementation of the Schemes so that Shareholders will be able to choose whether to trade on ASX or NASDAQ (assuming approval for listing is obtained).</p> <p>You should, however, be aware that while Unilife Corporation expects the listing on NASDAQ to commence in February 2010 (subject to NASDAQ approving the listing application and the Form 10 becoming effective following SEC review), there is no guarantee as to when a NASDAQ listing will occur or that it will occur at all.</p>	<p>Section 4</p>
<p>23 Will my Unilife Corporation Options be granted under the same plans and on the same terms as my existing Options?</p>	<p>The Unilife Corporation Options you receive under the Option Scheme will have largely the same terms as your current Options however they will be over Unilife Corporation Shares and their exercise price will be adjusted in accordance with the same 6:1 consolidation ratio as applies to your Shares. The Unilife Corporation Options will be granted under the new Unilife Corporation Employee Stock Option Plan. A copy of the Unilife Corporation Employee Stock Option Plan is set out in Appendix 7 to this Information Memorandum.</p>	<p>Section 4 and Appendix 7</p>
<p>24 How will the Standalone Options be treated as a result of the Proposed Transaction?</p>	<p>In conjunction with the Schemes, the Company will extend an offer to each Standalone Optionholder to cancel the Standalone Options held by such holder upon the Share Scheme becoming Effective. In consideration for that cancellation, Unilife Corporation will grant to each Standalone Optionholder one Unilife Corporation Standalone Option for every six Standalone Options on substantially the same terms as the existing Standalone Options except that they will be over Unilife Corporation Shares and their exercise price will be adjusted in accordance with the same 6:1 consolidation ratio as applies to the Shares.</p>	<p>8</p>

Question	Answer	Relevant Section of Information Memorandum
25 How will fractional entitlements be treated?	Fractional entitlements to Unilife Corporation Shares, Unilife Corporation Options and Unilife Corporation Standalone Options will be rounded down to the nearest whole number of Unilife Corporation Shares, Unilife Corporation Options and Unilife Corporation Standalone Options respectively.	3
26 Why are fractional entitlements being rounded down?	Under US taxation law, fractional entitlements to Option Scheme Consideration held by US taxpayers are not able to be rounded up to the nearest whole number of Unilife Corporation Options. As a result, to ensure all Shareholders and Optionholders receive equal treatment under the Schemes, all fractional entitlements to Scheme Consideration will be rounded down. An example of how this will affect holdings of Shareholders and Optionholders is set out in section 3.5.	3
27 Why will I only receive one Unilife Corporation Share for every six Shares I currently hold?	Unilife Corporation Shares need to satisfy a minimum price requirement of US\$4 in order to become eligible for listing on NASDAQ. Accordingly, the current Shares will effectively be consolidated on a 6:1 basis to ensure that Unilife Corporation Shares trade comfortably above this price should a listing on NASDAQ be obtained.	
28 Why did the Board adopt a ratio of 6:1?	In light of the recent volatility in both the Share price and the foreign exchange rate, the Board decided that it was not in the best interests of Shareholders to adopt too low a consolidation ratio that might risk the Unilife Corporation Share price being unattractive for US investors. More importantly, the Board wanted to ensure that there was sufficient 'head room' above the minimum share price required to trade on NASDAQ (i.e. US\$4) should a listing on NASDAQ be obtained.	



Question	Answer	Relevant Section of Information Memorandum
29 Will I have to pay brokerage fees or stamp duty?	Unless you are an Ineligible Overseas Shareholder you will not have to pay brokerage fees or stamp duty in connection with the exchange of your Shares for Unilife Corporation Shares. Ineligible Overseas Shareholders will have some brokerage fees deducted from the proceeds of sale of their CDIs under the Nominee sale process.	8
30 Will I pay any tax on the exchange of my Shares or Options?	In general terms, it is expected that Australian Shareholders and Optionholders will be able to defer any capital gain that arises as a result of the exchange of your Shares or Options under the Proposed Transaction by electing for CGT rollover relief. However, Shareholders and Optionholders should seek professional advice with respect to the implications of the Proposed Transaction in relation to their own specific circumstances.	9
<b>Approvals</b>		
31 Who has to approve the Schemes?	The Share Scheme needs to be approved by Shareholders and the Option Scheme by Optionholders. Each Scheme also needs to be approved by the Court.	4 & 9
32 What happens at the Second Court Hearing?	<p>If the Schemes are approved by Shareholders and Optionholders at the Scheme Meetings, the Court will be asked to approve the Schemes at the Second Court Hearing.</p> <p>If Shareholders or Optionholders wish to oppose the approval by the Court of the Schemes at the Second Court Hearing, they may do so at the Second Court Hearing by filing with the Court and serving on the Company a Notice of Appearance in the prescribed form, together with any affidavit on which they wish to rely at the hearing.</p>	8

Question	Answer	Relevant Section of Information Memorandum
33 What happens if the Share Scheme is approved but the Option Scheme is not?	<p>The Share Scheme is not conditional on the approval of the Option Scheme. As a result, if the Option Scheme resolution is not passed but the Share Scheme resolution is passed, the Share Scheme will still proceed. However, if that occurs, Optionholders will still hold options exercisable over Shares in the Company rather than options over Unilife Corporation Shares.</p> <p>In this case, Unilife Corporation would consider all of the alternatives available to it, including compulsory acquisition (or cancellation) of the Options (if available), or taking no immediate action, in which case, Optionholders who subsequently exercise their Options would become minority shareholders of the Company (which will have become a Subsidiary of Unilife Corporation and will have been delisted from ASX).</p>	4 & 8
34 What happens if the Option Scheme is approved but the Share Scheme is not?	The Option Scheme is conditional on the approval of the Share Scheme, so that if the Share Scheme resolution is not passed both Schemes will fail.	4 & 8
35 What happens if the Resolutions are not approved at the EGM?	The Schemes are not conditional upon approval of the Resolutions. Accordingly, if the required approvals are obtained for the Schemes they will proceed regardless of whether the Resolutions are passed at the EGM. However, if the Resolutions are not passed at the EGM, the 2009 Stock Incentive Plan will not be approved and no grants of incentives will be able to be made under that Plan. In addition, if the resolutions to approve the issue of incentives to directors are not approved, the incentives will not be granted.	4

Question	Answer	Relevant Section of Information Memorandum
<b>Voting</b>		
36 What am I being asked to vote on?	<p>If you own Shares, you are being asked to vote on:</p> <ul style="list-style-type: none"> <li>the Share Scheme; and</li> <li>the Resolutions to be proposed at the EGM</li> </ul> <p>If you own Options, you are being asked to vote on the Option Scheme.</p>	Your Vote on the Proposed Transaction (p8)
37 Am I entitled to vote?	If you are registered as a holder of Shares or Options as at 7.00pm on 6 January 2010 and you are eligible to vote, you will be entitled to vote at the Share Scheme Meeting, EGM or the Option Scheme Meeting (as applicable).	Your Vote on the Proposed Transaction (p8)
38 Should I vote?	You do not have to vote. However, your Directors believe that the Proposed Transaction is in the best interest of Shareholders and Optionholders and urge you to read this Information Memorandum carefully and, if eligible, to vote in favour of the Schemes in person by attending the relevant Meeting or by proxy, attorney or corporate representative.	3
39 What happens if I do not vote, or vote against the Schemes?	If the necessary approvals for the Proposed Transaction are obtained, Shareholders and Optionholders will be issued Unilife Corporation Shares and Unilife Corporation Options respectively in exchange for their Shares and Options. This will occur regardless of whether you voted for or against the Schemes or did not vote.	8

Question	Answer	Relevant Section of Information Memorandum
40 How do I vote?	<p>You may vote at the Meetings to approve the Proposed Transaction either in person, by proxy, attorney or if you are a body corporate, by a corporate representative of that entity.</p> <p>Your vote is very important. Please see the section entitled "Your vote on the Proposed Transaction" for details of the procedure for voting at the Meetings.</p>	Your vote on the Proposed Transaction (p8)
<b>Miscellaneous</b>		
41 Will the Company still have a representative in Australia that I can speak to?	Yes, the Company will continue to have representatives in Australia to answer your queries following the redomiciliation of the Unilife Group in the US.	
42 Will I still receive communications and updates about the activities of the Unilife Group?	Yes, as Unilife Corporation will be listed on ASX you will be able to access all of its ASX announcements and Unilife Corporation will continue to provide regular updates to you about the business.	
43 Who can help answer my questions about the Proposed Transaction?	<p>If you have any questions about the Proposed Transaction please consult your legal, financial or other professional adviser. Additionally, you can call the Company's enquiry line on:</p> <p>Australia (Toll Free): 1800 632 680</p> <p>US (Toll Free): +1 866 496 5819</p> <p>Outside Australia: +61 2 8256 3394</p> <p>For additional copies of this Information Memorandum, please visit the Company's website at <a href="http://www.unilife.com">www.unilife.com</a></p>	

### 3 The Proposed Transaction

#### 3.1 Overview

The Company has previously announced to the market the relocation of its key commercial and operations functions and members of its senior management team to Pennsylvania, US and its intention to formally redomicile the Unilife Group in the US.

The Proposed Transaction will, if implemented, result in the establishment of a new corporate structure under which Unilife Corporation (a new company incorporated in the US) will become the ultimate parent company of the Unilife Group. In conjunction with the redomiciliation, Unilife Corporation will list on ASX and seek a new listing on NASDAQ.

All existing Shares in the Company will be transferred to Unilife Corporation in exchange for the issue of Unilife Corporation Shares to the Company's Shareholders. Shareholders may elect to receive their Unilife Corporation Shares either in the form of CDIs<sup>7</sup> which will be tradeable on ASX or Common Stock which will be tradeable on NASDAQ<sup>8</sup>. In the event that no election is made prior to the Scheme Record Date, Shareholders will receive Unilife Corporation Shares in the form of CDIs.

In conjunction with this share exchange, all existing Options in the Company will be cancelled in exchange for the issue to Optionholders of equivalent Unilife Corporation Options.

The exchange of the Shares and Options for new securities in Unilife Corporation will be effected by way of two concurrent schemes of arrangement.

#### 3.2 Share Scheme

A scheme of arrangement under Part 5.1 of the Corporations Act will be proposed to Shareholders under which all existing Shares in the Company will be transferred to Unilife Corporation. Under this arrangement, Shareholders will receive:

**One Unilife Corporation Share for every six Shares or one Unilife Corporation CDI for every Share held in the Company as at the Scheme Record Date (subject to rounding)**

Scheme Shareholders may elect to receive their Unilife Corporation Shares in the form of Common Stock or CDIs. Each CDI will be equivalent to an interest in one sixth of a Unilife Corporation Share. A detailed description of CDIs is set out in section 3.12 and Appendix 9 of this Information Memorandum.

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<sup>7</sup> A detailed description of CDIs is contained in Appendix 9.

<sup>8</sup> Subject to the Form 10 becoming effective following SEC review and NASDAQ approval of the listing application.

Upon implementation of the Schemes and subject to ASX approval, the CDIs will be able to be traded on ASX. Unilife Corporation will also submit an application for a new listing of its Common Stock on NASDAQ in conjunction with the Proposed Transaction. However, there is no guarantee when, or if, such listing will occur, therefore Unilife Corporation Shares may not be immediately tradeable on any market in the US.

Accordingly, if Shareholders wish to trade on NASDAQ (if approval for listing is obtained) they may wish to elect to take their Unilife Corporation Shares in the form of Common Stock. Alternatively, if Shareholders wish to trade on ASX they may wish to elect to receive their Unilife Corporation Shares in the form of CDIs. However, Common Stock will be able to be converted into CDIs and vice versa following implementation of the Proposed Transaction so that Shareholders may choose to trade on either exchange going forward (provided that a NASDAQ listing is obtained).

Fractional entitlements to Unilife Corporation Common Stock will be rounded down to the nearest whole number of shares of Unilife Corporation Common Stock after aggregating all holdings of the relevant Shareholder. If Shareholders elect to receive CDIs, their entitlement to CDIs will be rounded down to the nearest multiple of six (please see example in section 3.5 below).

Shareholders may elect to receive Unilife Corporation Shares or CDIs by completing the election form accompanying this document. Shareholders who do not make an election by the Scheme Record Date will receive their Unilife Corporation Shares in the form of CDIs.

The Unilife Corporation Shares issued under the Share Scheme will be subject to the same restrictions (if any) as apply to the Shares in the Company which they replace. Please see section 6 of this Information Memorandum for further details.

The detailed steps involved in implementing the Share Scheme are set out in Section 8 of this Information Memorandum.

### 3.3 Option Scheme

A scheme of arrangement under Part 5.1 of the Corporations Act will be proposed to Optionholders under which all existing Options over Shares in the Company will be cancelled. Under this arrangement, Optionholders will receive:

**One Unilife Corporation Option for every six Options held in the Company  
as at the Scheme Record Date**

The new Unilife Corporation Options to be issued to Optionholders will be on essentially the same terms as the existing Options, except to the extent necessary or desirable to comply with Delaware and US federal laws and regulations. In particular, the Unilife Corporation Options will:

- have an equivalent exercise price to the price under the existing Options (but reflecting the 1:6 exchange ratio under the Schemes);

- be vested to the same extent as the existing Options are vested; and
- be subject to equivalent performance hurdles or vesting conditions (if any) as apply to the existing Options.

Fractional entitlements to Option Scheme Consideration will be rounded down to the nearest whole number of Unilife Corporation Options after aggregating all holdings of the relevant Optionholder.

Optionholders can elect to receive shares of Common Stock or CDIs on exercise of their Unilife Corporation Options.

In order to allow employees of the Company to resell the underlying Unilife Corporation Shares which will be issued to them on exercise of their Unilife Corporation Options, Unilife Corporation intends to file a Form S-8 Registration Statement shortly after listing on NASDAQ. However, employees should be aware that in the event that there is a delay in the listing of Unilife Corporation on NASDAQ, if they exercise their Unilife Corporation Options after the completion of the Proposed Transaction but before the Form S-8 Registration Statement is lodged, they will receive restricted securities under US law.

The detailed steps involved in implementing the Option Scheme are set out in Section 8 of this Information Memorandum.

### **3.4 Exchange ratio**

The Board of the Company has adopted an exchange ratio of 6:1 for the Proposed Transaction. That is, Shareholders will receive one Unilife Corporation Share for every six Shares and Optionholders will receive one Unilife Corporation Option for every six Options.

The reason for this exchange ratio is that, as Unilife Corporation is seeking a listing of Unilife Corporation Shares on NASDAQ in conjunction with the Proposed Transaction, its shares of Common Stock must satisfy a minimum bid price of US\$4 imposed by NASDAQ. The directors of Unilife Corporation believe that it is more advantageous for Unilife Corporation securities to have a higher value per share than this prescribed minimum particularly given the directors' desire to be conservative with respect to the foreign exchange rate of Australian dollars to US dollars that will exist at the intended date of listing on NASDAQ. Accordingly, the formula of one Unilife Corporation Share for every six Shares in the Company has been applied to effectively consolidate the share capital for US purposes upon implementation of the Proposed Transaction.

### **3.5 Treatment of fractional entitlements to Scheme Consideration**

Under US taxation law, fractional entitlements to Option Scheme Consideration held by US taxpayers are not able to be rounded up to the nearest whole number of Unilife Corporation Options. As a result, to ensure all Shareholders and Optionholders receive equal treatment under the Schemes, all fractional entitlement to Scheme

Consideration will be rounded down. An example of how this will affect holdings of Shareholders and Optionholders is set out below:

<b>Shareholder</b>	581,900 Shares
<b>Exchange Ratio</b>	1 Unilife Corporation Share: 6 Shares 1 Unilife Corporation CDI: 1 Share
<b>Entitlement to Unilife Corporation Shares</b>	$581,900 \div 6 = 96,983.33$ <i>Unilife Corporation Shares rounded down to 96,983 Unilife Corporation Shares</i>
<b>Entitlement to CDIs</b>	581,900 Shares rounded down to 581,898 CDIs (being the nearest multiple of 6)
<b>Optionholder</b>	25,000 Options
<b>Exchange Ratio</b>	1 Unilife Corporation Option: 6 Options
<b>Entitlement to Unilife Corporation Options</b>	4,166.66 Unilife Corporation Options rounded down to 4,166 Unilife Corporation Options

### 3.6 Relationship between the Schemes

The Option Scheme is conditional on the Share Scheme becoming Effective. Accordingly, unless Shareholders and the Court approve the Share Scheme, the Option Scheme will not proceed.

However, if the Share Scheme is approved, it will proceed regardless of whether the Option Scheme becomes Effective. If the Share Scheme becomes Effective but the Option Scheme is not approved, Unilife Corporation will consider all options available to it including compulsory acquisition (if available) or cancellation of the Options under Chapter 6A of the Corporations Act or by private agreement with Optionholders or not taking any action with respect to the Options.

If Unilife Corporation did not take any action in these circumstances, Optionholders who exercised their Options after the Scheme Record Date would receive Shares in the Company. As a result, they would become minority shareholders in the Company which will at that time have de-listed from ASX (as Unilife Corporation will then be the listed entity) and as a result their shareholding would be extremely illiquid.

The Resolution to be proposed at the EGM for approval of the Unilife Corporation 2009 Stock Incentive Plan, will only be proposed if the Share Scheme is approved by Shareholders, however, the remaining Resolutions will be proposed whether or not the Share Scheme is approved. The Schemes are not conditional upon the Resolutions being passed or vice versa. For further details of the Resolutions to be proposed at the EGM, please read the Notice of EGM which accompanies this Information Memorandum.



### **3.7 Ineligible Overseas Shareholders**

Shareholders who are resident outside Australia, New Zealand, United States, Hong Kong, United Kingdom, Republic of Ireland, France, Croatia and Malta will not receive Unilife Corporation Shares under the Share Scheme unless, before the Scheme Record Date (and without being obliged to conduct any investigations into the matter), Unilife Corporation is satisfied that Unilife Corporation Shares can lawfully be issued to such Shareholders under the Share Scheme.

Instead, the Unilife Corporation Shares to which such Shareholder would have otherwise been entitled will be issued to a Nominee appointed by Unilife Corporation who will sell those Unilife Corporation Shares (in the form of CDIs) on ASX. The Nominee will then distribute the proceeds received to the Ineligible Overseas Shareholders after deduction of any brokerage, taxes or other costs of sale (such amounts to be paid in Australian dollars and calculated on an averaged basis so that all Ineligible Overseas Shareholders receive the same price per CDI, subject to rounding to the nearest whole cent). Further details of the arrangement with the Nominee are detailed in Section 8.10 of this Information Memorandum.

As at 26 November 2009, the Company had 8,855 Shareholders of which only 0.14% of Shareholders (holding less than 0.09% of Shares) resided outside Australia, New Zealand, US, Hong Kong, United Kingdom, Republic of Ireland, France, Croatia and Malta. Based on this and the likely costs involved in seeking advice on and complying with local securities laws in other jurisdictions, the directors of the Company have decided not to extend the offer of Unilife Corporation securities into other jurisdictions.

### **3.8 Approvals**

In order for all elements of the Proposed Transaction to be implemented, the following approvals are required to be obtained:

- (a) the Share Scheme must be approved by a majority in number of Shareholders representing at least 75% of the votes cast by Shareholders present and voting (either in person or by proxy, attorney or corporate representative) at the Share Scheme Meeting (unless the Court orders otherwise);
- (b) the Option Scheme must be approved by a majority in number of Optionholders representing at least 75% by value of the Options present and voting (either in person or by proxy, attorney or corporate representative) at the Option Scheme Meeting; and
- (c) the Resolutions must be approved by a majority of Shareholders present and voting (either in person or by proxy, attorney or corporate representative) at the EGM

Each of the Schemes must also be approved by the Court.

The required quorum at the Meetings of Shareholders is two Shareholders and at the Meeting of Optionholders is two Optionholders in each case present in person or by proxy, attorney or corporate representative.

### **3.9 Replacement of Standalone Options**

In conjunction with the Schemes, Unilife Corporation and the Company has made or will make an offer to Standalone Optionholders to cancel their respective Standalone Options in consideration for the grant of equivalent options in Unilife Corporation. The Standalone Optionholders will receive one Unilife Corporation Standalone Option for every six Standalone Options held at the Scheme Record Date. Any fractions of Standalone Options will be rounded down to the nearest whole number of Unilife Corporation Standalone Options. The cancellation of the existing Standalone Options and offer of the Unilife Corporation Standalone Options is conditional upon the Share Scheme becoming Effective.

The Unilife Corporation Standalone Options will be issued in reliance upon the exemption from the US Securities Act registration requirements provided in Regulation D, Regulation S or Rule 701. The Shares issued on exercise of the Unilife Corporation Standalone Options can only be sold or transferred either pursuant to a valid registration statement, such as a Form S-8 (to the extent that such options qualify for inclusion on such form) or pursuant to an exemption from registration, such as Rule 144 of the US Securities Act which generally requires a six month holding period between the exercise of the relevant option and the sale of the underlying shares.

However, in order to permit such Standalone Optionholders to re-sell the Unilife Corporation Shares underlying their Unilife Corporation Standalone Options, Unilife Corporation intends to file a Form S-1 Registration Statement shortly after listing on NASDAQ.

In conjunction with their application for Shares in the Placement, professional and sophisticated investors in Australia and accredited investors in the US that received Standalone Options under the recent Placement all executed Option Cancellation Deeds to effect the replacement of their Standalone Options upon implementation of the Proposed Transaction.

### **3.10 Listing of Unilife Corporation on ASX**

An application will be made for the admission of Unilife Corporation to the official list of ASX and for quotation of the CDIs within seven days of the date of this Information Memorandum. Approval for the listing of Unilife Corporation and quotation of the CDIs is a condition to implementation of the Schemes and such condition will not be waived in connection with the Schemes.

It is expected, provided that ASX grants approval for the listing and quotation, that CDIs will commence trading on a deferred settlement basis on the Business Day after the Effective Date for the Schemes, which is currently expected to be on or around 16 January 2010.

### **3.11 Listing of Unilife Corporation on NASDAQ**

In conjunction with the implementation of the Proposed Transaction, Unilife Corporation is also seeking a listing for Unilife Corporation Common Stock on NASDAQ. Unilife Corporation expects the listing on NASDAQ to commence in February 2010 subject to the Form 10 becoming effective following SEC review and NASDAQ approval of the listing application. However, there is no guarantee as to when this will occur or that it will occur at all. Accordingly, you should be aware that unless and until such NASDAQ (or another) listing occurs the only market for trading Unilife Corporation Shares following implementation of the Schemes will be ASX, where they will only trade in the form of CDIs.

If Unilife Corporation is approved for listing on NASDAQ, Shareholders holding CDIs will be able to convert their CDIs into Unilife Corporation Shares on a six for one basis so that they will be able to trade Unilife Corporation Shares on NASDAQ.

### **3.12 CHESS Depositary Interests (CDIs)**

As noted above, Shareholders (excluding Ineligible Overseas Shareholders) may elect to receive the Share Scheme Consideration in the form of Unilife Corporation Common Stock or CDIs. Such election must be made by completing the election form accompanying this Information Memorandum and sending it to the Company's Share Registry. Shareholders who do not make an election by the Scheme Record Date will receive their Unilife Corporation Shares in the form of CDIs.

CDIs are instruments used to enable securities of foreign companies, such as Unilife Corporation, to be traded on ASX. The electronic transfer system used on ASX known as CHESS cannot be used to transfer securities of foreign companies, therefore depositary instruments known as CDIs are used to facilitate the electronic settlement of such securities.

CDI holders will obtain all the economic benefits of actual ownership of Unilife Corporation Shares. CDIs will confer the beneficial interest in Unilife Corporation Shares on Shareholders whilst the legal title to the Unilife Corporation Shares will be held by a depositary, CHESS Depositary Nominees Pty Limited, which is a Subsidiary of ASX.

Appendix 9 to this Information Memorandum provides a further description of the rights and entitlements attaching to the CDIs, including in relation to voting.

Shareholders who elect to receive Unilife Corporation Shares rather than CDIs may not immediately be able to trade the Unilife Corporation Shares on NASDAQ and therefore they will not be able to trade their Unilife Corporation Shares or other public exchange unless they convert their Unilife Corporation Shares into CDIs.

CDIs can be converted into Unilife Corporation Shares and vice versa on a six for one basis at any time following implementation of the Proposed Transaction.

## **4 Important considerations for Shareholders and Optionholders**

### **4.1 Introduction**

This section sets out the key potential advantages, disadvantages and risks associated with the Proposed Transaction which Shareholders and Optionholders should consider when deciding whether to approve the Schemes. Shareholders and Optionholders should also have regard to the entire Information Memorandum, particularly the Independent Expert's Report at Appendix 2, when deciding whether to vote in favour of the Proposed Transaction.

### **4.2 Potential advantages of the Proposed Transaction**

The Board believes that the Proposed Transaction will enhance the ability of the Company to co-ordinate the implementation of its strategic business plan which is focused on the attainment of global leader status in the design, development and supply of innovative safety medical devices for use in key pharmaceutical and healthcare markets. The United States, along with Europe, represents some of the Company's largest target markets.

The Board believes that some of the key advantages that may result from the Proposed Transaction are to:

- align the corporate structure of the Unilife Group with its operating business in the US. For example:
  - the Unilife Group's manufacturing, business development and corporate requirements are all currently undertaken and located in the US;
  - the US represents one of the Unilife Group's largest target markets for its products and FDA approvals are held in the US for some of its products to be sold commercially, subject to final regulatory clearances;
  - while the Unilife Group plans to continue certain research and development activities in Australia, these can be incorporated, as appropriate, into the Unilife Group's development business in the US;
- enhance the Unilife Group's ability to manage and centrally control its business and facilitate further expansion into international markets;
- provide easier access to capital for the Unilife Group by providing access to the world's largest capital market;
- increase the potential US-based demand and liquidity for the Unilife Group's securities by having an SEC compliant and NASDAQ listed entity heading the Unilife Group (assuming a NASDAQ listing is achieved) and allowing potential US investors who are currently precluded from investing

in non-US listed companies such as the Company to invest in Unilife Corporation's securities. By comparison of the companies listed on the ASX and NASDAQ in the Health Care Equipment & Services sector where the company is categorised, at 11 November 2009 there were:

- over 70 companies listed on the ASX in this sector. The total market capitalisation of these companies was approximately \$25,540 million with an average market capitalisation of approximately \$355 million and a median market capitalisation of these companies of approximately \$14 million;
- over 200 companies listed on NASDAQ in this sector. The total market capitalisation of these companies was approximately \$125,737 million with an average market capitalisation of approximately \$605 million and a median market capitalisation of these companies of approximately \$178 million;
- on NASDAQ the price to earnings ratio for those companies with earnings in this sector is over 35 times compared to ASX where the price to earnings ratio for those companies with earnings in this sector is over 18 times as at 11 November 2009;
- potentially broaden and diversify the Unilife Group's shareholder base;
- enhance the Company's visibility in the US and internationally;
- provide a US corporate structure which is more understandable for US investors and US based employees which the Unilife Group anticipates will enhance its ability to attract and retain investors and key management personnel, with sector and industry specific knowledge and experience, who can facilitate the development and commercialisation of the Unilife Group's products and further enhance its operations;
- enhance the Unilife Group's potential for further growth and realisation of shareholder value by providing greater access to opportunities for corporate transactions such as mergers and acquisitions in line with the Unilife Group's strategic plans;
- enable the Unilife Group to retain an Australian listing as it facilitates further growth internationally; and
- reduce the duplication of US and Australian infrastructure and resources.

#### **4.3 Potential disadvantages and risks of the Proposed Transaction**

The Board also recognises and acknowledges that some of the potential disadvantages or risks of the Proposed Transaction may include:

- increased reporting requirements and compliance costs due to the NASDAQ listing (if obtained) in addition to the ASX listing. For example, while Unilife Corporation will not be required to continue to prepare its

financial statements under AIFRS, it will be required to comply with financial reporting requirements under the ASX Listing Rules in addition to reporting requirements imposed by the SEC and NASDAQ. Further, Unilife Corporation will be required to pay two sets of listing fees if the dual listing on NASDAQ is obtained;

- that there is no guarantee as to when Unilife Corporation will obtain a listing on NASDAQ if at all. If a NASDAQ listing is not obtained, there will not be any public market in the US for Unilife Corporation Shares and Shareholders will only be able to trade Unilife Corporation Shares in the form of CDIs on ASX;
- the failure to meet the requirements for a listing on NASDAQ. For example minimum asset, capital, public shares and shareholder requirements are imposed under the NASDAQ market rules. The Board has considered the minimum requirements imposed under the NASDAQ market rules and believes that having regard to these requirements that there should be no significant barriers to obtaining a listing of Unilife Corporation on NASDAQ. The Independent Expert has also considered the NASDAQ listing requirements and is of the opinion that the listing requirements do not represent a significant barrier to the listing of Unilife Corporation on NASDAQ. For further information on the barriers to the listing of Unilife Corporation on NASDAQ please see the Independent Expert's Report set out in Appendix 2 to this Information Memorandum;
- the potential impact of having to comply with different legal regimes (which may be advantageous or disadvantageous) and the differences in Shareholders' rights in Unilife Corporation as a Delaware corporation when compared to their rights as Shareholders of the Company (please see section 4.4 and Appendix 10 for further details);
- the potential reduced access to management for Australian investors and the different style of reporting (to comply with US requirements);
- the lost benefit of potential dividend franking credits in Australia if Unilife Corporation makes a dividend payment in the future (please refer to section 9 of the Information Memorandum);
- increased complexity and monitoring of the preservation and ongoing availability of the carried forward tax losses of the Australian tax consolidated group, including compliance with the alternative tax loss utilisation tests - the Continuity of Ownership Test and the Same Business Test. This is currently an issue of broader ATO attention;
- the potential loss of demand for the Unilife Group's securities from Australian investors and potential reduction in liquidity of the Unilife Group's securities when traded on ASX in the form of CDIs;
- increased exposure to US law and the more litigious environment in the US; and

- exposure to US estate taxes under certain circumstances.

#### **4.4 Differences between Australian and US Corporations and Securities Laws**

The Company is incorporated in South Australia, Australia. Unilife Corporation is incorporated in Delaware, United States. As a result, if the Proposed Transaction proceeds, different legal regimes will apply with respect to your holdings of Unilife Corporation Shares and Unilife Corporation Options to those that currently apply to the Company. Rights of Shareholders and Optionholders after implementation of the Proposed Transaction will be governed by the laws of the State of Delaware in the US, US federal securities law (including SEC rules and regulations) and Unilife Corporation's certificate of incorporation and by-laws. Unilife Corporation will also be bound by the Listing Rules, due to the quotation of its CDIs<sup>9</sup> on ASX and also by the NASDAQ Listing Rules if Unilife Corporation is listed on NASDAQ.

As a foreign entity, Unilife Corporation will not be subject to Chapters 6, 6A, 6B and 6C of the Corporations Act dealing with the acquisition of shares (for example, substantial holdings and takeovers). However, in conjunction with Unilife Corporation's application for admission to the official list of ASX, Unilife Corporation will undertake to inform ASX upon becoming aware of:

- any person becoming a substantial holder of Unilife Corporation within the meaning of section 671B of the Corporations Act, and to disclose any details of the substantial holding of which Unilife Corporation is aware; and
- any subsequent changes in the substantial holdings of which Unilife Corporation is aware.

Some of the differences between Australian and US/Delaware corporations and securities law could be viewed as advantageous to Shareholders, while others could be viewed as disadvantageous. In particular, as noted above, the Company, as an Australian listed company, is subject to the takeover provisions of the Corporations Act that are designed to protect minority shareholders on a change of control and to restrict the Board's ability to take defensive steps that could impact competition for control of the Company. Delaware law provides different protections and also allows the directors of Unilife Corporation to implement takeover defences that the Company is not permitted to implement under Australian law.

A comparison of the legal regimes in Delaware and Australia and the significance of these differences for Shareholders and Optionholders is set out in Appendix 10. The Independent Expert has also considered the differences between Australian and US/Delaware corporations and securities laws in the Independent Expert's Report set out in Appendix 2 to this Information Memorandum.

In addition, as a result of the implementation of the Proposed Transaction:

- the Unilife Group will no longer report under AIFRS;

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<sup>9</sup> A detailed description of CDIs is contained in Appendix 9.

- Unilife Corporation will hold its shareholder meetings in the US;
- Unilife Corporation will have CDIs traded on ASX rather than ordinary shares. Appendix 9 sets out a summary of the rights attaching to CDIs;
- subject to NASDAQ approving the listing application and the Form 10 becoming effective following SEC review, Unilife Corporation will have Common Stock traded on NASDAQ; and
- holders of Unilife Corporation Shares may be subject to US estate taxes (see section 9 for further details).

#### **4.5 Taxation implications of the Proposed Transaction**

The Proposed Transaction may have taxation implications for Shareholders and Optionholders. Shareholders and Optionholders are referred to the summary of tax consequences in section 9 of this Information Memorandum, which also includes an analysis of the tax consequences of holding interests in shares and options in a company incorporated under the laws of the State of Delaware.

In addition, Shareholders and Optionholders are strongly urged to consult their tax advisers as to the specific tax consequences for them of the Proposed Transaction including the applicability and effect of local and foreign income and other tax laws in their particular circumstances.

#### **4.6 Implications if the Proposed Transaction does not proceed**

In the event that Shareholders do not approve the Share Scheme, Shareholders and Optionholders will retain their interests in the Company, which will continue to operate as a separate entity and will continue to be listed on ASX.

##### **(a) *Implications if the Share Scheme does not become Effective***

If the Share Scheme does not become Effective, the following key implications will arise for Shareholders:

- Unilife Corporation will not become the parent company of the Unilife Group and the Unilife Group will not redomicile in the US;
- the Company will remain the entity listed on ASX;
- Unilife Corporation will not proceed with the NASDAQ listing;
- the benefits expected to arise from the Proposed Transaction such as improved access to capital markets, increased demand from US investors and the ability to attract and retain quality US employees, as summarised in section 4.2 will not be obtained;
- the significant costs incurred in connection with presenting the Proposed Transaction to Shareholders will be incurred regardless of whether the Proposed Transaction is implemented; and



- the redomiciling proposal will not be revisited in the foreseeable future.

(b) *Implications if the Option Scheme does not become Effective*

If both the Share Scheme and Option Scheme do not become Effective, the implications set out in section 4.6(a) above will also apply to Optionholders so far as they relate to the value of the Shares underlying the Options.

However, if the Share Scheme is approved but the Option Scheme is not, the following key implications may arise for Optionholders:

- as the Company will become a wholly owned subsidiary of Unilife Corporation and will be de-listed from ASX, the Options will be over unlisted securities in a controlled entity (ie, the Company). As a result, any unexercised Options would only be able to convert into extremely illiquid Shares in an unlisted company. This would result in value realisation being uncertain for Optionholders;
- alternatively, Unilife Corporation may seek to compulsorily acquire the Options if the outstanding Options and Standalone Options comprise less than 10% of the issued share capital of the Company at that time. The right of an Optionholder to continue to hold his or her Options, or Shares issued on exercise of such Options, will be subject to any decision by Unilife Corporation to compulsorily acquire the Options and the Shares issued on exercise of such Options under Chapter 6A of the Corporations Act (if available). Unilife Corporation has indicated that it intends to exercise its compulsory acquisition rights if the Option Scheme is not approved. The compulsory acquisition must be at fair value for the Options in the opinion of an independent expert approved by ASIC and will be payable in cash, but there is no guarantee that this amount will exceed the value of the Unilife Corporation Options which would have been issued under the Option Scheme; and
- finally, Unilife Corporation may consider discussing the cancellation of the Options with Optionholders by private treaty.

Optionholders should note that Unilife Corporation may not be able to or may choose not to compulsorily acquire or cancel the Options in this situation and therefore there is no guaranteed exit for Optionholders in these circumstances.

(c) *Implications if Standalone Optionholders do not agree to the cancellation of Standalone Options in exchange for equivalent options in Unilife Corporation*

If the Share Scheme is approved but any or all of the Standalone Optionholders do not agree to the cancellation of their Standalone Options

in exchange for equivalent options in Unilife Corporation, such Standalone Optionholders will hold Standalone Options over unlisted securities as the Company will become a wholly owned Subsidiary of Unilife Corporation, and will be delisted from ASX. As a result, any unexercised Standalone Options would only be able to convert into extremely illiquid Shares in an unlisted company.

If this occurs, Unilife Corporation will consider the alternatives noted above including compulsorily acquisition of such Standalone Options (if available) as described in section 4.6(b) above.

#### **4.7 Implications if the Resolutions are not approved**

The Schemes are not conditional upon the approval of the Resolutions to be proposed at the EGM. Accordingly, if the Schemes are approved they will proceed regardless of whether the Resolutions are passed at the EGM. However, if the Resolutions are not passed, the 2009 Stock Incentive Plan will not be approved and no grants of incentives will be able to be made by Unilife Corporation under this Plan and the issues of incentives the subject of the Resolutions will not proceed. The directors of Unilife Corporation believe that an effective, customary US style stock incentive plan, such as that proposed to be adopted is essential to attract and retain quality US employees.

#### **4.8 Independent expert's opinion**

The Independent Expert has concluded that the Proposed Transaction is **fair and reasonable to, and hence, in the best interest of the Shareholders as a whole and also in respect of the Optionholders as a whole.**

#### **4.9 Directors' recommendation**

The Directors believe that the Proposed Transaction is in the best interests of Shareholders and Optionholders.

**Accordingly, the Directors unanimously recommend that Shareholders and Optionholders vote in favour of each of the resolutions to be proposed at the Scheme Meetings to approve the Proposed Transaction.**

Please see section 4.2 for details of the reasons why the Directors believe that the Proposed Transaction is in the best interests of Shareholders and Optionholders.

The Directors intend to vote all Shares and Options owned or controlled by them in favour of the Schemes.

## **5 Information about the Company**

### **5.1 Introduction**

The Unilife Group designs, develops and supplies innovative safety medical devices. Listed on ASX since 2002, the Company has FDA-registered manufacturing facilities in the US State of Pennsylvania and a proprietary portfolio of clinical and prefilled safety syringes designed for use within healthcare and pharmaceutical markets.

This section contains information in relation to the Company. The Independent Expert's Report set out in Appendix 2 to this Information Memorandum contains further detailed information about the Company and its business.

### **5.2 Business overview**

#### **5.2.1 *Background and Corporate Structure of the Company***

The Company is a public limited liability company incorporated in Australia. The Company is subject to the Corporations Act and the Listing Rules.

The Company was incorporated on 28 June 1985 in South Australia, Australia. The Company's Australian Company Number is ACN 008 071 403. The Company's registered office is located at Suite 3, Level 11, 1 Chifley Square, Sydney NSW 2000.

The Company (then known as Musgrave Block Holdings Limited) acquired all of the issued shares of Unitract Pty Limited (ACN 101 059 723) in November 2002, upon which it changed its name to Unitract Limited (now Unilife Medical Solutions Limited), listed on ASX under the ticker "UNI" and continued the business operations of Unitract Pty Limited and the development of Unitract Pty Limited's retractable syringe project.

The Company's global headquarters, operational activities and FDA registered manufacturing facility are located in Lewisberry, Pennsylvania.

The Company's principal operating subsidiary, Unilife Medical Solutions, Inc. is a Delaware corporation which was incorporated on 3 January 2003 under the name Integrated BioSciences, Inc. (**IBS**). It changed its name to Unilife Medical Solutions, Inc. on 18 February 2009. The Company's wholly-owned Australian subsidiary, Unitract Syringe Pty Ltd was incorporated on 21 June 2002 in Western Australia, Australia and holds the majority of the Unilife Group's intellectual property and conducts research and development activities

#### **5.2.2 *Overview***

The Company is a US-based medical device company focused on the design, development, manufacture and supply of a proprietary range of retractable syringes.

Primary target customers for the Company's products include pharmaceutical manufacturers and suppliers of medical equipment to healthcare facilities and patients who self-administer prescription medication.

All of the Company's syringes incorporate automatic and fully-integrated safety features which are designed to protect those at risk of needlestick injuries and other unsafe injection practices.

In the United States and a number of other sophisticated healthcare markets, hospitals and other healthcare facilities, as well as pharmaceutical manufacturers who supply injectable drugs and vaccines in a prefilled syringe format, are increasingly required to comply with legislation aimed at protecting healthcare workers from the risk of acquiring blood-borne pathogens such as HIV and hepatitis C via needlestick injuries.

The Company's core portfolio of safety syringe products are designed for supply to pharmaceutical manufacturers and healthcare facilities which are seeking to comply with these needlestick prevention laws. The Company expects its products will also be used by patients who self-administer prescription medication outside of the healthcare setting.

### **5.3 Market Opportunity and Target Markets**

#### **5.3.1 Market opportunity**

##### ***The Syringe Market and the Increasing Use of Pre-filled Syringes***

According to the International Association of Safe Injection Technologies, approximately 35 billion syringes are manufactured every year, half of which are used within sophisticated healthcare markets such as North America, Europe, Japan and Australia.<sup>10</sup> The majority of therapeutic injections occur within healthcare facilities such as acute-care hospitals and long-term care centres. Other sectors of the global syringe market include patients who self-administer prescription medication such as insulin, government agencies which sponsor harm reduction programs, and non-government organisations which conduct vaccination programs.

Injectable drugs and vaccines have traditionally been supplied in a vial or ampoule, with the operator required to draw up a measured dose of medication into a conventional plastic syringe immediately prior to an injection (**Clinical Syringes**). Prefilled syringes typically utilise a glass barrel and are filled by pharmaceutical manufacturers so that they are ready for use prior to shipment. While conventional syringes continue to make up the vast majority of syringes used, prefilled syringes are becoming an increasingly popular method of drug delivery.

The Company is aware of more than 50 drugs and vaccines that are currently available in a prefilled syringe format from more than 20 pharmaceutical companies,

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<sup>10</sup> The International Association of Safe Injection Technology (IASIT) presentation "Uganda Safe Injection Meeting" dated 28 April 2004.

and that a number of new drugs in the development pipeline are also likely to be supplied in this format in the future.

Greystone Associates estimates that approximately 2.3 billion prefilled syringes will be used globally in 2009, and that this number will increase significantly in the coming years.<sup>11</sup> Greystone Associates is an international company focused on providing timely, and comprehensive analysis, assessments, and forecasts on the life science technology and the pharmaceutical market.

Drugs that are currently supplied in a prefilled syringe format include anti-coagulants to prevent and treat thrombosis, anti-inflammatory drugs to treat rheumatoid arthritis, anti-infectives to treat hepatitis B and C, haematological drugs to stimulate production of red or white blood cells to treat anaemia or fight infection, and vaccines which seek to prevent a range of diseases. The Company expects that prefilled syringes will also be increasingly used in the coming years as a drug delivery device for other therapeutic drug classes including obstetrics, oncology, osteoporosis and human growth hormone treatment.

Prefilled syringes have a number of advantages over conventional plastic syringes. First, prefilled syringes can help pharmaceutical companies improve manufacturing efficiencies through the elimination of drug wastage commonly associated with the overfilling of multi-use vials. Second, healthcare workers often prefer prefilled syringes because they can facilitate a relatively fast, accurate and convenient administration of a drug. Furthermore, a pre-measured dose of an injectable drug in a prefilled syringe can help reduce the risk of dosing errors. Finally, the relative ease-of-use by patients of prefilled syringes also makes them suitable for the self-administration of many types of prescription medication.

### ***Increased Focus on Prevention of Needlestick Injuries***

The World Health Organisation estimates that 1.3 million people die each year as a result of needlestick injuries, syringe re-use and other unsafe injection practices.<sup>12</sup> Needlestick injuries and syringe sharing can result in the transmission of a number of blood-borne pathogens such as HIV/AIDS and hepatitis C. The US Centres for Disease Control and Prevention estimates that 385,000 needlestick injuries are sustained by US hospital-based healthcare personnel each year.<sup>13</sup> The US Occupational Safety and Health Administration (**OSHA**), estimates that when other secondary healthcare settings are also taken into account, there are as many as 800,000 needlestick injuries to US healthcare workers each year.<sup>14</sup> To help minimise the transmission of blood-borne pathogens caused by unsafe injection practices, many international healthcare and pharmaceutical markets are transitioning to the mandatory use of safety syringes.

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<sup>11</sup> Greystone Associates, "Prefilled Syringes: Drugs, Devices and Disease Therapeutics" (May 2009).

<sup>12</sup> WHO Fact Sheet 231 - Injection Safety.

<sup>13</sup> CDC Workbook for Designing, Implementing, and Evaluating a Sharps Injury Prevention Program.

<sup>14</sup> C Gosnell, "Preventing Needlestick Injuries across the Continuum of Care: Creating a Culture of Safety" (December 2007)

In sophisticated healthcare markets, governments are increasingly focused on the mandatory use of safety devices within healthcare facilities to protect healthcare workers from the risk of acquiring blood-borne pathogens via needlestick injuries. The US was the first nation to mandate the use of safety syringes within healthcare facilities, with the adoption of the Federal Needlestick Prevention Act in 2000, or FNSPA, and the subsequent revision to the Bloodborne Pathogens Standard (**BPS**). According to the International Healthcare Worker Safety Centre, approximately one in five healthcare facilities inspected by OSHA since 2002 have been issued with citations for non-compliance with the BPS.<sup>15</sup>

The European Union is also considering the introduction of legislation requiring member countries to use needlestick prevention products within healthcare facilities, while other countries such as Canada and Australia have also taken steps to encourage the use of safety syringes.<sup>16</sup> As a result of this existing and proposed legislation, safety syringes are now commonly used within the healthcare facilities of a number of countries.

The US represents the largest and most mature market for safety syringes, with a substantial majority of hypodermic syringes and needles used within acute-care facilities featuring some type of needlestick prevention device.

Notwithstanding the increased use of safety syringes, the Directors believe that current safety syringe technologies are, in several respects, inadequate to fully protect healthcare workers from infection risk caused by needlestick injuries or other potential transmission modes. First, most products currently available require operators to manually slide an external plastic guard or sheath over the needle after use or retract the needle into the barrel at a rapid, uncontrolled rate. Second, healthcare workers may choose to remove or not activate the safety feature of some types of safety syringe products. Moreover, activation of the needle retraction mechanism in the open air for some retractable syringes, rather than inside the body of the patient, may create the potential risk of infection via needlestick injuries or aerosol (splatter).

OSHA differentiates safety features in two primary ways. First, it differentiates passive safety features which “remain in effect before, during and after use” from active devices which “require the worker to activate the safety mechanism”.<sup>17</sup> Second, OSHA regulations state that products with an “integrated safety design that is an integral part of the device and cannot be removed” are usually preferred to those with an accessory safety device with safety features that are “external” and “dependent on employee compliance”.<sup>18</sup> The Directors believe that the majority of safety syringe products used within the US healthcare facilities incorporate active safety features which are not fully integrated within the barrel of the syringe. The

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<sup>15</sup> Perry J and Jagger J, “OSHA enforcement activity on BPS: an update” (March 2008) mlo online.

<sup>16</sup> Europa press release, “EU social partners’ agreement to prevent injuries to healthcare workers and cut risk of infections” (17 July 2009).

<sup>17</sup> Occupational Safety and Health Administration, Hospital e-Tool: Healthcare Wide Hazards - Needlesticks/Sharps Injuries.

<sup>18</sup> Occupational Safety and Health Administration, Hospital e-Tool: Healthcare Wide Hazards - Needlesticks/Sharps Injuries.

Company is not aware of any prefilled syringe with passive safety features which are integrated within the glass barrel.

To improve compliance with legislation such as the FNSPA, a number of pharmaceutical companies attach ancillary safety products onto standard prefilled syringes following dose filling and prior to packaging. The Company estimates that approximately half of the drugs currently available in prefilled syringe format are supplied by the pharmaceutical manufacturer with an ancillary safety device. The majority of these ancillary safety products slide an external plastic sheath or guard over the needle once the injection has been completed. It is costly for pharmaceutical companies to purchase these ancillary safety products and the automated assembly systems required to attach them onto a standard prefilled syringe. The relatively large size of prefilled syringes supplied with an ancillary safety device can also significantly increase the shipment and packaging costs of pharmaceutical companies. Furthermore, some of these prefilled syringes supplied with an ancillary safety device must be removed from the patient prior to activation, creating the risk of infection via needlestick injury or aerosol (splatter). Accordingly, the Directors believe that there is a significant market opportunity for a prefilled syringe with passive and integrated safety features that is compatible with drug filling systems of pharmaceutical companies.

The Directors also believe that there are significant market opportunities for the use of conventional and prefilled safety syringes outside of mainstream healthcare facilities. In addition to insulin, a range of other injectable drugs designed for the prevention and/or treatment of chronic or debilitating conditions such as arthritis, multiple sclerosis, osteoporosis and thrombosis are now available for self-administration. The Directors believe the popularity of safety syringes among patients who self-administer prescription medication may increase due to their capacity to prevent needlestick injuries to family members and encourage safe, convenient disposal. When purchased with a prescription, a number of insurance providers in the US now cover safety insulin syringes under the same tier level for reimbursement as standard insulin syringes.

The Directors believe that another market which may, in the future, transition towards the mandatory use of non-reusable safety syringes is the harm reduction market, where governments provide free or subsidised syringes to injecting drug users (IDUs). The reuse and sharing of syringes by IDUs has been identified as a prime accelerant in the transmission of blood-borne diseases and is responsible for one-third of new HIV infections outside sub-Saharan Africa. The governments of more than 60 countries worldwide now sponsor harm reduction programs which seek to minimise unsafe injection practices by IDUs. While these programs have proven largely effective in preventing or containing HIV epidemics, the continued sharing of standard syringes among IDUs has contributed to the continuation of national epidemics of the relatively more infectious hepatitis C.

In addition, the unsafe disposal of syringes in public areas creates public concern regarding the risk of needlestick injury. Recognising the scale of HIV and hepatitis C epidemics, and the substantial economic costs associated with their long-term

treatment, many governments are considering the use of single use, safety syringes as a way to enforce safe injection practices among IDUs.

### ***Unilife's Solution***

The Company's clinical and prefilled safety syringes incorporate automatic (also known as passive) safety features which are fully integrated within the barrel. They are designed to assist pharmaceutical manufacturers and healthcare facilities comply with needlestick prevention laws, and to encourage single use and safe disposal practices outside of healthcare settings.

The Company has utilised its core proprietary technology to design and develop a range of prefilled and clinical safety syringes with integrated safety features. In addition, the Company is not aware of any other company which is manufacturing syringes in both a prefilled (glass) and clinical (plastic) format which share the same common technology platform of automatic, integrated safety features.

### ***Key Target Markets***

Key target markets for the Company's products include pharmaceutical companies, healthcare facilities and patients who self-administer prescription medication. The Directors believe that the majority of the Company's products would be supplied either directly, or through pharmaceutical companies, for use within sophisticated healthcare markets such as North America, Western Europe and some Asia-Pacific countries that require, or are transitioning toward, the mandatory use of safety syringes.

## **5.4 The Company's Products and Technologies**

### **5.4.1 Technology**

The Company's proprietary range of prefilled and clinical safety syringes are designed to help prevent the transmission of blood-borne pathogens such as HIV or hepatitis C through infection routes such as needlestick injuries.

The Company considers the following combination of core proprietary features available in Unilife safety products provide a major advance and competitive advantage within the marketplace:

- **Integrated design.** All safety features are fully integrated inside the syringe barrel to facilitate compact handling, intuitive use, and convenient disposal.
- **Passive (automatic) activation.** The activation of the needle retraction mechanism occurs automatically while the needle is inside the body to help prevent the risk of needlestick injury.
- **Operator controlled retraction.** Operators can control the speed of automatic needle retraction directly from the body into the syringe barrel to help reduce the risk of infection through transmission routes such as needlestick injuries and aerosol (spatter).



- **Auto-disable.** Upon withdrawal of the needle into the barrel, the plunger is automatically locked to prevent re-exposure or reuse.

The Company has utilised this core technology to design and develop a range of prefilled and clinical safety syringes for supply to pharmaceutical companies, healthcare facilities and patients who self-administer prescription medication.

#### **5.4.2 Product**

The Company's main focus at present is on the production and supply of two distinct product lines within its safety syringe portfolio:

- the Unifill™ ready-to-fill syringe with a glass barrel, to be supplied to pharmaceutical companies; and
- the Unitract™ range of plastic barrelled syringes where the operator draws up a dose immediately prior to the injection.

##### ***Unifill™ syringe***

The Company's main product is the Unifill™ ready-to-fill syringe, which is designed to be supplied to pharmaceutical manufacturers in a form that is ready for filling with their injectable drugs and vaccines. Once the device has been filled with a measured dose of the vaccine, it becomes known as a prefilled syringe.

The Company's Unifill™ ready-to-fill syringe is, to the Company's knowledge, the only prefilled syringe with passive (automatic) features which are fully integrated within the glass barrel. Manufacturing features include a glass barrel with a staked needle that requires shaping at only one end to allow options for sourcing from a multitude of glass cartridge suppliers, and the development of components in the fluid path that use the same materials as standard prefilled syringes to facilitate drug compatibility. The product is designed to be a safe, compact and intuitive primary drug container suitable for use within healthcare facilities and by patients who self-administer prescription medication.

The Unifill™ syringe is designed to fit the manufacturing systems currently used by pharmaceutical companies to load and package a measured dose of an injectable drug into a standard prefilled syringe. The Directors believe the use of the Unifill™ syringe by a pharmaceutical customer can eliminate its need to purchase and attach ancillary safety products onto standard prefilled syringes to comply with needlestick prevention legislation. In addition to reducing production costs associated with the purchase and attachment of these ancillary devices, the Directors believe the Company's product can also significantly reduce comparable shipping and storage costs. The compact size, intuitive use, functionality and automatic safety features of the Unifill™ syringe may also help pharmaceutical companies extend the product lifecycles, increase levels of market differentiation in competitive therapeutic areas, and expand the marketability of some drugs for convenient self-administration by patients outside of the healthcare setting.

The Company has developed the Unifill™ syringe so that it is designed to be compatible with drug validation processes and the manufacturing systems currently used by target pharmaceutical customers to fill and package standard prefilled syringes.

The Company commenced initial pilot production of the Unifill™ syringe at its Lewisberry, Pennsylvania facility in 2008. The Company intends that the Unifill™ syringe will be filed as a Type III Drug Master File as a primary drug packaging container in support of the ANDA and NDA applications of a partner pharmaceutical company. Whilst this Drug Master File will be filed with relevant regulatory authorities such as the FDA, it is the ultimate responsibility of the pharmaceutical company to obtain final approval of the combination drug-delivery device. The Company expects that the commencement of product sales will coincide with the completion of the industrialisation program with sanofi-aventis.

### ***Unitract™ 1mL Syringes***

The Unित्रact™ 1mL range of safety syringes is primarily designed for the subcutaneous injection of drugs within healthcare facilities and by patients who self-administer prescription medication such as insulin.

In addition to insulin and tuberculin variants, the Unित्रact™ 1mL range also includes the Unित्रact™ Safe Syringe™ which is custom-designed for provision to governments that utilise harm reduction (needle exchange) programs to prevent the reuse, sharing and unsafe disposal practices of IDUs.

The Company has received regulatory clearance for the marketing and sale of various Unित्रact™ 1mL syringe products in the US, Australia and Canada and has received CE Mark approval in the European Union. The Company commenced initial production of Unित्रact™ 1mL Syringes in China during 2008 to support regulatory approval and marketing activities. In August 2009, the Company commenced production of the Unित्रact™ 1mL Syringes at its Pennsylvania facility utilising an automated assembly system that it designed and built in-house. The automated assembly system was fully designed, developed, built and validated to the requirements of the US Food and Drug Administration (**FDA**) and ISO 13485. The Company expects to commence commercial sales of US-manufactured stock after the completion of required stability (aging) testing towards the end of 2009.

### ***Pipeline Products***

The Company also holds additional syringe-related intellectual property for products which it may commercialise in the future. These pipeline products include a range of plastic clinical syringes to be developed in a range of larger sizes such as 3mL and 5mL. The Directors believe that commercialisation of this pipeline range of larger clinical syringes would further improve its opportunities to market and sell its products within healthcare facilities such as acute-care hospitals. The Company may also commercialise additional ready-to-fill syringe products currently in its development pipeline which, like the Unifill™ syringe, would be designed for supply to pharmaceutical manufacturers. The Company has also designed and filed patents for other safety syringe products that utilise aspects of its proprietary technology. The

Company intends to continue to expand its competitive position within target pharmaceutical and healthcare markets through the commercialisation of a number of these other pipeline products.

## 5.5 Strategic Partnership with sanofi-aventis

Sanofi-aventis is a large global pharmaceutical company, whose products span multiple therapeutic areas, including cardiovascular, thrombosis, oncology, metabolic diseases, central nervous system, internal medicine and vaccines. The Directors believe that sanofi-aventis is currently the world's largest purchaser of prefilled syringes.

The Company entered into a collaborative relationship with sanofi-aventis in 2003 for the development of the Unifill™ ready-to-fill syringe as a next-generation drug delivery safety device.

On 1 July 2008, the Company signed an exclusive licensing agreement (**Exclusivity Agreement**) with sanofi-aventis pursuant to which sanofi-aventis paid to the Company a non-refundable €10 million one-time fee (approximately A\$16.4 million) for the exclusive right to negotiate for the purchase, via a supply agreement, of the Unifill™ syringe for a limited period.

On 30 June 2009, the Company and sanofi-aventis signed an industrialisation agreement pursuant to which sanofi-aventis agreed to provide the Company with up to an additional €17 million in payments (approximately A\$30.4 million) based on milestones set out in the Company's industrialisation program for the Unifill™ ready-to-fill syringe. The industrialisation program began in July 2008 and is scheduled to be completed by the end of 2010. As at 31 August 2009, the Company had received milestone payments of €10 million (approximately A\$18.1 million) under the industrialisation agreement, in addition to the €10 million upfront fee (approximately A\$16.4 million) attached to the Exclusivity Agreement.

The industrialisation agreement requires sanofi-aventis to provide the Company with a list prior to 30 November 2009 that specifies therapeutic drug classes for which it seeks to market the Unifill™ syringe on an exclusive basis. If the Company and sanofi-aventis agree on the exclusivity list during a defined period, then sanofi-aventis will retain exclusive rights to the use of the product within these designated therapeutic drug classes until 1 July 2014. If the parties are unable to reach an agreement on the list during this defined period, then sanofi-aventis will retain full exclusivity across all therapeutic classes until 1 July 2012, at which time the Company would be free to commence sales to any pharmaceutical company across all therapeutic classes.

If the Company and sanofi-aventis enter into a supply agreement prior to 1 July 2014 for the purchase of the Unifill™ syringe for use with a particular drug product, sanofi-aventis will receive a ten-year extension of its exclusive right to purchase the product for the relevant therapeutic drug class. This extension will be reduced to five years if sanofi-aventis does not sell a minimum of 20 million units of the product for use with an injectable drug product in this therapeutic class in at least one of the first five years of the supply agreement. Each therapeutic class on the exclusivity list will be treated separately for this purpose. The industrialisation agreement does not require the

Company to commit more than 30% of its annual production capacity to sanofi-aventis unless sanofi-aventis provides orders to the Company 24 months in advance.

The Company has agreed to pay sanofi-aventis a 5% royalty on all revenues it generates from sales of the Unifill™ Ready to Fill Syringe to other pharmaceutical companies until total product sales to other pharmaceutical companies reach €340 million (approximately A\$556 million). Furthermore, the Company has agreed to pay sanofi-aventis 70% of any access, license or other upfront fee paid for access to purchase the Unifill™ product that Unilife may receive from other pharmaceutical companies until such time as total access fee revenue exceeds €14.286 million (approximately A\$23.340 million). If access fee revenues exceed €14.286 million (approximately A\$23.340 million) prior to 30 June 2014, then the Company is required to pay sanofi-aventis 30% of the access fee revenue it receives from that date until 30 June 2014.

## 5.6 The Company's Strategy

The Company's goal is to progressively move to the forefront of the international transition of healthcare and pharmaceutical markets to the mandatory use of prefilled and clinical safety syringes.

The Directors believe that the competitive strength of its proprietary technology puts it in a strong position to become an established and preferred supplier of “best-in-class” safety syringe products to pharmaceutical companies, healthcare facilities and patients who self-administer prescription medication.

Key elements of the Company's business strategy are the development, production and sale of its patent-protected safety syringes, the continued expansion of its global operational and commercial presence and the establishment of long-term supply relationships with multinational pharmaceutical and healthcare equipment companies. The Company is committed under its mission statement to design, develop and supply innovative medical devices that can enhance and save lives.

As part of its business strategy, the Company plans to:

- **Continue to build a strong relationship with sanofi-aventis:** The Directors believe sanofi-aventis is currently the world's largest consumer of prefilled syringes. The Company has had a business relationship with sanofi-aventis since 2003 and, under its industrialisation agreement, sanofi-aventis is funding the Company's industrialisation program for the Unifill™ syringe. Upon completion of the industrialisation program, the Company expects to begin supplying the product to sanofi-aventis for use within defined therapeutic drug classes.
- **Enter into business relationships with additional pharmaceutical companies:** The Company has retained the right to negotiate licensing and other business arrangements relating to the Unifill™ syringe with other pharmaceutical companies for use within those therapeutic drug classes outside of those held by sanofi-aventis during the period of exclusivity. It is the Company's intention to secure agreements with other pharmaceutical

companies which are industry leaders within their respective therapeutic areas of expertise. By pursuing this strategy, the Directors believe the Company's products can be marketed within a significant number of large therapeutic drug classes where prefilled syringes are commonly used.

- **Expand its proprietary product portfolio:** The Company will seek to enhance its competitive position in the design, development and supply of innovative safety medical devices for use within international pharmaceutical and healthcare markets. In addition to the production and supply of the Unifill™ syringe and the Unitract™ 1mL Syringes, the Company intends to commercialise a number of additional proprietary products which it believes can also meet the functionality and safety requirements of its target customers. This may include the commercialisation of its range of Unitract™ Clinical Syringes in a 3mL and 5mL size targeted for use within acute care hospitals and other healthcare facilities. The Company may also seek to commercialise additional ready-to-fill syringe products currently in its development pipeline which, like the Unifill™ syringe, would be designed for supply to pharmaceutical companies. While the Company's focus will remain on the pursuit of organic growth opportunities, it may evaluate opportunities to acquire other complementary technologies or products on a case-by-case basis.
- **Expand its operational capabilities within Central Pennsylvania:** The US represents the world's largest and most mature market for the supply and use of the Company's products and services. The Company will continue to consolidate the majority of its commercial and operational activities within Central Pennsylvania, a national logistics hub situated between several major pharmaceutical and medical device industry clusters. The Company intends to make a significant investment in the expansion of its operational capabilities within its Pennsylvania facility to support the commercialisation of its core products such as the Unifill™ syringe.
- **Manufacture and supply its Unitract™ 1mL Syringes to target international markets:** The Company commenced commercial production of the Unitract™ range of 1mL safety syringes at its facilities in Pennsylvania in August 2009. Product variants within this range have been certified for marketing and sale within key international territories including the US, Canada, Europe and Australia. The Company intends to continue to expand its customer base of pharmaceutical companies and healthcare distributors for the marketing and sale of the Unitract™ 1mL syringes.
- **Manufacture medical devices under contract for outsourcing customers:** The Company also manufactures non-proprietary Class I and II medical devices, such as specialty syringes under contract for outsourcing customers, including a multinational healthcare equipment company. The Company intends to maintain a small presence within this sector by working with selected companies that seek to utilise its special operational skills.

## 5.7 Competition

The healthcare equipment, pharmaceutical and medical device industry sectors in which the Company operates are highly competitive. The Company competes with many companies, both public and private, that range in size from small, highly focused businesses, to large diversified multinational manufacturers of healthcare and pharmaceutical equipment, as more fully described below.

While the Company does not believe there are any other companies that offer a ready-to-fill syringe with safety features which are fully integrated within the glass barrel, there is a highly concentrated market for the production of standard ready-to-fill syringes for supply to pharmaceutical manufacturers.

The Company is aware of five companies which specialise in the production and supply of glass ready-to-fill syringes. These companies are Becton, Dickinson and Company (**BD**); Gerresheimer Bünde GmbH; MGLAS AG; SCHOTT forma vitrum AG; and Nuova Ompi. All of these companies are larger and better capitalised than the Company, and have an extensive base of pharmaceutical customers. The Company estimates the market concentration of these five companies to be around 95%. The Directors believe BD's market share to be in excess of 50%, as it has supply relationships with most pharmaceutical companies and contract manufacturing organisations.

Of these companies, the Directors believe that BD is the only one which also markets and supplies ancillary safety products for attachment onto standard prefilled syringes to assist pharmaceutical companies in their compliance with needlestick prevention laws.

The Company is aware of another specialist supplier of ancillary safety products for use with prefilled syringes, Safety Syringes Inc, which has contracts with a number of pharmaceutical manufacturers.

The Company has sought to strengthen its competitive position in the abovementioned marketplace in a number of ways. For example, the design of the Unifill™ syringe incorporates the use of a glass barrel which requires shaping at only one end. As a result, the Company may elect to source the glass barrel for the Unifill™ syringe from a number of global suppliers of glass cartridges and not just the five specialty manufacturers mentioned above.

The global market for clinical (non-prefilled) plastic syringes is highly competitive, with at least 50 manufacturers located across North America, Europe and the Asia-Pacific.

The market for clinical safety syringes is relatively less competitive, yet highly concentrated. BD is the largest global supplier of clinical safety syringes. Other companies which compete in the clinical safety syringe market sector include Retractable Technologies, Inc, Covidien and Smiths Medical. All of these companies offer a full range of clinical safety syringes, operate a strong sales, distribution and customer support network, and have existing supply relationships with major healthcare buying groups.

## 5.8 Manufacturing

The Company has an FDA-registered, 50,000 square foot medical device production facility in Lewisberry, Pennsylvania. This facility has two class-eight clean rooms. The first clean room houses a fully automated assembly system used to manufacture the majority of the Company's Unitract™ 1mL Syringes. This automated assembly system, which has an optimum capacity of up to 40 million units per year, was fully designed, developed, built and qualified by the Company's in-house team. The other clean room is used to assemble non-proprietary medical devices under contract for outsourcing customers.

Other areas of the Company's Lewisberry facility are used for offices, product design and prototyping, engineering activities and the construction of automated assembly systems.

Prior to the commencement of commercial production of the Unitract™ 1mL Syringe at the Company's Lewisberry facility, the Company utilised a medical device company in China to manufacture sufficient volumes of these products to obtain regulatory approvals and undertake preliminary marketing activities. A small number of the Unitract™ 1mL Syringes are still being manufactured in China, however the Company intends to focus upon the domestic manufacture of the Unitract™ 1mL Syringe at its Lewisberry facility in the foreseeable future. As the Unilife Group grows, however, additional manufacturing from a second site may be considered.

To support the Company's manufacturing plan for the high-volume production of the Unifill™ syringe, the Company is outsourcing the development and manufacture of automated assembly systems for this product to an established industry specialist. The initial assembly line for the Unifill™ syringe, scheduled to be completed and installed in the Company's Pennsylvania facilities by late 2010, is expected to have a target annual capacity of more than 40 million units per year. Additional assembly lines which the Company expects to commission and operate beyond 2010 are targeted to have a significantly higher annual manufacturing capacity. To support the Company's business expansion activities, the Company is reviewing opportunities to secure additional manufacturing facilities within Central Pennsylvania. The Company expects to transition at least some of its manufacturing activities into a new production facility during 2010.

The Company sources its components and raw materials under contracts with a variety of suppliers, all of which specialise in the medical device and pharmaceutical sectors. The Company has also entered into a number of relationships with other companies for the initial supply of components, raw materials and related services for the Unifill™ syringe. To support the industrialisation program for this product and further strengthen the Unilife supply chain in the long-term, the Company intends to establish, wherever feasible, a dual-source strategy for the production of key components, raw materials and related services. The companies that are expected to be appointed for the production and supply of items and related services pertaining to the Unifill™ syringe all have an established presence in the international drug delivery market, with the majority having facilities in both North America and Europe.

## **5.9 Establishment of New Facility**

The Company recently conducted a review of some potential opportunities within Europe for the establishment of a new manufacturing facility which will be suitable for the high-volume production of the Unifill™ syringe.

Following a review of the potential European sites, the expanded production capacities of the Company's assembly lines and the ability for the Company under its industrialisation agreement with sanofi-aventis to sell to pharmaceutical companies other than sanofi-aventis, the Company decided to instead centralise its manufacturing activities for the foreseeable future within Central Pennsylvania.

The centralisation of Unifill™ syringe production activities within Central Pennsylvania is expected to reduce operational costs, optimise supply chain activities and place the Company in a more favourable international location to supply the Unifill™ product to the Company's anticipated customers.

The Company expects this new facility to be established within York County, Pennsylvania, which is close to the current FDA-registered facilities of the Company in Lewisberry. The Company is considering a number of options with respect to the development of the new facility, including having a new facility built to its specifications (including clean room requirements) and leasing the facility from the developer, acquiring a block of land and entering into a development agreement with a third party to develop the property to the Company's specifications or leasing an existing facility. The Company has provided for US\$8 million - US\$10 million in projected capital expenditure which will be used towards the establishment of a new facility or towards tailoring an existing facility to meet the Company's requirements. Further announcements will be made in relation to the development of the new facility upon signing of an agreement to facilitate the development.

The Company has also accepted a A\$5.6 million (US\$5.2 million) offer of assistance from the Commonwealth of Pennsylvania to support the creation of additional jobs and investment within Central Pennsylvania. The Company intends to use some of this funding to develop the proposed new facility.

## **5.10 Selection of Automated Assembly Supplier**

The Company is currently considering a number of qualified international suppliers for the development of the high-volume automated assembly system which will be used by the Unilife Group in the production of the Unifill™ Syringe.

## **5.11 Sales and Marketing**

The Company expects that its primary customers will be pharmaceutical companies which utilise prefilled syringes as a primary container device for the administration of therapeutic drugs and vaccines. The Company intends to enter into supply agreements for the Unifill™ syringe with sanofi-aventis and some other pharmaceutical companies. The majority of these target pharmaceutical companies are multinational companies with headquarters located in either the US or Europe.



The Company expects the pharmaceutical company to be primarily responsible for the sale, marketing and clinical use of the combination drug-delivery device to target government agencies, healthcare facilities or patients who self-administer prescription medication within indicated therapeutic drug classes. The Company expects to support pharmaceutical companies in the development of documentation or marketing material pertaining to the recommended clinical use of the device with the contained drug or vaccine. The Company may also enter into agreements for the supply of the Unitract™ 1mL Syringes directly to pharmaceutical companies for use with injectable drug products which are supplied in a vial and marketed in a kit format.

The Company also intends to distribute its Unitract™ 1mL Syringes within the US via distributors who specialise in target markets such as long-term and acute care healthcare facilities or the direct mail order of prescription medication and medical equipment to patients for self-administration. The Company will also examine opportunities to enter into relationships for its Unitract™ 1mL Syringes with group purchasing organisations, or GPOs, which secure competitive pricing for commodity items such as syringes on behalf of members such as acute-care hospitals. Over the past decade, many GPOs have introduced programs that encourage the expedient evaluation and selection of innovative products developed by smaller companies. However the Company does not expect to fully penetrate the acute-care hospital market until it has a complete range of clinical syringe sizes.

Outside of the US, the Company has appointed a distributor to sell its Unitract™ 1mL Syringes in Canada and expects to appoint other distributors within other international healthcare markets such as Western Europe and the Asia-Pacific region. In addition, the Company intends to review opportunities to collaborate with governments seeking to examine the use of its Unitract™ 1mL Syringes as a means of helping to prevent the reuse, sharing and unsafe disposal of non-sterile syringes by injecting drug users.

The Company has a small internal team to support the training of appointed distributors in the marketing and clinical use of its Unitract™ 1mL Syringes. The Company intends to expand this team as it commences sales of its Unitract™ 1mL Syringes, appoints additional distributors and commercialises its larger-sized clinical syringes.

## **5.12 Intellectual Property**

The Company has established an intellectual property portfolio through which it seeks to protect its products and technology. The Company's intellectual property portfolio includes 24 issued patents in 13 countries, with two issued patents in each of Australia and the US.

The Company has filed a significant number of patent applications in Australia, the US, Europe, China, India and other countries covered under the Patent Cooperation Treaty which are now pending.

The Company also holds provisional patent applications in both the US and Australia and several registered trademarks. The Company's patents expire at various dates between 2018 and 2028 but the provisional patent applications, if granted, will expire

earlier. The Company also relies on trade secrets and has non-disclosure agreements with all of its employees.

The Company classifies its patents and patent applications as they relate to particular product categories including 1mL insulin and safe syringes with an attached needle, clinical syringes which include larger sizes and interchangeable luer needles and its Unifill™ syringe. Many of the features claimed in the insulin and safe syringes patents, such as the mechanism allowing automatic and controlled needle retraction within an integrated medical device, also apply to other safety syringe products, including the Unifill™ syringe.

The Company has registered trademarks in a number of key countries, including Unitract™, and has commenced applications to register trademarks for the Company name Unilife as well as its ready-to-fill syringe brand name Unifill™.

Unitract™ is a registered trademark in the US and is also filed under the Madrid Protocol Agreement for the international registration of marks in 25 countries, including France, Germany, Japan, China, Switzerland and the United Kingdom. Additionally, Unitract™ is a registered trademark in Australia, Mexico, New Zealand, Canada, India, Indonesia, South Africa and Brazil. Unitract™ Safe Syringe™ is also a registered trademark in Australia.

### **5.13 Government Regulation**

The Company's medical devices and manufacturing operations are subject to regulation by the FDA and various other federal and state agencies, as well as by foreign governmental agencies. These agencies enforce laws and regulations that govern the development, testing, manufacturing, labelling, advertising, marketing and distribution, and market surveillance of medical devices.

Prior to marketing or selling the Company's products, the Company must secure certification for their therapeutic use from the FDA for the US market and counterpart regulatory agencies in other countries and international regions. In the US, each medical device that the Company markets must first receive pre-market notification clearance (usually by making a 510(k) submission) from the FDA. In addition, certain modifications made to marketed devices may also require 510(k) clearance. The FDA's 510(k) clearance process usually takes between three to twelve months.

As an ISO 13485:2003 certified manufacturer of medical devices, the Company is also required to develop and maintain a stringent quality management system, or QMS. The Company's current ISO 13485:2003 certification includes the design, development, production and distribution of sterile syringes and insulin syringes, and the provision of contract manufacturing product services to the medical device industry.

The Company has developed its QMS to comply with the requirements of both medical device and pharmaceutical manufacturing. The Unifill™ syringe will be filed as a Type III Drug Master File as a primary drug packaging container in support of partner pharmaceutical company ANDA and NDA applications. The Drug Master File will define the manufacturing and safety characteristics of the Unifill™ syringe while

protecting confidential proprietary information regarding its technical design. It is the responsibility of a pharmaceutical company to obtain final product approvals within international territories such as the US and Europe. Regulatory agencies would refer to the Drug Master File when reviewing product applications made by pharmaceutical companies seeking to utilise the Unifill™ syringe as the drug packaging device for an injectable drug product.

Medical device laws are also in effect in many of the non-US markets in which the Company currently does business or intends to market its products in the future. For example, the European Commission has harmonised national regulations for the control of medical devices through European Medical Device Directives with which manufacturers must comply.<sup>19</sup> Under these regulations, manufacturing plants must have received CE certification from a 'notified body' in order to be able to sell products within the member states of the European Union. Certification allows manufacturers to stamp the products of certified plants with a "CE" mark. Products covered by the European Commission regulations that do not bear the "CE" mark may not be sold or distributed within the European Union. In Europe and other international markets such as Japan and Asia-Pacific countries, there is a general trend towards increasingly stringent regulation of medical devices.

The Company's medical device manufacturing facility in Lewisberry, Pennsylvania is also FDA-registered. Following the certification and introduction of a medical device, regulatory agencies, including the FDA, can undertake periodic reviews of the Company's manufacturing facilities, internal processes and product performance. These regulatory controls can affect the time and cost associated with the development, introduction and continued availability of new products. Where possible, the Company anticipates these factors in its product development and planning processes. These agencies have the authority to take various administrative and legal actions against the Company, such as product recalls, product seizures and other civil and criminal sanctions.

The Company is also subject to various Federal, State and local laws and regulations, both in the US and other international territories where the Company conducts business, relating to such matters as safe working conditions, laboratory and manufacturing practices and the use, handling and disposal of hazardous or potentially hazardous substances used in connection with the Company's research and development work. Although the Directors believe it is in compliance with these laws and regulations in all material respects, the Company cannot provide assurance that it will not be required to incur additional significant costs to comply with environmental laws or regulations in the future.

#### **5.14 Healthcare Laws**

The Company is subject to various Federal, State and local laws in the US targeting fraud and abuse in the healthcare industry, which generally prohibit the Company from soliciting, offering, receiving or paying any remuneration in order to induce the

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<sup>19</sup> European Commission Directive 93/42/EEC regarding medical devices.

ordering or purchasing of items or services that are in any way paid for by Medicare, Medicaid or other government-sponsored healthcare programs.

Healthcare costs have been and continue to be a subject of study, investigation and regulation by governmental agencies and legislative bodies around the world. The US Federal Government continues to scrutinise potentially fraudulent practices affecting Medicare, Medicaid and other government healthcare programs. Payers have become more influential in the marketplace and are increasingly focused on drug and medical device pricing, appropriate drug and medical device utilisation and the quality and costs of healthcare. Violations of fraud and abuse-related laws are punishable by criminal or civil sanctions, including substantial fines, imprisonment and exclusion from participation in healthcare programs such as Medicare and Medicaid and health programs outside the US.

## **5.15 The Company's issued securities**

### **5.15.1 Summary of the Company's issued securities**

As at the date of this Information Memorandum, the issued securities of the Company comprise:

- 307,776,616 Shares;
- 32,068,537 Options; and
- 20,875,000 Standalone Options.

Except as disclosed in this section 5.15 and section 5.16 below, the Company is under no obligation to issue further Shares, Options or Standalone Options before the commencement of the Scheme Meetings, other than with respect to any Shares to be issued upon exercise of Options or Standalone Options.

Further details of the securities on issue in the Company are set out below.

Assuming that no further Share, Option or Standalone Option issues occur, the Company will have the number of Shares, Options and Standalone Options on issue immediately prior to implementation of the Schemes as set out in the table below.

	<b>Shares</b>	<b>Options</b>	<b>Standalone Options</b>
On issue as at 25 November 2009	307,776,616	20,875,000	32,068,537
Inventors' Shares (see section 5.16.4)	5,000,000	-	-
Directors' Options (see section 5.16.6)		1,800,000*	
<b>Total</b>	<b>312,776,616</b>	<b>22,675,000</b>	<b>32,068,537</b>

\*Subject to Shareholder approval at the EGM

### 5.15.2 Options

Details of the Options granted under the Employee Share Option Plan on issue as at the date of this Information Memorandum are set out below.

Number of Options	Exercise Price	Expiry Date
2,100,000	\$0.25	31 December 2009
1,840,000	\$0.25	31 December 2010
1,000,000	\$0.30	30 June 2012
3,900,000	\$0.33	30 June 2012
1,000,000	\$0.33	31 December 2012
7,500,000	\$0.33	30 September 2013
750,000	\$0.35	31 December 2010
2,000,000	\$0.35	30 June 2012
550,000	\$0.35	31 December 2012
235,000	\$1.90	31 December 2009
1,800,000 *	\$1.20	Five years from the date of grant

\*Subject to Shareholder approval at the EGM

### Standalone Options

Details of the Standalone Options on issue in the Company are set out below.

Number of Standalone Options	Exercise Price	Expiry Date
2,757,955	\$0.25	30 September 2011
3,000,000	\$0.33	30 September 2013
500,000	\$0.33	1 October 2012
500,000	\$0.45	30 June 2010
250,000	\$0.45	31 August 2011
600,000	\$0.50	28 February 2014
2,600,000	\$0.33	31 December 2010

Number of Standalone Options	Exercise Price	Expiry Date
9,437,304	\$1.25	17 November 2012
9,437,304	\$2.00	17 November 2012
2,985,974	\$0.85	17 November 2012

### 5.15.3 *Shares issued under the Exempt Employee Share Plan*

On 2 June 2008 and 15 January 2009 the Company extended offers to its employees for the issue of Shares under the Company's Exempt Employee Share Plan 2008. Under the offers, employees of the Company were eligible for a tax free issue of Shares in the Company for up to a total value of A\$1,000. In order for employees resident in Australia to be eligible for tax exempt status for the Shares under applicable Australian tax laws, Shares issued under this Plan must, except in limited circumstances, be held for a minimum of three years from the date of issue (**Restriction Period**). Shares issued under the Exempt Employee Share Plan to employees resident in the US were issued subject to the same three year Restriction Period even though their Shares were subject to taxation under applicable US tax laws on their issue. The Company provided a tax gross-up payment to such US employees so as to allow them to enjoy the same economic benefit under the Exempt Employee Share Plan as the Australian employees enjoyed.

There are a number of employees (or former employees) of the Company who hold Shares that have been issued under the Exempt Employee Share Plan (**Exempt Shares**). Under the Share Scheme, Unilife Corporation Shares will be substituted for the Exempt Shares. In order for the Exempt Shares to retain the tax exempt status referred to above, the full Restriction Period (as applicable) must be observed. Consequently, any Unilife Corporation Shares which are substituted for Exempt Shares under the Share Scheme will be subject to the balance of any Restriction Period that is applicable to those Exempt Shares.

## 5.16 **Recent developments**

### 5.16.1 *Capital Raising*

The Company has recently undertaken a capital raising pursuant to a private placement of its securities to accredited, professional and sophisticated investors in the US and Australia (**Placement**) and a share purchase plan to Shareholders in Australia and New Zealand (**SPP**).

On 7 October 2009, the Company announced that it had received commitments for a private placement of 37,749,209 Shares (**Placement Shares**) at a placement price of \$0.85 to raise \$32.1 million. The Placement Shares were issued in two tranches on 8 October 2009 and 17 November 2009. In addition, the Company extended an offer to its Shareholders in Australia and New Zealand under the SPP for Shareholders to acquire up to \$15,000 worth of additional Shares at the Placement price of \$0.85.

The SPP was significantly oversubscribed with applications for approximately 33.7 million new, fully paid ordinary shares (SPP Shares) with a value of approximately A\$28.7 million. The Board subsequently authorised an increase in the number of Shares to be issued under the SPP to 25,301,652 Shares to raise approximately A\$21.5 million before costs, representing a pro-rata allotment to all shareholders of 75% of their application. Accordingly, 25,310,065 Shares were allotted to Shareholders under the SPP on 17 November 2009 to raise \$21,513,555.25.

Following this capital raising, the Company had a cash balance at 25 November 2009 of approximately A\$50 million.

The Company proposes to use the proceeds of the Placement and SPP to accelerate the expansion of its operational capabilities and production facilities, to purchase additional equipment in the US, and to continue the industrialisation of the Unilife Ready-to-Fill Syringe whose targeted delivery date has been moved forward by one year from the original projected date. These proceeds will also be used to accelerate the commercialisation of additional pipeline products which the Company may develop with interested pharmaceutical companies, and enhance the Company's ability to ensure that it has adequate cash reserves leading up to and following its proposed redomiciliation in the US and proposed listing on NASDAQ.

#### **5.16.2 Issue of Placement Options**

In conjunction with the Placement, the Company also agreed to issue 18,874,608 Standalone Options (**Placement Options**) to investors under the Placement.

The Placement Options issued to each of the investors were issued for nil consideration and each Placement Option entitles the investor to subscribe for one Share in the Company.

The Placement Options were issued in two equal tranches (a Tranche 1 option and a Tranche 2 option). The exercise price of the Tranche 1 options is \$1.25 and the exercise price of the Tranche 2 options is \$2.00 (in each case payable in full on exercise of that option).

The Placement Options are exercisable at any time from the date of grant until the third anniversary of the date of grant.

Each of the investors under the Placement has signed a cancellation deed pursuant to which the investors have agreed to their Placement Options being cancelled, upon implementation of the Share Scheme, in exchange for the issue of equivalent options in Unilife Corporation.

#### **5.16.3 Issue of Broker Options**

In conjunction with the Placement and the SPP, the Company also agreed to issue up to 3,000,000 Broker Options to certain brokers as part of their commission arrangements.

The Broker Options issued to brokers were issued for nil consideration and each Broker Option entitles the holder to subscribe for one Share in the Company. The exercise price of each Broker Option is \$0.85 which is payable in full on exercise of that option.

The Broker Options are exercisable at any time from the date of grant until the third anniversary of the date of grant.

Each of the brokers has signed a cancellation deed pursuant to which they have agreed to their Broker Options being cancelled, upon implementation of the Share Scheme, in exchange for the issue of equivalent options in Unilife Corporation.

#### **5.16.4 *Issue of Inventors' Shares***

At the request of its pharmaceutical partner, the Company intends to enter into a Confirmation of Intellectual Property Rights and Confidentiality Agreement with the Inventors in early December 2009 in order to ensure that the Company has full rights to its valuable intellectual property. Under the Agreement, each of the Inventors confirms that all intellectual property rights created by them in respect of the Company's patents, products and/or services vested in the Company upon creation, and to the extent that this has not already happened, agrees to assign to the Company all current and future intellectual property rights they may hold in relation to the Company's patents, products and/or services in consideration for the issue of 5,000,000 Shares to the Inventors. The Company expects to issue the 5,000,000 Shares to the Investors on or about 2 December 2009.

#### **5.16.5 *Offer of options to US employees of the Company***

The Company recently offered its US employees the opportunity to secure Shares on similar terms to the offer made to eligible Shareholders under the Company's recent Share Purchase Plan (**Employee Offer**). Under the Employee Offer, US employees were given the opportunity to acquire Options under the Company's Employee Share Option Plan to purchase up to 17,647 Shares at a purchase price of US\$0.78 per Share.

On 30 October 2009, the Company issued 599,998 Options to those US employees who participated in the Employee Offer, 210,529 of which were exercised before the Options lapsed on 11 November 2009 raising approximately US\$164,211.30 for the Company.

#### **5.16.6 *Issue of incentives to certain Directors***

In recognition of the efforts and contributions that Jeff Carter, John Lund and William Galle have made to the business and operational activities of the Company, as well as to reflect the greater level of fiduciary responsibility following the completion of the Proposed Transaction, the Company has agreed to issue 600,000 Options to each of Mr Jeff Carter, Mr William Galle and Mr John Lund as part of their remuneration packages, subject to approval of Shareholders at the EGM. Further details of these option grants are set out in the Notice of EGM which accompanies this Information Memorandum.



In addition, as described in section 6.3.4 on page 83 and in the Notice of EGM accompanying this Information Memorandum, the boards of the Company and Unilife Corporation consider it appropriate at this time that a new incentive package be put in place for the Company's Chief Executive Officer, Alan Shortall. The package has been designed to comprise securities in Unilife Corporation. However, as set out in the Notice of EGM, if the Share Scheme does not become Effective, an equivalent package of 6,996,000 Shares and 5,004,000 Options in the Company will be granted to Alan Shortall subject to Shareholder approval being obtained at the EGM.

## 5.17 The Company's Directors and Management Structure

### 5.17.1 The Directors

Details of the Company's directors and brief biographies are set out below:

Name	Age	Position
Jim Bosnjak	60	Chairman and Non Executive Director
Alan Shortall	55	Chief Executive Officer and Executive Director
Jeff Carter	51	Non Executive Director and Company Secretary
William Galle	70	Non Executive Director
John Lund	43	Independent Non Executive Director

#### **Jim Bosnjak OAM - Chairman, Non Executive Director**

**Date of appointment:** 4 February 2003 (appointed as Chairman 21 April 2006).

#### **Background:**

Mr. Bosnjak has served as a director since February 2003 and as Chairman of the Board since April 2006. Mr. Bosnjak has been a co-owner and director of the Le Meridian Lav Hotel in Split, Croatia since 2002 and is chairman and co-founder of Ultimate Outdoor Ltd., an Australian outdoor advertising company. Mr. Bosnjak was a director of Westbus Pty Ltd. from 1975 to 2001 and the chairman of Westbus Pty Ltd. between 1990 and 2001. He has also held positions on Commonwealth and New South Wales advisory bodies, including the Greater Western Sydney Economic Development Board, and the GROW Employment Council. Mr. Bosnjak also served as the Chairman of the Tourism Council of Australia and Bus 2000, which coordinated bus services for the Sydney 2000 Olympic Games. Mr. Bosnjak holds an honorary doctorate from the University of Western Sydney for his services toward employment growth and economic development.

#### **Alan Shortall - Chief Executive Officer and Executive Director**

**Date of appointment:** 20 September 2002.

**Background:** Mr. Shortall has served as the Chief Executive Officer and a member of the Board of Directors since September 2002. Mr. Shortall co-founded Unilife in July 2002 and has guided the growth of Unilife since then. In 2008, the trade magazine Medical Device and Diagnostic Industry named him as one of 100 Notable People in the medical device industry worldwide.

**Jeff Carter - Company Secretary and Non Executive Director**

**Date of appointment:** 21 April 2006.

**Background:** Mr Carter is a Chartered Accountant with over 28 years of experience in financial and senior management roles, with a strong background in the healthcare industry where he held the roles of CFO and COO. Mr Carter has served as a member of Unilife's Board of Directors since April 2006 and was also appointed company secretary in March 2007. In January 2009, Mr Carter became a non-executive director and agreed to provide advisory, company secretarial and accounting services to the Company during its redomiciliation to the United States.

Prior to joining Unilife, Mr Carter worked with Ambri Ltd as CFO and Company Secretary, Agenix Ltd as CFO and COO, Coca-Cola Amatil Ltd (CCL-ASX) as strategic planning manager, Santos Ltd (STOSY-NASDAQ) as manager of corporate development international, CIBC Australia Ltd as manager of investment banking, and Touche Ross (now Deloitte Touche Tohmatsu) as a senior manager. Mr. Carter holds a Master's degree in applied finance.

**William Galle - Non Executive Director**

**Date of appointment:** 23 June 2008.

**Background:** Mr. Galle has served as a director since June 2008. Mr. Galle has also been the managing director of American Marketing Complex in New York City since October 2007 and president of Diversified Portfolio Strategies LLC in Washington D.C. since 1993, which provides alternative investment advisory services for institutions and substantial investors. Mr. Galle is a graduate of Columbia University, Rutgers University and the New York Institute of Finance.

**John Lund - Independent Non Executive Director**

**Date of appointment:** 10 November 2009

Mr Lund is currently the Managing Partner of M&A Holdings, LLC and the Vice President and Controller of E-rewards, Inc. and was previously the Vice President Finance & Controller of Nexstar Broadcasting, Inc, the Vice President & Financial Controller of LQ Management LLC (La Quinta) and the Corporate Controller of Excellerate HRO (now a HP company). Mr. Lund holds a Bachelor of Science in Accounting from University of North Texas (US) and is a member of the Financial Executives Institute.

### 5.17.2 **Senior management team**

Details of the Company's executive team and brief biographies are set out below:

Name	Age	Position
Daniel Calvert	55	Chief Financial Officer
Bernhard Opitz	52	Senior Vice President of Operations
Eugene Shortall	59	Senior Vice President of RTFS
Mark Iampietro	56	Vice President of Quality Systems and Regulatory Affairs
Stephen Allan	35	Vice President of Marketing and Communications

#### **Daniel Calvert - Chief Financial Officer**

**Date of appointment:** 2 December 2008

**Background:** Mr Calvert has served as the Group's Chief Financial Officer since December 2008. From September 2006 to November 2008, Mr. Calvert served as executive vice president and chief accounting officer of Standard Management Corporation, a company quoted on the OTC Bulletin Board. From May 2004 to March 2006, he was the Chief Financial Officer of MBT International, a division of a publicly held company. Mr. Calvert is a certified management accountant, holds a Master of Business Administration in finance from Michigan State University and a Master of Science degree in taxation from the University of Baltimore.

#### **Bernhard Opitz-Senior Vice President of Operations**

**Date of appointment:** 2 December 2008.

**Background:** Mr. Opitz has served as the Group's Senior Vice President of Operations since December 2008. From August 2007 to June 2008, Mr. Opitz served as Vice President – Manufacturing at Nanosphere, Inc., a Nanotechnology-based molecular diagnostics company. From December 2002 to July 2006, he was the Vice President – Engineering/Operations at Wells' Dairy, Inc. From 1980 to 2000, Mr. Opitz also held various positions at Bayer AG including project engineer, manager of plan engineering, manager of engineering, production manager, vice president of operations, and senior vice president of engineering. Mr. Opitz holds a Master of Science degree in mechanical/process engineering from Technical University Graz in Austria.

#### **Eugene Shortall – Senior Vice President of RTFS**

**Date of appointment:** 1 October 2007.

**Background:** Mr. Shortall has served as the Group's Senior Vice President of RTFS since February 2009. From October 2007 to February 2009 he served as the

Company's RTFS Project Director. From June 2003 to October 2007, Mr. Shortall was a consultant for the Public Institute for Social Security in Kuwait and was previously employed as a consultant for Behbehani National Construction. Mr. Shortall is the brother of Alan Shortall, the Chief Executive Officer and director of the Company.

***Mark Iampietro- Vice President of Quality Systems and Regulatory Affairs***

***Date of appointment:*** 17 October 2008.

***Background:*** Mr Iampietro has served as the Group's Vice President of Quality and Regulatory Affairs since October 2008. From May 2002 to July 2008, Mr Iampietro was Pharmaceutical Manager at Spherics, Inc., a pharmaceutical manufacturer, where he managed various phases of quality, regulatory and clinical programs. Mr Iampietro holds American Society for Quality certifications as both a quality and reliability engineer and holds a Bachelor of Science degree in life sciences with a minor in engineering from Worcester Polytechnic Institute.

***Stephen Allan – Vice President of Sales, Marketing and Communications***

***Date of appointment:*** 20 September 2002.

***Background:*** Mr Allan has served as the Group's Vice President of Marketing and Communications since October 2008. He served as the Group's Director of Communications from November 2007 to October 2008 and Manager of Communications from July 2002 to November 2007. Prior to joining Unilife, Mr Allan owned and operated his own Australian public relations firm, which assisted in the management of media relations for government liaison services for industry groups in the tourism, transport and economic development sectors. He also managed media liaison activities relating to bus transport services during the Sydney 2000 Olympic Games. Prior to this, he spent five years as a journalist for various Sydney-based newspaper groups. Mr Allan holds a Bachelor of Communications from Charles Sturt University.

**5.18 Other information about the Company**

The Company is a "disclosing entity" for the purposes of the Corporations Act and is subject to regular reporting and disclosure obligations under the Corporations Act and Listing Rules. The Company is required to notify ASX (subject to certain exceptions) immediately if it becomes aware of any information concerning the Company which a reasonable person would expect to have a material effect on the price or value of its securities. Following implementation of the Proposed Transaction, Unilife Corporation will be subject to the reporting and disclosure obligations under the Listing Rules by virtue of its listing on ASX.

Copies of announcements made by the Company to ASX are available on ASX website at [www.asx.com.au](http://www.asx.com.au).

Further announcements concerning developments relating to the Company and the Unilife Group will continue to be made available on ASX's website after the date of this

Information Memorandum. Certain disclosure documents and reports lodged in relation to the Company can also be obtained from ASIC.

In addition, you may read and copy any document that the Company files with the SEC at the public reference room of the SEC at 100 F Street, N.E., Washington, DC 20549. You may obtain information regarding the operation of the public reference room by calling +1-800-SEC-0330.

## **6 Information about Unilife Corporation**

### **6.1 Corporate overview**

Unilife Corporation was incorporated under the laws of the State of Delaware, US on 2 July 2009. Unilife Corporation is currently a wholly owned Subsidiary of the Company. The rights of Unilife Corporation security holders are governed by Delaware General Corporation Law and Unilife Corporation's certificate of incorporation and by-laws.

The Company incorporated Unilife Corporation for the purpose of redomiciling the Unilife Group in the US under the Proposed Transaction. As a result, prior to implementation of the Proposed Transaction, save as set out below, Unilife Corporation has not conducted and will not conduct any business other than entering into the agreements and performing the acts which are detailed in this Information Memorandum.

If the Proposed Transaction is implemented, Unilife Corporation's business will consist entirely of the business of the Company, which will become a wholly owned Subsidiary of Unilife Corporation.

In order to be able to carry on business in Australia and be listed on ASX, Unilife Corporation will be registered as a foreign company in Australia under the Corporations Act.

The Company was appointed as the local agent of Unilife Corporation on 9 November 2009. The Company will continue to maintain its registered office at Suite 3, Level 11, 1 Chifley Square, Sydney NSW 2000 Australia.

Being registered as a foreign company in Australia requires that Unilife Corporation file its annual accounts with ASIC and comply with various other notification requirements (for example, notifying ASIC of the appointment and resignation of directors or changes to constituent documents). In addition, as Unilife Corporation will be a disclosing entity for the purposes of the Corporations Act, Unilife Corporation will be required to comply with the continuous disclosure provisions contained in the Corporations Act and the Listing Rules in addition to SEC and other applicable disclosure requirements in the US.

### **6.2 Choice of jurisdiction**

The Company considers that the State of Delaware is an appropriate jurisdiction for the domicile of Unilife Corporation. Over 50% of all US publicly listed companies are incorporated in Delaware.

As the Company's aim is to redomicile in the US and obtain the advantages of being a US company (as described in section 4.2), it has adopted a customary form of by-laws for a Delaware corporation, which would also be appropriate for a NASDAQ listed company, rather than amending the by-laws to provide Australian style protections for

Shareholders. A description of some of the key differences between the Australian and Delaware legal regimes and their implications for shareholders of Unilife Corporation is set out in Appendix 10.

### **6.3 Unilife Corporation's issued securities**

#### **6.3.1 *Unilife Corporation Shares***

At the date of this Information Memorandum, Unilife Corporation has on issue 100 shares of Common Stock which were issued on incorporation to the Company. Following implementation of the Share Scheme, Unilife Corporation will buy back the shares of Common Stock currently held by the Company for a nominal consideration of US\$1.00.

Unilife Corporation has not raised any capital for the three months prior to the date of issue of this Information Memorandum other than the 100 shares of Common Stock issued upon its incorporation.

Under the Share Scheme, Shareholders will receive Unilife Corporation Shares. There are differences between the rights attaching to the Shares and to Unilife Corporation Shares. In addition, there are a number of significant differences between US/Delaware law and Australian law. A summary of these differences is set out in Appendix 10 of this Information Memorandum.

The Unilife Corporation Shares issued under the Share Scheme will be subject to the same restrictions (if any) as apply to the Shares in the Company they replace. For example, where Shareholders hold Shares issued under the Company's Exempt Employee Share Plan (as described in section 5.15.3), the Unilife Corporation Shares issued to those Shareholders will be subject to restrictions on transfer for the balance of the period for which the employees have to hold their shares to preserve their tax exemption (ie, except in certain circumstances, three years from the date on which the Shares were registered in the name of the employee).

#### **6.3.2 *Unilife Corporation Options***

Unilife Corporation has adopted the Unilife Corporation Employee Stock Option Plan under which Unilife Corporation will issue Unilife Corporation Options under the Option Scheme.

Each Optionholder will receive Unilife Corporation Options under the Unilife Corporation Employee Stock Option Plan in exchange for the cancellation of Options held by the Optionholder.

Unilife Corporation Options will be issued on essentially the same terms (except to the extent changes are required to comply with Delaware law) as the Options they replace including having an exercise period equal to the unexpired exercise period of the Options they replace and being vested to the same extent as the original Options were vested. The Unilife Corporation Options will also be subject to equivalent performance hurdles (if any) as the Options they replace. However, the Unilife Corporation Options will:

- be issued on a one for six basis, meaning that an Optionholder will receive one option to subscribe for a Unilife Corporation Share for every six Options held by them on the Scheme Record Date; and
- have an exercise price equal to six times the exercise price of the Options it replaces to reflect the effective 6:1 consolidation of Shares into Unilife Corporation Shares.

A copy of the Unilife Corporation Employee Stock Option Plan is set out in Appendix 7 of this Information Memorandum.

### **6.3.3 Unilife Corporation Standalone Options**

Similarly, the Unilife Corporation Standalone Options will be issued on essentially the same terms as the Standalone Options they replace except that, as with the Options, they will:

- be issued on a one for six basis, meaning that an Optionholder will receive one Unilife Corporation Standalone Option to subscribe for a Unilife Corporation Share for every six Standalone Options held by them on the Scheme Record Date; and
- have an exercise price equal to six times the exercise price of the Standalone Options it replaces to reflect the effective 6:1 consolidation of Shares into Unilife Corporation Shares.

### **6.3.4 Issue of restricted stock and options under the 2009 Stock Incentive Plan**

Following consultation with an experienced US remuneration consultant, Unilife Corporation has agreed a new incentive package for its Chief Executive Officer, Alan Shortall in recognition of the fact that he has achieved all of his current share price performance hurdles under previous incentive arrangements. US investors also expect, and have requested, that the Unilife Group implement a new incentive package to ensure that the CEO is incentivised to drive the Unilife Group's performance above that of peer companies by establishing aggressive goals and appropriate rewards for achieving those.

If the Share Scheme becomes Effective, Unilife Corporation will grant Mr Shortall 1,166,000 shares of restricted stock and 834,000 options, in each case under the 2009 Stock Incentive Plan.

In the event that the Share Scheme does not become Effective, Alan Shortall will instead receive an equivalent number of Shares and Options in the Company.

Shareholders will be asked to approve the issue of restricted stock and options in Unilife Corporation or Shares and Options in the Company (in the event that the Share Scheme does not become Effective) to Alan Shortall at the EGM.

Full details of the principal terms of the issue of shares of restricted stock and options in Unilife Corporation or Shares and Options in the Company are set out in the Notice of EGM which accompanies this Information Memorandum.



#### **6.4 Directors of Unilife Corporation**

The directors of Unilife Corporation are the existing Directors of the Company (the biographies of which are set out in section 5).

#### **6.5 Incorporation of new wholly owned subsidiary and acquisition of property**

As set out in section 5.9, the Unilife Group is considering a number of options with respect to the development of a new manufacturing facility in Pennsylvania.

Unilife Corporation has incorporated a new wholly owned subsidiary, Unilife Cross Farm LLC, as the vehicle for the acquisition and potential development of the new facility. Unilife Cross Farm LLC was incorporated in the State of Delaware, US and is a limited liability company.

On 16 November 2009, Unilife Cross Farm LLC entered into an agreement with Greenspring Partners, LP, to acquire a block of land in Pennsylvania for the purposes of the proposed new facility. Unilife Corporation and the Company are now considering entering into an agreement with a third party to develop the property to the Company's specifications.

Further announcements will be made in relation to the development of the new facility upon signing of an agreement to facilitate the development.

#### **6.6 Intentions if the Schemes Become Effective**

In the event that the Share Scheme becomes Effective, Unilife Corporation will own all of the Shares in the Company and Unilife Corporation will operate the business of the Unilife Group in a manner consistent with past practice and in accordance with the strategy set out in section 5 of this Information Memorandum.

If the Option Scheme becomes Effective, Unilife Corporation will issue Unilife Corporation Options in accordance with the requirements of the Option Scheme.

If the Option Scheme does not become Effective, Unilife Corporation will consider all options available to it with respect to the Options as further detailed in section 4 of this Information Memorandum.

#### **6.7 New 2009 Stock Incentive Plan**

Unilife Corporation is proposing to adopt a new employee incentive plan for use following the redomiciliation, the Unilife Corporation 2009 Stock Incentive Plan, which will be in a form typical for US public companies. The Plan provides important US tax benefits for Unilife Corporation that are not provided in the Company's existing incentive plans.

The Unilife Corporation 2009 Stock Incentive Plan will provide Unilife Corporation with the flexibility to issue a range of incentives to employees, officers, directors and other individuals who provide services to Unilife Corporation or any Affiliate of Unilife Corporation, including:

- stock options;
- stock appreciation rights;

- stock based incentives; and
- performance incentives.

A summary of the key terms of the Unilife Corporation 2009 Stock Incentive Plan is set out in Appendix 8 to this Information Memorandum.

Following implementation of the Proposed Transaction, the Unilife Corporation 2009 Stock Incentive Plan will, provided that it is approved by Shareholders at the EGM, be the plan used by Unilife Corporation for all future grants of incentives to employees and directors of the Unilife Group unless and until another incentive plan is approved by Unilife Corporation's shareholders. The Board believes that a new employee incentive plan is an important tool to attract, motivate and retain key employees of the Unilife Group. Further details on the resolution to approve the Unilife Corporation 2009 Stock Incentive Plan to be proposed at the EGM and a copy of the Unilife Corporation 2009 Stock Incentive Plan are set out in the Notice of EGM which accompanies this Information Memorandum.

#### **6.8 Differences between the rights attaching to the Shares and the Unilife Corporation Shares**

For information on the differences between the rights attaching to the Shares and Unilife Corporation Shares please see Appendix 10 to this Information Memorandum.

In addition to these general differences, there are restrictions on the ability of Affiliates of Unilife Corporation to resell Unilife Corporation Shares and Unilife Corporation Options. Further details of these restrictions are contained on page 15 of this Information Memorandum under the heading "Notice to Shareholders and Optionholders resident in the US".

#### **6.9 Conversion of the Company to a proprietary company limited by shares**

Following implementation of the Proposed Transaction, Unilife Corporation will pass a special resolution to convert the Company from a public company to a private company limited by shares and lodge all necessary documentation with ASIC to effect such conversion.

#### **6.10 Reporting obligations of Unilife Corporation on implementation of the Proposed Transaction**

In conjunction with the implementation of the Proposed Transaction, Unilife Corporation will seek a listing of its Common Stock on NASDAQ, which will require Unilife Corporation to register its Common Stock under the Exchange Act. As a consequence of such registration, Unilife Corporation will become subject to the reporting requirements of the Exchange Act and be required to file annual, quarterly and current reports, proxy statements and other information with the SEC in addition to its reporting requirements under the Listing Rules. In addition, assuming that Unilife Corporation's application for listing on NASDAQ is successful, it will also be required to comply with the applicable NASDAQ rules.

## **6.11 Restructure of the Unilife Group**

Following implementation of the Proposed Transaction, the Unilife Group may consider restructuring the group to ensure that the Unilife Group has the most effective corporate structure following its redomiciliation to the US.

## **6.12 Corporate Governance**

The board of directors of Unilife Corporation is the ultimate decision-making body of Unilife Corporation except with respect to those matters reserved to stockholders. The board selects the senior management team, which is charged with the conduct of the corporation's business. Having selected the senior management team, the board acts as an advisor and counsellor to senior management and ultimately monitors its performance. The fundamental role of the directors is to exercise their business judgment to act in what they reasonably believe to be the best interests of Unilife Corporation and its stockholders. In fulfilling that responsibility the directors may reasonably rely on the honesty and integrity of the corporation's senior management and expert legal, accounting, financial and other advisors.

As Unilife Corporation is a US company which is expected to be dual listed on NASDAQ<sup>20</sup> and ASX, the board has adopted a corporate governance policy and board committee charters reflecting NASDAQ listing rules and, to the extent appropriate having regard to the size and circumstances of Unilife Corporation, ASX Corporate Governance Principles and Recommendations. Unilife Corporation is committed to ensuring that its corporate governance systems comply with statutory and stock exchange requirements and to maintaining its focus on transparency, responsibility and accountability.

The board of Unilife Corporation currently comprises the existing Directors of the Company. As a team, the board brings together a broad range of qualifications and a diversity of experience to provide strategic guidance for, and effective oversight of, management.

The board has adopted a charter which sets out the board responsibilities which include:

- approving and monitoring the progress of major capital expenditure, capital management and acquisitions and divestments;
- reviewing management's processes, policies and decisions to ensure that they further Unilife Corporation's primary goal of maximising shareholder value over the long term;
- appointing, monitoring and managing the performance of the Chief Executive Officer and other directors and senior management;
- monitoring the legal and regulatory compliance of Unilife Corporation;

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<sup>20</sup> Subject to the Form 10 becoming effective following SEC review and NASDAQ approval of the listing application.

- reviewing the effectiveness of Unilife Corporation's corporate governance policies;
- monitoring Unilife Corporation's compliance with all disclosure obligations and regularly reviewing its policies and procedures relating to compliance with such disclosure obligations;
- regularly reviewing the board's own and each additional committee's performance;
- reviewing, ratifying and monitoring systems of risk management and internal control, codes of conduct and legal compliance;
- ensuring appropriate resources are available to senior executives; and
- approving and monitoring financial and other reporting.

The board will hold regular meetings each year and as frequently as otherwise required to deal with the affairs of Unilife Corporation.

#### **6.12.1 Board committees**

The board has established committees to assist it in carrying out its responsibilities. These committees act by examining various issues and making recommendations to the board.

The main committees which have been established are:

- the Audit Committee;
- the Compensation Committee; and
- the Nominating and Corporate Governance Committee.

#### **6.12.2 Audit Committee**

The main functions of the Audit Committee are to:

- oversee the accounting and financial reporting processes of Unilife Corporation and the audits of Unilife Corporation's financial statements;
- review the qualifications, independence and performance, and approve the terms of engagement, of Unilife Corporation's independent auditor and prepare any reports required of the Committee;
- review its assessment of the effectiveness and adequacy of Unilife Corporation's internal control structure and procedures for financial reporting; and
- implement and supervise Unilife Corporation's risk management framework.

It is intended that the Audit Committee comprise three or more financially literate independent directors who will meet as often as required, but not less than quarterly.

The initial members of the Audit Committee are John Lund (Chairman), Jim Bosnjak and William Galle. John Lund will be the audit committee financial expert for the purposes of the SEC rules.

### **6.12.3 Compensation Committee**

The main functions of the Compensation Committee are to:

- review and advise the board about Unilife Corporation's overall compensation philosophy, policies and plans, including a review of both regional and industry compensation practices and trends;
- review and approve corporate and personal performance goals and objectives relevant to the compensation levels and structure (cash, options and/or shares) of all executive officers, evaluate the performance of each executive officer in light of those goals and objectives, and set each executive officer's compensation including, but not limited to, salary, bonus, incentive compensation, equity awards, benefits and perquisites, based on such evaluation;
- make recommendations to the board regarding the establishment and terms of Unilife Corporation's incentive compensation plans and equity compensation plans, and administer such plans;
- review and discuss with management the disclosures in Unilife Corporation's "Compensation Discussion and Analysis" and any other disclosures regarding executive compensation to be included in its public filings or shareholder reports; and
- regularly review Unilife Corporation's remuneration, recruitment, retention and termination policies and procedures for senior executives.

It is intended that the Compensation Committee comprise three or more independent directors who will meet as often as required, but not less than quarterly.

The initial members of the Compensation Committee are Jim Bosnjak (Chairman), William Galle and John Lund.

### **6.12.4 Nominating and Corporate Governance Committee**

The main functions of the Nominating and Corporate Governance Committee are to:

- identify individuals qualified to become board members;
- select, or recommend to the board, director nominees for each election of directors;

- develop and recommend to the board criteria for selecting qualified director candidates;
- consider committee member qualifications, appointment and removal;
- recommend corporate governance principles, codes of conduct and compliance mechanisms applicable to Unilife Corporation; and
- provide oversight in the evaluation of the board and each committee.

It is intended that the Nominating and Corporate Governance Committee comprise three or more independent directors who will meet as often as required.

The initial members of the Nominating and Corporate Governance Committee are Jim Bosnjak (Chairman), William Galle and John Lund.

#### **6.12.5 Continuous disclosure**

Once listed, Unilife Corporation will be a "disclosing entity" for the purposes of the Corporations Act and will be listed on ASX and, as such, will need to continue to comply with the continuous disclosure requirements of the Listing Rules and section 674 of the Corporations Act. Subject to the exceptions contained in the Listing Rules, Unilife Corporation will be required to disclose to ASX any information concerning Unilife Corporation which is not generally available and which a reasonable person would expect to have a material effect on the price or value of Unilife Corporation Shares.

In addition once listed on NASDAQ, Unilife Corporation will be a publicly traded company in the US and will have certain legal and regulatory requirements regarding the public disclosure of material information as set out under Regulation FD adopted by the Securities Exchange Commission and the NASDAQ listing rules.

Unilife Corporation is committed to observing its disclosure obligations under the Corporations Act, US law and its obligations under the NASDAQ listing rules and Listing Rules. All relevant information provided to ASX and NASDAQ will be provided on the Company's website at [www.unilife.com](http://www.unilife.com).

Unilife Corporation has adopted a written Continuous Disclosure Policy in relation to information disclosures and relevant procedures. The Chief Financial Officer is responsible for the administration of the policy and coordinating education within Unilife Corporation about its disclosure obligations.

The policy also sets out other principles that Unilife Corporation will apply in relation to disclosure of material information, including that Unilife Corporation:

- will not provide analysts or other select groups of market participants any material price sensitive non-public information at any time before it is disclosed to ASX, NASDAQ or filed with the SEC;
- will not generally respond to market rumours and speculation, except when ASX or NASDAQ formally requests disclosure by Unilife Corporation on the

matter or the board considers it appropriate to make a disclosure in the circumstances; and

- will only allow the Chief Executive Officer and the Chairman of the board or another person expressly authorised in writing by the board to make public statements on behalf of Unilife Corporation.

This policy emphasises a proactive approach to continuous disclosure. The objective is to create a culture of openness, which is conducive to the fulfilment of Unilife Corporation's disclosure obligations.

#### **6.12.6 *Insider trading policy***

Unilife Corporation has adopted an Insider Trading Policy in order to ensure that Unilife Corporation meets the best practice established by ASX Corporate Governance Council as well as the requirements imposed under US securities laws including the measures set out in the Insider Trading and Securities Fraud Enforcement Act of 1988. Unilife Corporation has adopted an Insider Trading Policy to maintain investor confidence in the integrity of Unilife Corporation's internal controls and procedures and to provide guidance on avoiding any breach of the insider trading laws in both Australia and the US.

Under the policy, employees of Unilife Corporation, including all executive and non-executive directors, may only trade in Unilife Corporation's securities during a trading window (normally commencing 48 hours after the public release) as notified by the Company Secretary following the public release by Unilife Corporation of its annual, half yearly or quarterly financial results and ending one month prior to the release or Unilife Corporation's next annual, half yearly or quarterly financial results.

Furthermore, any employee or director who is in possession of price sensitive information, which is not generally available to the market, must not deal in Unilife Corporation's securities at any time, even if a trading window is open.

The Insider Trading Policy requires all directors and officers to pre-clear all transactions in Unilife Corporation's securities with Unilife Corporation's Compliance Officer. In addition, any changes in a director's direct or indirect interest in Unilife Corporation securities must be immediately reported to the Compliance Officer so that appropriate disclosure can be made.

#### **6.12.7 *Code of business conduct and ethics***

Unilife Corporation has adopted a written Code of Business Conduct and Ethics, which applies to all employees of Unilife Corporation, including executive and non-executive directors.

The objectives of the Code are to ensure that high standards of corporate and individual behaviour are observed by all employees in the context of their employment with Unilife Corporation and that employees always act in an ethical and professional manner so that all persons dealing with Unilife Corporation, whether it be employees, shareholders, suppliers, customers or competitors, can be guided by the stated values and practices of Unilife Corporation.

## **7      Investigating Accountant's Report**





BDO Kendalls

BDO Kendalls Corporate Finance (WA) Pty Ltd  
Level 8, 256 St Georges Terrace PERTH WA  
6000  
PO Box 7426 Cloisters Square Perth WA 6850  
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ABN 27 124 031 045  
AFS Licence No 316158

Our ref: SA:AM

27 November 2009

The Directors  
Unilife Medical Solutions Limited  
Suite 3 Level 11  
1 Chifley Square  
SYDNEY NSW 2000

Dear Sirs

## INVESTIGATING ACCOUNTANT'S REPORT

### *1. Introduction*

BDO Kendalls Corporate Finance (WA) Pty Limited ("**BDO Kendalls**") has been engaged by the Company to provide an Investigating Accountant's Report ("**IAR**") in connection with the proposed transaction, as a result of which the Unilife Group will redomicile in the United States of America whilst maintaining a listing on the Australian Securities Exchange ("**ASX**") ("**Proposed Transaction**") and seeking a listing on NASDAQ.

The Proposed Transaction will be implemented by the establishment of a new corporate structure under which Unilife Corporation (currently a wholly owned subsidiary of the Company) will become the parent company of the Unilife Group and will hold all of the shares in the Company. The Proposed Transaction will take place under Australian Law and will be implemented by way of two separate schemes of arrangement in relation to the Shares and Options of the Company.

This report is being issued for inclusion in the Information Memorandum dated on or about 27 November 2009 which will be sent to the Company's Shareholders and Optionholders ("**Information Memorandum**").

Expressions defined in the Information Memorandum have the same meaning in this Report.

### *2. Basis of Preparation*

This Report has been prepared to provide Shareholders and Optionholders of the Company with information on the Income Statement, Statement of Changes in Equity, the Balance Sheet and the pro-forma Balance Sheet as noted in Appendices 1, 2 and 3 of this Report.

This Report does not address the rights attaching to the Unilife Corporation Shares and Unilife Corporation Options to be issued under the Schemes, nor the risks associated with an investment in the Unilife Group and has been prepared based on the Proposed Transaction being implemented.

BDO Kendalls Corporate Finance (WA) Pty Ltd ("**BDO Kendalls**") has not been requested to consider the prospects for the Company, the Unilife Corporation Shares or Unilife Corporation Options and related pricing issues, nor the merits and risks associated with becoming a Shareholder or Optionholder of Unilife Corporation and accordingly has not done so, and does not purport to do so. BDO Kendalls accordingly takes no responsibility for these matters or for any matter or omission in the Information Memorandum, other than responsibility for this Report. Risk factors are set out in the Information Memorandum.

### 3. **Background**

The Company is publicly listed on the ASX (ASX:UNI) and is focused on the design, development, manufacture and supply of safety medical devices, including a retractable syringe. The Company has FDA registered manufacturing facilities in Pennsylvania in the United States.

### 4. **Scope**

The Company has requested BDO Kendalls to prepare an Investigating Accountant's Report covering the following financial information:

- ◆ the historical income statement (Appendix 1);
- ◆ the accounting policies applied by the Company in preparing its financial statements (Appendix 3);
- ◆ the balance sheet as at 30 June 2009 in US Dollars prepared in accordance with Australian equivalents to International Financial Reporting Standards ("**AIFRS**") (Appendix 4);
- ◆ the balance sheet as at 30 June 2009 in US Dollars prepared in accordance with US Generally Accepted Accounting Principles ("**US GAAP**") (Appendix 5);

Collectively this information forms the Historical Financial Information ("**Historical Financial Information**"). The Historical Financial Information set out in the appendices to this Report has been extracted from the financial statements of the Company for the year ended 30 June 2009.

The Directors are responsible for the preparation of the Historical Financial Information including determination of the adjustments.

The Company has also requested BDO Kendalls to prepare a pro-forma balance sheet of the Company ("**Pro-forma Balance Sheet**") as at 30 June 2009 reflecting the actual position as at that date, major transactions between that date and the date of this Report and the proposed capital raising (Appendix 2).

We have conducted our review of the Historical Financial Information in accordance with the Australian Auditing and Assurance Standard ASRE 2405 "Review of Historical Financial Information other than a Financial Report". We made such inquiries and performed such procedures as we, in our professional judgment, considered reasonable in the circumstances including:

- ◆ a review of work papers, accounting records and other documents pertaining to balances in existence at 30 June 2009;
- ◆ a review of the assumptions used to compile the pro-forma Balance Sheet;
- ◆ a review of the adjustments made to the pro-forma Historical Financial Information;
- ◆ a comparison of consistency in application of the recognition and measurement principles in Accounting Standards and other mandatory professional reporting requirements in Australia, and the accounting policies adopted by the Company disclosed in the appendices to this Report; and
- ◆ enquiry of Directors of the Company and others.

These procedures do not provide all the evidence that would be required in an audit, thus the level of assurance provided is less than given in an audit. We have not performed an audit and, accordingly, we do not express an audit opinion.

Our review was limited primarily to an examination of the Historical Financial Information, the pro-forma financial information, analytical review procedures and discussions with both management and directors. A review of this nature provides less assurance than an audit and, accordingly, this Report does not express an audit opinion on the historical information or pro-forma financial information included in this Report or elsewhere in the Information Memorandum.

In relation to the information presented in this Report:

- ◆ support by another person, corporation or an unrelated entity has not been assumed;
- ◆ the amounts shown in respect of assets do not purport to be the amounts that would have been realised if the assets were sold at the date of this Report; and
- ◆ the going concern basis of accounting has been adopted.

## **5. Conclusion**

### **Statement on Historical Financial Information**

Based on our review, which was not an audit, nothing has come to our attention which would cause us to believe the Historical Financial Information as set out in the Appendices to this Report does not present fairly the financial performance of the Company for the year ended 30 June 2009 or the financial position as at 30 June 2009 in accordance with the measurement and recognition requirements (but not all of the disclosure requirements) of applicable Accounting Standards and other mandatory professional reporting requirements in Australia.

The Financial Statements for the year ended 30 June 2009 were audited by BDO Kendalls Audit and Assurance (WA) Pty Ltd and an unqualified audit opinion was issued.

The US GAAP adjustments were reviewed by BDO Siedman LLP who advised that no matters that came to their attention that would lead them to believe that there were material misstatements in relation to these adjustments.

### **Statement on Pro-Forma Consolidated Balance Sheet**

Based on our review, which was not an audit, nothing has come to our attention which would cause us to believe the pro-forma consolidated balance sheet does not present fairly the financial position of the Company as at 30 June 2009, in accordance with the measurement and recognition requirements (but not all of the disclosure requirements) of applicable Accounting Standards and other mandatory professional reporting requirements in Australia as if the pro-forma transactions had occurred on that date.

## **6. Assumptions Adopted in Compiling the Pro-forma Balance Sheet**

The pro-forma balance sheet after implementation of the Proposed Transaction is shown in Appendix 2. This has been prepared based on the reviewed financial statements as at 30 June 2009 and the transactions and events relating to the issue of shares under the Information Memorandum:

- ◆ An effective consolidation of share capital on a 6:1 basis; and
- ◆ The exchange of Shares and Options in Unilife for shares and options in Unilife Corporation.

Significant events subsequent to 30 June 2009 and prior to the date of this report are as follows:

- ◆ The issue of 37,749,209 Shares at a price of \$0.85 raising \$32,086,828 before costs under a Private Placement to professional and sophisticated investors in Australia and accredited investors in the US ("**the Placement**"). Under the terms of the Placement each investor will also receive two Options for every four Shares received under the Placement, both with expiry dates of 3 years and exercise prices of \$1.25 and \$2.00 respectively;
- ◆ The issue of 2,985,974 options exercisable at \$0.85 to brokers in respect of the Placement;
- ◆ The issue of approximately 25,310,025 Shares at a price of \$0.85 raising approximately \$21.5 million before costs under a Share Purchase Plan ("**SPP**") to existing shareholders with a registered address in Australia or New Zealand;
- ◆ The issue of 25 million Shares to the Founders and Inventors, described in section 5 of the Information Memorandum, of which 20 million shares to the Founders were provided for in the balance sheet as at 30 June 2009. Under an agreement with the Inventors, a further 5 million shares are to be issued on or around 2 December 2009;

- ◆ The issue of 599,998 options issued to US employees to purchase shares at a purchase price of US\$0.78 per share. 210,529 of these options were exercised and the remaining balance subsequently lapsed;
- ◆ The exercise of 4,962,574 Options at \$0.25, \$0.45 and \$0.85 for total consideration of \$1,406,961; and
- ◆ Professional costs associated with the capital raising of \$4,201,444 of which \$2,565,805 are payable in cash.

## 7. ***Subsequent Events***

Apart from the matters dealt with in this Report, and having regard to the scope of our Report, to the best of our knowledge and belief, no other material transactions or events outside of the ordinary business of the Company have come to our attention that would require comment on, or adjustment to, the information referred to in our Report or that would cause such information to be misleading or deceptive.

## 8. ***Disclosures***

BDO Kendalls Corporate Finance (WA) Pty Ltd is the corporate advisory arm of BDO Kendalls in Perth.

Neither BDO Kendalls Corporate Finance (WA) Pty Ltd nor BDO Kendalls, nor any director or executive or employee thereof, has any financial interest in the outcome of the Proposed Transaction except for the normal professional fee due for the preparation of this Report.

Consent to the inclusion of the Investigating Accountant's Report in the Information Memorandum, in the form and context in which it appears, has been given. At the date of this Report, this consent has not been withdrawn.

Yours faithfully

**BDO Kendalls Corporate Finance (WA) Pty Ltd**



**Sherif Andrewes**

Director

**APPENDIX 1**  
**UNILIFE MEDICAL SOLUTIONS LIMITED**  
**CONSOLIDATED INCOME STATEMENT**

	<b>Year ended 30 June 2009 A\$</b>
Revenue from continuing operations	4,637,112
Other income	35,776,594
Cost of good sold	(5,732,353)
Employee expense	(5,844,643)
Depreciation and amortisation expenses	(1,210,022)
Other expenses	(10,503,988)
Loss on sale of non-current assets	(6,692)
Finance costs	(245,220)
Expense associated with issue of convertible note	(87,148)
Share based payments	<u>(4,957,187)</u>
<b>Profit / (Loss) before income tax expense</b>	11,826,453
Income tax benefit	<u>980,041</u>
<b>Profit / (Loss) attributable to members of the Company</b>	<u><u>12,806,494</u></u>

The Income Statement is to be read in conjunction with the notes to and forming part of the Historical Financial Information set out in Appendix 3.

**APPENDIX 2**  
**UNILIFE MEDICAL SOLUTIONS LIMITED**  
**PRO-FORMA CONSOLIDATED BALANCE SHEET**

	Note	Audited as at 30 June 2009	Pro forma adjustments	Pro forma as at 30 June 2009
		A\$	A\$	A\$
<b>CURRENT ASSETS</b>				
Cash and cash equivalents	2	4,506,684	52,441,538	56,948,222
Trade and other receivables		9,771,104	-	9,771,104
Inventories		1,362,851	-	1,362,851
Other current assets		182,591	-	182,591
<b>TOTAL CURRENT ASSETS</b>		<b>15,823,230</b>	<b>52,441,538</b>	<b>68,264,768</b>
<b>NON-CURRENT ASSETS</b>				
Property, plant and equipment		11,352,786	-	11,352,786
Intangible assets		13,627,986	-	13,627,986
Other non-current assets		6,761,668	-	6,761,668
Deferred tax assets		1,847,664	-	1,847,664
<b>TOTAL NON-CURRENT ASSETS</b>		<b>33,590,104</b>	<b>-</b>	<b>33,590,104</b>
<b>TOTAL ASSETS</b>		<b>49,413,334</b>	<b>52,441,538</b>	<b>101,854,872</b>
<b>CURRENT LIABILITIES</b>				
Trade and other payables	3	8,945,418	(6,300,000)	2,645,418
Borrowings		503,361	-	503,361
<b>TOTAL CURRENT LIABILITIES</b>		<b>9,448,779</b>	<b>(6,300,000)</b>	<b>3,148,779</b>
<b>NON-CURRENT LIABILITIES</b>				
Borrowings		3,390,133	-	3,390,133
Deferred tax liabilities		296,457	-	296,457
<b>TOTAL NON-CURRENT LIABILITIES</b>		<b>3,686,590</b>	<b>-</b>	<b>3,686,590</b>
<b>TOTAL LIABILITIES</b>		<b>13,135,369</b>	<b>(6,300,000)</b>	<b>6,835,369</b>
<b>NET ASSETS</b>		<b>36,277,965</b>	<b>58,741,538</b>	<b>95,019,503</b>
<b>EQUITY</b>				
Issued capital	4	75,458,648	62,009,673	137,468,321
Reserves	5	4,994,881	1,827,072	6,821,953
Accumulated losses	6	(44,175,564)	(5,095,207)	(49,270,771)
<b>TOTAL EQUITY</b>		<b>36,277,965</b>	<b>58,741,538</b>	<b>95,019,503</b>

The pro-forma Consolidated Balance Sheet reflects the pro-forma adjustments as described in section 6 of the Investigating Accountant's Report. The Balance Sheet is to be read in conjunction with the notes to and forming part of the Historical Financial Information set out in Appendix 3.

**APPENDIX 3**  
**UNILIFE MEDICAL SOLUTIONS LIMITED**  
**NOTES TO AND FORMING PART OF THE HISTORICAL FINANCIAL INFORMATION**

**1 STATEMENT OF SIGNIFICANT ACCOUNTING POLICIES**

The Historical Financial Information has been prepared in accordance with the recognition and measurement, but not all the disclosure requirements of the Australian equivalents to International Financial Reporting Standards (“**AIFRS**”), other authoritative pronouncements of the Australian Accounting Standards Board, Australian Accounting Interpretations and the Corporations Act 2001

The financial report covers the Economic Entity of Unilife Medical Solutions Limited and Controlled Entities (the “**Group**”). Unilife Medical Solutions Limited is a listed public company, incorporated and domiciled in Australia.

The following is a summary of the material accounting policies adopted by the Economic Entity in the preparation of the financial report. The accounting policies have been consistently applied, unless otherwise stated.

**Basis of Preparation**

*Compliance with IFRS*

Australian Accounting Standards include AIFRS. Compliance with AIFRS ensures that the consolidated financial statements and notes of Unilife Medical Solutions Limited comply with International Reporting Standards (“**IFRS**”).

*Reporting Basis and Conventions*

The financial report has been prepared on an accruals basis and is based on historical costs. The financial information is in Australian dollars.

**Accounting Policies**

**Principles of Consolidation**

A Controlled Entity is any entity Unilife Medical Solutions Limited has the power to control the financial and operating policies so as to obtain benefits from its activities.

All inter-company balances and transactions between entities in the Economic Entity, including any unrealised profits or losses, have been eliminated on consolidation. Accounting policies of subsidiaries have been changed where necessary to ensure consistencies with those policies applied by the Parent Entity.

**(b) Income Tax**

The charge for current income tax expense is based on the profit for the year adjusted for any non-assessable or disallowed items. It is calculated using tax rates that have been enacted or are substantively enacted by the balance sheet date.

Deferred tax is accounted for using the balance sheet liability method in respect of temporary differences arising between the tax bases of assets and liabilities and their carrying amounts in the financial statements. No deferred income tax will be recognised from the initial recognition of an asset or liability, excluding a business combination, where there is no effect on accounting or taxable profit or loss.

Deferred tax is calculated at the tax rates that are expected to apply to the period when the asset is realised or liability is settled. Deferred tax is credited in the Income Statements except where it relates to items that may be credited directly to equity, in which case the deferred tax is adjusted directly against equity.

Deferred income tax assets are recognised to the extent that it is probable that future tax profits will be available against which deductible temporary differences can be utilised.

The amount of benefits brought to account or which may be realised in the future is based on the assumption that no adverse change will occur in income taxation legislation and the anticipation that the Economic Entity will derive sufficient future assessable income to enable the benefit to be realised and comply with the conditions of deductibility imposed by the law.

Unilife Medical Solutions Limited and its wholly-owned Australian subsidiaries have formed an income tax consolidated group under the Tax Consolidation Regime. Unilife Medical Solutions Limited is responsible for recognising the current and deferred tax assets and liabilities for the tax consolidated group. The Group notified the Australian Taxation Office on 2 June 2004 that it formed an income tax consolidated group to apply from 1 July 2003.

**(c) Inventories**

Inventories are measured at the lower of cost and net realisable value. The cost of manufactured products includes direct materials, direct labour and an appropriate portion of variable and fixed overheads. Overheads are applied on the basis of normal operating capacity. Costs are assigned on the basis of weighted average costs.

**(d) Plant and Equipment**

Each class of plant and equipment is carried at cost or fair value less, where applicable, any accumulated depreciation and impairment losses.

Plant and equipment are measured on the cost basis less depreciation and impairment losses.

The carrying amount of plant and equipment is reviewed annually by Directors to ensure it is not in excess of the recoverable amount from these assets. The recoverable amount is assessed on the basis of the expected net cash flows which will be received from the assets' employment and subsequent disposal. The expected net cash flows have been discounted to their present values in determining recoverable amounts.

Subsequent costs are included in the asset's carrying amount or recognised as a separate asset, as appropriate, only when it is probable that future economic benefits associated with the item will flow to the Group and the cost of the item can be measured reliably. All other repairs and maintenance are charged to the Income Statements during the financial period in which they are incurred.

**Depreciation**

The depreciable amount of all fixed assets including capitalised lease assets is depreciated on a straight-line basis over their useful lives to the Economic Entity commencing from the time the asset is held ready for use. Leasehold improvements are depreciated over the shorter of either the unexpired period of the lease or the estimated useful lives of the improvements.

The depreciation rates used for each class of depreciable asset are:

<b>Class of Fixed Asset</b>	<b>Depreciation Rate</b>
Leasehold improvements	14.3% - 20%
Plant and equipment	7.5% – 40%
Leased plant and equipment	27.5%

The assets' residual values and useful lives are reviewed, and adjusted if appropriate, at each balance sheet date. Work in progress is not being depreciated.

An asset's carrying amount is written-down immediately to its recoverable amount if the asset's carrying amount is greater than its estimated recoverable amount.



Gains and losses on disposals are determined by comparing proceeds with the carrying amount. These gains or losses are included in the Income Statements. When revalued assets are sold, amounts included in the revaluation reserve relating to that asset are transferred to retained earnings.

**(e) Leases**

Leases of fixed assets, where substantially all the risks and benefits incidental to the ownership of the asset, but not the legal ownership that are transferred to entities in the Economic Entity, are classified as finance leases.

Finance leases are capitalised by recording an asset and a liability at the lower of the amounts equal to the fair value of the leased property or the present value of the minimum lease payments, including any guaranteed residual values. Lease payments are allocated between the reduction of the lease liability and the lease interest expense for the period.

Leased assets are depreciated on a straight-line basis over their estimated useful lives.

Lease payments for operating leases, where substantially all the risks and benefits remain with the lessor, are charged as expenses in the periods in which they are incurred.

Lease incentives under operating leases are recognised as a liability and amortised on a straight-line basis over the life of the least term.

**(f) Business combinations**

The purchase method of accounting is used to account for all business combinations, including business combinations involving entities or businesses under common control, regardless of whether equity instruments or other assets are acquired. Cost is measured as the fair value of the assets given, equity instruments issued or liabilities incurred or assumed at the date of exchange plus costs directly attributable to the acquisition. Where equity instruments are issued in an acquisition, the fair value of the instruments is their published market price as at the date of exchange unless, in rare circumstance, it can be demonstrated that the published price at the date of exchange is an unreliable indicator of fair value and that other evidence and valuation methods provide a more reliable measure of fair value. Transaction costs arising on the issue of equity instruments are recognised directly in equity.

Identifiable assets acquired and liabilities and contingent liabilities assumed in a business combination are measured initially at their fair values at the acquisition date, irrespective of the extent of any minority interest. The excess of the cost of acquisition over the fair value of the Group's share of the identifiable net assets acquired is recorded as goodwill (refer to note 1(i)). If the cost of acquisition is less than the Group's share of the fair value of the identifiable net assets of the subsidiary acquired, the difference is recognised directly in the income statement, but only after a reassessment of the identification and measurement of the net assets acquired.

Where settlement of any part of cash consideration is deferred, the amounts payable in the future are discounted to their present value as at the date of exchange. The discount rate used is the entity's incremental borrowing rate, being the rate at which a similar borrowing could be obtained from an independent financier under comparable terms and conditions.

**(g) Investments & Other Financial Assets**

**Classification**

The Group classifies its investments in the following categories: financial assets at fair value through profit or loss, loans and receivables, held-to-maturity investments and available-for-sale financial assets. The classification depends on the purpose for which the investments were acquired. The classification of an investment is determined by Company management at the time that the investment is first recognised in the Company's financial accounts.

## **Loans and receivables**

Loans and receivables are non-derivative financial assets with fixed or determinable payments that are not quoted in an active market and are stated at amortised cost using the effective interest rate method. They are included in current assets, except for those with maturities greater than 12 months after the balance sheet date which are classified as non-current assets. Loans and receivables are included in trade and other receivables in the balance sheet.

## **Recognition**

Financial instruments are initially measured at cost on trade date, which includes transaction costs, when the related contractual rights or obligations exist. Subsequent to initial recognition these instruments are measured as set out below.

## **Financial liabilities**

Non-derivative financial liabilities are recognised at amortised cost, comprising original debt less principal payments and amortisation.

## **Fair value**

Fair value is determined based on current bid prices for all quoted investments. Valuation techniques are applied to determine the fair value for all unlisted securities, including recent arm's length transactions, reference to similar instruments and option pricing models.

## **Impairment**

At each reporting date, the Group assess whether there is objective evidence that a financial instrument has been impaired.

### **(h) Impairment of Assets**

At each reporting date, the Group reviews the carrying values of its tangible and intangible assets to determine whether there is any indication that those assets have been impaired. If such an indication exists, the recoverable amount of the asset, being the higher of the asset's fair value less costs to sell and value in use, is compared to the assets carrying value. Any excess of the assets carrying value over its recoverable amount is expensed to the Income Statements.

Impairment testing is performed at least annually for goodwill and intangible assets with indefinite lives.

Where it is not possible to estimate the recoverable amount of an individual asset, the Group estimates the recoverable amount of the cash-generating unit to which the asset belongs.

### **(i) Intangibles**

#### **Goodwill**

Goodwill and goodwill on consolidation are initially recorded at the amount by which the purchase price for a business or for an ownership interest in a Controlled Entity exceeds the fair value attributed to its net assets at date of acquisition. Goodwill on acquisition of subsidiaries is included in intangible assets. Goodwill is tested annually for impairment and carried at cost less accumulated impairment losses. Gains and losses on the disposal of an entity include the carrying amount of goodwill relating to the entity sold.

#### **Patents and trademarks**

Patents and trademarks are recognised at cost of acquisition. Patents and trademarks have a finite life and are carried at cost less any accumulated amortisation and any impairment

losses. Patents and trademarks are amortised over their useful life ranging from 3 to 15 years.

### **Research and development**

Expenditure during the research phase of a project is recognised as an expense when incurred. Development costs are capitalised only when technically feasibility studies identify that the project will deliver future economic benefits and these benefits can be measured reliably.

Development costs have a finite life and are amortised on a systematic basis matched to the future economic benefits over the useful life of the project.

## **(j) Foreign Currency Transactions and Balances**

### **Functional and presentation currency**

The functional currency of each of the Group's entities is measured using the currency of the primary economic environment in which that entity operates. The consolidated financial statements are presented in Australian dollars which is the Parent Entity's functional and presentation currency.

### **Transaction and balances**

Foreign currency transactions are translated into functional currency using the exchange rates prevailing at the date of the transaction. Foreign currency monetary items are translated at the year-end exchange rate. Non-monetary items measured at historical cost continue to be carried at the exchange rate at the date of the transaction. Non-monetary items measured at fair value are reported at the exchange rate at the date when fair values were determined.

Exchange differences arising on the translation of monetary items are recognised in the Income Statements, except where deferred in equity as a qualifying cash flow or net investment hedge.

Exchange differences arising on the translation of non-monetary items are recognised directly in equity to the extent that the gain or loss is directly recognised in equity; otherwise the exchange difference is recognised in the Income Statements.

### **Group Companies**

The results and financial position of all the group entities (none of which has the currency of a hyperinflationary economy) that have a functional currency different from the presentation currency are translated into the presentation currency as follows:

- ◆ assets and liabilities for each balance sheet presented are translated at the closing rate at the date of that balance sheet;
- ◆ income and expenses for each income statement are translated at average exchange rates (unless this is not a reasonable approximation of the cumulative effect of the rates prevailing on the transaction dates, in which case income and expenses are translated at the dates of the transactions), and
- ◆ all resulting exchange differences are recognised as a separate component of equity.

## **(k) Employee Benefits**

Provision is made for the Company's liability for employee benefits arising from services rendered by employees to balance date. Employee benefits that are expected to be settled within one year have been measured at the amounts expected to be paid when the liability is settled, plus related on-costs. Employee benefits payable later than one year have been

measured at the present value of the estimated future cash outflows to be made for those benefits.

#### **Equity-settled compensation**

The Group operates an employee share option plan. The bonus element over the exercise price of the employee services rendered in exchange for the grant of options is recognised as an expense in the Income Statements. The total amount to be expensed over the vesting period is determined by reference to the fair value of the options granted. The fair value is determined using the Black-Scholes methodology and the Barrier Pricing model where appropriate.

#### **(l) Provisions**

Provisions are recognised when the Group has a legal or constructive obligation, as a result of past events, for which it is probable that an outflow of economic benefits will result and that outflow can be reliably measured.

#### **(m) Cash and Cash Equivalents**

Cash and cash equivalents includes cash on hand, deposits held at call with banks, other short-term highly liquid investments with original maturities of three months or less, and bank overdrafts.

#### **(n) Trade Receivables**

Trade receivables are recognised initially at fair value and subsequently measured at amortised cost. Trade receivables are generally due for settlement within 30 days.

Collectability of trade receivables is reviewed on an ongoing basis. Debts which are known to be uncollectible are written off. An allowance account is used when there is objective evidence that the Group will not be able to collect all amounts due according to the original terms of the receivables.

The amount of the impairment loss is recognised in the income statement within other expenses. When a trade receivable for which an impairment allowance had been recognised becomes uncollectable in a subsequent period, it is written off against the allowance account. Subsequent recoveries of amounts previously written off are credited against other expenses in the income statement.

#### **(o) Trade and other payables**

These amounts represent liabilities for goods and services provided to the group prior to the end of financial year which are unpaid. The amounts are unsecured and are usually paid within 30 days of recognition. Payables are recognised initially at fair value and subsequently at amortised cost.

#### **(p) Revenue**

Revenue from the sale of goods is recognised upon delivery of goods to customers.

Interest revenue is recognised on a proportional basis taking into account the interest rates applicable to the financial assets.

Dividend revenue is recognised when the right to receive a dividend has been established. Dividends received from associates are accounted for in accordance with the equity method of accounting.

Revenue from the rendering of a service is recognised upon the delivery of the service to the customers.

All revenue is stated net of the amount of goods and services tax.

**(q) Borrowings**

Borrowings are initially recognised at fair value, net of transaction costs incurred. Borrowings are subsequently measured at amortised cost. Any difference between the proceeds (net of transaction costs) and the redemption amount is recognised in the income statement over the period of the borrowings using the effective interest method. Fees paid on the establishment of loan facilities are recognised as transaction costs of the loan to the extent that it is probable that some or all of the facility will be drawn down. In this case, the fee is deferred until the draw down occurs. To the extent there is no evidence that it is probable that some or all of the facility will be drawn down, the fee is capitalised as a prepayment for liquidity services and amortised over the period of the facility to which it relates.

The fair value of the liability portion of a convertible bond is determined using market interest rate for an equivalent non-convertible bond. This amount is recorded as a liability on an amortised cost basis until extinguished on conversion or maturity of the bonds. The remainder of the proceeds is allocated to the conversion option. This is recognised and included in shareholder's equity, net of income tax effects.

**(r) Borrowing Costs**

Borrowing costs directly attributable to the acquisition, construction or production of assets that necessarily take a substantial period of time to prepare for their intended use or sale, are added to the costs of those assets, until such time as the assets are substantially ready for their intended use or sale.

All other borrowing costs are recognised in income statements in the period in which they are incurred.

**(s) Goods and Services Tax (GST)**

Revenues, expenses and assets are recognised net of the amount of GST, except where the amount of GST incurred is not recoverable from the Australian Tax Office. In these circumstances the GST is recognised as part of the cost of acquisition of the asset or as part of an item of the expense. Receivables and payables in the Balance Sheets are shown inclusive of GST.

**(t) Government Grants**

Government grants are recognised at fair value where there is reasonable assurance that the grant will be received and all grant conditions will be met. Grants relating to expense items are recognised as income over the periods necessary to match the grant to the costs they are compensating. Grants relating to assets are credited to deferred income at fair value and are credited to income over the expected useful life of the asset on a straight-line basis.

**(u) Segment Reporting**

A business segment is a group of assets and operations engaged in providing products or services that are subject to risks and returns that are different to those of other business segments. A geographical segment is engaged in providing products or services within a particular economic environment and subject to risks and returns that are different from those of segments operating in other economic environments.

**(v) Issued Capital**

Ordinary shares are classified as equity. Incremental costs directly attributable to the issue of new shares or options are shown in equity as a deduction, net of tax, from the proceeds. Incremental costs directly attributable to the issue of new shares or options for the acquisition of a business are included in the cost of the acquisition as part of the purchase consideration.

	30 June 2009	Pro-forma After Issue
	A\$	A\$

## NOTE 2. CASH

Cash at bank	4,506,684	56,948,222
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Adjustments arising in the preparation of the pro-forma cash balance are summarised as follows:

Audited balance at 30 June 2009		4,506,684
Proceeds from shares issued under the share purchase plan		21,513,555
Proceeds from shares issued under the Placement		32,086,827
Proceeds from exercise of 4,962,574 options at \$0.25, \$0.45 and \$0.85 per option		1,406,961
Share issue costs		(2,565,805)
Proforma balance at 30 June 2009		56,948,222

	30 June 2009	Pro-forma After Issue
	A\$	A\$

## NOTE 3. TRADE AND OTHER PAYABLES

Trade and other payables	8,945,418	2,645,418
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Adjustments arising in the preparation of the pro-forma balance is summarised as follows:

Audited balance at 30 June 2009		8,945,418
Issue of Founder shares previously provided for		(6,300,000)
Pro-forma balance at 30 June 2009		2,645,418

## NOTE 4. CONTRIBUTED EQUITY

	Number of Shares	A\$
As at 30 June 2009	219,754,809	75,458,648
Ordinary shares at \$0.85 each issued pursuant to the Placement	37,749,208	32,086,827
Ordinary shares at \$0.85 each issued pursuant to the Share Purchase Plan	25,310,025	21,513,555
Issue of Founder and Inventor shares	25,000,000	11,300,000
Exercise of options at \$0.25, \$0.45 and \$0.85	4,962,574	1,406,961
Share issue expenses	-	(4,297,670)
Consolidation of share capital on a 6:1 basis	(260,647,180)	-
Pro-forma balance at 30 June 2009	52,129,436	137,468,321

	30 June 2009	Pro-forma After Issue
	\$	\$
<b>NOTE 5. RESERVES</b>		
Reserves	<u>4,994,881</u>	<u>6,821,953</u>

Adjustments arising in the preparation of the pro-forma balance is summarised as follows:

Audited balance at 30 June 2009	4,994,881
Issue of 2,985,974 broker options	1,731,865
Issue of 599,998 US employee options	<u>95,207</u>
Pro-forma balance at 30 June 2009	<u>6,821,953</u>

The broker options have been valued using the Black Scholes model.  
The options have an exercise price of \$0.85 and have a term of 3 years.  
The employee options had a term of 11 days, 210,529 of these were subsequently exercised and the remaining balance lapsed..

	30 June 2009	Pro-forma After Issue
	A\$	A\$
<b>NOTE 6. ACCUMULATED LOSSES</b>		
Accumulated losses	<u>(44,175,564)</u>	<u>(49,270,771)</u>

Adjustments arising in the preparation of the pro-forma balance is summarised as follows:

Audited balance at 30 June 2009	(44,175,564)
Issue of 5 million Inventor shares at an anticipated price of \$1 each	(5,000,000)
Issue of 599,998 US employee options	<u>(95,207)</u>
Pro-forma balance at 30 June 2009	<u>(49,270,771)</u>

The value of the shares issued will be dependant on the market value of the shares on the grant date. It is anticipated that the post capital raising diluted share price will be approximately \$1.

#### **NOTE 7: RELATED PARTY DISCLOSURES**

Transactions with Related Parties and Directors Interests are disclosed in the Information Memorandum.

#### **NOTE 8: COMMITMENTS AND CONTINGENCIES**

The Company has proposed to issue 600,000 options to each of Mr Jeff Carter, Mr John Lund and Mr William Galle, all non-executive directors of the Company, under the Company's Employee Share Option Plan with an exercise price of \$1.20. These options are subject to shareholder approval in January 2010 at the EGM.

At the date of the report no material commitments or contingent liabilities exist that we are aware of, other than those disclosed in the Information Memorandum.

**APPENDIX 4**  
**UNILIFE MEDICAL SOLUTIONS LIMITED**  
**CONSOLIDATED BALANCE SHEET**

	<b>Audited as at 30 June 2009 US\$</b>
<b>CURRENT ASSETS</b>	
Cash and cash equivalents	3,626,979
Trade and other receivables	7,863,784
Inventories	1,096,822
Other current assets	146,949
<b>TOTAL CURRENT ASSETS</b>	<u>12,734,536</u>
<b>NON-CURRENT ASSETS</b>	
Property, plant and equipment	9,136,722
Intangible assets	10,967,803
Other non-current assets	5,441,790
Deferred tax assets	1,487,000
<b>TOTAL NON-CURRENT ASSETS</b>	<u>27,033,316</u>
<b>TOTAL ASSETS</b>	<u>39,767,851</u>
<b>CURRENT LIABILITIES</b>	
Trade and other payables	7,199,272
Borrowings	405,105
<b>TOTAL CURRENT LIABILITIES</b>	<u>7,604,377</u>
<b>NON-CURRENT LIABILITIES</b>	
Borrowings	2,728,379
Deferred tax liabilities	238,589
<b>TOTAL NON-CURRENT LIABILITIES</b>	<u>2,966,968</u>
<b>TOTAL LIABILITIES</b>	<u>10,571,345</u>
<b>NET ASSETS</b>	<u>29,196,506</u>
<b>EQUITY</b>	
Issued capital	56,445,332
Reserves	5,795,821
Accumulated losses	<u>(33,044,647)</u>
<b>TOTAL EQUITY</b>	<u>29,196,506</u>

The balance sheet as at 30 June 2009 in US dollars prepared in accordance with AIFRS. This balance sheet has been translated to US dollars based on the 30 June 2009 rate of 1 AUD to 0.80480 US\$.



**APPENDIX 5**  
**UNILIFE MEDICAL SOLUTIONS LIMITED**  
**CONSOLIDATED BALANCE SHEET**

30 June 2009

US\$000's

**CURRENT ASSETS**

Cash and cash equivalents	3,627
Accounts receivable	7,333
Inventories	1,097
Prepaid expenses and other current assets	223
<b>TOTAL CURRENT ASSETS</b>	<b>12,280</b>

**NON-CURRENT ASSETS**

Property, plant and equipment, net	9,137
Goodwill	10,235
Intangible assets, net	43
Other assets	517
<b>TOTAL NON-CURRENT ASSETS</b>	<b>19,932</b>

**TOTAL ASSETS**

**32,212**

**LIABILITIES AND STOCKHOLDERS' EQUITY**

**CURRENT LIABILITIES**

Accounts payable	1,103
Accrued expenses	6,097
Current portion of long-term debt	405
Deferred revenue	2,642
<b>TOTAL CURRENT LIABILITIES</b>	<b>10,247</b>

**NON-CURRENT LIABILITIES**

Borrowings	2,728
Deferred tax liabilities	7,926
<b>TOTAL NON-CURRENT LIABILITIES</b>	<b>10,654</b>

**TOTAL LIABILITIES**

**20,901**

**STOCKHOLDERS' EQUITY**

Common stock, \$0.01 par value, 250,000,000 shares authorised as of June 30, 2009 219,754,809 shares issued or outstanding.	2,198
Additional paid-in-capital	56,155
Accumulated deficit	(49,902)
Accumulated other comprehensive income	2,860
<b>TOTAL STOCKHOLDERS' EQUITY</b>	<b>11,311</b>

**TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY**

**\$32,212**

The balance sheet as at 30 June 2009 in US dollars '000s prepared by the Company in accordance with US GAAP.

Adjustment (other than classification and rounding) has been made for the following;

- 1 Reversal of amounts capitalised for research and development allowable under AIFRS
- 2 Calculation of tax and recognition of deferred tax assets and liabilities
- 3 Calculation and recognition of equity based payments
- 4 Recognition of revenue allowable under AIFRS but not US GAAP
- 5 Expensing of intellectual property and the amortisation of patents

## **8 Implementation of the proposed transaction**

### **8.1 Steps for implementing the Schemes**

To implement the Schemes, the steps set out below have been, or must be taken:

- (a) the Company and Unilife Corporation entered into the Merger Implementation Agreement on 1 September 2009 under which they agreed to implement the Schemes. A copy of the Merger Implementation Agreement is included in Appendix 1;
- (b) on 4 December 2009, Unilife Corporation executed the Deeds Poll in favour of each Scheme Participant. Under the Deeds Poll, Unilife Corporation undertakes to perform certain obligations under the Merger Implementation Agreement and the Schemes, including covenanting to provide the Scheme Consideration. Copies of the Deeds Poll are included in Appendix 5 and Appendix 6;
- (c) on 4 December 2009, the Court ordered that the Company convene:
  - the Share Scheme Meeting on 8 January 2010 for the purpose of considering and, if thought fit, approving the Share Scheme; and
  - the Option Scheme Meeting on 8 January 2010 for the purpose of considering and, if thought fit, approving the Option Scheme;
- (d) the Company has also convened an EGM on 8 January 2010 at which it will seek approval for the Resolutions described in the Notice of Meeting which accompanies this Information Memorandum if the Share Scheme is approved by the requisite majorities of Shareholders (please see section 8.5 below) voting at the Share Scheme Meeting and all of the conditions in clause 2 of the Merger Implementation Agreement have been satisfied or, where possible, waived and if the Merger Implementation Agreement has not been terminated on or before the dates specified for such steps under the Merger Implementation Agreement, then the Company will apply to the Court for orders approving the Share Scheme;
- (e) if all of the conditions set out in paragraph (d) above have been satisfied and the Option Scheme is approved by the requisite majorities of Optionholders (see section 8.5 below) voting at the Option Scheme Meeting then the Company will apply to the Court for orders approving the Option Scheme;
- (f) the Court has a discretion to refuse to grant the orders approving the Schemes, or any of them, even if the Schemes are approved by the requisite majorities of eligible Shareholders and Optionholders. If the Court orders approving the Schemes are obtained, then the Company and Unilife Corporation will take or procure the taking of steps required to implement the Schemes, namely:

- the Company will lodge with ASIC an office copy of the Court orders under section 411 of the Corporations Act approving the Schemes, upon which the Schemes will become Effective; and
- on the Implementation Date:
  - (i) in consideration for the transfer of Shares to Unilife Corporation, Unilife Corporation will issue the Share Scheme Consideration to each Scheme Shareholder (or to the Nominee on behalf of any Ineligible Overseas Shareholder (as to which, please see section 8.10 below)) in accordance with the provisions of the Share Scheme; and
  - (ii) all Options will be cancelled and Unilife Corporation will issue Option Scheme Consideration to each Scheme Optionholder in accordance with the provisions of the Option Scheme.

The Schemes are also subject to certain other conditions, which are described at section 8.2 below.

## 8.2 Conditions precedent

The obligations of the Company and Unilife Corporation to implement the Schemes are subject to the following conditions being satisfied or, where applicable, waived in accordance with the terms of the Merger Implementation Agreement.

### (a) *Conditions precedent to implementation of the Share Scheme*

- **No Prohibitive Orders** - prior to 8.00am on the Second Court Hearing Date, no judicial authority or entity and no Government Agency taking and not withdrawing any action, or imposing any legal restraint or prohibition, to prevent the implementation of the Proposed Transaction (or any transaction contemplated by the Proposed Transaction);
- **Regulatory Consents** - all approvals, consents or waivers which the parties agree are required to implement the Proposed Transaction envisaged by the Merger Implementation Agreement (other than the approval of the Court of the Share Scheme under section 411(4)(b) of the Corporations Act) having been obtained or deemed to be obtained by 5.00pm on the Business Day immediately prior to the Second Court Date including ASIC and ASX providing all consents, approvals and waivers and doing other acts which are necessary or reasonably desirable to implement the Proposed Transaction on terms that are unconditional or subject only to conditions which are acceptable to the Company;

- **Shareholder approval** – Shareholders approving the Share Scheme at the Share Scheme Meeting (or any adjournment or postponement of it at which the Share Scheme is voted on) by the requisite majorities under the Corporations Act;
- **Court approval of Share Scheme** – the Court approving the Share Scheme in accordance with section 411(4)(b) of the Corporations Act either unconditionally or on conditions that are customary or usual;
- **ASX Listing** – ASX approving:
  - (i) Unilife Corporation for admission to the official list of ASX; and
  - (ii) the CDIs for official quotation by ASX,

in each case conditional only on the Share Scheme becoming Effective and Unilife Corporation providing the information required by the ASX approval or by the Listing Rules and satisfying any conditions in the ASX approval with regard to the deferred settlement of the CDIs;

- **Depositary** - before 5.00pm on the Business Day prior to the Second Court Hearing Date, Unilife Corporation has appointed a Depositary and the Depositary has agreed to the allotment to it of Unilife Corporation Shares under the Share Scheme;
- **Nominee** - before 5.00pm on the Business Day prior to the Second Court Hearing Date, Unilife Corporation has appointed a Nominee and the Nominee has agreed to sell the CDIs in respect of the entitlements of Ineligible Overseas Shareholders under the Share Scheme;
- **Ability to issue CDIs** - before 5.00pm on the Business Day prior to the Second Court Hearing Date, Unilife Corporation has done everything necessary under the ASTC Settlement Rules to enable it to issue CDIs other than the allotment to a Depositary of Unilife Corporation Shares under the Share Scheme; and
- **Independent Expert** - the Independent Expert giving a report to the Company that in its opinion the Proposed Transaction is fair and reasonable and in the best interests of Shareholders and Optionholders and the Independent Expert does not change its conclusion or withdraw its report prior to 5.00pm on the day prior to the Second Court Hearing Date.

(b) *Conditions precedent to implementation of the Option Scheme*

- **Share Scheme Conditions satisfied** - each of the conditions precedent to the Share Scheme as described in section 8.2(a) having been satisfied or waived;
- **Optionholder Approval** - Optionholders approving the Option Scheme at the Option Scheme Meeting (or any adjournment or postponement of it at which the Option Scheme is voted on) by the requisite majorities under the Corporations Act; and
- **Court Approval of Option Scheme** - the Court approving the Option Scheme in accordance with section 411(4)(b) of the Corporations Act either unconditionally or on conditions that are customary or usual.

**8.3 No encumbrances on Shares**

Shareholders should be aware that clause 7 of the Share Scheme provides that each Scheme Shareholder is deemed to have warranted to Unilife Corporation that:

- (a) all of his or her Shares (including any rights and entitlements attaching to those Shares) transferred to Unilife Corporation under the Share Scheme will, on the Implementation Date, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests and other third-party interests of any kind, whether legal or otherwise; and
- (b) he or she has full power and capacity to transfer his or her Shares (including any rights and entitlements attaching to those Shares).

**8.4 Termination**

The Merger Implementation Agreement may be terminated by either the Company or Unilife Corporation, by giving written notice to the other party, at any time prior to 8.00am on the Second Court Date if:

- (a) the other party is in material breach of any of the terms of the Merger Implementation Agreement and:
  - the party wishing to terminate has given the other party a written notice:
    - (i) setting out the details of the breach; and
    - (ii) stating its intention to terminate, and

the breach continues to exist five Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date) from the date the notice is given; or
- (b) the Board of the Company withdraws its recommendation of the Schemes.

In addition, all of the obligations in the Merger Implementation Agreement with respect to a Scheme will terminate automatically without the need for action by any party in the event that:

- (a) the Independent Expert opines that such Scheme is not fair and reasonable and in the best interests of the Shareholders or Optionholders (as relevant); or
- (b) the Company's Shareholders or Optionholders (as relevant) fail to approve such Scheme by the necessary majorities at the relevant Scheme Meeting. Shareholders should be aware that approval of the Share Scheme is not conditional on approval of the Option Scheme; or
- (c) the Court refuses to grant an order convening any required Scheme Meeting or approving such Scheme and either the parties agree not to conduct an appeal or the parties agree to conduct an appeal but the appeal is unsuccessful; or
- (d) such Scheme is not approved by the Court under section 411(4)(b) of the Corporations Act on or before 30 June 2010.

## **8.5 Voting majorities required to approve Schemes**

For the Schemes to become Effective, the resolutions proposed at the Scheme Meetings, must be approved:

- (a) in the case of a resolution approving the Share Scheme:
  - by a majority in number of Shareholders present and voting at the Share Scheme Meeting (either in person or by proxy, attorney or corporate representative); and
  - by Shareholders holding at least 75% of the votes cast on the resolution; and
- (b) in the case of a resolution approving the Option Scheme:
  - by a majority in number of Optionholders present and voting at the Option Scheme Meeting (either in person or by proxy, attorney or corporate representative);
  - being a majority whose Options in aggregate represent at least 75% by value of the total Options held by the Optionholders present and voting (either in person or by proxy, attorney or corporate representative) at the meeting.

(Please refer to the Independent Expert's Report at Appendix 2 of the Information Memorandum for the calculation of the value of Options.)

## 8.6 Key dates for the implementation of the Schemes

The key dates with regard to the implementation of the Schemes include:

- (a) **Effective Date (19 January 2010)** - the date on which the Court order approving the Schemes takes effect by way of lodgement of the Court Order with ASIC;
- (b) **Scheme Record Date (26 January 2010)** - the date on which the Share Register and the Option Register (as relevant) is examined to determine who is entitled to participate in the Schemes;
- (c) **Implementation Date (1 February 2010)** - the date on which:
  - the Shares held by the Scheme Shareholders will be transferred to Unilife Corporation and Unilife Corporation Shares will be issued to Scheme Shareholders as consideration; and
  - the Options held by the Scheme Optionholders will be cancelled and Unilife Corporation Options will be issued to Scheme Optionholders as consideration.

An indicative timetable including each of the above dates is set out on page 3 of this Information Memorandum.

## 8.7 Determination of entitlements under the Share Scheme

For the purposes of determining which Shareholders are eligible to participate in the Share Scheme, dealings in the Shares will only be recognised if:

- in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Share Register as the holder of the relevant Shares by the Scheme Record Date; and
- in all other cases, registrable transmission applications or transfers in respect of those dealings are received on or before the Scheme Record Date at the place where the Share Register is kept.

The Company must register registrable transmission applications or transfers in respect of those dealings that are received on or before the Scheme Record Date at the place where the Share Register is kept, provided that nothing in this section 8.7 requires the Company to register a transfer that would result in a Shareholder holding a parcel of Shares that is less than a marketable parcel.

For the purposes of determining entitlements under the Share Scheme, the Company will not accept registration or recognise for any purpose, any transmission, application or transfer in respect of the Shares received after the Scheme Record Date. The Company will use its Share Register in the manner described above to determine the entitlements of Scheme Shareholders under the Share Scheme.

## 8.8 Election for Unilife Corporation Shares rather than CDIs<sup>21</sup>

A Scheme Shareholder may elect to receive Unilife Corporation Shares or CDIs under the Share Scheme. Accordingly, if Shareholders wish to trade on NASDAQ (if approval for listing is obtained) they may wish to elect to take their Unilife Corporation Shares in the form of Common Stock. Alternatively, if Shareholders wish to trade on ASX they may wish to elect to receive their Unilife Corporation Shares in the form of CDIs. However, Common Stock will be able to be converted into CDIs and vice versa following implementation of the Proposed Transaction so that Shareholders may choose to trade on either exchange going forward (provided that a NASDAQ listing is obtained).

If a Scheme Shareholder does not make an election, they will receive CDIs under the Share Scheme.

A Scheme Shareholder election must be made on the enclosed election form and be sent to the Company's Share Registry and it must be received by the Share Registry by 5.00pm on the Scheme Record Date (or such other date as agreed by the Company and Unilife Corporation). Following implementation of the Proposed Transaction, Unilife Corporation Shares will be exchangeable for CDIs and vice versa on a one for six basis, at any time subject to compliance with US securities laws.

## 8.9 Effect of the Schemes

### (a) Share Scheme

If the Share Scheme becomes Effective, on the Implementation Date:

- the Shares that are held by Scheme Shareholders will be transferred to Unilife Corporation without the need for any further input by Scheme Shareholders;
- save as set out at 8.10 below with respect to Ineligible Overseas Shareholders, Unilife Corporation will issue, or cause to be issued:
  - (i) one Unilife Corporation Share for every six Shares held by the Scheme Shareholder on the Scheme Record Date, where the Scheme Shareholder has made an election to receive Unilife Corporation Shares in accordance with section 8.8 above; or
  - (ii) one CDI for every Unilife Corporation Share to which the Shareholder would be entitled, where the Scheme Shareholder elects to receive CDIs<sup>22</sup> or has not made an election in accordance with section 8.8 above; and

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<sup>21</sup> A detailed description of CDIs is contained in Appendix 9.

<sup>22</sup> A detailed description of CDIs is contained in Appendix 9.



- within five Business Days of the Implementation Date, Unilife Corporation will:
  - (i) issue holding statements, certificates or transmittal letters (as the case may be) for such CDIs or Unilife Corporation Shares in the name of such persons; and
  - (ii) procure the dispatch of such holding statements, certificates or transmittal letters to the address shown in the Share Register for such persons.

*(b) Option Scheme*

If the Option Scheme becomes Effective, on the Implementation Date:

- the Options held by each Scheme Optionholder will be cancelled without the need for any further input by Scheme Optionholders;
- Unilife Corporation will issue one Unilife Corporation Option to each Scheme Optionholder for every six Options held by such Scheme Optionholder as at the Scheme Record Date; and
- within five Business Days of the Implementation Date, Unilife Corporation will:
  - (i) issue certificates for such Unilife Corporation Options in the name of such persons; and
  - (ii) procure the dispatch of such certificates to the address shown in the Option Register for such persons.

**8.10 Ineligible Overseas Shareholders**

Those Shareholders whose address as shown in the Share Register on the Scheme Record Date is in a place outside of Australia and its external territories, New Zealand, the US, Hong Kong, United Kingdom, Republic of Ireland, France, Croatia and Malta, have been classified as Ineligible Overseas Shareholders.

The issue of Unilife Corporation Shares to such Shareholders may be prohibited by the laws of the jurisdictions in which they reside or may require compliance with conditions or legal requirements which Unilife Corporation regards as onerous. Unless Unilife Corporation is satisfied that the laws of an Ineligible Overseas Shareholder's place of residence or registered address, as shown in the Share Register, do not prevent the issue or allotment of Unilife Corporation Shares (without being obliged to conduct any investigation into the matter) or if Unilife Corporation considers that the compliance requirements are not too onerous, Unilife Corporation will not issue Unilife Corporation Shares to Ineligible Overseas Shareholders.

Unilife Corporation will instead issue and allot CDIs<sup>23</sup> in respect of such Ineligible Overseas Shareholder's entitlements to a Nominee appointed by Unilife Corporation. The Nominee will:

- as soon as reasonably practicable (at the risk of the Ineligible Overseas Shareholder) sell the CDIs issued to it; and
- account to each Ineligible Overseas Shareholder for the net proceeds of sale of the CDIs allotted in respect of that Ineligible Overseas Shareholder (calculated on an averaged basis so that all Ineligible Overseas Shareholders receive the same price per CDI (subject to rounding to the nearest cent) and after deduction of any applicable brokerage and other taxes and charges) in full satisfaction of that Ineligible Overseas Shareholder's rights to Share Scheme Consideration.

The Nominee will have a discretion to determine the price at which the CDIs issued to it may be sold and the manner of any such sale. Neither Unilife Corporation or the Nominee will be subject to any liability for failure to sell such CDIs at any particular price.

Pursuant to the Share Scheme, each Ineligible Overseas Shareholder appoints Unilife Corporation as their agent to receive any notice (including a Financial Services Guide and any update of that document) that the Nominee or any other financial services provider is required to provide under the Corporations Act in connection with the service described above. Any notice received by Unilife Corporation as agent for an Ineligible Overseas Shareholder will be made available on the Company's website at [www.unilife.com](http://www.unilife.com). The notice will also be posted to any Ineligible Overseas Shareholders who request this in writing.

#### **8.11 Trading CDIs<sup>24</sup>**

If the Court approves the Share Scheme, the Company will notify ASX of the Court approval on the date of that approval.

Shares of the Company will be suspended from trading on ASX from the close of trading on the date on which the Company lodges the Court order approving the Share Scheme with ASIC.

Deferred settlement trading of CDIs, representing Unilife Corporation Shares, will commence on ASX after the trading of the Shares is suspended. CDIs are expected to commence trading on ASX on a normal T+3 settlement basis on 20 January 2010, being the Business Day following the despatch of holding statements. Should you wish to trade your CDIs before the issue of holding statements, you will do so at your own risk. The proceeds from the sale of securities sold on a deferred settlement basis will not be received until after the deferred settlement period has ended.

The Company will apply for termination of the official quotation of the Shares on ASX after the Implementation Date.

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<sup>23</sup> A detailed description of CDIs is contained in Appendix 9.

<sup>24</sup> A detailed description of CDIs is contained in Appendix 9.

In conjunction with the implementation of the Proposed Transaction, Unilife Corporation is seeking a listing for Unilife Corporation common stock on NASDAQ. Unilife Corporation expects the listing on NASDAQ to commence in or around February 2010 (subject to the Form 10 becoming effective following SEC review and NASDAQ approval of the listing application). However, there is no guarantee as to when this will occur or that it will occur. Unless and until Unilife Corporation Shares are listed for trading on NASDAQ or another exchange, there will be no US public market for Unilife Corporation Shares.

#### 8.12 Cancellation of Standalone Options

In conjunction with the Schemes, the Company has made or will make an offer to each Standalone Optionholder to cancel their Standalone Options and in consideration of the cancellation Unilife Corporation will issue to the Standalone Optionholders one Unilife Corporation Standalone Option for every six Standalone Options held by the Standalone Optionholders. Any fractions of Unilife Corporation Standalone Options will be rounded down to the nearest whole number of Unilife Corporation Standalone Options.

The cancellation of the Standalone Options in the Company and the offer of Unilife Corporation Standalone Options is conditional on:

- **Approval of Share Scheme** - the Court approving the Share Scheme in accordance with section 411(4)(b) of the Corporations Act either unconditionally or on conditions that are customary or usual; and
- **ASX Approvals** - a waiver of Listing Rule 6.23 to permit the Company to effect the cancellation of the Standalone Options in the Company without Shareholder approval.

The Unilife Corporation Standalone Options will be issued on essentially the same terms as the existing Standalone Options (except to the extent that changes are required or desirable to comply with Delaware law). However, the exercise price per Unilife Corporation Standalone Option will be equal to six times the exercise price of the Standalone Option that the Unilife Corporation Standalone Options replace so as to reflect the effective 6:1 consolidation of Shares into Unilife Corporation Shares under the Share Scheme. The exercise price will remain in Australian dollars.

The Unilife Corporation Standalone Options will be issued in reliance upon the exemption from the US Securities Act registration requirements provided in Regulation D, Regulation S or Rule 701. The shares issuable upon exercise of the Unilife Corporation Standalone Options can only be sold or transferred either pursuant to a valid registration statement, such as a Form S-8 registration statement to the extent such options qualify for inclusion on such form, or pursuant to an exemption from registration, such as Rule 144 of the US Securities Act which generally requires a six-month holding period between the exercise of options and the sale of the underlying shares.

### 8.13 Compulsory acquisition of Options

If the Share Scheme is approved but the Option Scheme is not, Unilife Corporation may compulsorily acquire the Options using the general statutory rights of compulsory acquisition under the Corporations Act if the outstanding Options constitute less than 10% of the issued share capital of the Company at that time.

If Unilife Corporation proceeds to compulsorily acquire Options (or the Shares issued on exercise of such Options) under the Corporations Act, Unilife Corporation may only acquire Options and/or Shares for a cash sum and must pay the same amount for each of the Options and/or Shares acquired. The procedures for compulsorily acquiring Options and/or Shares require Unilife Corporation to provide Optionholders or Shareholders (as applicable) with the following:

- a compulsory acquisition notice (which, amongst other things, specifies a period in which Optionholders or Shareholders may object to the acquisition);
- an expert's report prepared by an expert nominated by ASIC, which states whether, in the expert's opinion, the terms proposed in the compulsory acquisition notice give a fair value for the Options or Shares (as applicable); and
- an objection form.

Unilife Corporation can only proceed with the compulsory acquisition if:

- the Optionholders and/or Shareholders (as applicable) who objected to the compulsory acquisition together hold less than 10% by value of the remaining Options/Shares by the end of the objection period, which must be at least one month; or
- the Court approves the compulsory acquisition.

If Optionholders or Shareholders (as applicable) who hold at least 10% of the Options or Shares covered by the compulsory acquisition notice object to the acquisition before the end of the objection period, Unilife Corporation must give everyone to whom the compulsory acquisition notice was sent, notice that the proposed compulsory acquisition will not occur or a notice that Unilife Corporation has applied to the Court for approval of the compulsory acquisition.

If Unilife Corporation elects to apply to the Court for approval of the compulsory acquisition of Options and/or Shares, the burden of proof is on Unilife Corporation to establish to the Court's satisfaction that the terms set out in the compulsory acquisition notice give a fair value for the Options and/or Shares. Unilife Corporation will bear the costs that a person incurs on legal proceedings in relation to the compulsory acquisition, unless the Court is satisfied that the person acted improperly, vexatiously or otherwise unreasonably.

## **9 Taxation implications for Shareholders and Optionholders**

### **9.1 Australian tax implications**

This section of the Information Memorandum has been prepared by DLA Phillips Fox. The information contained in this section and elsewhere in this Information Memorandum for which DLA Phillips Fox is responsible does not constitute "financial product advice" within the meaning of the Corporations Act. DLA Phillips Fox, which is providing this advice, is not licensed to provide financial product advice under the Corporations Act. To the extent that this Information Memorandum contains any information about a "financial product" within the meaning of the Corporations Act, taxation is only one of the matters that must be considered when making a decision about the relevant financial product. The material for which DLA Phillips Fox is responsible has been prepared for general circulation and does not take into account the objectives, financial situation or needs of any recipient. Accordingly, you should, before acting on the material for which DLA Phillips Fox is responsible, consider taking advice from a person who is licensed to provide financial product advice under the Corporations Act. In addition, before acting on the material for which DLA Phillips Fox is responsible, you should also consider the appropriateness of this material having regard to your objectives, financial situation and needs and consider obtaining independent financial advice.

This section is a summary of the potential Australian tax consequences of the Proposed Transaction. It is a general guide to the Australian tax implications only. Shareholders and Optionholders are strongly recommended to obtain their own independent professional advice on the tax implications of the Proposed Transaction based on their own specific circumstances.

The comments are based on the law and understanding of the practice of the tax authorities in Australia as at the date of this Information Memorandum. These laws and practices are subject to change periodically as is their interpretation by the courts.

This summary generally discusses the Australian taxation position of Australian resident individuals and companies and non-Australian resident Shareholders and Optionholders of the Company in relation to:

- the exchange of Shares for Unilife Corporation Shares under the Share Scheme;
- the cancellation of Options in exchange for the issue of Unilife Corporation Options under the Option Scheme; and
- the cancellation of Standalone Options in exchange for the issue of Unilife Corporation Standalone Options.

### 9.1.1 **Australian tax considerations**

<b>Type of taxpayer</b>	<b>Relevant section</b>
Australian resident individual	9.1.2
Australian resident company	9.1.3
Australian resident complying superannuation fund	9.1.4
Australian resident trust (not taxed as a company)	9.1.5
Non-resident Shareholder	9.1.6
Optionholder and Standalone Optionholder	9.1.7

Where relevant to the particular type of taxpayer, each of the abovementioned Sections contains information relating to the tax implications of:

- the transfer of the Shares of the Company to Unilife Corporation, the cancellation of all Options and the reissue of replacement Unilife Corporation Shares (in the form of Common Stock or CDIs) and Unilife Corporation Options under the Schemes;
- the future disposal of Unilife Corporation Shares and Unilife Corporation Options that you receive under the Schemes; and
- the receipt of future dividends from Unilife Corporation.

We also provide comments in relation to the cancellation and reissue of Standalone Options outside the Schemes.

As outlined above, Shareholders may receive their Unilife Corporation Shares in the form of CDIs or Common Stock. Accordingly, references in sections 9.1.2 to 9.1.7 below to Unilife Corporation Shares should also be read as a reference to CDIs in respect of such Unilife Corporation Shares.

We also refer to section 9.1.9, which outlines the stamp duty and goods and services tax (**GST**) consequences, and section 9.1.10, which details the potential application of the foreign investment fund (**FIF**) rules.

### 9.1.2 **Australian tax consequences of the Share Scheme for Australian resident individuals**

The Australian tax consequences of the Share Scheme depend on whether you held your Shares in the Company on capital or revenue account.

Whether Shares are held on capital or revenue account is a question of fact. Generally, Shares are held on capital account where they have been acquired for long term investment. Shares are held on revenue account where they have been acquired for short term investment or you are in the business of trading shares. You should

obtain advice from your professional adviser if you are unsure whether you hold your Shares in the Company on capital or revenue account.

(a) Transfer of Shares held on capital account

The Australian tax implications of the Share Scheme depend on whether you acquired your Shares before 20 September 1985 (that is, the shares are pre-Capital Gains Tax (**CGT**)) or on or after 20 September 1985 (that is, the shares are post-CGT).

*If you acquired your Shares before 20 September 1985*

The transfer of your Shares under the Share Scheme will not be subject to tax. However, the replacement Unilife Corporation Shares will be post-CGT shares.

*If you acquired your Shares on or after 20 September 1985*

You can elect to be issued with one Unilife Corporation CDI for every share held by you, or one Unilife Corporation Share for every six Shares held by you. Subject to the discussion below in relation to the application of scrip-for-scrip rollover relief, this will be a CGT event in respect of your Shares.

A capital gain will arise where the capital proceeds (that is, the market value of the Unilife Corporation Shares) received pursuant to the Share Scheme exceeds the cost base of your Shares in the Company. A capital loss will arise where the capital proceeds (that is, the market value of the Unilife Corporation Shares) received is less than the reduced cost base of your Shares. The cost base or reduced cost base of your Shares will depend on your specific circumstances.

In preparing your Australian income tax return, total your individual capital gains and capital losses in a year of income to ascertain whether you have a net capital gain for the year of income. Subject to your eligibility for the capital gains discount concession (considered below), any net capital gain is included in your assessable income and is subject to income tax at your personal marginal tax rate. A net capital loss may be carried forward to offset against capital gains derived in future income years.

You can choose to claim scrip-for-scrip rollover relief where you would otherwise realise a capital gain from the disposal of your Shares under the Share Scheme. If you are eligible for and choose to claim scrip-for-scrip rollover relief, no tax liability will arise as a result of the transfer. The Schemes have been formulated to meet the requirements for scrip-for-scrip tax rollover such that Shareholders should not have to pay any Australian tax with respect to the replacement of their Shares under the Share Scheme.

A Class Ruling application has been lodged with the ATO seeking confirmation that the conditions for scrip-for-scrip rollover relief are satisfied. This Class Ruling, if issued, will confirm that rollover relief is available in

relation to the transfer of Shares for Unilife Corporation Shares under the Share Scheme. Shareholders will be advised of the outcome once the Class Ruling has been issued by the ATO. We note that the receipt of a Class Ruling from the ATO is not a condition required to be met prior to implementation of the Schemes.

You cannot claim scrip-for-scrip rollover relief where you make a capital loss from the disposal of your Shares as no tax liability arises in respect of the transfer.

*CGT rollover relief chosen*

As discussed above, no capital gain arises where the CGT rollover relief is chosen. Taxation of the potential capital gain is deferred until the Unilife Corporation Shares received as consideration under the Share Scheme are disposed of.

The choice to obtain CGT rollover relief must be made before the lodgement of your income tax return, which will be for the year ending 30 June 2010.

However, the ATO does not require notice from you when you choose to claim the rollover relief. Rather, the way you prepare your tax return will be sufficient evidence of you making this choice - that is, you do not include any capital gain on the disposal of your Shares in your assessable income in your tax return if you claim rollover relief.

*CGT rollover relief not chosen or not applicable*

If you do not choose the scrip-for-scrip rollover, or if scrip-for-scrip rollover is not available, any capital gain arising from the transfer of the Shares may be reduced by the capital gains discount concession.

You may be eligible for the capital gains discount concession where you have held your Shares for at least 12 months prior to disposal. If the capital gains discount concession applies, only half of any net capital gain arising from the transfer of the Shares is included as an assessable capital gain in your income tax return.

(b) Transfer of Shares held on revenue account

Any gain or loss that arises on the transfer of your Shares held on revenue account will be taxable as ordinary income. The gain (or loss) is the difference between the market value of the Unilife Corporation Shares received pursuant to the Share Scheme and the purchase price of your Shares (or the tax value at the beginning of the tax year where you hold the Shares as trading stock).

CGT scrip-for-scrip rollover relief and the capital gains discount concession will not be available to you.



(c) Tax on future dividends from Unilife Corporation

The Company has not paid any dividends to date and there can be no assurance that any dividends will be paid in the future. However, if any dividend is paid to you in the future, Unilife Corporation may be required to withhold and remit a percentage of the gross dividend to the US taxation authorities (referred to as withholding tax). You will receive the dividend net of the withholding tax (if applicable).

You will need to include the gross amount of the dividend in your Australian assessable income (that is, the dividend plus any withholding tax that has been deducted). However, the Australian tax payable by you on the dividend can generally be reduced by the amount of the withholding tax deducted and remitted in the US and amount of tax paid in the US is referred to as the 'foreign income tax offset'.

The amount of foreign income tax offset that you can claim to offset against your Australian tax payable on the dividend is calculated as the greater of:

- A\$1,000; or
- the Australian tax payable on the net income on which foreign tax is paid.

To the extent that the amount of withholding tax deducted from your foreign income (for example, dividends) exceeds the foreign income tax offset that you can claim in an income year applying the above principles, the excess is lost and cannot be carried forward.

(d) Tax on a future disposal of Unilife Corporation Shares held on capital account

The Australian tax implications of the future disposal of Unilife Corporation Shares will generally be the same as described above in section 9.1.2(a) for Shares where scrip-for-scrip rollover relief is not elected. However, the application of the Australian CGT provisions will differ slightly depending on whether you claimed scrip-for-scrip rollover relief on the original transfer of your Shares for Unilife Corporation Shares under the Share Scheme.

*CGT rollover relief chosen*

If you chose CGT rollover relief on the original transfer, the cost base of the Unilife Corporation Shares issued to you under the Share Scheme will be equal to the cost base of the transferred Shares. In determining whether you have held the Unilife Corporation Shares for at least 12 months prior to disposal when seeking to apply the capital gains discount concession, you will be deemed to have acquired your Unilife Corporation Shares at the time you originally acquired your Shares.

*CGT rollover relief not chosen or not applicable*

If you did not choose CGT rollover relief on the original transfer or if it was not available, the CGT cost base of the Unilife Corporation Shares you receive under the Share Scheme will be equal to the market value of the Shares transferred as part of the Share Scheme. In determining whether you have held the Unilife Corporation Shares for at least 12 months prior to disposal when seeking to apply the capital gains discount concession, the acquisition date of the Unilife Corporation Shares is the Implementation Date for the Share Scheme.

- (e) Tax on a future disposal of Unilife Corporation Shares held on revenue account

The Australian tax implications of any gain or loss that you make upon the future disposal of Unilife Corporation Shares are the same as that described above in section 9.1.2(b) for the Shares.

**9.1.3 Australian tax consequences of the Share Scheme for Australian resident companies**

- (a) Transfer of Shares

The Australian tax implications of the transfer of Shares are largely the same as for an Australian resident individual (outlined in sections 9.1.2(a) and 9.1.2(b) above). However, the 50% capital gains discount concession is not available to a company.

- (b) Tax on future dividends from Unilife Corporation

The Australian tax implications will depend on the percentage of voting interests held by the Australian company (together with its associates) in Unilife Corporation after the implementation of the Share Scheme.

*Australian company (together with its associates) holds less than 10% of voting interests in Unilife Corporation*

The Australian tax implications of receiving dividends from Unilife Corporation will be the same as for an Australian resident individual (discussed in section 9.1.2(c) above).

*Australian company (together with any associates) holds 10% or more of voting interests in Unilife Corporation*

For Australian tax purposes, the dividend will be exempt income to you and no tax will be payable if you hold 10% or more of the voting interests in Unilife Corporation. No foreign tax credit for US dividend withholding tax will be available.

(c) Tax on future disposal of Unilife Corporation shares

Subject to the comments below, the Australian tax implications of the future disposal of your Unilife Corporation Shares are the same as described in sections 9.1.2(d) and 9.1.2(e) above.

However:

- where your Unilife Corporation Shares are held on capital account, if you hold a direct voting interest of 10% or more in Unilife Corporation throughout a 12 month period within the 24 months prior to the disposal of Unilife Corporation Shares the capital gain or capital loss may be reduced to the extent that Unilife Corporation has 'active foreign business assets'. The calculation of this reduction is complex and will depend on the mix of assets held by Unilife Corporation at that time. We recommend that you seek independent professional advice with respect to this issue before a future disposal of Unilife Corporation Shares; and
- the capital gains discount concession is not available.

**9.1.4 Australian tax consequences of the Share Scheme for Australian resident complying superannuation funds**

(a) Transfer of Shares

The Australian tax consequences of the Share Scheme should broadly be as outlined above in sections 9.1.2(a) and 9.1.2(b) for Australian resident individuals. However, the capital gains discount concession applicable to Shares held for greater than 12 months for resident complying superannuation funds is 33<sup>1</sup>/<sub>3</sub>% (compared to 50% for individuals).

(b) Tax on future dividends from Unilife Corporation

The Australian tax implications of you receiving dividends from Unilife Corporation will be the same as for an Australian resident individual (outlined in section 9.1.2(c) above).

(c) Tax on future disposal of Unilife Corporation Shares

The Australian tax implications of any gain or loss that you make upon the disposal of your Unilife Corporation Shares are the same as described in sections 9.1.2(d) and 9.1.2(e) above. However, as outlined above, the capital gains discount concession will be 33<sup>1</sup>/<sub>3</sub>% (and not 50%).

**9.1.5 Australian tax consequences of the Share Scheme for Australian resident trusts that are not taxed as companies**

Where Shares in the Company are held by a trust (and the trust is not taxed as a company for Australian tax purposes) and gains are distributed to individual

beneficiaries, the CGT consequences are the same as described for Australian resident individuals in sections 9.1.2(a) and 9.1.2(b) above. This includes the CGT discount of 50%.

However, the tax consequences that arise where a trust holds Shares in the Company will vary depending upon the nature of the trust. These tax consequences have not been considered. Shareholders in these circumstances should seek their own independent professional advice.

#### **9.1.6 Australian tax consequences of the Share Scheme for non-resident Shareholders**

If you are a Shareholder who is not a resident of Australia for tax purposes, you should seek separate independent advice in relation to the tax implications of the Share Scheme under the laws of your country of residence.

Our comments below merely provide a brief overview of the Australian income tax implications under the Share Scheme for non-resident Shareholders.

##### **(a) Transfer of Shares held on capital account**

You will not be liable for Australian income tax on any capital gain arising upon the disposal of your Shares where they are held on capital account, unless the Share is taxable Australian property. Similarly, if a capital loss would arise on disposal of the Shares, you will not be able to claim this capital loss in Australia unless your Shares are taxable Australian property.

Generally, Shares will only be taxable Australian property if:

- you, together with your associates, own at least 10% of the Shares in the Company (either at the time of the transfer, or throughout a 12 month period within the previous 24 months) and the market value of the Company's Australian real property assets is more than 50% of the market value of its total assets; or
- you hold the Shares in connection with the conduct of a business through a permanent establishment in Australia.

The Company has confirmed that it currently has limited Australian real property assets and therefore your Shares will not currently be taxable Australian property. Accordingly, unless you hold your Shares in connection with the conduct of a business through a permanent establishment in Australia, you should not be subject to tax in Australia on disposal.

A Double Tax Agreement between Australia and your country of residence may also provide taxation relief or modify your tax position. This will depend on the terms of the particular Double Tax Agreement between Australia and your country of residence, and is also dependant on your

individual circumstances. You should seek independent professional advice in relation to this matter.

(b) Transfer of Shares held on revenue account

You may be liable to Australian income tax in respect of a profit arising upon the disposal of the Shares if you are a non-resident Shareholder who holds your Shares on revenue account.

However, the position will depend upon the following:

- whether you hold the Shares as part of carrying on a business through a permanent establishment in Australia;
- the source of the profit on the disposal; and
- whether you are a resident of a country with which Australia has entered into a Double Tax Agreement.

We advise that you should seek your own independent advice in these circumstances.

(c) Tax on future dividends from Unilife Corporation

There will be no Australian tax on any dividends paid by Unilife Corporation if you are not an Australian resident for tax purposes.

For Shareholders who are not US tax residents, upon payment of a dividend to you Unilife Corporation will generally withhold dividend withholding tax.

(d) Tax on future disposal of Unilife Corporation Shares held on capital account

You will not be subject to Australian tax upon any gain arising from the disposal of your Unilife Corporation Shares where they are held on capital account, unless the Unilife Corporation Share is taxable Australian property. To this extent, our comments in section 9.1.2(d) will be applicable.

(e) Tax on future disposal of Unilife Corporation Shares held on revenue account

You will not be subject to Australian tax upon any gain arising from the disposal of your Unilife Corporation Shares where you hold your shares on revenue account.

**9.1.7 Australian tax consequences of the Option Scheme for Optionholders and Cancellation Deeds for Standalone Optionholders**

Under the Option Scheme, each Option issued under the Employee Share Option Plan of the Company will be cancelled and in consideration for the cancellation you

will receive one Unilife Corporation Option under the Unilife Corporation Employee Stock Option Plan for every six Options held in the Company.

Further, in conjunction with the Schemes, the Standalone Optionholders will have their Standalone Options cancelled and will receive one Unilife Corporation Standalone Option for every six Standalone Options held in the Company.

Those Unilife Corporation Options and Unilife Corporation Standalone Options granted in relation to service or employment will be effectively classified as either 'qualifying' or 'non-qualifying' options under the Australian tax provisions dealing with employee share schemes. This classification depends on your prior individual tax circumstances at the date of receipt of the options. However, both the 'qualifying' and 'non-qualifying' options are eligible for tax rollover under either the employee share scheme tax rollover provisions or under the capital gains tax rollover provisions (as discussed below).

*Implications for Optionholders holding Options under the Employee Share Option Plan of the Company*

(a) Cancellation of Options under the Option Scheme

The cancellation of the Options may give rise to a taxing event for Australian resident Optionholders.

To the extent that the Options are:

- not 'qualifying' options issued under an Employee Share Scheme; or
- where they are 'qualifying' options issued under an Employee Share Scheme but you have elected to be taxed on the discount received on issue of the Options in the year of income in which the Options were granted,

the Australian CGT implications for Australian resident Optionholders are broadly the same as for Australian resident Shareholders (see discussion regarding Shares in section 9.1.2(a) above).

Where the Options are 'qualifying' options and you have not elected to be taxed on the discount received on issue of the Options in the year of income in which the Options were granted, you will be entitled to a rollover if upon receipt of the Unilife Corporation Options all of the following apply:

- the value of the Unilife Corporation Options can reasonably be regarded as matching the value of the Options;
- you are an employee of Unilife Corporation, the Company or another company in the Unilife Group;

- you do not hold a legal or beneficial interest in more than 5% of the total Unilife Corporation Shares; and
- you are not in a position to cast, or control the casting of, more than 5% of the maximum number of votes that may be cast at a general meeting of Unilife Corporation.

A Class Ruling application has been lodged with the ATO. This Class Ruling seeks to confirm that Optionholders with 'qualifying' options who did not elect to be taxed on the discount received in the year the Options were granted will be entitled to treat the Unilife Corporation Options as a continuation of the rights (ie entitled to a rollover) on cancellation of the Options. Again, it is important to note that receipt of a Class Ruling from the ATO is not a condition required to be met prior to implementing the Schemes.

The Australian income tax implications for non-resident Optionholders are complex and depend on your individual circumstances. You should seek your own independent professional advice if you fall into this category.

(b) Tax on future dividends from Unilife Corporation

No Australian tax liability will arise since Optionholders will not be entitled to receive dividends from Unilife Corporation.

(c) Tax on future exercise of options

Any future exercise of Unilife Corporation Options issued under the Unilife Corporation Employee Stock Option Plan may be subject to Australian tax. This will depend on application of the employee share and options tax provisions. You should seek specific advice on this before choosing to exercise any Unilife Corporation Options. However, implementation of the Option Scheme of itself will not change the Australian tax position of Optionholders on a future exercise of Unilife Corporation Options.

### **9.1.8 Implications for Optionholders holding Standalone Options**

(a) *Cancellation of Standalone Options*

The cancellation of the Standalone Options may give rise to a taxing event for Australian resident Optionholders.

To the extent that the Standalone Options are:

- not 'qualifying' options issued under an employee share scheme; or
- where they are 'qualifying' options issued under an employee share scheme but you have elected to be taxed on the discount

received on issue of the Standalone Options in the year of income in which the Standalone Options were granted,

the Australian CGT implications for Australian resident Optionholders are broadly the same as for Australian resident Shareholders (see discussion regarding Shares in section 9.1.2(a) above).

Where the Standalone Options are 'qualifying' options and you have *not* elected to be taxed on the discount received on issue of the Standalone Options in the year of income in which the Standalone Options were granted, you will be entitled to a rollover if upon receipt of the Unilife Corporation Standalone Options the following apply:

- the value of the Standalone Options over the Unilife Corporation Shares can reasonably be regarded as matching the value of the Standalone Options over the Shares;
- you are an employee of Unilife Corporation, the Company or another company in the Unilife Group;
- you do not hold a legal or beneficial interest in more than 5% of the total Unilife Corporation Shares; and
- you are not in a position to cast, or control the casting of, more than 5% of the maximum number of votes that may be cast at a general meeting of Unilife Corporation.

A Class Ruling application has been lodged with the ATO. This Class Ruling seeks to confirm that Optionholders with 'qualifying' options who did not elect to be taxed on the discount received in the year the Standalone Options were granted will be entitled to treat the Unilife Corporation Standalone Options as a continuation of the rights (ie entitled to a roll-over) on cancellation of the Standalone Options.

The Australian income tax implications for non-resident Optionholders are complex and depend on your individual circumstances. You should seek your own independent professional advice if you fall into this category.

*(b) Tax on future dividends from Unilife Corporation*

No Australian tax liability will arise since Optionholders will not be entitled to receive dividends from Unilife Corporation.

*(c) Tax on future exercise of Unilife Corporation Standalone Options*

Any future exercise of Unilife Corporation Standalone Options may be subject to Australian tax. This will depend on application of the employee share and option tax provisions. You should seek specific advice on this issue before choosing to exercise the Unilife Corporation Standalone Options. However, we note that cancellation and reissue of the Standalone



Options of itself will not change the Australian tax position of Standalone Optionholders on a future exercise of Unilife Corporation Standalone Options.

#### **9.1.9 Stamp duty/GST consequences**

Shareholders will not be required to pay any stamp duty or GST on the transfer of their Shares to Unilife Corporation or on the issue of the Unilife Corporation Shares received under the Share Scheme.

Optionholders (including Standalone Optionholders) will not be subject to any stamp duty or GST on the cancellation of their Options or Standalone Options or on the issue of Unilife Corporation Options or Unilife Corporation Standalone Options.

While no GST is payable on the transfer, cancellation or issue of Shares, Options or Standalone Options, Shareholders, Optionholders and Standalone Optionholders registered or required to be registered for GST in Australia will need to determine the extent, if any, to which GST paid by them on acquisitions relating to those events should be denied.

#### **9.1.10 Application of the Foreign Investment Fund (FIF) rules**

On completion of the Schemes, Australian resident Shareholders, Optionholders and Standalone Optionholders in Unilife Corporation will have an interest in a foreign company that may be subject to Australia's FIF rules. These rules may operate to include income in respect of the FIF into an Australian taxpayer's assessable income on an accruals basis, subject to any available exemptions or reductions.

The FIF rules are complex and will need to be considered by each Shareholder, Optionholder and Standalone Optionholder in light of their particular circumstances. However:

- Optionholders receiving 'qualifying' options who are employees and who did not elect to pay tax on the market value of their Options in the year the Options were granted to them will not be taxed under the FIF rules;
- whilst Unilife Corporation remains listed on the ASX (or another approved stock exchange, eg NASDAQ) and the relevant stock exchange designates Unilife Corporation to be engaging in eligible activities (eg the ASX currently classifies the Company as engaging in the 'Health Care Equipment and Services' sector, which is an eligible activity), an exemption will apply to ensure that Australian resident taxpayers will not be required to include attributed FIF income in their Australian assessable income;
- you should be aware that the Government announced as part of the Federal Budget on 12 May 2009 that the FIF provisions will be repealed and replaced with a specific, narrowly-defined anti avoidance rule. No draft legislation or further details regarding the proposed changes to the FIF provisions are available at this time.

## 9.2 US tax implications

This section of the Information Memorandum has been prepared by DLA Piper. The information contained in this section and elsewhere in this Information Memorandum for which DLA Piper is responsible does not constitute "financial product advice" within the meaning of the Corporations Act. DLA Piper, which is providing this advice, is not licensed to provide financial product advice under the Corporations Act. To the extent that this Information Memorandum contains any information about a "financial product" within the meaning of the Corporations Act, taxation is only one of the matters that must be considered when making a decision about the relevant financial product. The material for which DLA Piper is responsible has been prepared for general circulation and does not take into account the objectives, financial situation or needs of any recipient. Accordingly, you should, before acting on the material for which DLA Piper is responsible, consider taking advice from a person who is licensed to provide financial product advice under the Corporations Act. In addition, before acting on the material for which DLA Piper is responsible, you should also consider the appropriateness of this material having regard to your objectives, financial advice and needs and consider obtaining independent financial advice.

### 9.2.1 *US estate tax implications under the Proposed Transaction*

Following implementation of the Proposed Transaction, certain Unilife Corporation Shareholders, Optionholders and Standalone Optionholders may be subject to US estate tax. Essentially, individuals who are not residents or citizens of the US, for US estate tax purposes, may be subject to US estate tax on those assets that are situated (or deemed to be situated) in the US. For these purposes, shares and options of a US corporation are considered to be US situated assets. Accordingly, the Unilife Corporation Shares and Unilife Corporation Options, which Scheme Participants will receive under the Schemes and Unilife Corporation Standalone Options which Standalone Optionholders will receive under the Cancellation Deeds, will be deemed to be situated in the US for US estate tax purposes. Under current US law, individuals who are not residents or citizens of the US are subject to US estate tax upon their death where the value of their US situated assets exceeds US \$60,000. Any amounts in excess of this limit are taxed at progressive rates ranging from 18% to 45%. The US has estate tax treaties with a number of countries that may result in a lower US estate tax liability. US citizens and residents on the other hand are subject to US estate tax upon death on their worldwide assets and the exclusion amounts vary.

**YOU SHOULD SEEK PROFESSIONAL ADVICE IN RELATION TO US ESTATE TAX MATTERS, AS THE LAWS MAY APPLY DIFFERENTLY IN EACH INDIVIDUAL SITUATION.**

### 9.2.2 *Income tax implications*

This section 9.2.2 summarises the material US federal income tax consequences of the Proposed Transaction that are generally applicable to US Participants and Non-US Participants, as well as certain US federal income tax consequences of the Share Scheme to the Company and Unilife Corporation. This section 9.2.2 does not purport to deal with all aspects of US federal income taxation that may affect particular

persons in light of their individual circumstances or that may affect Scheme Participants subject to special treatment under US federal income tax law, including, without limitation:

- a tax-exempt organisation;
- an S corporation or other pass-through entity;
- an insurance company;
- a financial institution;
- a mutual fund;
- a dealer in stock and securities or foreign currencies;
- a trader in securities who elects the mark-to-market method of accounting for the securities;
- a US holder or non-US holder of Shares subject to the alternative minimum tax provisions of the Code;
- certain expatriates or a person that has a functional currency other than the US dollar;
- persons that do not hold their Shares or Options as capital assets;
- a regulated investment company;
- a real estate investment trust;
- a controlled foreign corporation;
- a passive foreign investment company;
- a holder of Options or Standalone Options that were not issued as compensatory options;
- a holder of Shares who holds such Shares as part of a hedge against currency risk, a straddle or a constructive sale or a conversion transaction.

In the case of a partnership that holds Shares, the US tax consequences may apply at the partner level, as a partnership is transparent for US tax purposes.

In addition, this section 9.2.2 does not consider the effect of any applicable US estate, US state and local, or foreign tax laws, nor does it consider the tax consequences of other transactions effectuated before, after or concurrently with the Proposed Transaction (whether or not any such transaction is undertaken in connection with the Proposed Transaction) (see section 9.2.1 for a discussion of certain estate tax matters). The discussion in this section 9.2.2 also does not apply to any person who receives Unilife Corporation Shares other than in exchange for Shares pursuant to the

Share Scheme (for example, in exchange for services or upon the exercise of Unilife Corporation Options).

This discussion is based on the US Treasury regulations promulgated under the Code, and judicial and administrative decisions and rulings, all as in effect as of the Effective Date and all of which are subject to change, possibly with retroactive effect. The Company has not obtained, nor does it intend to obtain, a ruling from the IRS with respect to the tax consequences of the Proposed Transaction. Therefore, this discussion is not binding on the IRS or the courts, and there can be no assurance that the IRS or the courts will not take a contrary view. This discussion is also premised on the accuracy of certain representations made by the Company.

**YOU ARE URGED TO CONSULT WITH YOUR TAX ADVISER AS TO THE SPECIFIC TAX CONSEQUENCES TO YOU OF THE PROPOSED TRANSACTION IN LIGHT OF YOUR PARTICULAR CIRCUMSTANCES, INCLUDING TAX RETURN REPORTING REQUIREMENTS, THE APPLICABILITY AND EFFECT OF FEDERAL (INCLUDING US ESTATE), STATE, LOCAL, FOREIGN, AND OTHER APPLICABLE TAX LAWS AND THE EFFECT OF ANY PROPOSED CHANGES IN THE TAX LAWS.**

### **9.2.3 US tax consequences of the Share Scheme for US Participants**

For US federal income tax purposes, the Company intends to treat the Share Scheme as a non-taxable transaction. The Company intends to treat the acquisition by Unilife Corporation in exchange for the issue of Unilife Corporation Shares, of all of the Shares in the Company, followed by a conversion of the Company into a proprietary company limited by shares as a reorganisation under section 368(a) of the Code. If the Share Scheme was, contrary to the Company's position, treated as a taxable transaction, US Participants generally would be subject to tax on gain realised in the exchange. The calculation of gain is dependent upon each individual US Participant's tax basis in the Shares. If treated as a reorganisation, the material US federal income tax consequences to a US Participant generally should be as follows:

#### **(a) Non-recognition of gain**

A US Participant should not recognise gain or loss as a result of the Share Scheme (except to the extent cash is received as a result of the US Participant being an Ineligible Overseas Shareholder). However, if the Company was classified as a controlled foreign corporation within the meaning of section 957 of the Code at any time during the five year period ending on the date of the Proposed Transaction, and at such time, a US Participant was a US shareholder of the Company within the meaning of section 951(b) of the Code, such US Participant will be required to include in its income as a dividend a portion of its gain, if any, equal to the amount that would have been treated as a dividend, as determined under section 1248 of the Code, if it had sold or exchanged its Shares in a taxable transaction.

(b) *Tax basis and holding period of Unilife Corporation Shares*

The aggregate tax basis of the Unilife Corporation Shares received by US Participants pursuant to the Share Scheme should be equal to the aggregate tax basis of the Shares surrendered in exchange therefore. The holding period of the Unilife Corporation Shares received by each US Participant pursuant to the Share Scheme should include the period for which such US Participant held the Shares surrendered in exchange therefore.

(c) *Holding Unilife Corporation Shares following the Share Scheme*

After implementation of the Share Scheme, a US Participant will own Unilife Corporation Shares in lieu of Shares in the Company. Although Unilife Corporation does not currently anticipate paying cash distributions on Unilife Corporation Shares in the foreseeable future, if distributions are made on Unilife Corporation Shares, such distributions generally will constitute dividends for US federal income tax purposes to the extent paid from current or accumulated earnings and profits, as determined under US federal income tax principles.

For individuals, dividends generally are taxed at a maximum rate of 35%. Certain dividends paid before 2011 to non-corporate US Participants should be eligible for a reduced rate of tax. Any dividends paid on Unilife Corporation Shares that are not eligible for the preferential rate will be taxed as ordinary income to a non-corporate US Participant. Dividends paid on Unilife Corporation Shares to corporate US Participants may be eligible for the dividends received deduction. If a distribution exceeds the current and accumulated earnings and profits of Unilife Corporation, the excess will be treated as a tax-free return of the US Participant's investment, up to the amount of such holder's adjusted tax basis in Unilife Corporation Shares (reducing, but not below zero, such basis in the amount of such tax-free return). Any remaining excess will be treated as capital gain, subject to the tax treatment described below.

Upon the sale or other taxable disposition of Unilife Corporation Shares, the US Participant will recognise capital gain or loss in an amount equal to the difference between the amount realised on the disposition and such US Participant's adjusted tax basis in the Unilife Corporation Shares. Such gain or loss will be long-term capital gain or loss if such US Participant's holding period in the Unilife Corporation Shares is more than one year (which, as described above, will include such US Participant's holding period in the Shares exchanged therefore pursuant to the Share Scheme) if the Company's intended treatment of the Proposed Transaction as non-taxable is respected for US federal income tax purposes. Long-term capital gain is subject to preferential rates for individuals and certain other non-corporate taxpayers.

(d) *Information reporting and backup withholding*

Generally, the amount of any dividend on Unilife Corporation Shares paid to a US Participant, such US Participant's name and address, and the amount of backup withholding tax withheld, if any, with respect to such distributions, will be reported annually to the IRS. A similar report is generally sent to such US Participant. These information reporting requirements apply even if backup withholdings is not required.

Dividends ordinarily will not be subject to withholding of US federal income tax. However, backup withholding tax (currently 28%) will apply to dividends paid on Unilife Corporation Shares held by a US Participant unless such US Participant:

- provides to Unilife Corporation or the nominee holding the Unilife Corporation Shares on the US Participant's behalf (typically the US Participant's broker) a properly executed IRS Form W-9 with such US Participant's taxpayer identification number (which for an individual is its Social Security number), and certifies that such number is correct and that the US Participant is not subject to backup withholding; or
- is otherwise exempt from backup withholding.

Information reporting will generally apply to the disposition of Unilife Corporation Shares by a US Participant. Backup withholding may also apply to a disposition of Unilife Corporation Shares unless proper certification is provided to the payer on IRS Form W-9 or the US Participant is otherwise exempt from backup withholding. Backup withholding is not an additional tax. Any amount withheld under the backup withholding rules is allowable as a credit against a US Participant's US federal income tax liability, if any, and a refund may be obtained if the amount withheld exceeds the US Participant's actual US federal income tax liability and the US Participant timely files with the IRS an appropriate claim.

**9.2.4 US tax consequences of the Share Scheme for Non-US Participants**

(a) *Share Scheme*

The Share Scheme should not have any US federal income tax consequences to a Non-US Shareholder. For purposes hereof, a Non-US Participant is a Scheme Shareholder that is not a US Participant.

(b) *Holding Unilife Corporation Shares following the Share Scheme*

As a result of exchanging Shares for Unilife Corporation Shares, a Non-US Participant will hold Unilife Corporation Shares after the Share Scheme. Although Unilife Corporation does not currently expect to pay dividends or make other distributions with respect to its stock in the foreseeable future, if distributions are made on Unilife Corporation Shares such distributions

generally will constitute dividends for US federal income tax purposes to the extent paid from current or accumulated earnings and profits, as determined under US federal income tax principles.

A Non-US Participant will be subject to US withholding tax on any dividends paid with respect to such Non-US Participant's Unilife Corporation Shares. Such tax is imposed at a rate of 30% of the gross amount of the dividend, or such lower rate as may be specified under an applicable income tax treaty if the recipient is eligible for benefits there under.

A Non-US Participant, who is an individual, eligible for the benefits of the Australia-US income tax treaty and holding less than 10% of the voting power of Unilife Corporation should be subject to US withholding at a reduced rate of 15%. A Non-US Participant that is a company eligible for the benefits of the Australia-US income tax treaty and that holds directly at least 10% of the voting power in Unilife Corporation should be subject to US withholding at a reduced rate of 5%. A Non-US Participant who wishes to claim the benefit of an applicable income tax treaty is required to provide a withholding certificate to the withholding agent (generally the broker where the shares are held) on the appropriate IRS Form W-BEN, but should not be required to obtain or provide a US taxpayer identification number as long as Unilife Corporation Shares are traded on an established financial market.

Upon the sale, exchange or other taxable disposition of Unilife Corporation Shares, a Non-US Participant generally will not be subject to US federal income tax or withholding tax unless:

- the gain is effectively connected with a US trade or business of the Non-US Participant (or, if a treaty applies, attributable to a permanent establishment in the US of such Non-US Participant);
- in the case of a Non-US Participant who is an individual, such Non-US Participant is present in the US for a period or periods aggregating 183 days or more during the taxable year of the disposition, certain other conditions are met, and such Non-US Participant does not qualify for an exemption; or
- Unilife Corporation is characterised as a US real property holding corporation for US federal income tax purposes. Unilife Corporation does not believe it is currently, and does not anticipate becoming, a US real property holding corporation. However, because the determination of whether Unilife Corporation is a US real property holding corporation depends on the fair market value of its US real property interests relative to the fair market value of its other business assets, there can be no assurance that Unilife Corporation will not become a US real property holding corporation in the future.

A Non-US Participant will be taxed in the same manner as a US Participant on dividends or gains on the sale or exchange of Unilife Corporation

Shares, to the extent that such dividends or gains are effectively connected with the conduct of a US trade or business by the Non-US Participant (or, if a treaty applies, attributable to a permanent establishment in the US of such Non-US Participant). If such Non-US Participant is a foreign corporation, it may be subject to an additional tax, the US branch profits tax, on such income at a 30% rate, or such lower rate as may be specified under an applicable income tax treaty. Even though such effectively connected dividends are subject to income tax and may be subject to the branch profits tax, they will not be subject to US federal withholding tax if the holder delivers a properly executed IRS Form W-8ECI (or successor form) to the payer or the payer's agent.

(c) *Information reporting and backup withholding*

Generally, the gross amount of the distributions on Unilife Corporation Shares paid to a Non-US Participant, such Non-US Participant's name and address, and the tax withheld, if any, with respect to such distributions will be reported annually to the IRS. A similar report generally is sent to such Non-US Participant. These information reporting requirements apply even if withholding was not required.

Payments of dividends made to a Non-US Participant will not be subject to backup withholding if such Non-US Participant establishes an exemption from backup withholding, for example, by properly certifying its status as a Non-US Participant on an IRS Form W-8BEN or another appropriate version of IRS Form W-8. Information reporting and backup withholding generally will apply to the proceeds of a disposition of Unilife Corporation Shares by a Non-US Participant effected by or through the US office of any foreign broker or any office of a US broker, unless the person certifies its status as a Non-US Participant and satisfies certain other requirements, or otherwise establishes an exemption.

Generally, information reporting and backup withholding will not apply to a payment of disposition proceeds to a Non-US Participant where the transaction is effected outside the US through a non-US office of a non-US broker and the sales proceeds are paid to such holder outside the US. However, for information reporting purposes, certain non-US brokers with specified connections with the US will be treated in a manner similar to US brokers.

Under the provisions of an applicable income tax treaty or agreement, copies of information returns may be made available to the tax authorities of the country in which the Non-US Participant resides or is incorporated. Backup withholding is not an additional tax. Any amounts withheld under the backup withholding rules from a payment to a Non-US Participant generally can be refunded or credited against the Non-US Participant's US federal income tax liability, if any, provided that an appropriate claim is timely filed with the IRS.



**NON-US PARTICIPANTS SHOULD CONSULT THEIR TAX ADVISERS REGARDING THE APPLICATION OF THE INFORMATION REPORTING AND BACKUP WITHHOLDING RULES TO THEM AND THE AVAILABILITY AND PROCEDURE FOR OBTAINING AN EXEMPTION FROM BACKUP WITHHOLDING UNDER CURRENT US TREASURY REGULATIONS.**

**9.2.5 *US consequences of the Share Scheme for the Company and Unilife Corporation***

Following the Share Scheme, Unilife Corporation, a US corporation, will become the parent company of the Company. As a US corporation, Unilife Corporation is subject to the general principles of US federal income taxation discussed in this section. A US corporation is taxed on its worldwide income.

Therefore, a US corporation is potentially subject to double-taxation on income earned outside the US. Double taxation may be mitigated to the extent the US corporation qualifies for a credit for non-US income taxes paid or accrued.

The earnings of foreign corporations owned by US shareholders generally are not subject to US federal income tax until such earnings are distributed to US shareholders as dividends or other gains constituting currently taxable income. This generally results in the deferral of US income tax on such earnings. However, the US imposes current tax on US shareholders of foreign corporations under complex anti-deferral regimes. Certain income of foreign corporations controlled by US shareholders is subject to this rule of current US taxation. Such income includes, for example, passive income (e.g. dividends, interest, rents and royalties) and certain investments in the US by the foreign corporation, such as loans to the US shareholder. Also, a US shareholder is denied the benefits of deferral related to certain non-US corporations a large portion of whose income or assets is passive. One or more of such anti-deferral regimes may operate to deny a US shareholder the benefit of deferral with respect to income of foreign corporations. As noted, regardless of whether deferral is available, such income may subject a US shareholder to double-taxation to the extent not offset by a foreign tax credit. A US corporation may qualify for a credit against its US tax liability for non-US income taxes paid or accrued by the US Corporation or certain of its foreign subsidiaries. Certain limitations may apply to limit the use, for US income tax purposes, of the Company's historic Australian losses after the Proposed Transaction, possibly resulting in a higher overall tax burden for the Unilife Group.

However, due to a complex set of limitations, the amount of the deemed paid credit may not be sufficient to offset all of the non-US taxes paid or accrued by the US corporation. To the extent not wholly offset by this credit, the foreign earnings of a US corporation may be subject to double-taxation.

**THE US HAS A VERY COMPLEX FEDERAL TAX REGIME GOVERNING A US PARENT CORPORATION THAT OWNS US AND FOREIGN SUBSIDIARIES AND INTERESTS IN OTHER FOREIGN CORPORATIONS. AS A RESULT OF THIS REGIME, THE GLOBAL GROUP HEADED BY UNILIFE CORPORATION MAY BE SUBJECT TO A HIGHER OVERALL TAX BURDEN AFTER THE SHARE SCHEME.**

**9.2.6 US tax consequences of the Option Scheme and Standalone Option cancellation in exchange for Unilife Corporation Standalone Options (the "Standalone Exchange")**

*(a) Option Scheme and Standalone Cancellation Deeds*

The exchange of Options and Standalone Options for Unilife Corporation Options or Unilife Corporation Standalone Options, respectively, should not cause any US federal income tax to be paid by Non-US Option Participants.

For US Option Participants, the exchange of Options and Standalone Options for Unilife Corporation Options and Unilife Corporation Standalone Options (as relevant) under the Option Scheme and Cancellation Deeds should not cause any US federal income tax to be paid by US Option Participants.

*(b) Tax on future dividends from Unilife Corporation*

Although Unilife Corporation does not currently expect to pay dividends or make other distributions with respect to its stock in the foreseeable future, holders of Unilife Corporation Options and Unilife Corporation Standalone Options will not be entitled to receive dividends from Unilife Corporation and, therefore, will not be subject to a resulting tax liability.

*(c) Holding Unilife Corporation Options and Unilife Corporation Standalone Options following the Option Scheme and the replacement of Standalone Options under the Cancellation Deeds*

As a result of exchanging Options for Unilife Corporation Options and Standalone Options for Unilife Corporation Standalone Options, a Scheme Optionholder and Standalone Optionholder will hold Unilife Corporation Options after the Option Scheme or Unilife Corporation Standalone Options (as applicable).

A US Option Participant will be taxed on the receipt of vested Unilife Corporation Shares upon the exercise of a Unilife Corporation Option in an amount equal to the fair market value of the Unilife Corporation Shares received upon exercise less the amount paid for such stock. Upon exercise, a Scheme Optionholder or Standalone Optionholder will receive a Unilife Corporation Share with a tax basis equalling its cost basis under section 1012 of the Code, generally its fair market value. A Non-US Option Participant may be subject to US tax upon the exercise of a Unilife Corporation Option. As a holder of Unilife Corporation Shares, US Persons and Non-US Persons will be subject to the tax consequences described in section 9.2.3 and 9.2.4 respectively.

Optionholders and Standalone Optionholders should consult their own tax adviser as to the specific tax consequences of the Option Scheme and replacement of the Standalone Options in light of such participant's particular circumstances.

**9.2.7     *Notice regarding US tax implications***

**TO ENSURE COMPLIANCE WITH US TREASURY DEPARTMENT CIRCULAR 230, THIS INFORMATION MEMORANDUM WAS NOT INTENDED OR WRITTEN TO BE USED, AND IT CANNOT BE USED, BY ANY US TAXPAYER FOR THE PURPOSES OF AVOIDING US TAX PENALTIES THAT MAY BE IMPOSED ON THE TAXPAYER. THIS INFORMATION MEMORANDUM WAS PREPARED IN CONNECTION WITH THE PROMOTION OR MARKETING (WITHIN THE MEANING OF CIRCULAR 230) BY THE COMPANY AND UNILIFE CORPORATION TO PERSONS OTHER THAN THE COMPANY AND UNILIFE CORPORATION OF THE PROPOSED TRANSACTION ADDRESSED IN IT. EACH US TAXPAYER SHOULD SEEK ADVICE BASED ON THE TAXPAYER'S PARTICULAR CIRCUMSTANCES FROM AN INDEPENDENT US TAX ADVISOR, NOT ASSOCIATED WITH THE PROPOSED TRANSACTION.**

## **10 Additional information**

### **10.1 ASX listing of the Company and Unilife Corporation**

Within seven days of the date of this Information Memorandum, Unilife Corporation will apply to ASX for admission to ASX's official list and for quotation of the CDIs conditional upon the Share Scheme becoming Effective. The listing of Unilife Corporation and the quotation of the CDIs is a condition to implementation of the Share Scheme.

The fact that ASX may admit Unilife Corporation to its official list is not in any way an indication of the merits of Unilife Corporation. ASX does not take any responsibility for the contents of this Information Memorandum.

It is expected that suspension of trading in the Company's Shares on ASX will occur from the date on which the Company lodges the Court order approving the Share Scheme with ASIC. The Company will then apply for termination of the official quotation of its Shares on ASX after the Implementation Date.

### **10.2 NASDAQ listing of Unilife Corporation**

In conjunction with the implementation of the Proposed Transaction, Unilife Corporation is seeking a listing for Unilife Corporation common stock on NASDAQ. Unilife Corporation expects the listing on NASDAQ to commence in February 2010 (subject to the Form 10 becoming effective following SEC review, NASDAQ approval of the listing application and the satisfaction of relevant legal requirements). However, there is no guarantee as to when this will occur or that it will occur at all. Accordingly, you should be aware that unless and until such NASDAQ (or another) listing occurs, the only market following implementation of the Schemes for trading Unilife Corporation Shares will be the ASX, where they will only trade in the form of CDIs.

If Unilife Corporation is approved for listing on NASDAQ, Shareholders holding CDIs will be able to convert their CDIs into Unilife Corporation Shares and vice versa at any time on a six for one basis so that they will be able to choose whether to trade their Unilife Corporation Shares on NASDAQ or ASX.

### **10.3 Interests of Directors**

#### **10.3.1 Directors' Interests in the Company**

Each of the Directors' interests and proposed interests in Shares and Options of the Company, as at the date of this Information Memorandum, are set out in the table below.

Director	Shares	Options
Jim Bosnjak	1,836,470	2,000,000
Alan Shortall	15,123,332	7,500,000

Director	Shares	Options
Jeff Carter	450,271	2,100,000 <sup>25</sup>
William Galle	0	1,150,000 <sup>26</sup>
John Lund	90,000	600,000 <sup>27</sup>

As at the date of this Information Memorandum and except as stated above, no Director holds a beneficial interest in any other Shares, Options or Standalone Options of the Company.

Save as set out below, the Directors will not receive any further consideration under the Proposed Transaction, other than as Shareholders or Optionholders under the Schemes. All of the Directors will have a basis of remuneration with Unilife Corporation which is equivalent to their existing remuneration arrangements with the Company.

### 10.3.2 Directors' Interests in Unilife Corporation

Prior to the Proposed Transaction, none of the Directors hold any interests in Unilife Corporation.

As described in section 6.3.4, Unilife Corporation and the Company have agreed that, subject to Shareholder approval being obtained at the EGM and the Share Scheme becoming Effective it will grant its Chief Executive Officer, Alan Shortall 1,166,000 shares of restricted stock and 834,000 options in Unilife Corporation as part of his new incentive package each under the Unilife Corporation 2009 Stock Incentive Plan.. If the Share Scheme does not become Effective, Mr Alan Shortall will instead receive (subject to Shareholder approval at the EGM) 6,199,000 Shares and 5,004,000 Options in the Company. Full details of the new incentive package to be provided to Alan Shortall are set out in the EGM notice accompanying this Information Memorandum. The following table sets out the relevant interests and proposed relevant interests of each Unilife Corporation director in securities of Unilife Corporation upon implementation of the Proposed Transaction, assuming that the Directors do not exercise any of their Options prior to the Scheme Record Date.

Director	Unilife Corporation Shares/CDIs	Unilife Corporation Options	Unilife Corporation Restricted Stock
Jim Bosnjak	306,078 Shares or 1,836,468 CDIs	333,333	

<sup>25</sup> 600,000 of these Options are subject to Shareholder approval at the EGM.

<sup>26</sup> 600,000 of these Options are subject to Shareholder approval at the EGM.

<sup>27</sup> Subject to Shareholder approval at the EGM.

Director	Unilife Corporation Shares/CDIs	Unilife Corporation Options	Unilife Corporation Restricted Stock
Alan Shortall	2,520,555 Shares or 15,123,330 CDIs	2,084,000 <sup>28</sup>	1,166,000 <sup>29</sup>
Jeff Carter	75,045 Shares or 450,270 CDIs	350,000 <sup>30</sup>	
William Galle	0	191,666 <sup>31</sup>	
John Lund	15,000 Shares or 90,000 CDIs	100,000 <sup>32</sup>	

#### **Termination payments or other benefits to directors, secretaries or executive officers**

Other than as set out in this Information Memorandum, no payment or other benefit is proposed to be made or given to any Director, secretary or executive officer of the Company or of its Related Bodies Corporate as compensation for loss of, or as consideration for or in connection with their retirement from, office with the Company or any Related Body Corporate or as a result of the Schemes becoming Effective.

#### **10.4 Other payments and benefits**

At the 2008 Annual General Meeting of the Company, Shareholders approved the issue of 10,000,000 Shares to Alan Shortall in recognition of his key role in achieving certain milestones of the Company. Mr Shortall was restricted from disposing of 50% of these Shares for 12 months from their date of issue and restricted from disposing of the remaining 50% for 24 months from their date of issue. However, under the terms of his Executive Service Agreement these disposal restrictions will be removed upon the Court ordering the Scheme Meetings. Mr Shortall has agreed that he will waive any right to the release of the disposal restrictions which will occur in connection with the Schemes and he will agree to similar restrictions being placed on the shares of Common Stock issued to him by Unilife Corporation under the Share Scheme.

Except as disclosed elsewhere in this Information Memorandum, no Director or Unilife Corporation director has any other interest, whether as a director, member or creditor of the Company or otherwise, which is material to the Proposed Transaction.

Except as disclosed elsewhere in this Information Memorandum, neither the Company, Unilife Corporation nor any of their respective directors has given, or offered or agreed to give, a benefit to another person where the benefit was likely to

<sup>28</sup> 834,000 of the Options are subject to Shareholder approval at the EGM.

<sup>29</sup> Subject to Shareholder approval at the EGM.

<sup>30</sup> 100,000 of the Options are subject to Shareholder approval at the EGM.

<sup>31</sup> 100,000 of which are subject to Shareholder approval at the EGM.

<sup>32</sup> Subject to Shareholder approval at the EGM.

induce the other person to vote in favour of the Schemes, where that benefit has not been offered to all Shareholders or Optionholders (as the case requires).

#### **10.5 Agreements or arrangements with directors**

No Director or Unilife Corporation director, as at the date of this Information Memorandum, has entered into an agreement or arrangement with another person in connection with or conditional on the outcome of the Schemes.

#### **10.6 Interests in contracts**

##### ***Alan Shortall, Chief Executive Officer***

The Company has entered into an executive service agreement with its sole Executive Director, Alan Shortall, the terms of which are set out below:

- total fixed remuneration for the 2009 financial year: US\$420,000
- no minimum term is specified for the executive service agreement;
- a bonus of up to US\$200,000 is payable in respect of each financial year as determined by the Board;
- participation in the Company's Employee Share Option Plan, under which Mr Shortall may receive Options based on the achievement of certain goals of the Company;
- after the termination of Mr Shortall's employment with the Company, he may not be involved in any business which is a competitor of the Company's, or entice away any employee, customer or supplier of the Company for up to 24 months worldwide (or for such shorter period and geographical area as a Court may decide); and
- Mr Shortall's employment may be terminated by the Company or Mr Shortall by giving three months written notice. If Mr Shortall's employment is terminated any time between the date of his relocation to the US and the first anniversary of that date the Company must pay him the equivalent of 15 months remuneration. If his employment is terminated after this period the Company must pay him the equivalent of nine months remuneration.

##### ***Jim Bosnjak, Independent Non-executive Director and Chairman***

The key elements of Mr Bosnjak's appointment with the Company are set out below:

- total fixed remuneration for the 2009 financial year was \$120,000;
- no minimum term of appointment; and
- Mr Bosnjak's appointment may be terminated by the Company or Mr Bosnjak by giving one month's written notice.

***Jeff Carter, Non-Executive Director and Company Secretary***

In January 2009, the Company made Mr Carter redundant as its Chief Financial Officer and paid him a severance amount of \$180,000 which was equal to nine months of his annual salary.

The key elements of Mr Carter's prior appointment with the Company as Chief Financial Officer were:

- total fixed remuneration for the 2009 financial year was \$240,000; and
- a bonus of up to 30% is payable in respect of each financial year as determined by the Board.

The Company has since entered into a Consultancy Agreement with Mr Carter, under which Mr Carter receives minimum compensation of \$20,000 per month for his consulting services. Mr Carter's engagement as a consultant may be terminated by the Company or Mr Carter by giving two months' notice.

Since February 2009, Mr Carter receives \$4,500 per month in directors' fees.

***William Galle, Independent Non-executive Director***

The key elements of Mr Galle's appointment by the Company are set out below:

- total fixed remuneration for the 2009 financial year was US\$36,000;
- a committee meeting fee of US\$1,500 per meeting of the Compensation and Audit Committees (approximately eight meetings per annum);
- no minimum term of appointment is specified; and
- Mr Galle's employment may be terminated by the Company or Mr Galle by giving one month's written notice.

***John Lund, Independent Non-executive Director***

The key elements of Mr Lund's appointment by the Company are as follows:

- total fixed remuneration of US\$32,000 per annum; and
- a committee meeting fee of US\$1,500 per meeting of the Compensation and Audit Committees (approximately eight meetings per annum)
- no minimum term of employment of Mr Lund is specified.

Each of the Directors and John Lund were appointed to the board of Unilife Corporation by way of board resolution. The terms of appointment of the Directors with Unilife Corporation are similar to their current terms of appointment with the Company.



Save as set out above, no Director or Unilife Corporation director, as at the date of this Information Memorandum, has any interest in any contract entered into by the Company or Unilife Corporation.

## **10.7 Regulatory relief**

### **10.7.1 ASIC Relief**

ASIC has granted the Company and Unilife Corporation exemptions from, modifications to and consents in respect of the following provisions of the Corporations Act:

- consent to omit from this Information Memorandum the list of Optionholders and other matters which would otherwise be required by paragraphs 8201(a), 8201(b), 8201(c), 8201(d), 8201(e), 8203(a) and 8203(b) of Part 2 of Schedule 8 to the Corporations Regulations to be set out in this Information Memorandum;
- an exemption pursuant to section 259C(2) of the Corporations Act in connection with the transfer of the Shares to Unilife Corporation pursuant to the Share Scheme;
- a declaration under subsection 741(1)(b) modifying subsection 707(3) and (4) of the Corporations Act so that the modified form of those subsections as set out in ASIC Class Order 04/671 applies to Unilife Corporation Shares issued following the exercise of Unilife Corporation Options granted under the Option Scheme; and
- an exemption under subsection 741(1)(a) to provide relief from Chapters 6D and 7 of the Corporations Act on a similar basis to ASIC Class Order 03/184 in respect of offers of Unilife Corporation Options, restricted stock, or restricted stock units under the Unilife Corporation 2009 Stock Incentive Plan or Unilife Corporation Options under the Unilife Corporation Employee Stock Option Plan in the 12 months following the listing of Unilife Corporation on ASX, but without requiring Unilife Corporation Shares to have been quoted on a relevant financial market throughout the 12 month period prior to the offer of Unilife Corporation Options, restricted stock or restricted stock units.

### **10.7.2 Listing Rules**

ASX has granted the Company and Unilife Corporation the following confirmations and waivers described below upon Unilife Corporation applying for admission to the official list of the ASX:

- a waiver from Listing Rule 6.23.2 so that shareholder approval is not required for the cancellation of the Options and Standalone Options;
- a waiver from paragraph 108 of Appendix A of the Listing Rules to permit Unilife Corporation to use the Information Memorandum as an information memorandum for the purposes of its application to list on ASX and to

confirm that Unilife Corporation is not required to make the statement in paragraph 108 of Appendix 1A of the Listing Rules (which requires prospectus equivalent information to be included);

- a waiver from paragraph 42 of Appendix 1A of the Listing Rules to the extent necessary to permit the Information Memorandum not to include a brief history of Unilife Corporation;
- a waiver from paragraphs 87, 87A, 87B and 87C of Appendix 1A of the Listing Rules to the extent necessary to permit Unilife Corporation not to provide the financial statements referred to in those paragraphs;
- a waiver from paragraph 106 of Appendix 1A of the Listing Rules to permit the Information Memorandum not to include details of Unilife Corporation's existing and proposed activities and level of operations, or a statement of its main business;
- a waiver from paragraph 110 of Appendix 1A of the Listing Rules to permit this Information Memorandum not to specify the date on which it was signed;
- a waiver from paragraph 116 of Appendix 1A of the Listing Rules to permit Unilife Corporation not to include a statement in the Information Memorandum that Unilife Corporation will not need to raise capital in the three months after the date of issue of this Information Memorandum;
- a waiver from paragraph 117 of Appendix 1A of the Listing Rules to permit Unilife Corporation not to include a statement in the Information Memorandum that a supplementary information memorandum will be issued if Unilife Corporation becomes aware of certain matters occurring between the issue of this Information Memorandum and the date Unilife Corporation's securities are quoted, on condition that any such matters are announced to the market by the Company;
- a waiver from condition 6 of Listing Rule 1.1 to the extent necessary to permit Unilife Corporation to apply for quotation on ASX of only those shares of its common stock of which CDIs have been issued as at the date of admission of Unilife Corporation on ASX;
- a waiver from condition 8 of Listing Rule 1.1 to the extent necessary to permit Unilife Corporation not to comply with Listing Rules 1.2 or 1.3 on the condition that the Company satisfies Listing Rules 12.1 and 12.2 at the time of admission of Unilife Corporation;
- a waiver of Listing Rule 2.4 to the extent necessary to permit Unilife Corporation to only apply for quotation on ASX of those shares over which CDIs have been issued;
- a waiver of Listing Rule 2.8 to the extent necessary to permit Unilife Corporation not to apply for a quotation of CDIs which are issued as a result of holders of shares of common stock converting their shares to CDIs,

within 10 business days of issue of those CDIs and instead apply on a monthly basis;

- confirmation that the terms that apply to the securities of Unilife Corporation, including Unilife Corporation Shares and Unilife Corporation Options, are appropriate and equitable for the purposes of Listing Rule 6.1;
- a waiver of Listing Rule 6.23.2 in respect of Unilife Corporation Options and Unilife Corporation Standalone Options, on the basis that an alternative mechanism equivalent to that contained in that Listing Rule will apply under the rules of an alternate regulatory regime;
- a waiver from Listing Rule 7.1 to permit Unilife Corporation to issue Unilife Corporation Options and Unilife Corporation Standalone Options to Optionholders and Standalone Optionholders without the approval of Shareholders of Unilife Corporation;
- confirmation that Listing Rule 9.1 will not apply to Unilife Corporation Shares or Unilife Corporation Options issued to Unilife Corporation Shareholders and Optionholders under the Schemes;
- a waiver from Listing Rule 10.14 to permit Unilife Corporation to issue, without Shareholder approval, replacement Unilife Corporation Options pursuant to an employee stock plan to its directors and their Associates in consideration for the cancellation of their Options;
- a waiver from Listing Rule 10.14 to the extent necessary to permit Unilife Corporation to issue, without Shareholder approval, options or restricted stock to certain of its directors under the Unilife Corporation 2009 Stock Incentive Plan on the condition that such issue is approved by Shareholders at the EGM;
- a waiver from Listing Rule 14.2.1 to the extent necessary to permit Unilife Corporation not to provide in its proxy form an option to security holders to vote against a resolution to re-elect a director;
- confirmation that Unilife Corporation may accept nominations for the election of directors in accordance with the timetable set out in Unilife Corporation's by-laws for the purposes of Listing Rule 14.3;
- a waiver from Listing Rule 15.12 to the extent necessary to permit Unilife Corporation's certificate of incorporation and by-laws not to contain the provisions required by Listing Rules 15.12.1 to 15.12.3 inclusive; and
- confirmation that Unilife Corporation may prepare its accounts in US GAAP and will not be required to provide a statement reconciling its accounts to Australian accounting standards or international accounting standards.

## **10.8 Foreign regulatory matters**

### **10.8.1 United States**

The initial issue of Unilife Corporation Shares and Unilife Corporation Options pursuant to the Schemes will qualify for a registration exemption under Section 3(a)(10) of the US Securities Act provided that Court approval is obtained for the Schemes. Prior to the Second Court Date, the Company will advise the Court that, if the Court approves the Schemes, the Unilife Corporation Shares and Unilife Corporation Options will be issued in reliance upon the Section 3(a)(10) exemption from registration based on the Court's approval of the Schemes.

### **10.8.2 New Zealand**

Clause 6 of the Securities Act (Overseas Companies) Exemption Notice 2002 (**Exemption Notice**) relieves Unilife Corporation from the prospectus and investment statement requirements and various other requirements of the New Zealand Securities Act 1978 and the Securities Regulations 1983 in respect of Unilife Corporation Shares which are being offered to New Zealand resident Shareholders, as Unilife Corporation will at the time of the offer have complied with the requirements of clauses 6 and 7 of the Exemption Notice, being:

- the Unilife Corporation Shares being offered under the Share Scheme are securities for which an application for quotation on ASX will be made and Unilife Corporation will, at the time of the offer of Unilife Corporation Shares to New Zealand resident Shareholders, have complied with the requirements of the ASX that are applicable at that time;
- the Unilife Corporation Shares are offered as consideration for the transfer of the Shares of the Company;
- the Company's Shares are quoted on the ASX; and
- the offer by Unilife Corporation of Unilife Corporation Shares under the Share Scheme to New Zealand resident Shareholders complies with the laws of Australia and any code, rules or other requirements relating to the offer that applies in Australia.

### **10.8.3 Hong Kong**

An offer of securities is exempt from the requirement to prepare a prospectus in Hong Kong if the offer is extended to not more than 50 persons or the value involved is less than HKD 5,000,000 (paragraphs 2 and/or 3 of Part I of the Seventeenth Schedule of the Companies Ordinance).

As this document is not regarded as a prospectus under the Companies Ordinance due to the above exemption, no registration requirement needs to be fulfilled.

#### **10.8.4 United Kingdom**

The Schemes do not involve an "offer" enabling the purchase/subscription for securities and therefore does not constitute an offer to the public requiring a prospectus in the United Kingdom. This is on the basis that the transaction is effected through a court procedure pursuant to which the members of the Company vote on and approve an arrangement which becomes effective when sanctioned by the court.

#### **10.8.5 Republic of Ireland**

The publication of a prospectus is not required if an offer of securities meets one or more of the exemptions contained in the prospectus directive and the prospectus regulations. One of those exemptions is if the offer is addressed to fewer than 100 persons (disregarding "qualified investors"). The offer of Shares, Options and/or Standalone Options to persons in the Republic of Ireland will therefore be exempt from the requirement of the publication of a prospectus on the basis that the offer is addressed to (i) registered "qualified investors" and/or (ii) no more than 99 persons (disregarding "qualified investors").

#### **10.8.6 France**

Article L. 411-2 of the French Monetary and Financial Code exempts offers of securities to less than 100 French investors from prospectus requirements.

#### **10.8.7 Croatia**

The publication of a prospectus is not required with respect to an offer of securities to a 'restricted group of investors' comprising less than 100 individuals.

#### **10.8.8 Malta**

Pursuant to article 2(3)(b) Companies Act (Chapter 386 of the Laws of Malta) offers of securities which are made to less than 100 persons per Member State or EEA State (not including qualified investors) are not considered to be offers to the public and accordingly would not be subject to prospectus requirements.

#### **10.8.9 Other jurisdictions**

Neither this Information Memorandum or the Schemes constitute, or are intended to constitute, an offer of securities in any place in which, or to any person to whom, the making of such an offer would not be lawful under the laws of the jurisdiction outside Australia and its external territories, New Zealand, US, Hong Kong, United Kingdom, Republic of Ireland, France, Croatia and Malta and shall not form the basis of any contract with such persons.

Ineligible Overseas Shareholders will not receive Unilife Corporation Shares under the Share Scheme, but will have their entitlement sold by a Nominee on ASX after Unilife Corporation CDIs commence trading on ASX with the proceeds of the sale remitted to them as further described in section 3.7 of this Information Memorandum.

## **10.9 Share Register**

Under the Corporations Act, any Shareholder has a right to inspect and to ask for a copy of the Share Register which contains details of the name and address of each Shareholder and other details regarding the terms of the Shares. Shareholders may inspect the Share Register of the Company without charge.

A copy of the Share Register will be made available to a Shareholder who requests a copy in writing from the Company Secretary on payment of the prescribed fee under the Corporations Act.

## **10.10 Option Register**

Under the Corporations Act, any Optionholder has a right to inspect and to ask for a copy of the Option Register which contains details of the name and address of each Optionholder and other details regarding the terms of the Options. Optionholders may inspect the Option Register of the Company without charge.

A copy of the Option Register will be made available to an Optionholder who requests a copy in writing from the Company Secretary on payment of the prescribed fee under the Corporations Act.

## **10.11 Other material information**

Other than as contained in this Information Memorandum, there is no information material to the making of a decision in relation to the Schemes (being information that is within the knowledge of any Director of the Company or a related company, acting in that capacity, that has not previously been disclosed to Shareholders or Optionholders (as appropriate)).

## **10.12 Material changes in the financial position of the Company**

A summary statement of the financial position of the Company is set out in section 7 of this Information Memorandum for the financial year ended 30 June 2009.

The latest published financial statements of the Company are the audited financial statements for the year ended 30 June 2009 that were released to ASX on 1 October 2009 and the unaudited Quarterly Report of cash flows for the Company which was released to ASX on 30 October 2009.

To the best of the knowledge and belief of the Directors, except as disclosed in this Information Memorandum, there has been no material change to the financial position of the Company since 30 June 2009, except as disclosed in announcements to ASX. Copies of these announcements are available to any Shareholder or Optionholder on ASX's website ([www.asx.com.au](http://www.asx.com.au)) or free of charge by contacting:

Company Secretary  
Unilife Medical Solutions Limited  
Suite 3, Level 11, 1 Chifley Square  
Sydney 2000 NSW, Australia

Fax: +61 2 8346 6511  
Email: [info@unilife.com](mailto:info@unilife.com)

### **10.13 Effect on creditors**

The intentions of Unilife Corporation in respect of its business following completion of the Proposed Transaction and the Schemes becoming Effective is set out in section 1 of this Information Memorandum.

To the best of the Directors' knowledge, the Proposed Transaction will not materially affect the interests of creditors of the Company and no material liability will be incurred by the Company under or by reason of the Proposed Transaction other than the costs associated with implementing the Proposed Transaction.

### **10.14 Disclosure of fees and benefits received by certain persons**

The persons named in this Information Memorandum as performing a function in a professional, advisory or other capacity in connection with the preparation and distribution of this Information Memorandum are:

- PKF as the Independent Expert;
- DLA Phillips Fox as the Australian legal and tax adviser to the Company and Unilife Corporation;
- DLA Piper LLP (US) as the US legal and tax adviser to the Company and Unilife Corporation;
- BDO as the Australian auditor to the Company and Unilife Corporation; and
- Computershare Investor Services Pty Limited as the share registry of the Company and Unilife Corporation.

Each of them will be entitled to receive professional fees charged in accordance with their normal basis of charging.

### **10.15 Consents**

#### **10.15.1 *Consent to be named***

The following parties have given and have not, before the time of registration of this Information Memorandum by ASIC, withdrawn their written consent to be named in this Information Memorandum in the form and context in which they appear:

- PKF as the Independent Expert;
- DLA Phillips Fox as the Australian legal and tax adviser to the Company and Unilife Corporation;
- DLA Piper LLP (US) as the US legal and tax adviser to the Company and to Unilife Corporation;
- BDO as the Australian auditor to the Company and Unilife Corporation;
- BDO as the Australian tax adviser to the Company and Unilife Corporation;

- Computershare Investor Services Pty Limited as the Australian share registry of the Company and Unilife Corporation; and
- sanofi-aventis.

#### **10.15.2 Consent to the inclusion of information**

The following parties have given and have not, before the date of this Information Memorandum, withdrawn their written consent to the inclusion of the following information in this Information Memorandum in the form and context in which it is included and to all references in this Information Memorandum to that information in the form and context in which they appear:

- PKF in respect of the Independent Expert's Report in Appendix 2;
- BDO in respect of the financial information included in section 7;
- DLA Phillips Fox in respect of the information in section 9.1; and
- DLA Piper LLP (US) in respect of the information in section 9.2.

#### **10.16 Disclaimers**

Each person referred to in section 10.15 above:

- does not make, or purport to make, any statement in this Information Memorandum other than those statements made in the capacity and to the extent the person has provided its consent as referred to in section 10.15 above; and
- to the maximum extent permitted under law, expressly disclaims and takes no responsibility for any part of this Information Memorandum other than as described in section 10.15 with the person's consent.

#### **10.17 Lodgement of this Information Memorandum**

This Information Memorandum was given to ASIC on 27 November 2009 pursuant to section 411(2)(b) of the Corporations Act.

#### **10.18 Consent to lodgement**

##### **10.18.1 The Directors of the Company**

Each Director of the Company has given, and not withdrawn, his consent to the lodgement of this Information Memorandum as an information memorandum for listing with ASX and an explanatory statement in relation to the Schemes with ASIC.



BY ORDER OF THE BOARD OF UNILIFE MEDICAL SOLUTIONS LIMITED

A handwritten signature in blue ink, appearing to read 'Jim Bosnjak', with a long horizontal stroke extending from the bottom right.

Jim Bosnjak  
Chairman

**10.18.2 The Directors of Unilife Corporation**

Each director of Unilife Corporation has given, and not withdrawn, his consent to the lodgement of this Information Memorandum as an information memorandum for listing with ASX and an explanatory statement in relation to the Schemes with ASIC.

BY ORDER OF THE BOARD OF UNILIFE CORPORATION

A handwritten signature in blue ink, appearing to read 'Jim Bosnjak', with a long horizontal stroke extending from the bottom right.

Jim Bosnjak  
Chairman

## 11 Glossary

### 11.1 Definitions

**A\$ or \$** means Australian currency.

**Affiliate** has the meaning given in the Securities Act being a person controlled, controlling or under common control with Unilife Corporation and is likely to include:

- the directors of Unilife Corporation and the Company;
- the executive officers of Unilife Corporation and potentially the Company;  
and
- significant shareholders of Unilife Corporation (i.e. those shareholders holding at least 10% of the issued shares of Unilife Corporation).

**AIFRS** means the Australian equivalent to International Financial Reporting Standards applying in Australia.

**ASIC** means the Australian Securities and Investments Commission.

**ASIC relief** means the modifications or exemptions set out in section 10.7.1 of this Information Memorandum.

**Associate** means that term as defined in section 12 of the Corporations Act.

**ASTC** means the ASX Settlement and Transfer Corporation Pty Limited (ABN 49 008 504 532).

**ASTC Settlement Rules** means the Settlement Rules of ASTC.

**ASX** means ASX Limited (ABN 98 008 624 691) or the securities market it operates, as the context requires.

**ASX Waivers** means the waivers to the Listing Rules described in section 10.7.2 of this Information Memorandum.

**ATO** means the Australian Taxation Office.

**BDO** means BDO Kendalls Corporate Finance (WA) Pty Ltd.

**Board** means the board of directors of the Company.

**BPS** means the Bloodborne Pathogens Standard.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, Australia.

**Cancellation Deeds** means the cancellation deeds entered into or to be entered into between Standalone Optionholders and the Company under which the Standalone

Optionholders agree to the cancellation of their Standalone Options in exchange for Unilife Corporation Standalone Options.

**CDC** means the US Centre for Disease Control.

**CDI** means a CHESS Depository Interest over a one sixth of a share of Unilife Corporation Common Stock.

**Chairman** means the Chairman of the Board.

**CHESS** means the Clearing House Electronic Sub-Register System of Share transfers operated by ASTC.

**CHESS Depository Interest** has the meaning given to that term in the ASTC Settlement Rules.

**CMOs** means contract manufacturing organisations.

**Code** means the US Internal Revenue Code of 1986, as amended.

**Common Stock** means fully paid shares of common stock in Unilife Corporation.

**Company or Unilife** means Unilife Medical Solutions Limited ABN 14 008 071 403.

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

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

**Court** means the Federal Court or any other court of competent jurisdiction under the Corporations Act agreed in writing by the Company and Unilife Corporation.

**Deeds Poll** means the Deeds Poll dated 7 December 2009 executed by Unilife Corporation in favour of Shareholders and Optionholders covenanting to provide the Scheme Consideration as set out in Appendix 5 and Appendix 6.

**Depository** has the meaning given to it in the ASTC Settlement Rules.

**Directors** means the directors of the Company as at the date of this Information Memorandum.

**DMO** means direct mail order.

**ECRI** means the Emergency Care Research Institute.

**Effective** means, when used in relation to a Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the Court order made under section 411(4)(b) of the Corporations Act in relation to that Scheme.

**Effective Date** means the date on which the Schemes (or such of them as are approved by Shareholders or Optionholders (as applicable) and the Court) become Effective.

**EGM** means the Extraordinary General Meeting of the Company to be held on 8 January 2010 for the purpose of considering the Resolutions.

**Employee Share Option Plan** means the Unilife Medical Solutions Limited Employee Share Option Plan.

**EPA** means the US Environmental Protection Agency.

**EU** means the European Union.

**Exchange Act** means the US Securities Exchange Act of 1934, as amended.

**Exclusivity List** means the list of therapeutic drug classes from sanofi-aventis that specifies therapeutic drug classes in which sanofi-aventis will seek to market the Unilife Ready-to-Fill Syringe on an exclusive basis.

**FDA** means the Food and Drug Administration Board (US).

**FNSPA** means the Federal Needlestick Prevention Act.

**Form 10** means the Form 10 registration statement to be filled with the SEC in connection with Unilife Corporation's proposed listing on NASDAQ.

**FTO** means Freedom to Operate.

**GMP** means current Good Manufacturing Practices.

**GPO** means Group Purchasing Organisations.

**IDN** means Integrated Delivery Networks.

**IDUs** means injecting drug users.

**Implementation Date** means the third Business Day following the Scheme Record Date.

**Independent Expert** means the independent expert appointed by the Company to consider whether the Schemes are in the best interests of Shareholders and Optionholders, being PKF.

**Independent Expert's Report** means the report prepared by the Independent Expert stating whether the Schemes are in the best interests of Shareholders and Optionholders set out in Appendix 2.

**Ineligible Overseas Shareholders** means a Scheme Shareholder who is registered in the Share Register with an address outside Australia and its external territories, New Zealand, the United States of America, Hong Kong, United Kingdom, Republic of Ireland, France, Croatia and Malta or such other country agreed to by the Company and Unilife Corporation.

**Information Memorandum** means this booklet, providing information to assist Shareholders and Optionholders in deciding how to vote on the Share Scheme and

the Option Scheme and comprising an information memorandum for the purposes of the listing of Unilife Corporation on ASX.

**Inventors** means Craig Stephen Thorley and Joseph Hermes Kaal.

**IP** means intellectual property.

**IRS** means the US Internal Revenue Service.

**KDL** means Shanghai Kindly Enterprise Development Group Co., Ltd.

**Listing** means the admission of Unilife Corporation to the official list of ASX and for the quotation of CDIs.

**Listing Rules** means the official listing rules of ASX as amended from time to time.

**LMWH** means Low Molecular Weight Heparin.

**Meetings** means the Scheme Meetings and the EGM.

**Merger Implementation Agreement** means the Amended & Restated Merger Implementation Agreement dated 1 September 2009 between the Company and Unilife Corporation in relation to the Schemes as set out in Appendix 1.

**NASDAQ** means the NASDAQ Global Market.

**NGOs** means non-government agencies.

**Nominee** means the nominee selected by Unilife Corporation to sell CDIs on behalf of Ineligible Overseas Shareholders for the purposes of clause 3.7 of the Merger Implementation Agreement.

**Non-US Option Participant** means a Scheme Optionholder who is not a US Person.

**Non-US Person** means a person who is not a US Person.

**Notices of Meeting** means the Notice of Share Scheme Meeting and Notice of Option Scheme Meeting set out at Appendix 11 and Appendix 12 respectively to this Information Memorandum.

**Option Register** means the register of Optionholders maintained in accordance with the Corporations Act.

**Option Scheme** means the proposed scheme of arrangement between the Company and its Optionholders, substantially in the form set out in Appendix 4, under Part 5.1 of the Corporations Act subject to any alterations or conditions made or required by the Court and approved in writing by the Company and Unilife Corporation.

**Option Scheme Consideration** means consideration to be provided by Unilife Corporation for the cancellation of each Option under the Option Scheme as set out in clause 4 of the Option Scheme.

**Option Scheme Deed Poll** means the deed poll to be executed by Unilife Corporation substantially in the form of Appendix 6, under which Unilife Corporation covenants in favour of Scheme Optionholders to perform its obligations under the Merger Implementation Agreement and the Option Scheme, with such amendments as are approved by the Court or as the Company and Unilife Corporation may otherwise agree.

**Option Scheme Meeting** means the meeting of Optionholders ordered by the Court to be convened pursuant to section 411(1) of the Corporations Act to consider the Option Scheme.

**Optionholder** means a person registered in the Company's Option Register as a holder of Options.

**Options** means options entitling holders to subscribe for Shares issued under the Employee Share Option Plan.

**OSHA** means the US Occupational Safety and Health Administration.

**PCT** means Patent Cooperation Treaty.

**PKF** means PKF Corporate Advisory (East Coast) Pty Limited.

**Proposed Transaction** means the re-domiciling of the Unilife Group in the US, which is to be effected on the Implementation Date, under which:

- Unilife Corporation will acquire all of the Shares under the Share Scheme;
- the Company will cancel all of the Options under the Option Scheme;
- the Company will cancel all of the Standalone Options; and
- the existing security holders of the Company will receive Unilife Corporation Shares, Unilife Corporation Options and Unilife Corporation Standalone Options (as relevant),

as described in this Information Memorandum.

**QMS** means Quality Management System.

**Registers** means the Share Register and Option Register.

**Related Bodies Corporate** has the meaning given to that term in the Corporations Act.

**Resolutions** means the resolutions to be considered at the EGM to approve the adoption of the 2009 Stock Incentive Plan, and the issue of Options to certain directors of the Company under the Employee Share Option Plan and the grant of a new incentive package to the Chief Executive Officer.

**Scheme Consideration** means the consideration to be provided under the Schemes.

**Scheme Meetings** means the Share Scheme Meeting and the Option Scheme Meeting.

**Scheme Optionholder** means an Optionholder as at the Scheme Record Date.

**Scheme Participant** means the Scheme Shareholders and Scheme Optionholders.

**Scheme Record Date** means 7.00pm on the fifth Business Day after the Effective Date or any other date agreed with ASX to be the record date for the Schemes to determine entitlements to receive consideration pursuant to the Schemes.

**Scheme Shareholder** means a Shareholder as at the Scheme Record Date.

**Schemes** means the Share Scheme and the Option Scheme.

**Second Court Date** means the first day on which an application to the Court for orders under section 411(4)(b) of the Corporations Act approving the Schemes is heard.

**Second Court Hearing** means the hearing at which the Court is asked to approve the Schemes pursuant to section 411(4)(b) of the Corporations Act.

**Securities Act** means the US Securities Act of 1933, as amended.

**Securities and Exchange Commission or SEC** means the body established by the US government that has the function of overseeing US securities laws.

**Shares** means fully paid ordinary shares in the Company.

**Share Scheme** means the scheme of arrangement between the Company and its Shareholders, substantially in the form set out in Appendix 3, under Part 5.1 of the Corporations Act subject to any alterations or conditions made or required by the Court and approved in writing by the Company and Unilife Corporation.

**Share Scheme Consideration** means the consideration to be provided to Shareholders under the Share Scheme as set out in clause 4 of the Share Scheme.

**Share Scheme Deed Poll** means the deed poll to be executed by Unilife Corporation, substantially in the form of Appendix 5, under which Unilife Corporation covenants in favour of Scheme Shareholders to perform its obligations under the Merger Implementation Agreement and the Share Scheme, with such amendments as are approved by the Court or as the Company and Unilife Corporation may otherwise agree.

**Share Scheme Meeting** means the Shareholders' meeting ordered by the Court to be convened under section 411(1) of the Corporations Act to consider the Share Scheme.

**Scheme Shareholders** means each person who is a Shareholder as at the Scheme Record Date.

**Share Register** means the register of Shareholders maintained in accordance with the Corporations Act.

**Shareholder** means each person who is registered in the Share Register as a holder of Shares.

**Standalone Optionholders** means certain former employees, consultants and advisers to the Company and other third parties who are the holders of Standalone Options.

**Standalone Options** means the options to subscribe for Shares in the Company granted by the Company to the Standalone Optionholders outside the Employee Share Option Plan.

**Subsidiary** has the meaning given to that term in section 46 of the Corporations Act.

**Unilife Corporation** means Unilife Corporation, a corporation incorporated under the laws of the State of Delaware, United States of America.

**Unilife Corporation Employee Stock Option Plan** means the Unilife Corporation Employee Stock Option Plan, details of which are set out in Appendix 7.

**Unilife Corporation Option** means an option to subscribe for Unilife Corporation Shares issued under the Unilife Corporation Employee Stock Option Plan.

**Unilife Corporation Shares** means shares of common stock in Unilife Corporation (which Shareholders can elect to hold in the form of common stock or CDIs).

**Unilife Corporation Standalone Option** means an option granted by Unilife Corporation to a Standalone Optionholder outside the Unilife Corporation Employee Stock Option Plan.

**Unilife Corporation 2009 Stock Incentive Plan** means the Unilife Corporation 2009 Stock Incentive Plan, details of which are set out in Appendix 8.

**Unilife Group** or **Group** means the Company and Unilife Corporation and any of their Subsidiaries.

**US Person** means:

- a US citizen or resident as determined under the Code;
- a corporation, or other entity taxable as a corporation for US federal income tax purposes, created or organised under the laws of the US, any state or the District of Columbia;
- an estate, the income of which is subject to US federal income taxation regardless of its source; or
- a trust, if:
  - (a) a court within the US is able to exercise primary supervision over its administration and at least one US person is authorised to control all substantial decisions of the trust; or



(b) it has validly elected to be treated as a US Person.

**US\$** means US dollars.

**US** means the United States of America.

**US GAAP** means the generally accepted accounting principles applying in the US.

**US Option Participant** means a Scheme Optionholder or a Standalone Optionholder who is a US Person.

**US Participant** means a Scheme Shareholder who is a US Person.

## 11.2 Interpretation

**Foreign Exchange Rate** - all conversions of Australian dollars to US dollars and Euro were calculated based on exchange rates of A\$1.00 = \$US0.9304 and A\$1.00 = €0.6208 as at 11 November 2009.

## **Appendix 1**

### **Merger Implementation Agreement**



**Amended and Restated  
Merger Implementation Agreement**

Unilife Medical Solutions Limited  
Unilife Corporation

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**Date** 1 September 2009

## **Parties**

**Unilife Medical Solutions Limited** ABN 14 008 071 403 of Level 11, 1 Chifley Square, Sydney, NSW, Australia2000 (**Company**)

**Unilife Corporation** a company incorporated in Delaware, United States of America, of 633 Lowther Road, Lewisberry, Pennsylvania 17339, United States of America (**Unilife Corporation**)

## **Background**

- A The Parties have agreed that the Company will seek to implement a transaction in order to redomicile the Unilife group in the United States of America pursuant to which:
- (a) Unilife Corporation will acquire all of the issued Shares of the Company in exchange for the issue of Unilife Corporation Shares or CDIs to shareholders of the Company by means of a scheme of arrangement under Part 5.1 of the Corporations Act (**Share Scheme**); and
  - (b) the existing Options issued under the Company's Employee Share Option Plan will be cancelled in exchange for the issue of Unilife Corporation Options in Unilife Corporation to existing holders of Options in the Company by means of a scheme of arrangement under Part 5.1 of the Corporations Act (**Option Scheme**).
- B As a result of the Proposed Transaction, the Company will become a wholly-owned subsidiary of Unilife Corporation.
- C The Board unanimously considers that the proposed Schemes are in the best interests of Shareholders and Optionholders.
- D The Parties will implement the Schemes in good faith on the terms and conditions of this Agreement.
- E In conjunction with the Schemes, the Parties will seek to replace the existing options issued to certain consultants and advisers and other third parties outside the ESOP (**Non-ESOP Options**) with new options in Unilife Corporation.
- F Following the implementation of the Schemes, Unilife Corporation will:
- (a) buy back the Unilife Corporation Shares issued to the Company on incorporation of Unilife Corporation for a nominal consideration of US\$1.00; and
  - (b) convert the Company from a public company to a proprietary company limited by shares.

## Operative provisions

### 1 Implementation of the Proposed Transaction

- 1.1 The Company will propose and the Parties will seek to implement the Proposed Transaction in accordance with this Agreement.
- 1.2 Unilife Corporation will comply with its obligations under the Proposed Transaction and provide reasonable assistance to the Company in proposing and implementing the Proposed Transaction in accordance with this Agreement.

### 2 Conditions

#### Conditions precedent to implementation of the Share Scheme

- 2.1 The transfer of the Scheme Shares and Unilife Corporation's obligations under clause 3.2 are subject to each of the following conditions being satisfied or waived in accordance with this clause 2:
  - 2.1.1 **(No prohibitive orders):** Prior to 8.00am on the Second Court Hearing Date, no judicial authority or entity and no Government Agency taking and not withdrawing any action, or imposing any legal restraint or prohibition, to prevent the implementation of the Proposed Transaction (or any transaction contemplated by the Proposed Transaction).
  - 2.1.2 **(Regulatory Consents):** All approvals, consents or waivers which the Parties agree are required to implement the transactions envisaged by this Agreement (other than the approval by the Court of the Schemes under section 411(4)(b) of the Corporations Act) having been obtained or deemed to have been obtained by 5:00pm on the Business Day immediately prior to the Second Court Hearing Date including ASIC and ASX providing all consents, approvals and waivers and doing all other acts which are necessary or reasonably desirable to implement the Proposed Transaction on terms that are unconditional or subject only to conditions which are acceptable to the Company (**Regulatory Consents**).
  - 2.1.3 **(ASX listing):** ASX approving:
    - (a) Unilife Corporation for admission to the official list of ASX; and
    - (b) the CDIs for official quotation by ASX,
 in each case conditional only on the Share Scheme becoming Effective and Unilife Corporation providing the information required by the ASX approval or by the Listing Rules and satisfying any conditions in the ASX approval with regard to deferred settlement trading of the CDIs.
  - 2.1.4 **(Shareholder approval):** Shareholders approving the Share Scheme at the Share Scheme Meeting (or any adjournment or postponement of it at which the Share Scheme is voted on) by the requisite majorities under the Corporations Act.
  - 2.1.5 **(Court approval of Share Scheme):** The Court approving the Share Scheme in accordance with section 411(4)(b) of the Corporations Act either unconditionally or on conditions that are customary or usual.

- 2.1.6 **(Depository):** Before 5.00pm on the Business Day prior to the Second Court Hearing Date, Unilife Corporation has appointed a Depository and the Depository has agreed to the allotment to it of Unilife Corporation Shares under the Share Scheme.
- 2.1.7 **(Nominee):** Before 5.00pm on the Business Day prior to the Second Court Hearing Date, Unilife Corporation has appointed a Nominee and the Nominee has agreed to sell the CDIs as contemplated by clause 3.7.
- 2.1.8 **(Ability to issue CDIs):** Before 5.00pm on the Business Day prior to the Second Court Hearing Date, Unilife Corporation has done everything necessary under the ASTC Settlement Rules to enable it to issue CDIs other than the allotment to a Depository of Unilife Corporation Shares under the Share Scheme.
- 2.1.9 **(Independent Expert):** The Independent Expert giving a report to the Company that in its opinion the Proposed Transaction is fair and reasonable and in the best interests of Shareholders and Optionholders and the Independent Expert does not change its conclusion or withdraw its report prior to 5.00pm on the day prior to the Second Court Hearing Date.

#### Conditions precedent to implementation of the Option Scheme

- 2.2 The cancellation of the Options and Unilife Corporation's obligations under clause 4.3 are subject to the satisfaction or waiver of each of the conditions set out in clause 2.1 and each of the following conditions being satisfied or waived in accordance with this clause 2:
  - 2.2.1 **(Optionholder approval):** Optionholders approving the Option Scheme at the Option Scheme Meeting (or any adjournment or postponement of it at which the Option Scheme is voted on) by the requisite majorities under the Corporations Act.
  - 2.2.2 **(Court approval of Option Scheme):** The Court approving the Option Scheme in accordance with section 411(4)(b) of the Corporations Act either unconditionally or on conditions that are customary or usual.

#### Reasonable endeavours

- 2.3 Each of the Parties must use its reasonable endeavours to procure that:
  - 2.3.1 each of the conditions in clauses 2.1 and 2.2 are satisfied as expeditiously as possible and in any event on or before the Sunset Date, including providing all reasonable assistance to the other Party as is necessary to satisfy such conditions; and
  - 2.3.2 there is no occurrence within the control of the Company or Unilife Corporation (as the context requires) which would prevent the conditions in clause 2.1 or 2.2 from being satisfied.
- 2.4 Without limiting clause 2.3.1, the Company and Unilife Corporation (as the case requires) must for the purpose of fulfilling their obligations under clause 2.3:
  - 2.4.1 promptly apply for all relevant Regulatory Consents and provide the other with a copy of all those applications;
  - 2.4.2 take all steps for which it is responsible as part of the approval process;
  - 2.4.3 respond to requests for information at the earliest practicable time;



- 2.4.4 provide the other with all information reasonably requested in connection with the applications for Regulatory Consents; and
- 2.4.5 so far as it is able, allow the other and its representatives the opportunity to be present at any meetings with any Government Agency.
- 2.5 Each of the Company and Unilife Corporation must promptly notify the other after it becomes aware that any condition in clause 2.1 or 2.2 has been satisfied or has become incapable of being satisfied.

**Waiver of conditions**

- 2.6 The conditions in clause 2.1.1, 2.1.2, 2.1.3, 2.1.6, 2.1.7 and 2.1.8 are for the joint benefit of the Company and Unilife Corporation and may only be waived jointly by them.
- 2.7 The condition in clause 2.1.9 is for the sole benefit of the Company and may only be waived by the Company.
- 2.8 The conditions in clauses 2.1.4, 2.1.5, 2.2.1 and 2.2.2 cannot be waived.
- 2.9 Any waiver of the conditions in clause 2.1 (that are capable of waiver) must take place prior to 8.00am on the Second Court Hearing Date to be effective.

**Failure of condition**

- 2.10 If:
  - 2.10.1 a condition in clause 2.1 or 2.2 is not satisfied or waived (where it is capable of being waived) by the date specified for its satisfaction; or
  - 2.10.2 a condition in clause 2.1 or 2.2 becomes incapable of being satisfied by the date specified for its satisfaction and is not waived (where it is capable of being waived),
 then unless the condition is waived (where it is capable of being waived), the Parties must consult in good faith to:
  - 2.10.3 determine whether the Proposed Transaction or an element of the Proposed Transaction (as relevant) may proceed by way of alternative means or methods;
  - 2.10.4 change the date of the application made to the Court for an order under section 411(4)(b) of the Corporations Act approving the Schemes or adjourning that application (as applicable) to another date agreed by the Company and Unilife Corporation (being a date no later than five Business Days before the Sunset Date); or
  - 2.10.5 extend the relevant date or Sunset Date.

- 2.11 If the Parties are unable to reach agreement under clause 2.10 within five Business Days of the date on which they both become aware that the condition has become incapable of being satisfied (or, if earlier, by 8.00am on the Second Court Hearing Date), then unless the condition is waived (where it is capable of being waived), the Party entitled to the benefit of that condition may terminate this Agreement at any time prior to 8.00am on the Second Court Hearing Date with immediate effect by written notice to the other Party.
- 2.12 Subject to the rights of the Parties under clauses 9.4, 9.5, 10, 12 and 13 of this Agreement, following any termination under clause 2.11, no Party will have any liability to the other Party in respect of this Agreement.

#### **Notice of changes**

- 2.13 The Company and Unilife Corporation must promptly notify each other of any change or event causing, or which, so far as can reasonably be foreseen, would cause:
- 2.13.1 any of the conditions in clauses 2.1 or 2.2 being satisfied or becoming incapable of satisfaction; or
  - 2.13.2 a material breach of this Agreement.

### **3 Share Scheme**

#### **Share Scheme**

- 3.1 The Company will propose a scheme of arrangement under which all the Scheme Shares are transferred to Unilife Corporation and Scheme Shareholders will be entitled to receive the Share Scheme Consideration.

#### **Share Scheme Consideration**

- 3.2 In consideration of the Scheme Shareholders transferring their Shares to Unilife Corporation on the Implementation Date, Unilife Corporation covenants in the Company's favour (in its own right and separately as trustee or nominee for each Scheme Shareholder) that Unilife Corporation will, on the Implementation Date, and immediately before the transfer of the Shares to Unilife Corporation, issue to such Scheme Shareholder (or, in accordance with clause 3.7 to a Nominee on its behalf where such Scheme Shareholder is an Ineligible Overseas Shareholder):
- 3.2.1 one Unilife Corporation Share for every six Shares held by the Scheme Shareholder on the Scheme Record Date, where such Scheme Shareholder has made an election to receive Unilife Corporation Shares in accordance with clause 3.3; or
  - 3.2.2 six CDIs for every Unilife Corporation Share to which the Scheme Shareholder would be entitled under clause 3.2.1, where the Scheme Shareholder has made an election to receive CDIs or has not made an election in accordance with clause 3.3.

#### **Election**

- 3.3 The Information Memorandum must be accompanied by written notice to the Company's share registry, under which each Scheme Shareholder may make an election to receive Unilife Corporation Shares or CDIs under the Share Scheme, by completing, signing and returning the written notice by 5.00pm on the Scheme

Record Date (or such other date as agreed by the Parties in writing) to the Company's share registry.

- 3.4 An election under clause 3.3 may only be made in respect of all and not only some of the Shares held by a Scheme Shareholder.
- 3.5 If a Scheme Shareholder does not make an election in accordance with clause 3.3, a Scheme Shareholder will receive CDIs under the Share Scheme.

#### **Fractional entitlements**

- 3.6 Fractional entitlements to Share Scheme Consideration will be rounded down to the nearest:
  - 3.6.1 whole number of Unilife Corporation Shares, if the Scheme Shareholder has elected to receive Unilife Corporation Shares under the Share Scheme; or
  - 3.6.2 multiple of six CDIs, if the Scheme Shareholder has elected to receive CDIs or has not made an election under clause 3.3,
 after aggregating all holdings of such Scheme Shareholder.

#### **Ineligible Overseas Shareholders**

- 3.7 Where a Scheme Shareholder is an Ineligible Overseas Shareholder, the number of CDIs to which the Scheme Shareholder would otherwise be entitled under the Share Scheme will be issued to a Nominee of Unilife Corporation who will sell those CDIs as soon as reasonably practicable (at the risk of that Ineligible Overseas Shareholder) and pay the net proceeds received in Australian dollars (calculated on an averaged basis so that all Ineligible Overseas Shareholders receive the same price per CDI subject to rounding to the nearest cent), after deducting any applicable brokerage and other taxes and charges, to that Ineligible Overseas Shareholder in full satisfaction of that Ineligible Overseas Shareholder's rights to Share Scheme Consideration.

#### **General provisions**

- 3.8 The obligations of Unilife Corporation to issue Unilife Corporation Shares under this Agreement will be satisfied by Unilife Corporation on the Implementation Date procuring the entry in the register maintained by Unilife Corporation of holders of Unilife Corporation Shares of each person who is to receive Unilife Corporation Shares.
- 3.9 After the satisfaction of the obligations of Unilife Corporation in clause 3.8, and within five Business Days after the Implementation Date, Unilife Corporation will:
  - 3.9.1 issue holding statements, certificates or transmittal letters (as the case may be) for such Unilife Corporation Shares in the name of such persons; and
  - 3.9.2 procure the despatch of such holding statements, certificates or transmittal letters to the address as shown in the register for such persons.
- 3.10 The obligations of Unilife Corporation to issue CDIs under clause 3.2 will be satisfied by Unilife Corporation on the Implementation Date procuring the entry in the register maintained by Unilife Corporation of holders of Unilife Corporation Shares of the Depositary as depositary to hold the Unilife Corporation Shares underlying those CDIs and procuring the Depositary to issue CDIs to Scheme Shareholders in accordance with the Share Scheme.

- 3.11 After the satisfaction of the obligations of Unilife Corporation in clause 3.10, and within five Business Days after the Implementation Date, Unilife Corporation will:
- 3.11.1 issue holding statements or transmittal letters (as the case may be) for such Unilife Corporation Shares in the name of the Depositary and procure the despatch of such holding statements or transmittal letters to the Depositary;
  - 3.11.2 record in the CDI Register each person who is to receive CDIs under clause 3.2; and
  - 3.11.3 despatch to each person who is to receive CDIs under clause 3.2 a holding statement in the name of that person representing the number of CDIs to be issued to that person.

## **4 Option Scheme**

### **Preliminary steps**

- 4.1 On or before 8.00am on the Second Court Hearing Date, Unilife Corporation will adopt the Unilife Corporation Employee Stock Option Plan.

### **Option Scheme**

- 4.2 The Company will propose a scheme of arrangement under which all of the Options are cancelled and Scheme Optionholders will be entitled to receive the Option Scheme Consideration.

### **Option Scheme Consideration**

- 4.3 In consideration of the Scheme Optionholders agreeing to cancel their Options on the Implementation Date, Unilife Corporation covenants in the Company's favour (in its own right and separately as trustee or nominee for each Scheme Optionholder) that Unilife Corporation will, on the Implementation Date, and immediately before the cancellation of the Options, issue to such Scheme Optionholder one Unilife Corporation Option for every six Options held by them on the Scheme Record Date.

### **Terms of Unilife Corporation Options**

- 4.4 Each Unilife Corporation Option issued in accordance with clause 4.3 will:
- 4.4.1 have an exercise price per Unilife Corporation Option equal to six times the exercise price per option of the relevant Options it replaces;
  - 4.4.2 have an exercise period equal to the unexpired exercise period of the relevant Options it replaces;
  - 4.4.3 be vested to the same extent and have the same terms as to vesting as the relevant Options it replaces; and
  - 4.4.4 otherwise be issued on the terms of the Unilife Corporation Employee Stock Option Plan.

### **Fractional entitlements**

- 4.5 Fractional entitlements to Option Scheme Consideration will be rounded down to the nearest whole number of Unilife Corporation Options after aggregating all holdings of such Scheme Optionholder.

### General provisions

- 4.6 The obligation of Unilife Corporation to issue Unilife Corporation Options under this Agreement will be satisfied by Unilife Corporation on the Implementation Date procuring the entry in the register maintained by Unilife Corporation of optionholders of each person who is to receive Unilife Corporation Options.
- 4.7 After the satisfaction of the obligations of Unilife Corporation in clause 4.6, and within five Business Days after the Implementation Date, Unilife Corporation will:
- 4.7.1 issue certificates for such Unilife Corporation Options in the name of such persons; and
  - 4.7.2 procure the despatch of such certificates to the address as shown in the option register for such persons.

## 5 Co-operation

- 5.1 Unilife Corporation and the Company must each use all reasonable endeavours to produce the Information Memorandum, seek the required Regulatory Consents and implement the Schemes as soon as reasonably practicable.
- 5.2 The Company and Unilife Corporation will for this purpose discuss the content of drafts of the Information Memorandum and the Company will consider all requests or suggestions by Unilife Corporation as to the content of the Information Memorandum.

## 6 Implementation of Schemes

### Preliminary steps

- 6.1 On or before 8.00am on the Second Court Hearing Date:
- 6.1.1 the Company will make an offer to each holder of Non-ESOP Options to cancel the Non-ESOP Options held by that person in accordance with clause 7; and
  - 6.1.2 the Company will apply for a ruling from the Australian Taxation Office that Australian resident Scheme Shareholders and Scheme Optionholders will receive capital gains tax rollover relief in relation to the transfer of their Shares to Unilife Corporation under the Share Scheme and the cancellation and replacement of their Options under the Option Scheme and for the Non-ESOP Optionholders in relation to the cancellation and replacement of their Non-ESOP Options in accordance with clause 7.

### The Company's obligations

- 6.2 The Company must take all necessary steps to propose, implement and complete the Schemes as soon as reasonably practicable. This includes taking each of the following steps:
- 6.2.1 **(Prepare Information Memorandum):** Prepare the Information Memorandum in accordance with all applicable laws including the Corporations Act, applicable ASIC Policy Statements and the Listing Rules. The Information Memorandum must include, amongst other things:
    - (a) details of the Schemes;
    - (b) the Deeds Poll;

- (c) an explanatory statement complying with the requirements of the Corporations Act in respect of the Schemes as a whole;
  - (d) a report from the Independent Expert;
  - (e) notices of the Scheme Meetings;
  - (f) proxy forms for the Scheme Meetings; and
  - (g) a statement that each director of the Company recommends that Shareholders and Optionholders vote in favour of the Schemes.
- 6.2.2 **(Consultation):** Consult with Unilife Corporation and give Unilife Corporation and its representatives a reasonable opportunity to provide input about the Information Memorandum's content and presentation.
- 6.2.3 **(Independent Expert):** Appoint an independent expert to provide a report with respect to the Schemes to be included in the Information Memorandum in accordance with all applicable laws.
- 6.2.4 **(Registration):** Request ASIC to register the explanatory statement included in the Information Memorandum in relation to the Schemes in accordance with section 412(6) of the Corporations Act.
- 6.2.5 **(Engage suitable counsel):** Engage suitable counsel to represent the Company in all Court proceedings related to the Schemes.
- 6.2.6 **(Section 411(17)(b) statement):** Apply to ASIC for a statement under section 411(17)(b) of the Corporations Act that ASIC has no objection to the Schemes.
- 6.2.7 **(Court direction):** Apply to the Court for orders under section 411(1) of the Corporations Act directing the Company to convene the Scheme Meetings.
- 6.2.8 **(Scheme Meetings):** Convene and hold the Scheme Meetings in order to seek approval of the Schemes in accordance with the Court's orders.
- 6.2.9 **(New information):** Provide to Shareholders and Optionholders any further or new information that arises after the Despatch Date and prior to the Scheme Meetings that is necessary to ensure that the information contained in the Information Memorandum is not false, misleading or deceptive in any material respect.
- 6.2.10 **(Court approval):** Apply to the Court for orders approving the Schemes if they are approved by the requisite majorities of Shareholders and Optionholders respectively at the Scheme Meetings.
- 6.2.11 **(Certificate):** Provide the Court on the Second Court Hearing Date with a certificate confirming whether all of the conditions in clauses 2.1 and 2.2 have been satisfied or waived in accordance with the terms of this Agreement.
- 6.2.12 **(Lodge copy of Court order):** Lodge an office copy of the Court order approving the Schemes (if made) with ASIC no later than 5.00pm on the day after the orders are made.
- 6.2.13 **(Registration):** If the Share Scheme becomes Effective, enter in the Register all transfers of Scheme Shares to Unilife Corporation under the Share Scheme on the Implementation Date.

- 6.2.14 **(Register information):** Provide Unilife Corporation and its share registry with all information necessary, or reasonably requested, in order to assist Unilife Corporation to provide the Scheme Consideration.

#### **Unilife Corporation obligations**

- 6.3 Unilife Corporation must take all necessary steps to implement and complete the Schemes as soon as is reasonably practicable. This includes taking each of the following steps:
- 6.3.1 **(Deeds Poll):** Execute the Deeds Poll immediately following the Court making the orders under section 411(1) of the Corporations Act to convene the Scheme Meetings;
  - 6.3.2 **(Unilife Corporation information):** Prepare and provide to the Company all information regarding Unilife Corporation required by all applicable laws, including the Corporations Act, applicable ASIC Policy Statements and the Listing Rules for inclusion in the Information Memorandum.
  - 6.3.3 **(Accuracy of Unilife Corporation information):** Before the Despatch Date verify to the Company the accuracy of the Unilife Corporation information provided to the Company for inclusion in the Information Memorandum and consent to the inclusion of that information in the form and context in which it appears, in each case subject to Unilife Corporation being reasonably satisfied as to those matters.
  - 6.3.4 **(Certificate):** Provide to the Court on the Second Court Hearing Date a certificate confirming whether all the conditions in clauses 2.1 and 2.2 have been satisfied or waived in accordance with the terms of this Agreement.
  - 6.3.5 **(Unilife Corporation new information):** Provide to the Company any further or new information about Unilife Corporation which arises after the Despatch Date and prior to the Scheme Meetings which is necessary or reasonably required by the Company to ensure that the information concerning Unilife Corporation that is disclosed in the Information Memorandum is not false, misleading or deceptive in any material respect.
  - 6.3.6 **(Scheme Consideration):** If the:
    - (a) Share Scheme becomes Effective, issue the Share Scheme Consideration in accordance with clause 3.2; and
    - (b) Option Scheme becomes Effective, issue the Option Scheme Consideration in accordance with clause 4.3;
 in each case on the Implementation Date.
  - 6.3.7 **(Independent Expert):** Promptly provide all assistance and information reasonably requested by the Independent Expert to enable it to prepare its report for inclusion in the Information Memorandum.
  - 6.3.8 **(Reasonable assistance):** Provide any assistance or information reasonably requested by the Company in relation to the Schemes, including for the purposes of obtaining the Regulatory Consents.
  - 6.3.9 **(Unilife Corporation Employee Stock Option Plan):** The Board of Directors and shareholders of Unilife Corporation must adopt the Unilife Corporation Employee Stock Option Plan prior to the Lodgement Date.

## **Quotation of Company Shares**

- 6.4 If the Share Scheme is approved by the Court, the Company must take all reasonable steps to ensure that the Shares remain quoted on ASX until the transfer of all the Scheme Shares to Unilife Corporation is completed.

## **7 Replacement of Non-ESOP Options**

### **Cancellation of Non-ESOP Options and offer of Unilife Corporation Non-ESOP Options**

- 7.1 On or before 8.00am on the Second Court Hearing Date, the Company will make an offer to each Non-ESOP Optionholder to cancel the Non-ESOP Options held by that person. In consideration for and subject to that cancellation, Unilife Corporation will grant one Unilife Corporation Non-ESOP Option to each Non-ESOP Optionholder for every six Non-ESOP Options held by them as at the Implementation Date (rounded down to the nearest whole number of Unilife Corporation Non-ESOP Options) on the terms set out in clause 7.3 below.
- 7.2 The offers set out in clause 7.1 will be conditional upon:
- 7.2.1 the Share Scheme becoming Effective; and
  - 7.2.2 ASX granting a waiver on or before the Implementation Date of the requirement under Listing Rule 6.23 to obtain Shareholder approval for the cancellation of the Non-ESOP Options.

### **Terms of Unilife Corporation Non-ESOP Options**

- 7.3 Each Unilife Corporation Non-ESOP Option issued in accordance with clause 7.1 will:
- 7.3.1 have an exercise price per option equal to six times the exercise price per option of the relevant Non-ESOP Options it replaces;
  - 7.3.2 have an exercise period equal to the unexpired exercise period of the relevant Non-ESOP Options it replaces;
  - 7.3.3 be vested to the same extent and have the same terms as to vesting as the relevant Non-ESOP Options it replaces; and
  - 7.3.4 otherwise be issued on the terms of the Unilife Corporation Option Deeds.

## **8 Conversion of Company to a proprietary company**

- 8.1 Within 10 Business Days following implementation of the Share Scheme, Unilife Corporation will pass a special resolution to convert the Company from a public company to a proprietary company limited by shares and lodge all necessary documentation with ASIC to give effect to the conversion of the Company from a public company to a proprietary company.

## **9 Termination**

### **Termination by notice**

- 9.1 Without prejudice to any other rights of termination under this Agreement, either Party may terminate this Agreement by giving the other Party written notice at any time before 8.00am on the Second Court Hearing Date if:



- 9.1.1 the other Party is in material breach of any term of this Agreement and:
  - (a) the Party wishing to terminate has given the other Party a written notice:
    - (i) setting out details of the breach; and
    - (ii) stating its intention to terminate, and
  - (b) the breach continues to exist five Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Hearing Date) from the date the notice is given; or
- 9.1.2 the Board withdraws its recommendation of the Schemes.

#### **Automatic termination**

- 9.2 All of the obligations in this Agreement with respect to a Scheme will terminate automatically without the need for action by any Party in the event that:
  - 9.2.1 the Independent Expert opines that such Scheme is not fair and reasonable and in the best interests of the Shareholders or Optionholders (as relevant); or
  - 9.2.2 the Company's Shareholders or Optionholders (as relevant) fail to approve such Scheme by the necessary majorities at the relevant Scheme Meeting; or
  - 9.2.3 the Court refuses to grant an order convening any required Scheme Meeting or approving such Scheme and either the Parties agree not to conduct an appeal or the Parties agree to conduct an appeal but the appeal is unsuccessful; or
  - 9.2.4 such Scheme is not approved by the Court under section 411(4)(b) of the Corporations Act on or before the Sunset Date.

#### **Mutual termination**

- 9.3 This Agreement may be terminated at any time by mutual consent of the Parties, provided that such consent to terminate is in writing and is signed by each of the Parties.

#### **Effect of termination**

- 9.4 If either the Company or Unilife Corporation terminates this Agreement under clauses 2.11 or 9.1 or this Agreement terminates automatically under clause 9.2, this Agreement and the Parties' obligations under it cease without any liability or obligation on behalf of the Parties other than those obligations under this clause and clauses 10, 12 and 13.
- 9.5 Termination of this Agreement under clause 9 does not affect any accrued rights of a Party in respect of a breach of this Agreement prior to termination.

## **10 Public announcements and disclosure**

### **Public announcements**

- 10.1 Neither Party may make a public announcement about this Agreement, the Information Memorandum or the Schemes unless:
  - 10.1.1 the other Party has approved the form of the announcement; or

- 10.1.2 the law or the Listing Rules requires an announcement to be made, subject to clause 10.2.

#### **Required disclosure**

- 10.2 If the law or the Listing Rules require a Party to make an announcement or disclosure about either the subject of this Agreement or the Information Memorandum, that Party must give the other Party as much notice as is reasonably practical and to the extent reasonably practical consult with the other Party about the form and content of the announcement or disclosure.

#### **Privacy Act**

- 10.3 Each Party acknowledges that the other has obligations under the Privacy Act 1988 (Cth) in relation to personal information (defined as any information identifying or potentially identifying an individual) in its possession and forming part of the Party's confidential information. Each Party undertakes to comply with these obligations to the same extent and degree as the Party from whom each has obtained the information is bound to observe them.

### **11 Buy back of shares in Unilife Corporation**

- 11.1 Within 10 Business Days following the implementation of the Share Scheme, Unilife Corporation will buy back the Unilife Corporation Shares issued to the Company on incorporation for a nominal consideration of US\$1.00 in accordance with the requirements of Delaware law.

### **12 Costs and stamp duty**

- 12.1 Subject to clause 12.2, each Party must bear its own costs and expenses (including professional fees and stamp duty) incurred by it in connection with the negotiation, preparation and execution of this Agreement and the implementation or attempted implementation of the Schemes.
- 12.2 Unilife Corporation must pay all stamp duty and any related fines or penalties in respect of this Agreement, the Deeds Poll and the acquisition of the Scheme Shares in accordance with the Share Scheme.

### **13 Miscellaneous**

#### **Notices**

- 13.1 Any notice, demand, consent or other communication (a **Notice**) given or made under this Agreement:
- 13.1.1 must be in writing and signed by a person duly authorised by the sender;
- 13.1.2 must be delivered to the intended recipient by prepaid post or by hand or fax to the address or fax number below or the address (being an address in Australia) or fax number last notified by the intended recipient to the sender:

**Company:**

Address: Level 11, 1 Chifley Square,  
Sydney NSW 2000 Australia

Fax: (02) 8346 6511

Attention: Mr Jeff Carter

**Unillife Corporation:**

Address: 633 Lowther Road  
Lewisberry, Pennsylvania 17339  
United States of America  
Fax: + 1 717 938 9364  
Attention: Mr Alan Shortall

13.1.3 will be taken to be duly given or made:

- (a) in the case of delivery in person, when delivered;
- (b) in the case of delivery by post:
  - (i) within Australia to an Australian address, two Business Days after the date of posting; and
  - (ii) in any other case, 10 Business Days after the date of posting;
- (c) in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day in that place.

**No waiver**

13.2 No failure to exercise nor any delay in exercising any right, power or remedy by a Party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the Party granting that waiver unless made in writing.

**Remedies cumulative**

13.3 The rights, powers and remedies provided to each Party in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or by any agreement.

**Entire agreement**

13.4 This Agreement contains the entire agreement between the Parties as at the date of this Agreement with respect to its subject matter and supersedes all prior agreements and understandings between the Parties in connection with it.

**Amendment**

13.5 No amendment or variation of this Agreement is valid or binding on a Party unless made in writing executed by the Company and Unillife Corporation which may so

make an amendment or variation notwithstanding that one or more other persons may be entitled to the benefit of all or any of the provisions of this Agreement.

#### **Assignment**

- 13.6 The rights and obligations of each Party under this Agreement are personal. They cannot be assigned, encumbered or otherwise dealt with and no Party may attempt, or purport, to do so without the prior consent of the other Party.

#### **Consents or approvals**

- 13.7 A Party may:
- 13.7.1 give conditionally or unconditionally; or
  - 13.7.2 withhold,
- its approval or consent in its absolute discretion unless this Agreement expressly provides otherwise.

#### **No merger**

- 13.8 The rights and obligations of the Parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

#### **Further assurances**

- 13.9 Each Party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

#### **Severability of provisions**

- 13.10 Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

#### **Counterparts**

- 13.11 This Agreement may be executed in any number of counterparts. All counterparts together will be taken to constitute one instrument, it being understood that both Parties need not sign the same counterpart.

#### **GST**

- 13.12 Unless expressly included, the consideration for any supply under or in connection with this Agreement does not include GST.
- 13.13 To the extent that any supply made by a Party to another Party (**Recipient**) under or in connection with this Agreement is a taxable supply and a tax invoice has been provided to the Recipient, the Recipient must pay, in addition to the consideration to be provided under this Agreement for that supply (unless it expressly includes GST), an amount equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.
- 13.14 The amount of GST payable in accordance with clause 13.13 will be paid at the same time and in the same manner as the consideration otherwise payable for the supply is provided.

## 14 Governing law and jurisdiction

- 14.1 This document is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis. Definitions and interpretation

## 15 Definitions and interpretations

### Definitions

- 15.1 In this Agreement the following definitions apply:

**APRA** means the Australian Prudential Regulation Authority.

**ASIC** means the Australian Securities and Investments Commission.

**ASTC** means ASX Settlement and Transfer Corporation Pty Limited (ABN 49 008 504 532).

**ASX** means ASX Limited (ACN 008 624 691) or the securities market which it operates, as the context requires.

**Board** means the Board of Directors of the Company from time to time.

**Business Day** means a day that is not a Saturday, Sunday or a public holiday or bank holiday in Sydney, Australia.

**CDI** means the CHESS Depositary Interest to be issued in connection with the Share Scheme representing an interest in one sixth of a Unilife Corporation Share.

**CDI Register** has the meaning given to that term in the ASTC Settlement Rules.

**CHESS Depositary Interest** has the meaning given to that term in the ASTC Settlement Rules.

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

**Court** means the Federal Court of Australia or any other court of competent jurisdiction under the Corporations Act agreed in writing by the Company and Unilife Corporation.

**Deeds Poll** means the Share Scheme Deed Poll and the Option Scheme Deed Poll.

**Depositary** has the meaning given to it in the ASTC Settlement Rules.

**Directors** means the directors of the Company.

**Despatch Date** means the day that the Information Memorandum is despatched to Shareholders and Optionholders.

**Effective** means, when used in relation to a Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the Court order made under section 411(4)(b) of the Corporations Act in relation to that Scheme.

**Effective Date** means the date on which a Scheme becomes Effective.

**ESOP** means the Unilife Medical Solutions Limited Employee Share Option Plan.

**First Court Hearing Date** means the date the Court hears the application to order the convening of the Scheme Meetings under section 411(1) of the Corporations Act.

**Government Agency** means:

- (a) a government, whether foreign, federal, state, territorial or local;
- (b) a department, office or minister of a government (whether foreign, federal, state, territorial or local) acting in that capacity; or
- (c) a court, administrative agency, arbitration tribunal, commission, delegate, instrumentality, agency, board, or other government, semi-government, judicial, administrative, monetary or fiscal authority, whether statutory or not and whether foreign, federal, state, territorial or local,

and includes ASX, ASIC, the Takeovers Panel and APRA.

**GST** means goods and services tax.

**Implementation Date** means the third Business Day following the Scheme Record Date.

**Independent Expert** means the independent expert in respect of the Schemes appointed by the Company in accordance with clause 6 to consider whether the Schemes are fair and reasonable to and in the best interests of Shareholders and Optionholders.

**Ineligible Overseas Shareholder** means a Scheme Shareholder who is registered in the Register with an address outside Australia and its external territories, New Zealand, United Kingdom, Ireland, France, Malta, Hong Kong, Croatia and the United States or any other country agreed to by the Company and Unilife Corporation.

**Information Memorandum** means the document containing the information described in clause 6.2.1 to be approved by the Court and to be despatched to Shareholders and Optionholders to assist them in deciding on how to vote on the Schemes.

**Listing Rules** means the official listing rules of ASX as amended from time to time.

**Lodgement Date** means the date of lodgement of the Information Memorandum with ASIC.

**Nominee** means the nominee selected by Unilife Corporation prior to the Implementation Date for the purposes of clause 2.1.7.

**Non-ESOP Options** means the options issued to certain consultants and advisers to the Company and other third parties all of which were issued outside of the ESOP.

**Option Scheme** means the proposed scheme of arrangement, substantially in the form set out in Annexure 2, under Part 5.1 of the Corporations Act between the Company and Scheme Optionholders as described in clause 4, subject to any alterations or conditions made or required by the Court and approved in writing by the Parties.

**Option Scheme Consideration** means the consideration for the cancellation of the Options as set out in clause 4.3.

**Option Scheme Deed Poll** means the deed poll to be executed by Unilife Corporation substantially in the form of Annexure 4, under which Unilife Corporation covenants in favour of Scheme Optionholders to perform its obligations under this Agreement and the obligations contemplated of it under the Option Scheme, with such amendments as are approved by the Court or as the Company and Unilife Corporation may otherwise agree.

**Option Scheme Meeting** means the meeting of Optionholders ordered by the Court to be convened under section 411(1) of the Corporations Act to consider the Option Scheme.

**Optionholder** means a person registered in the Company's option register as a holder of Options.

**Options** means options issued under the ESOP entitling holders to subscribe for Shares.

**Parties** mean the Company and Unilife Corporation.

**Proposed Transaction** means the redomiciliation transaction which is to be effected on the Implementation Date, under which:

- (a) Unilife Corporation will acquire all of the Shares under the Share Scheme;
- (b) the Company will cancel all of the Options under the Option Scheme;
- (c) the Company will cancel all of the Non-ESOP Options; and
- (d) the existing security holders of the Company will receive Unilife Corporation Shares (or CDIs), Unilife Corporation Options and Unilife Corporation Non-ESOP Options (as relevant).

**Register** means the Company's register of shareholders.

**Regulatory Consents** has the meaning given to that term in clause 2.1.2.

**Related Bodies Corporate** has the meaning given to that term in the Corporations Act.

**Scheme Meetings** means the Share Scheme Meeting and the Option Scheme Meeting.

**Scheme Optionholder** means an Optionholder as at the Scheme Record Date.

**Scheme Record Date** means 7.00 pm on the fifth Business Day after the Effective Date or any other date agreed with ASX to be the record date for the Schemes to determine entitlements to receive consideration pursuant to the Schemes.

**Scheme Shareholder** means a Shareholder as at the Scheme Record Date.

**Scheme Shares** means all Shares held by Scheme Shareholders as at the Scheme Record Date.

**Schemes** means the Share Scheme and the Option Scheme.

**Second Court Hearing Date** means the first day on which an application to the Court for orders under section 411(4)(b) of the Corporations Act approving the Schemes is heard.

**Share** means one fully paid ordinary share in the Company.

**Share Scheme** means the proposed scheme of arrangement, substantially in the form set out in Annexure 1, under Part 5.1 of the Corporations Act between the Company and Scheme Shareholders as described in clause 3 subject to any alterations or conditions made or required to be made by the Court and approved in writing by the Parties.

**Share Scheme Consideration** means the consideration for the transfer of the Scheme Shares to Unilife Corporation as set out in clause 3.2.

**Share Scheme Deed Poll** means the deed poll to be executed by Unilife Corporation substantially in the form of Annexure 3, under which Unilife Corporation covenants in favour of Scheme Shareholders to perform its obligations under this Agreement and the obligations contemplated of it under the Share Scheme, with such amendments as are approved by the Court or as the Company and Unilife Corporation may otherwise agree.

**Share Scheme Meeting** means the Shareholders' meeting ordered by the Court to be convened under section 411(1) of the Corporations Act to consider the Share Scheme.

**Shareholder** means each person who is registered in the Register as a holder of Shares.

**Subsidiary** has the meaning given to that term in section 46 of the Corporations Act.

**Sunset Date** means 5.00pm on 30 June 2010 or such other date and time agreed in writing between Unilife Corporation and the Company.

**Unilife Corporation Employee Stock Option Plan** means the Unilife Corporation Employee Stock Option Plan in the form agreed between the Parties to be adopted by Unilife Corporation in accordance with clause 4.1.

**Unilife Corporation Non-ESOP Options** means options granted by Unilife Corporation outside the Unilife Corporation Employee Stock Option Plan.

**Unilife Corporation Option Deeds** means the deeds under which the Unilife Corporation Non-ESOP Options will be granted by Unilife Corporation to each holder of Non-ESOP Options.

**Unilife Corporation Options** means options to subscribe for Unilife Corporation Shares under the Unilife Corporation Employee Stock Option Plan.

**Unilife Corporation Shares** means shares of fully paid common stock in the capital of Unilife Corporation.

## Interpretation

- 15.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
- 15.2.1 The singular includes the plural and conversely.
  - 15.2.2 If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
  - 15.2.3 A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
  - 15.2.4 A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this Agreement.
  - 15.2.5 A reference to A\$ or cents is to the lawful currency of Australia.
  - 15.2.6 The clause headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.
  - 15.2.7 A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, varied,



supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.

- 15.2.8 A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
- 15.2.9 A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- 15.2.10 Words and phrases not specifically defined in this Agreement have the same meanings (if any) given to them in the Corporations Act.
- 15.2.11 A reference to time is a reference to time in Sydney, Australia.
- 15.2.12 A reference to the word 'include' or 'including' is to be construed without limitation.
- 15.2.13 If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing must be done on the immediately succeeding Business Day.
- 15.2.14 The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.
- 15.2.15 A reference to a Party using its best endeavours or reasonable endeavours does not include a reference to that Party paying money or providing other valuable consideration to or for the benefit of any person (and an obligation on a Party to use its best or reasonable endeavours does not oblige that Party to pay money or provide other valuable consideration to or for the benefit of any person).

### Construction

- 15.3 This Agreement must not be construed adversely to a Party solely because that Party or its solicitors were responsible for preparing it.

### Payments

- 15.4 Unless otherwise expressly provided in this Agreement, where an amount is required to be paid to a Party (**Receiving Party**) by another Party under this Agreement, that amount must be paid:
  - 15.4.1 in immediately available and irrevocable funds by electronic transfer to a bank account or accounts notified by the Receiving Party in writing on or before the due date for payment or in other such immediately payable funds as the Parties agree; and
  - 15.4.2 without deduction, withholding or set-off.



**Execution and date**

Executed as an agreement.

Executed by **Unilife Medical Solutions Limited** acting by the following persons:

.....  
Signature of director

.....  
Name of director (print)

.....  
Signature of director/company secretary

.....  
Name of director/company secretary (print)

Executed by **Unilife Corporation** acting by the following persons:

.....  
Signature of duly authorised officer

.....  
Name of duly authorised officer (print)

.....  
Signature of duly authorised officer

.....  
Name of duly authorised officer (print)



**Annexure 1**  
**Share Scheme**



**Annexure 2**  
**Option Scheme**



**Annexure 3**  
**Share Scheme Deed Poll**



## **Annexure 4**

### **Option Scheme Deed Poll**

## **Appendix 2**

### **Independent Expert's Report**



## **Unilife Medical Solutions Limited**

### **Independent Expert's Report in relation to Proposed Redomiciliation**

27 November 2009



## Engagement

This Financial Services Guide is issued in relation to an independent expert's report ("**Report**") prepared by PKF Corporate Advisory (East Coast) Pty Limited (ABN 70 050 038 170) ("**PKFCA**") at the request of the directors ("**Directors**") of Unilife Medical Solutions Limited ("**Unilife**") in relation to proposed schemes of arrangement ("**Schemes**") effecting redomiciliation of Unilife to the USA ("**Proposed Transaction**"). The Report expressing our opinion as to whether each Scheme is "in the best interest" of the Shareholders of Unilife as a whole and Optionholders of Unilife as a whole under the Corporations Act 2001 is intended to accompany an information memorandum containing notices of meetings ("**Notices**") and an explanatory statement ("**Explanatory Statement**") in relation to the Schemes and the information memorandum in relation to the listing of Unilife Corporation on the Australian Securities Exchange, that is to be provided by the Directors to Shareholders and Optionholders.

## Australian Financial Services Licence

PKFCA holds an Australian Financial Services Licence (Licence No: 247420) ("**Licence**"). As a result of our Report being provided to you, PKFCA is required to issue to you, as a retail client, a Financial Services Guide ("**FSG**"). The FSG includes information on the use of general financial product advice and is issued so as to comply with our obligations as holder of an Australian Financial Services Licence.

## Financial services PKFCA is licensed to provide

The Licence authorises PKFCA to provide reports for the purposes of acting for and on behalf of clients in relation to proposed or actual mergers, acquisitions, takeovers, corporate restructures or share issues, to carry on a financial services business to provide general financial product advice for securities and certain derivatives (limited to old law securities, options contracts and warrants) to retail and wholesale clients.

PKFCA provides financial product advice by virtue of an engagement to issue the Report in connection with the issue of securities of another person. Our Report includes a description of the circumstances of our engagement and identifies the party who has engaged us. You have not engaged us directly but will be provided with a copy of our Report (as a retail client) because of your connection with the matters on which our Report has been issued. Our Report is provided on our own behalf as an Australian Financial Services Licensee authorised to provide the financial product advice contained in the Report.

## General financial product advice

Our Report provides general financial product advice only, and does not provide personal financial product advice, because it has been prepared without taking into account your particular personal circumstances or objectives (either financial or otherwise), your financial position or your needs.

Some individuals may place a different emphasis on various aspects of potential investments. An individual's decision in relation to the Proposed Transaction described in the Document may be influenced by their particular circumstances and, therefore, individuals should seek independent advice.

## Benefits that PKFCA may receive

PKFCA has charged fees for providing our Report. The basis on which our fees will be determined has been agreed with, and our fees will be paid by, the person who engaged us to provide the Report. Our fees have been agreed on either a fixed fee or time cost basis.

## Remuneration or other benefits received by our employees

All our employees receive a salary. Employees may be eligible for bonuses based on overall productivity and contribution to the operation of PKFCA or related entities but any bonuses are not directly connected with any assignment and in particular are not directly related to the engagement for which our Report was provided.

## Referrals

PKFCA does not pay commissions or provide any other benefits to any parties or person for referring customers to us in connection with the reports that PKFCA is licensed to provide.

## Associations and relationships

PKFCA is the licensed corporate advisory arm of PKF (East Coast Practice), Chartered Accountants and Business Advisers. The directors of PKFCA may also be partners in PKF New South Wales, Chartered Accountants and Business Advisers. PKF (East Coast Practice), Chartered Accountants and Business Advisers is comprised of a number of related entities that provide audit, accounting, tax and financial advisory services to a wide range of clients. PKFCA's contact details are as set out on our letterhead.

### Complaints resolution

As the holder of an Australian Financial Services Licence, we are required to have a system for handling complaints from persons to whom we provide financial product advice. All complaints must be in writing, addressed to The Complaints Officer, PKF Corporate Advisory (East Coast) Pty Limited, Level 10, 1 Margaret Street, Sydney NSW 2000.

On receipt of a written complaint we will record the complaint, acknowledge receipt of the complaint and seek to resolve the complaint as soon as practical. If we cannot reach a satisfactory resolution, you can raise your concerns with the Financial Ombudsman Service Limited ("**FOS**"). FOS is an independent body established to provide advice and assistance in helping resolve complaints relating to the financial services industry. PKFCA is a member of FOS. FOS may be contacted directly via the details set out below.

Financial Ombudsman Service Limited  
GPO Box 3  
Melbourne VIC 3001  
Toll free: 1300 78 08 08  
Facsimile: (02) 9240 9821  
Email: [info@fos.org.au](mailto:info@fos.org.au)

27 November 2009

The Directors  
Unilife Medical Solutions Limited  
Suite 3, Level 11  
1 Chifley Square  
Sydney NSW 2000

Dear Directors

## **INDEPENDENT EXPERT'S REPORT IN RELATION TO PROPOSED SCHEMES OF ARRANGEMENT BY UNILIFE MEDICAL SOLUTIONS LIMITED**

### **PROPOSAL**

On 1 September 2009, Unilife Medical Solutions Limited ("**Unilife**") announced that it had entered into a Merger Implementation Agreement ("**MIA**") with Unilife Corporation ("**Unilife Corporation**"), a wholly-owned subsidiary of Unilife incorporated in the State of Delaware in the United States of America ("**USA**").

The purpose of the MIA is to facilitate the redomiciliation of Unilife from Australia to the USA, as recommended to shareholders and optionholders of Unilife ("**Securityholders**") by the Directors of Unilife ("**Directors**") ("**Proposed Transaction**"). Under the Proposed Transaction, Unilife Corporation will become the holding company of Unilife and Securityholders will exchange their existing securities in Unilife for equivalent interests in Unilife Corporation.

Holders ("**Shareholders**") of issued fully paid ordinary shares in Unilife ("**Shares**") will be able to elect to receive shares of common stock in Unilife Corporation ("**Unilife Corporation Shares**") which may be held as Common Stock ("**Common Stock**") or CHESS Depository Interests ("**CDI**")s in Unilife Corporation on the basis of 1 Unilife Corporation Share for every 6 Shares held or one Unilife Corporation CDI for every Share held, subject in each case to rounding. The CDIs will be tradeable on the Australian Securities Exchange ("**ASX**"). Unilife Corporation will seek a new listing on the NASDAQ exchange of the USA and, if successful, the Common Stock will be tradeable on NASDAQ<sup>1</sup>.

Holders ("**Optionholders**") of options over unissued ordinary shares in Unilife ("**Options**") issued under the Unilife's Employee Share Option Plan ("**ESOP**") will be issued on the basis of 1 Unilife Corporation Option for every 6 Options held.

Holders ("**Standalone Optionholders**") of options over unissued ordinary shares in Unilife (which were issued outside the ESOP to certain consultants and advisers to Unilife and other third parties) ("**Standalone Options**") will be cancelled in exchange for equivalent options in Unilife Corporation.

Following implementation of the Proposed Transaction, Shareholders will own all the shares in Unilife Corporation and Unilife's business, operations, management and employees are not expected to change materially.

Tel: 61 2 9251 4100 | Fax: 61 2 9240 9821 | [www.pkf.com.au](http://www.pkf.com.au)  
PKF Corporate Advisory (East Coast) Pty Limited | Australian Financial Services Licence 247420 | ABN 70 050 038 170  
Level 10, 1 Margaret Street | Sydney | New South Wales 2000 | Australia  
DX 10173 | Sydney Stock Exchange | New South Wales

The PKF East Coast Practice is a member of the PKF International Limited network of legally independent member firms. The PKF East Coast Practice is also a member of the PKF Australia Limited national network of legally independent firms each trading as PKF. PKF East Coast Practice has offices in NSW, Victoria and Brisbane. PKF East Coast Practice does not accept responsibility or liability for the actions or inactions on the part of any other individual member firm or firms.

<sup>1</sup> Subject to NASDAQ approving the listing application and other USA regulatory requirements being met.

## APPROVAL OF PROPOSED TRANSACTION

The Proposed Transaction is subject to approval by the Shareholders and Optionholders and the Australian Federal Court (“**Court**”).

The Proposed Transaction will be implemented by way of Shareholders and Optionholders approving two schemes of arrangement under Australian law (“**Schemes**”) at separate scheme meetings; one in respect of the Shareholders and the other in respect of the Optionholders. The Share Scheme is not conditional on the Option Scheme and accordingly, if the Share Scheme is approved and the Option Scheme is not approved, Unilife has indicated that the Share Scheme will proceed.

A scheme of arrangement is not being proposed in relation to Standalone Options. The cancellation of Standalone Options and issue of equivalent options in Unilife Corporation will be implemented by a contract between Unilife Corporation, Unilife and each Standalone Optionholder.

Under Section 411 of the Corporations Act, 2001 (Cth) (“**Corporations Act**”), a scheme of arrangement between a company and:

- its creditors, must be approved by a majority in number of creditors whose debts or claims against the company amount in the aggregate to at least 75% of the total amount of the debts and claims of the creditors present and voting in person or by proxy; or
- its members, unless the Court orders otherwise, must be approved by a majority in number of each class of member present and voting (either in person or by proxy) at the meeting, and where the company has a share capital, by 75% of the votes cast on the resolution.

For the purposes of Section 411, the Optionholders will be treated as creditors of Unilife.

If approved by each class of creditor or member, the scheme of arrangement is then subject to approval by the Court.

## PURPOSE OF REPORT

Part 3 of Schedule 8 to the Corporations Regulations prescribes the information to be sent to members in relation to a proposed scheme of arrangement pursuant to Section 411. Part 3 of Schedule 8 requires an independent expert’s report (“**IER**”) to be prepared in relation to a scheme of arrangement when there is a common director of parties to the scheme. In those circumstances, the IER must state whether the scheme of arrangement is in the best interest of the members of the company the subject of the scheme and set out reasons for that opinion.

We understand that Unilife and Unilife Corporation have common directors. Consequently, an IER is required in respect of the proposed scheme of arrangement regarding members.

We understand that the provision of an IER is necessary in order to obtain approval by the Court and the Directors are desirous of obtaining an IER to assist in fulfilling their duties such that the Shareholders and Optionholders are given the necessary information to enable them to make informed decisions in relation to the Schemes.

PKF Corporate Advisory (East Coast) Pty Limited (“**PKFCA**”) has been appointed to prepare this IER setting out whether, in our opinion, the Scheme is fair and reasonable to, and in the best interest of each the Shareholders as a whole and the Optionholders as a whole (“**Report**”).

The scheme meetings of Unilife are scheduled to be held on or around 8 January 2010. An information memorandum (“**Information Memorandum**”) containing the notices of meeting setting out the resolutions to be considered (“**Notices**”), an explanatory statement in relation to the Schemes (“**Explanatory Statement**”) and an information memorandum in relation to the listing of Unilife Corporation on the ASX and this Report will be sent to Shareholders and Optionholders.

Shareholders are also being asked to approve the Unilife Corporation 2009 Stock Incentive Plan (“SIP”) and the grant of certain incentives to directors of Unilife Corporation at an Extraordinary General meeting to be held on the same day as the Scheme meetings (“January EGM”). This Report does not address or provide any opinion in respect of the SIP or grant of incentives.

## CONCLUSIONS

### Overall conclusion

Based on the analysis set out in the body of this Report, we conclude that the Proposed Transaction is “fair and reasonable” to, and hence, “in the best interest” of, the Shareholders as a whole and also in respect of the Optionholders as a whole.

In summary, it is our opinion that Shareholders as a whole and Optionholders as a whole are likely to be better off if the Proposed Transaction is implemented than if it is not, despite the possibility of some adverse impacts.

The Proposed Transaction has no material effect on control or management of Unilife. The directly measurable benefits of the Proposed Transaction are limited and the expected benefits primarily relate to the expected market for Unilife Shares, (including better access to the USA capital markets), enhanced ability to attract suitable personnel via equity-based rewards and enhanced opportunities to build the business of Unilife. These expected benefits involve judgements about relative advantages and disadvantages rather than matters that can be empirically verified. However, we note that almost all the operations and management of Unilife have been re-located in the USA and it appears logical that a USA-based entity should be the holding entity of the group.

It is our opinion that, over time, if not immediately, there should be increasing demand for Unilife Shares from USA-based investors particularly as a result of the proposed listing on the NASDAQ. However, ultimately, the price of and demand for, Unilife Shares will be determined by its business performance. Also, there is no certainty that the NASDAQ listing will occur and, if approved, the Proposed Transaction will be implemented regardless of whether Unilife Corporation will be listed on the NASDAQ.

At the moment, the majority in number of the Shareholders are Australian, rather than USA-based. There is no guarantee that, over time, there will be demand for Unilife Corporation Shares by USA-based investors and that increased trading liquidity will occur or that Unilife will become re-rated and the Unilife Corporation Shares re-priced.

There are some potential or actual costs, disadvantages and risks of implementing the Proposed Transaction. In our opinion, the more significant potential or actual costs, disadvantages and risks of implementing the Proposed Transaction are as follows:

- different corporate regulation arising from the change in jurisdiction. Some elements of USA /Delaware corporate regulation may be less favourable for Shareholders and, ultimately those Optionholders that become Shareholders upon exercising their Options, than the current Australian corporate regulation. In particular, there is an opportunity for control of Unilife to change without an offer being made to all Shareholders or Optionholders. On the other hand, Shareholders have greater protections in some respects. In any event, the USA and Delaware are regarded as a satisfactory jurisdiction by many USA corporations that are incorporated in Delaware;
- the potentially reduced access to management for Australian investors and different style of reporting (to comply with USA requirements);
- the loss of potential dividend franking credits if Unilife Corporation makes a dividend payment in the future;
- the potential loss of demand for the Group's securities from Australian investors;
- the potential exposure to USA estate taxes under certain circumstances;
- increased exposure to USA law and potentially the more litigious environment in the USA;

- the global group headed by Unilife Corporation may be subject to a higher overall tax burden after implementing the Proposed Transaction; and
- a risk that Australian tax losses may not be utilised.

There will be increased reporting requirements and compliance costs. Upon redomiciliation, Unilife will be subject to the USA Securities and Exchange Commission (“SEC”) reporting requirements even if it is not NASDAQ listed. If Unilife Corporation becomes listed on NASDAQ there will be additional reporting requirements and compliance costs. However, these costs arise from the decision to seek such listing and not from the Proposed Transaction itself.

In our opinion, the potential or actual costs, disadvantages and risks are not inconsequential but do not outweigh the potential advantages. However, they arise from Unilife repositioning itself in the world’s largest capital market and in the country that is expected to form its largest market and are the costs of doing so.

The Proposed Transaction is not necessarily a critical transaction to be undertaken by Unilife, which could remain in its present position (and will do so if the Proposed Transaction is not approved). Some Australian companies (many of which are significantly larger than Unilife) source the majority of their earnings from overseas and have not sought to incorporate overseas, although others have done so. There is no guarantee that Unilife’s future performance will be materially inhibited if the Proposed Transaction does not proceed.

## **Basis of overall conclusion**

Set out below are the matters that we consider relevant in assessing whether the Proposed Transaction is “fair” and/or “reasonable” to, and hence, “in the best interest” of, the Shareholders as a whole and the Optionholders as a whole.

### ***Fair***

#### ***Shareholders***

There will be no change in the essential ownership and other commercial interests of the Shareholders as shareholders of Unilife Corporation from their position as shareholders of Unilife. Shareholders, individually and as a group, will retain the same commercial ownership interest in Unilife Corporation as in Unilife. In our opinion, the redomiciliation of Unilife as a result of implementing the Proposed Transaction is not expected to have any adverse impact on the value of Shareholders’ ownership interests and in fact, one of the purposes of the redomiciliation is to enhance the opportunity to increase the value of Shareholders’ ownership interests, by measures having the object of growing the business of Unilife and encouraging investment from USA investors.

Accordingly, in our opinion, from the viewpoint of expressing an opinion on the question of a comparison of the value of the consideration offered (shares in Unilife Corporation) for the existing Shares, we believe that there is essentially commercial equivalency. Therefore, we consider the Proposed Transaction fair to the Shareholders.

#### ***Optionholders***

Similarly to the considerations regarding Shareholders, there will be no change in the essential ownership and other commercial interests of the Optionholders as optionholders of Unilife Corporation from their position as optionholders of Unilife. Optionholders, individually and as a group, will retain the same commercial ownership interest in Unilife Corporation as in Unilife. In our opinion, the redomiciliation of Unilife as a result of implementing the Proposed Transaction is not expected to have any adverse impact on the value of Optionholders’ ownership interests and in fact one of the purposes of the redomiciliation is to enhance the opportunity to increase the value of Optionholders’ ownership interests.



Accordingly, in our opinion, from the viewpoint of expressing an opinion on the question of a comparison of the value of the consideration offered (options in Unilife Corporation) for the existing Options, we believe that there is essentially commercial equivalency. Therefore, we consider the Proposed Transaction fair to the Optionholders.

However, we note that it is not possible to determine with certainty the effect of implementing the Proposed Transaction on the market price of the Common Stock, CDIs or Unilife Corporation Options as compared with the Shares and Options.

## **Reasonable**

### **Advantages**

Approval of the Proposed Transaction has the following potential advantages:

#### *Potentially increased ability to raise funds*

Unilife's core business and markets are currently located in the USA. As a result it is our opinion that Unilife and Unilife Corporation are likely to have more efficient access to the USA capital markets after implementing the Proposed Transaction. It is also our opinion that the USA capital markets provide credible sources of funding for medical equipment companies, with greater capacity for investment than the Australian market, although in recent times, as a result of the global financial crisis, investors have generally become more risk averse and financing capacity may have diminished from conditions prevailing prior to the onset of the global financial crisis.

As set out in Table 16 and Table 17, the health care sector in the United States is substantially larger than in Australia. We believe that this can only enhance Unilife's ability going forward in maximising both share price and ability to raise capital.

#### *Potentially improved appeal to USA investors and analysts*

Currently, Unilife is an Australian-listed company that conducts operations in the USA through a subsidiary. USA investors may have certain concerns as a result of this structure that prevent them from investing in Unilife and this will be likely to reduce Unilife's ability to attract capital and investor and analyst interest in the USA.

Implementing the Proposed Transaction may help to alleviate these concerns and facilitate both USA investors' and analysts' understanding and interest in Unilife. This may be important to enhancing the competitiveness of Unilife when competing with its peers for funding from similar sources.

#### *Potentially improved attraction to employees*

Working for a USA-regulated employer may be of significance to some USA-based potential employees of Unilife.

Offering USA-based employees equity incentives in an Australian listed company may be less attractive than issuing equity incentives in a USA-based company. This stems largely from the fact that there are differences in Employee Share Option Plan ("ESOP") regulation between the two jurisdictions which may be difficult for employees to understand and USA-based employees are likely to be more familiar with USA arrangements.

#### *Retention of the ASX listing*

Unilife Corporation intends to have its securities traded on the ASX in the form of CDIs, providing Shareholders with the ability to trade CDIs on the ASX regardless of whether or not the NASDAQ listing of Common Stock eventuates.

Optionholders issued with Unilife Corporation options will retain the ability to receive a tradable security upon exercise of the Unilife Corporation options.

We note that the liquidity of CDIs and any NASDAQ listed Common Stock may be different to that of the existing Unilife Shares and it is not possible to determine whether the liquidity of either will be positively or negatively impacted as a result of implementing the Proposed Transaction.

We note that it is not possible to determine the effect of implementing the Proposed Transaction on the market price of the Common Stock, CDIs or Unilife Corporation options with any degree of certainty. An active trading market for the Common Stock in the USA may not develop and the trading price of Common Stock may fluctuate significantly.

#### *Potentially increased opportunity for joint venture arrangements and commercial partnering in the USA*

While we are advised that no joint venture or commercial partnering arrangement is in contemplation at this time, we are of the opinion that implementing the Proposed Transaction would result in greater potential for Unilife to attract commercial partnering arrangements in the USA in the future.

#### **Disadvantages**

Approval of the Proposed Transaction has the following disadvantages:

##### *Interests altered*

Upon implementing the Proposed Transaction, Shareholders and Optionholders will cease to hold interests in an Australian company governed by the Australian regulatory regime and capital markets and different corporate regulation arising from the change in jurisdiction will apply. Some elements of USA /Delaware corporate regulation may be less favourable for Shareholders and, ultimately those Optionholders that become Shareholders upon exercising their Options, than the current Australian corporate regulation. In particular, there is an opportunity for control of Unilife to change without an offer being made to all Shareholders or Optionholders.

The ASX listing of Unilife Corporation CDIs will render Unilife Corporation subject to the ASX Listing Rules, whilst ever the CDIs remain listed. The Unilife Corporation CDIs will allow investors to obtain the economic benefits of holding Common Stock. Investors will be able to vote by a number of methods, including instructing the nominee appointed by Unilife Corporation ("**Nominee**") that holds the Common Stock and issues the Unilife Corporation CDIs or, if they wish to vote in person, they may convert their CDIs to Shares prior to the relevant meeting. Holders of CDIs will also be entitled to attend meetings of Unilife Corporation Shareholders whilst ever relevant USA law at the time of the meeting does not prevent this.

We have also noted the following disadvantages associated with being a USA company:

- there are not the stringent takeover rules as currently in place in Australia;
- directors have the right to issue shares and share buybacks without the need for shareholder approval;
- there are limited rights for shareholders to call meetings; and
- no shareholder oppression rules equivalent to those that exist in Australia.

##### *Potentially additional litigation exposure*

As a result of implementing the Proposed Transaction, Unilife may have increased exposure to litigation claims arising from its domicile in the USA. However, given that the major operating subsidiary of Unilife is already based, and operates, in the USA, and the USA is regarded as being likely to be the largest target market for Unilife products, Unilife already has, and will continue to have, an exposure to USA based litigation, regardless of whether or not the Proposed Transaction is implemented.

##### *Potential loss of dividend franking credits*

If Unilife Corporation makes a dividend payment in the future, the benefit of any future potential dividend franking credits would be lost by implementing the Proposed Transaction (refer to section 9 of the Information Memorandum).



For Shareholders who are not US tax residents, upon payment of a dividend, Unilife Corporation will generally withhold dividend withholding tax.

Following implementation of the Proposed Transaction, certain Unilife Corporation Shareholders, Optionholders and Standalone Optionholders who are not residents or citizens of the USA may be subject to USA estate tax upon their death where the value of their US situated assets exceeds US\$60,000.

#### *Potential risk re double taxation*

The foreign earnings of a USA corporation may be subject to double-taxation. The USA has a very complex federal tax regime governing a USA parent corporation that owns USA and foreign subsidiaries and interests in other foreign corporations. As a result of this regime, the global group headed by Unilife Corporation may be subject to a higher overall tax burden after implementing the Proposed Transaction.

#### *Potential risk re utilisation of tax losses*

Implementing the Proposed Transaction will lead to increased complexity and a requirement to monitor the preservation and ongoing availability of the carried forward tax losses of the Australian tax consolidated group, including compliance with the alternative tax loss utilisation tests - the Continuity of Ownership Test and the Same Business Test. This is currently an issue of broader Australian Tax Office ("ATO") attention.

Certain limitations may apply to limit the use, for USA income tax purposes, of Unilife's historical Australian losses after the Proposed Transaction, possibly resulting in a higher overall tax burden for the Unilife Group.

#### *Potential adverse impacts on pricing and liquidity of Unilife Corporation Common Stock and CDIs*

We note that it is not possible to determine the effect of implementing the Proposed Transaction on the market price of the Common Stock, CDIs or Unilife Corporation options with any degree of certainty. An active trading market for the Common Stock in the USA may not develop and the trading price of Common Stock may fluctuate significantly.

It is possible that there would be a potential loss of demand for the Group's securities from Australian investors as a result of implementing the Proposed Transaction.

### **Other factors**

#### *Compliance requirements and costs*

If Unilife Corporation lists on the NASDAQ, there will be additional ongoing costs associated with regulatory compliance, administration and maintenance of the NASDAQ listing. This includes costs associated with the satisfaction of Section 404 of the 2002 Sarbanes-Oxley Act. However, these costs would also be incurred if Unilife remained domiciled in Australia and wished to seek NASDAQ listing.

The dual listing on both the ASX and NASDAQ is not expected to result in significant additional costs as Unilife will now complete financial reports compliant with USA Generally Accepted Accounting Principles ("GAAP"), as distinct from Australian requirements. We note that an application has been made to the ASX to waive the obligation of completing financial accounts compliant with Australian requirements. However, we are advised that such a waiver may not be granted immediately and even if granted, there will be some additional costs of maintaining compliance with ASX listing rules in order continue the quotation of CDIs on the ASX. These costs are not expected to be significant.

#### *Taxation implications*

Outlined below is our understanding of the key taxation implications of the Proposed Transaction for Unilife and its Securityholders, as set out in section 9 of the Information Memorandum.

### *Shareholders, non-ESOP Optionholders and ESOP Optionholders*

The taxation implications of the Proposed Transaction will vary for each Securityholder, based on their individual taxation situation. The Information Memorandum only provides general information and, accordingly, we recommend that each Securityholder seek their own independent taxation advice in relation to the specific tax impacts of the Proposed Transaction on their taxation position.

Unilife has stated that it has been advised that the exchange under the Schemes of Unilife Corporation Shares and Unilife Corporation Options for Shares and Options will not cause any Australian tax to be paid by Shareholders or Optionholders that are eligible and elect for capital gains tax rollover or are eligible for Division 13A employee share/option tax rollover.

In addition, Unilife has stated that class ruling applications have been lodged with the ATO seeking confirmation that the conditions for capital gains scrip for scrip rollover relief and Division 13A employee share/option scheme rollover relief are satisfied and that rollover relief is available in relation to the transfer of Shares to Unilife Corporation under the Share Scheme and the cancellation of Options under the Option Scheme. Shareholders and Optionholders will be advised of the outcome of the ruling process once the final rulings have been issued. There is no guarantee that the ATO will provide the rulings prior to the Scheme Meetings and receipt of the final ruling is not a condition to the implementation of the Schemes.

Unilife has stated that, subject to the limitations and qualifications set forth in section 9 of the Information Memorandum, it has been advised that the exchange of Shares for Unilife Corporation Shares should not cause any USA federal income tax to be paid by Shareholders and the exchange of Options or Standalone Options for Unilife Corporation Options or Unilife Corporation Standalone Options, respectively, should not cause any US federal income tax to be paid by Optionholders or Standalone Optionholders.

### *Unilife*

- Tax rate

As a USA corporation, Unilife Corporation will be taxed on its worldwide income. Therefore, a USA corporation is potentially subject to double-taxation on income earned outside the USA. Double taxation may be mitigated to the extent that the USA corporation qualifies for a credit for non-USA income taxes paid or accrued.

The foreign earnings of a USA corporation may be subject to double-taxation. The USA has a very complex federal tax regime governing a USA parent corporation that owns USA and foreign subsidiaries and interests in other foreign corporations. As a result of this regime, the global group headed by Unilife Corporation may be subject to a higher overall tax burden after implementing the Proposed Transaction.

The corporate income tax rate in Australia is a flat rate of 30%. In the USA, corporate income tax may be composed of both federal and state taxes. The USA federal corporate tax rate varies from 0% to 35% based on a series of thresholds of taxable income. The State of Delaware does not levy any state-based corporate income tax on companies incorporated within the State that do not conduct their business within Delaware. As Unilife Corporation's operations will be conducted primarily in Pennsylvania, it will not be subject to Delaware state taxes. However, there may be other state-based taxes that apply.

- Carried forward income tax losses

Unilife currently has Australian carried forward income tax losses. Upon implementing the Proposed Transaction, these losses will not be cancelled or lost, nor will Unilife cease its Australian tax residence. However, the use of these losses against future income or the ability to continue to carry them forward is dependent on meeting certain tests and earning Australian taxable income.

Certain limitations may apply to limit the use, for USA income tax purposes, of Unilife's historical Australian losses after the Proposed Transaction, possibly resulting in a higher overall tax burden for the Unilife Group.

### **Liquidity, Value & Share Price**

If the Proposed Transaction is implemented, it is the intention of Unilife to have Common Stock in the USA-domiciled Unilife Corporation traded on the ASX via CDIs.

It is not possible to determine with certainty the effect of implementing the Proposed Transaction on the market price of the Common Stock, CDIs or Unilife Corporation options as compared with Shares and Options.

The liquidity of the CDIs is likely to be different to the current liquidity of Unilife Shares traded on the ASX. It is not possible at this stage to determine with certainty whether liquidity will be positively or negatively impacted as a result of implementing the Proposed Transaction. Further, even if the liquidity of Unilife Corporation CDIs on the ASX could be determined, it would not be possible to determine the effect of the changes in liquidity on the market price and value of the shares with any degree of certainty.

### **Limitations**

This Report is subject to a number of limitations as set out in Section 1.4. In particular, we note that this Report is addressed only to the Australian Shareholders and Optionholders. We have not been requested to, and do not provide an opinion on the impact of the proposed change of domicile as it applies to Shareholders and Optionholders whose addresses at the date of this Report are recorded in Unilife's share register as being outside Australia or to Standalone Optionholders.

### **Current Market Conditions**

Our opinion is based on economic, market and other conditions prevailing at the date of this Report. Such conditions can change significantly over relatively short periods of time and such changes may result in our opinion becoming outdated and in need of revision. PKFCA reserves the right to revise any opinion in light of material information existing at the date of this Report that subsequently becomes known to PKFCA.

### **Shareholders and Optionholders' individual circumstances**

This report is general financial product advice only and PKFCA has not considered the objectives, financial situation or needs of individual Shareholders and Optionholders, or taken into account the effect of the Proposed Transaction on the particular circumstances of individual Shareholders and Optionholders. Individual Shareholders and Optionholders may be influenced by their particular circumstances and place a different emphasis on various aspects of the Proposed Transaction from that adopted in this Report. Accordingly, individual Shareholders and Optionholders may reach different conclusions as to whether or not the Proposed Transaction is fair and reasonable and hence "in their best interest" given their individual circumstances.

Before acting in relation to the Proposed Transaction, Shareholders and Optionholders should consider the appropriateness of the advice in this Report having regard to their own objectives, financial situation or needs and are advised to read the Information Memorandum issued by Unilife in relation to each Scheme and seek their own independent advice.

### **Summary**

This Summary should be read in conjunction with the balance of the Report that sets out in full the purpose, scope, basis of evaluation, limitations, analysis and our findings.

Approval or rejection of the Proposed Transaction is a matter for individual Shareholders and Optionholders based on their expectations as to expected value and future prospects and market conditions and their particular circumstances, including risk profile, liquidity preference, portfolio strategy and tax position. Shareholders and Optionholders should carefully consider the Information Memorandum. Shareholders and Optionholders who are in doubt as to the action they should take in relation to the Proposed Transaction should consult their own professional adviser.

Capitalised terms used in this Report have the meanings as set out in the Glossary in **Appendix 1**.

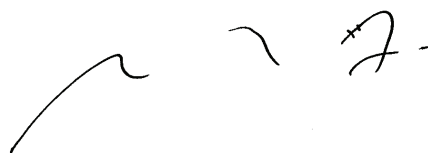
## Sources of Information

**Appendix 2** identifies the information referred to, and relied upon, by PKFCA during the course of preparing this Report and forming our opinion.

## Financial services guide

A financial services guide is attached to this Report.

Yours faithfully



**Vince Fayad**  
Director

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## 1 SCOPE AND LIMITATIONS

### 1.1 Regulatory requirements

The Proposed Transaction will be subject to Section 411 and this Report is subject to the Corporations Act as discussed earlier and the Australian Securities and Investments Commission's ("ASIC") Regulatory Guide 111 *Content of Expert Reports* ("RG 111").

### 1.2 Purpose of the Report

Part 3 of Schedule 8 to the Corporations Regulations prescribes the information to be sent to members in relation to a proposed scheme of arrangement pursuant to Section 411. Part 3 of Schedule 8 requires an IER to be prepared in relation to a scheme of arrangement when there is a common director of parties to the scheme. In those circumstances, the IER must state whether the scheme of arrangement is in the best interest of the members of the company the subject of the scheme and set out reasons for that opinion.

We understand that Unilife and Unilife Corporation have common directors. Consequently, an IER is required in respect of the proposed scheme of arrangement regarding members.

Part 2 of Schedule 8 to the Corporations Regulations prescribes the information to be sent to creditors or a class of creditors relating to a proposed scheme of arrangement pursuant to Section 411. An IER is not stipulated as being required in respect of the proposed scheme of arrangement regarding creditors.

However, we understand that the provision of an IER is necessary in order to obtain approval by the Court. In addition, the Directors are desirous of obtaining an IER to assist them fulfil their duties of ensuring that the Shareholders and Optionholders are given the necessary information to enable them to make informed decisions in relation to the Schemes.

PKFCA, has been appointed to prepare this IER setting out whether, in our opinion, the Scheme is in the best interest of each of the Shareholders as a whole and the Optionholders as a whole.

We understand that there are no separate classes of either Shareholders or Optionholders.

RG 111 indicates that the test of whether a scheme of arrangement is "in the best interest" of shareholders is equivalent to the test of whether a takeover offer for the relevant shares is "fair and reasonable".

While the Corporations Act does not prescribe that an IER is required in respect of creditors, nor is any test (such as "in the best interest" or "fair and reasonable") prescribed in respect of creditors, we have been requested by Unilife to apply the test of "in the best interest" in respect of the Scheme regarding Optionholders. Accordingly, we have also applied the ASIC interpretation of the test of "in the best interest" in respect of the Optionholders.

### 1.3 Basis of assessment

The Corporations Act does not define the expression "in the best interest". However, guidance is provided by the regulatory guides issued by the ASIC, which establish certain guidelines in respect of independent expert's reports required under the Corporations Act. In particular, RG 111 establishes guidelines in respect of a Report commissioned when a scheme is used to affect a takeover offer. Under such circumstances, the independent expert is required to opine as to whether the scheme is "fair and reasonable".

In the context of takeovers, RG 111 draws a distinction between the meaning of the terms "fair" and "reasonable". An offer is "fair" if the value of the consideration is equal to, or greater than, the value of the securities subject to the offer. The comparison must be made assuming 100% ownership of the target company, irrespective of the percentage holding of the bidder or its associates in the target.

RG 111 considers an offer to be reasonable if:

- the offer is “fair”; or
- despite not being fair, the expert believes that there are sufficient reasons for security holders to accept the offer in the absence of any higher offer.

RG 111.17 provides that if an expert concludes that a scheme was ‘fair and reasonable’ if it was in the form of a takeover bid, the expert will also be able to conclude that the scheme is in the best interest of the security holders of the company.

RG 111.18 provides that if an expert concludes that the scheme was ‘not fair but reasonable’ if it was in the form of a takeover bid, it is still open to the expert to conclude that the scheme is ‘in the best interest’ of the security holders of the company. The expert should clearly say that the consideration is not equal to or greater than the value of the securities the subject of the scheme, but there are sufficient reasons for security holders to vote in favour of the scheme in the absence of a higher offer.

RG 111.19 provides that if an expert concludes that a scheme is ‘not fair and not reasonable’, then the expert should conclude that the scheme is not in the best interest of the security holders of the company.

RG 111 sets out some of the factors that an expert might consider in assessing the reasonableness of an offer, including:

- the bidder’s pre-existing voting power in the target company;
- any other significant security holding blocks in the target;
- the liquidity of the market in the target’s securities;
- taxation losses, cash flow or other benefits arising through achieving 100% ownership of the target;
- any special value of the target to the bidder;
- the likely market price of the target’s securities if the offer is unsuccessful; and
- the value of the target to an alternative bidder and the likelihood that an alternative offer might be made.

In our opinion, the Proposed Transaction will be fair for each class of Securityholder if the consideration offered by Unilife Corporation attributable to each class of Unilife securities is equivalent in terms of rights and proportionate interest in Unilife Corporation to the existing relevant class of securities in Unilife. This formulation would preclude the requirement for a premium for control of Unilife to be paid by Unilife Corporation.

## 1.4 Limitations

The Report is to accompany the Information Memorandum to be provided by the Directors to the Shareholders and Optionholders entitled to vote on the Proposed Transaction. Apart from the Report, PKFCA is not responsible for the contents of the Information Memorandum or any other document.

The Report has been prepared to assist the Directors in making their recommendation to the Shareholders and Optionholders and to assist the Shareholders and Optionholders in their consideration of whether or not to approve the Proposed Transaction. PKFCA acknowledges that its Report may be lodged by the Directors with the Court and other regulatory and statutory bodies and will be circulated to Shareholders and Optionholders together with other documentation relating to the Proposed Transaction.



The Report is prepared solely for the above purpose and accordingly PKFCA disclaims any responsibility from reliance on its Report in regard to its use for any other purpose. Except in accordance with the stated purpose, no extract, quote or copy of our report, in whole or in part, should be reproduced without the prior written consent of PKFCA, as to the form and context in which it may appear.

PKFCA's procedures, in the preparation of the Report, may involve an analysis of financial information and accounting records. This does not include verification work nor constitute an audit or review in accordance with Australian Auditing and Assurance Standards. Consequently, this does not enable us to obtain assurance that we would become aware of all significant matters that might be identified in an audit or review. Accordingly, we will not express an audit or review opinion.

It is not PKFCA's role to undertake, and PKFCA will not undertake, any commercial, technical, financial, legal, taxation or other due diligence, other similar investigative activities or property valuations in respect of Unilife and/or Unilife Corporation. PKFCA understands that the Directors will be advised by legal, accounting and other appropriate advisors in relation to such matters, as necessary. PKFCA will provide no warranty or guarantee as to the existence, extent, adequacy, effectiveness and/ or completeness of any due diligence or other similar investigative activities by the Directors or their advisors.

The Report does not deal with the individual investment circumstances of Shareholders and Optionholders and no opinion is provided in relation to the same. Some individual Shareholders and Optionholders may place a different emphasis on various aspects of the Proposed Transaction from that adopted in our Report. Accordingly, individuals may reach different conclusions on whether or not the Proposed Transaction is in their particular best interest. An individual Security Holder's decision in relation to the Proposed Transaction may be influenced by their particular circumstances (including their taxation position) and, therefore, Shareholders and Optionholders are advised to seek their own independent advice.

This Report is addressed only to the Australian Shareholders and Optionholders. We have not been requested to, and do not provide an opinion on the impact of the proposed change of domicile as it applies to Shareholders and Optionholders whose addresses at the date of this Report are recorded in Unilife's share register as being outside Australia, or to Standalone Optionholders.

We are not lawyers and are not providing any corporate legal advice in this Report. To prepare this Report and in selecting key issues from Appendix 10 of the Information Memorandum as set out in **Appendix 5**, we consulted independent USA and Australian legal counsel, namely Baker & McKenzie and Deacons, respectively ("**Independent Legal Counsel**") and relied on their advice. Our Independent Legal Counsel reviewed the legal summary set out in Appendix 10 of the Information Memorandum and confirmed that it is a fair summary of the relevant legal regimes.

## 1.5 Assumptions

In forming our opinion, we made the following assumptions:

- that matters such as title to all relevant assets, compliance with laws and regulations and contracts in place are in good standing, and will remain so, and that there are no material legal proceedings, other than as publicly disclosed;
- information sent out in relation to the Proposed Transaction to Shareholders and Optionholders, or lodged with any statutory body is complete, accurate and fairly presented in all material respects;
- all publicly available information relied on by us is accurate, complete and not misleading;
- if the Proposed Transaction is implemented, that it will be implemented in accordance with its stated terms; and
- the legal mechanisms to implement the Proposed Transaction are correct and effective.

In addition to the above, the Directors have confirmed that there are no plans for additional corporate transactions between related parties, other than as publicly disclosed.

## 2 THE PROPOSAL

### 2.1 Overview

All existing Unilife Shares will be transferred to Unilife Corporation in exchange for the issue of Unilife Corporation Shares to Shareholders. In conjunction with this share exchange, all existing Unilife Options will be cancelled in exchange for the issue of equivalent Unilife Corporation Options to Optionholders. The exchange of the Shares and Options for new securities in Unilife Corporation will be effected by way of two concurrent Schemes, namely the Share Scheme and the Option Scheme.

### 2.2 Share Scheme

A Scheme under Part 5.1 of the Corporations Act will be proposed to Shareholders under which Shareholders will exchange one share of Unilife Corporation Common Stock for every six Shares held in Unilife at the Scheme Record Date ("**Share Scheme Consideration**").

Shareholders may elect to receive their Common Stock in the form of Common Stock or CDIs. Each CDI will be equivalent to an interest in one sixth of a share of Common Stock and accordingly, Shareholders will essentially receive one CDI for every one Share held by them on the Scheme Record Date (subject to rounding).

Upon implementation of the Schemes and subject to ASX approval, the CDIs will be able to be traded on the ASX. Unilife Corporation has also submitted an application for a new listing of its Common Stock on the NASDAQ. However, there is no guarantee when, or if, such a listing will occur. Therefore Common Stock may not be immediately tradable on any market in the USA.

Fractional entitlements to Share Scheme Consideration will be rounded down to the nearest whole number of the Common Stock after aggregating all holdings of the relevant Shareholder. If a Shareholder elects to receive CDIs, this rounded down entitlement will then be converted into CDIs on a six for one basis.

Shareholders who do not make an election will receive their Common Stock in the form of CDIs.

The conditions that need to be satisfied prior to the implementation of the Share Scheme include, but are not limited to:

- Shareholder approval – at the Share Scheme Meeting by the requisite majorities under the Corporations Act;
- Court approval of Share Scheme – in accordance with Section 411(4)(b) of the Corporations Act, either unconditionally or on conditions that are customary or usual;
- the ASX approving:
  - Unilife Corporation for admission to the official list of the ASX; and
  - the CDIs for official quotation by the ASX,

in each case conditional only on the Share Scheme becoming effective under Section 411 and Unilife Corporation providing the information required by the ASX or by the Listing Rules and satisfying any conditions in the ASX approval process with regard to the deferred settlement of the CDIs.

The detailed steps involved in implementing the Share Scheme are set out in section 8 of the Information Memorandum.

### 2.3 Option Scheme

A Scheme under Part 5.1 of the Corporations Act will be proposed to Optionholders under which all existing Options will be cancelled in exchange for Optionholders receiving one Unilife Corporation Option for every six Options held at the Scheme Record Date ("**Option Scheme Consideration**").

The new Unilife Corporation Options to be issued to Optionholders will be on essentially the same terms as the existing Options, except to the extent necessary or desirable to comply with Delaware and USA federal laws and regulations. In particular, the Unilife Corporation Options will:

- have an equivalent exercise price to the price under the existing Options (but reflecting the 6:1 exchange ratio under the Schemes);
- be vested to the same extent as the existing Options are vested; and
- be subject to the same performance hurdles (if any) as apply to the existing Options.

Fractional entitlements to Option Scheme Consideration will be rounded down to the nearest whole number of Unilife Corporation Options after aggregating all holdings of the relevant Optionholder.

The conditions that need to be satisfied prior to the implementation of the Option Scheme include, but are not limited to:

- Share Scheme Conditions satisfied – each of the conditions precedent to the Share Scheme as described in Section 2.2 having been satisfied or waived;
- Optionholder Approval – at the Option Scheme Meeting by the requisite majorities under the Corporations Act;
- Court Approval of Option Scheme – in accordance with Section 411(4) (b) of the Corporations Act, either unconditionally or on conditions that are customary or usual.

The detailed steps involved in implementing the Option Scheme are set out in section 8 of the Information Memorandum.

## 2.4 Replacement of Standalone Options

The existing Standalone Options (which were issued to certain consultants, advisers and third parties outside the ESOP) will be cancelled in exchange for equivalent options in Unilife Corporation. A Scheme is not being proposed in relation to Standalone Options.

In conjunction with the Schemes, Unilife Corporation and Unilife have or will make an offer to the Standalone Optionholders to the effect that their respective Standalone Options would be cancelled in consideration for the grant by Unilife Corporation of equivalent Options in Unilife Corporation. The Standalone Optionholders will receive one Unilife Corporation Standalone Option for every 6 Standalone Options held at the Scheme Record Date. Any fractions of Standalone Options will be rounded down to the nearest whole number of Unilife Corporation Standalone Options. The cancellation of the existing Standalone Options and offer of the Unilife Corporation Standalone Options is conditional upon the Share Scheme becoming effective under Section 411.

## 2.5 Exchange ratio

As Unilife Corporation is seeking a listing of its Common Stock on the NASDAQ in conjunction with the Proposed Transaction, its shares must satisfy a minimum USA\$4 bid price which is imposed by the NASDAQ. The directors of Unilife Corporation also believe it is more advantageous for Unilife Corporation securities to have a higher value per share. Accordingly, the basis of the 6:1 formula has been applied to effectively consolidate the share capital for USA purposes upon implementation of the Proposed Transaction.

In light of the recent volatility in both the Share price and the foreign exchange rate, the Directors decided that it was not in the best interest of Shareholders and Optionholders to adopt too low a consolidation ratio that might risk the Unilife Corporation share price being unattractive for USA investors. More importantly, the Directors wanted to ensure there was sufficient 'head room' above the minimum share price on NASDAQ. For these reasons, the exchange ratio was adopted.

## 2.6 Treatment of fractional entitlements to Scheme Consideration

Under USA taxation law, fractional entitlements to Option Scheme Consideration held by USA taxpayers are not able to be rounded up to the nearest whole number of Unilife Corporation Options. As a result, to ensure all Shareholders and Optionholders receive equal treatment under the Schemes, all fractional entitlements to Scheme Consideration will be rounded down.

An example of how this will affect holdings of Shareholders and Optionholders is set at paragraph 3.5 of the Information Memorandum.

## 2.7 Relationship between the Schemes

The Share Scheme is not conditional on the Option Scheme and accordingly, if the Share Scheme is approved and the Option Scheme is not approved, the Share Scheme will proceed.

In this case, Unilife Corporation would consider all of the alternatives available to it, including compulsory acquisition (or cancellation) of the Options (if available), or taking no immediate action, in which case, Optionholders who subsequently exercise their Options would become minority shareholders of Unilife (which will have become a subsidiary of Unilife Corporation and will have delisted from the ASX) and as a result their shareholding would be extremely illiquid.

The Option Scheme is conditional on the approval of the Share Scheme, so that if the Share Scheme resolution is not passed both Schemes will fail.

The Schemes are not conditional upon approval of the resolutions to approve the new SIP and grant certain incentives to directors to be considered at the January EGM (**"Resolutions"**). Accordingly, if the required approvals are obtained for the Schemes they will proceed regardless of whether the Resolutions are passed at the January EGM.

## 2.8 Ineligible Overseas Shareholders

Shareholders who are resident outside Australia, New Zealand, USA, Hong Kong, United Kingdom, Ireland, France Croatia and Malta (**"Ineligible Overseas Shareholders"**) will not receive Common Stock under the Share Scheme unless, before the Scheme Record Date (and without being obliged to conduct any investigations into the matter), Unilife Corporation is satisfied that Common Stock can lawfully be issued to such Shareholders under the Share Scheme.

Instead, the Common Stock to which such Shareholders would have otherwise been entitled will be issued to the Nominee who will sell the Common Stock (in the form of CDIs) on the ASX. The Nominee will then distribute the proceeds received to the Ineligible Overseas Shareholders after deduction of any brokerage, taxes or other costs of sale (such amounts to be paid in Australian dollars and calculated on an averaged basis so that all Ineligible Overseas Shareholders receive the same price per CDI, subject to rounding to the nearest whole cent).

## 2.9 Approvals

In order for all elements of the Proposed Transaction to be implemented, the following approvals are required:

- the Share Scheme must be approved by a majority in number of Shareholders representing at least 75% of the votes cast by Shareholders present and voting (either in person or by proxy) at the Share Scheme Meeting (unless the Court orders otherwise);
- the Option Scheme must be approved by a majority in number of Optionholders representing at least 75% by value of the Options present and voting (either in person or by proxy) at the Option Scheme Meeting; and
- each of the Schemes must also be approved by the Court.

## 2.10 Listing of Unilife Corporation on ASX

An application will be made for the admission of Unilife Corporation to the official list of the ASX and for quotation of the CDIs within seven days of the date of the Information Memorandum. Approval for the listing of Unilife Corporation and quotation of the CDIs is a condition precedent to implementation of the Schemes and will not be waived in connection with the Schemes.

It is expected that, providing the ASX grants approval for the listing and quotation, CDIs will commence trading on a deferred settlement basis on the Business Day after the date on which the Schemes become effective, which is currently expected to be on or around 19 January 2010.

## 2.11 Listing of Unilife Corporation on NASDAQ

Unilife Corporation is seeking a listing for Common Stock on NASDAQ. Unilife Corporation expects the listing on NASDAQ to commence on or around 3 February 2010 subject to obtaining the necessary regulatory approvals. However, there is no guarantee as to when this will occur or that it will occur at all. Accordingly, following implementation of the Schemes, the only market for trading Common Stock will be the ASX, where they will trade only in the form of CDIs.

If Unilife Corporation is approved for listing on NASDAQ, Shareholders holding CDIs will be able to convert their CDIs into Common Stock so that they will be able to trade Common Stock on NASDAQ.

NASDAQ is a USA computerised stock exchange. NASDAQ was founded in 1971 by the National Association of Securities Dealers (“**NASD**”). Unlike the American Stock Exchange (“**Amex**”) and the New York Stock Exchange (“**NYSE**”), NASDAQ (once an acronym for the National Association of Securities Dealers Automated Quotation system) does not have a physical trading floor that brings together buyers and sellers. Instead, all trading occurs over a network of computers and telephones.

NASDAQ is the largest electronic screen-based equity securities trading market in the USA. With approximately 3,200 listed companies (of which 335 are non-USA companies from 35 countries representing all industry sectors), it has, on average, more trades per day than any other USA market. NASDAQ provides companies throughout the world access to USA capital.

Listed companies include leaders in many areas of business, including technology, retail, communications, financial services, transportation, media and biotechnology. NASDAQ is the primary market for trading NASDAQ-listed stocks and continues to gain market share in also trading NYSE-listed companies.

In 1992, NASDAQ joined with the London Stock Exchange to form the first intercontinental linkage of securities markets. In 1998 NASDAQ merged with the Amex, although the two continue to operate separately and now is the largest electronic stock market (in terms of both dollar value and share volume) in the USA.

NASD spun off NASDAQ in 2000 to form a publicly traded company. NASDAQ is now owned by the NASDAQ OMX Group, the stock of which is listed on its own NASDAQ exchange beginning July 2, 2002, under the ticker symbol NASDAQ: NDAQ, and is monitored by the SEC.

On November 8, 2007, NASDAQ bought the Philadelphia Stock Exchange (“**PHLX**”) for US\$652,000,000. PHLX is the oldest stock exchange in America—having been in operation since 1790.

To qualify for listing on the NASDAQ exchange, a company must be registered with the SEC, have at least three market makers (financial firms that act as brokers or dealers for specific securities), and meet minimum requirements for assets, capital, public shares and shareholders. An extract of these requirements is presented below in Figure 1:

**Figure 1**

NASDAQ Capital Market Initial Listing Requirements			
INITIAL LISTING			
Companies must meet all of the criteria under at least one of the three standards below.			
NASDAQ Capital Market Initial Listing Requirements <sup>1</sup>			
Requirements	Equity Standard Listing Rules 5505(a) and 5505(b)(1)	Market Value of Listed Securities Standard Listing Rules 5505(a) and 5505(b)(2) <sup>2</sup>	Net Income Standard Listing Rules 5505(a) and 5505(b)(3)
Stockholders' equity	\$5 million	\$4 million	\$4 million
Market value of publicly held shares	\$15 million	\$15 million	\$5 million
Operating history	2 years	N/A	N/A
Market value of listed securities <sup>3</sup>	N/A	\$50 million	N/A
Net income from continuing operations (in the latest fiscal year or in two of the last three fiscal years)	N/A	N/A	\$750,000
Bid price	\$4	\$4	\$4
Publicly held shares <sup>4</sup>	1 million	1 million	1 million
Shareholders (round lot holders) <sup>5</sup>	300	300	300
Market makers <sup>6</sup>	3	3	3
Corporate governance <sup>7</sup>	Yes	Yes	Yes

<sup>1</sup> Companies must meet the bid price, publicly held shares, round lot holders, and market makers requirements as set forth in Rule 5505(a) and at least one of the Standards in Rule 5505(b).

<sup>2</sup> Seasoned companies (those companies already listed or quoted on another marketplace) qualifying only under the Market Value of Listed Securities Standard must meet the market value of listed securities and the bid price requirements for 90 consecutive trading days prior to applying for listing.

<sup>3</sup> The term, "listed securities", is defined as "securities listed on NASDAQ or another national securities exchange."

<sup>4</sup> Publicly held shares is defined as total shares outstanding, less any shares held directly or indirectly by officers, directors or any person who is the beneficial owner of more than 10% of the total shares outstanding of the company. In the case of ADRs, at least 400,000 shall be issued.

<sup>5</sup> Round lot holders are shareholders of 100 shares or more. The number of beneficial holders is considered in addition to holders of record.

<sup>6</sup> An electronic communications network (ECN) is not considered a market maker for the purpose of these rules.

<sup>7</sup> In addition to the above quantitative requirements, companies must comply with all corporate governance requirements as set forth in the Rule 5600 Series.

**Source:** NASDAQ Listing Standards and Fees, August 2009,  
[http://www.nasdaq.com/about/nasdaq\\_listing\\_req\\_fees.pdf](http://www.nasdaq.com/about/nasdaq_listing_req_fees.pdf)

We have reviewed the above requirements in light of the Unilife Group's position and are of the opinion that the above requirements do not represent significant barriers to the listing of Unilife Corporation on NASDAQ.



## 2.12 CHESS Depositary Interests (CDIs)

Shareholders (excluding Ineligible Overseas Shareholders) may elect to receive the Share Scheme Consideration in the form of Common Stock or CDIs. Details of how Shareholders may elect to receive Common Stock are set out in section 1.2 of the Information Memorandum. Shareholders who do not make an election will receive their Common Stock in the form of CDIs.

CDIs are instruments used to enable securities of foreign companies, such as Unilife Corporation, to be traded on the ASX. The electronic transfer system used on the ASX known as CHESS cannot be used to transfer securities of foreign companies. Therefore, depositary instruments known as CDIs are used to facilitate the electronic settlement of such securities.

CDIs will confer the beneficial interest in and all the economic benefits of holding Common Stock whilst the legal title to the Common Stock will be held by a depositary, CHESS Depositary Nominees Pty Limited, which is a subsidiary of the ASX.

Shareholders who elect to receive Common Stock rather than CDIs may not immediately be able to trade the Common Stock on NASDAQ and therefore will not be able to trade their Common Stock on a public exchange unless they convert their Common Stock into CDIs. CDIs can be converted into Common Stock at any time.

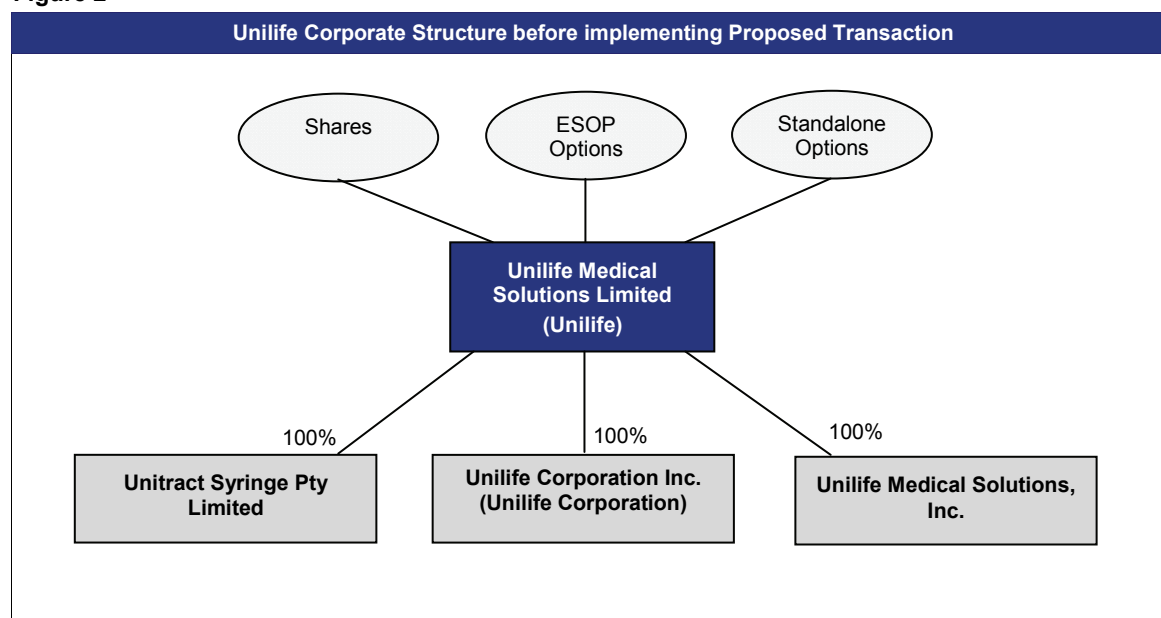
A description of the CDIs is set out in **Appendix 9** of the Information Memorandum and a summary is attached as **Appendix 3**.

## 2.13 Impact of Proposed Transaction on Unilife Corporate Structure

### 2.13.1 Before Implementing the Proposed Transaction

Illustrated below is the Unilife Corporate Structure before implementing the Proposed Transaction:

**Figure 2**



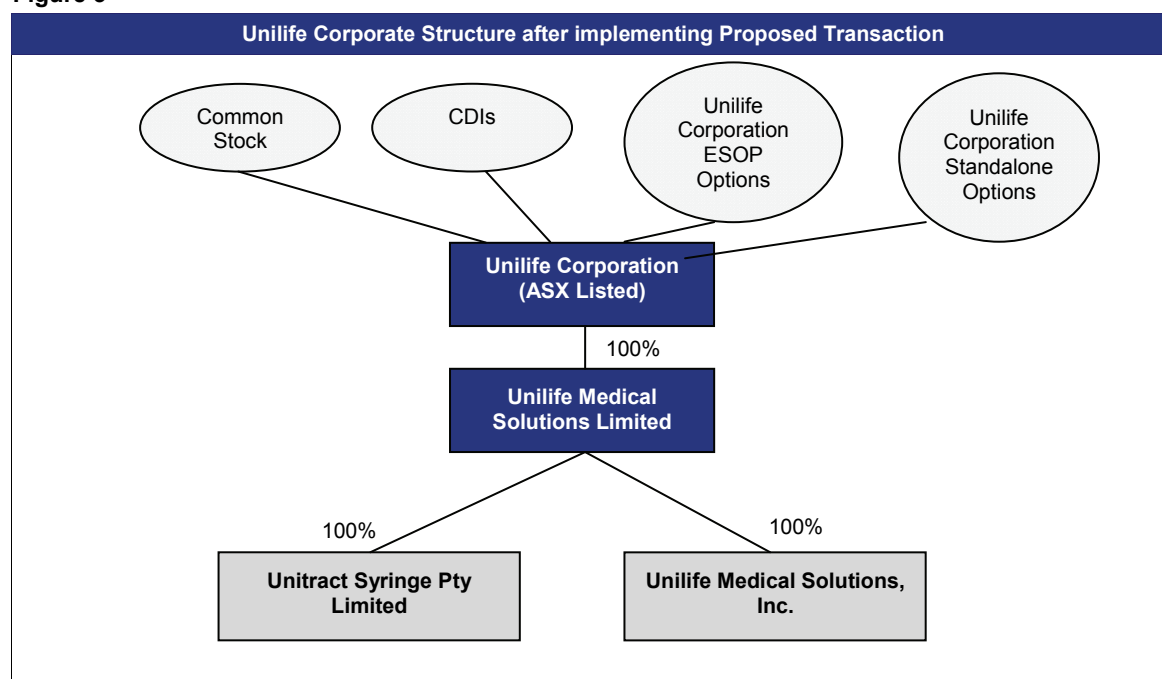
**Source:** Information Memorandum



## 2.13.2 After Implementing the Proposed Transaction

Illustrated below is the proposed Unilife Corporate Structure after implementing the Proposed Transaction:

**Figure 3**



**Source:** Information Memorandum

**Note:** Common Stock and CDI may be converted from one instrument to the other

## 2.14 Directors' Considerations

We understand that the Directors consider the Proposed Transaction desirable for a number of reasons, including that the Proposed Transaction:

- represents a natural evolution and opportunity for Unilife, as the USA represents the largest single target market of Unilife products and the majority of its operational base already is located in the USA;
- will enhance Unilife's ability to co-ordinate the implementation of its strategic business plan, which is focussed on the attainment of global leader status in the design, development and supply of innovative safety medical devices for use in key pharmaceutical and healthcare markets;
- will provide easier access to capital by enhancing access to the world's largest capital market;
- potentially will increase demand for Unilife's securities in the USA, particularly amongst institutional groups; and
- will optimise Unilife's capacity to attract and retain key employees with strong medical device and pharmaceutical industry experience who can facilitate the development and commercialisation of Unilife's products and further enhance its operations;
- enhance Unilife's potential for further growth and realisation of shareholder value by providing greater access to opportunities for corporate transactions such as mergers and acquisitions in line with Unilife's strategic plans;
- enable the Unilife group to retain an Australian listing; and
- reduce duplication of USA and Australian infrastructure and resources.

We understand that the Directors also recognise and acknowledge that some of the potential disadvantages or risks of the Proposed Transaction may include:

- the potential effect of different legal regimes (which may be advantageous or disadvantageous);
- the potential reduced access to management for Australian investors and different style of reporting (to comply with USA requirements);
- the lost benefit of potential dividend franking credits if Unilife Corporation makes a dividend payment in the future (refer to section 9 of the Information Memorandum);
- the potential loss of demand for the Group's securities from Australian investors;
- increased exposure to USA law and the more litigious environment in the USA;
- exposure to USA estate taxes under certain circumstances;
- increased reporting requirements and compliance costs due to NASDAQ listing; and
- the potential risk regarding the loss of the ability to utilise Australian tax losses.

### 3 PROFILE OF UNILIFE MEDICAL SOLUTIONS LIMITED

#### 3.1 Introduction

Unilife is an ISO-13485 certified medical device company specialising in the design, development and supply of an innovative proprietary range of safety medical devices comprising clinical and prefilled safety syringes to pharmaceutical customers, as well as healthcare facilities and patients that self-administer prescription medication. Unilife has been listed on the ASX since 2002. Unilife has disruptive drug delivery technology and is pursuing a strategy for entering international needle & syringe markets, including in North America and Europe.

sanofi-aventis, the largest consumer of prefilled syringes (“**sanofi-aventis**”), is investing \$38 million in fees and industrialisation payments for rights to use Unilife's safety syringes. Negotiations for exclusivity by therapeutic class are ongoing. Additional supply agreements with other pharmaceutical companies and in other therapeutic areas are expected to be concluded, starting in 2010.

The global headquarters and Food and Drug Administration (“**FDA**”) registered manufacturing facilities of Unilife are located in central Pennsylvania, USA and the Unilife group of companies employs approximately 85 staff worldwide.

#### 3.2 Timeline

Outlined below is a timeline of key events in Unilife's operations from 1 July 2008 to the date of this Report:

**Table 1: Unilife - Timeline**

Announcement Date	Description
1 July 2008	<b>Exclusive License Agreement:</b> sanofi-aventis secures exclusive rights to the Unilife Ready-to-fill Syringe for a term of five years. An upfront licensing fee of \$16.4 million was received, with ongoing negotiations in relation to the finalisation of an agreement over the industrialisation of the licensed product. sanofi-aventis will bear the industrialisation costs estimated at \$24 to \$27 million. Earlier in November 2007, Unilife signed a business development agreement with Gerresheimer Bünde, a wholly owned subsidiary of Gerresheimer AG. The agreement was for supply support, for the production of a minimum 400 million units of Unilife prefilled syringes per year for sanofi-aventis.
15 July 2008	<b>Commercial Sales Commence:</b> The sale of Unitract 1mL safety syringes commence.
24 October 2008	<b>FDA Clearance:</b> The Unitract 1mL insulin syringe received USA FDA clearance.
26 November 2008	<b>Key Senior Management Position Filled:</b> Bernard Optiz was appointed as the Senior Vice-President of Operations.
12 January 2009	<b>CFO Appointed in USA:</b> Daniel Calvert was appointed as Chief Financial Officer of Unilife.
6 April 2009	<b>Relocation of Operations:</b> CEO and other senior executive staff relocated to the USA.
1 July 2009	<b>Industrialisation Agreement:</b> Announcement of agreement made between Unilife and sanofi-aventis Winthrop Industrie, a wholly-owned subsidiary of sanofi-aventis with respect to the commercialisation of the Unilife prefilled syringe.
12 August 2009	<b>Commenced Production of Unitract:</b> Commenced USA production of the FDA approved Unitract 1mL insulin syringe.
1 September 2009	<b>Redomiciliation and Proposed NASDAQ Listing:</b> Unilife entered into a MIA with Unilife Corporation. The purpose of the MIA is to facilitate the proposed redomiciliation of the Unilife Group to the USA.
7 September 2009	<b>Unilife presents at the Rodman and Renshaw Global Investment Conference:</b> Unilife presented at the conference which features institutional investors, sophisticated investors and private equity firms that specialise in the biotechnology and life sciences sector.
7 October 2009	<b>Unilife announced a capital raising.</b>
26 October 2009	<b>Unilife secured A\$5.6 million in Pennsylvania Job Creation Program Funds</b> — Unilife reviewed the potential for expansion into Europe and decided to centralise manufacturing activities in Pennsylvania. Agreement with the Commonwealth of Pennsylvania to fuel corporate expansion.
27 October 2009	<b>Unilife commenced the filing of international trademarks</b> for Unifill ready-to-fill safety syringes.

Announcement Date	Description
30 October 2009	<b>Unilife issued options to USA employees</b> under the Employee Share Option Plan <b>Unilife released its annual report for the year ended 30 June 2009</b>
11 November 2009	<b>Director Appointment:</b> Unilife announced that it had appointed Mr John M. Lund to its Board of Directors as a non-executive Director. <b>Unilife lodged Information Memorandum with ASIC</b>
16 November 2009	<b>Process for NASDAQ listing commenced:</b> Unilife filed a Form 10 registration statement for review by the SEC, a precursor to applying for NASDAQ listing
19 November 2009	<b>Automated Assembly Line Supplier Appointed:</b> Unilife appointed Mikron Group as its contracted supply partner for the development and supply of automated assembly systems to support the production of Unifill syringes.
25 November 2009	<b>Unilife announced the filing of patent applications in the USA</b> for a new ready-to-fill syringe product to be marketed as the "Unifill Select"

Source: Unilife website and ASX Announcements

### 3.3 Products

Outlined in the table below are the products and services currently offered by Unilife:

**Table 2: Unilife – Products and Services**

Product or Service	Description
Syringe Based Devices	The devices' primary purpose is to help minimise the risk of infection with blood-borne disease via potential transmission modes such as needlestick injuries and aerosol. The range of syringe devices manufactured by Unilife include: <ul style="list-style-type: none"> <li><b>Unilife Prefilled Syringe</b> – This device allows for medications to be prefilled into a syringe device without the need for an additional clip on safety product. The device is made of three separate parts which are supplied to pharmaceutical companies, ready to be filled with a measured dose of an injectable drug. It is also known as the "Unifill" syringe; and</li> <li><b>Unitract Syringe</b> – This device is principally a 1mL safety syringe. Both a general device and insulin specific device have been developed.</li> </ul>
Contract Manufacturing	Unilife can provide a complete package of safety medical device commercialisation services, including device design, and development and operation of automated assembly systems. Unilife can assist companies seeking to outsource the production of their proprietary-owned medical devices.

Source: Company website

We note the following regarding the above:

- Unitract prospective product development – the Unitract clinical range device is still in the design and prototype phase, which has been slowed due to the efforts devoted to developing the Prefilled syringe device. It is expected that the clinical device will be available in 3mL and 5mL ranges; and
- Safety Features – each Unilife syringe device includes all safety feature developments. The products' core platform of technology is focused on the automatic, user-controlled retraction of the needle into the barrel. This system gives the user the ability to safely control needle retraction so as to minimise patient discomfort and includes an auto-disable feature. The auto-disable feature acts to automatically lock the needle into the barrel upon withdrawal of the needle to prevent re-exposure or reuse.

### 3.4 Board of Directors

The Directors are as follows:

**Table 3: Board of Directors**

Name	Position	Background
Mr Jim Bosnjak (OAM)	Non-Executive Chairman	Mr Bosnjak is a prominent Sydney businessman with strong government experience and broad investments across Australia, Asia and Europe.
Mr Alan Shortall	Executive Director & Chief Executive Officer	Mr Shortall is an experienced entrepreneur who has guided the growth and international development of Unilife since its inception.
Mr Jeff Carter (MAApp. BFin, Admin)	Non-Executive Director	Mr Carter is a Chartered Accountant with more than 28 years experience in financial and senior management roles in Australia and the USA.
Mr William Galle	Non-Executive Director	Mr Galle is a USA-based consultant with more than 30 years experience in the development and implementation of business growth and alternative investment strategies.
Mr John Lund	Non-Executive Director	Mr Lund is currently the Managing Partner of M&A Holdings, LLC and the Vice President and Controller of E-rewards, Inc. Previously, he was the Vice President Finance & Controller of Nexstar Broadcasting, Inc, the Vice President & Financial Controller of LQ Management LLC (La Quinta) and the Corporate Controller of ExcellerateHRO (now a HP company).

**Source:** Unilife website

### 3.5 Key Management Personnel

The key management personnel of Unilife are as follows:

**Table 4: Key Management Personnel**

Name	Position	Background
Mr. Daniel Calvert	Chief Financial Officer	Mr Calvert has more than 25 years financial, strategic and operational management experience, and is a Certified Management Accountant with an MBA in Finance, a Bachelor of Science and a Masters in Taxation.
Mr. Bernhard Optiz (MSME)	Senior Vice-President of Operations	Mr Optiz has almost 30 years medical device and biotechnology experience and has held senior leadership positions with global industry leaders including Bayer AG. Core specialties include device innovation and productivity improvement initiatives.
Mr. Eugene Shortall	Senior Vice President of RTFS	Mr. Shortall has served as the Group's Senior Vice President of RTFS since February 2009. From October 2007 to February 2009 he served as RTFS Project Director. From June 2003 to October 2007, Mr. Shortall was a consultant for the Public Institute for Social Security in Kuwait and was previously employed as a consultant for Behbehani National Construction. Mr. Shortall is the brother of Alan Shortall, the Chief Executive Officer and director.
Mr. Mark Iampietro	Vice-President of Quality Systems and Regulatory Affairs	Mr Iampietro has more than 30 years of quality experience across global pharmaceutical, biologics, and medical device markets.
Mr. Stephen Allan (Bachelor of Communications)	Vice President of Marketing and Communications	Mr. Allan has served as the Group's Vice President of Marketing and Communications since October 2008 and Director of Communications from November 2007 to October 2008 and Manager of Communications from July 2002 to November 2007. Prior to joining Unilife, Mr. Allan owned and operated his own Australian media and government relations firm.

**Source:** Unilife

### 3.6 Pharmaceutical Partner

As detailed in an announcement to the ASX, on 30 June 2009, Unilife entered into an Industrialisation Agreement with sanofi-aventis for the commercialisation of the Unilife Ready-to-Fill (“**Unifill**”) syringe (“**Industrialisation Agreement**”). Under an exclusive agreement on 1 July 2009 (“**Exclusive Agreement**”), sanofi-aventis paid Unilife \$16.4 million (€10 million) for the exclusive right to negotiate for the purchase of the Unifill syringe and to bear the costs of its industrialisation subject to the signing of the Industrialisation Agreement and the completion of agreed quarterly milestones.

The Industrialisation Agreement together with the Exclusive Agreement (collectively the “**Agreements**”) set forth the terms of the on-going relationship of the parties, including sanofi-aventis’ commitment to complete the funding of the \$30.4 million Unifill syringe industrialisation program commenced by Unilife one year ago. Furthermore, the Agreements outline the agreed pricing structure under which sanofi-aventis will purchase the Unifill syringe, subject to the signing of a Supply Agreement, and allow Unilife the right to supply the Unifill syringe to other pharmaceutical companies in certain therapeutic drug classes.

sanofi-aventis is one of the world leaders in the pharmaceutical industry. Backed by a large R&D organisation, sanofi-aventis is developing leading positions in seven major therapeutic areas: cardiovascular, thrombosis, oncology, metabolic diseases, central nervous system, internal medicine and vaccines. sanofi-aventis is listed in Paris (EURONEXT: SAN) and New York (NYSE: SNY).

A summary of the key terms of the Agreement as set out in the ASX announcement are attached in **Appendix 4**.

### 3.7 Update on Industrialisation Program

Following is an update on the Industrialisation Program with regard to the industrialisation of the Unifill syringe as set out by Unilife in an announcement to the market on 1 July 2009.

The Industrialisation Program was originally intended to be completed by the end of 2011. As the Industrialisation Program is proceeding ahead of schedule, both parties have agreed to bring its scheduled completion date forward to the end of 2010.

Following the completion of designated milestones during the quarter ending 30 March 2009, Unilife received an industrialisation milestone payment of A\$3.5 million (€2 million). Unilife has now received a total of A\$9.5 million (€5 million) in quarterly milestone payments since the commencement of the Industrialisation Program. With the industrialisation program proceeding as scheduled, Unilife issued an invoice to sanofi-aventis for the delivery of milestones attained during the quarter ended 30 June 2009.

Unilife has completed due diligence on potential qualified international suppliers for the development of the high-volume automated assembly system to be used in the production of the Unifill syringe. The quality of design concepts contained within the proposals validates Unilife’s decision to outsource the development of automated assembly systems for the Unifill syringe to an established industry specialist. The announcement of a preferred supply partner for the high-volume automated assembly system will be made upon the signing of an agreement with the selected company.

Unilife is scheduled to commence supply of the Unifill syringe by the end of 2010. Initial supply of the Unifill syringe will utilise a fully automated assembly system that will have a targeted annual capacity of more than 40 million units. The design and assembly process strategy developed for this first automated assembly line will enable Unilife to meet its production requirements under the Industrialisation Program.

The design of this first line will also be used to develop a higher-volume automated assembly system scheduled to be completed by the end of 2011. This high-volume automated assembly system is expected to have an annual production capacity greater than 100 million units. The significant annual capacity of this high-volume line and its modular design platform, will enable Unilife to increase production capacities at a much faster and more cost-effective rate than originally envisioned. Unilife's target production plan for the Unifill syringe remains at approximately 400 million units per year beyond 2014.

Following a review of opportunities within Europe for the establishment of a manufacturing facility suitable for the high-volume production of the Unifill syringe, the expanded production capacities of Unilife's assembly lines and the ability for Unilife under the Industrialisation Agreement to sell to pharmaceutical companies other than sanofi-aventis, Unilife has decided to centralise its manufacturing activities within Pennsylvania. The centralisation of Unifill syringe production activities within Pennsylvania is expected to reduce Unilife's operational costs, further optimise its supply chain activities and place Unilife in a more favourable international location to supply the Unifill syringe to all its expected customers.

Unilife expects this facility to be established within York County, Pennsylvania, which is close to the current FDA-registered facilities of Unilife in Lewisberry. Unilife has accepted an A\$5.6 million (US\$5.2 million) offer of assistance from the Commonwealth of Pennsylvania to support the creation of additional jobs and investment within Central Pennsylvania. It is intended that some of this government package will be utilised to fund the development of this new facility.

### 3.8 Historical Financial Performance

Following is a summary of Unilife's audited financial statements for the years ended 30 June 2006 to 2009, (both inclusive).

#### 3.8.1 Income Statements

Summarised in the following table are Unilife's audited consolidated income statements for the years ended 30 June 2006 to 2009, (both inclusive):

**Table 5: Unilife Income Statements**

Year Ended 30 June Audited	2006 \$	2007 \$	2008 \$	2009 \$
Revenue from Continuing Operations	134,381	2,292,389	3,708,655	4,637,112
Other Income	176,818	996,400	461,511	35,776,594
Costs of Goods Sold	0	(1,924,355)	(3,098,651)	(5,732,353)
<b>Gross Profit</b>	<b>311,199</b>	<b>1,364,434</b>	<b>1,071,515</b>	<b>34,681,353</b>
Employee Expense	3,100,709	2,831,756	3,250,097	5,844,643
Loss on Sale of Non-Current Assets	0	2,046,178	0	6,692
Impairment of Property, Plant & Equipment	2,967,869	697,102	0	0
Expense associated with issue of Convertible Note	480,000	364,682	124,300	87,148
Share Based Payments	(826,826)	634,558	681,217	4,957,187
Other Expenses	3,554,243	5,255,263	4,485,808	10,503,988
<b>EBITDA</b>	<b>(8,964,796)</b>	<b>(10,465,105)</b>	<b>(7,469,907)</b>	<b>13,281,695</b>
Depreciation	185,438	270,660	803,881	1,210,022
<b>EBIT</b>	<b>(9,150,234)</b>	<b>(10,735,765)</b>	<b>(8,273,788)</b>	<b>12,071,673</b>
Interest expense/(revenue)	57,888	319,108	387,065	245,220
Loss before Income Tax Expense	<b>(9,208,122)</b>	<b>(11,054,873)</b>	<b>(8,660,853)</b>	<b>11,826,453</b>
Income Tax Benefit	0	148,797	43,615	980,041
<b>Profit / (Loss) Attributable to members of Unilife</b>	<b>(9,208,122)</b>	<b>(10,906,076)</b>	<b>(8,617,238)</b>	<b>12,806,494</b>
Revenue growth %	n/a	1,606%	62%	25%
EBIT growth %	n/a	(17%)	23%	246%
EBIT margin %	(6,809%)	(468%)	(223%)	260%
EBITDA growth %	n/a	(17%)	29%	278%
EBITDA margin %	(6,671%)	(457%)	(201%)	286%

**Source:** Unilife Audited Financial Statements

We note the following with respect to the historical financial performance of Unilife, as set out above:

- Revenue – FY2006 revenue from sales of products was minimal. This reflects the very early stage of development and commercialisation of the various products. On 1 January 2007, Unilife completed the 100% acquisition of IBS (now called Unilife Medical Solutions, Inc. ("UMSI")), its contract medical device partner located in Pennsylvania, USA. UMSI is an FDA registered and ISO-13485 certified company with more than 45 skilled employees and a contract manufacturing portfolio covering more than 100 different types of medical devices. Most revenue generated subsequent to FY2006 can be attributed to the operations of UMSI.
- Other Income – there was a significant amount of other income received in FY2009. This was primarily due to payments received from sanofi-aventis.



- Overall net profit/(loss):
  - FY2006: the consolidated entity had a loss of \$9.2 million (after providing for tax) which was attributable to three significant items:
    - (i) the impairment of the automatic assembly line;
    - (ii) the costs associated with a convertible note issue; and
    - (iii) a favourable adjustment associated with the adoption of AIFRS in relation to share based payments.

Without these significant items, Unilife would have been in a net loss position of approximately \$6.6 million. The FY2006 result reflects the costs of development, commercialisation and marketing activities associated with Unilife's safety syringe technology;
  - FY2007: the consolidated entity had a loss of \$10.9 million (after providing for tax) which was attributable to three significant items:
    - (i) the loss on sale of non-current assets;
    - (ii) the impairment of property, plant and equipment; and
    - (iii) the expense in relation to share based payments.

Without these significant items, Unilife would have been in a net loss position of approximately \$7.5 million. The FY2007 result reflects the costs of development, commercialisation and marketing activities associated with Unilife's safety syringe technology as well as the contribution of UMSI, since acquisition on 1 January 2007;
  - FY2008: the consolidated entity had a loss of \$8.6 million (after providing for tax) which was attributable to the commencement of initial production of the Unitract range of 1mL safety syringes and the testing of its fully automated assembly system that is to support the high volume production of the Unitract 1mL safety syringes in FY2009. Unilife also submitted its application seeking USA regulatory approval to the FDA during the year. The FY2008 result also reflects Unilife's continued development, commercialisation and marketing activities associated with its safety syringe technology; and
  - FY2009: the consolidated entity had a profit of \$12.8 million (after providing for tax) which was attributable to the payments received from sanofi-aventis. The FY2009 result also reflects the commercialisation of the Unitract 1ml safety syringe as well as Unilife's continued development, commercialisation and marketing activities associated with its safety syringe technology.

### 3.8.2 Balance Sheets

A summary of Unilife's audited consolidated balance sheets as at 30 June 2006, 2007, 2008 and 2009 is provided in the following table:

**Table 6: Unilife Balance Sheets**

As at 30 June Audited	FY2006 \$	FY2007 \$	FY2008 \$	FY2009 \$
<b>Current Assets</b>				
Cash & Cash Equivalents	4,028,236	4,225,131	3,002,277	4,506,684
Trade & Other Receivables	98,297	1,181,353	1,069,942	9,771,104
Inventories	78,583	486,619	1,107,515	1,362,851
Other Current Assets	57,692	38,822	36,286	182,591
<b>Total Current Assets</b>	<b>4,262,808</b>	<b>5,931,925</b>	<b>5,216,020</b>	<b>15,823,230</b>
<b>Non Current Assets</b>				
Property, Plant and Equipment	7,500,959	8,019,884	8,111,437	11,352,786
Intangible Assets	3,167,201	6,872,275	6,849,797	13,627,986
Other Non-Current Assets	5,584,588	6,482,208	6,515,002	6,761,668
Deferred Tax Assets	0	0	593,864	1,847,664
<b>Total Non-Current Assets</b>	<b>16,252,748</b>	<b>21,374,367</b>	<b>22,070,100</b>	<b>33,590,104</b>
<b>TOTAL ASSETS</b>	<b>20,515,556</b>	<b>27,306,292</b>	<b>27,286,120</b>	<b>49,413,334</b>
<b>Current Liabilities</b>				
Trade & Other Payables	1,377,254	2,113,182	1,854,916	8,945,418
Borrowings	120,178	923,257	4,333,621	503,361
<b>Total Current Liabilities</b>	<b>1,497,432</b>	<b>3,036,439</b>	<b>6,188,537</b>	<b>9,448,779</b>
<b>Non Current Liabilities</b>				
Borrowings	25,498	4,096,486	3,162,656	3,390,133
Deferred Tax Liabilities	0	0	57,826	296,457
<b>Total Non-Current Liabilities</b>	<b>25,498</b>	<b>4,096,486</b>	<b>3,220,482</b>	<b>3,686,590</b>
<b>TOTAL LIABILITIES</b>	<b>1,522,930</b>	<b>7,132,925</b>	<b>9,409,019</b>	<b>13,135,369</b>
<b>NET ASSETS</b>	<b>18,992,626</b>	<b>20,173,367</b>	<b>17,877,101</b>	<b>36,277,965</b>
<b>Equity</b>				
Issued Capital	55,463,710	66,783,726	72,254,862	75,458,648
Reserves	987,660	1,754,461	2,604,297	4,994,881
Accumulated Losses	(37,458,744)	(48,364,820)	(56,982,058)	(44,175,564)
<b>Total Equity</b>	<b>18,992,626</b>	<b>20,173,367</b>	<b>17,877,101</b>	<b>36,277,965</b>

Source: Unilife Audited Financial Statements

We note the following with Unilife's financial position as displayed above:

- Cash & Cash Equivalents – remained relatively consistent;
- Trade & Other Receivables – grew substantially in FY2007, largely as a result of the acquisition of UMSI. In FY2009, the significant increase in the receivables balance largely relates to a milestone payment invoiced to sanofi-aventis under the Industrialisation Agreement;
- Inventories - grew substantially in FY2007, largely as a result of the acquisition of UMSI;
- Property, Plant and Equipment - grew substantially in FY2007, largely as a result of the acquisition of UMSI and increased in FY2009 as a result of the Industrialisation Programme;

- Intangible Assets - grew substantially in FY2007, primarily as a result of goodwill formed through the acquisition of UMSI on 1 January 2007; and
- Borrowings – over the course of the period from FY2006 to FY2008, total borrowings experienced considerable growth. This can be attributed to the need for funding to support Unilife's continued development, commercialisation and marketing activities associated with its safety syringe technology. FY2009 saw a considerable reduction in current borrowings which can be attributed to the repayment of U\$3.0 million to Medpro.

### 3.8.3 Cash Flow Statements

Summarised in the table below are the audited cash flow statements of Unilife for the years ended 30 June 2006 to 2009 (both inclusive):

**Table 7: Unilife Cash Flow Statements**

Year Ended 30 June Audited	2006 \$	2007 \$	2008 \$	2009 \$
<b>Cash Flows from Operating Activities</b>				
Receipts from Customers	0	2,938,089	3,616,539	4,621,318
Payments to Suppliers & Employees	(6,407,724)	(11,430,803)	(11,635,294)	(22,704,941)
Interest Received	134,381	141,728	226,516	482,639
Finance Costs	(57,888)	(319,108)	(277,861)	(245,220)
Government Grants Received	150,000	150,000	89,184	60,992
Other Revenue	0	0	0	26,891,156
<b>Net Cash Provided by/(used in) Operating Activities</b>	<b>(6,181,231)</b>	<b>(8,520,094)</b>	<b>(7,980,916)</b>	<b>9,105,944</b>
<b>Cash Flows from Investing Activities</b>				
Proceeds from Sale of Property, Plant & Equipment	26,819	187,818	292,000	17,374
Cash assets acquired on the acquisition of Subsidiary	0	1,014,094	0	0
Purchase of Property Plant & Equipment	(646,305)	(2,003,336)	(895,433)	(3,572,645)
Payment for Research & Development	(878,161)	(287,141)	(562,929)	(246,666)
<b>Net Cash Provided by/(used in) Investing Activities</b>	<b>(1,497,647)</b>	<b>(1,088,565)</b>	<b>(1,166,362)</b>	<b>(3,801,937)</b>
<b>Cash Flows from Financing Activities</b>				
Proceeds from Issue of Shares	6,689,576	9,057,708	5,751,991	834,795
Proceeds from Borrowings	0	5,804,419	5,437,813	127,407
Payments for Borrowings	(540,520)	(4,892,935)	(2,961,279)	(4,617,420)
Payments for share Issue Expenses	(465,237)	(163,638)	(304,101)	0
<b>Net Cash Provided by/(used in) Financing Activities</b>	<b>5,683,819</b>	<b>9,805,554</b>	<b>7,924,424</b>	<b>(3,655,218)</b>
<b>Net Decrease in Cash and Cash Equivalents</b>	<b>(1,995,059)</b>	<b>196,895</b>	<b>(1,222,854)</b>	<b>1,648,789</b>
<b>Cash &amp; Cash Equivalents at the Start of the Year</b>	<b>6,023,295</b>	<b>4,028,236</b>	<b>4,225,131</b>	<b>3,002,277</b>
<b>Foreign exchange rate changes</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>(144,382)</b>
<b>Cash &amp; Cash Equivalents at the End of the Year</b>	<b>4,028,236</b>	<b>4,225,131</b>	<b>3,002,277</b>	<b>4,506,684</b>

Source: Unilife Audited Financial Statements

The same comments made in respect of the income statement (refer to Section 3.8.1) are also applicable to the cashflow statement.

### 3.8.4 Events subsequent to FY2009 balance date

#### *Unitract Syringe Pty Limited*

In 2002, Unilife acquired Unitract Syringe Pty Limited ("**Unitract**"). Under this acquisition agreement ("**Unitract Agreement**") and as further approved by the shareholders on 28 November 2008, Unilife agreed to issue 10 million Shares to certain former shareholders of Unitract if Unilife earned net profit after tax of \$6.5 million (as confirmed by its auditors) in any financial year in the years following completion of the Unitract Agreement and a further 10 million shares if Unilife earned net profit after tax (as confirmed by its auditors) of \$12 million in any financial year in the years following the Unitract Agreement.

It is noted that the net profit after tax for the year ended 30 June 2009 exceeded \$12 million and accordingly 20 million Shares were issued in accordance with the Unitract Agreement on 17 November 2009. A provision for the issue of these shares of \$6.3 million has been raised as at 30 June 2009 and a corresponding increase in the goodwill on acquisition of Unitract has been recorded for the year ended 30 June 2009.

#### *Exercise of Options*

Subsequent to balance date 4,252,045 Shares have been issued due to the exercise of 4,252,045 Options. This resulted in the raising of an additional \$1,103,011 in cash and issued capital of 244,768,918.

#### *Capital raising*

On 7 October 2009 Unilife announced a capital raising comprising:

- \$32.1 million by way of a placement ("**Placement**") of 37,749,209 Shares at \$0.85 each and 18,874,604 free attaching options ("**Placement Options**"); and
- \$10 million (or such greater amount as the Directors determine subject to a maximum number of SPP Shares to be issued being equal to 30% of the issued share capital of Unilife at the date of issue, being the limit imposed by ASX Listing Rules) by way of a Share Purchase Plan ("**SPP**") under which existing eligible Shareholders had the right to purchase up to \$15,000 of Shares at the same price of \$0.85 each as under the Placement. ASIC regulations do not permit the issue of unlisted options under a SPP.

On 10 November 2009, Unilife announced that the SPP was significantly oversubscribed with applications for approximately 33.7 million new, fully paid ordinary shares ("**SPP Shares**") with a value of approximately A\$28.7 million and the Board increased the number of Shares to be issued under the SPP from 11,764,705 Shares to raise \$10 million to approximately 25.3 million Shares, to raise approximately A\$21.5 million before costs, representing a pro-rata allotment to all shareholders of 75% of their application. Allotment of SPP Shares will occur on 17 November 2009.

The Placement Shares that have been subscribed for under the Placement comprise:

- 20,762,065 Shares which are available to be issued under Unilife's 15% placement capacity under ASX Listing Rule 7.1 ("**Firm Shares**") issued on or around 8 October 2009; and
- an additional 16,987,144 Shares which are in excess of Unilife's 15% placement capacity under ASX Listing Rule 7.1, issued on 17 November 2009 ("**Additional Shares**").

Under the terms of the Placement, each investor received two unlisted Placement Options (a tranche 1 option and a tranche 2 option) for every four Placement Shares subscribed for under the Placement. Each Placement Option entitles the holder to acquire one Share and was issued for nil consideration. All of the Placement Options are exercisable from 17 November 2009, being the date of grant until the third anniversary of the date of grant and will have an exercise price of \$1.25 for the tranche 1 options and \$2.00 for the tranche 2 options.

In conjunction with the Placement, Unilife has also issued 2,820,068 unlisted options to certain advisers and brokers as part of their fee arrangements with respect to the Placement and Share Purchase Plan ("**Broker Options**"). The options each entitle the holder to acquire one Share, and are exercisable from 17 November 2009, being the date of grant until the third anniversary of the date of grant and will have an exercise price of \$0.85 each.

Unilife also offered its eligible USA employees an opportunity to subscribe for Options to acquire Shares in Unilife on similar terms to the offer made under the SPP ("**Employee Offer**").

Under the Employee Offer, eligible USA employees were given the opportunity to acquire Options under Unilife's Employee Share Option Plan to purchase up to 17,647 Shares each at an exercise price of US\$0.78 per Share (equivalent to the SPP price of A\$0.85 at the date of the Employee Offer). Unilife received applications for 599,998 Options to subscribe for a maximum of 599,998 Shares from its USA employees.

Options issued under the Employee Offer may be exercised at any time between 30 October 2009 and 5pm (USA Eastern time) on 11 November 2009 ("**Exercise Period**"). Options not exercised during the Exercise Period automatically lapsed. Options exercised during the Exercise Period were only exercisable in one of the following tranches so as to ensure consistency with the terms of the SPP:

**Table 8: Employee Offer**

Offer	Number of Options	Total amount payable @ US\$0.78 per option US\$
Offer A	1,500	1,170.00
Offer B	6,000	4,680.00
Offer C	12,000	9,360.00
Offer D	17,647	13,764.66

**Source:** Unilife

Unilife intends to use the proceeds raised to accelerate the expansion of its operational capabilities, production facilities and equipment requirements in the USA, and complete the industrialisation of the Unifill syringe which is currently running 12 months ahead of its original schedule. The proceeds will also be used to fast-track the commercialisation of additional pipeline products which Unilife had been developing more slowly in order to focus its available financial and personnel resources on the development of its initial key products. Unilife will now work to rapidly complete development of these additional products with other interested major pharmaceutical companies with whom Unilife is currently in discussions. Furthermore, these proceeds will help ensure Unilife has adequate cash reserves leading up to, and following, its proposed redomiciliation in the USA and proposed listing on NASDAQ.

PKFCA has not been requested to provide an opinion in relation to the resolutions to be considered at the November EGM and this Report does not provide any opinion in regard thereto.

In addition, on 11 November 2009 Unilife announced its intention to issue 600,000 Options to each of Mr. J Carter, Mr. J Lund and Mr. W Galle, all non-executive directors of Unilife, under Unilife's ESOP, with an exercise price of \$1.20 each. The issue of these Options is subject to Shareholder approval and accordingly they have not been included in the table in Section 3.9.

### 3.9 Capital Structure and Ownership

#### 3.9.1 Issued securities

As at 25 November 2009, Unilife had the following securities on issue:

**Table 9: Capital Structure as at 25 November 2009**

Security	Number issued	% of total	Exercise price \$	Expiry
<b>Shares</b>	<b>307,776,616</b>	<b>85.3%</b>	<b>n/a</b>	<b>n/a</b>
<b>Options (exc. ESOP)</b>				
Unlisted	2,757,955		\$0.25	30-Sep-11
Unlisted	3,500,000		\$0.33	Various
Unlisted	600,000		\$0.50	28-Feb-14
Unlisted	750,000		\$0.45	Various
Unlisted	2,600,000		\$0.33	31-Dec-10
Unlisted	2,985,974		\$0.85	17-Nov-12
Unlisted	9,437,304		\$1.25	17-Nov-12
Unlisted	9,437,304		\$2.00	17-Nov-12
<b>Sub Total Options (exc. ESOP)</b>	<b>32,068,537</b>	<b>8.9%</b>		
<b>ESOP Options</b>				
Unlisted	13,375,000		Various	Various
Unlisted	7,500,000		\$0.33	30-Sep-13
<b>Sub Total ESOP Options</b>	<b>20,875,000</b>	<b>5.8%</b>		
<b>Total</b>	<b>360,720,153</b>	<b>100.0%</b>		

Source: Unilife

n/a – not applicable

Based on the traded share price of Shares of approximately \$1.08 as at the date of the Report, the majority of the above options are “in the money”.

As at 27 November 2009, Unilife proposed to issue the following securities:

- 5,000,000 Shares: at the request of its pharmaceutical partner, Unilife intends in December 2009 to enter into a Confirmation of Intellectual Property Rights and Confidentiality Agreement with Craig Stephen Thorley and Joseph Hermes Kaal (“**Inventors**”) in order to ensure that Unilife had full rights to its valuable intellectual property. Under the Agreement, each of the Inventors confirm that all intellectual property rights created by them in respect of Unilife’s patents, products and/or services vested in Unilife upon creation, and to the extent that this has not already happened, agree to assign to Unilife all current and future intellectual property rights they may hold in relation to Unilife’s patents, products and/ or services in consideration for the issue of 5,000,000 Shares to the Inventors (“**Inventors’ Shares**”); and
- 600,000 Options to each of three directors (1,800,000 in total), proposed to be considered at the January EGM.

Subsequent to the issue of the Inventors' Shares and assuming approval of the issue of options to Directors at the January EGM, the Unilife capital structure on the date of the Scheme will be as follows:

**Table 10: Capital Structure assuming approval of all resolutions to be considered at the January EGM**

Security	Number issued	% of total	Exercise price (\$) and expiry
Shares	312,776,616	85.1%	n/a
ESOP Options	33,868,537	9.2%	Various
Other Options	20,875,000	5.7%	Various
<b>Total</b>	<b>367,520,153</b>	<b>100.0%</b>	

Source: Unilife

### 3.9.2 Shareholders

Shareholder information set out below was applicable as at 2 November 2009 and excludes subsequent issues of securities such as pursuant to the Extraordinary General Meeting held in November 2009 ("**November EGM**"), the securities that are to be issued pursuant to the January EGM, the Inventors' Shares and the shares issued under the SPP:

#### Shareholder distribution

**Table 11: Distribution of Shareholders as at 2 November 2009**

Shareholding range	Number of holders	Number of Shares
1 - 1,000	1,736	932,481
1,001 - 5,000	3,001	8,738,179
5,001 — 10,000	1,378	11,160,190
10,001 — 100,000	2,035	65,632,506
100,001 — and over	373	158,305,562
<b>Total</b>	<b>8,523</b>	<b>244,768,918</b>

Source: Unilife

There were no Shareholders holding an unmarketable parcel of Shares.

#### Shareholder Geographic Breakdown

**Table 12: Geographic Breakdown**

Country	Number of Shares	Number of holders	Percentage of Shares Held
<b>Australia</b>	<b>233,272,937</b>	<b>8,329</b>	<b>95.3%</b>
United States of America	5,386,864	83	2.2%
United Kingdom	3,652,607	12	1.5%
New Zealand	856,501	71	0.4%
Ireland	568,875	12	0.2%
Croatia	420,000	2	0.2%
Other	364,859	12	0.1%
Hong Kong	246,275	2	0.1%
<b>Total non-Australia</b>	<b>11,495,981</b>	<b>194</b>	<b>4.7%</b>
<b>Total</b>	<b>244,768,918</b>	<b>8,523</b>	<b>100.0%</b>

Source: Unilife

### Top 20 Shareholders

The following table sets out the top twenty Shareholders as at 25 November 2009 (i.e. excluding securities that are to be issued pursuant to the January EGM and the Inventors' Shares):

**Table 13: Top Twenty Shareholders as at 25 November 2009**

Rank	Name	Number of Shares Held	Percentage of Shares Held
1	Mr Alan Shortall	15,123,332	4.91%
2	Merkaba Limited	12,153,158	3.95%
3	Roger Williamson	10,129,778	3.29%
4	ANZ Nominees Limited	8,785,041	2.85%
5	UBS Nominees Pty Ltd	5,775,812	1.88%
6	Citicorp Nominees Pty Limited	5,557,195	1.81%
7	National Nominees Limited	5,053,999	1.64%
8	Joseph Kaal	5,030,361	1.63%
9	Mr Dennis John Banks	4,020,567	1.31%
10	Craig Thorley	3,917,225	1.27%
11	Mr Bradley Downes	3,104,312	1.01%
12	Admark Investments Pty Ltd	3,033,235	0.99%
13	Penila Investments Pty Ltd	2,302,235	0.75%
14	Fortis Clearing Nominees P/L	2,220,313	0.72%
15	Omah Nominees Pty Ltd	2,000,000	0.65%
16	Mr Francis James Reidy	1,967,283	0.64%
17	Torsby Pty Ltd	1,746,235	0.57%
18	HSBC Custody Nominees (Australia) Limited	1,588,874	0.52%
19	Merrill Lynch (Australia) Nominees Pty Limited	1,436,669	0.47%
20	Mr Charles Patrick Reagan	1,212,765	0.39%
<b>Total held by Top 20 Shareholders</b>		<b>96,158,389</b>	<b>31.24%</b>
<b>Total Remaining Holders Balance</b>		<b>211,618,227</b>	<b>68.76%</b>
<b>Total Shares Outstanding</b>		<b>307,776,616</b>	<b>100.00%</b>

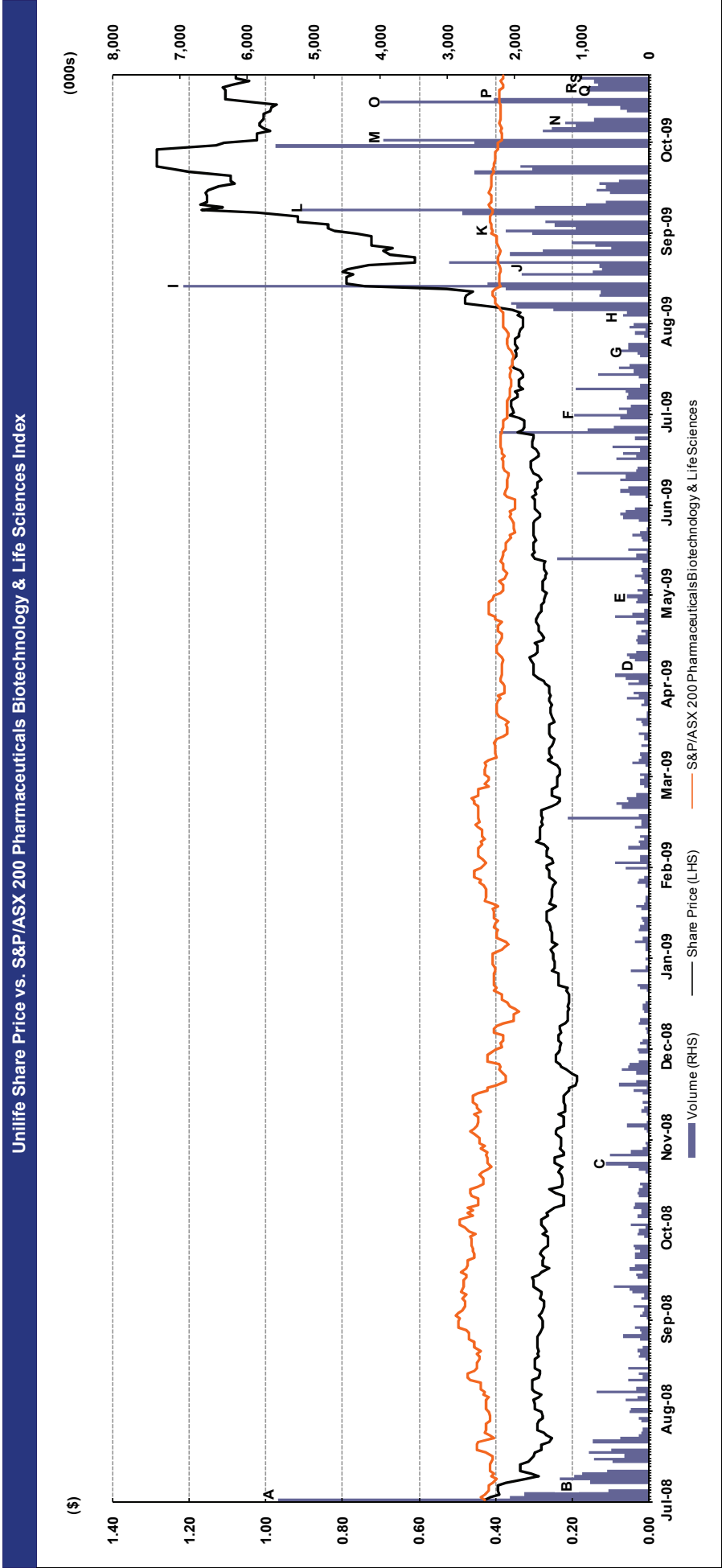
Source: Unilife



### 3.10 Share Trading History

The chart below compares Unilife's share price with the S&P/ASX 200 Pharmaceuticals Biotechnology and Life Sciences Index ("Index") from 1 July 2008 to 31 October 2009 ("Trading Period") (also refer to Table 14 for a legend of the market sensitive announcements noted on the chart below):

Figure 4



As illustrated in the chart above, Unilife significantly underperformed the Index for most of the Trading Period.

Notable events disclosed by Unilife which may have impacted the share price and trading volumes are set out below:

**Table 14: Market sensitive announcements**

Date	Chart Reference	Announcement Details
01 July 2008	A	Exclusive License Agreement with sanofi-aventis
07 July 2008	B	Notice further outlining agreement with sanofi-aventis and International Expansion
24 October 2008	C	Unilife's Unitract 1mL insulin syringe received USA FDA clearance
6 April 2009	D	Relocation of key commercial and operational functions to the USA
19 May 2009	E	Unilife features on Bloomberg television
01 June 2009	F	Announcement of Industrialisation Agreement signed with sanofi-aventis on 30 June 2009
21 July 2009	G	Issue of Ordinary securities & Unlisted Options
3 August 2009	H	Releases Quarterly Report - June 2009
12 August 2009	I	Unilife commences U.S. production of Unitract 1mL syringes
20 August 2009	J	Initiation of Independent Research Coverage by USA Investment Banking Firm, Griffin Securities
1 September 2009	K	Unilife Announces Proposed Redomiciliation of Unilife Group to USA and Proposed Listing on NASDAQ
7 September 2009	L	Unilife to present at the Rodman and Renshaw Global Investment Conference
1 October 2009	M	Unilife Medical Solutions released its Financial Report for the year ended 30 June 2009
7 October 2009	N	Unilife Placement and SPP
21 October 2009	O	Unilife to Exhibit at Two Major Pharmaceutical Industry Events
23 October 2009	P	Unilife CEO makes Open Market Purchase of \$500,000 of Company Shares
26 October 2009	Q	Unilife secures A\$5.6 million in Pennsylvania Job Creation Program Funds to fuel Corporate Expansion
27 October 2009	R	Unilife commenced the filing of international trademarks for Unifill syringe, which will become the market brand for its portfolio of ready-to-fill safety syringes.
30 October 2009	S	Unilife issued options to USA employees under the Employee Share Option Plan; Unilife released its annual report for the year ended 30 June 2009 to the market; Unilife released its September 2009 quarterly statement.

**Source:** ASX Company Announcements

The table below sets out details of Unilife's share trading liquidity in the 12 month period prior to the announcement of the Merger Implementation Agreement on 1 September 2009, and for the subsequent period to 31 October 2009:

**Table 15: Unilife Share Trading Summary**

Period	Average Daily Volume (Shares)	Average Daily Value (\$)	Turnover	Average Bid Ask Spread
<b>Pre 1 September 2009</b>				
As at 1 Sep 2009	1,099	1,584	0.72%	1.45%
1 month to 1 Sep 2009	872	1,395	13.94%	2.67%
3 months to 1 Sep 2009	391	759	22.08%	3.01%
6 months to 1 Sep 2009	308	619	24.10%	3.26%
12 months to 1 Sep 2009	132	315	36.73%	4.41%
<b>Post 1 September 2009</b>				
2 months after 1 Sep 2009	1,655	1,588	28.22%	1.50%

**Source:** Bloomberg

We note the following in relation to the above:

- the periods reviewed demonstrate an increase over time in average daily volume traded during the lead up to the announcement, albeit over increasingly shorter trading periods up to 1 September 2009. The same can be said for total turnover. These measures indicate that the liquidity of the stock was improving;
- during the twelve months leading to the announcement, the average bid-ask spread was 4.41%, while in the two months following the announcement the average bid-ask spread was 1.50%, further supporting a conclusion that the liquidity of the stock was improving; and
- during the 304 trading days covered in the period analysed above, Unilife traded for 289 of these days. This represents over 95% of total trading days.

Based on the above analysis and a comparison with the ASX listed companies in the Health Care index, we conclude that Unilife stock is liquid even though Unilife is not widely followed by analysts and the top 10 shareholders held around 20% of the total number of Shares outstanding over the period analysed above.

## 4 PROFILE OF UNILIFE CORPORATION

### 4.1 Overview

Unilife Corporation is a wholly owned subsidiary of Unilife and was incorporated under the laws of the State of Delaware, USA on 2 July 2009. The rights of Unilife Corporation security holders are governed by Delaware General Corporation Law, USA federal securities laws and Unilife Corporation's certificate of incorporation and by-laws.

Unilife Corporation was incorporated by Unilife solely for the purpose of facilitating the redomiciliation of the Unilife Group to the USA. Accordingly, Unilife Corporation is, and will remain, a shell company which has not conducted, and will not conduct, any business of its own accord, other than those required as part of the Proposed Transaction i.e. entering into various agreements and contracts. Upon implementing the Proposed Transaction, the business of Unilife Corporation will consist entirely of the business of Unilife.

### 4.2 Jurisdiction

Unilife states that it considers that the State of Delaware is an appropriate jurisdiction for the domicile of Unilife Corporation as over 50% of all USA publicly listed companies are incorporated in Delaware and it is often chosen due to its well developed corporations law and efficient incorporation and administration processes.

As Unilife's aim is to redomicile in the USA and obtain the advantages associated therewith, it has adopted a standard form of by-laws for a Delaware Corporation, which would also be appropriate for a NASDAQ listed company, rather than amending the by-laws to provide Australian style protections for Shareholders. A description of some of the key differences between the Australian and Delaware legal regimes and their implications for shareholders of Unilife Corporation is set out in Appendix 10 of the Information Memorandum and a selection is set out in Appendix 5. We also set out in Section 6.2.2 a summary of the changes to the protections afforded to Shareholders between the Australian and Delaware legal jurisdictions.

While we note from the material set out in Appendix 5 that the USA corporate regulatory requirements offer a different level of protection (arguably a lesser level of protection) to minority shareholders when compared to that afforded to them by the Australian regulatory requirements, in our view it is not possible to quantify the disadvantage. We are of this opinion as details will vary from transaction to transaction and the rights of minority shareholders will be different in each different circumstance.

### 4.3 Directors of Unilife Corporation

The directors of Unilife Corporation are the existing Directors of Unilife (as set out in Section 3.4).

### 4.4 Unilife Corporation's issued securities

#### 4.4.1 Common Stock

Unilife Corporation currently has 100 shares on issue. These were issued to Unilife on incorporation of Unilife Corporation. Following implementation of the Share Scheme, Unilife Corporation will buy back the shares currently held by Unilife. Unilife Corporation has not yet undertaken any capital raisings.

Under the Share Scheme, Shareholders will receive Common Stock. There are differences between the rights attaching to Shares and to Common Stock. In addition, there are a number of significant differences between USA/Delaware law and Australian law. A summary of these differences is set out in Appendix 10 of the Information Memorandum and a selection is set out in Appendix 5.

#### 4.4.2 Unilife Corporation Options

Unilife Corporation currently has no options on issue.

Unilife Corporation has adopted the Unilife Corporation ESOP under which Unilife Corporation will issue Unilife Corporation Options upon approval of the Option Scheme. Each ESOP Optionholder will receive Unilife Corporation Options under the Unilife Corporation ESOP in exchange for the cancellation of the Unilife ESOP Options held by the ESOP Optionholder.

Unilife Corporation Options will be issued on essentially the same terms (except to the extent changes are required to comply with Delaware law) as the Options they replace, including having an exercise period equal to the unexpired exercise period of the Options they replace and being vested to the same extent as the original Options were vested. However, the, Unilife Corporation Options will:

- be issued on a 1 for 6 basis, meaning that an Optionholder will receive 1 option to subscribe for a Common Stock for every 6 Options held by them on the Scheme Record Date; and
- have an exercise price equal to 6 times the exercise price of the Option it replaces.

#### 4.4.3 New 2009 Stock Incentive Plan

Following the redomiciliation, Unilife Corporation is proposing to adopt a new employee incentive plan termed the SIP and grant certain incentives to directors of Unilife Corporation at the January EGM. The SIP is expected to be in the form typical for USA public companies, which provides important USA tax benefits for Unilife employees that are not provided in Unilife's existing incentive plans.

The SIP is expected to provide Unilife Corporation with the flexibility to issue a range of incentives to employees, officers, directors and other individuals who provide services to Unilife Corporation or any Affiliate of Unilife Corporation, including stock options, stock appreciation rights, stock based incentives and performance incentives.

Following implementation of the Proposed Transaction, the SIP will be the only plan used by Unilife Corporation for all future grants of incentives to employees of the Unilife group. The Board believes that a new employee incentive plan is an important tool to attract, motivate and retain key employees of the Unilife group. At the meeting to consider the Proposed Transaction, Shareholders will also be asked to vote to approve the SIP.

#### 4.4.4 Reporting obligations of Unilife Corporation on implementing the Proposed Transaction

Following implementation of the Proposed Transaction, Unilife Corporation will be subject to the reporting requirements of the USA Exchange Act and be required to file annual, quarterly and current reports, proxy statements and other information with the SEC. In addition, should Unilife Corporation list on NASDAQ, it will also be required to comply with the NASDAQ market rules.

In order to be able to carry on business in Australia and be listed on the ASX, Unilife Corporation will be registered as a foreign company in Australia under the Corporations Act. Unilife has been appointed as the local agent of Unilife Corporation.

Being registered as a foreign company in Australia requires that Unilife Corporation file its annual accounts with the ASIC and comply with various other notification requirements (for example, notifying ASIC of the appointment and resignation of directors or changes to constituent documents). In addition, as Unilife Corporation will be a disclosing entity for the purposes of the Corporations Act, Unilife Corporation will be required to comply with the continuous disclosure provisions contained in the Corporations Act and the ASX's Listing Rules.

## 5 INDUSTRY OVERVIEW

### 5.1 The Medical and Surgical Equipment Manufacturing Industry

Unilife is focused on healthcare markets that mandate the use of safety devices to prevent needle-stick injuries, as well as the pharmaceutical markets for prefilled syringes.

With the passage of the Needlestick Safety & Prevention Act in 2000, the USA set a global precedent for reducing needlestick injuries among healthcare workers. Enforcement has gradually tightened, resulting in the adoption of safety needles & syringes by an estimated 70% of acute-care hospitals and around 50% of all other healthcare providers today. Hence, the USA domestic market has not matured fully, and other overseas markets are at even earlier stages of adoption. The European Union's parliament is expected to vote on a measure in October that will be used by member countries as a template for national legislation. It probably will reflect a regulation that Germany instituted in 2007, requiring an adoption of new technologies and measures that force employers in the healthcare industry to protect their workers without reducing the standard of care provided to patients.

An ageing baby boomers population in many Western countries is likely to significantly increase the demand for healthcare services in the future. To ensure adequate care and minimise costs, efforts are under way to expand the number of therapies that can be self-administered or provided by a caregiver in a home environment. Devices that simplify drug administration under these conditions should gain wide acceptance. Prefilled safety syringes suit this opportunity.

#### *Products in the Safety Syringe Industry*

A syringe consists of a transparent plastic or glass syringe outfitted with a hypodermic needle, and usually has marks that indicate the volume of fluid in the syringe. Most modern syringes are plastic with a rubber piston. This is due to it being cheap enough to dispose of after one use (in order to minimise the risk of spreading diseases) and because this type seals much better between the piston and the barrel. Major developments to the modern medical syringe include safety needles and prefilled cartridges. These are outlined in the following paragraphs:

#### *Safety Syringes*

- Auto-disable (Non-reuse) Syringes – there are multiple designs that accommodate the auto-disable function. These include a vacuum device, and a spiral design, which are implemented after the first use to disable the syringe. However, these devices do not reduce needlestick injuries;
- Safety Syringes with Needlestick protection – the designs of this product range generally differ in the way in which the safety mechanism(s) is/are activated, as well as the extent to which the safety features are integrated. Such safety features include a needle guard or sheath that slides over the needle after use. However, these are not tamper proof. Further developments include a retractable syringe which may either be controlled by the user or through a spring which propels the needle into the barrel after use. These spring based devices are the current generation of safety syringes and are based on a tamper proof design; and
- Prefilled Syringes – traditionally, injectable drugs have been supplied in vials that are administered through either an intravenous infusion or a standard syringe. However, prefilled syringes offer a number of benefits over traditional packaging of vials. For example, prefilled syringes reduce the number of steps over the former method, which facilitates ease of use. Prefilled Syringes also accommodate volumes that range from 0.25ml to 5.0ml. This makes them appropriate for products administered subcutaneously (under the skin) or intramuscularly (directly into the muscle). Due to biocompatibility issues, barrels of prefilled syringes are made of glass as it is a more stable material than plastic, allowing for a longer shelf life. This is a regulatory condition within certain major markets.

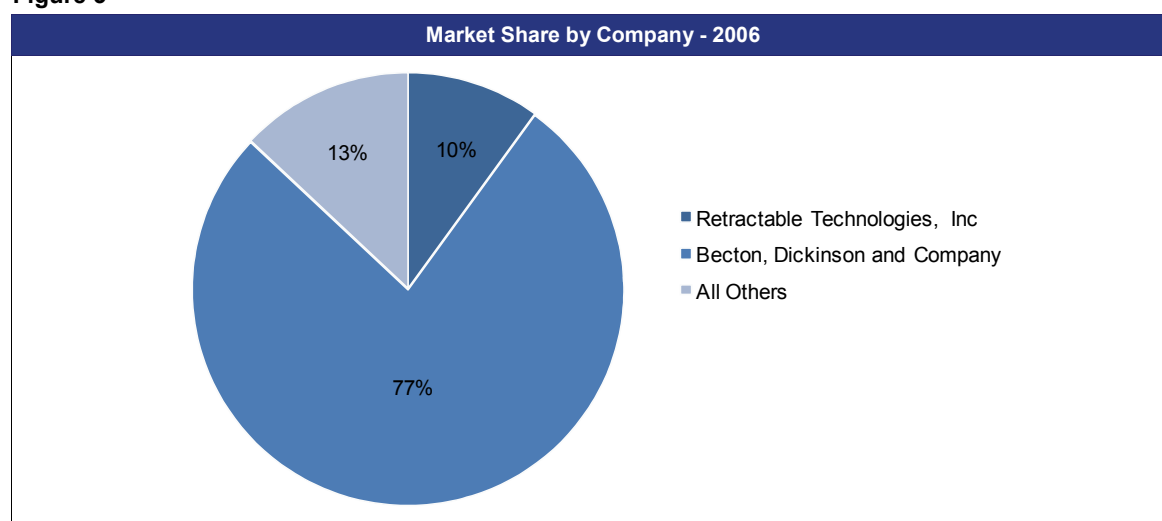
Other minor developments include a multi-shot syringe and the standard U-100 insulin syringe. The multi-shot syringe is designed to reload from a built-in container after each injection, so as to provide the possibility of multiple injections. These are used infrequently in humans so as to minimise the risk of spreading diseases, however an exception is the personal insulin multi-shot injector. The U-100 syringe is made specifically for insulin self-injections that feature a shorter needle for subcutaneous injections and markings in insulin units to simplify drawing a measured dose of insulin.

## 5.2 Safety Syringe Industry

### Participating companies

The following outlines the estimated market share of participating companies within the Safety Syringe Industry:

Figure 5



**Source:** Unilife Executive Informational Overview, prepared by Crystal Research Associates, dated 6 January 2009

The top two players in 2006, held approximately 87% of the market, with Industry concentration regarded as high.

### Market Size in the Safety Syringe Industry

According to the International Association of Safe Injection Technology, it is estimated that as many as 35 billion syringes are used worldwide annually. This is believed to represent about \$5 billion sales annually. Moreover, the estimated market for safety syringe products is estimated to be growing at about 8% per year, and is currently estimated at approximately \$1.69 billion. However, prefilled syringes are experiencing even greater market support with a minimum growth rate of 12% per year and an approximate market size of \$1.5 billion.

sanofi-aventis is the leading user (purchaser) of ready-to-fill syringes worldwide, accounting for an estimated 40% of the market. Some products, such as vaccines and anti-coagulants, are sold at a fraction of the price of therapeutic agents, including drugs for multiple sclerosis, haematological conditions, and inflammatory diseases.



## 5.2.1 Regulations within the Medical Manufacturing Industry

### *Australia Based*

Regulations which affect the Medical Manufacturing Industry include:

- Occupational Health and Safety Act – the general objective of this Act is to secure the health, safety and welfare at work of employees of the Commonwealth and of Commonwealth authorities. Under the Act it is reasonable to expect that healthcare professionals in Australia should be protected from needlestick injuries or exposure to bloodborne pathogens;
- Code of Good Manufacturing Practice – This applies to the manufacture of sterile medical devices and voluntary procedures existing for the recall of medical products; and
- Therapeutic Goods Act – medical equipment produced for the Australian market is subject to the Therapeutic Goods Administration (“**TGA**”) a division of the Department of Health and Aged Care, and its associated Act. The Therapeutic Goods Act’s primary purpose is to provide a national framework for the regulation of therapeutic goods within Australia and ensure their quality, safety, and efficacy.

The Therapeutic Goods Act is based on a risk management approach designed to ensure public health and safety, while at the same time freeing the Medical Manufacturing industry from any regulatory burden. It also includes regulations on advertisements, fees, costs and charges.

Furthermore, to be supplied to the Australian public or exported overseas, the product must be registered with the Australian Register of Therapeutic Goods. In order to obtain registration, the manufacturer must provide comprehensive scientific data regarding the quality, safety and effectiveness of the product. Also the standards must be complied with to ensure a continuation of registration.

### *USA Based*

Regulations which affect the Medical Manufacturing Industry include:

- Occupational Health and Safety (“**OHS**”) Act – Through the OSH Act 1970, the USA Congress established the Occupational Safety and Health Administration (“**OSHA**”) in 1971. Its purpose was to uphold and enforce health and safety standards in the workplace;
- FDA – The FDA is responsible for ensuring the safety, efficacy and security of human and veterinary drugs, biological products, medical devices, food supply, cosmetics and radiation emitting products. Further, the FDA is responsible for the progression of innovations that make medicines and foods more effective, affordable and safer as well as supplying science based information to the general public to improve their health. This is equivalent to the TGA mentioned above.
- Bloodborne Pathogens Standard (“**BPS**”) – In order to address concerns relating to the occupational transmission of bloodborne pathogens, the OSHA established the BPS. The standard covers any employee whose occupation may cause exposure to potentially infectious bodily fluids. In response to the standard, companies whose operations involve potentially infectious bodily fluids are willing to pay for more expensive devices such as safety and prefilled syringes. This is due to the high cost associated with testing and treating employees exposed to bloodborne pathogens; and
- Needlestick Safety and Prevention (“**NSP**”) Act – Subject to pressure from USA healthcare groups the NSP Act was signed into law by the USA Congress in order to update and improve the PBS. Primarily the Act is concerned with providing a safe work environment for healthcare workers.



## 5.2.2 Industry participants comparable to Unilife

It should be noted that in addition to the companies described below, the Medical Manufacturing industry has participants from other medical device manufacturers as well as large pharmaceutical and biotechnology firms that have device divisions.

### ***Becton, Dickson & Company***

Becton, Dickson and Company (“**BD**”) is a global firm that develops, manufactures and sells a range of medical equipment, devices, diagnostic products and laboratory equipment to healthcare institutions, researchers, clinical laboratories and the general public. The company was established in 1897, and employs people in over fifty countries. During 1906, the BD Medical division was formed, and is believed to be the first USA manufacturing facility for syringes and needles. Today its product range includes devices in direct competition to Unilife’s range, these being the BD Integra; a retractable syringe, the BD Safetyglide; which serves as a needle guard and the BD Preventis; which is used as an external sheath to prefilled syringes. During 2006, the company held approximately 77% of the Safety Syringe Industry.

### ***Retractable Technologies, Inc***

Retractable Technologies, Inc (“**RTI**”) provide safe and reliable medical products whose primary function is to reduce the worldwide spread of infectious diseases. The company was established in Texas 1989, as engineers were unresponsive to the feedback of healthcare workers at the time. Currently its products are marketed for the healthcare profession. Approximately 80% of its revenue is sourced from the USA. However, it currently holds agreements with governments and organisations around the world.

Its products are manufactured under the VanishPoint brand. These include non-reusable and retractable auto-disable syringes that range from 1ml to 10ml in size. Other products offered include a blood collection tube holder, a device used to reduce infections resulting from catheter hub contamination as well as safety catheters. During 2006, the company held approximately 10% of the total Safety Syringe Industry.

### ***Safety Syringes, Inc***

The company was founded in 2001 and its primary focus is the development of devices intended for the healthcare industry that reduce the risk of needlestick injuries. These include such products as prefilled pharmaceutical glass syringes and disposable plastic hypodermic syringes. More specifically, its product range includes the UltraSafe Passive Delivery System, in which a safety guard locks into place upon completion of shot delivery, UltraSafe Needle Guards, which attach to prefilled glass syringes, and the UltraSafe Tamper Evident Passive Delivery System that seeks to prevent the counterfeiting of prefilled glass syringes.

### ***Covidien Ltd***

In 2007, Tyco Healthcare separated from Tyco International Ltd and is now known as Covidien Plc. The firm is engaged in the development, manufacture and sale of healthcare products for use in clinical and home settings that provide both safety and flexibility in use. This is undertaken through four business segments. These are the medical devices, medical supplies, imaging solutions and pharmaceutical products segments. Its primary products include the MONOJECT prefilled syringe and Magellan safety syringe range.

### ***Inviro Medical Devices***

Inviro Medical Devices (“**Inviro**”) is a private company that was incorporated in 1988. Its focus is on the development and marketing of medication delivery systems that emphasise sharp safety. Located in the USA, its primary markets include the USA, Canada and Europe. The company’s InviroSNAP safety syringe range was developed in conjunction with end user feedback placing it as a market driven product. Its product functions with the initial administration of the medication by the operator, where this is followed by the retraction of the needle back into the barrel. Subsequently the plunger is broken off to prevent needlestick injury or reuse of the device.

### **Terumo Medical Corporation**

Terumo Medical Corporation's primary focus is to develop disposable hypodermic syringes, veterinary syringes and catheters as well as blood collection and transfusion equipment. It is a globally based company, whose manufacturing plants are located in the USA and Japan. Its primary products include the SurGuard2 syringe, which includes a needle locking mechanism. Further, the operator is signalled by an audible check to verify that the safety mechanism has been deployed.

### **Smiths Medical**

Smiths Medical is one of four divisions stemming from the UK based firm, Smiths Group Plc. The company is a global provider of medical devices for healthcare facilities as well as home and specialist environments. Its primary product includes the Needle-Pro device which has been developed to reduce the risk of needlestick injury. This product includes a hinged sheath in order to minimise the amount of time that the clinician is exposed to the needle.

## **5.2.3 Safety Syringe Industry**

The Safety Syringe Industry is a rapidly growing, immature industry. Industry commentators (such as Frost & Sullivan, Griffin Securities Inc, Crystal Research Associates, LLC and CCZ Equities Pty Limited) have forecast rapid growth for the prefilled syringe product.

The current market for prefilled syringes is estimated to be in the range of 2 - 2.5 billion units. The growth rate remains at a high level of more than 12% annually over the outlook period. This is due to a number of factors, which include:

- Product Fundamentals – such as greater medication safety, increased convenience from using a prefillable device, reduced drug wastage and dose accuracy;
- Legislation – legislation in the USA also has assisted with the uptake of products within the Safety Syringe industry. Further, the progressive adoption of these products by other developed international healthcare markets such as Europe, Canada and Australia will provide future growth for prefilled and retractable syringes; and
- Demographics – the aging of the world population, and corresponding increase in the amount spent on healthcare are likely to increase demand for safety syringes in coming years. This is particularly evident within China and India due to their growth in the aging patient base.

However, long-term growth is likely to depend on the ability of manufacturers to bring down production costs and prices. If this is successful, the products will become viable for developing countries.

## **5.3 Conclusion**

Based on the above industry review, we note that notwithstanding recent economic conditions and declines in business and consumer confidence, conditions in the Safety Syringe industry are expected to remain stable as most medical equipment products are not viewed as discretionary expenditure but rather a necessity.

The impact of the factors discussed above is likely to have a positive impact on Unilife's growth and business operations. More specifically, the introduction of the strategic partnership with sanofi-aventis, the world's largest purchaser of prefilled syringes and a positive global outlook for safety syringes, have positioned Unilife strongly for the short to medium term. However, long term viability stems largely from the reduction of production costs, further securing and retaining current strategic partnerships as well as the ongoing implementation of supportive regulations.

## 6 PKFCA EVALUATION

### 6.1 Fair

In our opinion, on the basis that the Schemes proceed on the terms outlined in Section 2, the Proposed Transaction will be fair to each class of Securityholder if the consideration offered by Unilife Corporation attributable to each class of Unilife securities is essentially equivalent in terms of rights and proportionate interest in Unilife Corporation to that of the existing relevant class of securities in Unilife.

#### 6.1.1 Share Scheme

The Share Scheme Consideration payable to each of the Shareholders will result in each Shareholder having an interest in Unilife Corporation which is proportionate to the interest that they held in Unilife.

However, there are differences between the rights attaching to the Shares and to Common Stock. In addition, there are a number of differences between USA/Delaware law and Australian law. A summary of these differences is set out in Appendix 10 of the Information Memorandum and a selection is set out in Appendix 5 of this Report.

Upon implementation of the Schemes, subject to ASX approval, any CDIs will be able to be traded on the ASX. Unilife Corporation has also submitted an application for a new listing of its Common Stock on NASDAQ. However, there is no guarantee when, or if, such listing will occur, and therefore Common Stock may not be immediately tradable on any market in the USA. If Shareholders elect to receive Unilife Corporation Common Stock and then decide they would like to trade, they can easily convert their shares to CDIs and proceed to trade them on the ASX.

Based on the above, we believe that the Share Scheme Consideration being offered to Shareholders is fair.

#### 6.1.2 Option Scheme

The Option Scheme Consideration payable to each of the Optionholders will result in each Optionholder having an interest in Unilife Corporation which is proportionate to the interest that they held in Unilife.

The new Unilife Corporation Options to be issued to Optionholders will be on essentially the same terms as the existing Options, except to the extent necessary or desirable to comply with Delaware and USA federal laws and regulations. In particular, the Unilife Corporation Options will:

- have an equivalent exercise price to the price under the existing Options (but reflecting the 6:1 exchange ratio under the Schemes);
- be vested to the same extent as the existing Options are vested; and
- be subject to the same performance hurdles (if any) as apply to the existing Options.

Fractional entitlements to Option Scheme Consideration will be rounded down to the nearest whole number of Unilife Corporation Options after aggregating all holdings of the relevant Optionholder.

Under USA taxation law, fractional entitlements to Option Scheme Consideration held by USA taxpayers are not able to be rounded up to the nearest whole number of Unilife Corporation Options. As a result, and to ensure all Shareholders and Optionholders receive equal treatment under the Schemes, all fractional entitlement to Scheme Consideration will be rounded down.

Based on the above, we believe that the Option Scheme Consideration being offered to Optionholders is fair.

## 6.2 Reasonable

According to RG 111, if a proposal is considered to be fair, it is also considered to be reasonable. However, we believe that it is useful to consider any other advantages and disadvantages of implementing the Proposed Transaction.

We set out below other considerations that we consider to be relevant when assessing the Proposed Transaction.

### 6.2.1 Advantages

Approval of the Proposed Transaction has the following advantages:

#### *Potential increased ability to raise funds*

According to the Australian Government report *Medical Devices for a Healthy Life*<sup>2</sup> local Australian medical devices manufacturers attract very little foreign direct investment, denying the industry a valuable source of capital and retarding growth.

In our opinion, the USA capital markets provide credible sources of funding for medical equipment companies, with greater capacity for investment than the Australian market. Although in recent times investors have generally become more risk averse, we note that the S&P 500 Health Care Equipment Index has outperformed the S&P 500 Index by 4.6% from the beginning of the 2009 calendar year to 2 September 2009.

Unilife and Unilife Corporation are likely to have more efficient access to the USA capital markets after implementing the Proposed Transaction for the following reasons:

- Increased Exposure – Unilife Corporation will be more accessible, and have greater exposure, to specialist and general investment funds in the USA, that are able to invest in, and are generally more comfortable investing in, USA-based companies. This is primarily because these investors and their advisors are more familiar with USA corporations and securities legislation, rules and practices; and
- Investment Mandates – certain USA investors (such as pension funds) are sometimes subject to investments mandates, which may restrict investing in offshore companies. Implementing the Proposed Transaction would enable these funds to invest in Unilife Corporation.

We set out below research undertaken in relation to sector composition of the S&P 500 companies (which are listed in the USA) as compared to the ASX200 listed companies as a percentage of the respective market capitalisations of the companies within each index. We present our findings below:

**Table 16: S&P500 / ASX200 Comparison**

GICS Sector	S&P 500 Representation (%)	ASX 200 Representation (%)
Oil & Gas	11.40	5.79
Basic Materials	2.70	23.20
Industrials	11.21	7.46
Consumer Goods	10.65	2.73
Health Care	13.24	3.46
Consumer Services	11.23	10.77
Telecommunications	3.11	4.12
Utilities	4.00	2.05
Financials	15.19	40.25
Technology	17.27	0.16

**Source:** Bloomberg – As at 2 September 2009

<sup>2</sup> *Medical Devices for a Healthy Life* Report of the Medical Devices Industry Action Agenda, Commonwealth of Australia, Department of Industry, Tourism & Resources, 2006, page 35

It is evident from the table above that a greater portion of the S&P500 listed companies represent health care companies when compared to ASX200 listed companies. This can be seen as an indication of the relative importance of the health care sector on the exchanges of the respective countries.

NASDAQ has evolved into a global stock exchange based in New York. NASDAQ is broken down into three tiers:

- NASDAQ Capital Market (“**NASDAQ CM**”) - exists for securities of smaller, less-capitalised companies;
- NASDAQ Global Market (“**NASDAQ GM**”) – formerly the NASDAQ National Market; exists for companies that have applied for listing, having met and continued to meet stringent financial and liquidity requirements and agreed to meet specific corporate governance standards; and
- NASDAQ Global Select Market (“**NASDAQ GSM**”) – exists for companies that meet the most stringent initial financial listing conditions (including market value, liquidity and earnings) ever set by a stock market.

The table below illustrates the GICS industry composition of the ASX, the NASDAQ CM, the NASDAQ GM and the NASDAQ GS as at 5 November 2009:

**Table 17: ASX vs. NASDAQ GICS Sector Composition**

GICS Sector	ASX	NASDAQ CM	NASDAQ GM	NASDAQ GS
Health Care	3.10%	22.62%	38.73%	11.71%
Financials	32.79%	21.95%	9.02%	8.47%
Consumer Staples	6.41%	4.25%	2.47%	1.97%
Consumer Discretionary	4.35%	9.46%	10.47%	14.36%
Industrials	6.79%	13.03%	9.86%	5.37%
Energy	8.82%	8.66%	1.67%	1.23%
Utilities	1.27%	0.55%	0.55%	0.06%
Materials	32.21%	4.15%	1.36%	0.72%
Telecommunications Services	3.14%	1.11%	1.78%	1.10%
Information Technology	0.92%	13.89%	23.75%	55.02%
Not Classified	0.19%	0.35%	0.35%	
Total	100.00%	100.00%	100.00%	100.00%

Source: Bloomberg – 5 November 2009

It is evident from the table above that the health care sector in the USA represents a much larger proportion of the country’s exchange when compared to the health care sector in Australia. Accordingly, the implementation of the Proposal will effectively mean that Unilife will have access to a much larger capital market in the USA as opposed to its current position here in Australia.

#### ***Opportunity to Pursue a NASDAQ Listing and (if a NASDAQ Listing is Completed) the Potential for Increased Liquidity***

There is no certainty that a NASDAQ listing of Unilife Corporation will occur at any future time and implementing the Proposed Transaction is not dependent upon such listing. Unilife Corporation has not yet listed on NASDAQ and therefore does not have a track record of trading on NASDAQ upon which to base any expectation of increased demand and liquidity in its Shares. However, if Unilife Corporation proceeds with a NASDAQ listing, there is the potential, over time, for increased liquidity in Unilife Corporation Shares.

#### ***Potentially improved USA investor and analyst understanding***

Currently Unilife is an Australian listed company that conducts operations in the USA through a subsidiary. Some matters that may be of concern to USA investors as a result of this structure include:

- Accounting Principles – USA GAAP and AIFRS are not consistent, and in some circumstances require different accounting treatment (i.e. the capitalisation of research and development costs), which may result in confusion;
- Authorised Capital – the concept of authorised capital (i.e. the imposition of a maximum number of shares that a company may issue) is no longer used in the Australian market, however it is still employed in the USA; and
- Regulatory arrangements – USA-based investors will be more familiar with the USA than the Australian regulatory system.

The above and other factors associated with having a holding company situated in Australia are likely to reduce Unilife's ability to attract capital and investor interest in the USA. The implementation of the Proposed Transaction will help to alleviate these concerns and facilitate both USA investors' and analysts' comparison of Unilife to comparable companies listed in the USA. This may be important to enhancing the competitiveness of Unilife when competing for funding from similar sources as its peers.

### ***Potentially improved attraction to employees***

Offering USA-based employees equity incentives in an Australian-listed company may be less attractive than issuing shares in a USA-based company. This stems largely from the fact that there are differences in ESOP regulation between the two jurisdictions which may be difficult for employees to understand and USA-based employees are likely to be more familiar with USA arrangements.

### ***Retention of the ASX listing***

Unilife Corporation intends to have its securities traded on the ASX in the form of CDIs. Advantages of this include:

- Tradable Security – regardless of whether or not the NASDAQ listing of Common Stock eventuates, Shareholders will be able to trade CDIs on the ASX and accordingly, following implementation of the Proposed Transaction:
  - Shareholders will continue to hold a tradable security. If Shareholders initially elect to receive Common Stock and subsequently decide they would like to trade securities, they will be able to easily convert their Common Stock to CDIs; and
  - Optionholders issued Unilife Corporation options will retain the ability to receive a tradable security upon exercise of the Unilife Corporation options.

We note that the liquidity of CDIs and any NASDAQ listed Common Stock may be different to that of the existing Unilife Shares and it is not possible to predict whether the liquidity of either will be positively or negatively impacted as a result of implementing the Proposed Transaction.

We note that it is not possible to determine the effect of implementing the Proposed Transaction on the market price of the Common Stock, CDIs or Unilife Corporation options with any degree of certainty.

Unilife is currently seeking capital gains tax rollover relief in relation to the issue of replacement securities for both Shares and Options.



### ***Potentially increased opportunity for joint venture arrangements and commercial partnering in the USA***

According to the Australian Government report *Medical Devices for a Healthy Life*<sup>3</sup> Australian inventors and manufacturers have difficulty selling their products in local and export markets. There are significant barriers to market entry for smaller companies, including the dominance of existing players (multinationals) with established brands and distribution networks; the high costs of establishing brand presence and distribution networks and the small size of the domestic market.

While we are advised that no joint venture or commercial partnering arrangement is in contemplation at this time, we are of the opinion that implementing the Proposed Transaction would result in greater potential for Unilife to attract commercial partnering arrangements in the USA in the future for the following reasons:

- Potential Synergies – Unilife Corporation's operations and major market are located in the USA. Partnering with an established USA company has the potential to bring about greater synergy benefits (such as reduced compliance costs);
- Medical Equipment Manufactures – there is a greater presence of larger health care firms in the USA as compared with Australia; and
- Understanding of the Regulatory Regime - a greater level of understanding by potential USA partners of the regulatory regime under which Unilife operates may improve Unilife's chances of sourcing joint venture or commercial partnering arrangements.

### **6.2.2 Disadvantages**

Implementing the Proposed Transaction has the following disadvantages:

#### ***Interests altered***

Upon implementing the Proposed Transaction, Shareholders and Optionholders will cease to hold interests in an Australian company governed by the Australian regulatory regime and capital markets. However, the ASX listing of Unilife Corporation CDIs will render the CDIs subject to ASX Listing Rules, whilst ever the CDIs remain listed.

Unilife Corporation CDIs will not confer legal title to the underlying Common Stock. Legal title will be held by the Nominee. However, the Unilife Corporation CDIs will allow investors to obtain the economic benefits of foreign financial products without holding legal title to those financial products and investors will be able to vote by a number of methods, including by directing the Nominee, however, there may be more compressed timetable to be met to do so than in Australia.

Shareholders may consider it a disadvantage that Unilife would be subject to USA corporate law, NASDAQ listing rules and other regulatory requirements. Unilife and its Shareholders and Optionholders will be subject to a different governance and regulatory regime including:

- the rights set out in the certificate of incorporation and by-laws;
- Delaware state and United States federal law;
- NASDAQ listing rules; and
- regulation by the SEC.

In some respects, the USA regime affords lesser protection for shareholders, especially minority shareholders, than the Australian regime, in particular, the takeover protections, including the "20% rule" that prevents any party acquiring more than 20% of the shares in a company without either making an offer to all shareholders or receiving approval from shareholders. These Australian protections will not apply to Unilife Corporation.

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<sup>3</sup> Op cit, page 35

It is not possible to canvass all the potential consequences of the change of regulatory regime. However, some obvious ones are that:

- third parties may be able to obtain a significant stake in Unilife Corporation (greater than 20%) without making an offer to all Shareholders and Optionholders; and
- in general, there appears to be a greater ability to secure a strong enough position to inhibit an open contest for control of Unilife Corporation.

Other aspects of the USA regime applying to Unilife Corporation that may be of concern to Shareholders and Optionholders include the following:

- Unilife Corporation will have the ability to implement a shareholder rights plan (colloquially referred to as a "poison pill") which could inhibit the ability of an investor to acquire a significant stake, thus helping to entrench the present Board and possibly management;
- partial offers which involve a fixed number of shares, as opposed to a fixed percentage of each shareholder's holding, are not prohibited;
- Shareholders do not have the capacity to call general meetings of the company;
- the provisions relating to voting for directors mean that directors can be elected with less than 50% of votes and in order to vote out an incumbent director will require nomination of an alternative candidate and a plurality vote at a shareholder meeting. Directors may be removed by shareholders only for cause and with a vote greater than 50% of the total issued voting capital;
- Unilife Corporation is able to issue shares prior ranking to existing Shares, without Shareholder approval. The terms of such shares could have an adverse impact on the rights or value of existing Shares;
- annual general meetings will be held in the USA; and
- Shareholders will not benefit from Australian corporate law that provides for (non binding) votes on executive remuneration.

The State of Delaware is a leading domicile for USA and international corporations. More than 850,000 business entities have made Delaware their legal home. More than 50% of all publicly-traded companies in the USA including 63% of the Fortune 500 have chosen Delaware as their legal home.

Delaware provides a complete package of incorporations services. The Delaware General Corporation Law is claimed to be the most advanced and flexible business formation statute in the USA. The Delaware Court of Chancery is a unique 215 year old business court that has written most of the modern USA corporation case law.

### ***Changes to protection of shareholders***

We are not lawyers and are not providing any corporate legal advice in this Report. To prepare this Report and in selecting key issues from Appendix 10 of the Information Memorandum, we consulted Independent Legal Counsel and relied on their advice.

The below paragraphs broadly outline some of the regulatory and governance issues that may have an impact on Australian Shareholders and Optionholders, following redomiciliation of Unilife in the USA. The issues outlined are:

- 20% takeover threshold;
- Poison Pills;
- Partial Offers;
- Directors' Rights;
- Shareholders' Rights to call Meetings and the Notice Period of Meetings;
- Shareholder Oppression; and
- Nomination of Directors.



### *20% takeover threshold*

In Australia, the Corporations Act provides that a party cannot increase their shareholding in a company from below 20% to above 20% (or from a starting point above 20% and below 90%) without making a formal takeover offer for all the shares in a company, unless one of a number of prescribed acquisition exceptions applies. Exceptions include acquisitions through a 3% creep in any 6 months or with the approval of the remaining shareholders by resolution at a general meeting.

We understand that Delaware General Corporation Law does not have such a provision. Without reproducing an exhaustive list of all relevant Delaware General Corporation Law takeover provisions, some of the differences generally include the following:

- an existing shareholder can increase their shareholding in a company from below 20% to above 20% without seeking the approval of the remaining shareholders, although they would need to disclose their interest when or before becoming a controlling shareholder;
- a new shareholder can acquire 20% or more of the shares in a company without making a takeover offer; and
- a substantial or majority shareholder can sell their shares to a third party by private treaty, without offering their shares on market. In Australia, a shareholder holding in excess of 20% could only sell their shares to a third party by private treaty if approved by shareholders.

### *Poison Pill*

The Board of Delaware corporations can implement a poison pill or shareholder rights plan, which may block a bidder from acquiring part or all of the shares in the company, without shareholder approval. This has the potential to prevent shareholders receiving what they may consider an attractive price for their shares. To some extent, this risk may be mitigated as Boards are required to act bona fide. Such a provision does not apply in Australia.

### *Partial Offers*

In the USA, bidders may make partial offers for a fixed number of shares from each shareholder. This may result in minority shareholders being required to part with a significantly higher percentage of their holding, relative to larger shareholders.

Such a provision does not apply in Australia. The main provisions regarding partial takeover offers applying in Australia are as follows:

- partial offers are restricted to proportional bids for each shareholder's holding, rather than for a proportion of the total share in the company (a pro-rata bid) or a proportion of each shareholder's holding (a proportional bid);
- maximum acceptance conditions are prohibited;
- a company may include in its constituent documents shareholder plebiscite provisions regarding allowing (or not) a partial takeover offer to proceed; and
- an offeror is not able to give benefits under an escalation agreement entered into within 6 months of a bid or proposed bid.

### *Directors' Rights*

Subject to initial approval of the certificate of incorporation by the shareholders, Delaware General Corporation Law allows directors to issue shares with preferential voting, dividend and other rights without shareholder approval.

Shareholders are generally not required to approve share buybacks or reductions in capital. Directors also determine the Board's compensation. In Australia, shareholder approval is generally required for share buybacks and reductions in capital.

Plurality rules allow directors to be elected through votes comprising less than a majority.

In Australia, the Corporations Act provides that directors can be removed with or without cause by passing a resolution at a general meeting.

#### *Shareholders' Rights to call Meetings and the Notice Period of Meetings*

In Australia, either 100 shareholders or those holding 5% of the ordinary voting rights can call a general meeting of a company. Under Delaware General Corporation Law, shareholders in a Delaware corporation do not have the same rights to call general meetings of the shareholders.

In Australia, notice of a general meeting of shareholders must be given to shareholders at least 28 days before the date of the meeting. Delaware General Corporation Law only requires notice be given to shareholders 10 days prior to a meeting of shareholders. It is noted that holders of CDIs will have to instruct the Nominee how to vote at a general meeting of shareholders within that time, should they wish to vote in that manner.

In Australia, under the Corporations Act, a special resolution of shareholders passed by 75% of the votes cast by members entitled to vote is required for actions including, but not limited to, modifying the constitution, changing the name of the company and undertaking a voluntary wind up of the company. Delaware General Corporation Law does not have the concept of special resolutions.

#### *Shareholder Oppression*

In Australia, the Corporations Act provides that any shareholder of a company can bring an action for conduct which is contrary to the interests of the shareholders as a whole, oppressive to, unfairly prejudicial to, or unfairly discriminatory against, any shareholders in their capacity as a shareholder, or themselves in a capacity other than as a shareholder.

There are no equivalent statutory provisions in the Delaware General Corporation Law. However, there may be common law remedies available.

#### *Nomination of Directors*

As Unilife CDIs will be ASX listed, ASX Listing Rules will continue to apply to Unilife.

Under ASX Listing Rule 14.3, companies are required to accept nominations for the election of directors up to 35 days (30 days in the case of a meeting requested by shareholders) before the date of a general meeting at which directors are to be elected. USA federal securities laws require that a shareholder proposal be eligible for inclusion only if it is received by the company no later than the 120th calendar day before the anniversary of the date of the prior year's proxy statement.

#### *Additional Costs*

If Unilife Corporation lists on NASDAQ, there will be additional costs which will include ongoing costs associated with regulatory compliance, administration and maintenance of the NASDAQ listing. This includes costs associated with the satisfaction of Section 404 of the 2002 Sarbanes-Oxley Act.

However, these costs would also be incurred if Unilife remained domiciled in Australia and wished to list on NASDAQ.

### ***Potentially additional litigation exposure***

As a result of implementing the Proposed Transaction and redomiciling in the US, Unilife may increase its exposure to litigation claims in the USA. However, given that the major operating subsidiary of Unilife is already based, and operates, in the USA, and the USA is regarded as being most likely to be the largest target market for Unilife products, at least in the near term, Unilife already has, and will continue to have an exposure to USA-based litigation regardless of whether or not the Proposed Transaction is implemented.

### ***No franked dividends***

Any dividends paid in the future by Unilife Corporation are likely to be unfranked. However, given that the USA is the likely source of Unilife's future earnings, even if the Proposed Transaction did not proceed, it is likely that any dividends paid in the future by Unilife would also be unfranked.

However, all Shareholders outside the USA will have USA dividend withholding tax deducted from any dividends from Unilife Corporation. However, such withholding tax should be creditable against Australian taxes.

## **6.2.3 Other Considerations**

### ***Other risks***

Potential risks arising from implementation of the Proposed Transaction include:

- USA investors may not invest in Unilife Corporation, to the degree that would benefit Shareholders (and ultimately Optionholders, should they exercise their Options), or such investment takes a considerable time to develop. There is no specific factor compelling USA investors to invest, other than the business prospects and performance of Unilife;
- Unilife may not be listed on NASDAQ. If the Proposed Transaction is approved, Unilife may proceed to implement the redomiciliation regardless of whether or not Unilife is listed on NASDAQ;
- it might be argued that Australian Securityholders are exchanging an Australian dollar denominated asset for a USA dollar denominated asset. However, given that the operations, business and major markets of Unilife are seen as being mainly in the USA, the company already has a currency-related risk; and
- unanticipated consequences arising from application of Delaware state and USA federal law or regulation that are disadvantageous relative to what may have occurred under Australian law or regulation.

### ***Taxation implications***

Outlined below is our understanding of the key taxation implications of the Proposed Transaction for Unilife and its Securityholders, as set out in section 9 of the Information Memorandum.

### ***Shareholders, non-ESOP Optionholders and ESOP Optionholders***

The taxation implications of the Proposed Transaction will vary for each Securityholder, based on their individual taxation situation. The Information Memorandum only provides general information and, accordingly, we recommend that each Securityholder seek their own independent taxation advice in relation to the specific tax impacts of the Proposed Transaction on their taxation position.

Unilife has stated that it has been advised that the exchange under the Schemes will not cause any Australian tax to be paid by Shareholders or Optionholders that are eligible and elect for capital gains tax rollover or are eligible for Division 13A employee share/option tax rollover.

In addition, Unilife has stated that class ruling applications have been lodged with the ATO seeking confirmation that the conditions for capital gains scrip for scrip rollover relief and Division 13A employee share/option scheme rollover relief are satisfied and that rollover relief is available in relation to the transfer of Shares to Unilife Corporation under the Share Scheme and the cancellation of Options under the Option Scheme. Shareholders and Optionholders will be advised of the outcome of the ruling process once the final rulings have been issued. There is no guarantee that the ATO will provide the rulings prior to the Scheme Meetings and receipt of the final ruling is not a condition to the implementation of the Schemes.

Unilife has stated that, subject to the limitations and qualifications set forth in section 9 of the Information Memorandum, it has been advised that the exchange of Shares for Unilife Corporation Shares should not cause any USA federal income tax to be paid by Shareholders and the exchange of Options or Standalone Options for Unilife Corporation Options or Unilife Corporation Standalone Options, respectively, should not cause any US federal income tax to be paid by Optionholders or Standalone Optionholders.

#### *Unilife*

- Tax rate

As a USA corporation, Unilife Corporation will be taxed on its worldwide income. Therefore, a USA corporation is potentially subject to double-taxation on income earned outside the USA. Double taxation may be mitigated to the extent as at 2 November 2009 the USA corporation qualifies for a credit for non-US income taxes paid or accrued.

However, due to a complex set of limitations, the amount of the deemed paid credit may not be sufficient to offset all of the non-USA taxes paid or accrued by the USA corporation. To the extent not wholly offset by this credit, the foreign earnings of a USA corporation may be subject to double-taxation.

The USA has a very complex federal tax regime governing a USA parent corporation that owns USA and foreign subsidiaries and interests in other foreign corporations. As a result of this regime, the global group headed by Unilife Corporation may be subject to a higher overall tax burden after implementing the Proposed Transaction.

The corporate income tax rate in Australia is a flat rate of 30%. In the USA, corporate income tax may be composed of both federal and state taxes. The USA federal corporate tax rate varies from 0% to 35% based on a series of thresholds of taxable income. The State of Delaware does not levy any state-based corporate income tax on companies incorporated within the State that do not conduct their business within Delaware. As Unilife Corporation's operations will be conducted primarily in Pennsylvania, it will not be subject to Delaware state taxes. However, there may be other state-based taxes that apply.

- Carried forward income tax losses

Unilife currently has Australian carried forward income tax losses. Upon implementing the Proposed Transaction these losses will not be cancelled or lost, nor will Unilife cease its Australian tax residence. However, the use of these losses against future income or the ability to continue to carry them forward is dependent on satisfying the 'continuation of ownership test', or failing that, the 'same business test' as defined within the Income Tax Assessment Act 1997. The use of these losses also is dependent upon producing future Australian taxable income.

Certain limitations may apply to limit the use, for USA income tax purposes, of the Unilife's historical Australian losses after the Proposed Transaction, possibly resulting in a higher overall tax burden for the Unilife Group.

### *Australian tax consequences of the Proposed Transaction for Australian resident Securityholders*

- **Capital Gains**

Unilife has applied to the ATO for a class ruling for capital gains tax rollover relief in relation to the transfer of both Shares and Options. If this is granted, shareholders will be able to elect to roll over any capital gain that would otherwise have arisen as a result of the transfer of their Shares for CDIs or Common Stock, leaving the cost base of the Shares unchanged.

As Unilife was incorporated on 28 June 1985, which is before the introduction of capital gains tax in Australia, it is possible that there will be some Shareholders holding pre-CGT Shares. If the Proposed Transaction proceeds, any Unilife Corporation Shares arising from such Shares will be subject to CGT, which would be a disadvantage for any such Shareholders.

The outcome may be different for Shareholders residing in other jurisdictions, institutional Shareholders or Shareholders who do not hold their Shares on capital account.

- **Dividend Imputation**

Whilst Australia has a dividend imputation system that allows companies to issue a franking credit with any franked distributions, the USA does not have a similar system, which means any dividends that may be paid by Unilife Corporation will not be frankable. Shareholders will therefore not be entitled to receive any franking credits which they may have received if Unilife had been the entity paying the dividend.

- **Withholding Tax**

If Unilife Corporation were to pay dividends to Australian residents, these dividends would be subject to US withholding tax at a rate of approximately 15%. Australia and the USA have a double taxation agreement in place which may reduce this rate of withholding tax in certain circumstances.

The withholding tax payable by Australian residents may however be able to be offset against the Australian income tax payable on that income and other foreign income for Australian tax purposes.

### **Liquidity, Value & Share Price**

If the Proposed Transaction is implemented, it is the intention of Unilife to have Common Stock in the USA-domiciled Unilife Corporation traded on the ASX via CDIs.

It is not possible to determine with certainty the effect of implementing the Proposed Transaction on the market price of the Common Stock, CDIs or Unilife Corporation options as compared with Shares and Options.

The liquidity of the CDIs is likely to be different to the current liquidity of Unilife Shares traded on the ASX. It is not possible at this stage to determine with certainty whether liquidity will be positively or negatively impacted as a result of implementing the Proposed Transaction. Further, even if the liquidity of Unilife Corporation CDIs on the ASX could be determined, it would not be possible to determine the effect of the changes in liquidity on the market price and value of the shares with any degree of certainty.

## **6.3 Non approval of Schemes**

In the event that Shareholders do not approve the Share Scheme, the following key implications will arise:

- Shareholders and Optionholders will retain their interests in Unilife, which will continue to operate as a separate entity and will continue to be listed on ASX;
- Unilife Corporation will not proceed with the NASDAQ listing;

- the benefits expected to arise from the Proposed Transaction such as improved access to capital markets, increased demand from USA Investors and the ability to attract and retain quality USA employees, may not be obtained;
- the costs incurred in connection with presenting the Proposed Transaction to Securityholders will be incurred regardless of whether the Proposed Transaction is implemented; and
- the redomiciling proposal will not be revisited in the foreseeable future.

If the Share Scheme is approved but the Option Scheme is not, the following key implications may arise for Optionholders:

- as Unilife will become a wholly owned subsidiary of Unilife Corporation and will be delisted from the ASX, the Options will be over unlisted securities in a controlled entity. As a result, any unexercised Options would only be able to convert into extremely illiquid Shares in an unlisted company. This would result in value realisation being uncertain for Optionholders;
- alternatively, Unilife Corporation may compulsorily acquire the Options if the outstanding Options and Standalone Options comprise less than 10% of the issued share capital of Unilife at that time. The right of an Optionholder to continue to hold his or her Options, or Shares issued on exercise of such Options, will be subject to any decision by Unilife Corporation to compulsorily acquire the Options and Shares issued on exercise of such Options under Chapter 6A of the Corporations Act (if available).

Unilife Corporation has indicated that it will consider exercising any compulsory acquisition rights if the Option Scheme is not approved and Options are exercised. The compulsory acquisition must be at fair value for the Options in the opinion of an independent expert approved by ASIC and will be payable in cash, but there is no guarantee that this amount will exceed the value of the Unilife Corporation Options which would have been issued under the Option Scheme; and

- Unilife Corporation may consider discussing the cancellation of the Options with Optionholders by private treaty.

Optionholders should note that Unilife Corporation may not be able to or may choose not to compulsorily acquire or cancel the Options in this situation and therefore there is no guaranteed exit for Optionholders in these circumstances.

If the Share Scheme is approved but any or all of the Standalone Optionholders do not agree to the cancellation of their Standalone Options in exchange for equivalent options in Unilife Corporation, such Standalone Optionholders will hold Standalone Options over unlisted securities as Unilife will become a wholly owned subsidiary of Unilife Corporation and will be delisted from the ASX. As a result, any unexercised Standalone Options would only be able to convert into extremely illiquid Shares in an unlisted company.

If this occurs, Unilife Corporation will consider the alternatives noted above including compulsorily acquisition of such Standalone Options (if available).

## 6.4 Conclusion

Based on the above, we conclude that the Proposed Transaction is “fair” and “reasonable” and hence in the best interests of the Shareholders as a whole and the Optionholders as a whole.



## 7 QUALIFICATIONS AND DECLARATIONS

### 7.1 Qualifications

PKFCA is the licensed corporate advisory arm of PKF East Coast Practice, Chartered Accountants and Business Advisers. PKFCA provides advice in relation to all aspects of valuations and has extensive experience in the valuation of corporate entities and provision of expert reports.

Mr Vince Fayad B.Bus, CA, is a Director of PKFCA and the head of the corporate advisory practice. Mr Fayad is also a partner of PKF East Coast Practice. Mr Fayad is the Director responsible for this Report. Mr Vince Fayad has over 25 years experience in a number of specialist corporate advisory activities including company valuations, due diligence investigations, preparation and review of business feasibility studies, public company floats, accounting, advising on transactions and acquisitions, preparation of independent expert reports, preparation of information memoranda and other corporate investigations.

Based on his experience, Mr Fayad is considered to have the appropriate expertise and professional qualifications to provide the advice offered.

### 7.2 Independence

PKFCA is unaware of any matter or circumstance that would preclude it from preparing this Report on the grounds of independence under regulatory or professional requirements. In particular, PKFCA has had regard to the provisions of applicable pronouncements and other guidance statements relating to professional independence issued by Australian professional accounting bodies and ASIC.

PKFCA was not involved in advising on, negotiating, setting, or otherwise acting in any capacity for Unilife in relation to the Proposed Transaction, other than the preparation of this Report. Further, PKFCA has not held and, at the date of this Report, does not hold any shareholding in, or other relationship with Unilife that could be regarded as capable of affecting its ability to provide an unbiased opinion in relation to the Proposed Transaction.

PKFCA considers itself to be independent in terms of RG 112 *Independence of experts* (“**RG 112**”), issued by ASIC.

PKFCA will receive a fee based on the time spent in the preparation of this Report. PKFCA will not receive any fee contingent upon the outcome of the Proposed Transaction, and accordingly, does not have any pecuniary or other interests that could reasonably be regarded as being capable of affecting its ability to give an unbiased opinion in relation to the Proposed Transaction.

Four (4) drafts of this Report were provided to the Directors of Unilife for review of factual accuracy. Certain changes were made to the Report as a result of the circulation of the draft Reports. However, no changes were made to the methodology, conclusions or recommendations made to the Shareholders.

#### 7.2.1 Disclaimer

This Report has been prepared at the request of the Directors and was not prepared for any purpose other than that stated in this Report. This Report has been prepared for the sole benefit of the Directors, Shareholders and Optionholders. Accordingly, this Report and the information contained herein may not be relied upon by anyone other than the Directors, Shareholders and Optionholders without the written consent of PKFCA. PKFCA accepts no responsibility to any person other than the Directors, Shareholders and Optionholders in relation to this Report.

The statements and opinions contained in this Report are given in good faith and are based upon PKFCA’s consideration and assessment of information provided by the Directors, executives and management of all of Unilife.

## APPENDIX 1 GLOSSARY

Table 18: Glossary

Term	Definition
AASB	Australian Accounting Standards Board
ABS	Australian Bureau of Statistics
Act	Corporations Act 2001 (Cth)
Additional Shares	Shares to be issued in excess of Unilife's Placement capacity
Agreements	collectively the Industrialisation Agreement and the Exclusive Agreement
AIFRS	Australian equivalents to international Financial Reporting Standards
Amex	American Stock Exchange
ASIC	Australian Securities and Investments Commission
ASX	ASX Limited or the Australian Securities Exchange
ATO	Australian Taxation Office
BD	Becton, Dickson and Company
Board	Board of Directors
BPS	Bloodborne Pathogens Standard
Broker Options	unlisted options to certain advisers and brokers as part of their fee arrangements with respect to the Placement and SPP
CDI	CHESS Depository Interest
Common Stock	Fully paid Common Stock in the capital of Unilife Corporation
Company	Unilife Medical Solutions Limited
Corporations Act	Corporations Act 2001 (Cth)
Court	Australian Federal Court
Directors	Directors of Unilife Medical Solutions Limited
Employee Offer	offer of an opportunity for USA employees to subscribe for Options to acquire Shares in Unilife on similar terms to the offer made under the SPP
ESOP	Employee Share Option Plan
Exclusive Agreement	Exclusive Agreement between Unilife and sanofi-aventis for the exclusive rights to negotiate for the purchase of the Unifill syringe
Exercise Period	period during which Options issued under the Employee Offer may be exercised, i.e. at any time between 30 October 2009 and 5pm (USA Eastern time) on 11 November 2009
Explanatory Statement	explanatory statement to accompany the Information Memorandum and Notices of Meeting
FDA	Food and Drug Administration
Firm Shares	shares to be issued under Unilife's placement capacity under ASX Listing Rule 7.1
FOS	Financial Ombudsman Service Limited
FSG	Financial Services Guide
GAAP	USA Generally Accepted Accounting Principles
GDP	gross domestic product
IER	Independent expert's report in relation to the Proposed Transaction
Independent Legal Counsel	Baker & McKenzie and Deacons, respectively
Index	S&P/ASX 200 Pharmaceuticals, Biotechnology and Life Sciences Index
Ineligible Overseas Shareholders	Shareholders who are resident outside Australia, New Zealand, USA, Hong Kong, United Kingdom, Ireland, France, Croatia and Malta
Industrialisation Agreement	Industrialisation Agreement between Unilife and sanofi-aventis for the commercialisation of the Unifill syringe
Information Memorandum	information memorandum issued by Unilife in relation to the Proposed Transaction, which accompanies this Report
Inventors	Craig Stephen Thorley and Joseph Hermes Kaal
Inventors' Shares	issue of 5,000,000 Shares to the Inventors as consideration under an Agreement with each of the Inventors in exchange for their confirmation that all intellectual property rights created by them in respect of Unilife's patents, products and/or services vested in Unilife upon creation, and to the extent that this has not already happened, agreed to assign to Unilife all current and future intellectual property rights they may hold in relation to Unilife's patents, products and/or services
Inviro	Inviro Medical Devices
January EGM	extraordinary general meeting to be held on the same day as the Scheme Meetings
Licence	Australian Financial Services Licence (Licence No: 247420)
Listing Rules	ASX's Listing Rules



Term	Definition
MIA	Merger Implementation Agreement
NAB	the National Australia Bank'
NASD	the National Association of Securities Dealers
NASDAQ CM	NASDAQ Capital Market
NASDAQ GM	NASDAQ Global Market
NASDAQ GSM	NASDAQ Global Select Market
Nominee	a nominee appointed by Unilife Corporation
Notices	notices of meetings in relation to the Schemes
November EGM	extraordinary general meeting held in November 2009
NSP	Needlestick Safety and Prevention
NYSE	New York Stock Exchange
Options	Issued options over unissued shares in Unilife Medical Solutions Limited
Optionholders	holders of Options in Unilife Medical Solutions Limited granted under the ESOP
OHS	Occupational Health and Safety
OSHA	Occupational Health and Safety Administration
Option Scheme Consideration	1 Unilife Corporation Option for every 6 Options held in Unilife at the Scheme Record Date
PHLX	Philadelphia Stock Exchange
PKFCA	PKF Corporate Advisory (East Coast) Pty Limited
Placement	issue of shares by way of a placement
Placement Options	free attaching options to shares issued under the Placement
Proposed Transaction	A transaction by which Unilife will redomicile in the USA, to be effected by two schemes of arrangement between Unilife and its Shareholders and Optionholders, respectively following which Unilife Corporation will apply for listing on ASX.
RBA	Reserve Bank of Australia
Regulation 8303	Regulation 8303 of Part 3 of Schedule 8 of the Corporations Regulations
Report	Independent expert's report in relation to the Proposed Transaction
Resolutions	resolutions to approve the new SIP and grant certain incentives to Directors to be considered at the January EGM
RG 111	ASIC's Regulatory Guide 111 " <i>Content of Expert Reports</i> "
RTI	Retractable Technologies, Inc.
sanofi-aventis	sanofi-aventis Winthrop Industrie, a wholly-owned subsidiary of sanofi-aventis
Schemes	The two schemes of arrangement under Australian law between Unilife and its Shareholders and Optionholders, respectively
SEC	USA Securities and Exchange Commission
Section 411	Section 411 of the Corporations Act
Securityholders	Shareholders, Optionholders and Standalone Optionholders of Unilife
Shares	Issued fully paid ordinary shares in Unilife
Shareholders	holders of shares in Unilife Medical Solutions Limited
Share Scheme Consideration	1 Common Stock for every 6 Shares held in Unilife at the Scheme Record Date
SIP	Unilife Corporation 2009 Stock Incentive Plan
SPP	Share Purchase Plan
SPP Shares	shares subscribed for under the SPP
Standalone Options	Options issued to certain former employees, consultants and advisers to Unilife outside the Employee Share Option Plan
Standalone Optionholders	holders of options in Unilife Medical Solutions Limited, other than those granted under the ESOP
Stock Incentive Plan	the Unilife Corporation 2009 Stock Incentive Plan
TGA	Therapeutic Goods Administration
Trading Period	1 July 1008 to 31 October 2009
UMSI	Unilife Medical Solutions, Inc.
Unifill	Unilife ready-to-fill syringe
Unilife	Unilife Medical Solutions Limited
Unilife Corporation	Unilife Corporation Inc.
Unilife Corporation Shares	common stock in Unilife Corporation
Unitract	Unitract Syringe Pty Limited
Unitract Agreement	Unitract acquisition agreement

Term	Definition
USA	United States of America
WHO	World Health Organization

## APPENDIX 2 SOURCES OF INFORMATION

In preparing this Report, PKFCA has had access to and relied upon the following principal sources of information:

- Unilife Merger Implementation Agreement, dated 1 September 2009;
- draft Information Memorandum, dated 11 November 2009;
- draft Unilife Notice of Meeting, dated 11 November 2009;
- draft Share Scheme of Agreement, received 8 November 2009;
- draft Option Scheme of Agreement, received 8 November 2009;
- Unilife audited annual financial statements for the years ended 30 June 2006, 2007, 2008 and 2009;
- Unilife ASX announcements;
- Unilife website, <http://www.unilife.com/>;
- Bylaws of Unilife Corporation;
- Certificate of Incorporation of Unilife Corporation, State of Delaware, dated 7 June 2009;
- Unilife Initiation Report, prepared by Griffin Securities, dated 19 August 2009;
- Unilife Executive Informational Overview, prepared by Crystal Research Associates, dated 6 January 2009;
- Unilife Research Report, prepared by CCZ Equities Research, dated 8 September 2008;
- IBISWorld Industry Report, Medical and Surgical Equipment Manufacturing in Australia, dated 31 March 2009;
- Letter from sanofi-aventis in relation to the Industrialisation Agreement, dated 30 June 2008;
- First Amendment to the Memorandum of Understanding between Unilife and Aventis Pharma S.A. entered into on 11 December 2006, dated 2 January 2008;
- Confidentiality Agreement between Unilife and Aventis Pharma S.A., dated 7 July 2006;
- Agreement between Unilife and sanofi-aventis Winthrop Industrie with respect to the Industrialisation and Development of Unilife products, dated 29 June 2009;
- Exclusive Agreement between Unilife and sanofi-aventis Winthrop Industrie, dated 30 June 2009;
- First Amendment to the Exclusive Agreement between Unilife and sanofi-aventis Winthrop Industrie, entered into on 30 June 2008, dated 29 June 2009;
- publicly available economic and industry information provided by major research bodies and industry participants;
- various Unilife internal management documents; and
- various discussions with Unilife management.

In addition to the above, PKFCA has sought external legal advice on the USA and Australian legal and corporate matters.

## APPENDIX 3 SUMMARY OF CDIs

Appendix 9 of the Information Memorandum sets out a summary of the terms and conditions of the CDIs. We note the following matters:

### Introduction

Unilife Corporation intends to participate in the Australian electronic transfer system known as CHESS. CHESS cannot be used directly for the transfer of securities of companies domiciled in certain foreign jurisdictions, such as the USA. To enable companies such as Unilife Corporation to have their securities cleared and settled electronically through CHESS, depositary interests called CHESS Depositary Interests (“CDI”s) are issued.

CDIs confer on holders’ beneficial ownership in foreign securities, with the legal title to such shares being held by an Australian depositary entity.

Trading in CDIs is no different to trading in other CHESS approved securities. A CDI holder will not incur any additional fees or charges as a result of holding CDIs rather than Common Stock.

### Number of CDIs issued in relation to Common Stock

Shareholders who elect to receive CDIs will receive 6 CDIs for every 1 share of Common Stock that they would be entitled to receive under the Share Scheme.

### Cessation of trading in Shares

Suspension of trading on ASX in Unilife's Shares will occur from the close of trading on the date on which Unilife lodges the Court order approving the Share Scheme with ASIC (being the Effective Date).

On the first Business Day after the Implementation Date, Unilife will apply for termination of the official listing of its Shares on ASX.

### Voting

Holders of CDIs will be able to attend Unilife Corporation general meetings, by following specified procedures, unless relevant USA law at the time of the meeting prevents CDI holders from attending those meetings. CDI holders will be entitled to vote the Unilife Corporation Common Stock underlying their CDIs by instructing CHESS Depositary Nominees Pty Limited (the proposed Nominee) to vote on the CDI voting instruction form which will accompany notices of meeting.

### Converting from a CDI holding to a Share holding of Unilife Corporation

CDI holders may convert CDIs to Common Stock by following specified procedures. However, trading of Common Stock on the ASX will not be possible. Holders of Common Stock may be able to trade those shares on NASDAQ, should Unilife Corporation obtain a listing on NASDAQ.

Holders of Common Stock may convert their holdings to CDIs at any time, by following specified procedures.

### Communication with CDI holders

CDI holders will receive all notices and company announcements (such as annual reports) that Shareholders are entitled to receive from Unilife Corporation.

### Dividends and other shareholder entitlements

CDI holders will have the right to receive any dividends and other entitlements (such as rights issues and bonus issues) which attach to Common Stock.

### Takeovers

If a takeover bid is made in respect of Common Stock comprising a CDI, the legally registered holder, must not accept the offer made under the takeover bid except to the extent that acceptance is authorised by the relevant CDI holder.

## APPENDIX 4 KEY TERMS OF THE INDUSTRIALISATION AND EXCLUSIVE AGREEMENTS

Set out below are the key terms of the Industrialisation Agreement dated 30 June 2009 and the Exclusive Agreement dated 1 July 2008, both between Unilife and sanofi-aventis Winthrop Industrie, a wholly-owned subsidiary of sanofi-aventis, ("**Agreements**") for the commercialisation of the Unifill syringe, as announced to the ASX on 1 July 2009:

**Table 19: Key Terms of the Agreements**

Term	Definition
Period of Exclusivity	The Agreements set forth the terms of the on-going relationship of the parties, including sanofi-aventis' commitment to complete the funding of the A\$30.4 million.  Both parties have agreed to extend the period in which sanofi-aventis has the exclusive right to negotiate for the purchase of the Unifill syringe by one year. This period of exclusivity for the Unifill syringe will now expire on 30 June 2014 ("Period of Exclusivity") subject to extensions of up to ten years for specific products for which sanofi-aventis has placed orders (as described below).
Exclusivity List	Within 120 days from the signing of this Agreement, sanofi-aventis will provide to Unilife a specific list of therapeutic drug classes (" <b>Exclusivity List</b> ") where it intends to market injectable drug products, which are either currently available from them or in their development pipeline. Should the parties agree to the contents of this Exclusivity List within 60 days of its initial receipt, sanofi-aventis will retain the exclusive right to negotiate for the purchase of the Unifill syringe for use with injectable drug products which are marketed in these therapeutic classes for the full Period of Exclusivity. If the parties are unable to agree to the Exclusivity List within 60 days of receipt of the list, sanofi-aventis will retain full exclusivity to the Unifill syringe across all therapeutic classes; however the Period of Exclusivity will be reduced and will then expire on 1 July 2012. If the Period of Exclusivity expires on 1 July 2012, Unilife will be free to sell the Unifill syringe to any pharmaceutical company across all therapeutic classes.
Supply to Other Pharmaceutical Companies	Unilife has retained the right to enter into agreements with other pharmaceutical companies which may seek to use the Unifill syringe with injectable drug products marketed in Unilife Therapeutic Drug Classes. sanofi-aventis will receive a 5% royalty on revenue generated from sales of the Unifill syringe to other pharmaceutical companies. Royalty payments to sanofi-aventis will cease when Unilife's total revenues from these other pharmaceutical companies reaches \$A600 million (€340 million).
Therapeutic Exclusivity and other Pharmaceutical Companies	Unilife has the right to seek an Access Fee (" <b>Access Fee</b> ") from other pharmaceutical companies for the right to negotiate for the purchase of the Unifill syringe for use with a Unilife Therapeutic Drug Class. Unilife shall pay sanofi-aventis 70% of any Access Fees received until such time as total Access Fee revenue exceeds €14.286 million. If Access Fee revenues exceed €14.286 million before 30 June 2014, sanofi-aventis will receive 30% of Access Fee revenue generated by Unilife until 30 June 2014.
Supply Agreement	sanofi-aventis will receive a ten year extension of its exclusive right to purchase the Unifill syringe for use for a designated therapeutic class should both parties sign a Supply Agreement prior to 1 July 2014 (" <b>Supply Agreement</b> "). This extension will be reduced to five years in the event that sanofi-aventis does not sell a minimum of 20 million units of the Unifill syringe for use with an injectable drug product to be marketed for this therapeutic class in at least one of the first five years of the Supply Agreement. Each therapeutic class on the Exclusivity List will be treated separately for this purpose.
Access to Production Capacities	Unilife is not required to commit more than 30% of its annual production capacity of the Unifill syringe to sanofi-aventis, thereby allowing adequate capacity for other Unifill syringe customers. sanofi-aventis must provide Unilife with orders twenty-four months in advance to receive a greater portion of Unilife's annual capacity.

**Source:** Unilife ASX Announcement, dated 1 July 2009

## APPENDIX 5 SUMMARY COMPARISON OF LEGAL REGIMES

As Unilife is incorporated in Australia, it is subject to, and the rights and obligations attaching to its securities are governed by, the laws of Australia and the company's Constitution. As Unilife is listed on the ASX, it is also subject to Listing Rules.

As Unilife Corporation is incorporated under the laws of Delaware in the USA, it is subject to, and the rights and obligations attaching to its securities are governed by, Delaware law and Unilife Corporation's certificate of incorporation and by-laws. Unilife Corporation will also be subject to the Listing Rules, USA federal securities laws and certain provisions of the Corporations Act applicable to registered foreign companies.

Appendix 10 of the Information Memorandum sets out a summary comparison of the rights attaching to Unilife Corporation's Shares as compared to the rights attaching to Unilife's Shares. We have also sought advice from independent legal advisers as to Delaware and Australian law, respectively. Generally speaking, the rights of the shareholders of the two companies are similar, but not identical. In our opinion, the key differences identified from Appendix 10 of the Information Memorandum and the legal advice obtained by us are noted in the table below:

**Table 20: Comparison of rights of Shareholders and Common Stockholders**

Rights of Holders of Shares in Unilife		Rights of Holders of Common Stock in Unilife Corporation
<b>Issue of additional shares</b>		
Issue of additional shares	<p>Subject to the Listing Rules and the Corporations Act, Unilife's constitution authorises the Board to allot and issue any securities in the capital of Unilife to any person on such terms and with such rights as the Board determines.</p> <p>There are also restrictions on issuing securities where the company is subject to a takeover or where a majority shareholder has notified the company of its intention to call a general meeting to appoint/remove directors.</p> <p>The issue of securities to directors and other related parties of the Company is regulated under the Corporations Act and the Listing Rules. Generally, various requirements must be met for such an issue, including shareholder approval, unless the issue falls within a specified exception.</p>	<p>Unilife Corporation's by-laws permit the issue of authorised and unissued shares of any class by vote of the board of directors in such manner, for such consideration and on such terms as the board of directors may determine, without stockholder approval.</p> <p>Under the NASDAQ listing rules, shareholder approval is required for certain significant issuances of Unilife Corporation securities, including issuances in excess of 20% of the voting power or number of shares outstanding before the issuance (or 5% in the case of certain related parties), issuances of company securities that will result in a change in control and issuances in connection with a new or materially amended equity compensation arrangement for officers, directors, employees or consultants.</p>
<b>Rights attaching to Shares</b>		
Voting rights	<p>Unilife's constitution provides that:</p> <p>on a show of hands, each shareholder individual present who is a member, proxy, attorney or representative of a member entitled to vote has one vote; and</p> <p>on a poll, each shareholder has one vote for every fully paid share held and a fraction of a vote for each partly paid share held, with the fraction of the vote being equivalent to the portion of the share paid up.</p> <p>Further, if the Corporations Act or the Listing Rules require that some members are not to vote on a resolution or that votes cast by some members be disregarded in order for the resolution to have the intended effect, and the notice of meeting at which the resolution was proposed states that fact, the Company must not count any votes purported to be cast by those members. This is consistent with the Listing Rules requirements.</p>	<p>Unilife Corporation's by-laws provide that each stockholder has one vote for every share of stock entitled to vote and a proportionate vote for each fractional share of stock entitled to vote, unless otherwise provided Delaware General Corporation Law or in the certificate of incorporation.</p>

Rights of Holders of Shares in Unilife		Rights of Holders of Common Stock in Unilife Corporation
Variation of rights	<p>The rights attached to shares of any class may be varied or cancelled only in accordance with Sections 246C and 246D of the Corporations Act:</p> <ul style="list-style-type: none"> <li>with the written consent of holders of 75% of the issued shares of the affected class; or</li> <li>by special resolution passed at a separate meeting of the holders of the issued shares of the affected class.</li> </ul> <p>The Corporations Act provides that where Shareholders in a class do not all agree (whether by resolution or written consent) to the:</p> <ul style="list-style-type: none"> <li>variation or cancellation of their rights; or</li> <li>a modification to the company's Constitution to allow rights to be varied,</li> </ul> <p>shareholders with at least 10% of the votes in the class may apply to the court to have the variation, cancellation or modification set aside.</p> <p>Subject to the shares' terms of issue, the rights attached to a class of shares are not deemed varied by the issue of further shares of that class.</p>	<p>Under Delaware General Corporation Law, any amendment to Unilife Corporation's certificate of incorporation requires approval by holders of the outstanding shares of a particular class if that amendment would:</p> <ul style="list-style-type: none"> <li>increase or decrease the aggregate number of authorised shares of that class;</li> <li>increase or decrease the par value of the shares of that class; or</li> <li>alter or change the powers, preferences or special rights of the shares of that class so as to affect them adversely. If an amendment would alter or change the powers, preferences or special rights of one or more series of any class so as to adversely affect that series without adversely affecting the entire class, then only the shares of the series so affected shall be considered a separate class and entitled to such separate class approval of the proposed amendment.</li> </ul> <p>Under Delaware General Corporation Law, amendments to Unilife Corporation's certificate of incorporation also generally require:</p> <ul style="list-style-type: none"> <li>a board resolution recommending the amendment; and</li> <li>approval of a majority of the outstanding shares entitled to vote and a majority of the outstanding shares of each class entitled to vote.</li> </ul> <p>Certain amendments to Unilife Corporation's certificate of incorporation could, in the future, require approval of only the majority of the shares of the then issued and outstanding preferred stock, because Delaware law and Unilife Corporation's certificate of incorporation permit Unilife Corporation to issue preferred shares with powers, preferences and rights superior to those of Common Stock.</p> <p>Pursuant to Delaware General Corporation Law and Unilife Corporation's by-laws, any amendment to Unilife Corporation's by-laws may be approved by the affirmative vote of a majority of the directors present at a meeting of the board of directors or by the affirmative vote of the holders of at least 66-2/3% of the voting power of all of the shares of the corporation then issued and outstanding and entitled to vote generally in any election of directors, voting together as a single class.</p> <p>Under the NASDAQ listing rules, Unilife Corporation will not be able to disparately reduce or restrict voting rights of the shares through any corporate action or issuance.</p>
<b>Directors</b>		
Duties of Directors	<p>Under Australian law, the Directors of Unilife have certain general law and statutory obligations to Unilife.</p> <p>These obligations include a duty to:</p> <ul style="list-style-type: none"> <li>act in good faith in the best interests of the company as a whole;</li> <li>act for a proper purpose;</li> <li>not improperly use information or their position;</li> <li>not to fetter their discretion;</li> <li>to exercise care, skill and diligence; and</li> <li>to avoid conflicts of interest.</li> </ul>	<p>Under Delaware law, the directors of Unilife Corporation have fiduciary obligations, including the duty of care and the duty of loyalty.</p> <p>The duty of care requires directors to inform themselves of all reasonably available material information before making business decisions on behalf of Unilife Corporation and to act with requisite care in discharging their duties to Unilife Corporation</p> <p>The duty of loyalty requires directors to act in good faith and in Unilife Corporation's best interest.</p>



Rights of Holders of Shares in Unilife		Rights of Holders of Common Stock in Unilife Corporation
Compensation of Directors	<p>The Corporations Act provides that the directors of a company are to be paid the remuneration that the company determines by resolution.</p> <p>Unilife's Constitution provides that compensation of the non-executive directors will be determined by the board, subject to the limitations that:</p> <ul style="list-style-type: none"> <li>the compensation arrangements must not in any year exceed in aggregate the amount that Unilife in general meeting determines; and</li> <li>the compensation arrangements must not be a commission on or percentage of profits or operating revenue.</li> </ul> <p>Unilife must repay a director for all reasonable costs and expenses incurred in attending board and committee meetings, in attending to Unilife's business and in carrying out his or her duties as a director.</p> <p>Termination or retirement benefits to directors and other officers of a company are also subject to restrictions under the Corporations Act and Listing Rules.</p>	<p>Unilife Corporation's by-laws provide that the directors may be paid such compensation for their services and such reimbursement for expenses of attendance at meetings as the board of directors may from time to time determine. Directors are not precluded from serving the corporation or any of its parent or Subsidiary corporations in any other capacity or from receiving compensation for such service.</p>
Transactions involving directors	<p>The Corporations Act prohibits Unilife from giving a director (or other related party) a financial benefit unless either Unilife obtains shareholders' approval or the financial benefit is exempt (such as benefits given on arms' length terms).</p> <p>Directors, when entering into transactions with Unilife, are subject to Australian common law and statutory duties to avoid conflicts of interest.</p> <p>There are also disclosure requirements and voting restrictions imposed on directors under the Corporations Act on matters involving a material personal interest.</p> <p>Within the parameters summarised above, under Unilife's Constitution, a director's position as such does not disqualify him or her from:</p> <ul style="list-style-type: none"> <li>holding any other office or place of profit or employment, except with Unilife's auditor;</li> <li>being a shareholder or creditor of any corporation (including Unilife) or partnership, except of Unilife's auditor; or</li> <li>entering into an agreement with Unilife,</li> </ul> <p>A director must comply with the company's constitution in relation to the declaration of interests, the material personal interest provisions set out in Section 191 of the Corporations Act and with any relevant general law principles in relation to disclosure of his or her interests, and Section 195 of the Corporations Act in relation to being present and voting at a board meeting that considers a matter in which he or she has a material personal interest.</p>	<p>Under Delaware General Corporation Law, no contract or transaction between Unilife Corporation and one or more of its directors, or between Unilife Corporation and any other corporation, partnership, association or other organisation in which one or more of its directors are directors or officers or have a financial interest will be void or voidable solely for that reason, or solely because the relevant director is present at or participates in the Unilife Corporation board or committee meeting that authorises the contract or transaction, or solely because the vote of the relevant director is counted for that purpose, if:</p> <ul style="list-style-type: none"> <li>the material facts as to the director's relationship or interest, and as to the contract or transaction, are disclosed or known to the board of directors or committee, and the board of directors or committee in good faith authorises the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or</li> <li>the material facts as to the director's relationship or interest and as to the contract or transaction are disclosed or known to the Unilife Corporation stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or</li> <li>the contract or transaction is fair to Unilife Corporation as of the time that it is authorised, approved or ratified by the board of directors, committee or stockholders.</li> </ul> <p>Unilife Corporation's by-laws provide that interested directors may be counted in determining the presence of a quorum at a board or committee meeting at which a contract or transaction with an interested director is authorised.</p>
Number and nomination of directors	<p>As a public company in Australia, Unilife must have:</p> <ul style="list-style-type: none"> <li>not fewer than three directors (not counting alternate directors);</li> <li>at least two directors ordinarily resident in Australia;</li> <li>at least one secretary; and</li> <li>at least one secretary must ordinarily reside in Australia.</li> </ul>	<p>Unilife Corporation's by-laws provide that the number of directors was initially one but amended by resolution to five and thereafter will be fixed from time to time exclusively by the board of directors pursuant to a resolution adopted by a majority of the total number of authorised directors (whether or not there exist any vacancies in previously authorised directorships at the time any such resolution is presented to the board for adoption).</p>



	Rights of Holders of Shares in Unilife	Rights of Holders of Common Stock in Unilife Corporation
	<p>Under the Unilife's constitution, the Board may determine the number of directors, which must be at least 3 (or a (larger) number in office when the decision is made). The maximum number of directors in office cannot exceed 10 directors.</p> <p>Under ASX Listing Rules, Unilife is required to accept nominations for the election of directors up to 35 business days (30 business days in the case of a meeting requested by shareholders) before the date of a general meeting at which directors may be elected, unless the company's constitution provides otherwise.</p> <p>Under Unilife's Constitution, Unilife cannot validly elect a person as a director unless the person has retired and sought re-election or the board has recommended the appointment, or at least 30 business days before the meeting and Unilife has received both a nomination for that person and a consent to act as a director signed by that person.</p>	<p>Unilife Corporation's by-laws provide that directors may be nominated either by the board of directors or a duly authorised committee, or by stockholders entitled to vote in the election of directors generally, provided that a stockholder desiring to nominate a director complies with a specified procedure, including providing Unilife Corporation's secretary with advance written notice of his or her intent to make the nomination not earlier than the 120<sup>th</sup> day, nor later than the 90<sup>th</sup> day, prior to the first anniversary of the date of the preceding year's annual meeting as first specified in the corporation's notice of meeting, except that if no annual meeting was held in the previous year or the date of the annual meeting has been advanced by more than 30 days from the date contemplated at the time of the previous year's proxy statement, notice must be received not later than the 10<sup>th</sup> day following the day on which public announcement of the date of such meeting is first made.</p> <p>In order to nominate directors at a special meeting of stockholders for the election of directors, the stockholder notice must be delivered to Unilife Corporation's secretary not earlier than the 90th day prior to such special meeting and not later than the close of business on the later of the 70th day prior to such special meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the board of directors to be elected at such meeting.</p>
Removal of directors	<p>Subject to the Corporations Act, the shareholders of Unilife may remove a director from office by passing an ordinary resolution to do so at a general meeting.</p> <p>Under the Corporations Act, a notice of intention to move the resolution must be given to Unilife at least two months before the meeting is to be held and the shareholders of Unilife may remove a director by passing an ordinary resolution to do so at a general meeting.</p> <p>However, if Unilife calls a meeting after the notice of intention is given, the meeting may pass the resolution even though the meeting is held less than two months after the notice of intention is given.</p> <p>Unilife's Constitution further provides that a person automatically ceases to be a director if the person, inter alia:</p> <ul style="list-style-type: none"> <li>• is removed from office as a director by a resolution of the company at a general meeting;</li> <li>• is not permitted under the Corporations Act to be a director;</li> <li>• dies;</li> <li>• becomes of unsound mind or physically or mentally incapable of performing the functions of that office;</li> <li>• fails to attend Board meetings (either personally or by an Alternate) for a continuous period of 6 months without leave of absence from the Board; or</li> <li>• resigns by notice in writing to Unilife.</li> </ul>	<p>Unilife Corporation's by-laws provide that, subject to the rights of the holders of any series of preferred stock, directors may be removed with or without cause by the affirmative vote of the holders of a majority of the voting power of all of the outstanding shares of capital stock entitled to vote generally in the election of directors, voting together as a single class.</p>

Rights of Holders of Shares in Unilife		Rights of Holders of Common Stock in Unilife Corporation
Rotation of directors	<p>The Listing Rules require that:</p> <ul style="list-style-type: none"> <li>Unilife hold an election of directors each year;</li> <li>a director, other than the managing director and directors appointed to fill casual vacancies or as additions to the Board, must not hold office past the third annual general meeting following the director's appointment or three years, which ever is longer, without submitting himself or herself for re-election; and</li> <li>directors appointed to fill casual vacancies or as additions to the Board do not hold office (without re-election) past the next annual general meeting.</li> </ul> <p>Unilife's Constitution also states that at every annual general meeting, one-third of the directors (other than certain exceptions, including the managing director) or, if their number is not a multiple of three, then the number nearest one-third must retire. Directors required to retire are those who have been longest in office since last being elected. A retiring director is eligible for re-election.</p>	<p>Neither Delaware General Corporation Law nor Unilife Corporation's certificate of incorporation provide for mandatory retirement or rotation of directors.</p> <p>Unilife Corporation's by-laws provide that each director shall hold office until the next annual meeting of stockholders to be held in the first year after the year in which he or she was elected and until his or her successor is elected, except in the case of his or her death, resignation or removal.</p>
Directors' indemnity	<p>The Corporations Act prohibits indemnification against the following specific liabilities:</p> <ul style="list-style-type: none"> <li>owed to the company or a related body corporate;</li> <li>for a pecuniary penalty order or a compensation order under the Corporations Act; or</li> <li>that is owed to someone other than the company or a related body corporate and did not arise out of conduct in good faith.</li> </ul> <p>The Corporations Act prohibits an indemnity for legal costs in specific circumstances including where an officer is liable, found guilty or where the grounds for a court order have been made out. Payments by a company of insurance premiums which cover conduct involving a wilful breach of duty or a breach of certain statutory directors' duties are also prohibited under the Corporations Act.</p> <p>Unilife's Constitution provides that Unilife must, subject to the Corporations Act, indemnify every officer (including every Director and secretary of Unilife) against any liability incurred in their role as an officer to a person other than Unilife or a related body corporate (unless the liability arises out of conduct involving a lack of good faith), and for costs and expenses incurred in defending civil or criminal proceedings in which judgement is given in favour of that person or in which that person is acquitted.</p>	<p>Unilife Corporation's by-laws provide that, to the fullest extent permitted by Delaware General Corporation Law, Unilife Corporation will indemnify, and advance expenses to, a director in an action brought by reason of the fact that the director is or was a director of Unilife Corporation, or is, or was, serving at the request of Unilife Corporation as a director or officer of any other entity, against all expenses, liability and loss reasonably incurred or suffered by such person in connection therewith.</p> <p>Unilife Corporation may maintain insurance to protect a director against any expense, liability or loss, whether or not the corporation would have the power to indemnify such person against such expense, liability or loss under Delaware General Corporation Law.</p>
Directors' liability	<p>Under the Corporations Act, there is a general prohibition on a company or a related body corporate exempting officers from liability.</p>	<p>Under Delaware General Corporation Law, Unilife Corporation may include in its certificate of incorporation a provision eliminating the personal liability of a director to the company or its stockholders for monetary damages for a breach of fiduciary duty as a director. However, the provision may not eliminate liability for (a) breach of the director's duty of loyalty, (b) acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law, (c) unlawful payment of dividends, (d) unlawful purchases or redemptions of shares, or (e) any transaction from which the director derived an improper personal benefit.</p> <p>Unilife Corporation's certificate of incorporation provides that, to the fullest extent permitted by the Delaware General Corporation Law, a director shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.</p>

Rights of Holders of Shares in Unilife		Rights of Holders of Common Stock in Unilife Corporation
Corporate governance	Unilife's board structure, the independence of its board members, the existence and composition of its various board committees and its corporate policies as a whole must comply with the Listing Rules and Australian law.	Unilife Corporation's board structure, the independence of its board members, the existence and composition of its various board committees and its corporate policies as a whole must comply with ASX Listing Rules, Delaware law, USA federal securities laws (including without limitation the Sarbanes-Oxley Act) and, if and when Unilife Corporation is listed on NASDAQ, Unilife Corporation must also comply with NASDAQ listing rules.
<b>Shareholders' Meetings</b>		
Quorum of Shareholders	Unilife's Constitution states that the quorum for a general meeting of Unilife's Shareholders is two shareholders present in person or by proxy and entitled to vote.	Unilife Corporation's by-laws provide that, except as otherwise provided by Delaware General Corporation Law or the by-laws of Unilife Corporation, the holders of a majority of the shares of the capital stock of the corporation entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business. Where a separate class vote by a class or classes or series is required, a majority of the shares of such class or classes or series present in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter.
Annual meetings	Under the Corporations Act, the annual general meeting of Unilife is required to be held at least once every calendar year and within five months after the end of each financial year.	<p>Delaware General Corporation Law requires Unilife Corporation to have an annual stockholders' meeting to elect directors, unless directors are elected by written consent in lieu of an annual meeting. Unilife Corporation's by-laws provide that effective upon the Implementation Date of the Share Scheme, any action required or permitted to be taken by stockholders must be effected at a duly called annual or special meeting of stockholders and may not be effected by written consent of stockholders.</p> <p>Under Delaware General Corporation Law, a director or stockholder of Unilife Corporation may petition the Court of Chancery of Delaware for an order compelling the holding of an annual meeting if:</p> <ul style="list-style-type: none"> <li>no annual meeting has been held, or action by written consent to elect directors in lieu of an annual meeting has been taken, for a period of 30 days after the date designated for the annual meeting; or</li> <li>no date for an annual meeting has been designated for a period of 13 months after the latest to occur of Unilife Corporation's organisation, the last annual meeting or the last action by written consent to elect directors in lieu of an annual meeting.</li> </ul> <p>Under the NASDAQ listing rules, Unilife Corporation will be required to hold an annual meeting within a year of its fiscal year end.</p>
Special / extraordinary meetings	Under Unilife's Constitution, a meeting of Shareholders may be convened at any time by the Board or a Director and must be called by the Board when it receives a request to do so from members with at least 5% of the votes that may be cast at the meeting or at least 100 members who are entitled to vote at the meeting.	Unilife Corporation's by-laws permit special meetings of stockholders for any purposes prescribed in the notice of the meeting to be called at any time by the board of directors, the Chairman of the board of directors or the president of the corporation.

Rights of Holders of Shares in Unilife		Rights of Holders of Common Stock in Unilife Corporation
Notice of meetings	<p>Under the Corporations Act, notice of a general meeting of Unilife must be given to Unilife's Shareholders at least 28 days before the meeting.</p> <p>A notice of meeting must specify:</p> <ul style="list-style-type: none"> <li>the date, time and place of the meeting;</li> <li>the general nature of the business to be transacted at the meeting;</li> <li>any proposed resolutions; and</li> <li>inform members of the right to appoint a proxy.</li> </ul>	<p>Delaware General Corporations Law and Unilife Corporation's by-laws provide that notice of a stockholders' meeting be delivered not less than 10 nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting, except as otherwise provided in Unilife Corporation's by-laws or as required by Delaware General Corporations Law.</p>
Resolutions at annual meetings	<p>A resolution at a general meeting is to be passed by a majority of votes cast by those present and voting, unless the Corporations Act or Constitution provides otherwise.</p> <p>Under the Corporations Act, approval by special resolution of shareholders is required for certain matters, such as modifying or repealing the Company's constitution, changing the Company's name or type or selectively reducing or buying back capital.</p>	<p>Unilife Corporation's by-laws provide that, when a quorum is present at any meeting of stockholders, any election of directors shall be determined by a majority of the votes cast by the stockholders entitled to vote at the election, and any other matter shall be determined by a majority in voting power of the shares present in person or represented by proxy and entitled to vote on the matter (or if there are two or more classes of stock entitled to vote as separate classes, then in the case of each such class, a majority of the shares of each such class present in person or by proxy and entitled to vote on the matter shall decide such matter), except when a different vote is required by express provision of law, the certificate of incorporation or the by-laws of the corporation.</p> <p>A plurality vote means that, on an election of a particular number of directors, the same number of nominees receiving the highest number of 'for' votes will be elected and the 'against' votes will have no legal effect on the election.</p> <p>Delaware General Corporations Law requires the approval of a majority of all votes entitled to be cast by Unilife Corporation stockholders for specified actions including:</p> <ul style="list-style-type: none"> <li>dissolution of the corporation;</li> <li>most mergers or consolidations; and</li> <li>amendments to the corporation's certificate of incorporation.</li> </ul>
Special resolutions	<p>Under the Corporations Act, a special resolution is passed by at least 75% of the votes cast by members entitled to vote on the resolution.</p> <p>Approval by special resolution of Shareholders is required for actions such as modifying or repealing Unilife's Constitution, changing the company's name or type, selectively reducing or buying back capital (in some circumstances), providing financial assistance in connection with the acquisition of shares in the company, and undertaking a voluntary winding up of the company.</p>	<p>Delaware General Corporations Law contains no concept of special resolutions.</p>
<b>Relationship between Unilife and its Shareholders</b>		
Relief from oppression	<p>Under the Corporations Act, any shareholder of Unilife can apply for an order from the court in circumstances where the conduct of the company's affairs, or any actual or proposed act or omission or resolution is either:</p> <ul style="list-style-type: none"> <li>contrary to the interests of shareholders as a whole; or</li> <li>oppressive to, unfairly prejudicial to, or unfairly discriminatory against, any shareholders in that capacity or any other capacity.</li> </ul> <p>Former shareholders can also bring an action if it relates to the circumstances in which they ceased to be a shareholder.</p>	<p>Delaware General Corporations Law contains no equivalent statutory provisions. However, Delaware law may provide judicial remedies to stockholders in comparable circumstances.</p>

Rights of Holders of Shares in Unilife		Rights of Holders of Common Stock in Unilife Corporation
Inspection of books	<p>Under the Corporations Act, a shareholder of Unilife must obtain a court order to obtain access to the company's books.</p> <p>Outside of these provisions, shareholders also have a right under the Corporations Act to inspect and get copies of the Company' statutory registers.</p>	<p>Delaware General Corporations Law provides each Unilife Corporation stockholder with the right to inspect, to make copies of and to take extracts from, certain books and records of Unilife Corporation for any proper purpose during normal business hours upon the stockholder making a sworn written demand, stating the purpose of his or her inspection.</p>
<b>Takeovers</b>		
Takeovers	<p>The Corporations Act restricts the acquisition by any person of a "relevant interest" in issued "voting shares" in the company under a transaction where, because of the transaction, that person or someone else's "voting power" in the company increases from 20% or below to more than 20% or, where the person's voting power was already above 20% and below 90%, increases in any way at all.</p> <p>Certain exceptions to this general takeover prohibition are set out in the Corporations Act. For example:</p> <ul style="list-style-type: none"> <li>• an acquisition resulting from a scheme undertaken in accordance with the Corporations Act and approved by the court; and</li> <li>• an acquisition that results from the acceptance of an offer under a takeover bid.</li> </ul> <p>In this respect, any takeover bid made for a company must be on the same terms for all shareholders, (subject to minor exceptions,) and must comply with the timetable, disclosure and other requirements set out in the Corporations Act.</p> <p>The purpose of these provisions is to attempt to ensure that shareholders in the target company have a reasonable and equal opportunity to share in any premium for control and that they are given reasonable time and enough information to assess the merits of the proposal.</p>	<p>Section 203 of the Delaware General Corporation Law, from which Unilife did not elect to opt out, provides that if a holder acquires 15% or more of Unilife Corporation's stock without prior approval of the board of directors, then for three years such holder cannot engage in a broad range of business combinations with such interested holder. Such limitations do not apply if either the holder buys at least 85% of Unilife Corporation's stock (other than stock owned by directors who are also officers and certain employee stock plans) in a transaction whereby that holder acquires its 15% interest, or the business combination is subsequently approved by the board of directors and two-thirds of the stock held by persons other than such holder.</p> <p>Certain provisions of the certificate of incorporation and by-laws of Unilife Corporation also have the effect of deterring takeovers, such as those provisions:</p> <ul style="list-style-type: none"> <li>• authorising the board of directors to issue from time to time any series of preferred stock and fix the designation, powers, preferences and rights of the shares of such series of preferred stock;</li> <li>• prohibiting stockholders from acting by written consent in lieu of a meeting;</li> <li>• requiring advance notice of stockholder intention to put forth director nominees or bring up other business at a stockholders' meeting; and</li> <li>• prohibiting stockholders from calling a special meeting of stockholders.</li> </ul> <p>The certificate of incorporation and by-laws of Unilife Corporation may be amended in the future pursuant to these provisions and Delaware General Corporation Law to authorise additional takeover defence mechanisms.</p>

Rights of Holders of Shares in Unilife		Rights of Holders of Common Stock in Unilife Corporation
Winding Up	<p>The Corporations Act provides for voluntary winding up by special resolution of members of a solvent company and for winding up by a court in certain circumstances.</p> <p>Unilife's Constitution states that if Unilife is wound up, the liquidator may, with the sanction of a special resolution, divide the assets of the company among the shareholders in kind. The liquidator cannot compel any member to accept marketable securities in respect of which there is a liability as part of a distribution of assets of the company.</p> <p>The Corporations Act provides that subject to provisions as to preferential payments, the property of a company must, on its winding up, be applied in satisfaction of its liabilities equally and, subject to that application, must, unless the company's constitution otherwise provides, be distributed among the members according to their rights and interests in the company.</p>	<p>Delaware General Corporation Law permits the board of directors to authorise the dissolution of Unilife Corporation if:</p> <ul style="list-style-type: none"> <li>• a majority of the directors in office adopt a resolution to approve dissolution at a board meeting called for that purpose;</li> <li>• holders of a majority of the issued and outstanding shares entitled to vote on the matter adopt a resolution to approve dissolution at a stockholders' meeting called for that purpose; and</li> <li>• a certificate of dissolution is filed with the Delaware Secretary of State.</li> </ul> <p>Delaware General Corporation Law also permits stockholders to authorise the dissolution of Unilife Corporation without board action, if:</p> <ul style="list-style-type: none"> <li>• all of the stockholders entitled to vote on the matter provide written consent to dissolution; and</li> <li>• a certificate of dissolution is filed with the Delaware Secretary of State.</li> </ul>

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## **Appendix 3**

### **Share Scheme of Arrangement**

## **Share Scheme of Arrangement**

Unilife Medical Solutions Limited  
The holders of fully paid ordinary shares in  
Unilife Medical Solutions Limited



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## **Share Scheme of Arrangement pursuant to section 411 of the Corporations Act 2001 (Cth)**

**Unilife Medical Solutions Limited** ABN 14 008 071 403 of Suite 3, Level 11, 1 Chifley Square, Sydney, NSW 2000 (**Company**)

**The holders of fully paid ordinary shares in the Company**

### **Operative provisions**

#### **1 Preliminary**

##### **The Company**

- 1.1 The Company is a public company limited by shares, incorporated in Australia and registered in South Australia. Its registered office is at Suite 3, Level 11, 1 Chifley Square, Sydney, NSW 2000.
- 1.2 The Company is admitted to the official list of ASX and the Shares are officially quoted on the financial market operated by ASX.
- 1.3 As at 25 November 2009, 293,520,768 Shares were on issue.

##### **Unilife Corporation**

- 1.4 Unilife Corporation is a corporation limited by shares, incorporated in Delaware, United States. Its registered office is at 1209 Orange Street, Wilmington, Delaware, 19801, County of New Castle.
- 1.5 As at 25 November 2009, the authorised capital stock of Unilife Corporation comprised 250,000,000 shares of common stock of US\$0.01 par value of which 100 Unilife Corporation Shares were on issue and 50,000,000 shares of preferred stock of US\$0.01 par value of which none were on issue.

##### **Effect of Share Scheme**

- 1.6 If this Share Scheme becomes Effective:
  - 1.6.1 Unilife Corporation will provide the Share Scheme Consideration to each Scheme Shareholder in accordance with the terms of this Share Scheme;
  - 1.6.2 all of the Scheme Shares will be transferred to Unilife Corporation; and
  - 1.6.3 the Company will enter the name and address of Unilife Corporation in the Share Register as the holder of all of the Scheme Shares.

##### **Merger Implementation Agreement and Share Scheme Deed Poll**

- 1.7 The Company and Unilife Corporation have entered into the Merger Implementation Agreement which sets out the terms on which the Company and Unilife Corporation have agreed to implement this Share Scheme.

- 1.8 Unilife Corporation has executed the Share Scheme Deed Poll in favour of each Scheme Shareholder pursuant to which it has covenanted to perform its obligations under the Merger Implementation Agreement and this Share Scheme, including to provide the Share Scheme Consideration to Scheme Shareholders.

## **2 Conditions precedent**

### **Conditions precedent to Share Scheme**

- 2.1 This Share Scheme is conditional on:
- 2.1.1 as at 8.00am on the Second Court Hearing Date, the Merger Implementation Agreement not having been terminated in accordance with its terms;
  - 2.1.2 all of the conditions precedent set out in clause 2.1 of the Merger Implementation Agreement having been satisfied or waived in accordance with the terms of that agreement;
  - 2.1.3 the Court having approved this Share Scheme, with or without modification, pursuant to section 411(4)(b) of the Corporations Act; and
  - 2.1.4 such other conditions made or required by the Court pursuant to section 411(6) of the Corporations Act in relation to this Share Scheme as are acceptable to the Company and Unilife Corporation, having been satisfied,

and the provisions of clauses 3 to 7 will not come into effect unless and until each of these conditions precedent has been satisfied.

### **Certificate in relation to conditions precedent**

- 2.2 On the Second Court Hearing Date, the Company and Unilife Corporation will each provide to the Court a certificate confirming whether or not all of the conditions precedent set out in clause 2.1 of the Merger Implementation Agreement (other than in relation to this Share Scheme being approved by the Court pursuant to section 411(4)(b) of the Corporations Act) have been satisfied or waived in accordance with the terms of that agreement.
- 2.3 The giving of a certificate by each of the Company and Unilife Corporation under clause 2.2 will, in the absence of manifest error, be conclusive evidence of the satisfaction or waiver of the conditions precedent referred to in the certificate.

### **Lapse of Share Scheme**

- 2.4 This Share Scheme will lapse and be of no further force or effect if the Effective Date has not occurred on or before the Sunset Date.

### **3 Implementation of Share Scheme**

#### **Lodgement of Court order**

- 3.1 On or before 5.00pm on the first Business Day following approval of this Share Scheme by the Court pursuant to section 411(4)(b) of the Corporations Act, the Company will lodge with ASIC an office copy of the Court order approving this Share Scheme.

#### **Provision of Share Scheme Consideration**

- 3.2 On the Implementation Date, in consideration for the transfer to Unilife Corporation of all of the Scheme Shares, Unilife Corporation must provide the Share Scheme Consideration to each Scheme Shareholder in accordance with clause 4.

#### **Transfer of Scheme Shares**

- 3.3 On the Implementation Date, in consideration for and immediately following the issue of the Share Scheme Consideration in accordance with clause 4:

- 3.3.1 all of the Scheme Shares, together with all rights and entitlements attaching to those shares at that date, will be transferred to Unilife Corporation without the need for any further act by any Scheme Shareholder by the Company effecting a valid transfer or transfers of the Scheme Shares under section 1074D of the Corporations Act or delivering to Unilife Corporation duly completed and executed share transfer forms (or a master transfer form) in accordance with section 1071B of the Corporations Act and Unilife Corporation executing and delivering those share transfer form(s) to the Company; and
- 3.3.2 the Company will enter the name and address of Unilife Corporation in the Share Register as the holder of all of the Scheme Shares.

### **4 Provision of Share Scheme Consideration**

#### **Provision of Share Scheme Consideration**

- 4.1 The obligation of the Company to procure Unilife Corporation to pay the Share Scheme Consideration will be satisfied on the Implementation Date by the Company procuring that Unilife Corporation, in accordance with its covenant in favour of Scheme Shareholders contained in clause 2.2 of the Share Scheme Deed Poll, issues to such Scheme Shareholders (or, in accordance with clause 4.7 to a Nominee on its behalf where such Scheme Shareholder is an Ineligible Overseas Shareholder):
- 4.1.1 One Unilife Corporation Shares for every six Shares held by the Scheme Shareholder on the Scheme Record Date, where such Scheme Shareholder has made an election to receive Unilife Corporation Shares in accordance with clause 4.2; or
- 4.1.2 Six CDIs for every Unilife Corporation Share to which the Scheme Shareholder would be entitled under clause 4.1.1, where the Scheme

Shareholder has made an election to receive CDIs or has not made an election in accordance with clause 4.2.

#### **Election**

- 4.2 Each Scheme Shareholder may make an election to receive Unilife Corporation Shares or CDIs by providing written notice to the Share Registry by 5.00pm on the Scheme Record Date (or such other date notified to Scheme Shareholders).
- 4.3 An election under clause 4.2 may only be made in respect of all and not only some of the Scheme Shares held by a Scheme Shareholder.
- 4.4 If a Scheme Shareholder does not make an election in accordance with clause 4.2, a Scheme Shareholder will receive CDIs under this Share Scheme.

#### **Restrictions on Unilife Corporation Shares**

- 4.5 Each Unilife Corporation Share or CDI issued pursuant to this Share Scheme will be subject to the same restrictions (if applicable) as the Share it replaces.

#### **Fractional entitlements**

- 4.6 Fractional entitlements to Share Scheme Consideration will be rounded down to the nearest:
- 4.6.1 whole number of Unilife Corporation Shares, if the Scheme Shareholder has elected to receive Unilife Corporation Shares under this Share Scheme; or
- 4.6.2 multiple of six CDIs, if the Scheme Shareholder has elected to receive CDIs or has not made an election under clause 4.2,

after aggregating all holdings of such Scheme Shareholder.

#### **Ineligible Overseas Shareholders**

- 4.7 Where a Scheme Shareholder is an Ineligible Overseas Shareholder, the Company will procure that Unilife Corporation, in accordance with its covenant in favour of Scheme Shareholders contained in clause 2.2 of the Share Scheme Deed Poll, issues the number of CDIs to which the Scheme Shareholder would otherwise be entitled under this Share Scheme to a Nominee of Unilife Corporation who will sell those CDIs as soon as reasonably practicable (at the risk of that Ineligible Overseas Shareholder) and pay the net proceeds received (calculated on an averaged basis so that all Ineligible Overseas Shareholders receive the same price per CDI subject to rounding to the nearest cent), after deducting any applicable brokerage and other taxes and charges, to that Ineligible Overseas Shareholder in full satisfaction of that Ineligible Overseas Shareholder's rights to Share Scheme Consideration. The net proceeds of sale will be paid by cheque in Australian dollars and dispatched by mail to Ineligible Overseas Shareholders to their address in the Share Register.

#### **Obligations of Scheme Shareholders**

- 4.8 Each Scheme Shareholder who will be issued Unilife Corporation Shares under the Share Scheme agrees:

- 4.8.1 to become a stockholder of Unilife Corporation;
- 4.8.2 to have their name and address entered into the register of stockholders maintained by Unilife Corporation;
- 4.8.3 to be bound by the Certificate of Incorporation and by-laws of Unilife Corporation in force from time to time in respect of the Unilife Corporation Shares.

#### **Joint holders**

- 4.9 In the case of Scheme Shares held in joint names:
  - 4.9.1 any holding statement or transmittal letters for Unilife Corporation Shares or CDIs which are to be issued to Scheme Shareholders under this Share Scheme will be issued in the names of the joint holders and sent to the holder whose name appears first in the Share Register on the Scheme Record Date; and
  - 4.9.2 any cheque required to be paid to Scheme Shareholders with respect to Share Scheme Consideration will be paid to the joint holders and will be forwarded to the holder whose name appears first in the Share Register on the Scheme Record Date.

#### **General**

- 4.10 The obligation of the Company to procure Unilife Corporation to issue Unilife Corporation Shares under clause 4.1 of this Share Scheme will be satisfied by Unilife Corporation on the Implementation Date procuring the entry in the register maintained by Unilife Corporation of holders of Unilife Corporation Shares of each person who is to receive Unilife Corporation Shares.
- 4.11 After the satisfaction of the obligation of the Company in clause 4.10, and within five Business Days after the Implementation Date, the Company will procure Unilife Corporation to:
  - 4.11.1 issue holding statements, certificates or transmittal letters (as the case may be) for such Unilife Corporation Shares in the name of such persons; and
  - 4.11.2 procure the despatch of such holding statements, certificates or transmittal letters to the address as shown in the register for such persons.
- 4.12 The obligation of the Company to procure Unilife Corporation to issue CDIs under clause 4.1 of this Share Scheme will be satisfied by Unilife Corporation on the Implementation Date procuring the entry in the register maintained by Unilife Corporation of holders of Unilife Corporation Shares of the Depositary as depositary to hold the Unilife Corporation Shares underlying those CDIs and procuring the Depositary to issue CDIs to Scheme Shareholders in accordance with this Share Scheme.
- 4.13 After the satisfaction of the obligation of the Company in clause 4.12, and within five Business Days after the Implementation Date, Unilife Corporation will:

- 4.13.1 issue holding statements or transmittal letters (as the case may be) for such Unilife Corporation Shares in the name of the Depositary, and procure the despatch of such holding statements or transmittal letters to the Depositary;
- 4.13.2 record in the CDI Register each person who is to receive CDIs under clause 4.1; and
- 4.13.3 despatch to each person who is to receive CDIs under clause 4.1 a holding statement in the name of that person representing the number of CDIs to be issued to that person.

## **5 Dealings in the Shares**

### **Determination of Scheme Shareholders**

- 5.1 For the purpose of determining who are Scheme Shareholders, dealings in Shares will only be recognised if:
  - 5.1.1 in the case of dealings of the type to be effected using CHESS, the transferee is registered in the Share Register as the holder of the relevant Shares by the Scheme Record Date; or
  - 5.1.2 in all other cases, registrable transfers or transmission applications in respect of those dealings are received on or before the Scheme Record Date at the place where the Share Register is kept.
- 5.2 The Company must register registrable transfers or transmission applications of the kind referred to in clause 5.1.2 by the Scheme Record Date provided that nothing in this clause 5.2 requires the Company to register a transfer that would result in a Shareholder holding a parcel of Shares that is less than a Marketable Parcel.
- 5.3 The Company will not accept for registration, nor recognise for any purpose, any transfer or transmission application in respect of Shares received after the Scheme Record Date (other than the transfers contemplated by clause 3.3).

### **Maintenance of the Share Register**

- 5.4 For the purpose of determining entitlements to the Share Scheme Consideration, the Company will, until the Share Scheme Consideration has been provided, maintain or procure the maintenance of the Share Register in accordance with this clause 5. The Share Register in this form will solely determine entitlements to the Share Scheme Consideration.

### **Effect of certificates and holding statements**

- 5.5 From the Scheme Record Date (other than for Unilife Corporation after the Implementation Date), all certificates and holding statements for the Scheme Shares will cease to have effect as documents of title, and each entry on the Share Register at that date will cease to have any effect other than as evidence of an entitlement to the Share Scheme Consideration.



### **Information to be made available to Unilife Corporation**

- 5.6 The Company will procure that, as soon as reasonably practicable after the Scheme Record Date, details of the names, registered addresses and holdings of Scheme Shares of every Scheme Shareholder as shown in the Share Register at the Scheme Record Date are made available to Unilife Corporation in such form as Unilife Corporation or Unilife Corporation's Share Registry reasonably requires.

## **6 Quotation of the Shares**

- 6.1 The Company will apply to ASX for:
- 6.1.1 suspension of the Shares from official quotation on ASX with effect from close of trading on the Business Day after the Effective Date; and
  - 6.1.2 termination of official quotation of the Shares on ASX after the Implementation Date.

## **7 General Share Scheme provisions**

### **Appointment of the Company as agent and attorney**

- 7.1 Each Scheme Shareholder, without the need for any further act, irrevocably appoints the Company and each of the directors and officers of the Company, jointly and severally, as its attorney and agent for the purpose of:
- 7.1.1 in the case of Scheme Shares in a CHESS holding:
    - (a) causing a message to be transmitted to ASTC in accordance with ASTC Settlement Rules to transfer the Scheme Shares held by the Scheme Shareholder from the CHESS subregister of the Company to the issuer sponsored subregister operated by the Company notwithstanding that, at the time of such transfer, Unilife Corporation has not provided the Share Scheme Consideration which is due under this Share Scheme to the Scheme Shareholders; and
    - (b) completing and signing on behalf of Scheme Shareholders any required form of transfer of Scheme Shares; and
  - 7.1.2 in the case of Scheme Shares registered in the issuer sponsored subregister operated by the Share Registry, completing and signing on behalf of Scheme Shareholders any required form of transfer; and
  - 7.1.3 in all cases, executing any document or doing any other act necessary to give full effect to this Share Scheme and the transactions contemplated by it.

**Scheme Shareholders' consent**

- 7.2 Each Scheme Shareholder consents to the Company doing all things and executing all deeds, instruments, transfers and other documents as may be necessary or desirable to give full effect to this Share Scheme and the transactions contemplated by it.
- 7.3 Each Scheme Shareholder agrees to be bound by the Certificate of Incorporation and by-laws of Unilife Corporation in respect of the Unilife Corporation Shares or CDIs issued to them pursuant to this Share Scheme.

**Agreement by Scheme Shareholders**

- 7.4 Each Scheme Shareholder agrees to the transfer of all of their Scheme Shares to Unilife Corporation in accordance with the terms of this Share Scheme.

**Warranty by Scheme Shareholders**

- 7.5 Each Scheme Shareholder is deemed to have warranted to Unilife Corporation that:
- 7.5.1 all of their Scheme Shares (including any rights and entitlements attaching to those shares) transferred to Unilife Corporation under this Share Scheme will, on the date of the transfer, be fully paid and free from all mortgages, charges, liens, encumbrances, pledges, security interests and other interests of third parties of any kind, whether legal or otherwise; and
  - 7.5.2 they have full power and capacity to sell and transfer their Scheme Shares (including any rights and entitlements attaching to those shares).

The Company undertakes in favour of each Scheme Shareholder that it will provide such warranty to Unilife Corporation on behalf of the Scheme Shareholder.

**Rights in Scheme Shares**

- 7.6 Shareholders shall be entitled to any dividends and other distributions declared or paid on the Shares prior to the Implementation Date.

**Title to Scheme Shares**

- 7.7 Unilife Corporation will be beneficially entitled to all of the Scheme Shares transferred to it under this Share Scheme pending registration by the Company of Unilife Corporation in the Share Register as the holder of all of the Scheme Shares.

**Appointment of Unilife Corporation as sole proxy**

- 7.8 From the Implementation Date until the Company registers Unilife Corporation in the Share Register as the holder of all of the Scheme Shares, each Scheme Shareholder:
- 7.8.1 is deemed to have irrevocably appointed the Chairman of Unilife Corporation as their sole proxy and, where applicable, corporate representative, to attend shareholders' meetings of the Company, exercise the votes attached to the Scheme Shares registered in their name and sign any shareholders' resolutions, whether in person, by proxy or by corporate representative;

7.8.2 must not attend or vote at any shareholders' meetings of the Company, or sign any resolutions, whether in person, by proxy or by corporate representative, other than under this clause 7.8; and

7.8.3 must take all other actions in the capacity of the registered holder of Scheme Shares as Unilife Corporation directs.

The Company undertakes in favour of each Scheme Shareholder that it will appoint the Chairman of Unilife Corporation as that Scheme Shareholder's proxy or, where applicable, corporate representative, in accordance with this clause 7.8.

### **Share Scheme alterations and conditions**

7.9 If the Court proposes to approve this Share Scheme subject to any alterations or conditions, the Company may, by its counsel or solicitors, and with the consent of Unilife Corporation, consent to those alterations or conditions on behalf of all persons concerned, including, for the avoidance of doubt, all Scheme Shareholders.

### **Enforcement of Share Scheme Deed Poll**

7.10 The Company undertakes in favour of each Scheme Shareholder to enforce the Share Scheme Deed Poll against Unilife Corporation on behalf of and as agent and attorney for the Scheme Shareholders.

### **Effect of Share Scheme**

7.11 This Share Scheme binds the Company and all Shareholders (including those who do not attend the Share Scheme Meeting, do not vote at the Share Scheme Meeting or vote against the Share Scheme) and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of the Company.

### **Notices**

7.12 Where a notice, transfer, transmission application, direction or other communication referred to in this Share Scheme is sent by post to the Company, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at the Company's registered office or at the place where the Share Register is kept.

### **Further assurances**

7.13 The Company will execute all deeds, instruments, transfers and other documents and do all acts and things (on its own behalf and on behalf of each Scheme Shareholder) as may be necessary or desirable to give full effect to this Share Scheme and the transactions contemplated by it.

### **Costs and stamp duty**

7.14 Subject to the terms of the Merger Implementation Agreement, the Company will pay the costs of the Share Scheme, except that Unilife Corporation will pay any stamp duty payable on the transfer by Scheme Shareholders of the Scheme Shares to Unilife Corporation.

## 8 Governing law and jurisdiction

- 8.1 This Share Scheme is governed by the laws of New South Wales, Australia.
- 8.2 Each party irrevocably and unconditionally:
- 8.2.1 submits to the non-exclusive jurisdiction of the courts of New South Wales; and
  - 8.2.2 waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

## 9 Definitions and Interpretation

### Definitions

- 9.1 In this Share Scheme, unless the context requires otherwise:
- ASIC** means the Australian Securities and Investments Commission.
- ASTC** means the ASX Settlement and Transfer Corporation Pty Ltd ABN 49 008 504 532.
- ASTC Settlement Rules** means the Settlement Rules of ASTC.
- ASX** means ASX Limited ABN 98 008 624 691 or the securities market it operates, as the context requires.
- ASX Market Rules** means the Market Rules of ASX.
- Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney, Australia.
- CDI** means the CHESS Depositary Interest to be issued in connection with the Share Scheme representing an interest in one sixth of a Unilife Corporation Share.
- CDI Register** has the meaning given to that term in the ASTC Settlement Rules.
- CHESS** means the Clearing House Electronic Sub-Register System of share transfers operated by ASTC.
- CHESS Depositary Interest** has the meaning given to that term in the ASTC Settlement Rules.
- Company** means Unilife Medical Solutions Limited ABN 14 008 071 403
- Corporations Act** means the Corporations Act 2001 (Cth).
- Court** means the Federal Court of Australia or any other court of competent jurisdiction under the Corporations Act agreed in writing by the Company and Unilife Corporation.

**Depository** has the meaning given to that term in the ASTC Settlement Rules.

**Effective** means, when used in relation to this Share Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the Court order made under section 411(4)(b) of the Corporations Act in relation to this Share Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

**Effective Date** means the date on which this Share Scheme becomes Effective.

**Implementation Date** means the third Business Day following the Scheme Record Date.

**Ineligible Overseas Shareholder** means a Scheme Shareholder who is registered in the Share Register with an address outside Australia and its external territories, New Zealand, France, Ireland, United Kingdom, Malta, Hong Kong and United States and such other country agreed to by the Company and Unilife Corporation.

**Information Memorandum** means the document containing the information described in clause 6.2.1 of the Merger Implementation Agreement to be approved by the Court and to be despatched to Shareholders.

**Marketable Parcel** has the meaning given in the ASX Market Rules.

**Merger Implementation Agreement** means the merger implementation agreement dated 1 September 2009 between the Company and Unilife Corporation.

**Nominee** means the nominee selected by Unilife Corporation prior to the Implementation Date for the purposes of clause 4.7.

**Related Body Corporate** has the meaning given to that term in the Corporations Act.

**Scheme Record Date** means 7.00pm on the fifth Business Day after the Effective Date or any other date agreed with ASX to be the record date for the Share Scheme to determine entitlements to receive Share Scheme Consideration.

**Scheme Share** means a Share held by a Scheme Shareholder at the Scheme Record Date.

**Scheme Shareholder** means a Shareholder, as at the Scheme Record Date.

**Second Court Hearing Date** means the first day on which the application made to the Court for an order approving this Share Scheme pursuant to section 411(4)(b) of the Corporations Act is heard, or if the hearing of the application is adjourned for any reason, the first day of the adjourned hearing.

**Share** means a fully paid ordinary share in the Company.

**Shareholder** means each person who is registered in the Share Register as a holder of the Shares.

**Share Register** means the register of shareholders of the Company maintained by or on behalf of the Company in accordance with section 168(1) of the Corporations Act.

**Share Registry** means Computershare Investor Services Pty Limited ABN 48 078 279 277.

**Share Scheme** means this scheme of arrangement under Part 5.1 of the Corporations Act between the Company and Scheme Shareholders, subject to any alterations or conditions made or required by the Court and approved in writing by the parties.

**Share Scheme Consideration** has the meaning given to it in the Merger Implementation Agreement.

**Share Scheme Deed Poll** means the share scheme deed poll dated 7 December 2009 executed by Unilife Corporation under which Unilife Corporation covenants in favour of each Scheme Shareholder to perform its obligations under the Merger Implementation Agreement and this Share Scheme.

**Share Scheme Meeting** has the meaning given to it in the Merger Implementation Agreement.

**Sunset Date** means 5.00pm on 30 June 2010 or such other date and time agreed in writing between the Company and Unilife Corporation.

**Unilife Corporation** means Unilife Corporation, a corporation incorporated under the laws of the state of Delaware, United States of America.

**Unilife Corporation Shares** means shares of fully paid common stock in the capital of Unilife Corporation.

## Interpretation

- 9.2 In the interpretation of this Share Scheme, the following provisions apply unless the context otherwise requires:
- 9.2.1 The singular includes the plural and conversely.
  - 9.2.2 A gender includes all genders.
  - 9.2.3 If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
  - 9.2.4 A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
  - 9.2.5 A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this Share Scheme.
  - 9.2.6 A reference to an agreement or document (including a reference to this Share Scheme) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Share Scheme or that other agreement or document.

- 9.2.7 A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.
- 9.2.8 A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- 9.2.9 A reference to \$ is to the lawful currency of Australia.
- 9.2.10 Words and phrases not specifically defined in this Share Scheme have the same meanings (if any) given to them in the Corporations Act.
- 9.2.11 A reference to time is a reference to time in Sydney, Australia.
- 9.2.12 If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing must be done on the immediately succeeding Business Day.
- 9.2.13 The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.
- 9.2.14 A reference to a party using its best endeavours or reasonable endeavours does not include a reference to that party paying money or providing other valuable consideration to or for the benefit of any person (and an obligation on a party to use its best or reasonable endeavours does not oblige that party to pay money or provide other valuable consideration to or for the benefit of any person).

## **Appendix 4**

### **Option Scheme of Arrangement**

## **Option Scheme of Arrangement**

Unilife Medical Solutions Limited  
The holders of options granted under the Unilife Medical  
Solutions Limited Employee Share Option Plan



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## **Option Scheme of Arrangement pursuant to section 411 of the Corporations Act 2001 (Cth)**

**Unilife Medical Solutions Limited** ABN 14 008 071 403 of Suite 3, Level 11, 1 Chifley Square, Sydney, NSW 2000 (**Company**)

### **The holders of options granted under the Unilife Medical Solutions Limited Employee Share Option Plan**

## **Operative provisions**

### **1 Preliminary**

#### **The Company**

- 1.1 The Company is a public company limited by shares, incorporated in Australia and registered in South Australia. Its registered office is at Suite 3, Level 11, 1 Chifley Square, Sydney, NSW 2000.
- 1.2 The Company is admitted to the official list of ASX and the Shares are officially quoted on the financial market operated by ASX.
- 1.3 As at 25 November 2009, 22,575,000 Options were on issue.

#### **Unilife Corporation**

- 1.4 Unilife Corporation is a corporation limited by shares, incorporated in Delaware, United States. Its registered office is at 1209 Orange Street, Wilmington, Delaware, 19801, County of New Castle.
- 1.5 As at 25 November 2009, the authorised capital stock of Unilife Corporation comprised 250,000,000 shares of common stock of US\$0.01 par value of which 100 Unilife Corporation Shares were on issue and 50,000,000 shares of preferred stock of \$US0.01 par value which none were on issue.

#### **Effect of Option Scheme**

- 1.6 If this Option Scheme becomes Effective:
  - 1.6.1 Unilife Corporation will provide the Option Scheme Consideration to each Scheme Optionholder in accordance with the terms of this Option Scheme;
  - 1.6.2 all of the Scheme Options will be cancelled; and
  - 1.6.3 Unilife Corporation will enter the name of each Scheme Optionholder in the Unilife Corporation Option Register in accordance with the terms of this Option Scheme.

## **Merger Implementation Agreement and Option Scheme Deed Poll**

- 1.7 The Company and Unilife Corporation have entered into the Merger Implementation Agreement which sets out the terms on which the Company and Unilife Corporation have agreed to implement this Option Scheme.
- 1.8 Unilife Corporation has executed the Option Scheme Deed Poll in favour of each Scheme Optionholder pursuant to which it has covenanted to perform its obligations under the Merger Implementation Agreement and this Option Scheme, including to provide the Option Scheme Consideration to Scheme Optionholders.

## **2 Conditions precedent**

### **Conditions precedent to Option Scheme**

- 2.1 This Option Scheme is conditional on:
  - 2.1.1 as at 8.00am on the Second Court Hearing Date, the Merger Implementation Agreement not having been terminated in accordance with its terms;
  - 2.1.2 all of the conditions precedent set out in clause 2.2 of the Merger Implementation Agreement having been satisfied or waived in accordance with the terms of that agreement;
  - 2.1.3 the Court having approved this Option Scheme, with or without modification, pursuant to section 411(4)(b) of the Corporations Act; and
  - 2.1.4 such other conditions made or required by the Court pursuant to section 411(6) of the Corporations Act in relation to this Option Scheme as are acceptable to the Company and Unilife Corporation having been satisfied,

and the provisions of clauses 3 to 6 will not come into effect unless and until each of these conditions precedent has been satisfied.

### **Certificate in relation to conditions precedent**

- 2.2 On the Second Court Hearing Date, the Company and Unilife Corporation will each provide to the Court a certificate confirming whether or not all of the conditions precedent set out in clause 2.2 of the Merger Implementation Agreement (other than in relation to this Option Scheme and the Share Scheme being approved by the Court pursuant to section 411(4)(b) of the Corporations Act) have been satisfied or waived in accordance with the terms of that agreement.
- 2.3 The giving of a certificate by each of the Company and Unilife Corporation under clause 2.2 will, in the absence of manifest error, be conclusive evidence of the satisfaction or waiver of the conditions precedent referred to in the certificate.

### **Lapse of Option Scheme**

- 2.4 This Option Scheme will lapse and be of no further force or effect if the Effective Date has not occurred on or before the Sunset Date.

## **3 Implementation of Option Scheme**

### **Lodgement of Court order**

- 3.1 On or before 5.00pm on the first Business Day following approval of this Option Scheme by the Court pursuant to section 411(4)(b) of the Corporations Act, the Company will lodge with ASIC an office copy of the Court order approving this Option Scheme.

### **Provision of Option Scheme Consideration**

- 3.2 On the Implementation Date, in consideration for the Scheme Optionholders agreeing to the cancellation of the Scheme Options, Unilife Corporation must provide the Option Scheme Consideration to each Scheme Optionholder in accordance with clause 4.

### **Cancellation of Options**

- 3.3 On the Implementation Date, in consideration for and immediately following the issue of the Option Scheme Consideration in accordance with clause 4:
- 3.3.1 all of the Scheme Options (together with all rights and entitlements attaching to the Scheme Options) will be cancelled; and
  - 3.3.2 the Company will record in its Option Register the cancellation of all of the Scheme Options.

### **Waiver of accelerated vesting and exercise rights**

- 3.4 Each Scheme Optionholder waives any rights he or she may have under section 7.3 of the Employee Share Option Plan to the waiver of performance hurdles required to be met for exercise of his or her Options and waives all and any rights to exercise Options at a date earlier than the date on which the Option vests as determined by the Plan Committee as a result of the occurrence of a Change of Control Event as defined in the Employee Share Option Plan.

### **Invitation to Optionholders**

- 3.5 It is agreed that this Option Scheme shall constitute an Offer (as defined in the Unilife Corporation Employee Stock Option Plan) to Optionholders to subscribe for Unilife Corporation Options upon the terms set out in clause 4 of this Option Scheme, except that the Grant Date (as such term is defined in the Unilife Corporation Employee Stock Option Plan) for Unilife Corporation Options shall be the date that Options were issued to Optionholders pursuant to the Employee Share Option Plan and:
- 3.5.1 the term "Last Exercise Date" in the Unilife Corporation Employee Stock Option Plan; and

3.5.2 the Exercise Period referred to in the Unilife Corporation Employee Stock Option Plan,

shall each be construed accordingly.

## **4 Provision of Option Scheme Consideration**

### **Provision of Option Scheme Consideration**

4.1 The obligation of Unilife Corporation to provide the Option Scheme Consideration will be satisfied on the Implementation Date by the Company procuring that Unilife Corporation, in accordance with its covenant in favour of Scheme Optionholders contained in clause 2.2 of the Option Scheme Deed Poll, issues to such Scheme Optionholder one Unilife Corporation Options for every six Scheme Options held by them on the Scheme Record Date.

### **Terms of New Options**

4.2 Each Unilife Corporation Option issued pursuant to this Option Scheme will be issued on the terms set out in Annexure A.

### **Fractional entitlements**

4.3 Fractional entitlements to Option Scheme Consideration will be rounded down to the nearest whole number of Unilife Corporation Options after aggregating all holdings of such Scheme Optionholder.

### **Obligations of Scheme Optionholders**

4.4 Each Scheme Optionholder who will be issued with Unilife Corporation Options under the Option Scheme agrees:

4.4.1 That this Option Scheme constitutes his/her acceptance of an offer of the Unilife Corporation Options for the purposes of clause 5.1 and 6.2 of the Unilife Corporation Employee Stock Option Plan;

4.4.2 to become an optionholder of Unilife Corporation;

4.4.3 to have their name and address entered into the register of optionholders maintained by Unilife Corporation; and

4.4.4 to be bound by the Certificate of Incorporation and by-laws of Unilife Corporation as in force from time to time in respect of the Unilife Corporation Options.

### **General**

4.5 The obligation of the Company to procure Unilife Corporation to issue Unilife Corporation Options under clause 4.1 of this Option Scheme will be satisfied by Unilife Corporation on the Implementation Date, procuring the entry in the Unilife Corporation's Option Register of each person who is to receive Unilife Corporation Options.

- 4.6 After the satisfaction of the obligation of the Company in clause 4.4, and within five Business Days after the Implementation Date, the Company will procure Unilife Corporation to:
- 4.6.1 issue certificates for such Unilife Corporation Options in the name of such persons; and
  - 4.6.2 procure the dispatch of such certificates to the address as shown in the register for such persons.

## **5 Exercise of Options**

### **Issue of Options**

- 5.1 The Company will issue Shares in accordance with any valid exercise of an Option which is received on or before 12.00 noon on the Business Day prior to the Scheme Record Date.
- 5.2 The Company will not accept for registration or recognise for any purpose any exercise of an Option received after 12.00 noon on the Business Day before the Scheme Record Date and, after such time, the Options shall not be capable of exercise notwithstanding any terms on which such Options were granted.

### **Maintenance of the Option Register**

- 5.3 For the purpose of determining entitlements to the Option Scheme Consideration, the Company will, until the Option Scheme Consideration has been provided, maintain or procure the maintenance of the Option Register in accordance with this clause 5. The Option Register in this form will solely determine entitlements to the Option Scheme Consideration.

### **Effect of Option Register**

- 5.4 After the Scheme Record Date, all option certificates for the Scheme Options and each entry in the Option Register as at the Scheme Record Date will cease to have any effect, except as evidence of entitlements to Option Scheme Consideration under this Option Scheme.

### **Information to be made available to Unilife Corporation**

- 5.5 The Company will procure that, as soon as reasonably practicable after the Scheme Record Date, details of the names, registered addresses and holdings of Options of every Scheme Optionholder as shown in the Option Register at the Scheme Record Date are made available to Unilife Corporation in such form as Unilife Corporation reasonably requires.

## **6 General Option Scheme provisions**

### **Appointment of the Company as agent and attorney**

- 6.1 Each Scheme Optionholder, without the need for any further act, irrevocably appoints the Company and each of the directors and officers of the Company, jointly and severally, as its attorney and agent for the purpose of doing all things necessary including executing all deeds, instruments, and other documents as may be necessary or desirable to give full effect to this Option Scheme and the transactions contemplated by it.

### **Option Scheme alterations and conditions**

- 6.2 If the Court proposes to approve this Option Scheme subject to any alterations or conditions, the Company may, by its counsel or solicitors, and with the consent of Unilife Corporation, consent to those alterations or conditions on behalf of all persons concerned, including, for the avoidance of doubt, all Scheme Optionholders.

### **Enforcement of Option Scheme Deed Poll**

- 6.3 The Company undertakes in favour of each Scheme Optionholder to enforce the Option Scheme Deed Poll against Unilife Corporation on behalf of and as agent and attorney for the Scheme Optionholders

### **Effect of Option Scheme**

- 6.4 This Option Scheme binds the Company and all Scheme Optionholders (including those who do not attend the Option Scheme Meeting, do not vote at the Option Scheme Meeting or vote against the Option Scheme) and, to the extent of any inconsistency and to the extent permitted by law, overrides the constitution of the Company.

### **Notices**

- 6.5 Where a notice, transfer, transmission application, direction or other communication referred to in this Option Scheme is sent by post to the Company, it will not be deemed to be received in the ordinary course of post or on a date other than the date (if any) on which it is actually received at the Company's registered office or at the place where the Option Register is kept.

### **Further assurances**

- 6.6 The Company will execute all deeds, instruments, transfers and other documents and do all acts and things (on its own behalf and on behalf of each Scheme Optionholder) as may be necessary or desirable to give full effect to this Option Scheme and the transactions contemplated by it.

### **Costs and stamp duty**

- 6.7 Subject to the terms of the Merger Implementation Agreement, the Company will pay the costs of the Option Scheme.

## 7 Governing law and jurisdiction

- 7.1 This Option Scheme is governed by the laws of New South Wales, Australia.
- 7.2 Each party irrevocably and unconditionally:
- 7.2.1 submits to the non-exclusive jurisdiction of the courts of New South Wales; and
  - 7.2.2 waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

## 8 Definitions and Interpretation

### Definitions

- 8.1 In this Option Scheme, unless the context requires otherwise:

**ASIC** means the Australian Securities and Investments Commission.

**ASX** means ASX Limited ABN 98 008 624 691 or the securities market it operates, as the context requires.

**Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney.

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

**Court** means the Federal Court of Australia or any other court of competent jurisdiction under the Corporations Act agreed in writing by the Company and Unilife Corporation.

**Effective** means, when used in relation to this Option Scheme, the coming into effect, pursuant to section 411(10) of the Corporations Act, of the order of the Court made for the purposes of section 411(4)(b) of the Corporations Act in relation to this Option Scheme, but in any event at no time before an office copy of the order of the Court is lodged with ASIC.

**Effective Date** means the date on which this Option Scheme becomes Effective.

**Employee Share Option Plan** means the Unilife Medical Solutions Limited Employee Share Option Plan.

**Implementation Date** means the third Business Day after the Scheme Record Date.

**Information Memorandum** means the document containing the information described in clause 6.2.1 of the Merger Implementation Agreement to be approved by the Court and to be despatched to Optionholders.

**Merger Implementation Agreement** means the Merger Implementation Agreement dated 1 September 2009 between the Company and Unilife Corporation.



**Options** means options entitling holders to subscribe for Shares, issued under the Employee Share Option Plan.

**Option Register** means the register of optionholders of the Company maintained by or on behalf of the Company in accordance with the Corporations Act.

**Option Scheme** means this scheme of arrangement under Part 5.1 of the Corporations Act between the Company and Scheme Optionholders, subject to any alterations or conditions made or required by the Court pursuant to section 411(6) of the Corporations Act.

**Option Scheme Consideration** has the meaning given to it in the Merger Implementation Agreement.

**Option Scheme Deed Poll** means the option scheme deed poll dated 7 December 2009 executed by Unilife Corporation under which Unilife Corporation covenants in favour of each Scheme Optionholder to perform its obligations under the Merger Implementation Agreement and this Option Scheme.

**Option Scheme Meeting** has the meaning given to it in the Merger Implementation Agreement.

**Optionholder** means a person who is registered in the Option Register as a holder of Options from time to time.

**Plan Committee** has the meaning given to it in the Employee Share Option Plan.

**Related Body Corporate** has the meaning given to that term in section 50 of the Corporations Act.

**Scheme Option** means an Option held by a Scheme Optionholder at the Scheme Record Date.

**Scheme Optionholder** means an Optionholder who is entered into the Option Register as the holder of Options as at the Scheme Record Date.

**Scheme Record Date** means 7.00pm on the fifth Business Day after the Effective Date or any other date agreed with ASX to be the record date for the Option Scheme to determine entitlements to receive Option Scheme Consideration.

**Scheme Shareholder** means a Shareholder as at the Scheme Record Date.

**Second Court Hearing Date** means the first day on which the application made to the Court for an order approving this Option Scheme pursuant to section 411(4)(b) of the Corporations Act is heard, or if the hearing of the application is adjourned for any reason, the first day of the adjourned hearing.

**Share** means a fully paid ordinary share in the Company

**Share Scheme** means the scheme of arrangement, substantially in the form set out in Annexure 1 to the Merger Implementation Agreement, under Part 5.1 of the Corporations Act between the Company and Scheme Shareholders.

**Sunset Date** means 5.00pm on 30 June 2010, or such later date and time agreed in writing between the Company and Unilife Corporation.

**Unilife Corporation** means Unilife Corporation, a corporation incorporated under the laws of the state of Delaware, United States of America.

**Unilife Corporation Employee Stock Option Plan** means the Unilife Corporation Employee Stock Option Plan adopted by Unilife Corporation on 11 November 2009.

**Unilife Corporation Option** means an option to subscribe for Unilife Corporation Shares under the Unilife Corporation Employee Stock Option Plan.

**Unilife Corporation Option Register** means the register of optionholders maintained by or on behalf of Unilife Corporation.

**Unilife Corporation Shares** means shares of fully paid common stock in the capital of Unilife Corporation.

## Interpretation

8.2 In the interpretation of this Option Scheme, the following provisions apply unless the context otherwise requires:

8.2.1 The singular includes the plural and conversely.

8.2.2 A gender includes all genders.

8.2.3 If a word or phrase is defined, its other grammatical forms have a corresponding meaning.

8.2.4 A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.

8.2.5 A reference to a clause, schedule or annexure is a reference to a clause of, or schedule or annexure to, this Option Scheme.

8.2.6 A reference to an agreement or document (including a reference to this Option Scheme) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Option Scheme or that other agreement or document.

8.2.7 A reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns.

- 8.2.8 A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
- 8.2.9 A reference to \$ is to the lawful currency of Australia.
- 8.2.10 Words and phrases not specifically defined in this Option Scheme have the same meanings (if any) given to them in the Corporations Act.
- 8.2.11 A reference to time is a reference to time in Sydney, Australia.
- 8.2.12 If the day on which any act, matter or thing is to be done is a day other than a Business Day, such act, matter or thing must be done on the immediately succeeding Business Day.
- 8.2.13 The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.
- 8.2.14 A reference to a party using its best endeavours or reasonable endeavours does not include a reference to that party paying money or providing other valuable consideration to or for the benefit of any person (and an obligation on a party to use its best or reasonable endeavours does not oblige that party to pay money or provide other valuable consideration to or for the benefit of any person).

## **Annexure A**

### **Terms of Unilife Corporation Options granted under the Unilife Corporation Employee Stock Option Plan**

Each Unilife Corporation Option issued pursuant to the Unilife Corporation Employee Stock Option Plan will:

- have an exercise price per option equal to six times the exercise price per option of the Options it replaces, provided that such exercise price of Unilife Corporation Option shall be rounded up to the nearest whole cent;
- have an exercise period equal to the unexpired exercise period of the Options it replaces;
- be vested to the same extent and have the same terms as to vesting as the Options it replaces;
- be subject to equivalent performance hurdles (if any) as the Options it replaces; and
- otherwise be issued on the terms of the Unilife Corporation Employee Stock Option Plan.

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## **Appendix 5**

### **Share Scheme Deed Poll**

# **Share Scheme Deed Poll**

Unilife Corporation  
in favour of each Scheme Shareholder

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**Date:**

## **Parties**

**Unilife Corporation** a company incorporated in Delaware, USA of 633 Lowther Road Lewisberry, Pennsylvania, 17339, United States (**Unilife Corporation**)

**In favour of** each holder of fully paid ordinary shares in **Unilife Medical Solutions Limited** ABN 14 008 071 403 (**Company**) on issue at the Scheme Record Date (**Scheme Shareholders**)

## **Background**

- A The Company's board considers that it is in the interests of the Company that Shareholders be given the opportunity to consider and, if thought fit, approve the Share Scheme.
- B Accordingly, the Company's board has resolved that the Company should propose the Share Scheme.
- C The effect of the Share Scheme will be that all of the Scheme Shares will be transferred to Unilife Corporation in consideration for the issue of Unilife Corporation Shares or CDIs to such Scheme Shareholders.
- D On 1 September 2009, Unilife Corporation and the Company entered into a Merger Implementation Agreement.
- E Under the Merger Implementation Agreement, Unilife Corporation has agreed to take all necessary steps to implement and complete the Share Scheme as soon as is reasonably practicable, including executing this document and providing the Share Scheme Consideration.
- F Unilife Corporation is entering into this document for the purpose of covenanting in favour of Scheme Shareholders to perform its obligations under the Merger Implementation Agreement and the Share Scheme.

## **Operative provisions**

### **1 Conditions and termination**

#### **Conditions precedent**

- 1.1 Unilife Corporation's obligations under clause 2 are subject to the Share Scheme becoming Effective.



**Termination**

1.2 Unilife Corporation's obligations under this document will automatically terminate and the terms of this document will be of no further force or effect if:

1.2.1 the Merger Implementation Agreement is terminated in accordance with its terms; or

1.2.2 the Share Scheme does not become Effective on or before the Sunset Date,

unless Unilife Corporation and the Company otherwise agree in accordance with the Merger Implementation Agreement.

**Consequences of termination**

1.3 If this document terminates under clause 1.2, then, in addition and without prejudice to any other rights, powers or remedies available to it:

1.3.1 Unilife Corporation is released from its obligations to further perform this document except those obligations under clause 6.1 and any other obligations which by their nature survive termination; and

1.3.2 Scheme Shareholders retain the rights they have against Unilife Corporation in respect of any breach of this document by Unilife Corporation which occurs before termination.

**2 Provision of Share Scheme Consideration****Compliance with Share Scheme obligations generally**

2.1 Unilife Corporation will comply with its obligations under the Merger Implementation Agreement and do all acts and things as may be necessary or desirable on its part to perform the acts contemplated of it under the Share Scheme.

**Provision of Share Scheme Consideration**

2.2 Subject to clause 1, in consideration of the transfer to Unilife Corporation of all of the Scheme Shares, Unilife Corporation will, on the Implementation Date, issue to each Scheme Shareholder (or, in accordance with clause 4.7 of the Share Scheme to a Nominee on its behalf where such Scheme Shareholder is an Ineligible Overseas Shareholder) the Share Scheme Consideration in accordance with clause 4 of the Share Scheme.

2.3 The Unilife Corporation Shares to be issued under the Share Scheme will be validly issued and fully paid and will rank equally in all respects with all other Unilife Corporation Shares on issue as at the Implementation Date.

**3 Representations and warranties**

3.1 Unilife Corporation represents and warrants that:

- 3.1.1 it is a corporation validly existing under the laws of its place of registration;
- 3.1.2 it has the corporate power to enter into and perform its obligations under this document and to carry out the transactions contemplated by this document;
- 3.1.3 it has taken all necessary corporate action to authorise the entry into this document and has taken or will take all necessary corporate action to authorise the performance of this document and to carry out the transactions contemplated by this document; and
- 3.1.4 this document is valid and binding upon it and enforceable against it in accordance with its terms.

## **4 Continuing obligations**

- 4.1 This document is irrevocable and, subject to clause 1, remains in full force and effect until:
  - 4.1.1 Unilife Corporation has fully performed its obligations under this document; or
  - 4.1.2 the earlier termination of this document under clause 1.2.

## **5 Notices**

- 5.1 Any notice, demand, consent or other communication (a **Notice**) given or made under this document:
  - 5.1.1 must be in writing and signed by a person duly authorised by the sender;
  - 5.1.2 must be delivered to the intended recipient by prepaid post or by hand or fax to the address or fax number below or the address (being an address in Australia) or fax number last notified by the intended recipient to the sender:  
**Unilife Corporation**  
  
Address: 633 Lowther Road  
Lewisberry, Pennsylvania 17339  
United States  
Fax: + 1 717 938 9364  
Attention: Alan Shortall
  - 5.1.3 will be taken to be duly given or made:
    - (a) in the case of delivery in person, when delivered;
    - (b) in the case of delivery by post:

- (i) within Australia to an Australian address, two Business Days after the date of posting; and
  - (ii) in any other case, 10 Business Days after the date of posting; and
- (c) in the case of fax, on receipt by the sender of a transmission control report from the dispatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day in that place.

## **6 General**

### **Stamp duty**

- 6.1 Unilife Corporation will:
- 6.1.1 pay all stamp duty (including fines, penalties and interest) in respect of this document, the performance of this document and each transaction effected by or made under this document; and
  - 6.1.2 indemnify each Scheme Shareholder against any liability arising from failure to comply with clause 6.1.1.

### **Waiver**

- 6.2 Waiver of any right arising from a breach of this document or of any right, power, authority, discretion or remedy arising upon default under this document must be in writing and signed by the party granting the waiver.
- 6.3 A failure or delay in exercise, or partial exercise, of:
- 6.3.1 a right arising from a breach of this document; or
  - 6.3.2 a right, power, authority, discretion or remedy created or arising upon default under this document,
- does not result in a waiver of that right, power, authority, discretion or remedy.
- 6.4 A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this document or on a default under this document as constituting a waiver of that right, power, authority, discretion or remedy.

- 6.5 A party may not rely on any conduct of another party as a defence to exercise of a right, power, authority, discretion or remedy by that other party.

**Variation**

- 6.6 A provision of this document may not be amended or varied unless the amendment or variation is agreed to in writing by the Company and the Court indicates that the amendment or variation would not of itself preclude approval of the Share Scheme in which event Unilife Corporation will enter into a further deed poll in favour of each Scheme Shareholder giving effect to the amendment or variation.

**Rights cumulative**

- 6.7 The rights, powers and remedies of Unilife Corporation and of each Scheme Shareholder under this document are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this document.

**Assignment**

- 6.8 The rights and obligations of Unilife Corporation and of each Scheme Shareholder under this document are personal and must not be assigned, encumbered or otherwise dealt with at law or in equity.

**Further assurances**

- 6.9 Unilife Corporation will, at its own expense, execute all deeds and other documents and do all acts and things as may be necessary or desirable to give full effect to this document.

**7 Governing law and jurisdiction**

- 7.1 This document is governed by the laws of New South Wales, Australia.
- 7.2 Unilife Corporation irrevocably and unconditionally:
- 7.2.1 submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia; and
  - 7.2.2 waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

**8 Definitions and Interpretation****Definitions**

- 8.1 Terms that are not defined in this document and that are defined in the Merger Implementation Agreement or the Share Scheme have the same meaning in this document, unless the context makes it clear that a definition is not intended to apply.

**Interpretation**

- 8.2 Clause 9.2 of the Share Scheme applies to the interpretation of this document except that references to 'this Share Scheme' in that clause are to be read as references to 'this document'.

**Nature of Deed Poll**

- 8.3 Unilife Corporation acknowledges that this document may be relied on and enforced by any Scheme Shareholder in accordance with its terms even though the Scheme Shareholders are not party to it.

**Execution and date**

Executed as a deed poll.

Executed by **Unilife Corporation** acting by  
the following persons:

.....  
Signature of duly authorised officer

.....  
Signature of duly authorised officer

.....  
Name of duly authorised officer (print)

.....  
Name of duly authorised officer (print)

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## **Appendix 6**

### **Option Scheme Deed Poll**

# **Option Scheme Deed Poll**

Unilife Corporation  
in favour of each Scheme Optionholder



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## Parties

**Unilife Corporation** a company incorporated in Delaware, USA, of 633, Lowther Road, Lewisberry, Pennsylvania 17339, United States, (**Unilife Corporation**)

**In favour of** each holder of options to subscribe for fully paid ordinary shares in **Unilife Medical Solutions Limited** ABN 14 008 071 403 (**Company**) granted under the Unilife Medical Solutions Limited Employee Share Option Plan as at the Scheme Record Date (**Scheme Optionholders**)

## Background

- A The Company's board considers that it is in the interests of the Company that Optionholders be given the opportunity to consider and, if thought fit, approve the Option Scheme.
- B Accordingly, the Company's board has resolved that the Company should propose the Option Scheme.
- C The effect of the Option Scheme will be that all of the Scheme Options will be cancelled in consideration for the issue of Unilife Corporation Options by Unilife Corporation to such Scheme Optionholders.
- D On 1 September 2009, Unilife Corporation and the Company entered into a Merger Implementation Agreement.
- E Under the Merger Implementation Agreement, Unilife Corporation has agreed to take all necessary steps to implement and complete the Option Scheme as soon as is reasonably practicable, including executing this document and providing the Option Scheme Consideration.
- F Unilife Corporation is entering into this document for the purpose of covenanting in favour of Scheme Optionholders to perform its obligations under the Merger Implementation Agreement and the Option Scheme.

## Operative provisions

### 1 Conditions and termination

#### Conditions precedent

- 1.1 Unilife Corporation's obligations under clause 2 are subject to the Option Scheme becoming Effective.

#### Termination

- 1.2 Unilife Corporation's obligations under this document will automatically terminate and the terms of this document will be of no further force or effect if:

1.2.1 the Merger Implementation Agreement is terminated in accordance with its terms; or

1.2.2 the Option Scheme does not become Effective on or before the Sunset Date,

unless Unilife Corporation and the Company otherwise agree in accordance with the Merger Implementation Agreement.

### **Consequences of termination**

1.3 If this document terminates under clause 1.2, then, in addition and without prejudice to any other rights, powers or remedies available to it:

1.3.1 Unilife Corporation is released from its obligations to further perform this document except those obligations under clause 6.1 and any other obligations which by their nature survive termination; and

1.3.2 Scheme Optionholders retain the rights they have against Unilife Corporation in respect of any breach of this document by Unilife Corporation which occurs before termination.

## **2 Provision of Option Scheme Consideration**

### **Compliance with Option Scheme obligations generally**

2.1 Unilife Corporation will comply with its obligations under the Merger Implementation Agreement and do all acts and things as may be necessary or desirable on its part to perform the acts contemplated of it under the Option Scheme.

### **Provision of Option Scheme Consideration**

2.2 Subject to clause 1, in consideration for the Scheme Optionholders agreeing to the cancellation of their Scheme Options, Unilife Corporation will, on the Implementation Date, issue to each Scheme Optionholder the Option Scheme Consideration in accordance with clause 4 of the Option Scheme.

## **3 Representations and warranties**

3.1 Unilife Corporation represents and warrants that:

3.1.1 it is a corporation validly existing under the laws of its place of registration;

3.1.2 it has the corporate power to enter into and perform its obligations under this document and to carry out the transactions contemplated by this document;

3.1.3 it has taken all necessary corporate action to authorise the entry into this document and has taken or will take all necessary corporate action to

authorise the performance of this document and to carry out the transactions contemplated by this document; and

- 3.1.4 this document is valid and binding upon it and enforceable against it in accordance with its terms.

## **4 Continuing obligations**

- 4.1 This document is irrevocable and, subject to clause 1, remains in full force and effect until:

4.1.1 Unilife Corporation has fully performed its obligations under this document; or

4.1.2 the earlier termination of this document under clause 1.2.

## **5 Notices**

- 5.1 Any notice, demand, consent or other communication (a **Notice**) given or made under this document:

5.1.1 must be in writing and signed by a person duly authorised by the sender;

5.1.2 must be delivered to the intended recipient by prepaid post or by hand or fax to the address or fax number below or the address (being an address in Australia) or fax number last notified by the intended recipient to the sender:

**Unilife Corporation**

Address: 633 Lowther Road  
Lewisberry, Pennsylvania 17339  
United States

Fax: + 1 717 938 9364

Attention: Alan Shortall

5.1.3 will be taken to be duly given or made:

(a) in the case of delivery in person, when delivered;

(b) in the case of delivery by post:

(i) within Australia to an Australian address, two Business Days after the date of posting; and

(ii) in any other case, 10 Business Days after the date of posting; and

(c) in the case of fax, on receipt by the sender of a transmission control report from the dispatching machine showing the relevant number of pages and the correct destination fax machine number

or name of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next Business Day in that place.

## **6 General**

### **Stamp duty**

6.1 Unilife Corporation will:

- 6.1.1 pay all stamp duty (including fines, penalties and interest) in respect of this document, the performance of this document and each transaction effected by or made under this document; and
- 6.1.2 indemnify each Scheme Optionholder against any liability arising from failure to comply with clause 6.1.1.

### **Waiver**

- 6.2 Waiver of any right arising from a breach of this document or of any right, power, authority, discretion or remedy arising upon default under this document must be in writing and signed by the party granting the waiver.
- 6.3 A failure or delay in exercise, or partial exercise, of:
  - 6.3.1 a right arising from a breach of this document; or
  - 6.3.2 a right, power, authority, discretion or remedy created or arising upon default under this document,does not result in a waiver of that right, power, authority, discretion or remedy.
- 6.4 A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this document or on a default under this document as constituting a waiver of that right, power, authority, discretion or remedy.
- 6.5 A party may not rely on any conduct of another party as a defence to exercise of a right, power, authority, discretion or remedy by that other party.

### **Variation**

- 6.6 A provision of this document may not be amended or varied unless the amendment or variation is agreed to in writing by the Company and the Court indicates that the amendment or variation would not of itself preclude approval of the Option Scheme in which event Unilife Corporation will enter into a further deed poll in favour of each Scheme Optionholder giving effect to the amendment or variation.

**Rights cumulative**

- 6.7 The rights, powers and remedies of Unilife Corporation and of each Scheme Optionholder under this document are cumulative and do not exclude any other rights, powers or remedies provided by law independently of this document.

**Assignment**

- 6.8 The rights and obligations of Unilife Corporation and of each Scheme Optionholder under this document are personal and must not be assigned, encumbered or otherwise dealt with at law or in equity.

**Further assurances**

- 6.9 Unilife Corporation will, at its own expense, execute all deeds and other documents and do all acts and things as may be necessary or desirable to give full effect to this document.

**7 Governing law and jurisdiction**

- 7.1 This document is governed by the laws of New South Wales, Australia.
- 7.2 Unilife Corporation irrevocably and unconditionally:
- 7.2.1 submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia; and
  - 7.2.2 waives, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

**8 Definitions and Interpretation****Definitions**

- 8.1 Terms that are not defined in this document and that are defined in the Merger Implementation Agreement or the Option Scheme have the same meaning in this document, unless the context makes it clear that a definition is not intended to apply.

**Interpretation**

- 8.2 Clause 8.2 of the Option Scheme applies to the interpretation of this document except that references to 'this Option Scheme' in that clause are to be read as references to 'this document'.

**Nature of Deed Poll**

- 8.3 Unilife Corporation acknowledges that this document may be relied on and enforced by any Scheme Optionholder in accordance with its terms even though the Scheme Optionholders are not party to it.

**Execution and date**

Executed as a deed poll.

Executed by **Unilife Corporation** acting by  
the following persons:

.....  
Signature of director

.....  
Signature of director/company secretary

.....  
Name of director (print)

.....  
Name of director/company secretary (print)

## Unilife Corporation Employee Stock Option Plan

Adopted by the Board of Directors on: [ ] 2009

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**APPENDIX A: PROVISIONS FOR CALIFORNIA RESIDENTS**

## **RULES OF THE UNILIFE CORPORATION EMPLOYEE STOCK OPTION PLAN**

### **1 Background**

#### **1.1 Name of Plan**

The Plan is called the “Unilife Corporation Employee Stock Option Plan”.

#### **1.2 Purpose of the Plan**

The purpose of the Plan is to:

- (a) assist in the motivation and retention of Employees;
- (b) encourage Employees to work in ways that will enhance shareholder value and give them the opportunity to have a greater involvement with and to share in the future growth and profitability of the Company;
- (c) recognise the importance of the Employees to the long term performance and success of the Company and to encourage Employees to focus on the long term goals of the Company; and
- (d) provide Employees with a means of acquiring a right to acquire Shares in the Company, in accordance with these Rules.

#### **1.3 Rules of Plan binding**

The Plan will operate in accordance with the terms and conditions set out in these Rules and the Rules will bind each Group Company, each Participant and each Nominator.

With respect to Options granted to California residents prior to a public offering of capital stock of the Company that is effected pursuant to a registration statement filed with, and declared effective by, the SEC under the Securities Act of 1933, as amended, and only to the extent required by applicable law, the provisions detailed in Appendix A shall apply notwithstanding anything in the Plan, Application Form, or Option Certificate to the contrary.

#### **1.4 Commencement of Plan**

The Plan will take effect on such date as the Board decides.

#### **1.5 Governing law**

This Plan is governed by and is to be construed in accordance with the laws of Delaware, USA, without regard to its conflict of laws principles, and these Rules are to be interpreted subject to all Relevant Laws. Each Participant, the Company and any Associated Body Corporate irrevocably and unconditionally agrees and submits to the personal jurisdiction and venue in the federal or state courts in the districts which include the city and state in which the principal executive offices of the Company are located on the date on which the suit arises with respect to any suits relating to the Options.

## **2 Dictionary and interpretation**

### **2.1 Dictionary**

In these Rules, unless the context otherwise requires:

**Application Form** means a duly completed and executed application for the issue of Options made by an Employee or his or her nominee approved under Rule 4.3 in respect of an Offer, in a form approved by the Plan Committee from time to time;

**ASIC** means the Australian Securities and Investments Commission;

**Associated Body Corporate** means a body corporate:

- (a) that is a related body corporate of the Company pursuant to section 50 of the Corporations Act; or
- (b) that has voting power in the Company of not less than 20%; or
- (c) in which the Company has voting power of not less than 20%;

(applying the definition of "voting power" contained in section 610 of the Corporations Act);

**ASX** means, as the context requires:

- (a) ASX Ltd ACN 008 624 691 and any successor body corporate; or
- (b) the financial market operated by the body corporate referred to in paragraph (a);

**Board** means all or some of the directors of the Company acting as a board or its delegate;

**Business Day** means any day on which trading banks generally are open for business in Sydney excluding a Saturday, Sunday or a public holiday in Sydney;

**CDIs** means CHESS Depositary Interests;

**Change of Control Event** means the occurrence of any of the following events:

- (a) a change of Ownership of the Company;
- (b) a change of Effective Control of the Company; or
- (c) a change of Ownership of Assets of the Company;

as described in these Rules and construed consistent with Section 409A of the Code. For the purposes of a Change of Control Event, fair market value is determined by the Board, and share ownership is determined under section 318(a) of the Code. A Change of Control Event excludes any transfer to a related person as described in Section 409A of the Code or a public offering of the Shares;

**Change of Effective Control of the Company** means the date on which a majority of members of the Company's full board of directors is replaced during any 12-month period by directors whose appointment

or election is not endorsed by a majority of the members of the Company's full board of directors before the date of the appointment or election;

**Change of Ownership of Assets of the Company** means the date on which any one person acquires, or Persons Acting as a Group acquire (or has or have acquired during the 12 month period ending on the date of the most recent acquisition by such Person or Persons), assets from the Company that have a total gross fair market value more than 50% of the total gross fair market value of all of the assets of the Company immediately before such acquisitions. For this purpose, gross fair market value means the value of the assets of the Company, or the value of the assets being disposed of, determined without regard to any liabilities associated with such assets;

**Change of Ownership of the Company** means the date on which any one Person acquires, or Persons Acting as a Group acquire, ownership of Shares that, together with the Shares held by such Person or Persons Acting as Group, constitutes more than 50% of the total fair market value or total voting power of the Shares of the Company. However, if any one Person is, or Persons Acting as a Group are, considered to own more than 50% of the total fair market value or total voting power of the Shares of the Company, the acquisition of additional Shares by the same Person or Persons Acting as a Group is not considered to cause a Change of Ownership of the Company or to cause a Change of Effective Control of the Company. An increase in the percentage of Shares owned by any one Person, or Persons Acting as a Group, as a result of a transaction in which the Company acquires its Shares in exchange for property will be treated as an acquisition of Shares;

**Code** means the United States Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder;

**Company** means Unilife Corporation, a corporation incorporated in Delaware, USA;

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

**Employee** means any full-time or part-time employee of any Group Company and includes any such employee on maternity leave, long service leave or other special leave as approved by the Plan Committee from time to time and also includes a director of any Group Company but does not include an employee who has been given notice of dismissal for misconduct from employment with a Group Company (or has given notice of resignation from such employment in order to avoid such dismissal) whom the Plan Committee, in its absolute discretion, determines is eligible to receive an Offer under the Plan; provided, however, that solely for purposes of the grant of Options under the Plan in provision of the option scheme consideration pursuant to that certain Merger Implementation Agreement dated 1 September 2009 between Unilife Medical Solutions Limited and the Company, the term "Employee" shall include all persons who were holders of UMSL Options notwithstanding the person's current employment status or lack thereof with any Group Company;

**Encumbrance** means any mortgage, charge, lien, pledge, arrangement for retention of title, any right, power, interest or arrangement having the purpose or effect of providing security for, or otherwise protecting against default in respect of, the obligation of any person or any other third party interest of any nature whatsoever;

**Exchange Act** means the United States Securities Exchange Act of 1934, as amended, including the rules promulgated thereunder;

**Exercise Notice** means a duly completed and executed notice of exercise of an Option by a Participant, in a form approved by the Plan Committee from time to time;

**Exercise Period** means the period commencing on the First Exercise Date and ending on the Last Exercise Date;

**Exercise Price** means the amount payable by the Participant on the exercise of the Option, being the amount determined by the Plan Committee and set out in the Offer (adjusted, if appropriate, in accordance with Rule 11);

**First Exercise Date** with respect to an Option means the earlier of:

- (a) the date on which the Option vests as determined by the Plan Committee and as specified in the Offer in respect of that Option;
- (b) the date on which a Special Circumstance arises in respect of the Participant holding the Option; and
- (c) the period of 7 days immediately prior to the date on which the Change of Control Event occurs, or such other period as determined by the Plan Committee;

**Grant Date** means, with respect to an Option, the date on which the Plan Committee grants the Option to a Participant;

**Group** means the Company and each Subsidiary;

**Group Company** means any company in the Group;

**Last Exercise Date** with respect to an Option means, unless otherwise specified in an Offer:

- (a) where the Performance Hurdles in respect of an Option have not been satisfied, the date 3 months after the fifth anniversary of the Grant Date; or
- (b) where the Performance Hurdles in respect of an Option have been satisfied, the date 6 months after the fifth anniversary of the Grant Date; or
- (c) if a Special Circumstance arises in respect of a Participant holding an Option, the date 3 months (or such longer period as may be determined by the Plan Committee) after the Special Circumstance arises; or
- (d) if a Change of Control Event occurs while a Participant holds an Option, the date immediately prior to the date of the Change of Control Event;

**Legal Personal Representative** means the executor or trustee of the will or an administrator of the estate of a deceased person, the trustee of the estate of a person under a legal disability or a person who holds an enduring power of attorney granted by another person;

**Listing Rules** means, while the Company is admitted to the official list of the ASX, the listing rules of the ASX and any other rules of the ASX that are applicable. In the event that the Shares

become listed for trading on any other securities exchange or market, the term “Listing Rules” shall also mean the applicable rules of such exchange or market;

**Nominator** means an Employee who has renounced an Offer in favour of a nominee approved under Rule 4.3 which nominee has accepted that Offer;

**Offer** means an invitation to an Employee made by the Company under Rule 4.1 to apply for Options;

**Option** means an option issued to a Participant under the Plan to subscribe for one Share on the terms set out in the Offer and in this Plan;

**Option Certificate** means a certificate issued under these Rules in the form approved by the Plan Committee from time to time, or if the Plan Committee determines that Options are uncertificated, then a statement issued to the Participant, disclosing:

- (a) the number of Options entered in the register of Option holders in respect of the Participant; and
- (b) the information in Rule 6.4;

**Participant** means a person who holds Options that have been issued under the Plan including, where a Participant dies or becomes subject to a legal disability, the Legal Personal Representative of that Participant;

**Performance Hurdles** means, in respect of any Option, those conditions (if any) determined by the Plan Committee and specified in an Offer that, subject to these Rules, must be satisfied before the Option can be exercised;

**Person** means any individual, entity or group within the meaning of section 13(d)(3) or 14(d)(2) of the Exchange Act, other than employee benefit plans sponsored or maintained by the Company and by entities controlled by the Company or an underwriter of the Shares of the Company in a registered public offering;

**Persons Acting as a Group** means persons who are owners of a corporation that enters into a merger, consolidation, purchase or acquisition of shares, or similar business transaction with the Company. If a Person owns shares in both corporations that enter into a merger, consolidation, purchase or acquisition of shares, or similar transaction, such shareholder is considered to be a Person Acting as a Group with other shareholders only with respect to the ownership in that corporation before the transaction giving rise to the change and not with respect to the ownership interest in the other corporation. Persons will not be considered to be Persons Acting as a Group solely because they purchase assets of the same corporation at the same time or purchase or own shares of the same corporation at the same time, or as a result of the same public offering;

**Plan** means means this Employee Stock Option Plan established and operated in accordance with these Rules;

**Plan Committee** means the committee of the Board to which power to administer the Plan has been delegated or if there has been no delegation, the Board;

**Redundancy** means in respect of a Participant the termination of employment with the Company or any Group Company of that Participant (if he or she is an Employee) or of that Participant's Nominator (if the Participant is not an Employee) by reason of a restructure or a state of affairs within the Company or Group Company whereby the position previously occupied by that person no longer exists within the Company or any Group Company and where the Plan Committee in its absolute discretion determines that such an event qualifies as a Redundancy for the purposes of these Rules;

**Relevant Law** means one or more, as the context requires, of the following:

- (a) the Corporations Act including any and all regulations made under the Corporations Act;
- (b) the Listing Rules;
- (c) the charter of the Company;
- (d) the United States Securities Act of 1933, as amended (including the rules thereunder), Exchange Act and any other applicable United States federal or state law, including without limitation the Delaware General Corporation Law; or
- (e) any practice note, policy statement, class order, declaration, guideline, policy or procedure pursuant to the provisions of which any of the SEC, ASIC or ASX is authorised or entitled to regulate, implement or enforce, either directly or indirectly, the provisions of any of the foregoing statutes, regulations or rules or any conduct of any duly authorised person, pursuant to any of the above mentioned statutes, regulations or rules;

**Restricted Shares** means Shares held under the Plan which are subject to the restrictions under Rule 8;

**Retirement** means in respect of a Participant resignation from employment with the Company or any Group Company of that Participant (if he or she is an Employee) or of that Participant's Nominator (if the Participant is not an Employee) in circumstances where the Board is satisfied that person intends no longer to work on a full-time basis;

**Rules** means the rules governing the operation of the Plan set out in this document, as amended from time to time;

**SEC** means the United States Securities and Exchange Commission;

**Share** means a fully paid share of the common stock of the Company, par value US\$.01 per share, in the form of either common stock or CDIs;

**Special Circumstances** with respect to a Participant means:

- (a) the Retirement of the Participant;
- (b) the Redundancy of the Participant;
- (c) the death of the Participant or that Participant's Nominator;



- (d) the Total and Permanent Disablement of the Participant; or
- (e) any other circumstances determined by the Plan Committee in its absolute discretion at any time (whether in relation to the Participant or the Nominator, a class of Participants or a class of Nominators, a particular circumstance or a class of circumstances) and whether before or after the Grant Date and which is notified to the Participant and the relevant Nominator in writing;

**Subsidiary** means a body corporate (whether incorporated under the Corporations Act or not) of which the Company is a holding company for the purposes of Division 6 of Part 1.2 of the Corporations Act;

**Tax** includes any tax, levy, charge, impost, GST, deduction, compulsory loan, duty or withholding which is assessed, levied or imposed by any government or any governmental, semi-governmental or judicial entity or authority and includes any interest, penalty, fine, charge, fee or other amount, imposed on or in respect of the above;

**Total and Permanent Disablement** means in respect of a Participant the disablement of that Participant (if he or she is an Employee) or of that Participant's Nominator (if that Participant is not an Employee) the effect of which is, in the opinion of the Plan Committee, likely to be permanent and will prevent that person from continuing his or her current employment with the Company or any Group Company;

**UMSL Options** means share options granted under the Rules of the Unilife Medical Solutions Limited Employee Share Option Plan; and

**vest** in relation to an Option means become capable of exercise in accordance with the Rules subject only to the satisfaction of the Performance Hurdles, if any, in respect of that Option (and **vested** and **vesting** shall have a corresponding meaning).

## 2.2 *Interpretation*

In these Rules, unless the context otherwise requires:

- (a) headings are for convenience only and shall not affect the interpretation of these Rules;
- (b) words denoting the singular include the plural, and the converse also applies;
- (c) words denoting any gender include all genders;
- (d) any reference to any agreement or document (including these Rules) includes that agreement or document as amended, consolidated, novated, supplemented or replaced from time to time;
- (e) any reference to a Rule or paragraph means a rule or paragraph of these Rules;
- (f) references to any legislation or a provision of any legislation includes a modification or re-enactment of the legislation or a legislative provision substituted for, and all legislation and statutory instruments and regulations issued under, the legislation; and

- (g) where an act or thing must be done on a particular day or within a particular period, that act or thing must be done before, and that period ends at, 5.00 pm Sydney time on the relevant day.

### **3 Participation and eligibility**

#### **3.1 *Employees and nominees only to be granted Options***

Unless the Plan Committee determines otherwise, no Options may be granted to a person under the Plan unless the person is, as at the Grant Date, an Employee or a nominee of an Employee who is approved under Rule 4.3.

#### **3.2 *Compliance with Relevant Laws***

No Option may be offered or granted to, or exercised by, an Employee or his or her nominee approved under Rule 4.3, or a Participant (as applicable) if to do so would contravene a Relevant Law.

#### **3.3 *Limitation on Offers that can be made***

The Plan Committee must not offer any Options to an Employee under the Plan if the total number of Shares to be received on exercise of the Options the subject of the Offer, when aggregated with:

- (a) the number of Shares which would be issued were each outstanding offer with respect to Shares, units of Shares and options to acquire unissued Shares, being an offer made or option acquired pursuant to the Plan or any other employee share or option scheme extended only to employees or directors of the Company or an Associated Body Corporate to be accepted or exercised; and
- (b) the number of Shares issued during the previous five years pursuant to the Plan or any other employee share or option scheme extended only to employees or directors of the Company or an Associated Body Corporate;

but disregarding any offer made, or option acquired or Share issued by way of or as a result of:

- (c) an offer to a person situated at the time of receipt of the offer outside Australia; or
- (d) an offer that did not need disclosure to investors because of section 708 of the Corporations Act; or
- (e) an offer that did not require the giving of a Product Disclosure Statement because of section 1012D of the Corporations Act; or
- (f) an offer made under a disclosure document or Product Disclosure Statement,

would exceed 5% of the total number of issued Shares as at the time of the Offer.

## **4 Offers**

### **4.1 *Plan Committee may make Offers***

Subject to these Rules, the Plan Committee in its discretion may from time to time make Offers to Employees.

### **4.2 *Contents of Offer***

An Offer must be in writing and may state, as applicable:

- (a) the name and address of the Employee to whom the Offer is made;
- (b) the date of the Offer;
- (c) the period in which the invitation constituted by the Offer can be accepted by the Employee or his or her nominee approved under Rule 4.3;
- (d) the maximum number of Options which may be applied for and the number of Shares to which the Options relate;
- (e) the expected Grant Date of the Options the subject of the Offer;
- (f) the expected Exercise Period of the Options the subject of the Offer;
- (g) the Exercise Price or the manner of determining the Exercise Price of the Options the subject of the Offer;
- (h) any Performance Hurdles that attach to the Options the subject of the Offer including the date, if any, by which the Performance Hurdle must be satisfied;
- (i) the minimum number of Options which may be exercised at any one time (if any); and
- (j) any other terms and conditions applicable to the Offer, including any other matters required to be specified in the Offer by any Relevant Law.

### **4.3 *Nominee of Employee***

- (a) An Employee who receives an Offer may renounce the Offer in favour of his or her nominee who has been approved by the Plan Committee in its absolute discretion before the end of the period in which the invitation constituted by the Offer can be accepted (the “acceptance period”).
- (b) The Employee must provide the Plan Committee with written notice of the details of the nominee in whose favour they wish to renounce the Offer at least 3 (three) Business Days prior to the end of the acceptance period unless otherwise agreed by the Plan Committee. The Plan Committee may in its absolute discretion accept or reject a proposed nominee.
- (c) If an Employee advises the Plan Committee of its proposed nominee in compliance with this Rule, the Plan Committee must inform the Employee of its acceptance or rejection of

the proposed nominee at least 2 (two) Business Days prior to the close of the acceptance period.

## **5 Application for Options**

### **5.1 Acceptance of Offer**

An Employee or his or her nominee approved under Rule 4.3 may accept the invitation constituted by an Offer by giving to the Company an Application Form within the acceptance period specified in the Offer.

### **5.2 Lapse of Offer**

An Offer not accepted in accordance with Rule 5.1 lapses unless the Plan Committee determines otherwise.

## **6 Issue of Options**

### **6.1 Acceptance of Application Form**

The Plan Committee may, within 30 days after receiving a duly completed Application Form but subject to the conditions of the Offer, approve and accept the Application Form.

### **6.2 Issue of Options**

Following acceptance of an Application Form under Rule 6.1, the Company will:

- (a) issue to the Employee or his or her nominee approved under Rule 4.3 all of the Options the subject of the Application Form; and
- (b) notify the Employee or his or her nominee approved under Rule 4.3 in writing of the Grant Date and the Exercise Period of those Options.

### **6.3 Becoming a Participant**

An Employee or his or her nominee approved under Rule 4.3 becomes a Participant and is bound by these Rules upon the issue of an Option. A Nominator will become bound by these Rules upon the issue of an Option to the relevant nominee.

### **6.4 Option Certificates**

The Company must give a Participant one or more Option Certificates stating:

- (a) the number of Options issued to the Participant;
- (b) the Exercise Price of those Options;
- (c) the Exercise Period of those Options; and
- (d) the Grant Date of those Options.

**6.5     *No consideration payable for Options***

No monetary consideration is payable by Participants for the issue of Options under the Plan.

**6.6     *Entitlement to underlying Shares***

Subject to these Rules, each Option confers on its holder the entitlement to subscribe for and be issued one fully paid Share at the Exercise Price. Whilst the Company remains listed on ASX, the Participant will be entitled to elect whether to receive the Shares in the form of common stock of the Company or as CDIs.

**6.7     *No interest in Shares until issued***

A Participant has no interest in a Share the subject of an Option held by the Participant unless and until the Share is issued to that Participant under these Rules.

**7       **Exercise of Options****

**7.1     *Exercise during Exercise Period***

Subject to Rules 3.2, 7 and 9, an Option may be exercised at any time during the Exercise Period for that Option.

**7.2     *Performance Hurdles***

Subject to Rules 7.3 and 7.4, if the Offer in respect of an Option has specified any Performance Hurdles, that Option may not be exercised unless and until those Performance Hurdles have been satisfied, reached or met.

**7.3     *Waiver of Performance Hurdles where Special Circumstances or Change of Control***

The Performance Hurdles attaching to an Option will be automatically waived on the occurrence of a Special Circumstance in respect of the Participant or on the occurrence of a Change of Control Event.

**7.4     *Waiver of Performance Hurdles at discretion of Plan Committee***

The Plan Committee may, at its absolute discretion, by notice to the Participant and the relevant Nominator reduce or waive the Performance Hurdles attaching to an Option in whole or in part at any time and in any particular case.

**7.5     *Exercise of Options***

Subject to these Rules, Options that have not lapsed and are able to be exercised in accordance with these Rules may be exercised by the Participant giving to the Company:

- (a)     an Exercise Notice;
- (b)     the Option Certificate for those Options; and

- (c) a cheque payable to the Company (or another form of payment acceptable to the Plan Committee) for the amount determined by multiplying the number of Options then being exercised by the Exercise Price of those Options.

## **7.6 *Issue of Shares***

- (a) After receipt of the full amount payable by a Participant in accordance with Rule 7.5 the Company will, subject to Rule 3.2, issue to the Participant that number of Shares that relate to the Options being exercised.
- (b) Shares issued by the Company under the Plan will on and from the date of issue:
  - (i) be credited as fully paid;
  - (ii) rank equally with all existing issued Shares in respect of all rights, issues and dividends which have a record date for determining entitlements on or after the date of issue of those Shares; and
  - (iii) otherwise rank equally with Shares of the Company that are on issue at the time of issue.
- (c) The Participant to whom the Shares are issued under the Plan will be deemed to have agreed to be bound by the Company's charter in respect of those Shares.

## **7.7 *Quotation of Shares***

If Shares are quoted on the financial market operated by the ASX at the time of issue of Shares under the Plan, the Company must apply for official quotation of those Shares issued under the Plan on the financial market operated by the ASX and any other financial markets on which Shares are then quoted.

## **7.8 *Partial exercise of Options***

- (a) A Participant may only exercise Options in multiples of 100 or such other multiple as the Plan Committee determines unless the Participant exercises all Options that are covered by a certificate that are able to be exercised by him or her at that time.
- (b) The exercise by a Participant of only some of the Options held by the Participant does not affect the Participant's right to exercise at a later date in accordance with the Rules other Options held by the Participant.

## **7.9 *Replacement Option Certificate***

If a Participant submits an Exercise Notice in respect of only part of the Options covered by an Option Certificate, the Company must issue an Option Certificate stating the remaining number of Options held by the Participant.

## **8 Restriction on disposal of Shares**

### **8.1 *Restrictions on Shares***

All Shares acquired pursuant to an exercise of Options are subject to the restrictions set out in this Rule 8, unless the holder of the Shares or the relevant Nominator has at the time of exercise of the Option already ceased employment with the Group or such restrictions are in contravention of Relevant Law.

### **8.2 *Restriction on disposal of Shares in Plan***

A holder of Restricted Shares must not grant an Encumbrance over, dispose of or otherwise deal with (or purport to grant an Encumbrance over, dispose of or otherwise deal with) any of those Restricted Shares (or any interest in those Restricted Shares) while those Restricted Shares are held in the Plan and are subject to these Rules.

### **8.3 *Holding lock on Restricted Shares***

Subject to the Listing Rules, the Company must apply a holding lock or ensure that such a holding lock is applied in respect of all Restricted Shares so as to prevent the transfer of those Restricted Shares.

### **8.4 *Paper transfers***

Subject to the Listing Rules, the Company must not register any paper transfer that it receives in respect of Restricted Shares.

### **8.5 *Withdrawal of Restricted Shares from Plan***

A holder of Restricted Shares may apply in writing to the Plan Committee at any time to withdraw all of or a portion of the Restricted Shares held by the holder from the Plan.

### **8.6 *Acceptance of application to withdraw Restricted Shares***

- (a) The Plan Committee may in its absolute discretion refuse to accept an application to withdraw any Restricted Shares from the Plan:
  - (i) if any debts owed by the holder or the relevant Nominator to any Group Company have not been repaid or arrangements have not been made for repayment; or
  - (ii) where any of the circumstances set out in Rule 9.2(a) have occurred, unless the Group has been recompensed for any loss or damage suffered in those circumstances or arrangements satisfactory to the Plan Committee have been made.
- (b) Without limiting the powers of the Plan Committee, the Plan Committee may determine that the holder of Restricted Shares is to sell all or any of those Restricted Shares and apply the proceeds to repay any debt referred to at paragraph (a)(i) above and/or to

recompense the Group for any loss suffered as a result of any of the circumstances referred to in paragraph (a)(ii) above and pay any balance to the holder.

- (c) The holder of Restricted Shares appoints the Plan Committee as his or her attorney to do all things necessary to sell Restricted Shares in respect of which the Plan Committee has made a determination under paragraph (b) and to do all things necessary to give effect to paragraph (b).
- (d) Subject to paragraphs (a) and (b), the Plan Committee must not unreasonably refuse to accept an application to withdraw Restricted Shares from the Plan.
- (e) A holder of Restricted Shares must not lodge a withdrawal application in respect of any Restricted Shares if it would breach or may result in a breach of the insider trading provisions of Relevant Law and any approval of the withdrawal application may be withheld or delayed by the Plan Committee where the Plan Committee in its reasonable opinion forms the view that such approval is not appropriate at that time.

#### **8.7     *Company not liable under Rule 8.6***

The Company is not liable and will not be held responsible to the holder of Restricted Shares for or in relation to any action taken or any inaction by the Company or the Plan Committee under Rule 8.6.

#### **8.8     *Deemed withdrawal application***

A holder of Restricted Shares is on the occurrence of any of the following events deemed to have made an application under Rule 8.5 to withdraw all Restricted Shares held by the holder at that time:

- (a) the ceasing of employment with the Group of that holder or of the relevant Nominator;
- (b) the occurrence of a Special Circumstance;
- (c) where a Change of Control Event occurs;
- (d) the day immediately following the fifth anniversary of the date of issue of the Restricted Shares; or
- (e) the day immediately following the suspension or termination of the Plan in accordance with the Rules.

#### **8.9     *Removal of holding lock***

An application for withdrawal served under Rule 8.5 or deemed to have been made under Rule 8.8 is deemed to have been accepted by the Company by the lifting of any holding lock on the relevant Restricted Shares.

#### **8.10    *Cease to be in Plan upon acceptance of withdrawal application***

Following acceptance under Rule 8.9:



- (a) the relevant Restricted Shares cease to be held in the Plan and subject to these Rules;
- (b) the relevant Restricted Shares cease to be subject to restriction on disposal under Rules 8.2 to 8.9; and
- (c) the Plan Committee must, as soon as practicable, notify the holder in writing of the Shares in respect of which the holding lock has been lifted and the time at which it was lifted.

## **9 Lapse of Options**

### **9.1 *Lapse of Options on Last Exercise Date***

Subject to Rule 9.3A, an Option which has not previously lapsed pursuant to any other provision of these Rules, including Rules 9.2 and 9.3, will automatically lapse at 5.00pm (Sydney time) on the Last Exercise Date unless otherwise determined by the Plan Committee.

### **9.2 *Lapse of vested Options where Performance Hurdles satisfied but there is a cessation of employment***

Unless previously lapsed, an Option which has vested and in respect of which the applicable Performance Hurdles have been satisfied will lapse on the first to occur of:

- (a) a determination of the Plan Committee that the Option should lapse because the Participant (if he or she is an Employee) or that Participant's Nominator (if the Participant is not an Employee), in the Plan Committee's opinion:
  - (i) has been dismissed or removed from office for a reason which entitles a Group Company to dismiss that person without notice;
  - (ii) has committed an act of fraud, defalcation or gross misconduct in relation to the affairs of a Group Company (whether or not charged with an offence); or
  - (iii) has breached any of the Rules; and
- (b) the date that is 3 months after the date of cessation or termination of employment of the Participant (if he or she is an Employee) or that Participant's Nominator (if the Participant is not an Employee) with the Group (other than due to the occurrence of a Special Circumstance in which case Rule 9.1 will apply or the occurrence of an event set out in subparagraph (a) in which case that subparagraph will apply), unless otherwise determined by the Plan Committee.

### **9.3 *Additional lapsing events***

Unless previously lapsed, an Option which has either:

- (a) vested but the applicable Performance Hurdles attaching to that Option have not been satisfied; or
- (b) not vested but the applicable Performance Hurdles attaching to that Option have been satisfied; or

- (c) not vested and the applicable Performance Hurdles attaching to that Option have not been satisfied,

will automatically lapse on the date on which the Participant (if he or she is an Employee) or that Participant's Nominator (if the Participant is not an Employee) ceases to be employed by any Group Company (other than where a Special Circumstance occurs (in which case Rule 9.1 will apply)), unless otherwise determined by the Plan Committee.

### **9.3A *Lapsing of Options on a Change of Control Event***

Each outstanding Option under the Plan, whether or not vested or for which the applicable Performance Hurdles have been satisfied, shall lapse upon the effective time of a Change of Control Event, unless the transaction the subject of the Change of Control Event provides for the continuation or assumption of outstanding Options by the surviving or successor entity or a parent company of that entity, or for the substitution of equivalent awards, as determined in the sole discretion of the Board, of the surviving or successor entity or a parent of that entity. This is subject to the proviso that holders of Options that lapse under this Rule 9.3 are permitted to exercise all of their Options immediately before the Change of Control Event.

### **9.4 *Cessation of rights***

Subject to Rule 9.3A, if a Participant fails for any reason to exercise all the Options registered in the Participant's name before the occurrence of a circumstance set out in Rules 9.1 to 9.3A, those Options that the Participant:

- (a) would have been entitled to exercise and that have not been exercised; or
- (b) may have had a right or entitlement to have vested in the Participant,

will lapse and all rights of a Participant under the Plan in respect of those Options will cease.

## **10 *Dealings with Options***

### **10.1 *Options are personal***

Subject to Rule 10.3, Options are personal to the Participant to whom they have been issued and may not be assigned to, transferred to or exercised by any other person without the prior written approval of the Plan Committee.

### **10.2 *No unauthorised disposal***

Except as permitted under Rule 10.3, a Participant must not dispose of or grant an Encumbrance over or otherwise deal with an Option or an interest in an Option, and the Encumbrance or disposal or dealing will not be recognised in any manner by the Company.

### **10.3 *Permitted transfer of Options***

Options may be transferred, by an instrument of transfer, only where a Change of Control Event occurs.

## **11 Participation rights, rights issues, reorganisations of capital and winding up**

### **11.1 New issues**

- (a) Participants are not entitled to participate in any new issue to existing shareholders of securities in the Company unless:
  - (i) they have become entitled to exercise their Options under the Plan; and
  - (ii) they do so before the record date for the determination of entitlements to the new issue of securities and participate as a result of being holders of Shares.
- (b) In accordance with the Listing Rules, the Company must give Participants notice of any new issue of securities before the record date for determining entitlements to the new issue.

### **11.2 Dividends, distributions and rights issues**

The Company shall make no adjustment for dividends, distributions, or other rights for which the record date is before the date the Shares are issued.

### **11.3 Reconstruction of capital**

If there is any reconstruction (including consolidation (reverse split), sub-division (stock split), split-up or similar transaction, spin-off, dividend, recapitalization, merger or share exchange) of the issued capital of the Company (whether before or during the Exercise Period) (other than as part of a transaction resulting in a Change of Control Event), then the rights of a Participant (including the number of Options to which each Participant is entitled, the Exercise Price, and the type of shares that the Participant will be entitled to or any other terms) will be changed in a manner determined by the Board to the extent necessary to comply with the Listing Rules applying to a reconstruction of capital at the time of the reconstruction.

### **11.4 Liquidation or Dissolution**

If (whether before or during the Exercise Period) a resolution for a voluntary liquidation or dissolution of the Company is proposed to shareholders (other than for the purpose of a reconstruction) the Plan Committee may, in its absolute discretion, give written notice to Participants of the proposed resolution. Subject to satisfaction of the Performance Hurdles, the Participants may, during the period referred to in the notice, exercise their Options if the Last Exercise Date for the Options has not expired.

### **11.5 Fractions of Shares**

For the purposes of this Rule 11, if Options are exercised simultaneously, then the Participant may aggregate the number of Shares or fractions of Shares for which the Participant is entitled to subscribe. Fractions in the aggregate number only will be disregarded in determining the total entitlement of a Participant.

### **11.6 Cumulative application**

In applying any provisions of this Rule 11 to adjust a number of Shares the subject of an Option or the Exercise Price for Shares, account shall be taken of each prior event requiring adjustment under this Rule 11 so that the effect of successive applications of the provisions of this Rule 11 is cumulative.

### **11.7 Calculations and adjustments**

Any calculations or adjustments which are required to be made under this Rule 11 will be made by the Plan Committee and, in the absence of manifest error, are final and conclusive and binding on the Company and the Participant.

### **11.8 Notice of change**

The Company must within a reasonable period give to each Participant and each relevant Nominator notice of any change under Rule 11 to the Exercise Price of any Options held by the Participant or to the number or type of Shares that the Participant is entitled to subscribe for on exercise of an Option.

## **12 No quotation of Options**

The Company will not seek official quotation of any Options.

## **13 Administration of the Plan**

### **13.1 Plan Committee's powers**

The Plan Committee will administer the Plan and it will have the power to:

- (a) determine appropriate procedures and make regulations for the administration of the Plan, including vesting and any Performance Hurdles, provided they are consistent with these Rules;
- (b) determine finally and conclusively all questions of fact or interpretation arising in connection with the Plan, including whether any Options have vested and whether Performance Hurdles have been satisfied;
- (c) terminate or suspend the operation of the Plan at any time, subject to any resolution of the Company required by the Listing Rules, provided that the termination or suspension does not adversely affect or prejudice the rights of Participants holding Options at that time;
- (d) delegate any functions, powers or discretions it considers appropriate, for the efficient administration of the Plan, to any person or persons whom the Plan Committee reasonably believes to be capable of performing those functions and exercising those powers or discretions;
- (e) take and rely upon independent professional or expert advice in or in relation to the exercise of any of their powers or discretions under these Rules;

- (f) administer the Plan in accordance with these Rules as and to the extent provided in these Rules; and
- (g) make any additions, variations or modifications to the Rules, in relation to the implementation of the Plan and the specific application of the Rules to Employees residing outside Australia.

### **13.2 *Exercise of powers or discretion***

Any power or discretion that is conferred on the Plan Committee or Board by these Rules may be exercised by the Plan Committee or Board in the interests or for the benefit of the Company. In exercising that power or discretion, neither the Plan Committee nor the Board is under any fiduciary or other obligations to another person.

### **13.3 *Decisions binding***

Whenever the Plan Committee exercises a discretion pursuant to the Rules, the exercise of that discretion shall be in the sole and absolute discretion of the Plan Committee and each decision shall be conclusive, final and binding upon Participants.

### **13.4 *Expenses and costs***

Subject to these Rules, the Company must pay all expenses, costs and charges incurred in the administration of the Plan.

### **13.5 *Tax***

The Company is not responsible for any Tax which may become payable by a Participant in connection with the grant of any Option, the issue of Shares pursuant to an exercise of Options or any other dealing by a Participant with the Options or Shares. At the time an Option is exercised, in whole or in part, or at any time thereafter as requested by the Company, the Participant, by having accepted the Option, agrees to make adequate provision for United States federal, state and local Taxes, or other applicable non-United States Taxes required by law to be withheld, if any, which arise in connection with the Option. The Company may require a Participant to make a cash payment to cover any withholding Tax obligation as a condition of exercise of the Option. If the Participant does not make such payment when requested, the Company may refuse to issue any Share or share certificate under the Plan until arrangements satisfactory to the Company for such payment have been made. The Company may, in its sole discretion, permit a Participant to satisfy, in whole or in part, any withholding Tax obligation which may arise in connection with an Option either by electing to have the Company withhold from the Shares to be issued upon exercise that number of Shares, or by electing to deliver to the Company already-owned Shares, in either case having a fair market value equal to no more than the amount necessary to satisfy the statutory minimum withholding amount due.

## **14 *Amendment to Rules***

### **14.1 *Board may amend Rules***

Subject to all Relevant Laws, the Board may at any time amend any of these Rules, or waive or modify the application of any of these Rules in relation to a Participant or relevant Nominator.

#### **14.2**    *Consent of Participants*

If an amendment to be made under Rule 14.1 would adversely affect the rights of Participants in respect of any Options then held by them, the Board must obtain the consent of Participants who between them hold not less than 75% of the total number of those Options held by all those Participants before making the amendment.

### **15**       **Rights of Participants**

#### **15.1**    *No conferred rights*

These Rules:

- (a)       do not confer on an Employee the right to receive an Offer;
- (b)       do not confer on a Participant or Nominator the right to continue as an employee of any Group Company; and
- (c)       do not affect any rights that a Group Company may have to terminate the employment of a Participant or Nominator and may not be used to increase damages in an action brought against the Group Company in respect of that termination.

#### **15.2**    *Plan not part of employment contract*

This Plan does not form part of any contract of employment between any Group Company and an Employee and does not confer directly or indirectly on an Employee any legal or equitable right whatsoever (other than rights as a Participant under the Plan or the holder of any Shares issued pursuant to the exercise of Options issued under the Plan) against any Group Company.

#### **15.3**    *Voting at general meetings*

Participants do not, as Participants, have any right to attend or vote at general meetings of holders of Shares.

### **16**       **Participation in other plans**

Subject to these Rules, participation in the Plan does not affect, and is not affected by, participation in any other incentive or other scheme of the Company unless the terms of that scheme provide otherwise.

### **17**       **Advice**

Employees and any nominees approved under Rule 4.3 should obtain their own independent advice at their own cost in relation to the financial, taxation and other implications arising for them as a result of their participation in the Plan.

### **18**       **Notices**

Any notice or direction given under this Plan is validly given if it is handed to the person concerned or posted by ordinary prepaid post to the person's last known address. Where a notice

or other communication is given by post, it will be deemed to have been received 48 hours after it was put into the post correctly addressed and stamped.

## **19 Data protection**

By participating in the Plan, the Participant and the Nominator, as applicable, consent to the collection, holding and processing of personal data provided by the Participant and/or Nominator for all purposes relating to the operation of the Plan.

## **20 Compliant with securities laws, listing and registration**

- (a) If at any time the Board determines that the delivery of Shares under the Plan is or may be unlawful under the laws of any applicable jurisdiction, or United States federal or state securities laws, or applicable non-United States securities laws, the right to exercise an Option or receive Shares pursuant to an Option shall be suspended until the Board determines that such delivery is lawful. If at any time the Board determines that the delivery of Shares under the Plan is or may violate the rules of the securities exchange on which the Shares are then listed for trade, the right to exercise an Option or receive Shares pursuant to an Option shall be suspended until the Board determines that such delivery would not violate such rules. The Company shall have no obligation to effect any registration or qualification of the Shares under United States federal or state laws, or applicable non-United States laws.
- (b) The Company may require that a Participant, as a condition to exercise of an Option, and as a condition to the delivery of any share certificate, make such written representations (including representations to the effect that such person will not dispose of the Shares so acquired in violation of United States federal or state securities laws, or applicable non-United States securities laws) and furnish such information as may, in the opinion of counsel for the Company, be appropriate to permit the Company to issue the Shares in compliance with applicable United States federal or state securities laws, or applicable non-United States securities laws. The stock certificates for any Shares issued pursuant to this Plan may bear a legend restricting transferability of the Shares unless such Shares are registered or an exemption from registration is available under the Securities Act of 1933, as amended, and applicable state or applicable non-United States securities laws.
- (c) While the Shares are listed for trading on any securities exchange or market (including, without limitation, ASX and NASDAQ Stock Market), the Company shall not make any amendments to this Plan or issue any Awards or take any other action unless such action complies with the relevant Listing Rules.

## **APPENDIX A**

### **PROVISIONS FOR CALIFORNIA RESIDENTS**

With respect to Options granted to California residents prior to a public offering of capital stock of the Company that is effected pursuant to a registration statement filed with, and declared effective by, the SEC under the Securities Act of 1933, as amended, and only to the extent required by applicable law, the following provisions shall apply notwithstanding anything in the Plan, Application Form, or Option Certificate to the contrary:

#### **1 Terms of Options**

With respect to any Option granted under the Plan:

- (a) The Exercise Period shall be no more than 120 months from the Grant Date.
- (b) The Options shall be non-transferable other than by will, by the laws of descent and distribution, or, if and to the extent permitted under the Plan or applicable Option Certificate, to a revocable trust or as permitted by Rule 701 of the Securities Act of 1933, as amended.
- (c) Unless employment is terminated for “cause” as defined by applicable law, the terms of the Plan or Option Certificate, or a contract of employment, the right to exercise the Option in the event of termination of employment, to the extent that the Option holder is entitled to exercise on the date employment terminates, will continue until the earlier of the Option expiration date, or:
  - (i) At least 6 months from the date of termination if termination was caused by death or disability.
  - (ii) At least 30 days from the date of termination if termination was caused by other than death or disability.

#### **2 Plan termination date**

The Plan shall have a termination date of not more than 10 years from the date the Plan is adopted by the Board or the date the Plan is approved by the security holders, whichever is earlier.

#### **3 Shareholder approval**

Security holders representing a majority of the Company’s outstanding securities entitled to vote must approve the Plan by the later of (a) 12 months after the date the Plan is adopted or (b) 12 months after the granting of any Option to a resident of California. Any Option exercised or any securities purchased before security holder approval is obtained must be rescinded if security holder approval is not obtained within the period described in the preceding sentence. Such securities shall not be counted in determining whether such approval is obtained.

#### **4 Right to repurchase**

At the discretion of the Plan Committee, the Company may reserve to itself and/or its assignee(s) in the Option Certificate or any applicable stock restriction agreement a right to repurchase securities held by an Option holder upon such Option holder’s termination of employment at any



time within six months after such Option holder's termination date (or in the case of securities issued upon exercise of an Option after the termination date, within six months after the date of such exercise) for cash or cancellation of purchase money indebtedness, at:

- (a) no less than the fair market value of such securities as of the date of the Option holder's termination of employment, provided, that such right to repurchase securities terminates when the Company's securities have become publicly traded; or
- (b) the Option holder's original purchase price, provided, that such right to repurchase securities at the original purchase price lapses at the rate of at least 20% of the securities per year over 5 years from the Grant Date (without respect to the date the Option was exercised or became exercisable).

The securities held by an officer, director, manager or consultant of the Company or an affiliate may be subject to additional or greater restrictions.

## **5 Financial statements**

The Company will provide financial statements to each Option holder annually during the period such individual has Options outstanding, or as otherwise required under section 260.140.46 of Title 10 of the California Code of Regulations. Notwithstanding the foregoing, the Company will not be required to provide such financial statements to Option holders when the Plan complies with all conditions of Rule 701 of the Securities Act of 1933, as amended; provided that for purposes of determining such compliance, any registered domestic partner shall be considered a "family member" as that term is defined in Rule 701.

## **6 Compliant with California law**

The Plan is intended to comply with section 25102(o) of the California Corporations Code (**Section 25102(o)**). Any provision of this Plan which is inconsistent with Section 25102(o), including without limitation any provision of this Plan that is more restrictive than would be permitted by Section 25102(o) as amended from time to time, shall, without further act or amendment by the Board, be reformed to comply with the provisions of Section 25102(o). If at any time the Plan Committee determines that the delivery of Shares under the Plan is or may be unlawful under the laws of any applicable jurisdiction, or federal or state securities laws, the right to exercise an Option or receive Shares pursuant to an Option shall be suspended until the Plan Committee determines that such delivery is lawful. The Company shall have no obligation to effect any registration or qualification of the Shares under U.S. federal or state laws.

## Appendix 8

### Summary of Unilife Corporation 2009 Stock Incentive Plan

#### 1. Background and purpose

The Unilife Corporation 2009 Stock Incentive Plan (**2009 Plan**) has been adopted by Unilife Corporation to promote long-term growth and profitability by:

- providing key people with incentives to improve the value of the Unilife Corporation Shares and contribute to the growth and financial success of Unilife Corporation; and
- enabling Unilife Corporation to attract, retain and reward the best-available personnel.

The 2009 Plan is a typical plan for US issuers and is designed to comply with US law. The provisions of the 2009 Plan are consistent with important US tax considerations relevant to Unilife Corporation which are not currently provided for in the Company's current Employee Share Option Plan and Exempt Employee Share Plan.

#### 2. Eligibility and participation

Participation in the 2009 Plan is open to all employees, officers, directors and other individuals who provide services to Unilife Corporation or any affiliate of Unilife Corporation, as the administrator of the 2009 Plan may select from time to time.

The administrator may also grant awards to individuals in connection with their hiring, retention or other related circumstances prior to the date that the relevant individual first performs those services for Unilife Corporation or any affiliate, however, no awards may vest or become exercisable and no shares may be issued prior to the individual commencing performance of those services.

#### 3. Types of awards that may be granted under the 2009 Plan

The 2009 Plan provides for the grant of stock options, stock appreciation rights, and other stock-based awards (including performance awards), as each is described more fully below, which may be granted separately or in tandem with other awards.

The administrator will be responsible for determining the prices, expiration dates, and other material conditions governing the exercise of the awards granted under the 2009 Plan.

Unilife Corporation or any of its Affiliates may make or guarantee loans to assist award holders in the exercise of awards or to satisfy any withholding tax obligations arising from awards granted under the 2009 Plan, to the extent permitted by law.

Types of awards which may be granted under the 2009 Plan include:

*Stock Options.* The administrator may grant tax qualified incentive stock options, within the meaning of section 422 of the US Internal Revenue Code, or nonqualified stock options. However, only employees of Unilife Corporation or its Subsidiaries may receive tax-qualified incentive stock options.

All stock options must have an exercise price equal to or above the fair market value of Unilife Corporation Shares on the date of grant and a term of no longer than ten years.

An optionholder may pay the exercise price in cash, by tendering Unilife Corporation Shares, by a combination of cash and Unilife Corporation Shares or by any other means that the administrator approves.

*Stock Appreciation Rights.* The administrator may grant stock appreciation rights which entitle the holder to receive a payment in cash, Unilife Corporation Shares or a combination of the foregoing, having an aggregate value, which is equal to the excess (if any) on the date of exercise of the fair market value of the underlying Unilife Corporation Shares on that date over the base price of the Unilife Corporation Shares specified in the grant agreement.

The base price per share specified in the grant agreement cannot be less than the lower of the fair market value of Unilife Corporation Shares on the grant date or the exercise price of any tandem stock option award to which the stock appreciation right is related. No stock appreciation right shall have a term longer than ten years' duration.

*Stock-Based Awards.* The administrator may grant stock-based awards in such amounts, on such terms and conditions and for such consideration (including no consideration or such minimum consideration as may be required by law), as the administrator shall determine.

A stock award may be restricted or unrestricted and may be denominated and paid in cash, Unilife Corporation Shares or other securities, stock-equivalent units, securities or debentures convertible into Unilife Corporation Shares, or any combination of these.

*Performance Awards.* The administrator may grant stock-based awards in a manner which constitutes them as "qualified performance-based compensation" within the meaning of section 162(m) of the US Internal Revenue Code.

The administrator may determine that the grant of, or lapse of restrictions with respect to, performance-based stock awards may be based upon one or more performance measures or objective performance targets to be attained relative to those performance measures.

Performance targets may include minimum, maximum, intermediate and target levels of performance, with the size of the performance-based stock award or the lapse of restrictions based on the level of performance attained.

The administrator is authorised to make adjustments to the method of calculating the attainment of performance measures or targets in recognition of:

- extraordinary or non-recurring items;
- changes in tax laws;
- changes in generally accepted accounting principles or accounting policies;
- changes related to restructured or discontinued operations;
- the restatement of prior period financial results; or
- any other unusual, non-recurring gain or loss that is separately identified and quantified in Unilife Corporation's financial statements,

provided that the administrator's decision is made as to whether such adjustments will be made with respect to any covered employee within the meaning of section 162(m) of the US Internal Revenue Code and is determined when the performance targets are established for the applicable performance period.

The administrator may also, at its sole discretion, modify the performance results upon which awards are based under the 2009 Plan to offset any unintended results arising from events not anticipated when performance measures and targets were established provided that such adjustment is permitted by section 162(m) of the US Internal Revenue Code.

For this purpose, "performance measures" means the criteria established by the administrator in either absolute terms or relative to the performance of one or more comparable companies or an index covering multiple companies and which relate to any of the following, as it may apply to an individual, one or more business unit(s), divisions or subsidiaries or the whole of Unilife Corporation:

- revenue;
- earnings before interest, taxes, depreciation and amortisation (EBITDA);
- operating income;
- pre- or after-tax income;
- cash flow;
- cash flow per share;
- net earnings;
- earnings per share;
- price-to-earnings ratio;
- return on equity;
- return on invested capital;
- return on assets;
- growth in assets;
- share price performance;
- economic value added;
- total stockholder return;
- improvement in or attainment of expense levels;
- improvement in or attainment of working capital levels;

- relative performance to a group of companies comparable to Unilife Corporation, and strategic business criteria consisting of one or more objectives based on the Company meeting specified goals relating to revenue, market penetration, business expansion, costs, clinical trials, product feasibility studies, regulatory submissions, regulatory approvals, or acquisitions or divestitures.

The benefits or amounts that will be allocated (or would have been allocated if the 2009 Plan had been in effect) to any participant or group of participants are indeterminable at the date of this Information Memorandum because participation and the types of awards (including options) available under the 2009 Plan are subject to the discretion of the administrator.

#### 4. Shares available under the 2009 Plan

The initial number of Unilife Corporation Shares which may be issued with respect to awards granted under the 2009 Plan will not exceed an aggregate of 36,000,000 shares which shall be adjusted to 6,000,000 shares upon the effectiveness of the Proposed Transaction (referred to as the **Share Reserve**).

Commencing 1 January 2011, and on each anniversary of that date until 1 January 2019, the Share Reserve will automatically adjust so that it will equal 12.5% percent of the weighted average number of Unilife Corporation Shares which are outstanding at that time. This number is the number determined by Unilife Corporation to calculate basic earnings or loss per share for the preceding four fiscal quarters, *reduced by* any Unilife Corporation Shares issued or delivered pursuant to awards under the 2009 Plan provided, however, that any such adjustment may only increase, and not decrease, the Share Reserve. Notwithstanding the foregoing, the board of directors of Unilife Corporation may, prior to the first day of any calendar year, determine that there will be no increase in the Share Reserve for that calendar year or determine that the increase in the Share Reserve for that calendar year will be a lesser number of Unilife Corporation Shares than would otherwise occur in accordance with the above formula.

In addition, Unilife Corporation Shares may be issued in connection with a merger or acquisition as permitted by applicable rules of the principal securities exchange or market on which Unilife Corporation Shares are listed. Such issue will not reduce the number of shares available for issue under the 2009 Plan.

If any:

- award issued under the 2009 Plan has for any reason expired or otherwise terminated, in whole or in part, without having been exercised in full;
- Unilife Corporation Shares issued to an award holder under the 2009 Plan are forfeited, or bought back by Unilife Corporation because of the failure to meet a contingency or condition required for the vesting of such shares; or
- awards issued under the 2009 Plan are settled in cash,

then the Unilife Corporation Shares not issued pursuant to such award, or forfeited or bought back by Unilife Corporation, will revert and become available for re-issue under the 2009 Plan.

If any Unilife Corporation Shares subject to an award are not delivered to the award holder under the 2009 Plan because those shares are withheld for the payment of taxes or because the award has been exercised through a reduction of shares the subject of the award (i.e., **net**

**exercised**) or where an appreciation distribution in respect of a stock appreciation right is paid in Unilife Corporation Shares, the number of shares subject to the award that are not delivered to the award holder will remain available for subsequent issue under the 2009 Plan.

If the exercise price of any award is satisfied by tendering of Unilife Corporation Shares held by the award holder (either by actual delivery or by attestation), then the number of shares so tendered will remain available for issue under the 2009 Plan.

Notwithstanding the above, of the total shares that are authorised for issue under the Plan, not more than 36,000,000 shares, which shall be adjusted to 6,000,000 shares upon the effectiveness of the Proposed Transaction, will be available for issue pursuant to tax-qualified incentive stock options intended to qualify under section 422 of the US Internal Revenue Code. In addition, the maximum number of Unilife Corporation Shares subject to awards of any combination which may be granted during any one calendar year to any one individual under the 2009 Plan will be limited to one-third of the total number of shares available for issue under the 2009 Plan as at its effective date.

Each of the limits described above will be adjusted to reflect any stock dividends, stock splits, split-ups, recapitalisations, mergers, consolidations, business combinations, exchanges of stock or anything similar.

The Unilife Corporation Shares to be issued under the 2009 Plan will be shares of authorised but unissued or reacquired Unilife Corporation Shares or treasury shares, including shares repurchased by Unilife Corporation on the open market.

## **5. Adjustments to awards**

In the event of a stock dividend, stock split or reverse stock split affecting Unilife Corporation Shares:

- the maximum number of shares for which awards may be granted under the 2009 Plan and the maximum number of shares with respect to which awards may be granted during any one fiscal year to any individual; and
- the number of shares covered by and the exercise price and other terms of outstanding awards,

will be adjusted to reflect such event.

Except as stated above, in the event of any change affecting Unilife Corporation Shares, Unilife Corporation or its capitalisation, by reason of a spin-off, split-up, dividend, recapitalisation, merger, consolidation, or share exchange (other than any such change that is part of a transaction resulting in a “Change in Control” of Unilife Corporation (as defined in the 2009 Plan)), the administrator, in its discretion and without the consent of the holders of the awards, may make:

- appropriate adjustments to the maximum number and type of shares reserved for issue or with respect to which awards may be granted under the 2009 Plan (in the aggregate, with respect to any individual during any one calendar year and with respect to which awards that are intended to be tax-qualified as incentive stock options under the US Internal Revenue Code); and

- any adjustments in outstanding awards, including, but not limited to, modifying the number, kind and price of securities subject to awards.

In the event of any transaction resulting in a “Change in Control” of Unilife Corporation (as defined in the 2009 Plan), outstanding stock options and other awards which are payable or convertible into Unilife Corporation Shares will terminate on the effective time of the “Change in Control” unless provision is made for the continuation, assumption or substitution of the awards by the surviving or successor entity or its parent.

In the event of such a termination, the outstanding stock options and other awards that will terminate upon the effective time of the Change in Control will become fully vested immediately before the effective time of the Change in Control and the holders of stock options and other awards under the 2009 Plan will be permitted, immediately before the “Change in Control,” to exercise or convert all portions of the awards that are then exercisable or convertible.

Further, in the event that a “Change in Control” of Unilife Corporation (as defined in the 2009 Plan) occurs after a performance-based stock award has been granted but before completion of the applicable performance period, such award will become payable (or the lapse restrictions will lapse, as applicable) as at the date of the Change in Control.

Without the consent of award holders, the administrator may make adjustments to the terms and conditions of, and the criteria included in, awards in recognition of unusual or non-recurring events affecting Unilife Corporation, the financial statements of Unilife Corporation or any affiliate, changes in applicable laws, regulations, or accounting principles, whenever the administrator determines that such adjustments are appropriate in order to prevent dilution or enlargement of the benefits or potential benefits intended to be made available under the 2009 Plan.

## **6. Amendment and termination**

Unilife Corporation’s board of directors may terminate, amend or modify the 2009 Plan or any portion of it at any time without stockholder approval, subject to such restrictions on amendments and modifications as may apply under applicable laws or listing rules.

## **7. Compliance with listing rules**

While Unilife Corporation Shares are listed for trading on any stock exchange or market, the board of directors of Unilife Corporation and the administrator agree that they will not make any amendments, issue any awards or take any action under the 2009 Plan unless such action complies with the relevant listing rules.

## **8. US federal income tax consequences**

The following is a general summary of the US federal income tax treatment of stock options, which are authorised for grant under the 2009 Plan, based upon the provisions of the US Internal Revenue Code as at the date of this Information Memorandum. Non-US residents should consult with their tax adviser regarding the specific tax consequences as a result of the grant of awards under the 2009 Plan in their country of origin.

This summary is not intended to be exhaustive and the exact tax consequences to any award holder will depend upon his or her particular circumstances and other facts. 2009 Plan

participants should consult their tax advisor with respect to any state, local and non-US tax considerations or relevant US federal tax implications of options granted under the 2009 Plan.

*Incentive Stock Options.* An optionholder will recognise no taxable income for regular income tax purposes as a result of the grant or exercise of an incentive stock option which qualifies under section 422 of the US Internal Revenue Code.

Optionholders who neither dispose of their shares within two years of the date that the option was granted, nor within one year following the exercise of the option, will normally recognise a capital gain or loss on the sale of the shares equal to the difference, if any, between the sale price and the purchase price of the shares.

If an optionholder satisfies these holding periods, on the sale of the shares, Unilife Corporation will not be entitled to any deduction for US federal income tax purposes.

Where an optionholder disposes of shares within two years after the date of grant of those options or within one year after the date of exercise (a **disqualifying disposition**), the difference between the fair market value of the shares on the exercise date and the option exercise price (which is not to exceed the gain realised on the sale, if the disposition is a transaction with respect to which a loss, if sustained, would be recognised) will be taxed as ordinary income at the time of disposition. Any gain in excess of that amount will be a capital gain. If a loss is recognised, there will be no ordinary income, and such loss will be a capital loss. Any ordinary income recognised by the optionholder on the disqualifying disposition of the shares will generally result in a deduction by Unilife Corporation for US federal income tax purposes.

*Nonqualified Stock Options.* Options not designated or qualifying as incentive stock options will be nonqualified stock options having no special tax status.

An optionholder generally recognises no taxable income as a result of the grant of the option. On the exercise of a nonqualified stock option, the optionholder normally recognises ordinary income in the amount of the difference between the option exercise price and the fair market value of the shares on the exercise date. Where the optionholder is an employee, such ordinary income will generally be subject to withholding of income and employment taxes.

On the sale of shares acquired by the exercise of a nonqualified stock option, any gain or loss (based on the difference between the sale price and the fair market value on the exercise date) will be taxed as a capital gain or loss. No tax deduction is available to Unilife Corporation with respect to the grant of a nonqualified stock option or the sale of the stock acquired pursuant to such grant. Unilife Corporation should generally be entitled to a deduction equal to the amount of ordinary income recognised by the optionholder as a result of the exercise of a nonqualified stock option.

*Deductibility of Compensation.* The US Internal Revenue Code allows publicly held corporations to deduct compensation which is in excess of US\$1 million paid to the corporation's chief executive officer and or any of its three other most highly compensated executive officers (excluding the chief financial officer) if the compensation is payable solely based on the attainment of one or more performance goals and where certain statutory requirements are satisfied.

It is intended that compensation arising from awards granted under the 2009 Plan that are based on performance goals, and stock options and stock appreciation rights, are to be



deductible by Unilife Corporation as qualified performance-based compensation not subject to the US\$1 million limitation on deductibility under the US Internal Revenue Code.

Despite this, the board of directors of Unilife Corporation reserves the right to grant awards under the 2009 Plan that do not result in qualified performance-based compensation and, as such, may not entitle Unilife Corporation to a tax deduction.

## Appendix 9

### Summary of CDIs

#### 1 Definitions

Capitalised terms used in this Appendix and not otherwise defined have the same meanings as set out in the Glossary of the Information Memorandum.

#### 2 Introduction

Unilife Corporation intends to participate in the electronic transfer system known as CHESS operated by ASTC.

CHESS cannot be used directly for the transfer of securities of companies domiciled in certain foreign jurisdictions, such as the United States of America. To enable companies such as Unilife Corporation to have their securities cleared and settled electronically through CHESS, depositary interests called CDIs are issued.

CDIs confer holders with beneficial ownership in foreign securities such as Unilife Corporation Shares, with the legal title to such shares being held by an Australian depositary entity. Unilife Corporation has appointed CHESS Depositary Nominees Pty Ltd (**CDN**), a Subsidiary of ASX, to act as its Australian depositary.

Each CDI holder will receive a holding statement which sets out the number of CDIs held by the CDI holder and the reference number of the holding. These holding statements will be provided to a holder when a holding is first established and if there is a change in the holdings of CDIs.

A summary of the rights and entitlements of Unilife Corporation CDI holders and CDI holders generally is set out below. Further information about CDIs is available from ASX, any stockbroker or the Company's share registry.

#### 3 Number of CDIs issued in relation to Unilife Corporation Shares

Each Scheme Shareholder (unless they otherwise elect) will receive six CDIs for every one Unilife Corporation Share that they would be entitled to receive under the Share Scheme. Each CDI will represent an interest in one sixth of a Unilife Corporation Share.

Fractional entitlements to Unilife Corporation Shares offered under the Share Scheme will be rounded down to the nearest whole number of Unilife Corporation Shares after aggregating all holdings of a Scheme Shareholder.

#### 4 Cessation of trading in Shares

Suspension of trading on ASX in the Company's Shares will occur from the close of trading on the date on which the Company lodges the Court order approving the Share Scheme with ASIC (being the Effective Date).

Deferred settlement trading of CDIs representing Unilife Corporation Shares will commence on ASX after trading of the Shares is suspended.

On the first Business Day after the Implementation Date, the Company will apply for termination of the official listing of its Shares on ASX.

## **5 Trading in CDIs on ASX on implementation of the Proposed Transaction**

On the day after the Effective Date, trading in CDIs will commence initially on a deferred settlement basis and, after that, is expected to recommence on a normal T+ 3 settlement basis on 20 January 2010, being the Business Day following the despatch of holding statements.

Former Shareholders trading on a deferred settlement basis and before the issue of holding statements in respect of their CDIs do so at their own risk. The proceeds from sale of securities sold on a deferred settlement basis will not be received until after the deferred settlement period has ended.

Those former Shareholders who do not choose to deal with their securities on a deferred settlement basis will be issued with Share Scheme Consideration and corresponding holding statements within 5 Business Days after the Implementation Date by pre-paid post at their respective addresses as shown in the Share Register (or at such other address as they instruct the Company's share registry).

## **6 Voting**

If holders of CDIs wish to attend and vote at Unilife Corporation general meetings, they will be able to do so. Under the Listing Rules, Unilife Corporation as an issuer of CDIs, must allow CDI holders to attend any meeting of the holders of the underlying securities unless relevant US law at the time of the meeting prevents CDI holders from attending those meetings.

In order to vote at such meetings, CDI holders have the following options:

- instructing CDN, as the legal owner, to vote the Unilife Corporation Shares underlying their CDIs in a particular manner. The instruction form must be completed and returned to Unilife Corporation's share registry prior to the meeting;
- informing Unilife Corporation that they wish to nominate themselves or another person to be appointed as CDN's proxy for the purposes of attending and voting at the general meeting; or
- converting their CDIs into a holding of Unilife Corporation Shares and voting these at the meeting (however, if thereafter the former CDI holder wishes to sell their investment on ASX it would be necessary to convert Unilife Corporation Shares back to CDIs). This must be done prior to the record date for the meeting. See section 7 below for further information regarding the conversion process.

As holders of CDIs will not appear on Unilife Corporation's share register as the legal holders of Unilife Corporation Shares, they will not be entitled to vote at Unilife Corporation shareholder meetings unless one of the above steps is undertaken.

Proxy forms, CDI voting instruction forms and details of these alternatives will be included in each notice of meeting sent to CDI holders by Unilife Corporation.

## **7 Converting from a CDI holding to a direct holding of Unilife Corporation**

CDI holders who wish to convert their ASX listed CDIs to Unilife Corporation Shares can do so by instructing Unilife Corporation's Australian share registry either:

- directly in the case of CDIs on the issuer sponsored sub-register operated by Unilife Corporation. CDI holders will be provided with a form entitled "Removal Form" for completion and return to Computershare Investor Services Pty Ltd, GPO Box 2975, Melbourne, Victoria, 3001; or
- through their 'sponsoring participant' (usually your broker) in the case of CDIs which are sponsored on the CHESS sub register. In this case, your sponsoring broker will arrange for completion of the relevant form and its return to Computershare.

Unilife Corporation's Australian share registry will then arrange for the transfer of Unilife Corporation Shares from CDN to the former CDI holder and issue to the former CDI holder a corresponding share certificate. Unilife Corporation Shares will then be transferred from CDN into the name of that holder and a new Unilife Corporation share certificate will be issued. This will cause Unilife Corporation Shares to be registered in the name of the holder on the Unilife Corporation share register and trading on ASX will no longer be possible.

It is expected that this process will be completed on the same day, provided that the share registry is in receipt of a duly completed and valid removal request form. However, no guarantee can be given about the time for this conversion to take place.

The share registry will not charge an individual security holder or Unilife Corporation a fee for transferring CDI holdings into Unilife Corporation Shares.

If holders of Unilife Corporation Shares wish to convert their holdings to CDIs, they can do so by contacting Computershare Investor Services Pty Ltd. Computershare Investor Services Pty Ltd will not charge a fee to a shareholder seeking to convert Unilife Corporation Shares to CDIs.

In this instance, underlying Unilife Corporation Shares will be transferred to CDN and a holding statement for the CDIs will be issued to the relevant security holder. No trading in Unilife Corporation Shares on ASX can take place until this transfer process is complete.

A holder of Unilife Corporation Shares will not be able to trade those shares on ASX. However, holders of Unilife Corporation Shares may be able to trade those shares on NASDAQ, should Unilife Corporation obtain a listing on NASDAQ.

## **8 Communication with CDI holders**

CDI holders will receive all notices and company announcements (such as annual reports) that shareholders are entitled to receive from Unilife Corporation.

## **9 Dividends and other shareholder entitlements**

The ASTC Settlement Rules have the force of law by virtue of the Corporations Act. These rules grant CDI holders the right to receive any dividends and other entitlements which attach to Unilife Corporation Shares.

Despite legal title to Unilife Corporation Shares being vested with CDN, the ASTC Settlement Rules provide that CDI holders are to receive all direct economic benefits and other entitlements in relation to the underlying shares (such as the right to receive the same dividends, rights issues and bonus issues).

#### **10 Local and international trading in CDIs**

CDI holders who wish to trade their CDIs will be transferring beneficial interest in Unilife Corporation Shares rather than legal title. The transfer will be settled electronically by delivery of the relevant CDI holdings through CHESS.

Trading in CDIs is no different to trading in other CHESS approved securities.

#### **11 Takeovers**

If a takeover bid is made in respect of Unilife Corporation Shares of which CDN is the registered holder, under the ASTC Settlement Rules CDN must not accept the offer made under the takeover bid except to the extent that acceptance is authorised by the relevant CDI holder.

#### **12 Fees**

A CDI holder will not incur any additional fees or charges as a result of holding CDIs rather than Unilife Corporation Shares.

#### **13 Further Information**

For further information in relation to CDIs and matters referred to above, please refer to ASX website [www.asx.com.au](http://www.asx.com.au) or contact your stockbroker or the Company's share registry at the details provided below:

Computershare Investor Services Pty Ltd  
Level 2  
45 St George's Terrace  
PERTH WA 6000

Investor Enquiries: 1300 55 70 10 (within Australia)

Appendix 10

Comparison of Australian and US Legal Regimes

Introduction

As the Company is incorporated under the laws of Australia, the rights attaching to the Company's shares are governed by the laws of Australia and the Company's constitution. As Unilife Corporation is incorporated under the laws of Delaware in the US, the rights attaching to Unilife Corporation's Shares will be governed by Delaware law, including the Delaware General Corporation Law (**DGCL**) and Unilife Corporation's certificate of incorporation and by-laws. Unilife Corporation will also remain subject to the Listing Rules, US federal securities laws and certain provisions of the Corporations Act applicable to registered foreign companies and, if listed on NASDAQ, Unilife Corporation will also be subject to the applicable NASDAQ listing rules.

This Appendix provides a summary of the rights attaching to Unilife Corporation's Shares as compared with the rights attaching to the Company's Shares. Should you require a copy of Unilife Corporation's certificate of incorporation or by-laws, or the Company's constitution, you may obtain copies of these documents free of charge by writing to:

Jeff Carter  
Company Secretary  
Suite 3, Level 11  
1 Chifley Square  
Sydney NSW 2000

Rights of Holders of Shares in the Company		Rights of Holders Unilife Corporation Shares
Rights attaching to Shares		
Share capital	<p>The Corporations Act does not:</p> <ul style="list-style-type: none"><li>▪ prescribe the minimum amount of share capital that the Company should have;</li><li>▪ prescribe a minimum issue price for each share in the Company; or</li><li>▪ require the Company to place a maximum limit on the share capital that its members may subscribe.</li></ul> <p>Australian law does not contain any concept of authorised capital or par value per share.</p>	<p>Unilife Corporation's certificate of incorporation authorises the issue of up to 250,000,000 shares of common stock, US\$0.01 par value per share, and up to 50,000,000 shares of preferred stock, US\$0.01 par value per share.</p>

Rights of Holders of Shares in the Company		Rights of Holders Unilife Corporation Shares
	<p>The issue price of shares is set by the directors of the Company collectively as a board at the time of each issue.</p>	
<p><b>Issue of additional shares</b></p>	<p>Subject to the Listing Rules and the Corporations Act, the Company's constitution authorises the Board to allot and issue any securities in the capital of the Company to any person on such terms and with such rights as the Board determines.</p> <p>Under the Listing Rules, the Company is prohibited from issuing or agreeing to issue securities in any 12 month period which amount to more than 15% of the Company's fully paid ordinary securities unless it obtains shareholder approval or unless one of a number of exceptions apply.</p> <p>There are also restrictions on issuing securities where the Company is subject to a takeover or where a majority shareholder has notified the Company of its intention to call a general meeting to appoint/remove directors.</p> <p>The issue of securities to directors and other related parties of Unilife Corporation is regulated under the Listing Rules. Generally, various requirements must be met for such an issue, including shareholder approval, unless the issue falls within a specified exception.</p>	<p>Unilife Corporation's by-laws permit the issue of authorised and unissued shares of any class by vote of the board of directors in such manner, for such consideration and on such terms as the board of directors may determine, without stockholder approval.</p> <p>Under the Listing Rules, Unilife Corporation is prohibited from issuing or agreeing to issue securities (being shares of common stock, CDIs, options or other instruments that can convert into shares or CDIs) in any 12 month period which amount to more than 15% of Unilife Corporation's common stock unless it obtains stockholder approval or unless one of a number of exceptions apply.</p> <p>Under the NASDAQ listing rules, shareholder approval is required for certain significant issuances of Unilife Corporation securities including issuances in excess of 20% of the voting power or number of shares outstanding before the issuance (or 5% in the case of certain related parties), issuances of company securities that will result in a change in control and issuances in connection with a new or materially amended equity compensation arrangement for officers, directors, employees or consultants.</p> <p>The issue of securities to directors and other related parties of Unilife Corporation is regulated under the Listing Rules. Generally, various requirements must be met for such</p>

Rights of Holders of Shares in the Company		Rights of Holders Unilife Corporation Shares
		an issue, including shareholder approval, unless the issue falls within a specified exception.
<b>Issue of preference shares</b>	<p>The Company's constitution authorises the Board to issue preference shares, including preference shares liable to be redeemed, subject to the Listing Rules.</p> <p>Rights attached to any preference shares issued by the Company are:</p> <ul style="list-style-type: none"> <li>▪ unless other rights have been approved by special resolution of the Company, the rights set out in schedule 1 of the Company's constitution; or</li> <li>▪ the rights approved by special resolution of the Company as applicable to those shares.</li> </ul> <p>Voting rights attached to the preference shares are limited to voting only in certain circumstances (such as proposals to reduce the Company's share capital or to wind-up the Company) under the Listing Rules.</p>	<p>Unilife Corporation's certificate of incorporation authorises the corporation to issue any class of preferred stock in any series and authorises the board of directors to fix the number of shares included in each such series and the variations in the relative rights, preferences and limitations as between series.</p>
<b>Buy-back of shares</b>	<p>The Corporations Act allows the Company to buy-back its own shares through a specific buy-back procedure provided that:</p> <ul style="list-style-type: none"> <li>▪ the buy-back does not materially prejudice the Company's ability to pay its creditors; and</li> <li>▪ the Company follows the procedures set out in the Corporations Act.</li> </ul> <p>The buy-back procedure which includes the form of shareholder</p>	<p>The DGCL generally permits Unilife Corporation to purchase or redeem its outstanding shares out of funds legally available for that purpose without obtaining stockholder approval, provided that:</p> <ul style="list-style-type: none"> <li>▪ the capital of Unilife Corporation is not impaired;</li> <li>▪ such purchase or redemption would not cause the capital of Unilife Corporation to become impaired;</li> </ul>



Rights of Holders of Shares in the Company		Rights of Holders Unilife Corporation Shares
	approval (for example, ordinary, special or unanimous resolutions), notice period and disclosure to be given to the shareholders, depends on the type of buy-back.	<ul style="list-style-type: none"> <li>the purchase price does not exceed the price at which the shares are redeemable at the option of Unilife Corporation; and</li> <li>immediately following any such redemption Unilife Corporation shall have outstanding one or more shares of one or more classes or series of stock, which shares shall have full voting powers.</li> </ul>
<b>Transfer of shares</b>	<p>Under the Company's constitution securities in the Company are generally freely transferable.</p> <p>The Directors may refuse to register a transfer of shares only if that refusal would not contravene the Listing Rules or the SCH business rules (being the relevant operating rules).</p> <p>The Directors must refuse to register a transfer of shares if:</p> <ul style="list-style-type: none"> <li>the Corporations Act, the Listing Rules or the SCH business rules forbid the registration;</li> <li>registration of the transfer would give effect to a contract resulting from the acceptance of an offer made under a Proportional Takeover bid unless and until a resolution to approve the proportional takeover bid is passed in accordance with the provisions of schedule 2 of the Company's constitution;</li> <li>subject to section 259C of the Corporations Act, registration of the transfer would result in a transfer to a Subsidiary of the Company; or</li> </ul>	<p>Under the DGCL, shares are generally freely transferable. Transfer of shares may be subject to restrictions imposed by US federal or state securities laws, by the certificate of incorporation or by-laws or by an agreement signed with the holders of shares at issue. Unilife Corporation's certificate of incorporation and by-laws do not impose any specific restrictions on transfer.</p>

Rights of Holders of Shares in the Company	Rights of Holders Unilife Corporation Shares
<ul style="list-style-type: none"> <li>the securities the subject of the transfer notice are classified as restricted securities under the Listing Rules (i.e. subject to escrow for a specified period).</li> </ul> <p>The board may sell a security in the Company that is part of an Unmarketable Parcel (as defined in the Company's constitution) if it does so in accordance with schedule 3 of its constitution.</p>	
<p><b>Dividends and distributions</b></p> <p>The Company's constitution permits the Board to declare dividends to shareholders from time to time in its sole discretion, subject to the limitation that dividends are paid out of the Company's profits, including profits previously set aside as a reserve.</p> <p>Before declaring a dividend, the Directors should be satisfied that the proposed dividend can be paid without causing the Company to be unable to pay its debts as they fall due in order to avoid liability.</p>	<p>Under the DGCL, the board of directors of Unilife Corporation is permitted to declare and pay dividends to stockholders either:</p> <ul style="list-style-type: none"> <li>out of Unilife Corporation's surplus, which is defined to be the net assets less statutory capital; or</li> <li>if no surplus exists, then out of the net profits for the fiscal year in which the dividend is declared and/or the preceding fiscal year, provided that the capital of the corporation is not less than the aggregate amount of the capital represented by the corporation's outstanding stock of all classes having a preference on distribution of assets.</li> </ul>
<p><b>Voting rights</b></p> <p>The Company's constitution provides that:</p> <ul style="list-style-type: none"> <li>on a show of hands each individual present who is a member, proxy, attorney or representative of a member entitled to vote has one vote; and</li> <li>on a poll each shareholder has one vote for every fully paid share held and a</li> </ul>	<p>Unilife Corporation's by-laws provide that each stockholder has one vote for every share of stock entitled to vote and a proportionate vote for each fractional share of stock entitled to vote, unless otherwise provided by the DGCL or in the certificate of incorporation.</p> <p>Further, if the Listing Rules require that some members are not to vote</p>

Rights of Holders of Shares in the Company		Rights of Holders Unilife Corporation Shares
	<p>fraction of a vote for each partly paid share held, with the fraction of the vote being equivalent to the portion of the share paid up.</p> <p>Further, if the Listing Rules require that some members are not to vote on a resolution or that votes cast by some members be disregarded in order for the resolution to have the intended effect, and the notice of meeting at which the resolution was proposed states that fact, Unilife Corporation must not count any votes purported to be cast by those members.</p>	<p>on a resolution or that votes cast by some members be disregarded in order for the resolution to have the intended effect, and the notice of meeting at which the resolution was proposed states that fact, Unilife Corporation must not count any votes purported to be cast by those members.</p>
<b>Variation of rights</b>	<p>The Company's constitution provides that the rights attached to shares in any class may (subject to section 246C and 246D of the Corporations Act) be varied or cancelled:</p> <ul style="list-style-type: none"> <li>▪ with the written consent of holders of a majority of the issued shares of the affected class; or</li> <li>▪ by ordinary resolution passed at a meeting of the holders of the issued shares of the affected class.</li> </ul> <p>The Corporations Act provides that where shareholders in an affected class do not all agree (whether by resolution or written consent) to the:</p> <ul style="list-style-type: none"> <li>▪ variation or cancellation of their rights; or</li> <li>▪ a modification to the Company's constitution to allow rights to be varied or cancelled,</li> </ul> <p>shareholders with at least 10% of the votes in the affected class may apply to the court (within a limited time frame) to have the variation,</p>	<p>Under the DGCL, any amendment to Unilife Corporation's certificate of incorporation requires approval by holders of the outstanding shares of a particular class if that amendment would:</p> <ul style="list-style-type: none"> <li>▪ increase or decrease the aggregate number of authorised shares of that class;</li> <li>▪ increase or decrease the par value of the shares of that class; or</li> <li>▪ alter or change the powers, preferences or special rights of the shares of that class so as to affect them adversely. If an amendment would alter or change the powers, preferences or special rights of one or more series of any class so as to adversely affect that series without adversely affecting the entire class, then only the shares of the series so affected shall be considered a separate class and entitled to such separate class approval of the proposed amendment.</li> </ul>

Rights of Holders of Shares in the Company	Rights of Holders Unilife Corporation Shares
	<p>cancellation or modification set aside.</p> <p>Subject to the shares' terms of issue, the rights attached to a class of shares are not deemed varied by the issue of further shares of that class.</p> <p>Under the DGCL, amendments to Unilife Corporation's certificate of incorporation also generally require:</p> <ul style="list-style-type: none"> <li>▪ a board resolution recommending the amendment; and</li> <li>▪ approval of a majority of the outstanding shares entitled to vote and a majority of the outstanding shares of each class entitled to vote.</li> </ul> <p>Certain amendments to Unilife Corporation's certificate of incorporation could, in the future, require approval of only the majority of the shares of the then issued and outstanding preferred stock, because the DGCL and Unilife Corporation's certificate of incorporation permit Unilife Corporation to issue preferred shares with powers, preferences and rights superior to those of common stock.</p> <p>Pursuant to the DGCL and Unilife Corporation's by-laws, any amendment to Unilife Corporation's by-laws may be approved by the affirmative vote of a majority of the directors present at a meeting of the board of directors or by the affirmative vote of the holders of at least 66-2/3% of the voting power of all of the shares of the corporation then issued and outstanding and entitled to vote generally in any election of directors, voting together as a single class.</p> <p>Under the NASDAQ listing rules, Unilife Corporation will not be able to disparately reduce or restrict voting rights of the shares through any</p>

Rights of Holders of Shares in the Company		Rights of Holders Unilife Corporation Shares
		corporate action or issuance.
Capital Raising		
<b>Listing Rules</b>	<p>Under the Listing Rules, the Company is prohibited from issuing or agreeing to issue securities in any 12 month period which amount to more than 15% of the Company's fully paid ordinary securities unless it obtains shareholder approval or unless one of a number of the specified exceptions apply.</p> <p>There are also restrictions relating to issues of securities where the company is subject to a takeover or where a majority shareholder has notified the company of its intention to call a general meeting to appoint/remove directors.</p> <p>The issue of securities to directors and other related parties of Unilife Corporation is regulated under the Listing Rules. Generally, various requirements must be met for such an issue, including shareholder approval, unless the issue falls within a specified exception.</p>	<p>Under the Listing Rules, Unilife Corporation will be prohibited from issuing or agreeing to issue shares in any 12 month period which amount to more than 15% of Unilife Corporation's issued common stock unless it obtains stockholder approval or unless one of a number of the specified exceptions (such as shares issued under a pro rata issue) apply.</p> <p>Under the NASDAQ listing rules, shareholder approval is required for certain significant issuances of Unilife Corporation securities, including issuances in excess of 20% of the voting power or number of shares outstanding before the issuance (or 5% in the case of certain related parties), issuances of company securities that will result in a change in control and issuances in connection with a new or materially amended equity compensation arrangement for officers, directors, employees or consultants.</p> <p>The issue of securities to directors and other related parties of Unilife Corporation is regulated under the Listing Rules. Generally, various requirements must be met for such an issue, including shareholder approval, unless the issue falls within a specified exception.</p>
<b>Continuous disclosure</b>	Subject to certain limited exceptions, the Listing Rules require the Company to immediately disclose to ASX any information concerning the Company that a reasonable person would expect to have a material	Unilife Corporation will be subject to both the Listing Rules, US federal securities laws and regulations following the implementation of the Share Scheme in relation to its continuous disclosure obligations.

Rights of Holders of Shares in the Company		Rights of Holders Unilife Corporation Shares
	<p>effect on the price or the value of the Company's shares.</p> <p>The Corporations Act also imposes obligations on the Company to require it to notify the ASX of relevant information where the Company is required under the Listing Rules to notify ASX of information about specified events or matters as they arise for market disclosure.</p> <p>There are also periodic reporting and disclosure rules that apply to the Company, requiring it (among other things) to report to the ASX at the end of every half year and annually in respect of its financial statements and reports.</p>	<p>The Listing Rules will generally require Unilife Corporation to disclose to ASX any information concerning Unilife Corporation that a reasonable person would expect to have a material effect on the price or the value of Unilife Corporation's shares.</p> <p>The NASDAQ listing rules will generally require disclosure to the public of any material information that would reasonably be expected to affect the value of Unilife Corporation's shares or influence investors' decisions.</p> <p>US federal securities laws and regulations and the NASDAQ listing rules require Unilife Corporation to publicly file with the SEC, among others:</p> <ul style="list-style-type: none"> <li>▪ annual reports on Form 10-K;</li> <li>▪ quarterly reports on Form 10-Q;</li> <li>▪ current reports containing material information required to be disclosed on Form 8-K; and</li> <li>▪ proxy statement.</li> </ul>
Directors		
<b>Powers of the Board</b>	<p>The Company's constitution grants the Board the power to manage the Company's business and to exercise all powers of the Company except:</p> <ul style="list-style-type: none"> <li>▪ as specified below; and</li> <li>▪ as otherwise required by the Corporations Act, Listing Rules and any other applicable law.</li> </ul>	<p>Unilife Corporation's by-laws grant the board of directors the power to manage or direct Unilife Corporation's business and affairs, and to exercise all the powers of the corporation, except as otherwise provided by the DGCL or in the certificate of incorporation.</p>

Rights of Holders of Shares in the Company	Rights of Holders Unilife Corporation Shares
	<p>The Board must not sell or dispose of the main undertaking of the Company unless the decision is ratified by the Company in general meeting.</p> <p>The Listing Rules also impose restrictions on the disposal of a company's main undertaking, requiring compliance with the ASX's requirements (including shareholder approval).</p>
<p><b>Duties of Directors</b></p>	<p>Under Australian law, the Directors of the Company have a wide range of both general law and statutory duties to the Company.</p> <p>These duties are of a fiduciary nature and include the duty to:</p> <ul style="list-style-type: none"> <li>▪ act in good faith in the best interests of the Company as a whole;</li> <li>▪ act for a proper purpose;</li> <li>▪ not improperly use information or their position;</li> <li>▪ to exercise care, skill and diligence; and</li> <li>▪ to avoid actual or potential conflicts of interest.</li> </ul>
<p><b>Compensation of Directors</b></p>	<p>Under Delaware law, the directors of Unilife Corporation have fiduciary obligations, including the duty of care and the duty of loyalty.</p> <p>The duty of care requires directors to inform themselves of all reasonably available material information before making business decisions on behalf of Unilife Corporation and to act with requisite care in discharging their duties to Unilife Corporation.</p> <p>The duty of loyalty requires directors to act in good faith and in Unilife Corporation's best interests.</p>
<p>The Company's constitution provides that, subject to any contract with the Company and the Listing Rules, the Board may fix the remuneration of each executive director (which may consist of salary, bonuses or any other elements but must not be a commission on or percentage of profits or operating revenue (consistent with the Listing Rules)).</p> <p>The Company's constitution provides that non-executive directors are entitled to be paid out</p>	<p>Unilife Corporation's by-laws provide that the directors may be paid such compensation for their services and such reimbursement for expenses of attendance at meetings as the board of directors may from time to time determine. Directors are not precluded from serving the corporation or any of its parent or Subsidiary corporations in any other capacity or from receiving compensation for such service.</p>

Rights of Holders of Shares in the Company		Rights of Holders Unilife Corporation Shares
	<p>of the funds of the Company, an amount of remuneration, on the terms and subject to the limitations as follows:</p> <ul style="list-style-type: none"><li>▪ the compensation arrangements must not in any year exceed in aggregate the amount that the Company in general meeting determines (by ordinary resolution consistent with the Listing Rules);</li><li>▪ the compensation arrangements must not be a commission on or percentage of profits or operating revenue (the Listing Rules require payments to non-executive directors to be paid as fixed sums); and</li><li>▪ unless otherwise determined by the Board, the remuneration must be allocated among those directors on an equal basis having regard to the proportion of the relevant year for which each director held office.</li></ul> <p>The Company must pay a director (in addition to any remuneration) all reasonable expenses (including travelling and accommodation expenses) incurred by the director:</p> <ul style="list-style-type: none"><li>▪ in attending meetings of the Company, the Board or a committee of the Board; and</li><li>▪ in attending to the Company's business and carrying out his or her duties as a director.</li></ul> <p>Termination or retirement benefits to directors and other officers of the</p>	



Rights of Holders of Shares in the Company	Rights of Holders Unilife Corporation Shares
	Company are also subject to restrictions under the Corporations Act and Listing Rules.
<p><b>Transactions involving directors</b></p>	<p>The Corporations Act prohibits the Company from giving a director (or other related party) a financial benefit unless either:</p> <ul style="list-style-type: none"> <li>▪ the Company obtains shareholder approval (in compliance with the Corporations Act requirements) and gives the benefit within 15 months after approval; or</li> <li>▪ giving the financial benefit falls within a specific exception set out in the Corporations Act, for example, a benefit given on arms' length terms or the reasonable remuneration or reimbursement of an officer or employee of the Company).</li> </ul> <p>The issue of securities to directors and other related parties of the Company is also subject to the requirements under the Listing Rules, including the need for shareholder approval, unless the issue falls within a specified exception.</p> <p>Subject to limited exceptions, the Listing Rules prohibit the Company from acquiring a substantial asset from, or disposing of a substantial asset to, any of its directors (or other person of influence) unless it obtains shareholder approval. Additionally, the Listing Rules prohibit the Company from issuing securities to any of its directors unless it obtains shareholder approval prior to the issue or an exemption applies to the share</p> <p>Under the DGCL, no contract or transaction between Unilife Corporation and one or more of its directors, or between Unilife Corporation and any other corporation, partnership, association or other organisation in which one or more of its directors are directors or officers or have a financial interest will be void or voidable solely for that reason, or solely because the relevant director is present at or participates in the Unilife Corporation board or committee meeting that authorises the contract or transaction, or solely because the vote of the relevant director is counted for that purpose, if:</p> <ul style="list-style-type: none"> <li>▪ the material facts as to the director's relationship or interest, and as to the contract or transaction, are disclosed or known to the board of directors or committee, and the board of directors or committee in good faith authorises the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or</li> <li>▪ the material facts as to the director's relationship or interest and as to the contract or transaction are disclosed or known to the Unilife Corporation stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or</li> <li>▪ the contract or transaction is</li> </ul>

Rights of Holders of Shares in the Company	Rights of Holders Unilife Corporation Shares
<p>issue (such as pro rata issues to all shareholders).</p> <p>Directors, when entering into transactions with the Company, are subject to the Australian common law and statutory duties to avoid actual and potential conflicts of interest.</p> <p>There are also disclosure requirements and voting restrictions imposed on directors under the Corporations Act on matters involving a material personal interest.</p> <p>Within the parameters summarised above, under the Company's constitution a director's position as such does not disqualify him or her from:</p> <ul style="list-style-type: none"> <li>▪ holding any other office or place of profit or employment, except with the Company's auditor;</li> <li>▪ being a shareholder or creditor of any corporation (including the Company) or partnership, except of the Company's auditor; or</li> <li>▪ entering into an agreement with the Company.</li> </ul> <p>A director must also comply with:</p> <ul style="list-style-type: none"> <li>▪ the Company's constitution in relation to the declaration of interests, the material personal interest provisions set out in section 191 of the Corporations Act and with any relevant general law principles in relation to disclosure of his or her interests; and</li> <li>▪ section 195 of the Corporations Act in relation to</li> </ul>	<p>fair to Unilife Corporation as of the time that it is authorised, approved or ratified by the board of directors, committee or stockholders.</p> <p>Unilife Corporation's by-laws provide that interested directors may be counted in determining the presence of a quorum at a board or committee meeting at which a contract or transaction with an interested director is authorised.</p> <p>The Listing Rules will prohibit Unilife Corporation from acquiring a substantial asset from, or disposing of a substantial asset to, any of its directors unless it obtains stockholder approval. Additionally, the Listing Rules will prohibit Unilife Corporation from issuing securities to any of its directors unless either it obtains stockholder approval or the share issue is exempt (such as pro rata issues to stockholders).</p>

Rights of Holders of Shares in the Company		Rights of Holders Unilife Corporation Shares
	being present and voting at a board meeting that considers a matter in which he or she has a material personal interest.	
<b>Number and nomination of directors</b>	<p><b>Number</b></p> <p>As a public company in Australia, the Company must have:</p> <ul style="list-style-type: none"> <li>▪ no fewer than three directors (not counting alternate directors);</li> <li>▪ at least two directors ordinarily resident in Australia;</li> <li>▪ at least one secretary; and</li> <li>▪ at least one secretary must ordinarily reside in Australia.</li> </ul> <p>Under the Company's constitution, the Board may determine the number of directors, which must be at least three (or a larger) number in office when the decision is made. The maximum number of directors in office cannot exceed ten directors.</p> <p><b>Nomination</b></p> <p>Under the Listing Rules, the Company must accept nominations for the election of directors up to 35 business days (or 30 business days in the case of a meeting requested by shareholders) before the date of a general meeting at which the directors may be elected, unless the Company's constitution provides otherwise.</p> <p>Under the Company's constitution, the Company cannot validly elect a person as a director unless the person has retired and sought re-election or the Board has</p>	<p>Unilife Corporation's by-laws provide that the number of directors was initially one but amended by resolution to five and thereafter will be fixed from time to time exclusively by the board of directors pursuant to a resolution adopted by a majority of the total number of authorised directors (whether or not there exist any vacancies in previously authorised directorships at the time any such resolution is presented to the board for adoption).</p> <p>Unilife Corporation's by-laws provide that directors may be nominated by either the board of directors or a duly authorised committee, or by stockholders entitled to vote in the election of directors generally, provided that a stockholder desiring to nominate a director complies with the following procedure.</p> <p>In order to nominate directors at an annual meeting, a stockholder must provide Unilife Corporation's secretary with advance written notice of his or her intent to make the nomination not earlier than the 120<sup>th</sup> day, nor later than the 90<sup>th</sup> day, prior to the first anniversary of the date of the preceding year's annual meeting as first specified in the corporation's notice of meeting, except that if no annual meeting was held in the previous year or the date of the annual meeting is more than 30 days earlier or later than such anniversary date, notice must be received not later than the later of the 90<sup>th</sup> day prior to the annual meeting or the 10<sup>th</sup> day following the</p>

Rights of Holders of Shares in the Company	Rights of Holders Unilife Corporation Shares
<p>recommended the appointment, or at least 30 business days before the meeting the Company has received both a nomination for that person by a member and a consent to act as a director signed by that person. The Company is obliged to notify members of every candidate for election as a director at least seven days before the relevant meeting.</p>	<p>date on which public announcement of the date of such meeting is first made. Each such notice must set forth:</p> <ul style="list-style-type: none"> <li>▪ the name and address of the stockholder who intends to make the nomination, of the beneficial owner, if any, on whose behalf the nomination is being made and of the person or persons to be nominated;</li> <li>▪ a representation that the stockholder is a holder of record of stock of the corporation entitled to vote for the election of directors on the date of such notice and intends to appear in person or by proxy at the meeting to nominate the person or persons specified in the notice;</li> <li>▪ a description of all arrangements or understandings between the stockholder or such beneficial owner and each nominee and any other person or persons (naming such person or persons) pursuant to which the nomination or nominations are to be made by the stockholder;</li> <li>▪ a description of all material compensation, monetary or other relationships between or among such stockholder and such other beneficial owner and their respective affiliates and associates or others acting in concert therewith, on the one hand, and each proposed nominee and his or her affiliates or associates or others acting in concert therewith, on the other hand;</li> <li>▪ such other information</li> </ul>

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		<p>regarding each nominee proposed by such stockholder as would be required to be included in a proxy statement filed pursuant to the proxy rules of the SEC, had the nominee been nominated, or intended to be nominated, by the board of directors;</p> <ul style="list-style-type: none"> <li>▪ the consent of each nominee to serve as a director of the corporation if so elected; and</li> <li>▪ certain information regarding the ownership interests of the stockholder or such other beneficial owner, including without limitation the class and number of shares of the corporation that are owned beneficially and of record by the stockholder or such other beneficial owner, which shall be supplemented in writing by the stockholder not later than 10 days after the record date for the meeting to disclose such interests as of the record date.</li> </ul> <p>In order to nominate directors at a special meeting of stockholders for the election of directors, the stockholder notice must be delivered to Unilife Corporation's secretary not earlier than the 90th day prior to such special meeting and not later than the close of business on the later of the 70th day prior to such special meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the board of directors to be elected at such meeting.</p>
<b>Removal of directors</b>	<b>Removal of directors</b>	Unilife Corporation's by-laws provide that, subject to the rights of the

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<p>Subject to the Corporations Act, the shareholders of the Company may remove a director from office by passing an ordinary resolution to do so at a general meeting.</p> <p>Under the Corporations Act, a notice of intention to move the resolution must be given to the Company at least two months before the meeting is to be held. However, if the Company calls a meeting after the notice of intention is given, the meeting may pass the resolution even though the meeting is held less than two months after the notice of intention is given. The director is entitled to put their case to members and to receive a copy of the notice.</p> <p><b>Cessation of director's appointment</b></p> <p>The Company's constitution further provides that a person automatically ceases to be a director if the person:</p> <ul style="list-style-type: none"> <li>▪ is removed from office by a resolution of the company at a general meeting (subject to the provisions of the Corporations Act);</li> <li>▪ is not permitted under the Corporations Act to be a director or is disqualified from managing corporations;</li> <li>▪ ceases to qualify as a director (for example, by becoming the auditor of the Company (or a partner or employee of the auditor), or reaching the age of 72 years (except as otherwise permitted in the Corporations Act));</li> </ul>	<p>holders of any series of preferred stock, directors may be removed with or without cause by the affirmative vote of the holders of a majority of the voting power of all of the outstanding shares of capital stock entitled to vote generally in the election of directors, voting together as a single class.</p>

Rights of Holders of Shares in the Company	Rights of Holders Unilife Corporation Shares
	<ul style="list-style-type: none"> <li>▪ becomes of unsound mind or physically or mentally incapable of performing the functions of that office;</li> <li>▪ becomes an insolvent under administration;</li> <li>▪ fails to attend Board meetings (either personally or by an alternate director) for a continuous period of three months without leave of absence from the Board; or</li> <li>▪ resigns by notice in writing to the Company.</li> </ul>
<b>Casual vacancies</b>	<p>The Board may appoint a person to be a director at any time, except during a general meeting. Any director so appointed automatically retires at the next annual general meeting (and is eligible for re-election) and is not taken into account in deciding the rotation or retirement of directors.</p> <p>Unilife Corporation's by-laws provide that, subject to the rights of the holders of any series of preferred stock, vacancies in the board of directors will be filled by a majority vote of the directors then in office, even if less than a quorum, or by the sole remaining director, or, to the extent required by the certificate of incorporation or if there are no directors, by the stockholders.</p>
<b>Rotation of directors</b>	<p>The Listing Rules require that:</p> <ul style="list-style-type: none"> <li>▪ the Company hold an election of directors each year;</li> <li>▪ a director, other than the managing director and directors appointed to fill casual vacancies or as additions to the Board, must not hold office past the third annual general meeting following the director's appointment or three years, whichever is longer, without submitting himself or herself for re-elections; and</li> <li>▪ directors appointed to fill casual vacancies or as additions to the</li> </ul> <p>Neither the DGCL nor Unilife Corporation's certificate of incorporation provide for mandatory retirement or rotation of directors.</p> <p>Unilife Corporation's by-laws provide that each director shall hold office until the next annual meeting of stockholders to be held in the first year after the year in which he or she was elected and until his or her successor is elected, except in the case of his or her death, resignation or removal.</p>

Rights of Holders of Shares in the Company	Rights of Holders Unilife Corporation Shares
<p>Board do not hold office (without re-election) past the next annual general meeting.</p> <p>The Company's constitution also provides that at every annual general meeting one-third of the directors or, if their number is not a multiple of three, then the number nearest to one-third, must retire from office, as well as those directors that would have held office for more than three years if they remained in office until the next annual general meeting, and are eligible for re-election. The following directors are not subject to the one-third rotational director count:</p> <ul style="list-style-type: none"> <li>▪ a director appointed by the Board;</li> <li>▪ a director who vacates office as they are over the age of 72 years;</li> <li>▪ the Managing Director; and</li> <li>▪ alternate directors.</li> </ul> <p>Directors required to retire are those who have been longest in office since last being elected.</p>	
<p><b>Directors' indemnity</b></p>	<p>The Corporations Act prohibits the indemnification of persons against the following specific liabilities incurred as an officer or auditor of the Company:</p> <p>These are liabilities:</p> <ul style="list-style-type: none"> <li>▪ owed to the company or a related body corporate;</li> <li>▪ for a pecuniary penalty order or a compensation order under the Corporations Act; or</li> </ul> <p>Unilife Corporation's by-laws provide that, to the fullest extent permitted by the DGCL, Unilife Corporation will indemnify, and advance expenses to, a director in an action brought by reason of the fact that the director is or was a director of Unilife Corporation, or is, or was, serving at the request of Unilife Corporation as a director or officer of any other entity, against all expenses, liability and loss reasonably incurred or suffered by such person in</p>



Rights of Holders of Shares in the Company	Rights of Holders Unilife Corporation Shares
<div data-bbox="508 420 959 583"> <ul style="list-style-type: none"> <li>that is owed to someone other than the company or a related body corporate and did not arise out of conduct in good faith.</li> </ul> </div> <div data-bbox="508 599 959 1152"> <p>Further, the Corporations Act prohibits an indemnity for legal costs incurred in defending an action for a liability incurred as an officer or auditor of the Company in specific circumstances including where an officer is found to have a liability for which they could not be indemnified or found guilty in criminal proceedings, or where the grounds for a court order have been made out (in proceedings brought by the Australian Securities and Investments Commission or a liquidator).</p> </div> <div data-bbox="508 1187 959 1552"> <p>Payments by the Company of insurance premiums which cover conduct involving a wilful breach of duty in relation to the Company or a breach of a director's statutory duty not to improperly use their position or improperly use information is also certain statutory directors' duties is also prohibited under the Corporations Act.</p> </div> <div data-bbox="508 1587 959 2140"> <p>The Company's constitution provides that the Company must, subject to the Corporations Act, indemnify every officer (including every director and secretary) of the Company against a liability incurred in their role as an officer to a person other than the Company or a related body corporate (unless the liability arises out of conduct involving a lack of good faith), and for costs and expenses incurred in defending civil or criminal proceedings in which judgement is given in favour of that person or in</p> </div>	<div data-bbox="984 390 1252 420"> <p>connection therewith.</p> </div> <div data-bbox="984 460 1438 715"> <p>Unilife Corporation may maintain insurance to protect a director against any expense, liability or loss, whether or not the corporation would have the power to indemnify such person against such expense, liability or loss under the DGCL.</p> </div>

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	which that person is acquitted.	
<b>Directors' liability</b>	<p>Under the Corporations Act, there is a general prohibition on a company or a related body corporate exempting officers from any liability incurred as an officer of the company.</p>	<p>Under the DGCL, Unilife Corporation may include in its certificate of incorporation a provision eliminating the personal liability of a director to the company or its stockholders for monetary damages for a breach of fiduciary duty as a director. However, the provision may not eliminate liability for:</p> <ul style="list-style-type: none"> <li>▪ breach of the director's duty of loyalty;</li> <li>▪ acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of the law;</li> <li>▪ unlawful payment of dividends;</li> <li>▪ unlawful purchases or redemptions of shares; or</li> <li>▪ any transaction from which the director derived an improper personal benefit.</li> </ul> <p>Unilife Corporation's certificate of incorporation provides that, to the fullest extent permitted by the DGCL, a director shall not be personally liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director.</p>
<b>Corporate governance</b>	<p><b>Corporate Governance Principles and Recommendations</b></p> <p>The ASX Corporate Governance Council (ASXCGC) is an industry based body established to develop corporate governance recommendations for listed entities which reflect international best</p>	<p>Unilife Corporation's board structure, the independence of its board members, the existence and composition of its various board committees and its corporate policies as a whole must comply with Listing Rules, Delaware law, US federal securities laws (including without limitation the Sarbanes-</p>

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<p>practice.</p> <p>The ASXCGC released its "Principles of Good Corporate Governance and Best Practice Recommendations" on 31 March 2003, which deal with matters such as the structure of the board and management, decision-making processes, risk and remuneration. The 2<sup>nd</sup> edition, titled "Corporate Governance Principles and Recommendations" was released in August 2007, taking effect from 1 January 2008.</p> <p>The Listing Rules require the Company to disclose the extent to which it has followed the recommendations of the ASXCGC. This disclosure is required annually, either included in the Company's annual report or in a separate report clearly labelled as the corporate governance report and given to the ASX at the same time as the annual report.</p> <p>Where the Company has not followed all the Recommendations, it must identify the Recommendations that have not been followed and give reasons for not following them.</p> <p>If the Company follows the Recommendations, it will publish various corporate governance policies and procedures in place on its website.</p> <p><b>Audit Committee</b></p> <p>The Listing Rules provide that if the Company is included in the S&amp;P All Ordinaries Index at the beginning of its financial year, it must have an audit committee during that year.</p>	<p>Oxley Act) and, if and when the Corporation is listed on NASDAQ, Unilife Corporation must also comply with NASDAQ listing rules.</p>

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	<p>If the entity was in the top 300 of that Index at the beginning of its financial year, it must also comply with the recommendations set by the ASXCGC in relation to composition, operation and responsibility of the audit committee.</p>	
<b>Insider trading</b>	<p>The Corporations Act prohibits any person who:</p> <ul style="list-style-type: none"> <li>▪ possesses information that is not generally available, but if it were generally available, a reasonable person would expect it to have a material effect on the price or value of the Company's securities (<b>Inside Information</b>); and</li> <li>▪ knew, or ought reasonably to have known, that the information was Inside Information,</li> </ul> <p>from applying for, buying or selling those securities (or entering an agreement to do so) or procuring others to do so. The prohibition also extends to the communication of the information (or causing the information to be communicated) directly or indirectly to third parties if the person knew, or ought reasonably to have known, that the recipient would or would be likely to apply for, buy or sell the securities (or enter an agreement to do so), or procure others to do so.</p> <p>This prohibition is subject to certain limited exceptions.</p>	<p>US federal securities laws generally prohibit any person who possesses material non-public information relating to Unilife Corporation or its securities from buying or selling those securities or procuring others to do so, or from communicating the material non-public information to third parties.</p>
Shareholders' Meetings		
<b>Quorum of</b>	The Company's constitution states that the quorum for a general	Unilife Corporation's by-laws provide that, except as otherwise provided

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<b>shareholders</b>	meeting of the Company's shareholders is two shareholders present in person or by proxy or representative and entitled to vote.	by the DGCL or the by-laws of Unilife Corporation, the holders of a majority of the shares of the capital stock of the corporation entitled to vote at the meeting, present in person or represented by proxy, shall constitute a quorum for the transaction of business. Where a separate class vote by a class or classes or series is required, a majority of the shares of such class or classes or series present in person or represented by proxy shall constitute a quorum entitled to take action with respect to that vote on that matter.
<b>Annual meetings</b>	Under the Corporations Act, the annual general meeting of the Company is required to be held at least once every calendar year and within five months after the end of each financial year.	<p>The DGCL requires Unilife Corporation to have an annual stockholders' meeting to elect directors, unless directors are elected by written consent in lieu of an annual meeting. Unilife Corporation's by-laws provide that, effective upon the Implementation Date of the Share Scheme, any action required or permitted to be taken by stockholders must be effected at a duly called annual or special meeting of stockholders and may not be effected by written consent of stockholders.</p> <p>Under the DGCL, a director or stockholder of Unilife Corporation may petition the Court of Chancery of Delaware for an order compelling the holding of an annual meeting if:</p> <ul style="list-style-type: none"> <li>▪ no annual meeting has been held, or action by written consent to elect directors in lieu of an annual meeting has been taken, for a period of 30 days after the date designated for the annual meeting; or</li> <li>▪ no date for an annual</li> </ul>

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		<p>meeting has been designated for a period of 13 months after the latest to occur of Unilife Corporation's organisation, the last annual meeting or the last action by written consent to elect directors in lieu of an annual meeting.</p> <p>Under the NASDAQ listing rules, Unilife Corporation will be required to hold an annual meeting within a year of its fiscal year end.</p>
<b>Special / extraordinary meetings</b>	<p>Under the Company's constitution (and in accordance with the provisions of the Corporations Act), a meeting of shareholders may be convened at any time by the Board or a Director and must be called by the Board when it receives a request to do so from members with at least 5% of the votes that may be cast at the meeting or at least 100 members who are entitled to vote at the meeting or by order of the Court if it is impracticable to call the meeting in any other way.</p>	<p>Unilife Corporation's by-laws permit special meetings of stockholders for any purposes prescribed in the notice of the meeting to be called at any time by the board of directors, the Chairman of the board of directors or the president of the corporation.</p>
<b>Notice of meetings</b>	<p>Under the Corporations Act (and in accordance with the Constitution), notice of a general meeting of the Company must be given to the Company's shareholders at least 28 days before the date of the proposed meeting. Notice of the meeting must also be given to each director and to the auditor of the Company.</p> <p>A notice of meeting must specify:</p> <ul style="list-style-type: none"> <li>▪ the date, time and place of the meeting;</li> <li>▪ the general nature of the business to be transacted at the meeting;</li> </ul>	<p>The DGCL and Unilife Corporation's by-laws provide that notice of a stockholders' meeting be delivered not less than ten days nor more than 60 days before the date of the meeting to each stockholder entitled to vote at such meeting, except as otherwise provided in Unilife Corporation's by-laws or as required by the DGCL.</p>

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	<ul style="list-style-type: none"> <li>▪ any proposed resolutions and if a special resolution is to be proposed, set out an intention to propose the special resolution and state the resolution;</li> <li>▪ the right of members to appoint a proxy whether or not the proxy needs to be member of the Company, and that a member who is entitled to cast two or more votes may appoint two proxies and may specify the proportion or number of votes each proxy is appointed to exercise;</li> <li>▪ specify a place and fax number for the purposes of receipt of proxy appointments and proxy appointment authorities and may specify an electronic address and other electronic means for such lodgements; and</li> <li>▪ inform members that the resolution on remuneration report will be put at the AGM.</li> </ul>
<b>Resolutions at annual meetings</b>	<p>A resolution at a general meeting is to be passed by a majority of votes cast by those present and voting, unless the Corporations Act or Constitution provides otherwise.</p> <p>A resolution put to the vote at a members' meeting must be decided on a show of hands unless a poll is demanded in accordance with the Company's constitution either before or on the declaration of the result of the vote on a show of hands.</p> <p>The Company must not count any votes on a resolution purported to be cast by those members that are not permitted to vote (under the</p> <p>Unilife Corporation's by-laws provide that, when a quorum is present at any meeting of stockholders, any election of directors shall be determined by a plurality of the votes cast by the stockholders entitled to vote at the election, and any other matter shall be determined by a majority in voting power of the shares present in person or represented by proxy and entitled to vote on the matter (or if there are two or more classes of stock entitled to vote as separate classes, then in the case of each such class, a majority of the shares of each such class present in person or by proxy and entitled to vote on the matter shall decide such matter), except</p>

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	<p>Corporations Act or the Listing Rules) on the resolution (or whose votes are to be disregarded) and the relevant notice of meeting states that voting restriction.</p>	<p>when a different vote is required by express provision of law, the certificate of incorporation or the by-laws of the corporation.</p> <p>A plurality vote means that, on an election of a particular number of directors, the same number of nominees receiving the highest number of 'for' votes will be elected and the 'against' votes will have no legal effect on the election.</p> <p>The DGCL requires the approval of a majority of all votes entitled to be cast by Unilife Corporation stockholders for specified actions including:</p> <ul style="list-style-type: none"> <li>▪ dissolution of the corporation;</li> <li>▪ most mergers or consolidations; and</li> <li>▪ amendments to the corporation's certificate of incorporation.</li> </ul>
<b>Special resolutions</b>	<p>Under the Corporations Act, a special resolution must be a resolution that is passed by at least 75% of the votes cast by members entitled to vote on the resolution.</p> <p>Approval by special resolution of shareholders is required for actions such as modifying or repealing the Company's constitution, changing the Company's name or type, selectively reducing or buying back capital (in some circumstances), providing financial assistance in connection with the acquisition of shares in the company, and undertaking a voluntary winding up of the company.</p>	<p>The DGCL contains no concept of special resolutions.</p>
<b>Derivative actions</b>	<p>Under the Corporations Act, a derivative action may be instituted</p>	<p>The DGCL permits a Unilife Corporation stockholder to bring a</p>



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	<p>by a shareholder, former shareholder or person entitled to be registered as a shareholder of the Company (or a related body corporate), or an officer or former officer of the Company. In all cases, leave of the court is required.</p> <p>Such leave will be granted if:</p> <ul style="list-style-type: none"> <li>▪ it is probable that the Company will not itself bring the proceedings or properly take responsibility for them (or for the steps in them);</li> <li>▪ the applicant is acting in good faith;</li> <li>▪ it is in the best interests of the Company that the applicant be granted leave;</li> <li>▪ if the applicant is applying for leave to bring the proceedings, there is a serious question to be tried; and <ul style="list-style-type: none"> <li>(a) either at least 14 days before making the application, the applicant gave written notice to the Company of the intention to apply for leave and of the reasons for applying; or</li> <li>(b) it is otherwise appropriate for the court to grant leave.</li> </ul> </li> </ul>	<p>derivative action on behalf of Unilife Corporation if those in control of Unilife Corporation have failed to assert a claim belonging to Unilife Corporation.</p> <p>Derivative actions have certain standing and eligibility requirements, including that the plaintiff in the action must generally have been a stockholder of the company at the time that the act complained of occurred and must maintain his or her status as a stockholder of the company throughout the course of the litigation. Derivative plaintiffs must have previously made a demand on the directors of the company to assert the corporate claim, unless such a demand would have been futile.</p>
Relationship between the Company and its Shareholders		
<b>Relief from oppression</b>	Under the Corporations Act, any shareholder of the Company can apply for an order from the court in circumstances where the conduct of the Company's affairs, or any actual or proposed act or omission or	The DGCL contains no equivalent statutory provisions. However, Delaware law may provide judicial remedies to stockholders in comparable circumstances.

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	<p>resolution is either:</p> <ul style="list-style-type: none"><li>▪ contrary to the interests of shareholders as a whole; or</li><li>▪ oppressive to, unfairly prejudicial to, or unfairly discriminatory against, any shareholders in that capacity or any other capacity.</li></ul> <p>Former shareholders can also bring an action if it relates to the circumstances in which they ceased to be a shareholder.</p> <p>The court may make any order that it considers appropriate in relation to the circumstances and the Company including, among other things, an order that the Company be wound up, that the Company's existing constitution be modified or repealed, or that a person is required to do a specified act.</p>	

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<b>Inspection of books</b>	<p>Under the Corporations Act, a shareholder of the Company must obtain a court order to obtain access to the company's books. A person authorised to inspect books may make copies of those books unless the court orders otherwise. The court may make this order only if it is satisfied that the applicant is acting in good faith and that the inspection is to be made for a proper purpose. However, the applicant is not permitted to disclose information obtained during such an inspection.</p> <p>Outside of these provisions, shareholders also have a right under the Corporations Act to inspect and get copies of the Company's statutory registers.</p> <p>The Company's statutory registers include:</p> <ul style="list-style-type: none"> <li>▪ register of members;</li> <li>▪ if the Company issues options over unissued shares or interests, register of Optionholders; and</li> <li>▪ if the Company issues debentures, a register of debenture holders.</li> </ul>	<p>The DGCL provides each Unilife Corporation stockholder with the right to inspect, to make copies of and to take extracts from, certain books and records of Unilife Corporation for any proper purpose during normal business hours upon the stockholder making a sworn written demand, stating the purpose of his or her inspection.</p> <p>The books and records subject to a stockholders' right of inspection include Unilife Corporation's stock ledger, Unilife Corporation's list of stockholders and certain other books and records of Unilife Corporation and its subsidiaries.</p>
<b>Takeovers</b>		
<b>Takeovers</b>	<p>The Corporations Act restricts the acquisition by any person of a "relevant interest" in issued "voting shares" in the Company under a transaction where, because of the transaction, that person or someone else's "voting power" in the Company increases from 20% or below to more than 20% or, where the person's voting power was</p>	<p>Section 203 of the DGCL, from which Unilife did not elect to opt out, provides that if a holder acquires 15% or more of Unilife Corporation's stock without prior approval of the board of directors, then for three years such holder cannot engage in a broad range of business combinations with such interested holder. Such limitations do not apply</p>

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<p>already above 20% and below 90%, increases in any way at all) subject to a number of exceptions detailed in the Corporations Act.</p> <p>Concepts of "relevant interests", "issued voting shares" and "voting power" are defined under the Corporations Act and are quite complex. The key concept of relevant interest is very widely defined and generally extends to a holder of the securities or a person either directly or indirectly having a power to vote (or control the vote) or dispose (or control the disposal) of the securities.</p> <p>Certain exceptions to this general takeover prohibition are set out in the Corporations Act. For example:</p> <ul style="list-style-type: none"> <li>▪ an acquisition resulting from a scheme undertaken in accordance with the Corporations Act and approved by the court; and</li> <li>▪ an acquisition that results from the acceptance of an offer under a takeover bid.</li> </ul> <p>In this respect, any takeover bid made for the Company must be on the same terms for all shareholders, subject to minor exceptions, and must comply with the timetable, disclosure and other requirements set out in the Corporations Act.</p> <p>The purpose of these provisions is to attempt to ensure that shareholders in the target company have a reasonable and equal opportunity to share in any premium for control and that they are given reasonable time and enough information to assess the merits of</p>	<p>if either the holder buys at least 85% of Unilife Corporation's stock (other than stock owned by directors who are also officers and certain employee stock plans) in a transaction whereby that holder acquires its 15% interest or the business combination is subsequently approved by the board of directors and two-thirds of the stock held by persons other than such holder.</p> <p>Certain provisions of the certificate of incorporation and by-laws of Unilife Corporation also have the effect of deterring takeovers, such as those provisions:</p> <ul style="list-style-type: none"> <li>▪ authorising the board of directors to issue from time to time any series of preferred stock and fix the designation, powers, preferences and rights of the shares of such series of preferred stock;</li> <li>▪ prohibiting stockholders from acting by written consent in lieu of a meeting;</li> <li>▪ requiring advance notice of stockholder intention to put forth director nominees or bring up other business at a stockholders' meeting;</li> <li>▪ prohibiting stockholders from calling a special meeting of stockholders</li> </ul> <p>The certificate of incorporation and by-laws of Unilife Corporation may be amended in the future pursuant to these provisions and the DGCL to authorise additional takeover defence mechanisms.</p>

Rights of Holders of Shares in the Company		Rights of Holders Unilife Corporation Shares
	the proposal.	
<b>Winding Up</b>	<p>The members of a solvent company may decide to wind-up the company under the Corporations Act. A special resolution is required.</p> <p>From the passing of the resolution, the company must cease to carry on its business except so far as the liquidator considers is required for the beneficial disposal or winding up of that business, but the corporate state and corporate powers of the company continue until it is deregistered.</p> <p>The Company's constitution states that if the Company is wound up, the liquidator may, with the sanction of a special resolution, divide the assets of the Company among the shareholders in kind. The liquidator cannot compel any member to accept marketable securities in respect of which there is a liability as part of a distribution of assets of the Company.</p> <p>The Corporations Act provides that subject to provisions as to preferential payments, the property of a company must, on its winding up, be applied in satisfaction of its liabilities equally and, subject to that application, must, unless the company's constitution otherwise provides, be distributed among the members according to their rights and interests in the company.</p>	<p>The DGCL permits the board of directors to authorise the dissolution of Unilife Corporation if:</p> <ul style="list-style-type: none"> <li>▪ a majority of the directors in office adopt a resolution to approve dissolution at a board meeting called for that purpose;</li> <li>▪ holders of a majority of the issued and outstanding shares entitled to vote on the matter adopt a resolution to approve dissolution at a stockholders' meeting called for that purpose; and</li> <li>▪ a certificate of dissolution is filed with the Delaware Secretary of State.</li> </ul> <p>The DGCL also permits stockholders to authorise the dissolution of Unilife Corporation without board action if:</p> <ul style="list-style-type: none"> <li>▪ all of the stockholders entitled to vote on the matter provide written consent to dissolution; and</li> <li>▪ a certificate of dissolution is filed with the Delaware Secretary of State.</li> </ul>

## Appendix 11

### Notice of Share Scheme Meeting

#### **Notice of a Court ordered Scheme Meeting of the holders of ordinary shares in Unilife Medical Solutions Limited**

#### **Unilife Medical Solutions Limited ABN 14 008 071 403**

Notice is given that, in accordance with an order of the Federal Court of Australia (**Court**) made on 4 December 2009 pursuant to section 411 of the Corporations Act 2001, a meeting of the holders of fully paid ordinary shares of Unilife Medical Solutions Limited (**Company**) will be held at 10:00am on 8 January 2010 at The Westin Hotel, No. 1 Martin Place, Sydney NSW 2000.

#### **Purpose of the meeting**

The purpose of the meeting is to consider and, if thought fit, to agree to a scheme of arrangement (with or without modification) proposed to be made between the Company and the holders of fully paid ordinary shares in the Company (**Share Scheme**).

To enable you to make an informed voting decision, further information on the Share Scheme is set out in the Information Memorandum which accompanies this notice of meeting.

#### **Resolution**

To consider and, if thought fit, to pass the following resolution:

*'That, pursuant to and in accordance with section 411 of the Corporations Act 2001, the arrangement proposed between the Company and the holders of its fully paid ordinary shares (the **Share Scheme**), the terms of which are described in the Information Memorandum, is agreed to and the board of directors of the Company are authorised to agree to such alterations or conditions as are thought fit by the Court and, subject to approval of the scheme by the Court, to implement the Share Scheme with any such alterations or conditions'.*

## **EXPLANATORY NOTES**

### **Material accompanying this Notice**

This notice of meeting should be read in conjunction with the Information Memorandum of which this notice forms part. Terms used in this notice, unless otherwise defined, have the same meaning as set out in the Information Memorandum.

A copy of the Share Scheme of Arrangement is contained in Appendix 3 of the Information Memorandum.

### **Requisite Majority**

In accordance with section 411(4)(a)(ii) of the Corporations Act 2001, the resolution must be passed at the meeting by:

- a majority in number of the holders of the fully paid ordinary shares of the Company present and voting (either in person or by proxy, attorney or corporate representative); and
- by at least 75% of the total number of votes cast on the resolution.

### **Court approval**

The Share Scheme is subject to the approval of the Court (with or without modification) under section 411(4)(b) of the Corporations Act 2001 and the satisfaction or waiver of any other conditions in the Share Scheme. If the resolution put to the meeting is passed by the requisite majorities (described above), the Company intends to apply to the Court for approval of the Share Scheme.

### **Recommendation**

The directors of the Company unanimously recommend that you vote in favour of the resolution.

### **Voting by Poll**

Voting at the meeting will occur by poll.

### **Entitlement to Vote**

All persons that are registered in the Company's Share Register as at 7.00pm on 6 January 2010 will be entitled to vote on the resolution set out in this notice.

### **Proxies**

If you are a member and entitled to attend and vote at the Share Scheme Meeting, you are entitled to appoint a proxy. If you are a member and entitled to attend and cast two or more votes at the Share Scheme Meeting, you are entitled to appoint up to two proxies. Where two proxies are appointed, you may specify the number or proportion of votes that each may exercise, failing which each may exercise half of the votes. A proxy need not be a shareholder of the Company.

If you wish to appoint a proxy in respect of the Share Scheme Meeting, please complete and return the blue Share Scheme proxy form provided.

To be effective, the proxy form must be received by the Company's share registrar, Computershare, at the address or facsimile provided below no later than 10:00am on 6 January 2010 (being at least 48 hours before the time for the holding of the meeting).

#### **Delivery address:**

Level 2, 45 St George's Terrace  
PERTH WA 6000

#### **Postal address:**

GPO Box 242  
MELBOURNE VIC 3001

Telephone number: + 61 3 9415 5000

Facsimile number: +61 3 9473 2368

DATED 27 November 2009

By order of the Board

A handwritten signature in black ink, consisting of several overlapping, sweeping strokes that form a stylized, somewhat abstract shape.

Jeff Carter

Company Secretary



## Appendix 12

### Notice of Option Scheme Meeting

#### **Notice of a Court ordered Scheme Meeting of the holders of Options in Unilife Medical Solutions Limited**

#### **Unilife Medical Solutions Limited ABN 14 008 071 403**

Notice is given that, in accordance with an order of the Federal Court of Australia (**Court**) made on 4 December 2009 pursuant to section 411 of the Corporations Act 2001, a meeting of option holders of Unilife Medical Solutions Limited (**Company**) will be held at 10:30am (or immediately following the conclusion of the share scheme meeting to be held on that day, if later) on 8 January 2010 at The Westin Hotel, No. 1 Martin Place, Sydney NSW 2000.

#### **Purpose of the meeting**

The purpose of the meeting is to consider and, if thought fit, to agree to a scheme of arrangement (with or without modification) proposed to be made between the Company and the holders of options (**Optionholders**) issued pursuant to the Unilife Medical Solutions Limited Employee Share Option Plan (**Option Scheme**).

To enable you to make an informed voting decision, further information on the Option Scheme is set out in the Information Memorandum which accompanies this notice of meeting.

#### **Resolution**

To consider and, if thought fit, to pass the following resolution:

*'That, pursuant to and in accordance with section 411 of the Corporations Act 2001, the arrangement proposed between the Company and the holders of options to acquire fully paid ordinary shares issued under the Unilife Medical Solutions Limited Employee Share Option Plan (the **Option Scheme**), the terms of which are described in the Information Memorandum, is agreed to and the board of directors of the Company are authorised to agree to such alterations or conditions as are thought fit by the Court and, subject to approval of the scheme by the Court, to implement the Option Scheme with any such alterations or conditions'.*

## **EXPLANATORY NOTES**

### **Material accompanying this Notice**

This notice of meeting should be read in conjunction with the Information Memorandum of which this notice forms part. Terms used in this notice, unless otherwise defined, have the same meaning as set out in the Information Memorandum.

A copy of the Option Scheme of Arrangement is contained in Appendix 4 of the Information Memorandum.

### **Requisite Majority**

In accordance with section 411(4)(a)(i) of the Corporations Act 2001, the resolution must be passed by:

- a majority in number of the Optionholders present and voting (either in person or by proxy, attorney or corporate representative);
- being a majority whose Options in aggregate represent at least 75% by value of the total Options held by the Optionholders present and voting.

### **Court approval**

The Option Scheme is subject to the approval of the Court (with or without modification) under section 411(4)(b) of the Corporations Act 2001 and the satisfaction or waiver of any other conditions in the Option Scheme. If the resolution put to the meeting is passed by the requisite majorities (described above), the Company intends to apply to the Court for approval of the Option Scheme.

### **Recommendation**

The directors of the Company unanimously recommend that you vote in favour of the resolution.

### **Voting by Poll**

Voting at the meeting will occur by poll.

### **Entitlement to vote**

All persons that are registered in the Company's Option Register as at 7:00pm on 6 January 2010 will be entitled to vote on the resolution set out in this notice.

### **Proxies**

If you are an Optionholder entitled to attend and vote at the Option Scheme Meeting, you are entitled to appoint a proxy. If you are an Optionholder and entitled to attend and cast two or more votes at the Option Scheme Meeting, you are entitled to appoint up to two proxies. Where two proxies are appointed, you may specify the number or proportion of votes that each may exercise, failing which each may exercise half of the votes. A proxy need not be an Optionholder of the Company.

If you wish to appoint a proxy in respect of the Option Scheme Meeting, please complete and return the green Option Scheme proxy form provided.

To be effective, the proxy form must be received by the Company's share registrar, Computershare, at the address or facsimile provided below no later than 10:30am on 6 January 2010 (being at least 48 hours before the time for the holding of the meeting).

#### **Delivery address:**

Level 2, 45 St George's Terrace  
PERTH WA 6000

#### **Postal address:**

GPO Box 242  
MELBOURNE VIC 3001

Telephone number: + 61 3 9415 5000

Facsimile number: +61 3 9473 2368

DATED 27 November 2009

By order of the Board

A handwritten signature in black ink, consisting of a large, stylized 'J' followed by several horizontal strokes.

Jeff Carter

Company Secretary

## **Corporate Directory**

### **Unilife Medical Solutions Limited**

(ABN 14 008 071 403)  
Level 11, 1 Chifley Square  
SYDNEY NSW 2000  
Australia  
Tel: +61 2 8346 6500  
Fax: +61 2 8346 6511

### **Unilife Corporation**

633 Lowther Road  
Lewisberry, Pennsylvania 17339  
United States of America  
Tel: +1 717 938 9323  
Fax: +1 717 938 9364

### **US Tax Counsel**

DLA Piper US LLP (US)  
1251 Avenue of the Americas  
New York, NY 10020-1104  
United States of America

Tel: +1 212 335 - 4500  
Fax: +1 212 335 - 4501

### **Tax Advisor - Australia**

DLA Phillips Fox  
201 Elizabeth Street  
SYDNEY NSW 2000  
Australia

Tel: +61 2 9286 8000  
Fax: +61 2 9283 4144

### **US Legal Counsel**

DLA Piper US LLP (US)  
1251 Avenue of the Americas  
New York, NY 10020-1104  
United States of America  
Tel: +1 212 335 - 4500  
Fax: +1 212 335 - 4501

### **Legal Advisor - Australia**

DLA Phillips Fox  
201 Elizabeth Street  
SYDNEY NSW 2000  
Australia  
Tel: +61 2 9286 8000  
Fax: +61 2 9283 4144

### **Australian Accountant**

BDO Kendalls Corporate Finance (WA) Pty Ltd  
Level 8, 256 St George's Terrace  
PERTH WA 6000  
Australia  
Tel: +61 8 9360 4200  
Fax: +61 8 9481 2524

### **Share Registry**

Computershare Investor Services Pty Limited  
Level 2  
Reserve Bank Building  
45 St George's Terrace  
PERTH WA 6000  
Australia  
Tel: +61 1300 55 70 102  
Facsimile: +61 8 9323 2033

### **Enquiry line**

Tel: 1800 632 680 (Australia toll free)  
+1 866 496 5819 (US toll free)  
+61 2 8256 3394 (International)