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BORATES LIMITED

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## AMERICAN PACIFIC BORATES LIMITED

ACN 615 606 114

## NOTICE OF GENERAL MEETING

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Notice is given that the Meeting will be held at:

**TIME:** 10.30 am (AEST)

**DATE:** Friday, 19 June 2020

**PLACE:** The Company is closely monitoring the impact of the COVID-19 virus in Western Australia and following guidance from the Federal and State Governments. The Meeting will be held virtually. There will not be a physical meeting where shareholders can attend in person.

A live webcast and electronic voting via [www.advancedshare.com.au/virtual-meeting](http://www.advancedshare.com.au/virtual-meeting) will be offered to allow Shareholders to listen to the Meeting and vote online. Please refer to the Meeting ID and Shareholder ID on the proxy form to login to the website.

***The business of the Meeting affects your shareholding and your vote is important.***

***This Notice of Meeting should be read in its entirety. If Shareholders are in doubt as to how they should vote, they should seek advice from their professional advisers prior to voting.***

***The Directors have determined pursuant to Regulation 7.11.37 of the Corporations Regulations 2001 (Cth) that the persons eligible to vote at the Meeting are those who are registered Shareholders at 7:00pm (AEST) on Wednesday, 17 June 2020.***

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## BUSINESS OF THE MEETING

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### AGENDA

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#### 1. RESOLUTION 1 – RATIFICATION OF PRIOR ISSUE OF SHARES AND OPTIONS – DECEMBER 2019 PLACEMENT

To consider and, if thought fit, to pass, with or without amendment, the following resolution as an **ordinary resolution**:

*“That, for the purposes of Listing Rule 7.4 and for all other purposes, Shareholders ratify the issue of 11,000,000 Shares and 9,166,667 Options on the terms and conditions set out in the Explanatory Statement.”*

**Voting Exclusion:** The Company will disregard any votes cast in favour of the Resolution by or on behalf of a person who participated in the issue or is a counterparty to the agreement being approved (including Mayfair Ventures Pte Ltd) or an associate of that person or those persons.

However, this does not apply to a vote cast in favour of the Resolution by:

- (a) a person as a proxy or attorney for a person who is entitled to vote on the Resolution, in accordance with the directions given to the proxy or attorney to vote on the Resolution in that way; or
- (b) the Chair as proxy or attorney for a person who is entitled to vote on the Resolution, in accordance with a direction given to the Chair to vote on the Resolution as the Chair decides; or
- (c) a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:
  - (i) the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on the Resolution; and
  - (ii) the holder votes on the Resolution in accordance with directions given by the beneficiary to the holder to vote in that way.

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#### 2. RESOLUTION 2 – RATIFICATION OF PRIOR ISSUE OF SHARES – LISTING RULE 7.1 FEBRUARY PLACEMENT

To consider and, if thought fit, to pass, with or without amendment, the following resolution as an **ordinary resolution**:

*“That, for the purposes of Listing Rule 7.4 and for all other purposes, Shareholders ratify the issue of 7,754,334 Shares on the terms and conditions set out in the Explanatory Statement.”*

**Voting Exclusion:** The Company will disregard any votes cast in favour of the Resolution by or on behalf of a person who participated in the issue or is a counterparty to the agreement being approved (including Mayfair Ventures Pte Ltd) or an associate of that person or those persons.

However, this does not apply to a vote cast in favour of the Resolution by:

- (a) a person as a proxy or attorney for a person who is entitled to vote on the Resolution, in accordance with the directions given to the proxy or attorney to vote on the Resolution in that way; or
- (b) the Chair as proxy or attorney for a person who is entitled to vote on the Resolution, in accordance with a direction given to the Chair to vote on the Resolution as the Chair decides; or
- (c) a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:
  - (i) the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on the Resolution; and

- (ii) the holder votes on the Resolution in accordance with directions given by the beneficiary to the holder to vote in that way.

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**3. RESOLUTION 3 – RATIFICATION OF PRIOR ISSUE OF SHARES – LISTING RULE 7.1A FEBRUARY PLACEMENT**

To consider and, if thought fit, to pass, with or without amendment, the following resolution as an **ordinary resolution**:

*“That, for the purposes of Listing Rule 7.4 and for all other purposes, Shareholders ratify the issue of 9,995,666 Shares on the terms and conditions set out in the Explanatory Statement.”*

**Voting Exclusion:** The Company will disregard any votes cast in favour of the Resolution by or on behalf of a person who participated in the issue or is a counterparty to the agreement being approved (including Mayfair Ventures Pte Ltd) or an associate of that person or those persons.

However, this does not apply to a vote cast in favour of the Resolution by:

- (a) a person as a proxy or attorney for a person who is entitled to vote on the Resolution, in accordance with the directions given to the proxy or attorney to vote on the Resolution in that way; or
- (b) the Chair as proxy or attorney for a person who is entitled to vote on the Resolution, in accordance with a direction given to the Chair to vote on the Resolution as the Chair decides; or
- (c) a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:
  - (i) the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on the Resolution; and
  - (ii) the holder votes on the Resolution in accordance with directions given by the beneficiary to the holder to vote in that way.

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**4. RESOLUTION 4 – REPLACEMENT OF CONSTITUTION**

To consider and, if thought fit, to pass the following resolution as a **special resolution**:

*“That, for the purposes of section 136(2) of the Corporations Act and for all other purposes, approval is given for the Company to repeal its existing Constitution and adopt a new constitution in its place in the form as signed by the chairman of the Meeting for identification purposes.”*

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**5. RESOLUTION 5 – ADOPTION OF INCENTIVE OPTION PLAN**

To consider and, if thought fit, to pass, with or without amendment, the following resolution as an **ordinary resolution**:

*“That, for the purposes of Listing Rule 7.2 (Exception 13(b)) and for all other purposes, approval is given for the Company to adopt an employee incentive scheme titled Incentive Option Plan and for the issue of securities under that Option Plan, on the terms and conditions set out in the Explanatory Statement.”*

**Voting Exclusion:** The Company will disregard any votes cast in favour of the Resolution by or on behalf of a person who is eligible to participate in the employee incentive scheme or an associate of that person or those persons.

However, this does not apply to a vote cast in favour of the Resolution by:

- (a) a person as a proxy or attorney for a person who is entitled to vote on the Resolution, in accordance with the directions given to the proxy or attorney to vote on the Resolution in that way; or

- (b) the Chair as proxy or attorney for a person who is entitled to vote on the Resolution, in accordance with a direction given to the Chair to vote on the Resolution as the Chair decides; or
- (c) a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:
  - (i) the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on the Resolution; and
  - (ii) the holder votes on the Resolution in accordance with directions given by the beneficiary to the holder to vote in that way.

**Voting Prohibition Statement:**

A person appointed as a proxy must not vote, on the basis of that appointment, on this Resolution if:

- (a) the proxy is either:
  - (i) a member of the Key Management Personnel; or
  - (ii) a Closely Related Party of such a member; and
- (b) the appointment does not specify the way the proxy is to vote on this Resolution. However, the above prohibition does not apply if:
  - (a) the proxy is the Chair; and
  - (b) the appointment expressly authorises the Chair to exercise the proxy even though this Resolution is connected directly or indirectly with remuneration of a member of the Key Management Personnel.

## 6. RESOLUTION 6 – APPROVAL OF SALARY SACRIFICE SHARE PLAN

To consider and, if thought fit, pass the following resolution as an **ordinary resolution**:

*"That, for the purposes of ASX Listing Rule 7.2 (Exception 13(b)) and for all other purposes, Shareholders approve the Salary Sacrifice Share Plan and the issue of securities under that plan on the terms and conditions which are summarised in the Explanatory Statement."*

**Voting Exclusion:** The Company will disregard any votes cast in favour of the Resolution by or on behalf of a person who is eligible to participate in the employee incentive scheme or an associate of that person or those persons.

However, this does not apply to a vote cast in favour of the Resolution by:

- (d) a person as a proxy or attorney for a person who is entitled to vote on the Resolution, in accordance with the directions given to the proxy or attorney to vote on the Resolution in that way; or
- (e) the Chair as proxy or attorney for a person who is entitled to vote on the Resolution, in accordance with a direction given to the Chair to vote on the Resolution as the Chair decides; or
- (f) a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:
  - (i) the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on the Resolution; and
  - (ii) the holder votes on the Resolution in accordance with directions given by the beneficiary to the holder to vote in that way.

**Voting Prohibition Statement:**

A person appointed as a proxy must not vote, on the basis of that appointment, on this Resolution if:

- (c) the proxy is either:
  - (iii) a member of the Key Management Personnel; or
  - (iv) a Closely Related Party of such a member; and
- (d) the appointment does not specify the way the proxy is to vote on this Resolution. However, the above prohibition does not apply if:
  - (c) the proxy is the Chair; and

- (d) the appointment expressly authorises the Chair to exercise the proxy even though this Resolution is connected directly or indirectly with remuneration of a member of the Key Management Personnel.

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**7. RESOLUTION 7 – ISSUE OF SHARES TO DIRECTOR UNDER SALARY SACRIFICE SHARE PLAN - ANTHONY HALL**

To consider and, if thought fit, to pass the following resolution as an **ordinary resolution**:

*“That, subject to the passing of Resolution 6, for the purposes of Listing Rule 10.14 and for all other purposes, approval is given for the Company to issue up to that number of Shares, when multiplied by the issue price, which will total up to \$160,000, to Anthony Hall (or their nominee) under the Salary Sacrifice Share Plan on the terms and conditions set out in the Explanatory Statement.”*

**Voting Exclusion:** The Company will disregard any votes cast in favour of the Resolution by or on behalf any person referred to in Listing Rule 10.14.1, 10.14.2 or 10.14.3 who is eligible to participate in the employee incentive scheme in question (including Mr Anthony Hall and Mr Michael Schlumpberger) or an associate of that person or those persons.

However, this does not apply to a vote cast in favour of the Resolution by:

- (a) a person as a proxy or attorney for a person who is entitled to vote on the Resolution, in accordance with the directions given to the proxy or attorney to vote on the Resolution in that way; or
- (b) the Chair as proxy or attorney for a person who is entitled to vote on the Resolution, in accordance with a direction given to the Chair to vote on the Resolution as the Chair decides; or
- (c) a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:
  - (i) the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on the Resolution; and
  - (ii) the holder votes on the Resolution in accordance with directions given by the beneficiary to the holder to vote in that way.

**Voting Prohibition Statement:**

A person appointed as a proxy must not vote, on the basis of that appointment, on this Resolution if:

- (a) the proxy is either:
  - (i) a member of the Key Management Personnel; or
  - (ii) a Closely Related Party of such a member; and
- (b) the appointment does not specify the way the proxy is to vote on this Resolution.

However, the above prohibition does not apply if:

- (a) the proxy is the Chair; and
- (b) the appointment expressly authorises the Chair to exercise the proxy even though this Resolution is connected directly or indirectly with remuneration of a member of the Key Management Personnel.

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**8. RESOLUTION 8 – ISSUE OF SHARES TO DIRECTOR UNDER SALARY SACRIFICE SHARE PLAN - MICHAEL SCHLUMPBERGER**

To consider and, if thought fit, to pass the following resolution as an **ordinary resolution**:

*“That, subject to the passing of Resolution 6, for the purposes of Listing Rule 10.14 and for all other purposes, approval is given for the Company to issue up to that number of Shares, when multiplied by the issue price, which will total up to \$280,000, to Michael Schlumpberger (or their nominee) under the*

*Salary Sacrifice Share Plan on the terms and conditions set out in the Explanatory Statement."*

**Voting Exclusion:** The Company will disregard any votes cast in favour of the Resolution by or on behalf any person referred to in Listing Rule 10.14.1, 10.14.2 or 10.14.3 who is eligible to participate in the employee incentive scheme in question (including Mr Anthony Hall and Mr Michael Schlumpberger) or an associate of that person or those persons.

However, this does not apply to a vote cast in favour of the Resolution by:

- (d) a person as a proxy or attorney for a person who is entitled to vote on the Resolution, in accordance with the directions given to the proxy or attorney to vote on the Resolution in that way; or
- (e) the Chair as proxy or attorney for a person who is entitled to vote on the Resolution, in accordance with a direction given to the Chair to vote on the Resolution as the Chair decides; or
- (f) a holder acting solely in a nominee, trustee, custodial or other fiduciary capacity on behalf of a beneficiary provided the following conditions are met:
  - (i) the beneficiary provides written confirmation to the holder that the beneficiary is not excluded from voting, and is not an associate of a person excluded from voting, on the Resolution; and
  - (ii) the holder votes on the Resolution in accordance with directions given by the beneficiary to the holder to vote in that way.

**Voting Prohibition Statement:**

A person appointed as a proxy must not vote, on the basis of that appointment, on this Resolution if:

- (c) the proxy is either:
    - (iii) a member of the Key Management Personnel; or
    - (iv) a Closely Related Party of such a member; and
  - (d) the appointment does not specify the way the proxy is to vote on this Resolution.
- However, the above prohibition does not apply if:
- (c) the proxy is the Chair; and
  - (d) the appointment expressly authorises the Chair to exercise the proxy even though this Resolution is connected directly or indirectly with remuneration of a member of the Key Management Personnel.

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**Dated: 19 May 2020**

**By order of the Board**

**Aaron Bertolatti**  
**Company Secretary**

## **Voting by proxy**

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To vote by proxy, please complete and sign the enclosed Proxy Form and return by the time and in accordance with the instructions set out on the Proxy Form.

In accordance with section 249L of the Corporations Act, Shareholders are advised that:

- each Shareholder has a right to appoint a proxy;
- the proxy need not be a Shareholder of the Company; and
- a Shareholder who is entitled to cast two (2) or more votes may appoint two (2) proxies and may specify the proportion or number of votes each proxy is appointed to exercise. If the member appoints two (2) proxies and the appointment does not specify the proportion or number of the member's votes, then in accordance with section 249X(3) of the Corporations Act, each proxy may exercise one-half of the votes.

Shareholders and their proxies should be aware that:

- if proxy holders vote, they must cast all directed proxies as directed; and
- any directed proxies which are not voted will automatically default to the Chair, who must vote the proxies as directed.

## **Voting in person**

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Generally, to vote in person, Shareholders would be able to attend the Meeting at the time, date and place set out above. In light of on the status of the evolving COVID-19 situation and Government restrictions on public gatherings in place at the time of the Meeting, the Directors have made a decision that Shareholders will not be able to physically attend the Meeting in person.

**Accordingly, the Directors strongly encourage all Shareholders to either lodge a directed proxy form prior to the Meeting.**

## **Voting online during meeting**

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Due to the rapidly evolving COVID-19 outbreak, the Company encourages Shareholders to consider participating in the Meeting virtually or voting by proxy rather than attending the Meeting in person.

Shareholders will have the opportunity to participate in the Meeting virtually through an online platform. Voting on each Resolution will occur by an online polling rather than a show of hands.

A live webcast and electronic voting via [www.advancedshare.com.au/virtual-meeting](http://www.advancedshare.com.au/virtual-meeting) will be offered to allow Shareholders to listen to the Meeting and vote online. Please refer to the Meeting ID and Shareholder ID on the proxy form to login to the website.

Shareholders may submit questions ahead of the Meeting via the portal from 20 May 2020.

***Should you wish to discuss the matters in this Notice of Meeting please do not hesitate to contact the Company Secretary on +61 8 6141 3145.***

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## EXPLANATORY STATEMENT

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This Explanatory Statement has been prepared to provide information which the Directors believe to be material to Shareholders in deciding whether or not to pass the Resolutions.

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### 1. RESOLUTION 1 – RATIFICATION OF PRIOR ISSUE OF SHARES AND OPTIONS – DECEMBER 2019 PLACEMENT

#### 1.1 General

As announced on 11 December 2019, the Company has completed a capital raising of \$2,750,000 through the issue of 11,000,000 Shares at an issue price of \$0.25 per Share together with 5 free attaching Options for every 6 Shares subscribed for and issued (**December Placement**).

On 13 December 2019, the Company issued the Shares and Options the subject of the December Placement (**December Placement Securities**) to three global institutional investors, including Mayfair Ventures Pte Ltd who was issued in excess of 1% of all issued capital in the Company at the time, being 8,000,000 Shares and 6,666,667 Options.

Broadly speaking, and subject to a number of exceptions, Listing Rule 7.1 limits the amount of equity securities that a listed company can issue without the approval of its shareholders over any 12 month period to 15% of the fully paid ordinary securities it had on issue at the start of that 12 month period.

Under Listing Rule 7.1A, an eligible entity can seek approval from its members, by way of a special resolution passed at its annual general meeting, to increase this 15% limit by an extra 10% to 25%. The Company obtained approval to increase its limit to 25% at the annual general meeting held on 16 October 2019.

The issue of the December Placement Securities does not fit within any of these exceptions and, as it has not yet been approved by Shareholders, it effectively uses up part of the 15% limit in Listing Rule 7.1, reducing the Company's capacity to issue further equity securities without Shareholder approval under Listing Rule 7.1 for the 12 month period following the date of issue of the December Placement Securities.

Listing Rule 7.4 allows the shareholders of a listed company to approve an issue of equity securities after it has been made or agreed to be made. If they do, the issue is taken to have been approved under Listing Rule 7.1 and so does not reduce the company's capacity to issue further equity securities without shareholder approval under that rule.

The Company wishes to retain as much flexibility as possible to issue additional equity securities in the future without having to obtain Shareholder approval for such issues under Listing Rule 7.1. Accordingly, the Company is seeking Shareholder ratification pursuant to Listing Rule 7.4 for the issue of the December Placement Securities.

Resolution 1 seeks Shareholder ratification pursuant to Listing Rule 7.4 for the issue of the December Placement Securities.

#### 1.2 Technical information required by Listing Rule 14.1A

If Resolution 1 is passed, the December Placement Securities will be excluded in calculating the Company's combined 25% limit in Listing Rules 7.1 and 7.1A,



effectively increasing the number of equity securities the Company can issue with Shareholder approval over the 12 month period following the date of issue of the December Placement Securities.

If Resolution 1 is not passed, the December Placement Securities will be included in calculating the Company's combined 25% limit in Listing Rules 7.1 and 7.1A, effectively decreasing the number of equity securities that the Company can issue without Shareholder approval over the 12 month period following the date of issue of the December Placement Securities.

### 1.3 Technical information required by Listing Rule 7.4

Pursuant to and in accordance with Listing Rule 7.5, the following information is provided in relation to Resolution 1:

- (a) the December Placement Securities were issued to professional and sophisticated investors who were identified by the Directors. The recipients were identified through the Company's own management networks, which involved the Company seeking expressions of interest to participate in the capital raising from non-related parties of the Company. This included Mayfair Ventures Pte Ltd who was issued 8,000,000 Shares and 6,666,667 Options (an amount in excess of 1% of all issued capital in the Company). None of the recipients are related parties of the Company.
- (b) 11,000,000 Shares and 9,166,667 Options were issued;
- (c) the Shares issued to participants in the December Placement were all fully paid ordinary shares in the capital of the Company issued on the same terms and conditions as the Company's existing Shares;
- (d) the Options issued to participants in the December Placement were issued on the terms and conditions set out in Schedule 1;
- (e) the December Placement Securities were issued on 13 December 2019;
- (f) the issue price per Share was \$0.25 and the issue price of the Options was nil as they were issued free attaching with the Shares on a 5 for 6 basis. The Company has not and will not receive any other consideration for the issue of the December Placement Securities (other than in respect of funds received on exercise of the Options);
- (g) the purpose of the issue of the December Placement Securities was to raise \$2,750,000, which will be applied towards paying for long lead items for the Fort Cady Borate Project such as centrifuges, the crystalliser, Manheim furnaces and the natural gas connection; and
- (h) a voting exclusion statement is included in Resolution 1 of the Notice.

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## 2. RESOLUTIONS 2 AND 3 – RATIFICATION OF PRIOR ISSUE OF SHARES – FEBRUARY PLACEMENT

### 2.1 General

On 26 February 2020, the Company issued 17,750,000 Shares (**February Placement Shares**) at an issue price of \$0.40 per Share to raise \$7,100,000 (**February Placement**).

7,754,334 Shares were issued pursuant to the Company's capacity under Listing Rule 7.1 (being, the subject of Resolution 2) and 9,995,666 Shares were issued pursuant to the Company's 7.1A (being the subject of Resolution 3) mandate which was approved by Shareholders at the annual general meeting held on 16 October 2019.

The Company engaged the services of Peloton Capital Pty Limited (ACN 149 540 018) (**Peloton**), (AFSL 406 040), to manage the issue of the February Placement Shares. The Company has paid Peloton a fee of \$271,000 in respect of management and capital raising fees.

## **2.2 Listing Rules 7.1 and 7.1A**

As summarised in Section 1.1 above, Listing Rule 7.1 limits the amount of equity securities that a listed company can issue without the approval of its shareholders over any 12 month period to 15% of the fully paid ordinary securities it had on issue at the start of that 12 month period.

Under Listing Rule 7.1A however, an eligible entity can seek approval from its members, by way of a special resolution passed at its annual general meeting, to increase this 15% limit by an extra 10% to 25%.

The Company obtained approval to increase its limit to 25% at the annual general meeting held on 16 October 2019.

The issue of the February Placement Shares does not fit within any of these exceptions and, as it has not yet been approved by Shareholders, it effectively uses up part of the 25% limit in Listing Rules 7.1 and 7.1A, reducing the Company's capacity to issue further equity securities without Shareholder approval under Listing Rule 7.1 and 7.1A for the 12 month period following the date of issue of the February Placement Shares.

## **2.3 Listing Rule 7.4**

Listing Rule 7.4 allows the shareholders of a listed company to approve an issue of equity securities after it has been made or agreed to be made. If they do, the issue is taken to have been approved under Listing Rule 7.1 and so does not reduce the company's capacity to issue further equity securities without shareholder approval under that rule.

The Company wishes to retain as much flexibility as possible to issue additional equity securities in the future without having to obtain Shareholder approval for such issues under Listing Rule 7.1. Accordingly, the Company is seeking Shareholder ratification pursuant to Listing Rule 7.4 for the issue of the February Placement Shares.

Resolutions 2 and 3 seek Shareholder ratification pursuant to Listing Rule 7.4 for the issue of the February Placement Shares.

## **2.4 Technical information required by Listing Rule 14.1A**

If Resolutions 2 and 3 are passed, the February Placement Shares will be excluded in calculating the Company's combined 25% limit in Listing Rules 7.1 and 7.1A, effectively increasing the number of equity securities the Company can issue with Shareholder approval over the 12 month period following the date of issue of the February Placement Shares.

If Resolutions 2 and 3 are not passed, the February Placement Shares will be included in calculating the Company's combined 25% limit in Listing Rules 7.1 and 7.1A, effectively decreasing the number of equity securities the Company can issue without Shareholder approval over the 12 month period following the date of issue of the February Placement Shares.

## **2.5 Technical information required by Listing Rule 7.5**

Pursuant to and in accordance with Listing Rule 7.5, the following information is provided in relation to Resolutions 2 and 3:

- (a) the February Placement Shares were issued to professional and sophisticated investors who are clients of Peloton. The recipients were identified through a bookbuild process, which involved Peloton seeking expressions of interest to participate in the capital raising from non-related parties of the Company. This included Mayfair Ventures Pte Ltd which was issued 2,500,000 Shares (an amount in excess of 1% of all issued capital in the Company). None of the recipients are related parties of the Company.
- (b) 17,750,000 February Placement Shares were issued on the following basis:
  - (i) 7,754,334 Shares issued pursuant to Listing Rule 7.1 (ratification of which is sought under Resolution 2); and
  - (ii) 9,995,666 Shares issued pursuant to Listing Rule 7.1A (ratification of which is sought under Resolution 3);
- (c) the February Placement Shares issued were all fully paid ordinary shares in the capital of the Company issued on the same terms and conditions as the Company's existing Shares;
- (d) the February Placement Shares were issued on 26 February 2020;
- (e) the issue price was \$0.40 per February Placement Shares under both the issue of Shares pursuant to Listing Rule 7.1 and Listing Rule 7.1A. The Company has not and will not receive any other consideration for the issue of the February Placement Shares;
- (f) the purpose of the issue of the February Placement Shares was to raise \$7,100,000, which will be applied towards progressing construction related activities at the Fort Cady Borate Mine; and
- (g) a voting exclusion statement is included in Resolutions 2 and 3 of the Notice.

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## **3. RESOLUTION 4 – REPLACEMENT OF CONSTITUTION**

### **3.1 General**

A company may modify or repeal its constitution or a provision of its constitution by special resolution of shareholders.

Resolution 4 is a special resolution which will enable the Company to repeal its existing Constitution and adopt a new constitution (**Proposed Constitution**) which is of the type required for a listed public company limited by shares updated to ensure it reflects the current provisions of the Corporations Act and Listing Rules.

This will incorporate amendments to the Corporations Act and Listing Rules since the current Constitution was adopted in 2017.

The Directors believe that it is preferable in the circumstances to replace the existing Constitution with the Proposed Constitution rather than to amend a multitude of specific provisions.

The Proposed Constitution is broadly consistent with the provisions of the existing Constitution. Many of the proposed changes are administrative or minor in nature including but not limited to:

- updating to allow for recent changes to the ASX Listing Rules;
- updating the name of the Company to that adopted at the Company's Annual General Meeting on 16 October 2019;
- updating references to bodies or legislation which have been renamed (e.g. references to the Australian Settlement and Transfer Corporation Pty Ltd, ASTC Settlement Rules and ASTC Transfer); and
- expressly providing for statutory rights by mirroring these rights in provisions of the Proposed Constitution.

The Directors believe these amendments are not material nor will they have any significant impact on Shareholders. It is not practicable to list all of the changes to the Constitution in detail in this Explanatory Statement, however, a summary of the proposed material changes is set out below.

A copy of the Proposed Constitution is available for review by Shareholders at the Company's website [www.americanpacificborates.com](http://www.americanpacificborates.com) and at the office of the Company. A copy of the Proposed Constitution can also be sent to Shareholders upon request to the Company Secretary (+61 8 6141 3145). Shareholders are invited to contact the Company if they have any queries or concerns.

## **3.2 Summary of material proposed changes**

### **Restricted Securities (clause 2.12)**

The Proposed Constitution complies with the recent changes to Listing Rule 15.12 which took effect from 1 December 2019. As a result of these changes, ASX will require certain more significant holders of restricted securities and their controllers (such as related parties, promoters, substantial holders, service providers and their associates) to execute a formal escrow agreement in the form Appendix 9A, as is currently the case. However, for less significant holdings (such as non-related parties and non-promoters), ASX will permit the Company to issue restriction notices to holders of restricted securities in the form of the new Appendix 9C advising them of the restriction rather than requiring signed restriction agreements.

### **Fee for registration of off market transfers (clause 8.4(c))**

On 24 January 2011, ASX amended Listing Rule 8.14 with the effect that the Company may now charge a "reasonable fee" for registering paper-based transfers, sometimes referred to "off-market transfers".

Clause 8.4 of the Proposed Constitution is being made to enable the Company to charge a reasonable fee when it is required to register off-market transfers from

Shareholders. The fee is intended to represent the cost incurred by the Company in upgrading its fraud detection practices specific to off-market transfers.

Before charging any fee, the Company is required to notify ASX of the fee to be charged and provide sufficient information to enable ASX to assess the reasonableness of the proposed amount.

### **Direct Voting (clause 13, specifically clauses 13.35 – 13.40)**

The Proposed Constitution includes a new provision which allows Shareholders to exercise their voting rights through direct voting (in addition to exercising their existing rights to appoint a proxy). Direct voting is a mechanism by which Shareholders can vote directly on resolutions which are to be determined by poll. Votes cast by direct vote by a Shareholder are taken to have been cast on the poll as if the Shareholder had cast the votes on the poll at the meeting. In order for direct voting to be available, Directors must elect that votes can be cast via direct vote for all or any resolutions and determine the manner appropriate for the casting of direct votes. If such a determination is made by the Directors, the notice of meeting will include information on the application of direct voting.

### **Partial (proportional) takeover provisions (new clause 36)**

A proportional takeover bid is a takeover bid where the offer made to each shareholder is only for a proportion of that shareholder's shares.

Pursuant to section 648G of the Corporations Act, the Company has included in the Proposed Constitution a provision whereby a proportional takeover bid for Shares may only proceed after the bid has been approved by a meeting of Shareholders held in accordance with the terms set out in the Corporations Act.

This clause of the Proposed Constitution will cease to have effect on the third anniversary of the date of the adoption of last renewal of the clause.

### Information required by section 648G of the Corporations Act

#### *Effect of proposed proportional takeover provisions*

Where offers have been made under a proportional off-market bid in respect of a class of securities in a company, the registration of a transfer giving effect to a contract resulting from the acceptance of an offer made under such a proportional off-market bid is prohibited unless and until a resolution to approve the proportional off-market bid is passed.

#### *Reasons for proportional takeover provisions*

A proportional takeover bid may result in control of the Company changing without Shareholders having the opportunity to dispose of all their Shares. By making a partial bid, a bidder can obtain practical control of the Company by acquiring less than a majority interest. Shareholders are exposed to the risk of being left as a minority in the Company and the risk of the bidder being able to acquire control of the Company without payment of an adequate control premium. These amended provisions allow Shareholders to decide whether a proportional takeover bid is acceptable in principle, and assist in ensuring that any partial bid is appropriately priced.

### *Knowledge of any acquisition proposals*

As at the date of this Notice of Meeting, no Director is aware of any proposal by any person to acquire, or to increase the extent of, a substantial interest in the Company.

### *Potential advantages and disadvantages of proportional takeover provisions*

The Directors consider that the proportional takeover provisions have no potential advantages or disadvantages for them and that they remain free to make a recommendation on whether an offer under a proportional takeover bid should be accepted.

The potential advantages of the proportional takeover provisions for Shareholders include:

- (a) the right to decide by majority vote whether an offer under a proportional takeover bid should proceed;
- (b) assisting in preventing Shareholders from being locked in as a minority;
- (a) increasing the bargaining power of Shareholders which may assist in ensuring that any proportional takeover bid is adequately priced; and
- (b) each individual Shareholder may better assess the likely outcome of the proportional takeover bid by knowing the view of the majority of Shareholders which may assist in deciding whether to accept or reject an offer under the takeover bid.

The potential disadvantages of the proportional takeover provisions for Shareholders include:

- (a) proportional takeover bids may be discouraged;
- (b) lost opportunity to sell a portion of their Shares at a premium; and
- (c) the likelihood of a proportional takeover bid succeeding may be reduced.

### *Recommendation of the Board*

The Directors do not believe the potential disadvantages outweigh the potential advantages of adopting the proportional takeover provisions and as a result consider that the proportional takeover provision in the Proposed Constitution is in the interest of Shareholders and unanimously recommend that Shareholders vote in favour of Resolution 4.

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## **4. RESOLUTION 5 – ADOPTION OF INCENTIVE OPTION PLAN**

### **4.1 General**

Resolution 5 seeks Shareholder approval for the adoption of the employee incentive scheme titled "Incentive Option Plan" (**Option Plan**) and for the issue of Options under the Option Plan in accordance with Listing Rule 7.2 (Exception 13(b)).

The objective of the Option Plan is to attract, motivate and retain key employees and the Company considers that the adoption of the Option Plan and the future

issue of Options under the Option Plan will provide selected employees with the opportunity to participate in the future growth of the Company.

As summarised in Section 1.1 above, Listing Rule 7.1 limits the amount of equity securities that a listed company can issue without the approval of its shareholders over any 12 month period to 15% of the fully paid ordinary shares it had on issue at the start of that period.

Listing Rule 7.2 (Exception 13(b)) provides that Listing Rule 7.1 does not apply to an issue of securities under an employee incentive scheme if, within three years before the date of issue of the securities, the holders of the entity's ordinary securities have approved the issue of equity securities under the scheme as exception to Listing Rule 7.1.

Exception 13(b) is only available if and to the extent that the number of equity securities issued under the scheme does not exceed the maximum number set out in the entity's notice of meeting dispatched to shareholders in respect of the meeting at which shareholder approval was obtained pursuant to Listing Rule 7.2 (Exception 13(b)). Exception 13(b) also ceases to be available if there is a material change to the terms of the scheme from those set out in the notice of meeting.

#### **4.2 Technical information required by Listing Rule 14.1A**

If Resolution 5 is passed, the Company will be able to issue Options under the Option Plan to eligible participants over a period of 3 years. The issue of any Options to eligible participants under the Option Plan (up to the maximum number of Options stated in Section 4.3(c) below) will be excluded from the calculation of the number of equity securities that the Company can issue without Shareholder approval under Listing Rule 7.1.

For the avoidance of doubt, the Company must seek Shareholder approval under Listing Rule 10.14 in respect of any future issues of Options under the Option Plan to a related party or a person whose relationship with the Company or the related party is, in ASX's opinion, such that approval should be obtained.

If Resolution 5 is not passed, the Company will be able to proceed with the issue of Options under the Option Plan to eligible participants, but any issues of Options will reduce, to that extent, the Company's capacity to issue equity securities without Shareholder approval under Listing Rule 7.1 for the 12 month period following the issue of the Options.

#### **4.3 Technical information required by Listing Rule 7.2 (Exception 13)**

Pursuant to and in accordance with Listing Rule 7.2 (Exception 13), the following information is provided in relation to Resolution 5:

- (a) a summary of the key terms and conditions of the Option Plan is set out in Schedule 2;
- (b) the Company has issued 15,350,000 Options under the Option Plan since the Company was admitted to the Official List (including 6,000,000 Options which were issued to Directors or their nominees);
- (c) the maximum number of Options proposed to be issued under the Option Plan, following Shareholder approval in reliance on the Listing Rule 7.2 (Exception 13), is 20,000,000 Options. It is not envisaged that the maximum number of Options for which approval is sought will be issued immediately; and

- (d) a voting exclusion statement is included in Resolution 5 of this Notice.

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## **5. RESOLUTION 6 – APPROVAL OF SALARY SACRIFICE SHARE PLAN**

### **5.1 General**

Resolution 6 seeks Shareholder approval for the adoption of the employee incentive scheme titled "Salary Sacrifice Share Plan" (**SSSP**). In accordance with Listing Rule 7.2 (Exception 13(b)), and pursuant to the SSSP, Directors and contractors of the Company may be invited to apply for Shares in accordance with the SSSP. The employees, directors and contractors, upon accepting an offer under the SSSP, will reduce their annual remuneration by the amount of the sacrifice they make pursuant to the SSSP.

The objective of the SSSP is to:

- (a) to reduce Company cash outlays and preserve cash reserves specifically in light of the COVID-19 pandemic;
- (b) enhance the alignment of interests between employees and Directors and Shareholders generally.
- (c) provide competitive remuneration for the retention of key employees;
- (d) support key employees and Directors to build their shareholdings in the Company; and
- (a) assist with remuneration planning for eligible persons.

Related parties, including Directors, of the Company may participate under the SSSP. However, additional Shareholder approval under Listing Rule 10.14 will be required before any related party of the Company (or any person whose relationship with the Company or the related party is, in ASX's opinion, such that approval should be obtained) can be issued Shares under the SSSP. Shareholder approval is being sought, as per Resolutions 7 and 8, under Listing 10.14 for the proposed issue of Shares under the SSSP to Anthony Hall and Michael Schlumpberger.

### **5.2 Regulatory Requirements**

As summarised in Section 1.1 above, Listing Rule 7.1 limits the amount of equity securities that a listed company can issue without the approval of its shareholders over any 12 month period to 15% of the fully paid ordinary shares it had on issue at the start of that period.

Listing Rule 7.2 (Exception 13(b)) provides that Listing Rule 7.1 does not apply to an issue of securities under an employee incentive scheme if, within three years before the date of issue of the securities, the holders of the entity's ordinary securities have approved the issue of equity securities under the scheme as exception to Listing Rule 7.1.

Exception 13(b) is only available if and to the extent that the number of equity securities issued under the scheme does not exceed the maximum number set out in the entity's notice of meeting dispatched to shareholders in respect of the meeting at which shareholder approval was obtained pursuant to Listing Rule 7.2 (Exception 13(b)). Exception 13(b) also ceases to be available if there is a material change to the terms of the scheme from those set out in the notice of meeting.



### 5.3 Technical information required by Listing Rule 14.1A

If Resolution 6 is passed, the Company will be able to issue Shares under the SSSP to eligible participants over a period of 3 years. The issue of any Shares to eligible participants under the SSSP (up to the maximum number of Shares stated in Section 5.4(c) below) will be excluded from the calculation of the number of equity securities that the Company can issue without Shareholder approval under Listing Rule 7.1.

For the avoidance of doubt, the Company must seek Shareholder approval under Listing Rule 10.14 in respect of any future issues of Shares under the SSSP to a related party or a person whose relationship with the Company or the related party is, in ASX's opinion, such that approval should be obtained.

If Resolution 6 is not passed, the Company will be able to proceed with the issue of Shares under the SSSP to eligible participants, but any issues of Shares will reduce, to that extent, the Company's capacity to issue equity securities without Shareholder approval under Listing Rule 7.1 for the 12 month period following the issue of the Shares.

### 5.4 Technical information required by Listing Rule 7.2 (Exception 13)

Pursuant to and in accordance with Listing Rule 7.2 (Exception 13), the following information is provided in relation to Resolution 6:

- (a) a summary of the key terms and conditions of the SSSP is set out in Schedule 3;
- (b) the Company has not issued any Shares under the SSSP as this is the first time that Shareholder approval is being sought for the adoption of the SSSP;
- (c) the maximum number of Shares proposed to be issued under the SSSP, following Shareholder approval in reliance on the Listing Rule 7.2 (Exception 13), is 10,000,000 Shares. It is not envisaged that the maximum number of Shares for which approval is sought will be issued immediately; and
- (d) a voting exclusion statement is included in Resolution 6 of this Notice.

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## 6. RESOLUTIONS 7 AND 8 – ISSUE OF SHARES TO DIRECTOR UNDER SALARY SACRIFICE PLAN

### 6.1 General

Subject to the adoption of the SSSP in accordance with Resolution 6, the Board will consider making offers to Directors Anthony Hall and Michael Schlumpberger, in accordance with the terms of the SSSP. The purpose of these offers will be to reduce the cash director fees in lieu of Shares in order to maximise the availability of cash for the Company's future exploration and development activities. A summary of the key terms and conditions of the SSSP is set out in Schedule 3.

The Company has agreed, subject to obtaining Shareholder approval, to allot and issue Shares (**Related Party Shares**) to Anthony Hall and Michael Schlumpberger (**Related Parties**) on the terms and conditions set out below.

## **6.2 Chapter 2E of the Corporations Act**

Chapter 2E of the Corporations Act requires that for a public company, or an entity that the public company controls, to give a financial benefit to a related party of the public company, the public company or entity must:

- (a) obtain the approval of the public company's members in the manner set out in sections 217 to 227 of the Corporations Act; and
- (b) give the benefit within 15 months following such approval,

unless the giving of the financial benefit falls within an exception set out in sections 210 to 216 of the Corporations Act.

The issue of the Related Party Shares to the Related Parties (or their respective nominees) constitutes giving a financial benefit and Anthony Hall and Michael Schlumpberger are each related parties of the Company by virtue of being Directors.

The Directors (other than Anthony Hall and Michael Schlumpberger) consider that Shareholder approval pursuant to Chapter 2E of the Corporations Act is not required in respect of the issue of Related Party Shares, because the agreement to issue the Related Party Shares, reached as part of the respective remuneration packages for Anthony Hall and Michael Schlumpberger, is considered reasonable remuneration in the circumstances and will be negotiated on an arm's length basis.

## **6.3 Listing Rule 10.14**

Listing Rule 10.14 provides that an entity must not permit any of the following persons to acquire equity securities under an employee incentive scheme without the approval of the holders of its ordinary securities:

- (a) 10.14.1: a director of the entity;
- (b) 10.14.2: an associate of a director of the entity; or
- (c) 10.14.3: a person whose relationship with the entity or a person referred to in Listing Rules 10.14.1 to 10.14.2 is such that, in ASX's opinion, the acquisition should be approved by security holders.

The issue of the Related Party Shares to Anthony Hall and Michael Schlumpberger falls within Listing Rule 10.14.1 and therefore requires the approval of Shareholders under Listing Rule 10.14.

Resolutions 7 and 8 each seek the required Shareholder approval for the issue of the Related Party Shares to the respective Related Party, under and for the purposes of Listing Rule 10.14.

## **6.4 Technical information required by Listing Rule 14.1A**

If Resolutions 7 and 8 are passed, the Company will be able to proceed with the issue of the Related Party Shares to Anthony Hall and Michael Schlumpberger under the SSSP within three years after the date of the Meeting (or such later date as permitted by any ASX waiver or modification of the Listing Rules). As approval pursuant to Listing Rule 7.1 is not required for the issue of the Related Party Shares (because approval is being obtained under Listing Rule 10.14), the issue of the

Related Party Shares will not use up any of the Company's 15% annual placement capacity.

If Resolutions 7 and 8 are not passed, the Company will not be able to proceed with the issue of the Related Party Shares to the Related Parties under the SSSP and will subsequently need to use the Company's funds to pay the required remuneration of the respective Related Parties.

## **6.5 Technical information required by Listing Rule 10.15**

Pursuant to and in accordance with the requirements of Listing Rule 10.15, the following information is provided in relation to Resolutions 7 and 8:

- (a) the Related Party Shares will be issued to Anthony Hall and Michael Schlumpberger (or their respective nominees), who each fall within the category set out in Listing Rule 10.14.1 by virtue of Anthony Hall and Michael Schlumpberger each being a Director;
- (b) the maximum number of Related Party Shares to be issued:
  - (i) to Anthony Hall is up to that number of Related Party Shares which, when multiplied by the issue price of a 10% discount to the 20-Day VWAP prior to the date of issue, equals \$160,000; and
  - (ii) to Michael Schlumpberger is up to that number of Related Party Shares which, when multiplied by the issue price of a 10% discount to the 20-Day VWAP prior to the date of issue, equals \$280,000; and

The Related Party Shares issued will be fully paid ordinary shares in the capital of the Company issued on the same terms and conditions as the Company's existing Shares;

- (c) the deemed issue price of the Related Party Shares will be equal to a 10% discount to the 20-Day VWAP for Shares prior to the date of issue and although the fees payable by the Company to Mr Hall and Mr Schlumpberger will be reduced, the Company will not receive any cash consideration for the issue of the Related Party Shares;
- (d) the current total remuneration package for:
  - (i) Anthony Hall is consulting fees equal to \$160,000 per year; and
  - (ii) Michael Schlumpberger is US\$282,290 per year, comprising of:
    - (A) a salary of US\$250,000;
    - (B) a superannuation payment of US\$11,650; and
    - (C) paid private accommodation of US\$20,640;
- (e) if the Related Party Shares are issued, the total remuneration package of each Related Party will remain the same, as the value of the Related Party Shares to be issued to each Related Party is equal to the decrease in the amount of fees payable to the respective Related Party;

- (f) as this is the first time that Shareholder approval is being sought for the adoption of the SSSP, no Shares have been previously issued under the SSSP;
- (g) the Related Party Shares will be issued to the Related Parties (or their respective nominees) no later than 3 years after the date of the Meeting (or such later date as permitted by any ASX waiver or modification of the Listing Rules) and it is anticipated the Related Party Shares will be issued on one date;
- (h) no funds will be raised from the issue of the Related Party Shares as they will be issued in lieu of directors' fees;
- (i) a summary of the material terms and conditions of the SSSP is set out in Schedule 3;
- (j) no loan is being made to Related Parties in connection with the acquisition of the Related Party Shares;
- (k) details of any Related Party Shares issued under the SSSP will be published in the annual report of the Company relating to the period in which they were issued, along with a statement that approval for the issue was obtained under Listing Rule 10.14;
- (l) any additional persons covered by Listing Rule 10.14 who become entitled to participate in an issue of Shares under the SSSP after Resolutions 7 and 8 is approved and who were not named in this Notice will not participate until approval is obtained under Listing Rule 10.14; and
- (m) a voting exclusion statement is included in Resolutions 7 and 8 of the Notice.

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## GLOSSARY

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**20-Day VWAP** means the volume weighted average price for Shares calculated over the 20 trading days on which trades in Shares were recorded prior to the date of issue.

**\$** means Australian dollars.

**ASIC** means the Australian Securities & Investments Commission.

**ASX** means ASX Limited (ACN 008 624 691) or the financial market operated by ASX Limited, as the context requires.

**Board** means the current board of directors of the Company.

**Business Day** means Monday to Friday inclusive, except New Year's Day, Good Friday, Easter Monday, Christmas Day, Boxing Day, and any other day that ASX declares is not a business day.

**Chair** means the chair of the Meeting.

**Closely Related Party** of a member of the Key Management Personnel means:

- (a) a spouse or child of the member;
- (b) a child of the member's spouse;
- (c) a dependent of the member or the member's spouse;
- (d) anyone else who is one of the member's family and may be expected to influence the member, or be influenced by the member, in the member's dealing with the entity;
- (e) a company the member controls; or
- (f) a person prescribed by the Corporations Regulations 2001 (Cth) for the purposes of the definition of 'closely related party' in the Corporations Act.

**Company** means American Pacific Borates Limited (ACN 615 606 114).

**Constitution** means the Company's constitution.

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

**Directors** means the current directors of the Company.

**Explanatory Statement** means the explanatory statement accompanying the Notice.

**General Meeting** or **Meeting** means the meeting convened by the Notice.

**Key Management Personnel** has the same meaning as in the accounting standards issued by the Australian Accounting Standards Board and means those persons having authority and responsibility for planning, directing and controlling the activities of the Company, or if the Company is part of a consolidated entity, of the consolidated entity, directly or indirectly, including any director (whether executive or otherwise) of the Company, or if the Company is part of a consolidated entity, of an entity within the consolidated group.

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

**Notice** or **Notice of Meeting** means this notice of meeting including the Explanatory Statement and the Proxy Form.

**Option** means an option to acquire a Share.

**Optionholder** means a holder of an Option.

**Proxy Form** means the proxy form accompanying the Notice.

**Resolutions** means the resolutions set out in the Notice, or any one of them, as the context requires.

**Section** means a section of the Explanatory Statement.

**Share** means a fully paid ordinary share in the capital of the Company.

**Shareholder** means a registered holder of a Share.

**US\$** means United States dollars.

**WST** means Western Standard Time as observed in Perth, Western Australia.

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## SCHEDULE 1– TERMS AND CONDITIONS OF RESOLUTION 1 OPTIONS

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1. Each Option will be granted by the Company for nil cash consideration.
2. The Options will expire the earlier of 6 December 2021 or 15 days after the shares in the Company trade at over \$0.50 for ten consecutive days on the ASX. (**Expiry Date**). Any Option not exercised before the Expiry Date will automatically lapse on the Expiry Date.
3. Each Option gives the Option holder the right to subscribe for one ordinary share in the Company. To obtain the right given by each Option, the Option holder must exercise the Options in accordance with the terms and conditions of the Options.
4. The exercise price payable upon exercise of each Option will be **AU\$0.30 (Exercise Price)**.
5. An Option holder may exercise their Options by lodging with the Company, before the Expiry Date:
  - (a) a written notice of exercise of Options specifying the number of Options being exercised (**Exercise Notice**); and
  - (b) a cheque or electronic funds transfer for the Exercise Price for the number of Options being exercised;
6. An Exercise Notice is only effective when the Company has received the full amount of the Exercise Price in cleared funds.
7. Within 10 Business Days of receipt of the Exercise Notice accompanied by the funds constituting the Exercise Price, the Company will allot and issue the number of ordinary shares required under these terms and conditions in respect of the number of Options specified in the Exercise Notice.
8. All ordinary shares allotted upon the exercise of Options will, upon allotment, rank pari passu in all respects with other shares of the Company.
9. In the event of any reorganisation (including consolidation, sub-division, reduction or return) of the issued capital of the Company before the expiry of any Options, the number of Options to which an Option holder is entitled or the Exercise Price of the Options or both will be reconstructed (as appropriate) in accordance with standard practice so as to ensure that said reorganisation is neither advantageous nor disadvantageous to the Option holder.
10. There are no participating rights or entitlements inherent in the Options and option holders will not be entitled to participate in new issues of shares offered to shareholders of the Company during the term of the Options.
11. If the Company makes a rights issue (other than a bonus issue), the exercise price of options on issue will be reduced according to the following formula:

$$A = O - \frac{E [P - (S + D)]}{(N + 1)}$$

Where:

- A = the new exercise price of the option; O = the old exercise price of the option;
- E = the number of underlying ordinary shares into which one option is exercisable;
- P = the average closing sale price per ordinary share (weighted by reference to volume) recorded on the stockmarket of ASX during the five trading days immediately preceding the ex-rights date or ex entitlements date (excluding special crossings and overnight sales and exchange traded option exercises);
- S = the subscription price for a security under the pro rata issue;
- D = the dividend due but not yet paid on existing underlying securities (except those to be issued under the pro rata issue); and
- N = the number of securities with rights or entitlements that must be held to receive a right to one new security.

12. Options are non-transferrable.

13. Compliance with Corporations Act, Listing Rules and Constitution:

- (a) Despite anything else contained in these terms and conditions, if the Corporations Act, Listing Rules or Constitution prohibits an act being done, that act must not be done.
- (b) Nothing contained in these terms and conditions prevents an act being done that the Corporations Act, Listing Rules or Constitution require to be done.
- (c) If the Corporations Act, Listing Rules or Constitution conflict with these terms and conditions, or these terms and conditions do not comply with the Corporations Act, Listing Rules or the Constitution, the holder authorises the Company to do anything necessary to rectify such conflict or non-compliance, including but not limited to unilaterally amending these terms and conditions.
- (d) The terms of the Options may be amended as necessary by the directors of the Company in order to comply with the Listing Rules, or any directions of ASX regarding the terms.

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## SCHEDULE 2 – TERMS AND CONDITIONS OF INCENTIVE OPTION PLAN

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A summary of the key terms and conditions of the Company's employee incentive option plan (**Plan or Option Plan**) is set out below:

- (a) **Eligibility:** Participants in the Plan may be:
- (i) a Director (whether executive or non-executive) of the Company, its subsidiaries and any other related body corporate of the Company (**Group Company**);
  - (ii) a full or part time employee of any Group Company;
  - (iii) a casual employee or contractor of a Group Company to the extent permitted by ASIC Class Order 14/1000 (or any amendment to or replacement of that Class Order) (**Class Order**); or
  - (iv) a prospective participant, being a person to whom the offer is made but who can only accept the offer if an arrangement has been entered into that will result in the person becoming a Participant under clauses (a), (b) or (c) above,

who is declared by the Board to be eligible to receive grants of Options under the Plan (**Participants**).

- (b) **Offer:** The Board may, from time to time, in its absolute discretion, make a written offer to any Participant (including a Participant who has previously received an offer) to apply for up to a specified number of Options, upon the terms set out in the Plan and upon such additional terms and conditions as the Board determines.
- (c) **Plan limit:** The Company must have reasonable grounds to believe, when making an offer, that the number of Shares to be received on exercise of Options offered under an offer, when aggregated with the number of Shares issued or that may be issued as a result of offers made in reliance on the Class Order at any time during the previous 3 year period under an employee incentive scheme covered by the Class Order or an ASIC exempt arrangement of a similar kind to an employee incentive scheme, will not exceed 5% of the total number of Shares on issue at the date of the offer.
- (d) **Issue price:** unless the Options are quoted on the ASX, Options issued under the Plan will be issued for no more than nominal cash consideration.
- (e) **Vesting Conditions:** An Option may be made subject to vesting conditions as determined by the Board in its discretion and as specified in the offer for the Option.
- (f) **Vesting:** The Board may in its absolute discretion (except in respect of a Change of Control occurring where Vesting Conditions are deemed to be automatically waived) by written notice to a Participant, resolve to waive any of the Vesting Conditions applying to Options due to
- (i) the Participant ceasing to be a Participant due to death or total and permanent disability; or
  - (ii) a Change of Control occurring; or



- (iii) the Company passing a resolution for voluntary winding up, or an order is made for the compulsory winding up of the Company.
- (g) **Lapse of an Option:** An Option will lapse upon the earlier to occur of:
- (i) an unauthorised dealing in the Option;
  - (ii) a Vesting Condition in relation to the Option is not satisfied by its due date, or becomes incapable of satisfaction, unless the Board exercises its discretion to vest the Option (e.g. due to death, total and permanent disability);
  - (iii) in respect of unvested Option only, a Participant ceases to be a Participant, unless the Board exercises its discretion to vest the Right (e.g. due to death, total and permanent disability) or allow the unvested Options to remain unvested after the relevant person ceases to be a Participant;
  - (iv) in respect of vested Options only, a relevant person ceases to be a Participant and the Option granted in respect of that person is not exercised within one (1) month (or such later date as the Board determines) of the date that person ceases to be a Participant;
  - (v) the Board deems that an Option lapses due to fraud, dishonesty or other improper behaviour of the Participant;
  - (vi) the Company undergoes a change in control or winding up, and the Board does not exercise its discretion to vest the Option;
  - (vii) the expiry date of the Option; and
  - (viii) the 7 year anniversary of the date of grant of the Option.
- (h) **Not transferrable:** Options are only transferrable with the prior written consent of the Board (which may be withheld in its absolute discretion) or by force of law upon death to the participant's legal personal representative or upon bankruptcy to the participant's trustee in bankruptcy.
- (i) **Shares:** Shares resulting from the exercise of the Options shall, subject to any Sale Restrictions (refer below) from the date of issue, rank on equal terms with all other Shares on issue.
- (j) **Quotation of Shares:** If Shares of the same class as those issued upon exercise of Options issued under the Plan are quoted on the ASX, the Company will, subject to the ASX Listing Rules, apply to the ASX for those Shares to be quoted on ASX within 10 business days of the later of the date the Shares are issued and the date any restriction period applying to the disposal of Shares ends.
- (k) **Share Sale Restrictions:** The Board may, in its discretion, determine at any time up until exercise of Options, that a restriction period will apply to some or all of the Shares issued to a Participant (or their eligible nominee) on exercise of those Options up to a maximum of seven (7) years from the grant date of the Options.
- (l) **No Participation Rights:** There are no participating rights or entitlements inherent in the Options and holders will not be entitled to participate in new issues of capital offered to Shareholders during the currency of the Options.

- (m) **Reorganisation:** If, at any time, the issued capital of the Company is reorganised (including consolidation, subdivision, reduction or return), all rights of a holder of an Option are to be changed in a manner consistent with the Corporations Act and the ASX Listing Rules at the time of the reorganisation.
  
- (n) **Amendments:** Subject to express restrictions set out in the Plan and complying with the Corporations Act, ASX Listing Rules and any other applicable law, the Board may at any time by resolution amend or add to all or any of the provisions of the Plan, or the terms or conditions of any Option granted under the Plan including giving any amendment retrospective effect.

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## SCHEDULE 3 – SALARY SACRIFICE SHARE PLAN – SUMMARY

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A summary of the key terms and conditions of the Company's salary sacrifice share plan (**SSSP**) is set out below:

- (a) **Eligibility:** The Board may determine the persons who are eligible to participate in the SSSP from time to time and the Board may make an invitation to participate in the SSSP to an eligible person.

Participants in the SSSP may be:

- (i) a Director (whether executive or non-executive) of the Company, its subsidiaries and any other related body corporate of the Company (**Group Company**);
- (ii) a full or part time employee of any Group Company;
- (iii) a contractor, who is:
  - (A) an individual with whom a Group Company has entered into a contract for the provision of services under which the individual performs work for a Group Company; or
  - (B) a body corporate with whom a Group Company has entered into a contract for the provision of services under which an individual (who is a director of the body corporate) or his or her spouse, performs work for a Group Company,

where, the individual who performs the work under or in relation to the contract is, or might reasonably be expected to be, engaged to work the number of hours that are the pro-rata equivalent of 40% or more of a comparable full-time position with a Group Company.

- (iv) a casual employee of a Group Company to the extent permitted by ASIC Class Order 14/1000 (or any amendment to or replacement of that Class Order); or
  - (v) a person who has entered into an arrangement that will result in the person becoming a person under clauses (i), (ii), (iii) or (iv) above,
- (b) **Invitation:** An invitation to an eligible person to acquire securities under the SSSP may be on such terms and conditions as the Board decides from time to time,
- (c) **Salary Sacrifice:** The Board may determine the terms and conditions of the salary sacrifice arrangement for which securities under the SSSP are offered in lieu of that remuneration. In respect of an offer to participate under the SSSP through a salary sacrifice arrangement:
- (i) the Board may determine the amount of the remuneration which may be salary sacrificed by each eligible person;
  - (ii) the number of securities granted, issued, transferred or allocated (as applicable) to a participant will be indicated in the invitation; and
  - (iii) such offer will be conditional on the Company and the participant entering into an agreement setting out the terms and conditions of the salary sacrifice arrangement.

The Board may determine in its sole and absolute discretion that any salary sacrifice arrangement agreed to by a participant is to be continued until the participant ceases to participate in the SSSP.

- (d) **Non-transferable:** An invitation is not transferable or capable of being acted upon by a person other than the eligible person to whom it is addressed.
- (e) **Tax treatment:** The SSSP is a scheme to which Subdivision 83A-C of the ITAA 1997 applies (subject to the conditions in the ITAA 1997).
- (f) **Superannuation Contributions:** Salary sacrifice contributions will be eligible for employer paid superannuation contributions. The prevailing superannuation guarantee contribution rate will be applied to the salary sacrifice amount in accordance with the deduction amount as elected.
- (g) **Issue, transfer or allocation:** Upon acceptance of an invitation and the deduction of any salary sacrifice contribution, the Board must, subject to its discretion, either issue, transfer or allocate the prescribed number of Shares to the eligible person in accordance with the invitation.
- (h) **Restrictions on dealing with securities:** The Board may, at its discretion, impose restrictions on dealing in respect of any Shares allocated under the SSSP and may implement any procedure it considers appropriate to enforce such restrictions. A participant may, request to remove any restrictions on dealing, but only on the basis of exceptional circumstances.
- (i) **Withholding and other taxes:**
  - (i) Unless otherwise required by law, no Group Company is responsible for any tax that may become payable by a participant as a consequence of or in connection with the grant of any right, the issue, transfer or allocation of any Shares or any dealing with any securities or any Shares under the SSSP.
  - (ii) If a Group Company is obliged, or reasonably believes it may have an obligation, as a result of or in connection with any securities granted or Shares issued, transferred or allocated under the SSSP, to account for:
    - (A) income tax or employment taxes under any wage, withholding or other arrangements; or
    - (B) any other tax, social security contributions or levy or charge of a similar nature,that is a liability of the participant, then the relevant Group Company is entitled to be reimbursed by the participant for the amount or amounts so paid or payable.