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Partnership

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**Immune System Therapeutics Limited (In Liquidation)**  
**ACN 097 244 721 ("the Company" or "ISTL")**

**Circular to Creditors**  
**25 May 2015**

We refer to the appointment of Barry Kogan and Tony McGrath as Joint and Several Voluntary Administrators of ISTL on 3 October 2014. As creditors may be aware, at the second creditors meeting held on 14 January 2015, it was resolved that the Company be placed into liquidation and that Barry Kogan and Tony McGrath be appointed as Joint and Several Liquidators.

This circular provides a further update to creditors and covers the following matters:

1. Sale of ISTL's business and assets;
2. Receipts and payments for the period from 3 October 2014 to 1 May 2015;
3. Estimated return to unsecured creditors;
4. Remuneration; and
5. Next steps.

**1 Sale of ISTL's business and assets**

As previously reported, prior to our appointment, the Company had invested circa \$36 million in various research and development activities relating to its drug, IST-1097. Immediately following our appointment, we commenced marketing the business/assets of ISTL for sale to extract value from these activities for creditors.

During the sale process we engaged with over 40 interested parties (consisting of various local and offshore pharmaceutical, private equity and venture capital firms). Additionally, in order to market the assets to a wider audience, the Administrators placed an advertisement in the Australian Financial Review.

As previously outlined, certain parties undertook detailed diligence (both scientific and financial).

We requested parties to submit their final bids together with comments on our business sale deed by 10 December 2014. Following receipt of final bids we continued to liaise with a number of parties in an effort to consummate a sale.

After significant negotiations, on 4 March 2015, a sale of ISTL's business/assets to HaemalogiX Pty Limited ("HaemalogiX") for \$1.275 million (GST inclusive) was effected. We note that several former employees and directors have an interest or involvement in the purchasing entity.

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In association  
with



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During the sale process, Lonza Sales AG ("Lonza") (ISTL's largest creditor owed circa \$3.2 million – circa 50.5% of total creditors) claimed a lien over the master cell bank (a key asset required to advance IST-1097) and controlled the issuance of critical licencing for the drug. We note that both the master cell bank and licencing were required by HaemalogiX for the sale to proceed.

In late January/early February 2015, Lonza advised that they would not release the master cell bank or provide the relevant licencing to HaemalogiX, unless they received an amount of \$1 million. We also note that in the absence of the master cell bank and licencing, HaemalogiX indicated they would not proceed with a purchase of ISTL's assets.

Given the funding constraints to meet the very significant holding and preservation costs associated with the drug and that no other parties were in a position to proceed with a sale, with HaemalogiX's endorsement, we agreed to remit \$1 million from the purchase price to Lonza to enable a sale to occur. As part of the transaction, Lonza agreed to not participate in any distributions from the liquidation.

As a result, the sale consideration which will be made available to unsecured creditors of ISTL totals circa \$160,000 (being \$1.275m less GST and the payment to Lonza).

While the immediate financial outcome is disappointing, we note that as part of the sale, HaemalogiX have an obligation to repay all ISTL's creditors in full subject to certain events ("the Contingent Payment"), which broadly include (but are not limited to):

- If within 4 calendar years HaemalogiX enters into one or more transactions for the sale or licencing of any of the assets acquired from ISTL; and
- HaemalogiX receives cash proceeds of AUD\$20 million or more; and
- The funds are not used solely for the purpose of clinical research, development activities or other research.

In this regard, HaemalogiX will execute separate Deed Polls with unsecured creditors to formalise this obligation within 30 calendar days of the Liquidators providing HaemalogiX with details of creditors' claims following completion of our distribution process. We attach a copy of the pro forma Deed Poll for your reference as Annexure "A".

## **2 Receipts and payments for the period from 3 October 2014 to 1 May 2015**

Set out at Annexure "B" is a summary of receipts and payments from the date of our appointment as Administrators on 3 October 2014 to 1 May 2015. Funds to the credit of ISTL's accounts as at 1 May 2015 total \$552,222.

## **3 Estimated return to unsecured creditors**

Our current best estimate of the return available to creditors on a 'high' and 'low' basis is enclosed as Annexure "C". Both scenarios do not include recoveries from any antecedent transactions (to be conservative) – we refer creditors to our report pursuant to Section 439A of the Corporations Act dated 3 November 2014 which details these transactions.

Additionally, this estimate does not take into account the Contingent Payment.

We note that since our previous forecast the sale timetable was extended to allow contract negotiations to continue. As a result, the following costs have increased:

- asset preservation costs including product storage (in various jurisdictions) and patent renewal/registration fees;



- operational costs including additional rent and wages/contractor fees; and
- Administrators' remuneration and legal fees.

We note that HaemalogiX provided the Liquidators with limited funding as sale negotiations became protracted (in addition to the sale consideration) to meet certain of the additional costs (which is reflected in the attached receipts and payments summary).

#### **4 Remuneration**

At the meeting of creditors held on 14 January 2015, creditors resolved to approve the Liquidators' remuneration for the period from 15 January 2015 onwards in the amount of \$138,810 (exclusive of GST). We note that this remuneration was based on expected future work in the liquidation (with the assumption that the sale would be concluded by 31 January 2015, as set out in our circular dated 5 January 2015).

This cost estimate included circa \$47,000 (exclusive of GST) to cover time costs associated with the remaining sale activities, including (but not limited to) negotiating, executing and completing the business sale deed. As a result of sale process delays (and the extent of negotiations required), the Liquidators' time costs associated with the sale process have increased to \$136,476 (exclusive of GST).

Enclosed as Annexure "D" is a schedule detailing the Liquidators' remuneration incurred from 15 January 2015 to 20 March 2015 ("the Period") totalling \$201,835 (exclusive of GST). Also attached as Annexure "E" is a description of work completed during the Period.

While our time costs for the period exceed our fee approval by \$63,025 (exclusive of GST), it is our intention to limit further fee approval unless events or circumstances change beyond what is presently anticipated to an amount of \$35,000 (exclusive of GST), i.e. a shortfall for the Period of \$28,025 (exclusive of GST) is incurred prior to accounting for additional work required to finalising the liquidation. We will seek approval for this additional remuneration at a meeting of the Committee of Inspection in due course.

#### **5 Next steps**

Now that the sale of ISTL's business and assets has completed, our key objective is to pay a dividend to unsecured creditors as soon as possible.

The process for payment of a dividend to unsecured creditors of a company in liquidation is as follows:

- (i) Obtain taxation clearance from the Australian Taxation Office ("ATO");
- (ii) Call for proofs of debt;
- (iii) Adjudicate on proofs of debt; and
- (iv) Pay the dividend.

In this regard, the time period from issuing the initial notice calling for proofs of debt to the intended date of payment can be no more than two months. Accordingly, in order to comply with the statutory timetable, we must first obtain taxation clearance from the ATO (which can take several months).

Separately, as Liquidators our efforts will also focus on the following:

- realising the remaining assets of ISTL (i.e. laboratory equipment);
- investigating antecedent/voidable transactions;
- reporting to the Australian Securities and Investments Commission ("ASIC") and creditors in relation to offences (if any); and



- ultimately arranging for the deregistration of the Company.

We will continue to keep you informed as the liquidation progresses and will issue further information regarding dividends to unsecured creditors in due course.

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If you have any further queries in relation to this circular or the liquidation, please do not hesitate to contact Summer Nguyen of my staff on +61 2 9338 2608.

Dated Monday, 25 May 2015

Barry Kogan  
*Joint and Several Liquidator*

**Enclosures:**

Creditors Deed Poll

Liquidators' receipts and payments

Estimated return to unsecured creditors

Liquidators' remuneration from 15 January 2015 to 20 March 2015

Description of work completed for the period from 15 January 2015 to 20 March 2015

## Schedule 2 – Form of Deed Poll

### HAEMALOGIX: ADDITIONAL PAYMENT DEED POLL

**BY:** The party listed in item 1 of the schedule to this deed (**Promisor**).

**IN FAVOUR OF:** The party or parties listed in item 2 of the schedule to this deed (**Beneficiaries**).

#### Background

- A. Immune System Therapeutics Limited ACN 097 244 721 (**Company**) is an unlisted Australian public company that was undertaking research, development and commercialisation in the field of monoclonal antibodies for the treatment of blood cancers and other blood disorders (**Business**).
- B. On 3 October 2014, Mr Barry Kogan and Mr Anthony McGrath, of McGrathNicol were jointly and severally appointed administrators of Company under section 436A of the Australian Corporations Act 2001 (**Corporations Act**).
- C. On 14 January 2015, Mr Barry Kogan and Mr Anthony McGrath, of McGrathNicol (**Liquidators**) were jointly and severally appointed liquidators of Company.
- D. Promisor, Liquidators and Company have entered into a Business Sale Deed dated [insert] 2015 (**Sale Deed**) under which the Business and various assets (collectively, the **Assets**) are to be sold to Promisor.
- E. A condition of closing under the Sale Deed is that Promisor enter into this deed poll in favour of Beneficiaries.

#### Operative Provisions

1. Subject to clauses 2 and 8, if within 4 calendar years of the closing date of the Sale Deed (as set out in item 3 of the schedule to this deed) and through one or more transactions for the sale or licensing of any of the Assets acquired from the Company (through any means whatsoever), Promisor receives cash proceeds in cleared funds of A\$20 million or more (**Payment Threshold**), Promisor undertakes in favour of each Beneficiary to pay the amount of their respective debts that are proved in and admitted by the Liquidators in the liquidation of the Company after deduction of such portion of such debts that is repaid whether in cash or by distribution or transfer of other property of equivalent value by a payment, distribution or transfer by the Liquidator of the Company, (referred to in this deed poll as the **Proved Debts Balance**).
2. Any cash proceeds received by Promisor solely for the purposes of:
  - (a) clinical research or development activities (including but not limited to drug storage, validation studies, stability evaluation, formulation development and patent research, filing and maintenance fees and prosecutions); or
  - (b) other research activities (including without limitation in each instance reasonable, licensing, administration and management costs),

will not be included in determining whether the Payment Threshold has been reached under clause 1.

3. Promisor undertakes to make the payment to each Beneficiary of their respective Proved Debts Balance within 30 calendar days after receipt of the cash proceeds in cleared funds that results in the total amount of all such cash proceeds received in cleared funds being equal to or greater than amount of the Payment Threshold.
4. For the avoidance of doubt, in the event that:
  - (a) Promisor secures agreements to the value of A\$20 million or more (after excluding any cash proceeds under clause 2) regarding one or more transactions involving the sale or licensing of the Assets on or before the fourth (4<sup>th</sup>) anniversary of this Deed; and
  - (b) due consideration under such agreements are only received by Promisor after the fourth (4<sup>th</sup>) anniversary of this Deed,

Promisor remains obliged to make payment to each Beneficiary of their respective Proved Debt Balance.

5. Without limiting clause 1 above, Promisor may (but is not obliged to) pay some or all of the Proved Debt Balances of some or all Beneficiaries if it determines, in its sole and absolute discretion, that the making of such payment is in the best interests of Promisor and its shareholders, investors or creditors. If Promisor only partially repays some of the Proved Debt Balances of some or all Beneficiaries, the remainder will be payable in accordance with clause 1 above.
6. For the purpose of giving effect to this deed poll:
  - (a) the Proved Debts Balance provided by the Liquidator as required by the business sale deed will comprise proved and admitted amounts of principal and interest accrued up to the date of the Company entering into voluntary administration but not any claim for interest on such principal arising after the commencement of the administration of the Company and, for the avoidance of doubt, will not include interest on the Proved Debt Balance on or after the date of this deed poll;
  - (b) a certificate or other form of information from the Liquidators as to the amount of the Proved Debts Balance or by which the Proved Debts Balance can be calculated for a Beneficiary, is conclusive and binding on the Beneficiary; and
  - (c) payment by Promisor of the respective Proved Debts Balance of a Beneficiary:
    - (i) may be made by payment into the last known bank account of such Beneficiary or by mailing a cheque to its last known address; or
    - (ii) on return of any such payment to Promisor, may be paid into a separate bank account on trust for such Beneficiary pending payment either to such Beneficiary or to the relevant authorities under laws relating to unpaid moneys,

will be a full and final discharge of Promisor of its obligations to the Beneficiaries under this deed poll.

7. For the avoidance of doubt, a Beneficiary whose Proved Debts Balance is paid into a trust account or to authorities under laws relating to unclaimed moneys:
  - (a) will not be entitled to any interest that may be paid on the trust account (which Promisor is entitled to sweep from the account and use for its own business purposes) or to interest from Promisor in relation to moneys paid to the authorities; and
  - (b) in any case, will only be entitled to be paid from the trust account the net amount after deduction of bank fees and charges relating to the operation and maintenance of the account from time to time.
8. Promisor's obligation to make payment of the Proved Debt Balance under clause 1 to a Beneficiary is subject to that Beneficiary:
  - (a) co-operating with Promisor and the Liquidators to promptly translate any assets of the Company in the possession or control of the Beneficiary to Promisor, on the Business being sold to Promisor;
  - (b) if requested by Promisor, engaging in good faith commercial negotiations with Promisor to agree, and further execute, a services agreement (being for such services that were provided by the Beneficiary to the Company before its entry into administration) on reasonable commercial terms that are no less favourable than those customarily made available by the Beneficiary to its customers; and
  - (c) engaging in good faith negotiations with Promisor to agree, and further execute, any other services or supply agreement reasonably requested by Promisor in order to develop or exploit the Assets, on reasonable commercial terms no less favourable than those customarily made available by the Beneficiary to its existing customers.
9. In this deed poll:
  - (a) singular includes the plural, and plural includes the singular and another grammatical form of a defined expression or term has a corresponding meaning;
  - (b) a reference to a person or a person holding an office (including of administrator or liquidator) includes a reference to the person's successors, replacements and assigns; and
  - (c) terms given a meaning in the Corporations Act have the same meaning when used in this deed poll.
10. This deed poll is governed by the laws of jurisdiction set out in item 4 of the schedule to this deed poll. The courts of that jurisdiction have exclusive jurisdiction to determine proceedings relating to this deed poll.
11. For the avoidance of doubt, the Company and the Liquidators:
  - (a) are not parties to this deed poll; and
  - (b) have no obligations under this deed poll.

**Schedule**

Item	Description
1. Promisor	HaemalogiX Pty Ltd ACN 603 314 496 of c/- Piper Alderman, Level 23, Governor Macquarie Tower, 1 Farrer Place, Sydney, New South Wales, 2000
2. Beneficiaries	Those known creditors of the Company at the commencement of the administration of the Company commenced on 3 October 2014
3. Sale Deed Closing Date	[insert] 2015
4. Jurisdiction	State of New South Wales Australia

**Executed** on [insert] 2015

**Executed** as a deed poll  
for and on behalf of Promisor  
by:

X.....  
Director

X.....  
Director/Secretary

.....  
Name (please print)

.....  
Name (please print)



## Annexure "B"

### Receipts and payments for the period from 3 October 2014 to 1 May 2015

Set out below are the Administrators'/Liquidators' receipts and payments for the period from 3 October 2014 to 1 May 2015:

#### ISTL - Summary of receipts and payments for the period from 3 October 2014 to 1 May 2015

<b>Particulars</b>	<b>A\$</b>
<b>Receipts</b>	
Cash at bank at appointment	1,338,170
Funding contribution from HaemalogiX	44,830
GST refund	25,207
Interest income	2,667
Sale of ISTL's assets	1,275,000
Sale of laboratory equipment	22,000
Sundry receipts	83
<b>Total receipts</b>	<b>2,707,957</b>
<b>Payments</b>	
Administrators' fees	(437,955)
Administrators' expenses	(3,840)
Asset maintenance and preservation costs	(87,860)
Bank charges	(227)
Data room and advertisements	(17,868)
Insurance	(11,423)
Legal fees	(48,753)
Lonza settlement	(1,000,000)
Preferential employee entitlements	(391,237)
Rent, utilities and other operational expenses	(52,186)
Sundry expenses	(170)
Valuation fees	(3,300)
Wages, salaries and contractors	(100,916)
<b>Total payments</b>	<b>(2,155,735)</b>
<b>Cash at bank as at 1 May 2015</b>	<b>552,222</b>

*Source: Liquidators' bank account*



## Annexure "C"

### Estimated return to creditors

Set out below is the estimated return to creditors:

Estimated return to creditors		
Particulars	High \$	Low \$
<b>Assets</b>		
Cash at bank at 1 May 2015	552,222	552,222
GST refund	29,176	29,176
Rental bonds	24,035	9,713
R&D credits	-	-
Voidable transaction recoveries	Unknown	Unknown
<b>Total assets</b>	<b>605,433</b>	<b>591,111</b>
<b>Less costs</b>		
GST payable	(117,916)	(117,916)
Staff, asset maintenance and operational costs	(67,945)	(77,945)
Preferential employee entitlements	(4,239)	(4,239)
Estimated Liquidators' fees and disbursements	(178,148)	(178,148)
Legal and other professional costs	(35,000)	(45,000)
<b>Total costs</b>	<b>(403,248)</b>	<b>(423,248)</b>
<b>Amount available for unsecured creditors</b>	<b>202,185</b>	<b>167,863</b>
Unsecured creditor claims (incl. noteholder claims and excl. Lonza)	3,118,874	4,121,165
<b>Estimated return to unsecured creditors</b>	<b>6.48%</b>	<b>4.07%</b>
<b>Residual funds available to shareholders</b>	<b>Nil</b>	<b>Nil</b>

Key points:

- Cash at bank includes the sale proceeds from ISTL's business/assets and funding received from HaemalogiX.
- The above analysis does not include any recoveries from voidable transactions and accordingly, is considered conservative.
- Staff, asset maintenance and operational costs and Liquidators' remuneration has increased from our previous forecast due to the extension of the sale timetable (to accommodate bidders).
- Preferential employee claims have been paid in full (for all employees except non-executive directors). These entitlements are included under the 'Preferential employee entitlements' heading.
- As reported previously, under either scenario, a significant shortfall to unsecured creditors (including noteholders and excluding Lonza) is incurred, and there are no funds available for shareholders of the Company.
- Creditors should note that the above estimates are preliminary only and are subject to change as creditor claims are considered and adjudicated, and assets are better understood. No warranty as to the accuracy or reliability of this estimate is provided.
- All figures outlined above are GST exclusive.



## Annexure "D"

### Liquidators' remuneration for the period from 15 January 2015 to 20 March 2015

Set out below is the calculation of the Liquidators' remuneration for the period from 15 January 2015 to 20 March 2015:

Remuneration for the period from 15 January 2015 to 20 March 2015														
Employee	Position	Rate \$/hr (ex GST)	Total		Sale of business and assets		Trading		Creditors, shareholders and investigations		Employees		Strategy, statutory and administration	
			hrs	\$ (ex GST)	hrs	\$ (ex GST)	hrs	\$ (ex GST)	hrs	\$ (ex GST)	hrs	\$ (ex GST)	hrs	\$ (ex GST)
Barry Kogan	Partner	690	97.30	67,137.00	91.90	63,411.00	1.30	897.00	2.00	1,380.00	0.50	345.00	1.60	1,104.00
Tony McGrath	Partner	690	7.00	4,830.00	7.00	4,830.00	-	-	-	-	-	-	-	-
Hugh Monaghan	Director	580	25.50	14,790.00	25.50	14,790.00	-	-	-	-	-	-	-	-
Rosemary Winser	Director	460	0.20	92.00	-	-	-	-	-	-	-	-	0.20	92.00
Mitchell Mansfield	Senior Manager	515	116.70	60,100.50	90.70	46,710.50	13.90	7,158.50	2.10	1,081.50	2.90	1,493.50	7.10	3,656.50
Summer Nguyen	Assistant Manager	370	111.40	41,218.00	18.20	6,734.00	22.90	8,473.00	26.20	9,694.00	21.70	8,029.00	22.40	8,288.00
Peta Portelli	Accountant	245	28.90	7,080.50	-	-	12.90	3,160.50	1.30	318.50	-	-	14.70	3,601.50
Jack Freeman	Accountant	245	10.10	2,474.50	-	-	3.30	808.50	5.10	1,249.50	-	-	1.70	416.50
Various	Administration Staff	160	25.70	4,112.00	-	-	12.60	2,016.00	4.00	640.00	1.00	160.00	8.10	1,296.00
Total (excluding GST)			422.80	201,834.50	233.30	136,475.50	66.90	22,513.50	40.70	14,363.50	26.10	10,027.50	55.80	18,454.50
GST				20,183.45										
<b>Total (including GST)</b>				<b>222,017.95</b>										



## Annexure “E”

### Description of work completed for the period from 15 January 2015 to 20 March 2015

Set out below is a summary of work completed during the period from 15 January 2015 to 20 March 2015:

- Liaising with the Company's pre-appointment patent attorneys with respect to managing, registering and renewing ISTL's patents;
- Attending to the preservation of ISTL's assets (both intellectual property assets and physical assets – e.g. drug storage, testing etc);
- Liaising with insurance brokers in relation to the adequacy of ongoing insurance coverage for ISTL's assets and activities;
- Liaising with the Company's pre-appointment accountants with the respect to ISTL's potential research and development tax credit for the year ending 30 June 2015;
- Liaising with the Ultimo property landlord (ISTL's former premises) with respect to releasing the bank guarantee for the benefit of creditors;
- Attending to statutory duties including the lodgement of minutes for the reconvened second meeting of creditors and final six monthly return for the administration period;
- Liaising with stakeholders, including:
  - employees;
  - unsecured trade creditors;
  - convertible note holders; and
  - shareholders;
- Investigating the validity of certain unsecured creditor claims;
- Reviewing, calculating and paying outstanding PAYG and superannuation;
- Terminating the Company's Chief Financial Officer and attending to the payment of her outstanding employee entitlements;
- Liaising with the Company's landlord in relation to ending the current lease arrangements;
- Preparing and issuing a notice declaring shareholdings valueless to shareholders;
- Attending to the asset sale process, including:
  - attending multiple meetings and teleconferences with HaemalogiX (and their legal advisors) with respect to their interest in purchasing ISTL's assets;
  - extensive negotiation of the terms of the business sale deed with certain interested parties;
  - extensive negotiations with HaemalogiX and Lonza with respect to ancillary sale documentation, including a confidentiality deed, licensing agreement and various deed polls;
  - obtaining and considering legal advice in respect of the Lonza lien over the Master Cell bank;



- preparing for and attending to negotiations in relation to a settlement agreement with Lonza in respect of their alleged lien over the Master Cell bank;
  - preparing various cash flow budgets and liaising with interested parties with respect to funding requirements to meet holding costs while sale negotiations continue;
  - preparing estimated return analysis on the basis of offers received;
  - considering GST implications and exploring various options to maximise the return to creditors;
  - reviewing, amending and executing the business sale deed and the Lonza settlement agreement;
  - instructing auctioneers to commence a sale campaign for the Company's laboratory equipment; and
  - attending teleconferences with the auctioneers to discuss the results of the auction and expression of interest sales campaigns.
- Ongoing liaison with the Company's major unsecured creditor, Lonza (and their legal representatives), regarding the sale of ISTL's assets and the administration generally;
  - Instructing lawyers in relation to various legal matters;
  - Preparing this circular; and
  - Attending to other general and statutory requirements.