

## WAM Leaders and Absolute Equity Performance Fund set to merge

14 June 2022  
ASX announcement

WAM Leaders Limited (**WAM Leaders**) (ASX: WLE) and Absolute Equity Performance Fund Limited (**AEG**) (ASX: AEG) are pleased to announce that they have entered into a Scheme Implementation Agreement (which is annexed to this announcement) to merge the two entities (**Proposed Transaction**).

It is proposed that WAM Leaders will acquire 100% of the shares in AEG through a Scheme of Arrangement (**Scheme**). Under the Scheme, AEG shareholders will receive new WAM Leaders shares (**Scrip Consideration**) as consideration for their AEG shares. The number of WAM Leaders shares to be offered for each AEG share will be determined by a formula based on the ratio of the net tangible assets (**NTA**) of WAM Leaders before tax (**pre-tax NTA**) to the pre-tax NTA of AEG. Using the latest available pre-tax NTA of WAM Leaders (dated 30 April 2022) and the latest available pre-tax NTA of AEG (dated 31 May 2022), as an example<sup>1</sup>, AEG shareholders would receive 0.622 new WAM Leaders shares for each AEG share they hold under the Proposed Transaction, with an indicative market value of \$0.92 per AEG share, representing a 10.6% uplift over the closing share price of AEG on 10 June 2022.

It is the current intention of the WAM Leaders Board to ensure that all AEG shareholders who receive WAM Leaders shares under the Scheme will be eligible to receive any FY2022 fully franked final dividend that is paid by WAM Leaders.

The proposed merger of WAM Leaders and AEG follows AEG's consultation process announced on 16 February 2022, under which the AEG Board and its advisors evaluated a range of alternatives with a view to maximise value for all AEG shareholders.

WAM Leaders Chairman and Chief Investment Officer Geoff Wilson AO said: "The WAM Leaders and AEG Boards of Directors believe that the Scheme will be beneficial to both companies and result in a strong merged entity leveraging Wilson Asset Management's investment strategy. We look forward to welcoming AEG shareholders to the Wilson Asset Management family as we continue to grow WAM Leaders."

### AEG Board of Directors' recommendation

Subject to the independent expert determining that the Proposed Transaction is in the best interests of AEG shareholders, and in the absence of a superior proposal, the AEG Board of Directors believe the Proposed Transaction is in the best interests of AEG shareholders and intend to vote any AEG shares they own or control in favour of the Proposed Transaction.

Reasons for the AEG Board's recommendation will be provided in a Scheme Booklet which AEG will distribute in due course. The Scheme Booklet will include details of the Scheme, including an independent expert's report, the scheme of arrangement document, and the deed poll in favour of the AEG shareholders.

AEG Chairman Marc Fisher said: "Wilson Asset Management's reputation for putting shareholders first mirrors our own, and reflects the outcome the AEG Board sought when embarking upon the consultation process. Wilson Asset Management's pioneering strategies and strong focus on fully-franked dividend income for shareholders deliver them a deservedly unrivalled position in the LIC space, and I very much look forward to working with them."

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<sup>1</sup> Based on WAM Leaders closing share price of \$14.85 per share as at 10 June 2022 and pre-tax NTA of \$1,532 as at 30 April 2022, and AEG's closing share price of \$0.835 per share as at 10 June 2022 and pre-tax NTA of \$0.953 as at 31 May 2022. The implied value of the Offer depends on the value of WAM Leaders share price and pre-tax NTA, and AEG's pre-tax NTA, at the Calculation Date and the WAM Leaders share price at the time the Scheme consideration is issued (on the Implementation Date), and could be higher or lower than the example used.

On implementation of the Proposed Transaction, an invitation will be made to AEG Chairman, Marc Fisher, to join the WAM Leaders Board subject to the corporate governance processes and protocols of WAM Leaders.

### Key benefits of the Proposed Transaction for AEG shareholders

The Proposed Transaction will create a single listed investment company with a larger capital and shareholder base, to be managed by Wilson Asset Management.

The WAM Leaders Board of Directors believe the merged entity will deliver the following benefits:

- the potential to exit their investment in AEG at or above the stated pre-tax NTA backing of the company and at a premium to the share price of AEG;
- Wilson Asset Management's investment expertise and experience;
- Wilson Asset Management's commitment to shareholder engagement;
- a history of paying fully franked dividends to shareholders;
- WAM Leaders' track record of investment portfolio performance; and
- WAM Leaders' greater market capitalisation and on-market liquidity.

### Key benefits of the merger for WAM Leaders shareholders

If the Proposed Transaction proceeds, it will create a single listed investment company with a larger capital and shareholder base. On a pre-tax NTA basis, it is expected that the WAM Leaders net assets will increase by approximately \$86.0 million<sup>2</sup> as at 30 April 2022.

The WAM Leaders Board of Directors believe the merged entity will deliver the following benefits for WAM Leaders shareholders:

- a stable and clearly articulated investment strategy and a proven investment manager with a track record of delivering investment portfolio outperformance for shareholders since inception in May 2016;
- a reduced management expense ratio as a result of the removal of duplication of expenses such as ASX listing fees, share registry fees, auditing fees, compliance costs and other public listed company costs, as well as a larger pool of assets to spread the expenses across;
- access to greater on-market liquidity for shareholders;
- improving the prospect of broker and research coverage;
- garnering additional interest from financial planners; and
- equitably and efficiently grow the Company's pre-tax NTA to approximately \$1,670.6 million<sup>2</sup> with approximately 24,700 shareholders.

### Scheme Implementation Agreement and indicative timeline

WAM Leaders and AEG have entered into the attached Scheme Implementation Agreement, which contains the terms and conditions on which WAM Leaders and AEG will implement the Proposed Transaction. The Scheme Implementation Agreement includes a number of customary clauses and is subject to conditions precedent including AEG shareholders approving the Scheme in accordance with the *Corporations Act 2001*(Cth), the independent expert concluding that the Proposed Transaction is in the best interests of AEG shareholders and the Federal Court approving the Scheme.

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<sup>2</sup> Based on the WAM Leaders pre-tax NTA of \$1,532 as at 30 April 2022 and AEG's pre-tax NTA of \$0.953 as at 31 May 2022.

Subject to any adjustments required by ASIC or ASX, the date and time for determining the exchange ratio will be 5pm on the date the Scheme becomes legally binding, i.e. after both AEG shareholders and the court have approved the Proposed Transaction (**Calculation Date**). This will ensure that changes to AEG and WAM Leaders' respective NTA's before the Scheme has been approved will be taken into account in the determination of the exchange ratio.

It is currently anticipated that AEG shareholders will be given the opportunity to vote on the Scheme at a meeting expected to be held in September 2022. Detailed information relating to the Scheme will be set out in the Scheme Booklet, which is expected to be sent to AEG shareholders during August 2022.

An indicative timetable for the Proposed Transaction is set out below:

Event	Expected Date
First Court date	Early August 2022
Scheme Booklet to Absolute Equity Performance Fund sent to shareholders	Early August 2022
Scheme Meeting	Mid September 2022
Second Court date	Mid-Late September 2022
Effective date / Calculation date for the exchange ratio	Late September 2022
Record date	Late September 2022
Implementation date	Early October 2022

The indicative timetable is subject to finalisation and review with the ASX.

## Contact details and advisors

AEG is being advised by Mont Lawyers as legal adviser.

For further information, please contact:

Lisa Dadswell

### Company Secretary

[Lisa.Dadswell@boardroomlimited.com.au](mailto:Lisa.Dadswell@boardroomlimited.com.au)

WAM Leaders is being advised by Mills Oakley as legal adviser.

### Chief Financial Officer & Company Secretary

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This announcement has been authorised by the boards of WAM Leaders Limited and Absolute Equity Performance Fund Limited.

## About Absolute Equity Performance Fund

Absolute Equity Performance Fund Limited (ASX: AEG) provides investors with a diversified portfolio of Australian listed equities, with the aim of achieving positive returns regardless of share market performance, through an "equity market neutral" style of investing. AEG's objective is to deliver absolute returns through capital growth and income regardless of market movements.

## About WAM Leaders

WAM Leaders Limited (ASX: WLE) is a listed investment company (LIC) managed by Wilson Asset Management. Listed in May 2016, WAM Leaders provides investors with exposure to an active investment process focused on identifying large-cap companies with compelling fundamentals, a robust macroeconomic thematic and a catalyst. The Company's investment objectives are to deliver a stream of fully franked dividends, provide capital growth over the medium-to-long term and preserve capital.

All major platforms provide access to WAM Leaders, including AMP North, BT Panorama, Colonial First State FirstWrap, Netwealth, Macquarie Wrap and Hub24. WAM Leaders receives coverage from the following independent investment research providers:



## About Wilson Asset Management

Wilson Asset Management has a track record of making a difference for shareholders and the community for more than 20 years. As the investment manager for eight leading LICs: WAM Capital (ASX: WAM), WAM Leaders (ASX: WLE), WAM Global (ASX: WGB), WAM Microcap (ASX: WMI), WAM Alternative Assets (ASX: WMA), WAM Strategic Value (ASX: WAR), WAM Research (ASX: WAX) and WAM Active (ASX: WAA), Wilson Asset Management invests over \$5.4 billion on behalf of more than 120,000 retail investors.

Wilson Asset Management created and is the lead supporter of the first LICs to deliver both investment and social returns: Future Generation Australia (ASX: FGX) and Future Generation Global (ASX: FGG). Wilson Asset Management advocates and acts for retail investors, is a member of the global philanthropic Pledge 1% movement, is a significant funder of many Australian charities and provides all team members with \$10,000 each year to donate to charities of their choice. All philanthropic investments are made by the Investment Manager.



For further information, visit [wilsonassetmanagement.com.au](http://wilsonassetmanagement.com.au) or contact:

### Geoff Wilson AO

Chairman &  
Chief Investment Officer  
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### Kate Thorley

Chief Executive Officer  
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### Jesse Hamilton

Chief Financial Officer  
(02) 9247 6755  
0401 944 807

### Camilla Cox

Senior Corporate Affairs  
Advisor  
(02) 9247 6755

# **Scheme Implementation Agreement**

**BETWEEN**

WAM Leaders Limited (ACN 611 053 751)  
(**WAM Leaders**)

**AND**

Absolute Equity Performance Fund Limited  
(ACN 608 552 496) (**AEG**)

**MILLS OAKLEY**

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SYDNEY NSW 2000  
Telephone: +61 2 8289 5800  
Facsimile: +61 2 9247 1315  
[www.millsoakley.com.au](http://www.millsoakley.com.au)  
Ref: LYRS/3567987

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## Details

**Date** **13 June 2022**

**Parties** **WAM Leaders and AEG**

<b>WAM Leaders</b>	Name	WAM Leaders Limited
	ACN	611 053 751
	Address	Level 26, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000
	Email	jesse@wilsonassetmanagement.com.au
	Attention	Jesse Hamilton

<b>AEG</b>	Name	Absolute Equity Performance Fund Limited
	ACN	608 552 496
	Address	Level 12, Grosvenor Place, 225 George Street, Sydney NSW 2000
	Email	marc.fisher@aepfund.com.au
	Attention	Marc Fisher

**Governing law** New South Wales, Australia

**Recitals**

- A. WAM Leaders and AEG have agreed to implement the Transaction.
- B. To implement the Transaction, AEG has agreed to propose the Scheme.
- C. WAM Leaders and AEG have agreed to implement the Scheme on the terms and conditions of this agreement.

## General Terms

### 1 Definitions and interpretation

#### 1.1 Definitions

Unless the contrary intention appears, these meanings apply:

**AEG Auditor** means the auditor for AEG being, as at the date of this agreement, Pitcher Partners Sydney.

**AEG Board** means the board of directors of AEG.

**AEG Constitution** means the constitution of AEG, as amended from time to time.

**AEG Directors** means the directors of AEG.

**AEG Disclosure Material** means the written information disclosed by or on behalf of AEG to WAM Leaders or any of its Representatives:

- (a) in the Data Room; and or
- (b) via email,

as at 5:00pm on 9 June 2022, the index of which is to be initialled by the parties (or their respective lawyers) for the purpose of identification before execution of this agreement.

**AEG Indemnified Parties** means:

- (a) AEG and its Related Bodies Corporate; and
- (b) any director or officer of AEG or its Related Bodies Corporate.

**AEG Information** means all information contained in the Scheme Booklet other than the WAM Leaders Information and the Independent Expert's Report.

**AEG Material Adverse Change** means a Specified Event which has, has had, or is reasonably likely to have, either individually or when aggregated with any other Specified Events:

- (a) a material adverse effect on the business, assets, liabilities, financial condition or results of operation of AEG; or
- (b) an effect that will prevent, materially delay or materially impair AEG's ability to consummate the Transaction,

excluding alone or in combination those Specified Events:

- (c) required by this agreement, the Transaction or transactions contemplated by them;
- (d) involving any change in the market price or trading volume of shares after the date of this agreement;
- (e) which took place with the prior written consent of WAM Leaders;
- (f) relating to the global economy or securities market in general; or
- (g) which took place as a result of anything done or omitted to be done by WAM Leaders or the WAM Leaders Manager.

**AEG NTA** means the NTA of AEG on the Calculation Date, as calculated and Confirmed in accordance with clauses 5.2(q), 5.3(m)(i) and, if applicable, 5.2(r)(ii). For the avoidance

of doubt, the AEG Transaction Costs are considered a liability of AEG in calculating the AEG NTA.

**AEG Prescribed Occurrence** means, except to the extent contemplated by this agreement or the Scheme, any of the following events:

- (a) **(conversion)** AEG converting AEG Shares into a larger or smaller number of shares;
- (b) **(reduction of share capital)** AEG resolving to reduce its capital in any way or resolving to reclassify, combine, split or redeem or repurchase directly or indirectly any of its securities;
- (c) **(buy-back)** AEG:
  - (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) **(distribution)** AEG, directly or indirectly, making or declaring, or announcing an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie);
- (e) **(issuing or granting shares or options)** AEG:
  - (i) issuing shares;
  - (ii) granting an option over its shares; or
  - (iii) agreeing to make such an issue or grant such an option;
- (f) **(securities or other instruments)** AEG issuing or agreeing to issue securities or other instruments convertible into shares or debt securities;
- (g) **(constitution)** AEG adopting a new constitution or modifying or repealing its constitution or a provision of it;
- (h) **(disposals)** AEG disposing, or agreeing to dispose of the whole or a substantial part of its business or property;
- (i) **(acquisitions, disposals or tenders)** AEG:
  - (i) acquiring or disposing of;
  - (ii) agreeing to acquire or dispose of; or
  - (iii) offering, proposing, announcing a bid or tenders for,
- (j) any business, assets, entity or undertaking the value of which exceeds \$100,000 other than as permitted under the Management Agreement;
- (k) **(Encumbrances)** AEG creating, or agreeing to create, any Encumbrance over or declaring itself the trustee of the whole or a substantial part of its business or property;
- (l) **(director arrangements)** AEG:
  - (i) increasing the remuneration of, or otherwise varying the arrangements with, any of its directors;
  - (ii) accelerating the rights of any of its directors to compensation or benefits of any kind (including under any AEG executive or employee share plans); or

- (iii) paying any of its directors a termination or retention payment (otherwise than in accordance with an existing contract in place at the date of this agreement);
- (m) **(commitments and settlements)** AEG:
  - (i) entering into any contract or commitment involving revenue or expenditure of more than \$100,000 over the term of the contract or commitment;
  - (ii) (without limiting the above) entering into any contract or commitment relating to the same matter or project involving revenue or expenditure which exceeds \$100,000 in aggregate over the term of the contracts or commitments;
  - (iii) terminating or amending in a material manner any contract material to the conduct of AEG's business or which involves revenue or expenditure of more than \$100,000 over the term of the contract;
  - (iv) waiving any material third party default; or
  - (v) accepting as a settlement or compromise of a material matter (relating to an amount in excess of \$100,000) less than the full compensation due to AEG or a Subsidiary of AEG;
- (n) **(Insolvency)** AEG or any of its Related Bodies Corporate becomes Insolvent; or
- (o) **(authorise)** AEG authorises or agrees to do, or makes any representation or warranty regarding doing, authorising or agreeing to do, any of the matters in items (a) to (n),

provided that an AEG Prescribed Occurrence listed in items (a) to (o) will not occur:

- (p) in relation to any matter contemplated, permitted or required to be done by AEG pursuant to this agreement or the Transaction;
- (q) in relation to any matter contemplated, permitted or required to be done under the Management Agreement;
- (r) where the event was Disclosed to WAM Leaders;
- (s) where WAM Leaders approved the proposed event in writing; or
- (t) if it is within the actual knowledge of WAM Leaders as at the date of this agreement.

**AEG Representations and Warranties** means the representations and warranties of AEG set out in clauses 9.1 and 10.1.

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

**AEG Shareholder** means each person registered in the Share Register as a holder of AEG Shares.

**AEG Transaction Costs** means, unless otherwise agreed in this agreement, all of AEG's costs associated with implementing the Transaction (including registry, court and other filing fees, portfolio transaction costs, fees for AEG's financial, taxation, legal and other professional advisers, counsel fees, fees of the Independent Expert, costs associated with the D&O Run-Off Insurance, accrued management and performance fees as at the Calculation Date and any other contractual liabilities, including GST paid on such costs to

the extent not reduced by an input tax credit) that have been incurred but remain unpaid as at the Calculation Date.

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

**Associate** has the meaning given in section 12 of the Corporations Act, as if section 12(1) of the Corporations Act referenced this agreement.

**ASX** means ASX Limited or the market operated by it, as the context requires.

**ATO** means the Australian Taxation Office.

**Business Day** has the meaning given in the Listing Rules.

**Calculation Date** means:

- (a) 5:00pm (Sydney time) on the Effective Date; or
- (b) such other time and date as the parties agree in writing.

**Competing Transaction** means a proposal, transaction or arrangement (including a takeover bid, scheme of arrangement, capital reduction, sale of assets, sale or issue of securities, or joint venture) which, if completed, would mean a person (other than a member of the WAM Leaders Group) whether alone or together with its Associates would, directly or indirectly:

- (a) acquire an interest or Relevant Interest in or become the holder of 20% or more of the AEG Shares on issue (other than as custodian, nominee or bare trustee);
- (b) acquire control of AEG, within the meaning of section 50AA of the Corporations Act;
- (c) directly or indirectly acquire, obtain a right to acquire, or otherwise obtain an economic interest in all or a substantial part or a material part of the assets of or business conducted by AEG;
- (d) otherwise acquire or merge with AEG (including by a reverse takeover bid); or
- (e) cause the Transaction to be required to be abandoned or otherwise fail to proceed.

**Conditions Precedent** means the conditions precedent set out in clause 3.1.

**Confidentiality Agreement** means the confidentiality agreement dated 7 April 2022 between WAM Leaders and AEG.

**Confirmed** means:

- (a) the amounts agreed between the parties in writing; or
- (b) the amounts certified by the AEG Auditor (in respect of the NTA per AEG Share) or the WAM Leaders Auditor (in respect of the NTA per WAM Leaders Share) as calculated to the standard prescribed by Accounting Standard on Review Engagements ASRE 2410 "Review of a Financial Report Performed by the Independent Auditor of the Entity",

and **Confirm** has a corresponding meaning.

**Controller** has the meaning given in the Corporations Act.

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

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

**Court** means the Federal Court of Australia, or any other court of competent jurisdiction under the Corporations Act agreed by the parties in writing.

**Data Room** means the on-line data room hosted on SharePoint in relation to the Transaction contemplated by this agreement.

**Deed Poll** means a deed poll substantially in the form of Annexure C to this agreement.

**Details** means the section of this agreement headed "Details".

**Disclosed** means, in relation to a change, event, occurrence or matter, means disclosed by a party:

- (a) to the other party in writing in a manner reasonably likely to draw the importance of that change, event, occurrence or matter to the attention of a reasonably sophisticated person, reasonably experienced in a transaction of the nature contemplated by this agreement;
- (b) in the AEG Disclosure Material or WAM Leaders Disclosure Material; or
- (c) in any announcement made by that party on ASX in the 3 years prior to the date of this agreement.

**D&O Run-Off Insurance** has the meaning given in clause 7.4(b).

**Effective** when used in relation to the Scheme, means the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme.

**Effective Date** means the date on which the Scheme becomes Effective.

**Encumbrance** means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or 12(2) of the PPSA or any agreement to create any of them or allow them to exist.

**End Date** means 30 November 2022 or such other date agreed by WAM Leaders and AEG in writing.

**Excluded Shareholder** means WAM Leaders and includes any custodian of WAM Leaders to the extent it is acting in that capacity.

**Exclusivity Period** means the period from and including the date of this agreement to the earlier of:

- (a) the termination of this agreement in accordance with its terms;
- (b) the Implementation Date; and
- (c) the End Date.

**Explanatory Statement** means the statement under section 412 of the Corporations Act which has been, or will be, registered by ASIC in relation to the Scheme, and forms part of the Scheme Booklet.

**First Court Date** means the first day on which an application made to the Court, in accordance with clause 5.2(h), for orders under section 411(1) of the Corporations Act convening the Scheme Meeting, is heard.

**GST** has the meaning given in the GST Act.

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

**Implementation Date** means the:

- (a) 5<sup>th</sup> Business Day following the Record Date; or

- (b) 2<sup>nd</sup> Business Day after the WAM Leaders NTA and AEG NTA have both been Confirmed,

whichever date occurs last, or such other date as the parties agree in writing or as may be required by ASX.

**Incoming Officers** means at least two directors and the company secretary nominated by WAM Leaders no later than five Business Days before the Implementation Date.

**Independent Expert** means the independent expert appointed by AEG under clause 5.2(b).

**Independent Expert's Report** means the report from the Independent Expert for inclusion in the Scheme Booklet, including any update or supplementary report, stating whether, in the Independent Expert's opinion, the Scheme is in the best interests of AEG Shareholders.

**Ineligible Overseas Shareholder** means any person who:

- (a) holds AEG Shares and to whom WAM Leaders would be prohibited from issuing Scheme Consideration pursuant to any act, rule or regulation of Australia which prohibits WAM Leaders from issuing Scheme Consideration to foreign persons;
- (b) holds AEG Shares and does not have a registered address in Australia, or such other jurisdiction where AEG and WAM Leaders may determine it would be lawful and practicable for that registered shareholder to receive an offer under or to participate in the Scheme and receive Scheme Consideration in compliance with applicable laws; or
- (c) is acting on behalf of or for the account of a person who holds AEG Shares beneficially and resides in a jurisdiction outside of Australia, except, with the consent of AEG and WAM Leaders, such a beneficial shareholder residing in another jurisdiction where AEG and WAM Leaders may determine it would be lawful and practicable for that beneficial holder to receive an offer under or to participate in the Scheme and receive Scheme Consideration in compliance with applicable laws.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 14 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the things described in paragraphs (a), (b) or (c); or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or

- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

**Listing Rules** means the listing rules of ASX and any other applicable rules of ASX modified to the extent of any express written waiver by ASX.

**Losses** means all claims, demands, damages, losses, costs, expenses and liabilities, excluding any:

- (a) indirect loss or damage;
- (b) indirect loss of profit;
- (c) loss of expected savings;
- (d) opportunity costs;
- (e) indirect loss of business (including loss or reduction of goodwill);
- (f) damage to reputation;
- (g) loss or corruption of data; and
- (h) diminution in credit rating,

in each case, regardless of whether any or all of the claim, demand, damages, loss, cost, expense and/or liability arises in contract, tort (including negligence), under any statute or otherwise under or in relation to or arising out of this agreement.

**Management Agreement** means the investment management agreement between AEG and the Manager dated 12 November 2015 as amended from time to time.

**Manager** means Bennelong Long Short Equity Management Pty Ltd (ACN 118 724 173).

**Material Contract** means any contract or commitment by AEG involving an amount of not less than \$100,000 or which is for a period of more than 60 days.

**New WAM Leaders Shares** means the WAM Leaders Shares to be issued to Scheme Participants as Scheme Consideration.

**NTA** means the net tangible asset backing of AEG or WAM Leaders (as the context requires) per AEG Share or WAM Leaders Share (as the case may be) before current and deferred tax balances calculated in accordance with the Corporations Act, Australian Accounting Standards (including the Australian Accounting Interpretations) and the Corporations Regulations. For the avoidance of doubt, the NTA will:

- (a) reflect the pro-forma impact of any WAM Leaders Permitted Dividend for which the Scheme Participants are ineligible (per clause 4.5(b)(ii) of this agreement);
- (b) be calculated on the basis of the last sale price quoted by Refinitiv of the relevant party's underlying portfolio positions on the Calculation Date; and
- (c) include a liability provision equal to 0.20% (or 20 basis points) multiplied by the gross exposure of the portfolio positions (long positions plus the absolute value of short positions) to account for the costs of selling (such as brokerage costs) that would be incurred if all portfolio positions held on the Calculation Date were



disposed, or if the borrowed short positions were closed or repaid, on the Calculation Date.

**Outgoing Officers** means all directors on the AEG Board and all AEG company secretaries, other than Marc Fisher and any Incoming Officers.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Record Date** means 5.00pm on the 2<sup>nd</sup> Business Day following the Effective Date or such other time and date as the parties agree in writing or as may be required by ASX.

**Registry** means Boardroom Pty Limited (ACN 003 209 836) or such other person that provides share registry services to AEG from time to time.

**Regulator's Draft** means the draft of the Scheme Booklet provided to ASIC for approval under section 411(2) of the Corporations Act.

**Regulatory Authority** includes:

- (a) ASX, ASIC and the Takeovers Panel;
- (b) a government or governmental, semi-governmental or judicial entity or authority, including the ATO;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any regulatory organisation established under statute.

**Related Body Corporate** has the meaning given in the Corporations Act.

**Relevant Interest** has the meaning given in sections 608 and 609 of the Corporations Act.

**Representative** means, in relation to a party:

- (a) a Related Body Corporate;
- (b) a director, officer or employee of the party or any of the party's Related Bodies Corporate; or
- (c) an adviser to the party or any of the party's Related Bodies Corporate, where an "adviser" means, in relation to an entity, a financier, financial adviser, corporate adviser, legal adviser, or technical or other expert adviser or consultant who provides advisory services in a professional capacity and who has been engaged by that entity excluding, in the case of AEG only, the Manager.

**Scheme** means the scheme of arrangement under part 5.1 of the Corporations Act under which all Scheme Shares held by the Scheme Participants will be transferred to WAM Leaders substantially in the form of Annexure B together with any amendment or modification made under section 411(6) of the Corporations Act and agreed to in writing by AEG and WAM Leaders.

**Scheme Booklet** means the information booklet to be approved by the Court and despatched to AEG Shareholders which includes the Scheme, Explanatory Statement, Deed Poll, Independent Expert's Report, notice of the Scheme Meeting and proxy form.

**Scheme Consideration** means for each Scheme Share, that number of New WAM Leaders Shares determined by dividing the AEG NTA by the WAM Leaders NTA, and calculated as set out in the Scheme.

**Scheme Meeting** means the meeting to be convened by the Court at which AEG Shareholders will vote on the Scheme.

**Scheme Participant** means each person who is an AEG Shareholder at the Record Date other than Excluded Shareholders.

**Scheme Share** means an AEG Share held by a Scheme Participant at the Record Date.

**Second Court Date** means the first day on which the Court hears an application for an order to be made pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the application is adjourned or subject to appeal for any reason, means the day on which the adjourned application or appeal is heard.

**Share Register** means the register of holders of AEG Shares maintained by or on behalf of AEG.

**Specified Event** means an event, occurrence or matter that:

- (a) occurs after the date of this agreement;
- (b) occurs before the date of this agreement but is only announced or publicly disclosed after the date of this agreement; or
- (c) will or is likely to occur after the date of this agreement and which has not been publicly announced prior to the date of this agreement.

**Subsidiary** of an entity means another entity which:

- (a) is a subsidiary of the first entity within the meaning of the Corporations Act; and
- (b) is part of a consolidated entity constituted by the first entity and the entities it is required to include in the consolidated financial statements it prepares, or would be if the first entity was required to prepare consolidated financial statements.

A trust may be a subsidiary (and an entity may be a subsidiary of a trust) if it would have been a subsidiary under this definition if that trust were a body corporate. For these purposes, a unit or other beneficial interest in a trust is to be regarded as a share.

**Superior Proposal** means a bona fide Competing Transaction which the AEG Directors, acting in good faith, and after taking written advice from their legal and financial advisers (as contemplated under clauses 9.5(a) and 9.5(b)), determine:

- (a) is reasonably capable of being completed, taking into account all aspects of the Competing Transaction and the person making it, within a reasonable timeframe and substantially in accordance with its terms; and
- (b) would, if so completed, result in a more favourable outcome for AEG Shareholders as a whole than would result from implementation of the Transaction, taking into account all the terms and conditions of the Competing Transaction.

**Takeovers Panel** means the panel established under section 171 of the *Australian Securities and Investments Commission Act 1989* (Cth) and continued in existence by section 261 of the *Australian Securities and Investments Commission Act 2001* (Cth).

**Tax Act** means the *Income Tax Assessment Act 1936* (Cth) or the *Income Tax Assessment Act 1997* (Cth), or both, as the context requires.

**Taxes** means taxes, levies, imposts, charges and duties (including stamp and transaction duties) paid, payable or assessed as being payable by any authority together with any fines, penalties and interest in connection with them.

**Timetable** means the indicative timetable for the Transaction set out in Schedule 1 subject to any amendments required by ASX or agreed by the parties in writing.

**Transaction** means the acquisition of AEG by WAM Leaders through implementation of the Scheme, in accordance with this agreement or as otherwise agreed between the parties in writing.

**Transaction Costs** means all costs associated with the Transaction and its implementation incurred by either party, including advisers expenses, legal expenses, counsel fees and fees of the Independent Expert.

**WAM Leaders Auditor** means the auditor for WAM Leaders being, as at the date of this agreement, Pitcher Partners Sydney.

**WAM Leaders Counterproposal** has the meaning given in clause 9.9(a).

**WAM Leaders Disclosure Material** means the written information disclosed by or on behalf of WAM Leaders to AEG or any of its Representatives in the Data Room as at 5.00pm on 9 June 2022, the index of which is to be initialled by the parties (or their respective lawyers) for the purpose of identification before execution of this agreement.

**WAM Leaders Group** means:

- (a) WAM Leaders and its Related Bodies Corporate; and
- (b) WAM Leaders Manager, its Related Bodies Corporate and each entity managed by any one of them.

**WAM Leaders Indemnified Parties** means:

- (a) each member of the WAM Leaders Group; and
- (b) any director or officer of any member of the WAM Leaders Group.

**WAM Leaders Information** means the information regarding WAM Leaders provided by or on behalf of WAM Leaders to AEG for inclusion in the Scheme Booklet, being information regarding WAM Leaders required to be included in the Scheme Booklet under the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60, Takeovers Panel policy and guidance notes, and the Listing Rules. WAM Leaders Information does not include information about AEG, except to the extent it relates to any statement of intention relating to AEG following the Effective Date.

**WAM Leaders Manager** means MAM Pty Limited (ACN 100 276 542).

**WAM Leaders Material Adverse Change** means a Specified Event which has, has had, or is reasonably likely to have, either individually or when aggregated with any other Specified Events:

- (a) a material adverse effect on the business, assets, liabilities, financial condition or results of operation of WAM Leaders; or
- (b) an effect that will prevent, materially delay or materially impair WAM Leaders' ability to consummate the Transaction,

excluding alone or in combination those Specified Events:

- (c) required by this agreement, the Transaction or transactions contemplated by them;
- (d) involving any change in the market price or trading volume of shares after the date of this agreement;
- (e) which took place with the prior written consent of AEG;
- (f) relating to the global economy or securities market in general; or

(g) which took place as a result of anything done or omitted to be done by AEG.

**WAM Leaders NTA** means the NTA of WAM Leaders as at the Calculation Date, calculated and Confirmed in accordance with clauses 5.3(l), 5.2(r)(i), and, where applicable, 5.3(m)(ii). For the avoidance of doubt, the WAM Leaders Transaction Costs are considered a liability of WAM Leaders in calculating the WAM Leaders NTA.

**WAM Leaders Permitted Dividend** has the meaning given in clause 4.5(b).

**WAM Leaders Prescribed Occurrence** means, except to the extent contemplated by this agreement or the Scheme, any of the following events:

- (a) **(conversion)** WAM Leaders converting WAM Leaders Shares into a larger or smaller number of shares;
- (b) **(reduction of share capital)** WAM Leaders resolving to reduce its capital in any way or resolving to reclassify, combine, split or redeem or repurchase directly or indirectly any of its securities;
- (c) **(buy-back)** WAM Leaders:
  - (i) entering into a buy-back agreement; or
  - (ii) resolving to approve the terms of a buy-back agreement under the Corporations Act;
- (d) **(distribution)** WAM Leaders, directly or indirectly, making or declaring, or announcing an intention to make or declare, any distribution (whether by way of dividend, capital reduction or otherwise and whether in cash or in specie) other than the WAM Leaders Permitted Dividend;
- (e) **(issuing or granting shares or options)** WAM Leaders:
  - (i) issuing shares;
  - (ii) granting an option over its shares; or
  - (iii) agreeing to make such an issue or grant such an option;
- (f) **(securities or other instruments)** WAM Leaders issuing or agreeing to issue securities or other instruments convertible into shares or debt securities;
- (g) **(constitution)** WAM Leaders adopting a new constitution or modifying or repealing its constitution or a provision of it;
- (h) **(disposals)** WAM Leaders disposing, or agreeing to dispose of the whole or a substantial part of its business or property;
- (i) **(acquisitions, disposals or tenders)** WAM Leaders:
  - (i) acquiring or disposing of;
  - (ii) agreeing to acquire or dispose of; or
  - (iii) offering, proposing, announcing a bid or tenders for, any business, assets, entity or undertaking the value of which exceeds \$100,000 other than in the usual and ordinary course of trading under the investment management agreement with the WAM Leaders Manager dated 4 April 2016;
- (j) **(Encumbrances)** WAM Leaders creating, or agreeing to create, any Encumbrance over or declaring itself the trustee of the whole or a substantial part of its business or property;

- (k) **(director arrangements)** WAM Leaders:
- (i) increasing the remuneration of, or otherwise varying the arrangements with, any of its directors;
  - (ii) accelerating the rights of any of its directors to compensation or benefits of any kind (including under any WAM Leaders executive or employee share plans); or
  - (iii) paying any of its directors a termination or retention payment (otherwise than in accordance with an existing contract in place at the date of this agreement);
- (l) **(commitments and settlements)** WAM Leaders:
- (i) entering into any contract or commitment involving revenue or expenditure of more than \$100,000 over the term of the contract or commitment;
  - (ii) (without limiting the above) entering into any contract or commitment relating to the same matter or project involving revenue or expenditure which exceeds \$100,000 in aggregate over the term of the contracts or commitments;
  - (iii) terminating or amending in a material manner any contract material to the conduct of WAM Leaders' business or which involves revenue or expenditure of more than \$100,000 over the term of the contract;
  - (iv) waiving any material third party default; or
  - (v) accepting as a settlement or compromise of a material matter (relating to an amount in excess of \$100,000) less than the full compensation due to WAM Leaders or a Subsidiary of WAM Leaders;
- (m) **(Insolvency)** WAM Leaders or any of its Related Bodies Corporate becomes Insolvent; or
- (n) **(authorise)** WAM Leaders authorises or agrees to do, or makes any representation or warranty regarding doing, authorising or agreeing to do, any of the matters in items (a) to (m),

provided that a WAM Leaders Prescribed Occurrence listed in items (a) to (n) will not occur:

- (o) in relation to any matter contemplated, permitted or required to be done by WAM Leaders pursuant to the agreement or the Scheme;
- (p) in relation to any matter contemplated, permitted or required to be done under the investment management agreement with the WAM Leaders Manager dated 4 April 2016;
- (q) where the event was Disclosed to AEG; or
- (r) where AEG approved the proposed event in writing.

**WAM Leaders Representations and Warranties** means WAM Leaders' representations and warranties set out in clause 10.5.

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

**WAM Leaders Transaction Costs** means, unless otherwise agreed pursuant to the this agreement, all of WAM Leaders' costs associated with implementing the Transaction

(including registry, court and other filing fees, fees for WAM Leaders' financial, taxation, legal and other professional advisers, counsel fees, accrued management and performance fees as at the Calculation Date and any other contractual liabilities, including GST paid on such costs to the extent not reduced by an input tax credit) that have been incurred but remain unpaid as at the Calculation Date.

## **1.2 General interpretation**

Headings and labels used for definitions are for convenience only and do not affect interpretation. Unless the contrary intention appears, in this agreement:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;
- (d) a reference to a party, clause, annexure or schedule is a reference to a party to, clause in or annexure or schedule to this agreement;
- (e) headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement;
- (f) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
- (g) a reference to "person" includes an individual, a body corporate, a partnership, a joint venture, an unincorporated association and an authority or any other entity or organisation;
- (h) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (i) a reference to a time of day is a reference to Sydney time;
- (j) if an act under this agreement to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (k) if a day on which a party must do something under this agreement is not a Business Day, the party must do it on the next Business Day;
- (l) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (m) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (n) a reference to "law" includes common law, principles of equity and legislation (including regulations);
- (o) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (p) a reference to "regulations" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (q) a reference to a group of persons is a reference to any two or more of them jointly and to each of them individually; and

- (r) a reference to any thing (including an amount) is a reference to the whole and each part of it.

## 2 Agreement to propose and implement Scheme

### 2.1 AEG to propose Scheme

AEG agrees to propose the Scheme on and subject to the terms and conditions of this agreement.

### 2.2 Agreement to implement Scheme

The parties agree to implement the Scheme on the terms and conditions of this agreement.

## 3 Conditions Precedent

### 3.1 Conditions Precedent to the Scheme

Subject to this clause 3, the Scheme will not become Effective, and the obligations of WAM Leaders under clause 4.2 are not binding, until each of the following Conditions Precedent are satisfied or waived to the extent and in the manner set out in this clause.

Conditions Precedent		Party entitled to benefit	Party responsible
(a)	<b>(Regulatory approvals)</b> before 8.00am on the Second Court Date, ASIC and ASX issue or provide any consents or approvals, or have done any other acts, which are reasonably necessary or desirable to implement the Transaction, and those consents, approvals or other acts have not been withdrawn or revoked at that time.	Both	Both
(b)	<b>(Shareholder approval)</b> AEG Shareholders approve the Scheme by the requisite majorities in accordance with the Corporations Act.	Cannot be waived	AEG
(c)	<b>(Court approval)</b> the Court approves the Scheme in accordance with section 411(4)(b) of the Corporations Act	Cannot be waived	AEG
(d)	<b>(Regulatory intervention)</b> no Court or Regulatory Authority has issued or taken steps to issue an order, temporary restraining order, preliminary or permanent injunction, decree or ruling or taken any action enjoining, restraining or otherwise imposing a legal restraint or prohibition preventing the Scheme and no such order, decree, ruling, other action or	Both	Both

Conditions Precedent		Party entitled to benefit	Party responsible
	refusal is in effect as at 8.00am on the Second Court Date.		
(e)	<b>(No AEG Prescribed Occurrence)</b> no AEG Prescribed Occurrence occurs between the date of this agreement and 8.00am on the Second Court Date.	WAM Leaders	AEG
(f)	<b>(No WAM Leaders Prescribed Occurrence)</b> no WAM Leaders Prescribed Occurrence occurs between the date of this agreement and 8.00am on the Second Court Date.	AEG	WAM Leaders
(g)	<b>(No AEG Material Adverse Change)</b> no AEG Material Adverse Change occurs between the date of this agreement and 8:00am on the Second Court Date.	WAM Leaders	AEG
(h)	<b>(No WAM Leaders Material Adverse Change)</b> no WAM Leaders Material Adverse Change occurs between the date of this agreement and 8:00am on the Second Court Date.	AEG	WAM Leaders
(i)	<b>(New WAM Leaders Shares)</b> the New WAM Leaders Shares to be issued pursuant to the Scheme are approved for official quotation by ASX, subject to customary conditions by, and such approval has not been withdrawn, suspended or revoked before, 8.00am on the Second Court Date.	AEG	WAM Leaders
(j)	<b>(No breach of AEG Representations and Warranties)</b> each of the AEG Representations and Warranties is true and correct in all material respects as at the time it is given under clause 9.1 or 10.1 (as applicable) or if this is not the case the breach has been remedied in accordance with clause 11.1(c) or is not of such materiality that WAM Leaders could rely on clause 11.1(c) to terminate this document as a result of the breach.	WAM Leaders	AEG
(k)	<b>(No breach of WAM Leaders Representations and Warranties)</b> each of the WAM Leaders	AEG	WAM Leaders



Conditions Precedent		Party entitled to benefit	Party responsible
	Representations and Warranties is true and correct in all material respects as at the time it is given under clause 10.5 or if this is not the case the breach has been remedied in accordance with clause 11.1(c) or is not of such materiality that AEG could rely on clause 11.1(c) to terminate this document as a result of the breach.		
(l)	<b>(Independent Expert)</b> the Independent Expert issues the Independent Expert's Report which concludes that the Scheme is in the best interest of AEG Shareholders before the date on which the Scheme Booklet is lodged with ASIC and the Independent Expert does not change its opinion, withdraw or qualify its conclusion in any written update to its Independent Expert's Report or otherwise withdraw the report before 8:00am on the Second Court Date.	AEG	AEG

### 3.2 Reasonable endeavours

Each of AEG and WAM Leaders agree to use reasonable endeavours to procure that:

- (a) each of the Conditions Precedent for which it is a party responsible (as noted in clause 3.1):
  - (i) is satisfied as soon as practicable after the date of this agreement; and
  - (ii) continues to be satisfied at all times until the last time it is to be satisfied (as the case may require); and
- (b) there is no occurrence that would prevent the Condition Precedent for which it is a party responsible being satisfied.

### 3.3 Regulatory matters

Without limiting clause 3.2, for the purposes of the Condition Precedent in clause 3.1(a) each party:

- (a) **(applying for ASIC and ASX consents and approvals)** must promptly apply for all relevant ASIC and ASX consents and approvals and provide each other party with a copy of those applications (provided that any commercially sensitive information may be redacted from the copy provided);
- (b) **(ASIC and ASX consents and approvals process)** must take all steps it is responsible for to obtain ASIC or ASX consents and approvals process, including responding to requests for information at the earliest practicable time;

- (c) **(representation)** has the right to be represented and make submissions at any meeting with ASIC or ASX in relation to an ASX or ASIC consent or approval; and
- (d) **(consultation)** must consult with the other party in advance in relation to all communications (whether written or oral, and whether direct or via a Representative) with ASIC or ASX (as applicable) relating to any ASIC or ASX consents and approvals and:
  - (i) provide the other party with drafts of any material written communications to be sent to ASIC and ASX (as applicable) and make any amendments as the other party reasonably requires; and
  - (ii) provide copies of any material written communications sent to or received from ASIC or ASX (as applicable) to the other party promptly upon despatch or receipt (as the case may be),
 in each case to the extent it is reasonable to do so.

For the avoidance of doubt, neither party is required to disclose commercially sensitive information in relation to the application for an ASIC or ASX consent or approval (as applicable) to the other party and the party applying for an ASIC or ASX consent or approval (as applicable) may withhold or redact information or documents from the other party if and to the extent that they are either confidential to a third party or commercially sensitive and confidential to the applicant.

### **3.4 Waiver of Conditions Precedent**

- (a) A Condition Precedent:
  - (i) may only be waived in writing by the party or parties entitled to the benefit of that Condition Precedent as noted in clause 3.1;
  - (ii) may only be waived in writing by both parties together where that Condition Precedent is expressed to apply for the benefit of both parties;
  - (iii) will be effective only to the extent specifically set out in that waiver; and
  - (iv) may only be waived before 8.00am on the date of the Second Court Date.
- (b) A party entitled to waive the breach or non-fulfilment of a Condition Precedent under this clause 3.4 may do so in its absolute discretion.
- (c) If either AEG or WAM Leaders waives the breach or non-fulfilment of a Condition Precedent in accordance with this clause 3.4, then:
  - (i) subject to clause 3.4(c)(ii), that waiver precludes that party from suing the other for any breach of this agreement arising as a result of the breach or non-fulfilment of that Condition Precedent or arising from the same event which gave rise to the breach or non-fulfilment of that Condition Precedent; but
  - (ii) if the waiver of the Condition Precedent is itself conditional and the other party:
    - (A) accepts the condition, the terms of that condition apply notwithstanding any inconsistency with clause 3.4(c)(i); or

- (B) does not accept the condition, the Condition Precedent has not been waived.
- (d) A waiver of a breach or non-fulfilment in respect of a Condition Precedent does not constitute:
  - (i) a waiver of a breach or non-fulfilment of any other Condition Precedent arising from the same event; or
  - (ii) a waiver of a breach or non-fulfilment of that Condition Precedent resulting from any other event.

### **3.5 Notices in relation to Conditions Precedent**

Each party must:

- (a) (**notice of satisfaction**) promptly notify the other of satisfaction of a Condition Precedent and must keep the other informed of any material development of which it becomes aware that may lead to the breach or non-fulfilment of a Condition Precedent;
- (b) (**notice of failure**) immediately give written notice to the other of a breach or non-fulfilment of a Condition Precedent, or of any event which will prevent a Condition Precedent being satisfied; and
- (c) (**notice of waiver**) upon receipt of a notice given under clause 3.5(b), give written notice to the other party as soon as possible as to whether or not it waives the breach or non-fulfilment of any Condition Precedent resulting from the occurrence of that event, specifying the Condition Precedent in question.

### **3.6 Deferral of Second Court Date**

- (a) If a Condition Precedent (other than the Condition Precedent in clause 3.1(c)) is not satisfied by the time and date specified for that Condition Precedent (and has not been waived in accordance with this agreement), then unless there is no reasonable prospect that the Condition Precedent will be satisfied such that the Scheme may become Effective before the End Date, AEG must make an application to defer the Second Court Date until such time (being no later than the Business Day before the End Date) as reasonably required to enable the relevant Condition Precedent to be satisfied.
- (b) The Condition Precedent in clause 3.1(b) will not be prevented from being satisfied only because of a failure to obtain the majority required by section 411(4)(a)(ii)(A) of the Corporations Act.

If the majority required by section 411(4)(a)(ii)(A) is not obtained, then either party may by written notice to the other within three Business Days after the date of the conclusion of the Scheme Meeting require the approval of the Court to be sought, pursuant to the Court's discretion in that section, provided the requesting party:

- (i) has in good faith, based on advice from senior counsel, formed the view that there are reasonable prospects of the Court exercising its discretion in that way; and
- (ii) if the requesting party is WAM Leaders, indemnifying AEG for all costs reasonably incurred by AEG associated with the Second Court Date and the seeking such orders from the Court.

**3.7 Consultation on failure of Condition Precedent**

If:

- (a) there is a breach or non-fulfilment of a Condition Precedent which is not waived in accordance with this agreement by the time or date specified in this agreement for the satisfaction of the Condition Precedent;
- (b) there is an act, failure to act or occurrence which will prevent a Condition Precedent being satisfied by the time or date specified in this agreement for the satisfaction of the Condition Precedent (and that Condition Precedent is not waived in accordance with this agreement); or
- (c) the Scheme has not become Effective by the End Date,

and the relevant occurrence or the failure of the Condition Precedent does not arise out of a breach of clause 3.2, then the parties must consult in good faith with a view to determine whether:

- (d) the Transaction may proceed by way of alternative means or methods and, if so, agree on the terms of such alternative means or methods;
- (e) to extend the relevant time for satisfaction of the Condition Precedent or to adjourn or change the date of an application to the Court another date agreed by the parties (being a date not later than five Business Days before the End Date); or
- (f) to extend the End Date.

**3.8 Failure to agree**

- (a) If the parties are unable to reach agreement under clause 3.7 within five Business Days (or any shorter period ending at 5.00pm on the day before the Second Court Date):
  - (i) subject to clauses 3.8(a)(ii) and 3.8(b), either party may terminate this agreement (and that termination will be in accordance with clause 11.1(f)(i)); or
  - (ii) if the relevant Condition Precedent may be waived and exists for the benefit of one party only, that party only may waive that Condition Precedent or terminate this agreement (and that termination will be in accordance with clause 11.1(f)(ii)),

in each case before 8.00am on the Second Court Date.

- (b) A party will not be entitled to terminate this agreement under this clause if the relevant Condition Precedent has not been satisfied, or there is an occurrence that will prevent the Condition Precedent being satisfied by the date specified in this agreement for its satisfaction, as a result of:
  - (i) a breach of this agreement by that party; or
  - (ii) a deliberate act or omission of that party or any of its Representatives.

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## **4 Outline of Scheme**

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### **4.1 Scheme**

- (a) AEG must propose a scheme of arrangement under which:
  - (i) all of the AEG Shares held by Scheme Participants at the Record Date will be transferred to WAM Leaders; and
  - (ii) subject to and in accordance with this agreement and the Scheme, each Scheme Participant will be entitled to receive the Scheme Consideration in respect of each Scheme Share held by that Scheme Participant.
- (b) WAM Leaders agrees to assist AEG to propose and implement the Scheme in accordance with Part 5.1 of the Corporations Act and subject to the terms of this document, and must use reasonable endeavours to do so substantially in accordance with the Timetable.

### **4.2 Scheme Consideration**

- (a) WAM Leaders, subject to clause 4.2(b) and the Scheme, covenants in favour of AEG (in its own right and on behalf of the Scheme Participants) that, in consideration of the transfer to WAM Leaders of each Scheme Share held by a Scheme Participant under the terms of the Scheme, on the Implementation Date, WAM Leaders will, subject to the terms of the Deed Poll and Scheme, issue the Scheme Consideration to each Scheme Participant. Any fractional entitlement of a Scheme Participant to a part of a New WAM Leaders Share will be rounded up or down (as applicable) to the nearest whole number as follows:
  - (i) fractional entitlements of 0.5 (or greater) to a New WAM Leaders Share will be rounded up;
  - (ii) fractional entitlements of less than 0.5 to a New WAM Leaders Share will be rounded down.
- (b) WAM Leaders will, unless satisfied that the laws of an Ineligible Overseas Shareholder's country of residence (as shown in the Share Register) permit the issue of New WAM Leaders Shares under the Scheme to that Ineligible Overseas Shareholder (either unconditionally or after compliance with conditions which WAM Leaders and AEG reasonably regard as acceptable and not unduly onerous and not unduly impracticable), issue the New WAM Leaders Shares to which an Ineligible Overseas Shareholder would otherwise become entitled to a nominee appointed by WAM Leaders, who will sell those New WAM Leaders Shares in accordance with the Scheme, so that each Ineligible Overseas Shareholder receives a prorate proportion of the proceeds of sale, after deducting any applicable brokerage, taxes and charges.

### **4.3 New WAM Leaders Shares to rank equally**

WAM Leaders covenants in favour of AEG (in its own right and on behalf of the Scheme Participants) that:

- (a) the New WAM Leaders Shares will rank equally in all respects with all existing WAM Leaders Shares from their date of issue;
- (b) it will do everything reasonably necessary to ensure that trading in the New WAM Leaders Shares commences by the first Business Day after the Implementation Date; and

- (c) on issue, each New WAM Leaders Share will be fully paid and free from any Encumbrance.

#### **4.4 No amendment to the Scheme without consent**

AEG must not consent to any modification of, or amendment to, or the making or imposition by the Court of any condition in respect of, the Scheme without the prior written consent of WAM Leaders (not to be unreasonably withheld or delayed).

#### **4.5 WAM Leaders Permitted Dividend**

- (a) The parties acknowledge that it is WAM Leaders' intention for the Scheme Participants to be eligible for a WAM Leaders Permitted Dividend.
- (b) Subject to the requirements of this clause 4.5, WAM Leaders may (in its absolute discretion) determine to pay or declare and pay to its shareholders a dividend in the ordinary course in respect of the financial year ended 30 June 2022 (**WAM Leaders Permitted Dividend**), provided that:
  - (i) the determination, declaration and payment of the WAM Leaders Permitted Dividend must comply with the Corporations Act; and
  - (ii) notwithstanding WAM Leaders' intention in clause 4.5(a), if Scheme Participants are ineligible for the WAM Leaders Permitted Dividend, as the record date for the WAM Leaders Permitted Dividend is before the Implementation Date, the WAM Leaders NTA must reflect the pro-forma impact of the WAM Leaders Permitted Dividend.
- (c) If WAM Leaders announces, determine to pay or declares and pays the WAM Leaders Permitted Dividend in accordance with clause 4.5(b), the WAM Leaders Permitted Dividend:
  - (i) may be franked to the maximum extent possible; and
  - (ii) is to be paid from accumulated profits, retained earnings or distributable reserves (or a combination of all or some of them) of WAM Leaders existing immediately prior to the declaration of that dividend.
- (d) The provisions of this clause 4.5 do not prevent the determination to pay or declaration or payment of a dividend by WAM Leaders if this agreement is terminated.

## **5 Implementation**

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### **5.1 General obligations**

AEG and WAM Leaders must each:

- (a) use all reasonable endeavours and commit necessary resources (including management and corporate relations resources and the resources of external advisers); and
  - (b) procure that its officers and advisers work in good faith and in a timely and co-operative fashion with the other party (including by attending meetings and by providing information),
- to
- (c) agree the Timetable as soon as practicable after the date of this agreement, with a view to implementing the Transaction expeditiously; and

- (d) produce the Scheme Booklet and implement the Scheme as soon as reasonably practicable and in accordance with the Timetable.

## 5.2 AEG's obligations

AEG must take all reasonable steps to implement the Scheme on a basis consistent with this agreement and as soon as reasonably practicable, and in particular must:

- (a) **(announce directors' recommendation)** following execution of this agreement, announce, in the form contained in Annexure A (on the basis of statements made to AEG by the AEG Directors) that each AEG Director:
- (i) intends to recommend that the Scheme is in the best interests of AEG Shareholders and that AEG Shareholders vote in favour of the Scheme; and
  - (ii) intends to vote, or cause to be voted, all AEG Shares in which he has a Relevant Interest (if any) in favour of the Scheme,
- subject to:
- (iii) the Independent Expert concluding, and continuing to conclude, that the Scheme is in the best interests of the AEG Shareholders; and
  - (iv) there being no Superior Proposal;
- and for the avoidance of doubt, the AEG Directors' recommendation must not prefer or recommend any element of the Transaction over another.
- (b) **(Independent Expert)** promptly:
- (i) appoint the Independent Expert and provide any assistance and information reasonably requested by the Independent Expert to enable the Independent Expert to prepare the Independent Expert's Report for the Scheme Booklet as soon as practicable (and any update to any such report);
  - (ii) provide WAM Leaders with a copy of the final draft Independent Expert's Report (and any final subsequent update to any such report) as contemplated by clause 5.2(d)(i);
- (c) **(preparation of Scheme Booklet)** subject to clause 5.2(d), as soon as practicable after the date of this agreement, prepare the Scheme Booklet:
- (i) in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60, ASIC Regulatory Guide 110 and the Listing Rules;
  - (ii) which includes a statement by the AEG Directors:
    - (A) unanimously recommending that AEG Shareholders vote in favour of the Scheme subject to the Independent Expert continuing to conclude that the Scheme is in the best interests of the AEG Shareholders and there being no Superior Proposal; and
    - (B) that each AEG Director who holds AEG Shares intends to vote, or cause to be voted, all AEG Shares in which he has a Relevant Interest (if any) in favour of the Scheme subject to the Independent Expert continuing to conclude that the Scheme is

- in the best interests of the relevant AEG Shareholders and there being no Superior Proposal;
- (d) **(Scheme Booklet consultation with WAM Leaders)** consult with WAM Leaders as to the content and presentation of the Scheme Booklet, which includes:
- (i) allowing WAM Leaders a reasonable opportunity to review and make comments on successive drafts of the Scheme Booklet including, for the avoidance of doubt, draft reports received from the Independent Expert (accepting that any review of the Independent Expert's Report is limited to review for factual accuracy of those parts that include information relating to WAM Leaders);
  - (ii) taking any reasonable comments made by WAM Leaders into account in good faith when producing a revised draft of the Scheme Booklet;
  - (iii) providing to WAM Leaders a revised draft of the Scheme Booklet within a reasonable time before the draft of the Scheme Booklet which is provided to ASIC for approval under section 411(2) of the Corporations Act is finalised; and
  - (iv) obtaining WAM Leaders' consent to the inclusion of the WAM Leaders Information (including in respect of the form and context in which the WAM Leaders Information appears in the Scheme Booklet);
- (e) **(lodgement of Regulator's Draft)**
- (i) no later than 14 days before the First Court Date, provide the Regulator's Draft to ASIC for its review for the purposes of section 411(2) of the Corporations Act, and provide a copy of the Regulator's Draft to WAM Leaders immediately following; and
  - (ii) keep WAM Leaders reasonably informed of any material issues raised by ASIC in relation to the Regulator's Draft and, where practical to do so, consult with WAM Leaders in good faith prior to taking any steps or actions to address those material issues (provided that, where those issues relate to WAM Leaders Information, AEG must not take any steps to address them without WAM Leaders' prior written consent, not to be unreasonably withheld);
- (f) **(section 411(17)(b) statement)** apply to ASIC for the production of a statement under section 411(17)(b) of the Corporations Act stating that ASIC has no objection to the Scheme;
- (g) **(Court document consultation with WAM Leaders)** consult with WAM Leaders as to the content of documents required for the purposes of the Court hearings held for the purposes of sections 411(1) and 411(4)(b) of the Corporations Act in relation to the Scheme (including originating processes, affidavits, submissions and draft minutes of Court orders), and consider in good faith any comments on, or suggested amendments to, those documents from WAM Leaders prior to filing those documents with the Court;
- (h) **(Court application)** apply to the Court for an order under section 411(1) of the Corporations Act directing AEG to convene the Scheme Meeting;



- (i) **(register Scheme Booklet)** if the Court directs AEG to convene the Scheme Meeting, request ASIC register the Explanatory Statement forming part of the Scheme Booklet in accordance with section 412(6) of the Corporations Act;
- (j) **(send Scheme Booklet)** send the Scheme Booklet to AEG Shareholders as soon as practicable after the Court orders AEG to convene the Scheme Meeting;
- (k) **(supplementary disclosure)** if, after despatch of the Scheme Booklet, AEG becomes aware:
  - (i) that information included in the Scheme Booklet is or has become misleading or deceptive in any material respect (whether by omission or otherwise); or
  - (ii) of information that is required to be disclosed to AEG Shareholders under any applicable law but was not included in the Scheme Booklet, promptly consult with WAM Leaders in good faith as to the need for, and the form of, any supplementary disclosure to AEG Shareholders, and make any disclosure that AEG considers reasonably necessary in the circumstances, having regard to applicable laws and to ensure that there would be no breach of clause 10.1(g) if it applied as at the date that information arose;
- (l) **(Scheme Meeting)** convene the Scheme Meeting to agree to the Scheme in accordance with any orders made by the Court under section 411(1) of the Corporations Act;
- (m) **(Share Register changes)** inform WAM Leaders within two Business Days of becoming aware of changes involving an AEG Shareholder increasing its holding of AEG Shares by 1% or more (calculated as a proportion of the total number of AEG Shares on issue). Nothing in this clause requires AEG to make enquires regarding changes in AEG Shareholder holdings more than once every five Business Days between the date of this agreement and the Scheme Meeting;
- (n) **(proxy reports)** keep WAM Leaders regularly informed on the status of proxy forms received by the Registry for the Scheme Meeting, including:
  - (i) on the day that is five Business Days before the Scheme Meeting;
  - (ii) on each Business Day following the day that is five Business Days before the Scheme Meeting, up to the deadline for the receipt of proxy forms; and
  - (iii) immediately following the deadline for the receipt of proxy forms;
- (o) **(lodge copy of Court order)** lodge with ASIC an office copy of the Court order approving the Scheme as approved by the AEG Shareholders at the Scheme Meeting in accordance with section 411(10) of the Corporations Act on the day after that office copy is received (or any later date agreed in writing by WAM Leaders);
- (p) **(proxy solicitation)** if requested by WAM Leaders and at WAM Leaders' expense retain a proxy solicitation services firm to assist AEG with the solicitation of votes at the Scheme Meeting and provide WAM Leaders with copies of or access to information regarding the Scheme Meeting generated by that firm, including promptly advising WAM Leaders, at such times as WAM Leaders may reasonably request and at least on a daily basis on each of the last five Business Days prior to the date of the Scheme Meeting, as to the aggregate tally of the votes received by AEG in respect of the Scheme;

- (q) **(Calculation of AEG NTA for Scheme Consideration)** procure that the AEG NTA is calculated for the purposes of the Scheme Consideration, and delivered to WAM Leaders within two Business Days of the Calculation Date along with:
- (i) sufficient supporting information to permit WAM Leaders to review the calculation; and
  - (ii) written confirmation that the AEG NTA has been calculated in accordance with this agreement and is consistent with past practice;
- (r) **(Confirmation of NTAs):**
- (i) with respect to the WAM Leaders NTA, review and, with WAM Leaders, use its reasonable endeavours to procure that the WAM Leaders NTA is Confirmed as soon as possible;
  - (ii) with respect to the AEG NTA, if the AEG NTA is not Confirmed by the parties in writing by 5.00pm on the second Business Day after WAM Leaders' receipt of the AEG NTA information pursuant to clause 5.3(l), AEG must procure that:
    - (A) the calculation is immediately referred to the AEG Auditor to Confirm the AEG NTA; and
    - (B) the AEG Auditor Confirms the AEG NTA in writing within three Business Days of the referral;
- (s) **(Court approval)** subject to all Conditions Precedent, other than paragraph (c) in clause 3.1, being satisfied or waived in accordance with this agreement, apply to the Court for an order approving the Scheme in accordance with sections 411(4)(b) and 411(6) of the Corporations Act;
- (t) **(Conditions Precedent certificate)** at the hearing on the Second Court Date, provide to the Court (through its counsel):
- (i) a certificate signed by one of its directors and made in accordance with a resolution of the AEG Board confirming (in respect of matters within AEG's knowledge) whether or not the Conditions Precedent for which it is responsible, as noted in clause 3.1 (other than paragraph (c)), have been satisfied or waived in accordance with clause 3, a draft of which must be provided to WAM Leaders by 5.00pm on the Business Day prior to the Second Court Date; and
  - (ii) any certificate provided to it by WAM Leaders under clause 5.3(n);
- (u) **(Share Register)** close the Share Register as at the Record Date to determine the identity of Scheme Participants and their entitlements to Scheme Consideration;
- (v) **(instruments of transfer)** subject to WAM Leaders satisfying its obligations under clause 4.2, on the Implementation Date:
- (i) execute proper instruments of transfer and effect the transfer of AEG Shares to WAM Leaders in accordance with the Scheme; and
  - (ii) register all transfers of AEG Shares held by Scheme Participants to WAM Leaders; and
- (w) **(Suspension of trading)** apply to ASX to suspend trading in AEG Shares with effect from the close of trading on the Effective Date;

- (x) **(representation)**
  - (i) procure that it is represented by counsel at the Court hearings convened for the purposes of section 411(4)(b) of the Corporations Act;
  - (ii) allow, and not oppose, any application by WAM Leaders for leave of the Court to be represented, or the separate representation of WAM Leaders by counsel, at any Court hearings in relation to the Scheme, provided that in making any application for representation or in appearing before the Court, WAM Leaders acts in accordance with this document and does not oppose any application by AEG in exercise of its rights under this document;
  - (iii) through its counsel, AEG must undertake (if requested by the Court) to do all things and take all steps within its power reasonably required to obtain Court approval and confirmation of the Scheme as contemplated by this document; and
- (y) **(director and officer changes)** if the Scheme becomes Effective, comply with its obligations under clause 7.3; and
- (z) **(other steps)** do all other things necessary to give effect to the Scheme and the orders of the Court approving the Scheme.

### 5.3 WAM Leaders' obligations

WAM Leaders must take all reasonable steps to assist AEG to implement the Scheme on a basis consistent with this agreement and as soon as reasonably practicable, and in particular must:

- (a) **(Announcement)** on the date of this document, make the Public Announcement in accordance with clause 12.1;
- (b) **(WAM Leaders Information)**
  - (i) prepare and promptly provide to AEG for inclusion in the Scheme Booklet the WAM Leaders Information (in accordance with all applicable laws, including the Corporations Act, Corporations Regulations, ASIC Regulatory Guide 60, Takeovers Panel policy and guidance notes and the Listing Rules) and consent to the inclusion of that information in the Scheme Booklet; and
  - (ii) provide AEG with drafts of the WAM Leaders Information in a timely manner and consider in good faith any reasonable comments provided by or on behalf of AEG;
- (c) **(affidavit)** undertake appropriate verification processes in relation to the WAM Leaders Information and, after those processes have been completed, provide on or before the First Court Date an affidavit to the Court confirming the due diligence and verification processes undertaken and their completion;
- (d) **(consent)** promptly after AEG requests that it does so, confirm in writing to AEG that it consents in writing to the inclusion of the WAM Leaders Information in the Scheme Booklet (or any supplementary disclosure to AEG Shareholders in respect of the Scheme), such consent is to not be unreasonably withheld;
- (e) **(assistance)** provide any assistance or information reasonably requested by AEG in connection with the preparation of the Scheme Booklet (including any supplementary disclosure to AEG Shareholders) including promptly reviewing

and providing comments on drafts of the Scheme Booklet given to WAM Leaders by AEG;

- (f) **(further WAM Leaders Information)** if it becomes aware that any information in the Scheme Booklet is or has become misleading or deceptive in any material respect (including because of any material omission) or otherwise does not comply with all applicable laws, relevant ASIC regulatory guides, Takeovers Panel policy and guidance notes or the ASX Listing Rules, including due to any further or new WAM Leaders Information that arises after the Scheme Booklet has been sent to AEG Shareholders, WAM Leaders must:
  - (i) promptly advise AEG;
  - (ii) consult with AEG as to the form and content of any supplementary disclosure to AEG Shareholders; and
  - (iii) if the information is WAM Leaders Information:
    - (A) as expeditiously as possible, prepare such updates to the WAM Leaders Information for inclusion in supplementary disclosure by AEG to AEG Shareholders as is reasonably required to ensure that the WAM Leaders Information contained in the Scheme Booklet is not, having regard to applicable disclosure requirements, false, misleading or deceptive in any material respect (including because of any material omission) and to ensure that there would be no breach of clause 10.5(i) if it applied as at the date on which such further or new WAM Leaders Information arose; and
    - (B) provide AEG with drafts of the updates to the WAM Leaders Information in a timely manner, and consider in good faith any reasonable comments provided by or on behalf of AEG;
- (g) **(Independent Expert information)** provide any assistance or information reasonably requested by the Independent Expert in connection with the preparation of the Independent Expert's Report;
- (h) **(liaison with ASIC and ASX)** promptly provide assistance reasonably requested by AEG in resolving any matter raised by ASIC or ASX regarding the Scheme, Scheme Booklet, or any supplementary disclosure by AEG to AEG Shareholders in connection with the Scheme;
- (i) **(Court document consultation with AEG)** promptly:
  - (i) review and provide comments on the drafts of the documents necessary to the Court proceedings relating to the Scheme given to WAM Leaders by AEG;
  - (ii) provide AEG with such evidence as is reasonably recommended by AEG's counsel to be provided by WAM Leaders in connection with the Court proceedings; and
  - (iii) provide successive drafts of each affidavit or other document to be provided by WAM Leaders (or its Representatives) necessary for the Court proceedings in relation to the Scheme to AEG for the purpose of enabling AEG to review and comment on those drafts;
- (j) **(representation)** give all undertakings reasonably required to obtain Court approval and confirmation of the Scheme as contemplated by this document;

- (k) **(Deed Poll)** prior to the Scheme Booklet being sent, sign and deliver the Deed Poll;
- (l) **(Calculation of WAM Leaders NTA for Scheme Consideration)** procure that the WAM Leaders NTA is calculated and delivered to AEG within two Business Days of the Calculation Date along with:
- (i) sufficient supporting information to permit AEG to review the calculation; and
  - (ii) written confirmation that the WAM Leaders NTA has been calculated in accordance with this agreement and is consistent with past practice;
- (m) **(Confirmation of NTAs):**
- (i) with respect to the AEG NTA, review and, with AEG, use its reasonable endeavours to procure that the AEG NTA is Confirmed as soon as possible;
  - (ii) with respect to the WAM Leaders NTA, the WAM Leaders NTA is not Confirmed by the parties in writing by 5.00pm on the second Business Day after AEG's receipt of the WAM Leaders NTA information pursuant to clause 5.2(q), WAM Leaders must procure that:
    - (A) the calculation is immediately referred to the WAM Leaders Auditor to Confirm the WAM Leaders NTA; and
    - (B) the WAM Leaders Auditor Confirms the WAM Leaders NTA in writing within three Business Days of the referral;
- (n) **(Conditions Precedent certificate)** before 8.00am on the Second Court Date, provide to AEG for provision to the Court at the hearing on that date a certificate signed by one of its directors and made in accordance with a resolution of its board confirming (in respect of matters within WAM Leaders' knowledge) whether or not the Conditions Precedent for which WAM Leaders is responsible, as noted in clause 3.1 (other than paragraph (c)), have been satisfied or waived in accordance with clause 3, a draft of which must be provided to AEG by 5.00pm on the Business Day prior to the Second Court Date;
- (o) **(transfer)** if the Scheme becomes Effective, execute and deliver instruments of transfer in respect of the Scheme Shares and accept a transfer of the AEG Shares as contemplated by clause 4.2(a);
- (p) **(Listing)** procure that the New WAM Leaders Shares to be issued as Scheme Consideration pursuant to the Scheme are approved for official quotation by ASX, subject to any conditions which ASX may reasonably require and which are acceptable to both WAM Leaders and AEG, acting reasonably and promptly;
- (q) **(Scheme Consideration)** if the Scheme becomes Effective, register or cause to be registered the Scheme Participants who are to receive the Scheme Consideration under the Scheme (or the nominee of Ineligible Overseas Shareholders appointed for the purpose of the Scheme) as the holders of New WAM Leaders Shares to which those Scheme Participants are entitled under the terms of the Scheme;
- (r) **(director and officer changes)** if the Scheme becomes Effective, comply with its obligations under clause 7.3 and 7.4; and

- (s) **(other steps)** do all other things necessary to give effect to the Scheme and the orders of the Court approving the Scheme.

#### **5.4 Scheme Booklet responsibility statement**

The responsibility statement to appear in the Scheme Booklet, in a form to be agreed by the parties, will contain words to the effect of:

- (a) AEG has prepared, and is responsible for, the content of the Scheme Booklet other than, to the maximum extent permitted by law, the WAM Leaders Information, the Independent Expert's Report or any other report or letter issued to AEG by a third party and that WAM Leaders and its directors and officers do not assume any responsibility for the accuracy or completeness of the sections of the Scheme Booklet that AEG has prepared and has responsibility for; and
- (b) WAM Leaders has prepared, and is responsible for, the WAM Leaders Information in the Scheme Booklet (and no other part of the Scheme Booklet) and that AEG and its directors and officers do not assume any responsibility for the accuracy or completeness of the sections of the Scheme Booklet that WAM Leaders has prepared and has responsibility for.

#### **5.5 Disagreement on content of Scheme Booklet**

If WAM Leaders and AEG disagree on the form or content of the Scheme Booklet, they must consult in good faith to try to settle an agreed form of the Scheme Booklet. If complete agreement is not reached after reasonable consultation, then:

- (a) if the disagreement relates to the form or content of the WAM Leaders Information contained in the Scheme Booklet, AEG will make any amendments as WAM Leaders reasonably requires; and
- (b) if the disagreement relates to the form or content of any other part of the Scheme Booklet, the AEG Directors will, acting in good faith, decide the final form or content of the disputed part of the Scheme Booklet.

#### **5.6 Verification**

Each party must undertake appropriate verification processes for the information supplied by that party in the Scheme Booklet.

#### **5.7 Conduct of Court proceeding**

AEG and WAM Leaders are entitled to separate representation at all Court proceedings relating to the Scheme. This agreement does not give AEG or WAM Leaders any right or power to give undertakings to the Court for or on behalf of the other party without that party's written consent. AEG and WAM Leaders must give all undertakings to the Court in all Court proceedings which are reasonably required to obtain Court approval and confirmation of the Scheme as contemplated by this agreement.

#### **5.8 Appeal process**

If the Court refuses to make orders convening the Scheme Meeting or approving the Scheme, WAM Leaders and AEG must appeal the Court's decision to the fullest extent possible except to the extent that:

- (a) the parties agree otherwise; or
- (b) an independent senior counsel of the New South Wales bar advises that, in their opinion, an appeal would have no reasonable prospect of success before the End Date,

in which case, either party may terminate this agreement in accordance with clause 11.1(f)(iii). The costs of any appeal under this clause 5.8 are to be borne equally between the parties.

### **5.9 No partnership or joint venture**

Subject to this agreement, nothing in this clause requires either party to act at the direction of the other. The business of each party will continue to operate independently from the other until the Implementation Date. The parties agree that nothing in this agreement constitutes the relationship of a partnership or a joint venture between the parties.

### **5.10 Ownership of Names**

- (a) The parties agree that, as soon as practicable after the Implementation Date, WAM Leaders will approve and cause the company name of AEG to be changed.
- (b) On and from the Implementation Date WAM Leaders must not, use (either on its own or in combination with other material) any trade mark, logo, get up or business, domain or company name containing:
  - (i) AEG;
  - (ii) an AEG trade mark; or
  - (iii) any word, expression, letter, name, logo or mark that is similar to or likely to be confused with AEG or an AEG trade mark,(together, **AEG Naming Rights**).

## **6 AEG Director recommendation**

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### **6.1 Reasonable endeavours**

- (a) AEG must use its reasonable endeavours to procure that none of the AEG Directors withdraws or changes their recommendation in favour of the Scheme, unless:
  - (i) there is a Superior Proposal and AEG has complied with its obligations under clause 9.8; or
  - (ii) the Independent Expert concludes that the Scheme is not in the best interests of the AEG Shareholders, withdraws or qualifies its conclusion in any written update to its Independent Expert's Report or otherwise adversely changes the basis of its previously given opinion that the Scheme is in the best interests of the AEG Shareholders; or
  - (iii) the AEG Board determines in good faith and acting reasonably, having received advice in writing from its legal advisers (who must be reputable advisers experienced in transactions of this nature), that if they maintained their recommendation, it may breach their fiduciary or statutory duties to AEG Shareholders.
- (b) For the purposes of this document, if a Competing Transaction is publicly announced in respect of AEG, the release by AEG of one or more announcements to the effect that AEG Shareholders should take no action while the AEG Board considers its response will not (in and of itself) be regarded as a failure of AEG Directors to maintain the recommendation referred to in this clause and elsewhere in this agreement.

**6.2 Withdrawal or change of recommendation**

- (a) Without limiting clause 9, if an AEG Director proposes to withdraw or change their recommendation in accordance with clause 6.1:
  - (i) AEG must notify WAM Leaders in writing immediately; and
  - (ii) the parties must consult in good faith for two Business Days after the date on which the notification in clause 6.2(a)(i) is given to consider and determine whether the recommendation in place at the time can be maintained.
- (b) AEG must use its reasonable endeavours to procure that the recommendation is not withdrawn or changed until the end of the consultation period in clause 6.2(a)(ii).

**6.3 Fiduciary exception**

The obligation in clause 6.2(a)(ii) to negotiate for the full two Business Days, and the restriction in clause 6.2(b) do not apply where an AEG Director, acting in good faith and after taking written advice from AEG's external legal advisers experienced in transactions of this nature, determines that a failure to withdraw, change or modify the recommendation before the end of the two Business Day consultation period would be reasonably likely to constitute a breach of the fiduciary duties or statutory obligations of any member of the AEG Board to AEG.

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**7 Directors**

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**7.1 Release of WAM Leaders Indemnified Parties**

- (a) Subject to the Corporations Act, AEG releases its rights, and agrees with WAM Leaders that it will not make a claim, against any WAM Leaders Indemnified Party (other than WAM Leaders) as at the date of this agreement and from time to time in connection with:
  - (i) any breach of any representations and warranties of WAM Leaders; or
  - (ii) any disclosure containing any statement which is false or misleading whether in content or by omission,whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the WAM Leaders Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 7.1 limits AEG's rights to terminate this agreement under clause 11.1.
- (b) WAM Leaders receives and holds the benefit of this clause to the extent it relates to each WAM Leaders Indemnified Party on behalf of each of them.

**7.2 Release for AEG Indemnified Parties**

- (a) Subject to the Corporations Act, WAM Leaders releases its rights, and agrees with AEG that it will not make a claim, against any AEG Indemnified Party (other than AEG) as at the date of this agreement and from time to time in connection with:
  - (i) any breach of any representations and warranties of AEG in this agreement; or



- (ii) any disclosure containing any statement which is false or misleading whether in content or by omission, whether current or future, known or unknown, arising at common law, in equity, under statute or otherwise, except where the AEG Indemnified Party has not acted in good faith or has engaged in wilful misconduct or fraud. Nothing in this clause 7.2 limits WAM Leaders' rights to terminate this agreement under clause 11.1.
- (b) AEG receives and holds the benefit of this clause to the extent it relates to each AEG Indemnified Party on behalf of each of them.

### **7.3 Appointment/retirement of AEG directors**

On the Implementation Date, but subject to:

- (a) the Scheme Consideration having been issued to the Scheme Participants (or the nominee of Ineligible Overseas Shareholders appointed under clause 4.2(b)); and
- (b) receipt by AEG of signed consents to act,

AEG must use its reasonable endeavours to:

- (c) cause the appointment of each Incoming Officer to AEG; and
- (d) procure that each of the Outgoing Officers retire from AEG and provide written notice to the effect that they have no claim outstanding for loss of office, remuneration or otherwise against AEG,

in each case, in accordance with the AEG Constitution, the Corporations Act and the Listing Rules.

### **7.4 Directors' and officers' indemnities and insurance**

- (a) Subject to the Scheme becoming Effective and subject to clause 7.5, WAM Leaders undertakes in favour of AEG and each of its directors or officers that it will:
  - (i) for a period of seven years from the Implementation Date, ensure that the AEG Constitution continues to contain those rules as are contained in the AEG Constitution at the date of this agreement that permit AEG to indemnify each of its directors and officers against any liability incurred by that person in his or her capacity as a director or officer of AEG to any person; and
  - (ii) ensure that there is no variation or termination of:
    - (A) any terms of the AEG Constitution or any other organisational document containing an indemnity, right of advancement of expenses, right of insurance or right of access to documents in favour of any current or previous director or officer of AEG; or
    - (B) the terms of any indemnities, rights of advancement of expenses, rights to insurance and/or rights of access to documents or information under any deeds of indemnity, access and insurance (or other agreements) entered into by AEG with or in favour of any current or previous directors or officers of AEG,

in each case in a manner which is less favourable to those persons than their terms as at the date of this agreement unless such variation or termination is effected with the prior agreement of each affected current or previous director or officer or is otherwise required to procure compliance with, or to prevent a contravention of, applicable law; and

- (iii) procure that AEG complies with any deeds of indemnity, access and insurance made by them in favour of their current and previous directors and officers.
- (b) WAM Leaders consents to AEG arranging and effecting or procuring the arrangement and effecting of, on or before the Implementation Date, separate directors' and officers' liability run-off insurance to cover for a period of up to seven years from the Implementation Date, the directors, officers and other individuals who are insured under the current directors' and officers' liability insurance policy applicable to AEG as at the Implementation Date on terms no less favourable than such current policy in force immediately before the Implementation Date in respect of acts or omissions occurring in the period up to the Implementation Date (**D&O Run-Off Insurance**).
- (c) Each party acknowledges that, provided that clause 7.4(b) has been complied with, the entry into the D&O Run-Off Insurance and payment of the relevant premiums will not constitute an AEG Prescribed Occurrence.
- (d) Subject to the Scheme becoming Effective, from the Implementation Date, WAM Leaders agrees to provide, and to procure that AEG provides, all information required to give effect to the D&O Run-Off Insurance contemplated in clause 7.4(b), including the provision of reasonable assistance and information in order to make a claim under the D&O Run-Off Insurance.
- (e) WAM Leaders must not, and from the Implementation Date must procure that AEG does not, amend or cancel the D&O Run-Off Insurance at any time after the Implementation Date, or do anything or fail to do anything which would prejudice or adversely affect the D&O Run-Off Insurance (or the cover under such) at any time after the Implementation Date.

## **7.5 Period of undertaking**

The undertakings contained in clause 7.4(a) are given:

- (a) subject to any Corporations Act restriction or any other law of a jurisdiction in which an entity is incorporated, and will be read down accordingly; and
- (b) until the earlier of the end of the relevant period specified in that clause or AEG ceasing to be part of the WAM Leaders Group.

## **7.6 Benefit of undertaking for AEG**

AEG acknowledges that it receives and holds the benefit of clause 7.4 to the extent it relates to each director and officer of AEG on behalf of each of them.

# **8 Conduct of business**

## **8.1 Overview**

From the date of this agreement up to and including the Implementation Date, other than with the prior approval of the other party (which approval must not be unreasonably withheld or delayed) or as required by this agreement, each party must conduct its business:

- (a) in the usual and ordinary course;
- (b) in substantially the same manner as previously conducted in the 12 months prior to the date of this agreement;
- (c) in accordance with all applicable laws in all material respects.

## 8.2 Specific obligations

Without limiting clause 8.1 and other than with the prior approval of the other party (which approval must not be unreasonably withheld or delayed) or as required by this agreement, each party must, during the period contemplated by clause 8.1, use all reasonable endeavours to ensure that it:

- (a) **(business and assets)** maintains and preserves intact the condition of its business and assets, and manages its working capital in the ordinary course consistent with past practice;
- (b) **(officers)** keeps available the services of its officers;
- (c) **(relationships)** preserves its relationships with customers, suppliers, licensors, licensees, joint venturers and others with whom it has business dealings;
- (d) **(change of control provisions)** identifies any change of control or similar provisions in any significant contracts (including all Material Contracts) and obtain the consents of relevant persons who have rights under those contracts in respect of the transactions contemplated by the Scheme;
- (e) **(authorisations)** maintain in effect all of its permits and authorisations from any Regulatory Authority which are required for it to operate its business in accordance with clause 8.1;
- (f) **(cash)** ensures there is no material decrease in the amount of cash other than as:
  - (i) used in the ordinary course of business and consistent with forecast cash utilisation;
  - (ii) a result of reasonable costs incurred directly in relation to the Transaction, including engagement of professional advisers (including financial, tax and legal advisers and counsel) in connection with the Transaction;
  - (iii) a result of purchasing directors' and officers' run-off insurance cover (of the type, scope and length contemplated by clause 7.4); or
  - (iv) in the case of WAM Leaders, a result of paying the WAM Leaders Permitted Dividend.

## 8.3 Prohibited actions

Other than with the prior approval of the other party or as required by this agreement AEG and/or WAM Leaders must not, during the period referred to in clause 8.1:

- (a) **(Material Contracts)** subject to clause 8.5(a)(ii), enter into or terminate a Material Contract, provided that either party is permitted to engage professional advisers (including financial, tax and legal advisers and counsel) in connection with the Transaction;
- (b) **(competition)** enter into any contract or commitment restraining it from competing with any person or conducting activities in any market;

- (c) **(related party transactions)** enter into any transaction with any related party as defined in section 228 of the Corporations Act;
- (d) **(accounting policies)** change any accounting policy applied by it to report its financial position other than any change required by a change in accounting standards;
- (e) **(tax)** settle or compromise or make any concessions in relation to any Tax claims, liabilities or disputes or make any election in relation to Tax, or otherwise engage in any transaction, act or event which gives rise to any Tax liability which is outside the ordinary course of business as it was conducted prior to the date of this agreement;
- (f) **(legal proceedings)** settle any legal proceedings, claim, investigation, arbitration or other like proceedings where the amount claimed:
  - (i) With respect to AEG, exceeds \$100,000, either individually or in aggregate;
  - (ii) With respect to WAM Leaders, exceeds \$100,000, either individually or in aggregate;
- (g) **(dividends)** announce, declare or pay any dividends other than in the case of WAM Leaders, the WAM Leaders Permitted Dividend; or
- (h) **(agree)** agree or resolve to do any of the matters set out above.

#### **8.4 No Prescribed Occurrence**

- (a) During the period commencing on the date of this document and ending on the Implementation Date, AEG must ensure that neither it nor any of its Related Bodies Corporate:
  - (i) takes or fails to take any action that constitutes, or that could reasonably be expected to result in or otherwise give rise to, an AEG Prescribed Occurrence; or
  - (ii) authorises, commits or agrees to do any such thing.
- (b) During the period commencing on the date of this document and ending on the Implementation Date, WAM Leaders must ensure that no member of the WAM Leaders Group:
  - (i) takes or fails to take any action that constitutes, or that could reasonably be expected to result in or otherwise give rise to, a WAM Leaders Prescribed Occurrence; or
  - (ii) authorises, commits or agrees to do any such thing.

#### **8.5 Exceptions to conduct of business provisions**

- (a) Nothing in this clause 8 restricts:
  - (i) the ability of AEG to take any action which:
    - (A) is expressly required or permitted by this agreement, the Scheme, or otherwise required by law;
    - (B) has been Disclosed to WAM Leaders; or
    - (C) has been agreed to in writing by WAM Leaders; or

- (ii) the ability of the Manager to manage the portfolio of investments of AEG, in accordance with the Management Agreement, and instructions given by AEG under the Management Agreement.
- (b) Nothing in this clause 8 restricts:
  - (i) the ability of WAM Leaders to take any action which:
    - (A) is expressly required or permitted by this agreement, the Scheme, or otherwise required by law;
    - (B) has been Disclosed to AEG prior to the date of this agreement; or
    - (C) has been agreed to in writing by AEG; or
  - (ii) the ability of WAM Leaders Manager to take any action in relation to the portfolio of investments of WAM Leaders permitted under the investment management agreement dated 4 April 2016, which expressly includes the buying and selling of securities as determined by the WAM Leaders Manager.

## **8.6 Consultation**

- (a) The parties must consult with each other in good faith after execution of this agreement and for the period up to the Implementation Date, to discuss and assist WAM Leaders in preparing, and adopting, a transition plan.
- (b) WAM Leaders must not adopt a transition plan without AEG's written consent (such consent not to be unreasonably withheld).
- (c) On and from AEG Shareholder approval of the Transaction at the Scheme Meeting until the Implementation Date, AEG will give the Manager any instructions permitted under the Management Agreement which are reasonably required to implement the transition plan adopted by WAM Leaders in accordance with clause 8.6(a).
- (d) Nothing in this clause 8.6 requires AEG to:
  - (i) give an instruction to the Manager that:
    - (A) is not permitted under the Management Agreement; or
    - (B) the AEG Board considers, acting reasonably and in good faith:
      - (1) is not in the best interest of the AEG Shareholders; or
      - (2) could, if given, breach their fiduciary or statutory duties to AEG Shareholders; or
  - (ii) consent to a transition plan that could require AEG to give an instruction of the kind listed in clauses 8.6(d)(i).

## **8.7 Access to people and AEG Information**

- (a) Subject to clause 8.7(b), between the date of this agreement and the Implementation Date, AEG must provide WAM Leaders and its officers and advisers with reasonable access to any documents, records, and other information (subject to any existing confidentiality obligations owed to third parties, or applicable privacy laws) and such officers and advisers as reasonably requested by WAM Leaders, at mutually convenient times, for the purposes of:

- (i) understanding AEG's financial position (including its cash flow and working capital position), trading performance and management control systems;
  - (ii) implementing the Scheme;
  - (iii) preparing for carrying on the business of AEG following implementation of the Scheme; and
  - (iv) any other purpose which is agreed in writing between the parties, provided in every case that the access is reasonable, and does not place an unreasonable burden on the ability of AEG to run its business.
- (b) To avoid doubt, the parties acknowledge and agree that nothing in this clause 8.7 or elsewhere in this document:
- (i) requires a party to take any action that would reasonably be expected to conflict with or violate that party's constituent documents or any applicable law;
  - (ii) requires AEG to provide information concerning its directors' or management's consideration of the Scheme or (without limiting AEG's obligations under clause 9) a Competing Transaction;
  - (iii) requires a party to provide information that, in the reasonable opinion of the disclosing party:
    - (A) is commercially sensitive;
    - (B) would require AEG to make further disclosures to any other entity or to a Regulatory Authority; or
    - (C) would compromise legal privilege.
  - (iv) gives a party any rights to undertake further due diligence; or
  - (v) gives a party any rights as to the decision making of the other party (or its subsidiaries).

## **9 Exclusivity**

### **9.1 No existing discussions**

AEG represents and warrants that, other than the discussions with WAM Leaders in respect of the Transaction, it is not as at the date of this agreement in negotiations or discussions in respect of any Competing Transaction with any person.

### **9.2 No-shop**

During the Exclusivity Period, AEG must ensure that neither it nor any of its Representatives directly or indirectly:

- (a) solicits, invites, encourages or initiates any enquiries, negotiations or discussions; or
- (b) communicates any intention to do any of these things,

with a view to obtaining any offer, proposal or expression of interest from any person in relation to a Competing Transaction.

**9.3 No-talk**

Subject to clauses 9.5 and 9.6, during the Exclusivity Period, AEG must ensure that neither it nor any of its Representatives:

- (a) negotiates or enters into; or
- (b) participates in negotiations or discussions with any other person regarding, a Competing Transaction or any agreement, understanding or arrangement that may be reasonably expected to lead to a Competing Transaction, even if that person's Competing Transaction was not directly or indirectly solicited, invited, encouraged or initiated by AEG or any of its Representatives or the person has publicly announced the Competing Transaction.

**9.4 Due diligence information**

Subject to clauses 9.5 and 9.6, during the Exclusivity Period, AEG must ensure that neither it nor any of its Representatives in relation to a Competing Transaction:

- (a) enables any other person other than WAM Leaders and its Representatives to undertake due diligence investigations on AEG or its business or operations in connection with or with a view to obtaining or which would reasonably be expected to lead to such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Transaction; or
- (b) makes available to any other person, or permits any other person to receive, other than WAM Leaders and its Representatives (in the course of due diligence investigations or otherwise) any non-public information relating to AEG or its business or operations, that may reasonably be expected to assist such third party in formulating, developing or finalising a Competing Transaction.

**9.5 Exceptions**

Clause 9.3 and clause 9.4 do not apply to the extent that they restrict AEG or the AEG Board from taking or refusing to take any action with respect to a genuine Competing Transaction (which was not solicited, invited, encouraged or initiated by AEG in contravention of clause 9.2) provided that the AEG Board has determined, acting in good faith that:

- (a) after consultation with its financial advisers, such a genuine Competing Transaction is, or could reasonably be considered to become, a Superior Proposal; and
- (b) after receiving written legal advice from their external legal advisers (who must be reputable advisers experienced in transactions of this nature) that failing to respond to such a genuine Competing Transaction would be reasonably likely to constitute a breach of any member of the AEG Board's fiduciary duties or statutory obligations.

**9.6 Further exceptions**

Nothing in this agreement prevents AEG from:

- (a) continuing to make normal presentations to, and to respond to enquiries from, brokers, portfolio investors and analysts in the ordinary course in relation to the Scheme or its business generally;
- (b) fulfilling its continuous disclosure requirements; or

- (c) otherwise disclosing non-public information to its auditors or advisers, or a Regulatory Authority in the ordinary course of its business or as required under AEG's existing contractual obligations provided it is not done in a manner which is intended to circumvent the intent of the exclusivity provisions of this agreement.

### **9.7 Notice of unsolicited approach**

During the Exclusivity Period, AEG must promptly inform WAM Leaders if AEG or any of its Representatives:

- (a) receives any unsolicited approach with respect to any Competing Transaction and must disclose to WAM Leaders:
  - (i) material details of the Competing Transaction; and
  - (ii) details of the proposed bidder or acquirer; and/or
- (b) receives any request for information relating to AEG or any of its Related Bodies Corporate or any of their businesses or operations or any request for access to the books or records of AEG or any of its Related Bodies Corporate, which AEG has reasonable grounds to suspect may relate to a current or future Competing Transaction; and/or
- (c) provides any information relating to AEG or any of its Related Bodies Corporate or any of its business or operations to any person in connection with or for the purposes of a current or future Competing Transaction,

and for the avoidance of doubt, this obligation is not subject to the AEG Board reaching a determination under 9.8(a).

### **9.8 Matching right**

Without limiting clauses 9.2 and 9.3, during the Exclusivity Period, AEG must not enter into, or agree to enter into, any legally binding agreement, arrangement or understanding to undertake or give effect to a Competing Transaction, unless:

- (a) the AEG Board, acting in good faith and after consultation with its financial advisers and external legal advisers, as contemplated under clauses 9.5(a) and 9.5(b), determines that:
  - (i) the proposed Competing Transaction would constitute an actual, proposed or potential Superior Proposal; and
  - (ii) failure to take that action would be inconsistent with the AEG Directors' fiduciary duties or statutory obligations;
- (b) AEG has given WAM Leaders:
  - (i) the information contemplated by clause 9.7; and
  - (ii) notice of the AEG Directors' determination under clause 9.8(a);
- (c) AEG has given WAM Leaders at least five Business Days after the later of:
  - (i) the date that AEG notifies WAM Leaders that the AEG Directors have determined that the Competing Transaction would be or would be reasonably likely to be an actual, proposed or potential Superior Proposal under clause 9.8(a)(i); and
  - (ii) the date of the provision of the information referred to in clause 9.7,



to provide a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction; and

- (d) either:
- (i) WAM Leaders has not provided a WAM Leaders Counterproposal to AEG by the expiry of the five Business Day period referred to in clause 9.8(c); or
  - (ii) WAM Leaders has provided a WAM Leaders Counterproposal to AEG, but the AEG Board determines, acting reasonably and in good faith, after consultation with its financial advisers and after receiving written legal advice from their external legal advisers (who must be reputable advisers experienced in transactions of this nature), that the WAM Leaders Counterproposal would not provide an equivalent or superior outcome for AEG Shareholders as a whole compared with the Competing Transaction, taking into account all of the terms and conditions of the WAM Leaders Counterproposal.

AEG acknowledges and agrees that each successive material modification of any Competing Transaction will constitute a new actual, proposed or potential Competing Transaction for the purposes of the requirements under clause 9.8(b) and 9.8(c) and accordingly AEG must comply with clauses 9.8(b) and 9.8(c) in respect of any such new actual, proposed or potential Competing Transaction.

#### **9.9 WAM Leaders counterproposal**

- (a) If by the expiry of the five Business Day period referred to in clause 9.8(c) WAM Leaders proposes to AEG amendments to the Scheme or makes a new proposal that may reasonably constitute a matching or superior proposal to the terms of the actual, proposed or potential Competing Transaction (**WAM Leaders Counterproposal**), then:
- (i) AEG must procure that the AEG Board considers the WAM Leaders Counterproposal; and
  - (ii) if the AEG Board, acting reasonably and in good faith, determines that the WAM Leaders Counterproposal would provide an equivalent or superior outcome for AEG Shareholders as a whole compared with the Competing Transaction, taking into account all of the terms and conditions of the WAM Leaders Counterproposal, then:
    - (A) AEG and WAM Leaders must use their reasonable endeavours to agree the amendments to this agreement and, if applicable, the Scheme and Deed Poll, that are reasonably necessary to reflect the WAM Leaders Counterproposal and to implement the WAM Leaders Counterproposal, in each case as soon as reasonably practicable; and
    - (B) AEG must use its reasonable endeavours to procure that each of the AEG Directors continues to recommend the Transaction (as modified by the WAM Leaders Counterproposal) to AEG Shareholders subject only to no Superior Proposal emerging and to the Independent Expert concluding (and continuing to conclude) that the Transaction, as modified by the WAM Leaders Counterproposal, is in the best interests of AEG Shareholders.

- (b) Each successive amendment to any proposal by WAM Leaders that is a WAM Leaders Counterproposal constitutes a new WAM Leaders Counterproposal for the purposes of this clause 9.9, and clause 9.8 and 9.9 will apply in relation to that WAM Leaders Counterproposal.

#### 9.10 Legal advice

AEG acknowledges that it has received legal advice on this agreement and the operation of this clause.

## 10 Representations and warranties

### 10.1 AEG's representations and warranties

AEG represents and warrants to WAM Leaders (on its own behalf and separately as trustee or nominee for each of the WAM Leaders directors) that each of the following statements is true and correct in all material respects as at the date of this agreement and as at 8.00am on the Second Court Date:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;
- (b) **(power)** it has power to enter into this agreement, to comply with its obligations under it and exercise its rights under it;
- (c) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this agreement do not and will not conflict with:
- (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;
  - (ii) any law binding on or applicable to it or its assets; or
  - (iii) any material document or agreement that is binding on it or its Subsidiaries;
- (d) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this agreement, subject to satisfaction of the Conditions Precedent, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (e) **(validity of obligations)** its obligations under this agreement are valid and binding and are enforceable against it in accordance with its terms;
- (f) **(reliance)** the AEG Information contained in the Scheme Booklet will be included in good faith and on the understanding that WAM Leaders and its directors will rely on that information for the purposes of considering and approving the WAM Leaders Information in the Scheme Booklet before it is despatched, approving the entry into the Deed Poll and implementing the Scheme;
- (g) **(AEG Information)** the AEG Information provided in accordance with this agreement and included in the Scheme Booklet as at the date of the Scheme Booklet will not knowingly, recklessly or negligently contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;

- (h) **(disclosure)** AEG has not knowingly, negligently or recklessly, omitted from the AEG Disclosure Material information actually known to AEG (having made reasonable enquiries) as at the date of this agreement regarding matters affecting or relating to it:
- (i) which is not already in the public domain; and
  - (ii) the disclosure of which might reasonably be expected to have resulted in WAM Leaders not entering into this agreement at all or only entering into this agreement on materially different terms;
- (i) **(continuous disclosure)** AEG is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure (other than the Transaction contemplated by this agreement);
- (j) **(complete and accurate)** has not knowingly, negligently or recklessly included or omitted anything from the AEG Disclosure Material that is or makes any part of that material misleading, whether by way of omission or otherwise;
- (k) **(compliance)** AEG has, to its best knowledge and belief (after due enquiry), complied in all material respects with all Australian and foreign laws and regulations applicable to it and orders of Australian and foreign governmental agencies having jurisdiction over it and has all material licences and permits necessary for it to conduct its business as presently being conducted;
- (l) **(opinions)** any statement of opinion or belief contained in the AEG Information is honestly held and there are reasonable grounds for holding the opinion or belief;
- (m) **(provision of information to Independent Expert)** all information provided by or on behalf of AEG to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;
- (n) **(no default)** AEG is not in material default under any document, agreement or instrument binding on it or its assets and which is material to AEG taken as a whole, nor has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party a termination right or right to accelerate any right or obligation, under any such document or agreement with that effect;
- (o) **(securities)** AEG's issued securities as at the date of this agreement are 90,264,949 AEG Shares, and other than as Disclosed it has not issued or agreed to issue any other securities or instruments which are still outstanding and which may convert into AEG Shares; and
- (p) **(no Encumbrances)** there are no material Encumbrances over all or any of its assets or revenues;
- (q) **(no Subsidiaries)** AEG has no Subsidiaries;
- (r) **(litigation or regulatory investigation)** there is no material litigation or regulatory investigation commenced or (so far as AEG is aware) threatened against AEG of any nature;
- (s) **(Insolvency event)** AEG is not Insolvent;

- (t) **(AEG Shares not indirect Australian real property interests)** the relevant AEG Shares held by each Scheme Participant are not, and until (and including) the Implementation Date will not be, indirect Australian real property interests within the meaning of Division 855 of the Tax Act for the Scheme Participant;
- (u) **(change of control)** there is no agreement or other instrument to which AEG is a party, or (so far as AEG is aware) by or to which AEG or any of its assets are bound or subject, pursuant to which a person other than AEG has the right to take an action (as a result of the Scheme) which would have the following consequence (to an extent which is material in the context of AEG taken as a whole) if exercised:
  - (i) any monies borrowed by AEG being or becoming repayable or being capable of being declared repayable immediately or earlier than the repayment date stated in that agreement or other instrument;
  - (ii) any such agreement or other instrument being terminated or modified or any action being taken or arising under the agreement or instrument; or
  - (iii) the interest of AEG in any firm, joint venture, trust, corporation or other entity (or any arrangements relating to that interest) being terminated or modified.

## **10.2 AEG's indemnity**

AEG indemnifies the WAM Leaders Indemnified Parties against all Losses incurred as a result of any of the representations and warranties in clause 10.1 not being true and correct.

## **10.3 AEG's knowledge or awareness**

Where an AEG Representation and Warranty is given 'to the best of AEG's knowledge', or 'so far as AEG is aware' or with a similar qualification as to AEG's awareness or knowledge, AEG will be deemed to know or be aware of a particular fact, matter or circumstance at a given time only if, at that time, any of the AEG Directors is aware of that fact, matter or circumstance as at the date the AEG Representation and Warranty is given.

## **10.4 Qualifications on AEG's representations, warranties and indemnities**

The AEG Representations and Warranties and the indemnity in clause 10.2 are qualified by matters which:

- (a) are expressly provided for in this agreement;
- (b) has been consented to by WAM Leaders;
- (c) have been Disclosed; or
- (d) are within the actual knowledge of WAM Leaders as at the date of this agreement.

## **10.5 WAM Leaders' representations and warranties**

WAM Leaders represents and warrants to AEG (on its own behalf and separately as trustee or nominee for each of the AEG Directors) that each of the following statements is true and correct in all material respects as at the date of this agreement and as at 8.00am on the Second Court Date:

- (a) **(status)** it has been incorporated or formed in accordance with the laws of its place of incorporation;

- (b) **(power)** it has power to enter into this agreement, to comply with its obligations under it and exercise its rights under it;
- (c) **(not representative capacity)** it is not entering into this document as trustee of any trust or settlement or otherwise in a representative capacity;
- (d) **(no contravention)** the entry by it into, its compliance with its obligations and the exercise of its rights under, this agreement do not and will not conflict with:
  - (i) its constituent documents or cause a limitation on its powers or the powers of its directors to be exceeded;
  - (ii) any law binding on or applicable to it or its assets; or
  - (iii) any material document or agreement that is binding on it;
- (e) **(authorisations)** it has in full force and effect each authorisation necessary for it to enter into this agreement, and subject to satisfaction of the Conditions Precedent, to comply with its obligations and exercise its rights under it, and to allow them to be enforced;
- (f) **(validity of obligations)** its obligations under this agreement are valid and binding and are enforceable against it in accordance with its terms;
- (g) **(reliance)** the WAM Leaders Information provided to AEG for inclusion in the Scheme Booklet will be provided in good faith and on the understanding that AEG and its directors will rely on that information for the purposes of preparing the Scheme Booklet and proposing and implementing the Scheme in accordance with the Corporations Act;
- (h) **(Information not false or misleading)** as at the date of this agreement, WAM Leaders has not knowingly, negligently or recklessly, omitted to disclose information to AEG, the disclosure of which might reasonably be expected to have resulted in AEG not entering into this document, or entering into it on materially different terms;
- (i) **(WAM Leaders Information)** the WAM Leaders Information provided in accordance with this agreement and included in the Scheme Booklet, as at the date of the Scheme Booklet, will not contain any material statement which is misleading or deceptive nor contain any material omission having regard to applicable disclosure requirements and will comply in all material respects with the requirements of the Corporations Act, the Listing Rules and all relevant regulatory guides and other guidelines and requirements of ASIC;
- (j) **(reasonable assumptions)** to the extent information provided to AEG, whether under due diligence or not, in connection with this agreement, includes forward looking statements, those forward looking statements are based on assumptions which WAM Leaders believes, as at the date the information was provided and continues to believe, to be reasonable;
- (k) **(disclosure)** the WAM Leaders Disclosure Material has been collated and prepared in good faith, and WAM Leaders has not knowingly, negligently or recklessly included or omitted anything from the WAM Leaders Disclosure Material that is or makes any part of that materially false or misleading in any material respect (including by omission) as at the date of collation or preparation;
- (l) **(continuous disclosure)** WAM Leaders is not in breach of its continuous disclosure obligations under the Listing Rules and is not relying on the carve-out

- in Listing Rule 3.1A to withhold any information from disclosure (other than the Transaction contemplated by this agreement);
- (m) **(compliance)** WAM Leaders has complied in all material respects with all Australian and foreign laws and regulations applicable to them and orders of Australian and foreign governmental agencies having jurisdiction over it and has all material licenses, permits and franchises necessary for it to conduct its businesses as presently being conducted;
  - (n) **(opinions)** any statement of opinion or belief contained in the WAM Leaders Information is honestly held and there are reasonable grounds for holding the opinion or belief;
  - (o) **(no dealing with AEG Shareholders)** neither WAM Leaders nor any of its Associates has any agreement, arrangement or understanding with any AEG Shareholder under which that AEG Shareholder (or an Associate of that AEG Shareholder) would be entitled to receive consideration for their AEG Shares different from the Scheme Consideration or under which the AEG Shareholder agrees to vote in favour of the Scheme or against any Competing Transaction;
  - (p) **(provision of information to Independent Expert)** all information provided by or on behalf of WAM Leaders to the Independent Expert to enable the Independent Expert's Report to be prepared and completed will be provided in good faith and on the understanding that the Independent Expert will rely upon that information for the purpose of preparing the Independent Expert's Report;
  - (q) **(no default)** WAM Leaders is not in material default under any document, agreement or instrument binding on it or its assets and which is material to WAM Leaders taken as a whole, nor has anything occurred which is or would with the giving of notice or lapse of time constitute an event of default, prepayment event or similar event, or give another party a termination right or right to accelerate any right or obligation, under any such document or agreement with that effect;
  - (r) **(securities)** WAM Leaders' issued securities as at the date of this agreement are 1,034,044,884 WAM Leaders Shares and other than as Disclosed prior to the date of this agreement it has not issued or agreed to issue any other securities or instruments which are still outstanding and which may convert into WAM Leaders Shares;
  - (s) **(no Encumbrances)** there are no material Encumbrances over all or any of its assets or revenues;
  - (t) **(no Subsidiaries)** WAM Leaders has no Subsidiaries;
  - (u) **(Consideration)** the WAM Leaders Shares issued under the Scheme will, on issue:
    - (i) be duly issued and fully paid;
    - (ii) be free from any Encumbrance and interest of third parties of any kind, whether legal or otherwise, or restriction on transfer of any kind; and
    - (iii) rank equally in all respects, including for future dividends, with all existing WAM Leaders Shares;
  - (v) **(litigation or regulatory investigation)** there is no litigation or regulatory investigation commenced or (so far as WAM Leaders is aware) threatened against WAM Leaders of any nature;

- (w) **(WAM Leaders Shares not indirect Australian real property interests)** WAM Leaders Shares are not, and until (and including) the Implementation Date will not be, indirect Australian real property interests within the meaning of Division 855 of the Tax Act for the holders of WAM Leaders Shares; and
- (x) **(Insolvency event)** WAM Leaders is not Insolvent.

#### **10.6 WAM Leaders' indemnity**

WAM Leaders indemnifies the AEG Indemnified Parties against all Losses incurred as a result of any of the representations and warranties in clause 10.5 not being true and correct.

#### **10.7 WAM Leaders' knowledge or awareness**

Where a WAM Leaders Representation and Warranty is given 'to the best of WAM Leaders' knowledge', or 'so far as WAM Leaders is aware' or with a similar qualification as to WAM Leaders' awareness or knowledge, WAM Leaders will be deemed to know or be aware of a particular fact, matter or circumstance at a given time only if, at that time, any of the WAM Leaders directors or Jesse Hamilton (WAM Leaders' joint company secretary) is aware of that fact, matter or circumstance as at the date the WAM Leaders Representation and Warranty is given.

#### **10.8 Qualifications on WAM Leaders' representations, warranties and indemnities**

The WAM Leaders Representations and Warranties and the indemnity in clause 10.6 are qualified by matters which:

- (a) are expressly provided for in this agreement;
- (b) have been Disclosed in writing to AEG; or
- (c) are within the actual knowledge of AEG as at the date of this agreement.

#### **10.9 Limitations of liability**

- (a) Notwithstanding any other provision of this agreement:
  - (i) the maximum aggregate liability of AEG to the WAM Leaders Indemnified Parties under or in connection with this agreement including in respect of any breach of the agreement will be \$1,000,000; and
  - (ii) the maximum liability amount referred to in clause 10.9(a)(i) represents the maximum and absolute amount of the liability of AEG under or in connection with this agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by AEG in connection with this agreement.
- (b) Notwithstanding any other provision of this agreement:
  - (i) the maximum liability of WAM Leaders to AEG Indemnified Parties under or in connection with this agreement including in respect of any breach of the agreement will be \$1,000,000; and
  - (ii) the maximum liability amount referred to in clause 10.9(b)(i) represents the maximum and absolute amount of the liability of WAM Leaders under or in connection with this agreement and no further damages, fees, expenses or reimbursements of any kind will be payable by WAM Leaders in connection with this agreement,

except that nothing in this clause 10.9 limits the liability of WAM Leaders for any breach of clauses 4.2(a), 4.2(b), 4.3 or 10.5(u).

- (c) Nothing in this clause 10.9 limits the liability of any party for fraud.

## **11 Termination**

### **11.1 Termination events**

This agreement may be terminated:

- (a) **(End Date)** by either party, if the Scheme has not become Effective on or before the End Date;
- (b) **(lack of support)** by WAM Leaders at any time prior to 8.00am on the Second Court Date if any AEG Director changes their recommendation to the AEG Shareholders that they vote in favour of the resolution to approve the Scheme, including any adverse modification to their recommendation, or otherwise makes a public statement indicating that they no longer support the Scheme;
- (c) **(material breach)** by either party at any time prior to 8.00am on the Second Court Date, if the other is in material breach of a term of this agreement (including any representation and warranty not being true and correct), taken in the context of the Scheme as a whole, provided:
- (i) the non-defaulting party has given notice to the other setting out the relevant circumstances giving rise to the breach, and stating an intention to terminate this document;
  - (ii) the relevant circumstances giving rise to the breach are not remedied to the non-defaulting party's reasonable satisfaction by the earlier of:
    - (A) five Business Days after the date of the notice given by the non-defaulting party under clause 11.1(c)(i); or
    - (B) any shorter period ending at 8.00am on the Second Court Date;
- (d) **(competing interest)** by WAM Leaders at any time prior to the AEG Shareholders approving the Scheme by the requisite majorities in accordance with the Corporations Act, if a person (other than WAM Leaders or its Associates) acquires a Relevant Interest in more than 20% of AEG Shares;
- (e) **(Competing Transaction)** by AEG at any time prior to 8.00am on the Second Court Date if the AEG Board determines that a Competing Transaction that was not solicited, invited, encouraged or initiated in breach of clause 9.2 is a Superior Proposal, and either:
- (i) WAM Leaders has not made a WAM Leaders Counterproposal within the five day period mandated under clause 9.8; and/or
  - (ii) following consideration of a WAM Leaders Counterproposal under clause 9.9, the AEG Board determines that that the WAM Leaders Counterproposal would not provide an equivalent or superior outcome for AEG Shareholders as a whole compared with the Competing Transaction;
- (f) **(consultation or appeal failure)** in accordance with and under:
- (i) clause 3.8(a)(i);



- (ii) clause 3.8(a)(ii); or
- (iii) clause 5.8;
- (g) **(agreement)** if agreed to in writing by WAM Leaders and AEG;
- (h) **(Independent Expert)** by AEG at any time prior to 8.00am on the Second Court Date if the Independent Expert concludes in the Independent Expert's Report (or any update or variation to that report) that the Transaction is not in the best interests of AEG Shareholders, or adversely changes its previously given opinion in the Independent Expert's Report (or any update or variation to that report) that the Transaction is in the best interests of AEG Shareholders; or
- (i) **(Insolvency)** by either party if the other party becomes Insolvent.

## **11.2 Termination**

Where a party has a right to terminate this agreement, that right for all purposes will be validly exercised if the party delivers a notice in writing to the other party stating that it terminates this agreement.

## **11.3 Effect of Termination**

If this agreement is terminated by either party, or if this agreement otherwise terminates in accordance with its terms, then in either case all further obligations of the parties under this agreement, other than the obligations set out in this clause and in clauses 5.8, 10.9, 12 to 17 (inclusive) will immediately cease to be of further force and effect without further liability of any party to the other, provided that nothing in this clause releases any party from liability for any pre-termination breach of this agreement.

## **12 Public announcements**

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### **12.1 Public announcement of Transaction**

Immediately after signing this agreement, AEG and WAM Leaders must issue a joint public announcement of the Transaction in the form contained in Annexure A (**Public Announcement**).

### **12.2 Required disclosure**

Where a party is required by any applicable law or any Listing Rule to make any announcement or make any disclosure in connection with the Transaction, it must use all reasonable endeavours, to the extent possible, to consult with the other party prior to making the relevant disclosure.

### **12.3 Other announcements**

Subject to clauses 12.1 and 12.2, no party may make any public announcement or disclosure in connection with the Transaction (including disclosure to a Regulatory Authority) other than in a form approved by each party (acting reasonably) unless that party is repeating or summarising points from the Public Announcement or an announcement previously approved by each party. Each party will use all reasonable endeavours to provide that approval as soon as practicable.

## **13 Confidential Information**

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### **13.1 Confidentiality agreement**

WAM Leaders and AEG acknowledge and agree that the parties to the Confidentiality Agreement continue to be bound by the Confidentiality Agreement in respect of all

information received by it from or on behalf of the other party on, before or after the date of this agreement.

### **13.2 Survival of obligations**

The rights and obligations of the parties to the Confidentiality Agreement survive termination (for whatever reason) of this agreement.

## **14 Notices and other communications**

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### **14.1 Form**

Unless this agreement expressly states otherwise, all notices, demands, certificates, consents, approvals, waivers and other communications in connection with this agreement must be in writing and signed by the sender (if an individual) or an authorised officer of the sender.

All communications (other than email communications) must also be marked for the attention of the person referred to in the Details (or, if the recipient has notified otherwise, then marked for attention in the way last notified).

Email communications must state the first and last name of the sender and are taken to be signed by the named sender.

### **14.2 Delivery**

Communications must be:

- (a) left at the address referred to in the Details;
- (b) sent by regular ordinary post (airmail if appropriate) to the address referred to in the Details; or
- (c) sent by email to the address referred to in the Details.

If the intended recipient has notified changed contact details, then communications must be sent to the changed contact details.

### **14.3 When effective**

Communications take effect from the time they are received or taken to be received under clause 14.4 (whichever happens first) unless a later time is specified in the communication.

### **14.4 When taken to be received**

Communications are taken to be received:

- (a) if sent by post, two Business Days after posting (or 10 days after posting if sent from one country to another);
- (b) if sent by email:
  - (i) when the sender receives an automated message confirming delivery; or
  - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,

whichever happens first.

**14.5 Receipt outside business hours**

Despite anything else in this clause 14, if communications are received or taken to be received under clause 14.4 after 5.00pm on a Business Day or on a non-Business Day, they are taken to be received at 9.00am on the next Business Day. For the purposes of this clause, the place in the definition of Business Day is taken to be the place specified in the Details as the address of the recipient and the time of receipt is the time in that place.

**15 GST**


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**15.1 Definitions and interpretation**

For the purposes of this clause:

- (a) "GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (b) a term which has a defined meaning in the GST Act has the same meaning when used in this clause, unless the contrary intention appears; and
- (c) each periodic or progressive component of a supply to which section 156-5(1) of the GST Act applies will be treated as if it were a separate supply.

**15.2 GST exclusive**

Unless this agreement expressly states otherwise, all consideration to be provided under this agreement is exclusive of GST.

**15.3 Payment of GST**

- (a) If GST is payable, or notionally payable, on a supply in connection with this agreement, the party providing the consideration for the supply agrees to pay to the supplier an additional amount equal to the amount of GST payable on that supply (**GST Amount**).
- (b) Subject to the prior receipt of a tax invoice, the GST Amount is payable at the same time as the GST-exclusive consideration for the supply, or the first part of the GST-exclusive consideration for the supply (as the case may be), is payable or is to be provided.
- (c) This clause does not apply to the extent that the consideration for the supply is expressly stated to include GST or the supply is subject to a reverse-charge.

**15.4 Adjustment events**

If an adjustment event arises for a supply made in connection with this agreement, the GST Amount must be recalculated to reflect that adjustment. The supplier or the recipient (as the case may be) agrees to make any payments necessary to reflect the adjustment and the supplier agrees to issue an adjustment note.

**15.5 Reimbursements**

Any payment, indemnity, reimbursement or similar obligation that is required to be made in connection with this agreement which is calculated by reference to an amount paid by another party must be reduced by the amount of any input tax credits which the other party (or the representative member of any GST group of which the other party is a member) is entitled. If the reduced payment is consideration for a taxable supply, clause 15.3 will apply to the reduced payment.

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**16 Costs**


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**16.1 Costs**

- (a) Unless clause 16.1(b) or clause 16.1(d) apply, the parties agree to pay their own Transaction Costs, except for amounts covered by clause 16.2. For the avoidance of doubt, the parties agree to pay their own Transaction Costs if this agreement is terminated by WAM Leaders in accordance with clauses 11.1(b), 11.1(e) or 11.1(h).
- (b) Subject to clause 16.1(c), in the event that:
- (i) a Condition Precedent for which WAM Leaders is the party responsible is not satisfied or waived and AEG validly terminates this agreement in accordance with clause 11.1(f)(ii); or
  - (ii) WAM Leaders is in material breach of a term of this agreement and AEG validly terminates this agreement in accordance with clause 11.1(c),
- WAM Leaders will be liable for all Transaction Costs incurred by AEG on or before the termination date and agrees to indemnify the AEG Indemnified Parties against, and must pay on demand, any costs arising from or incurred by AEG in connection the Transaction.
- (c) Clause 16.1(b) does not apply if at the time AEG validly terminates this agreement:
- (i) AEG is in material breach of this agreement and WAM Leaders is entitled to terminate this agreement in accordance with clause 11.1(c); or
  - (ii) a Condition Precedent for which AEG is the party responsible is not satisfied or waived and WAM Leaders is entitled to terminate this agreement in accordance with clause 11.1(f)(ii).
- (d) The parties agree that all Transaction Costs are to be shared in equal proportions in the event that:
- (i) WAM Leaders validly terminates this agreement under clause 11.1(a);
  - (ii) WAM Leaders and AEG agree in writing in accordance with clause 11.1(g) to terminate this agreement;
  - (iii) a Condition Precedent for which both AEG and WAM Leaders are both responsible is not satisfied or waived and either party validly terminates this agreement in accordance with clause 11.1(f)(i);
  - (iv) the Court refuses to make orders convening the Scheme Meeting or approving the Scheme and either party validly terminates this agreement in accordance with clause 11.1(f)(iii).

**16.2 Stamp duty and registration fees**

WAM Leaders:

- (a) agrees to pay or reimburse all stamp duty, registration fees and similar Taxes payable or assessed as being payable in connection with this agreement, the Transaction or any other transaction contemplated by this agreement (including any fees, fines, penalties and interest in connection with any of those amounts); and

- (b) indemnifies AEG against, and agrees to reimburse and compensate it for, any liability in respect of stamp duty, fees and Taxes under clause 16.2(a).

WAM Leaders agrees to pay amounts due to AEG under this clause within three Business Days of demand from WAM Leaders.

However, WAM Leaders need not pay, reimburse or indemnify against any fees, fines, penalties or interest to the extent they have been imposed as a result of actions by AEG.

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## **17 General**

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### **17.1 Variation and waiver**

A provision of this agreement, or right, power or remedy created under it, may not be varied or waived except in writing signed by the party to be bound.

### **17.2 Consents, approvals or waivers**

By giving any approval, consent or waiver a party does not give any representation or warranty as to any circumstance in connection with the subject matter of the consent, approval or waiver.

### **17.3 Discretion in exercising rights**

Unless this agreement expressly states otherwise, a party may exercise a right, power or remedy or give or refuse its consent, approval or a waiver in connection with this agreement in its absolute discretion (including by imposing conditions).

### **17.4 Partial exercising of rights**

Unless this agreement expressly states otherwise, if a party does not exercise a right, power or remedy in connection with this agreement fully or at a given time, they may still exercise it later.

### **17.5 Conflict of interest**

Each party may exercise their rights, powers and remedies in connection with this agreement even if this involves a conflict of duty or they have a personal interest in their exercise.

### **17.6 Remedies cumulative**

The rights, powers and remedies in connection with this agreement are in addition to other rights, powers and remedies given by law independently of this agreement.

### **17.7 Indemnities and reimbursement obligations**

Any indemnity, reimbursement or similar obligation in this agreement.

- (a) is a continuing obligation despite the satisfaction of any payment or other obligation in connection with this agreement, any settlement or any other thing;
- (b) is independent of any other obligations under this agreement; and
- (c) continues after this agreement, or any obligation arising under it, ends.

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity in connection with this agreement.

### **17.8 Inconsistent law**

To the extent the law permits, this agreement prevails to the extent it is inconsistent with any law.

**17.9 Supervening law**

Any present or future law which operates to vary the obligations of a party in connection with this agreement with the result that another party's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

**17.10 Counterparts**

This agreement may consist of a number of copies, each signed by one or more parties to it. If so, the signed copies are treated as making up a single document and the date on which the last counterpart is executed is the date of the document.

**17.11 Entire agreement**

This agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.

**17.12 Further steps**

Each party agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed), which the other party asks and considers necessary to:

- (a) bind the party and any other person intended to be bound under this agreement;
- (b) implement the Transaction or any part of it, including, for the avoidance of doubt, adopting the transition plan as contemplated under clause 8.6(a) and implementing that plan; or
- (c) show whether the party is complying with this agreement.

**17.13 Cooperation**

Without limiting clauses 3.2 and 3.3, each party agrees to consult with the other party in advance in relation to all communications (whether written or oral, and whether direct or via a Representative) with any Regulatory Authority relating to the Transaction to the extent it is reasonable to do so. For the avoidance of doubt, neither party is required to disclose commercially sensitive information in relation to the communications with any Regulatory Authority to the other party and each party may withhold or redact information or documents from the other party if and to the extent that they are either confidential to a third party or commercially sensitive and confidential to that party.

**17.14 No liability for loss**

Unless this agreement expressly states otherwise, a party is not liable for any loss, liability or costs arising in connection with the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right, power or remedy in connection with this agreement.

**17.15 Severability**

If the whole or any part of a provision of this agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this agreement or is contrary to public policy.

**17.16 Rules of construction**

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this agreement or any part of it.

**17.17 Assignment**

A party may not assign or otherwise deal with its rights under this agreement or allow any interest in them to arise or be varied without the consent of the other party.

**17.18 Enforceability**

For the purpose of this agreement:

- (a) AEG is taken to be acting as agent and trustee on behalf of and for the benefit of all AEG Indemnified Parties; and
- (b) WAM Leaders is taken to be acting as agent and trustee on behalf of and for the benefit of all WAM Leaders Indemnified Parties,

and all of those persons are to this extent taken to be parties to this agreement.

**17.19 No representation or reliance**

Each party acknowledges that:

- (a) no party (nor any person acting on its behalf) has made any representation or other inducement to it to enter into this agreement, except for representations or inducements expressly set out in this agreement;
- (b) it does not enter into this agreement in reliance on any representation or other inducement by or on behalf of any other party, except for any representation or inducement expressly set out in this agreement; and
- (c) clauses 17.19(a) and 17.19(b) above do not prejudice any rights a party may have in relation to information which had been filed by the other party with ASIC or ASX.

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**18 Governing law****18.1 Governing law and jurisdiction**

The law in force in the place specified in the Details governs this agreement. The parties submit to the non-exclusive jurisdiction of the courts of that place.

**18.2 Serving documents**

Without preventing any other method of service, any document in an action in connection with this agreement may be served on a party by being delivered or left at that party's address for service of notices under clause 14.2.

## **Schedule 1      Indicative Timetable (clause 5.1)**

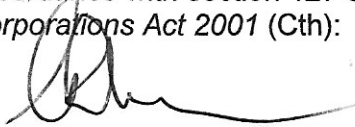
<b>Event</b>	<b>Date</b>
Sign Scheme Implementation Agreement and joint public announcement of the Transaction	Date of this agreement
Lodge draft Scheme Booklet with ASIC	Early July 2022
First Court Date	Early August 2022
Despatch of Scheme Booklet	Early August 2022
Scheme Meeting	Mid – late September 2022
Second Court Date	Late September 2022
Calculation Date	Late September 2022
Lodge Court order with ASIC (Effective Date)	Late September 2022
Record Date	Late September 2022
NTA calculations are Confirmed	Late September – Early October 2022
Implementation Date	Early October 2022



## Signing pages

**EXECUTED** as an agreement

**EXECUTED** by **WAM LEADERS LIMITED (ACN 611 053 751)** in accordance with section 127 of the *Corporations Act 2001 (Cth)*:



.....  
Signature of director

LINDSAY ROBERT MANN

.....  
Name of director (block letters)



.....  
Signature of ~~director~~/company secretary\*  
\*delete whichever is not applicable

Jesse Hamilton

.....  
Name of ~~director~~/company secretary\*  
(block letters)  
\*delete whichever is not applicable

**EXECUTED** by **ABSOLUTE  
EQUITY PERFORMANCE FUND  
LIMITED (ACN 608 552 496)** in  
accordance with section 127 of the  
*Corporations Act 2001 (Cth)*:



.....  
Signature of director

Marc Fisher

.....  
Name of director (block letters)



.....  
Signature of director/company secretary\*  
\*delete whichever is not applicable

D.W. HARRISON

.....  
Name of director/company secretary\*  
(block letters)  
\*delete whichever is not applicable

## **Annexure A    Public Announcement**

## WAM Leaders and Absolute Equity Performance Fund set to merge

14 June 2022  
ASX announcement

WAM Leaders Limited (**WAM Leaders**) (ASX: WLE) and Absolute Equity Performance Fund Limited (**AEG**) (ASX: AEG) are pleased to announce that they have entered into a Scheme Implementation Agreement (which is annexed to this announcement) to merge the two entities (**Proposed Transaction**).

It is proposed that WAM Leaders will acquire 100% of the shares in AEG through a Scheme of Arrangement (**Scheme**). Under the Scheme, AEG shareholders will receive new WAM Leaders shares (**Scrip Consideration**) as consideration for their AEG shares. The number of WAM Leaders shares to be offered for each AEG share will be determined by a formula based on the ratio of the net tangible assets (**NTA**) of WAM Leaders before tax (**pre-tax NTA**) to the pre-tax NTA of AEG. Using the latest available pre-tax NTA of WAM Leaders (dated 30 April 2022) and the latest available pre-tax NTA of AEG (dated 31 May 2022), as an example<sup>1</sup>, AEG shareholders would receive 0.622 new WAM Leaders shares for each AEG share they hold under the Proposed Transaction, with an indicative market value of \$0.92 per AEG share, representing a 10.6% uplift over the closing share price of AEG on 10 June 2022.

It is the current intention of the WAM Leaders Board to ensure that all AEG shareholders who receive WAM Leaders shares under the Scheme will be eligible to receive any FY2022 fully franked final dividend that is paid by WAM Leaders.

The proposed merger of WAM Leaders and AEG follows AEG's consultation process announced on 16 February 2022, under which the AEG Board and its advisors evaluated a range of alternatives with a view to maximise value for all AEG shareholders.

WAM Leaders Chairman and Chief Investment Officer Geoff Wilson AO said: "The WAM Leaders and AEG Boards of Directors believe that the Scheme will be beneficial to both companies and result in a strong merged entity leveraging Wilson Asset Management's investment strategy. We look forward to welcoming AEG shareholders to the Wilson Asset Management family as we continue to grow WAM Leaders."

### AEG Board of Directors' recommendation

Subject to the independent expert determining that the Proposed Transaction is in the best interests of AEG shareholders, and in the absence of a superior proposal, the AEG Board of Directors believe the Proposed Transaction is in the best interests of AEG shareholders and intend to vote any AEG shares they own or control in favour of the Proposed Transaction.

Reasons for the AEG Board's recommendation will be provided in a Scheme Booklet which AEG will distribute in due course. The Scheme Booklet will include details of the Scheme, including an independent expert's report, the scheme of arrangement document, and the deed poll in favour of the AEG shareholders.

AEG Chairman Marc Fisher said: "Wilson Asset Management's reputation for putting shareholders first mirrors our own, and reflects the outcome the AEG Board sought when embarking upon the consultation process. Wilson Asset Management's pioneering strategies and strong focus on fully-franked dividend income for shareholders deliver them a deservedly unrivalled position in the LIC space, and I very much look forward to working with them."

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<sup>1</sup> Based on WAM Leaders closing share price of \$14.85 per share as at 10 June 2022 and pre-tax NTA of \$1,532 as at 30 April 2022, and AEG's closing share price of \$0.835 per share as at 10 June 2022 and pre-tax NTA of \$0.953 as at 31 May 2022. The implied value of the Offer depends on the value of WAM Leaders share price and pre-tax NTA, and AEG's pre-tax NTA, at the Calculation Date and the WAM Leaders share price at the time the Scheme consideration is issued (on the Implementation Date), and could be higher or lower than the example used.

On implementation of the Proposed Transaction, an invitation will be made to AEG Chairman, Marc Fisher, to join the WAM Leaders Board subject to the corporate governance processes and protocols of WAM Leaders.

### Key benefits of the Proposed Transaction for AEG shareholders

The Proposed Transaction will create a single listed investment company with a larger capital and shareholder base, to be managed by Wilson Asset Management.

The WAM Leaders Board of Directors believe the merged entity will deliver the following benefits:

- the potential to exit their investment in AEG at or above the stated pre-tax NTA backing of the company and at a premium to the share price of AEG;
- Wilson Asset Management's investment expertise and experience;
- Wilson Asset Management's commitment to shareholder engagement;
- a history of paying fully franked dividends to shareholders;
- WAM Leaders' track record of investment portfolio performance; and
- WAM Leaders' greater market capitalisation and on-market liquidity.

### Key benefits of the merger for WAM Leaders shareholders

If the Proposed Transaction proceeds, it will create a single listed investment company with a larger capital and shareholder base. On a pre-tax NTA basis, it is expected that the WAM Leaders net assets will increase by approximately \$86.0 million<sup>2</sup> as at 30 April 2022.

The WAM Leaders Board of Directors believe the merged entity will deliver the following benefits for WAM Leaders shareholders:

- a stable and clearly articulated investment strategy and a proven investment manager with a track record of delivering investment portfolio outperformance for shareholders since inception in May 2016;
- a reduced management expense ratio as a result of the removal of duplication of expenses such as ASX listing fees, share registry fees, auditing fees, compliance costs and other public listed company costs, as well as a larger pool of assets to spread the expenses across;
- access to greater on-market liquidity for shareholders;
- improving the prospect of broker and research coverage;
- garnering additional interest from financial planners; and
- equitably and efficiently grow the Company's pre-tax NTA to approximately \$1,670.6 million<sup>2</sup> with approximately 24,700 shareholders.

### Scheme Implementation Agreement and indicative timeline

WAM Leaders and AEG have entered into the attached Scheme Implementation Agreement, which contains the terms and conditions on which WAM Leaders and AEG will implement the Proposed Transaction. The Scheme Implementation Agreement includes a number of customary clauses and is subject to conditions precedent including AEG shareholders approving the Scheme in accordance with the *Corporations Act 2001*(Cth), the independent expert concluding that the Proposed Transaction is in the best interests of AEG shareholders and the Federal Court approving the Scheme.

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<sup>2</sup> Based on the WAM Leaders pre-tax NTA of \$1.532 as at 30 April 2022 and AEG's pre-tax NTA of \$0.953 as at 31 May 2022.

Subject to any adjustments required by ASIC or ASX, the date and time for determining the exchange ratio will be 5pm on the date the Scheme becomes legally binding, i.e. after both AEG shareholders and the court have approved the Proposed Transaction (**Calculation Date**). This will ensure that changes to AEG and WAM Leaders' respective NTA's before the Scheme has been approved will be taken into account in the determination of the exchange ratio.

It is currently anticipated that AEG shareholders will be given the opportunity to vote on the Scheme at a meeting expected to be held in September 2022. Detailed information relating to the Scheme will be set out in the Scheme Booklet, which is expected to be sent to AEG shareholders during August 2022.

An indicative timetable for the Proposed Transaction is set out below:

Event	Expected Date
First Court date	Early August 2022
Scheme Booklet to Absolute Equity Performance Fund sent to shareholders	Early August 2022
Scheme Meeting	Mid September 2022
Second Court date	Mid-Late September 2022
Effective date / Calculation date for the exchange ratio	Late September 2022
Record date	Late September 2022
Implementation date	Early October 2022

The indicative timetable is subject to finalisation and review with the ASX.

## Contact details and advisors

AEG is being advised by Mont Lawyers as legal adviser.

For further information, please contact:

Lisa Dadswell

### Company Secretary

[Lisa.Dadswell@boardroomlimited.com.au](mailto:Lisa.Dadswell@boardroomlimited.com.au)

WAM Leaders is being advised by Mills Oakley as legal adviser.

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Jesse Hamilton

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This announcement has been authorised by the boards of WAM Leaders Limited and Absolute Equity Performance Fund Limited.

## About Absolute Equity Performance Fund

Absolute Equity Performance Fund Limited (ASX: AEG) provides investors with a diversified portfolio of Australian listed equities, with the aim of achieving positive returns regardless of share market performance, through an "equity market neutral" style of investing. AEG's objective is to deliver absolute returns through capital growth and income regardless of market movements.

## About WAM Leaders

WAM Leaders Limited (ASX: WLE) is a listed investment company (LIC) managed by Wilson Asset Management. Listed in May 2016, WAM Leaders provides investors with exposure to an active investment process focused on identifying large-cap companies with compelling fundamentals, a robust macroeconomic thematic and a catalyst. The Company's investment objectives are to deliver a stream of fully franked dividends, provide capital growth over the medium-to-long term and preserve capital.

All major platforms provide access to WAM Leaders, including AMP North, BT Panorama, Colonial First State FirstWrap, Netwealth, Macquarie Wrap and Hub24. WAM Leaders receives coverage from the following independent investment research providers:



## About Wilson Asset Management

Wilson Asset Management has a track record of making a difference for shareholders and the community for more than 20 years. As the investment manager for eight leading LICs: WAM Capital (ASX: WAM), WAM Leaders (ASX: WLE), WAM Global (ASX: WGB), WAM Microcap (ASX: WMI), WAM Alternative Assets (ASX: WMA), WAM Strategic Value (ASX: WAR), WAM Research (ASX: WAX) and WAM Active (ASX: WAA), Wilson Asset Management invests over \$5.4 billion on behalf of more than 120,000 retail investors.

Wilson Asset Management created and is the lead supporter of the first LICs to deliver both investment and social returns: Future Generation Australia (ASX: FGX) and Future Generation Global (ASX: FGG). Wilson Asset Management advocates and acts for retail investors, is a member of the global philanthropic Pledge 1% movement, is a significant funder of many Australian charities and provides all team members with \$10,000 each year to donate to charities of their choice. All philanthropic investments are made by the Investment Manager.



For further information, visit [wilsonassetmanagement.com.au](http://wilsonassetmanagement.com.au) or contact:

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Chairman &  
Chief Investment Officer  
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## **Annexure B    Scheme of Arrangement**



## **SCHEME OF ARRANGEMENT**

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**Absolute Equity Performance Fund Limited**  
(ACN 608 552 496)

### **Scheme Participants**



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This scheme of arrangement is made under section 411 of the Corporations Act 2001 (Cth) between the parties:

**Name** Absolute Equity Performance Fund Limited (ACN 608 552 496) (**AEG**)

**Address** Level 12, Grosvenor Place, 225 George St, Sydney, NSW, Australia, 2000

**And** Each Scheme Participant

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1. Definitions**

In this Scheme:

**AEG Auditor** means the auditor for AEG being, as at the date of this agreement, Pitcher Partners Sydney.

**AEG NTA** means the NTA of AEG on the Calculation Date, as calculated and Confirmed in accordance with clauses 5.2(q), 5.3(m)(i) and, if applicable, 5.2(r)(ii) of the Scheme Implementation Agreement. For the avoidance of doubt, the AEG Transaction Costs are considered a liability of AEG in calculating the AEG NTA.

**AEG Registry** means Boardroom Pty Limited of Level 12, 225 George Street, Sydney NSW 2000.

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

**AEG Shareholder** means each person registered in the AEG Share Register as a holder of AEG Shares.

**AEG Share Register** means the register of members of AEG maintained by the AEG Registry in accordance with the Corporations Act.

**AEG Transaction Costs** means, unless otherwise agreed pursuant to the Scheme Implementation Agreement, all of AEG's costs associated with implementing the Transaction (including registry, court and other filing fees, portfolio transaction costs, fees for AEG's financial, taxation, legal and other professional advisers, counsel fees, fees of the independent expert appointed by AEG under clause 5.2(b) of the Scheme Implementation Agreement, costs associated with the D&O Run-Off Insurance, accrued management and performance fees as at the Calculation Date and any other contractual liabilities, including GST paid on such costs to the extent not reduced by an input tax credit) that have been incurred but remain unpaid as at the Calculation Date.

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

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

**ASX Operating Rules** means the operating rules of ASX Settlement.

**ASX Settlement** means ASX Settlement Pty Ltd (ACN 008 504 532).

**Business Day** has the meaning given in the Listing Rules.

**Calculation Date** means:

- (a) 5:00pm (Sydney time) on the Effective Date; or
- (b) such other time and date as AEG and WAM Leaders agree in writing.

**CHESS** means the Clearing House Electronic Subregister System operated by ASX Settlement.

**Confirmed** means, in respect of the NTA per AEG Share on the Calculation Date, or NTA per WAM Leaders Share on the Calculation Date:

- (a) the amounts agreed between the parties in writing; or
- (b) the amount certified by the AEG Auditor (in respect of the NTA per AEG Share) or the WAM Leaders Auditor (in respect of the NTA per WAM Leaders Share) as calculated to the standard prescribed by Accounting Standard on Review Engagements ASRE 2410 "Review of a Financial Report Performed by the Independent Auditor of the Entity".

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

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

**Court** means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act as AEG and WAM Leaders agree on in writing.

**D&O Run-Off Insurance** has the meaning given in clause 7.4(b) of the Scheme Implementation Agreement.

**Deed Poll** means the deed poll to be granted by WAM Leaders in favour of the Scheme Participants in substantially the form set out in Annexure C to the Scheme Implementation Agreement or such other form agreed to in writing between AEG and WAM Leaders.

**Delivery Time** means 8.00am on the Second Court Date.

**Effective** means, when used in relation to the Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme.

**Effective Date** means the date on which the Scheme becomes Effective.

**Encumbrance** means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or 12(2) of the *Personal Property Securities Act 2009* (Cth) or any agreement to create any of them or allow them to exist.

**End Date** means 30 November 2022 or such other date agreed by WAM Leaders and AEG in writing.

**Excluded Shareholder** means WAM Leaders and includes any custodian of WAM Leaders to the extent it is acting in that capacity.

**GST** has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Implementation Date** means the:

- (a) 5<sup>th</sup> Business Day following the Record Date; or
- (b) 2<sup>nd</sup> Business Day after the WAM Leaders NTA and AEG NTA are both Confirmed,

whichever date occurs last, or such other date as AEG and WAM Leaders agree in writing or as may be required by ASX.

**Ineligible Overseas Shareholder** means any person who:

- (a) holds AEG Shares and to whom WAM Leaders would be prohibited from issuing Scheme Consideration pursuant to any act, rule or regulation of Australia which prohibits WAM Leaders from issuing Scheme Consideration to foreign persons;
- (b) holds AEG Shares and does not have a registered address in Australia, or such other jurisdiction where AEG and WAM Leaders may determine it would be lawful and practicable for that registered shareholder to receive an offer under or to participate in this Scheme and receive Scheme Consideration in compliance with applicable laws; or
- (c) is acting on behalf of or for the account of a person who holds AEG Shares beneficially and resides in a jurisdiction outside of Australia, except, with the consent of AEG and WAM Leaders, such a beneficial shareholder residing in another jurisdiction where AEG and WAM Leaders may determine it would be lawful and practicable for that beneficial holder to receive an offer under or to participate in this Scheme and receive Scheme Consideration in compliance with applicable laws.

**Ineligible Shares** means the New WAM Leaders Shares to which Ineligible Overseas Shareholders would have been entitled under this Scheme but for the operation of clause 5.4.

**Listing Rules** means the official listing rules of the ASX and any other applicable rules of ASX modified to the extent of any express written waiver by ASX.

**Net Proceeds** means the total proceeds of sale of all of the Ineligible Shares after the deduction of any applicable fees, brokerage, taxes and charges of the Sale Nominee reasonably incurred in connection with the sale of the Ineligible Shares.

**New WAM Leaders Share** means a WAM Leaders Share to be issued to a Scheme Participant as Scheme Consideration.

**NTA** means the net tangible asset backing of AEG or WAM Leaders (as the context requires) per AEG Share or WAM Leaders Share (as the case may be) before current and deferred tax balances calculated in accordance with the Corporations Act, Australian Accounting Standards (including the Australian Accounting Interpretations) and the Corporations Regulations. For the avoidance of doubt, the NTA will:

- (a) reflect the pro-forma impact of any WAM Leaders Permitted Dividend (as defined in the Scheme Implementation Agreement) for which the Scheme Participants are ineligible (per clause 4.5(b)(ii) of the Scheme Implementation Agreement) (if applicable);
- (b) be calculated on the basis of the last sale price quoted by Refinitiv of the relevant party's underlying portfolio positions on the Calculation Date; and
- (c) include a liability provision equal to 0.20% (or 20 basis points) multiplied by the gross exposure of the portfolio positions (long positions plus the absolute value of short

positions) to account for the costs of selling (such as brokerage costs) that would be incurred if all portfolio positions held on the Calculation Date were disposed, or if the borrowed short positions were closed or repaid, on the Calculation Date.

**Record Date** means 5.00pm on the 2<sup>nd</sup> Business Day following the Effective Date or such other date as AEG and WAM Leaders agree in writing or as may be required by ASX.

**Registered Address** means, in relation to an AEG Shareholder, the address of the AEG Shareholder as recorded in the AEG Share Register as at the Record Date.

**Regulatory Authority** includes:

- (a) ASX, ASIC and the Takeovers Panel;
- (b) a government or governmental, semi-governmental or judicial entity or authority, including the ATO;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any regulatory organisation established under statute.

**Sale Nominee** means the agent appointed by WAM Leaders (acting reasonably and in good faith) to sell the New WAM Leaders Shares that are attributable to Ineligible Overseas Shareholders under the terms of this Scheme (or any nominee of such person).

**Scheme** means this scheme of arrangement under Part 5.1 of the Corporations Act under which all Scheme Shares held by the Scheme Participants will be transferred to WAM Leaders, together with any amendment or modification made under section 411(6) of the Corporations Act and agreed to in writing by AEG and WAM Leaders.

**Scheme Consideration** means for each Scheme Share, that number of New WAM Leaders Shares determined in accordance with Schedule 1 and issued in accordance with clause 5 of this Scheme.

**Scheme Implementation Agreement** means the scheme implementation agreement dated 13 June 2022 between AEG and WAM Leaders relating to (among other things) the implementation of this Scheme.

**Scheme Meeting** means the meeting to be convened by the Court at which AEG Shareholders will vote on the Scheme.

**Scheme Participant** means each person who is an AEG Shareholder as at the Record Date (other than Excluded Shareholders).

**Scheme Share** means an AEG Share held by a Scheme Participant at the Record Date.

**Second Court Date** means the first day on which the Court hears an application for an order to be made pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the application is adjourned or subject to appeal for any reason, means the day on which the adjourned application or appeal is heard.

**Subsidiary** of an entity means another entity which:

- (a) is a subsidiary of the first entity within the meaning of the Corporations Act; and

- (a) is part of a consolidated entity constituted by the first entity and the entities it is required to include in the consolidated financial statements it prepares, or would be if the first entity was required to prepare consolidated financial statements.

**Takeovers Panel** means the panel established under section 171 of the *Australian Securities and Investments Commission Act 1989* (Cth) and continued in existence by section 261 of the *Australian Securities and Investments Commission Act 2001* (Cth).

**Transaction** means the acquisition of AEG by WAM Leaders through implementation of the Scheme, in accordance with the Scheme Implementation Agreement or as otherwise agreed between the parties in writing.

**WAM Custodian** means a custodian determined and appointed by WAM Leaders in respect of all or any of the AEG Shares held by WAM Leaders.

**WAM Leaders** means WAM Leaders Limited (ACN 611 053 751).

**WAM Leaders Auditor** means the auditor for WAM Leaders being, as at the date of this agreement, Pitcher Partners Sydney.

**WAM Leaders NTA** means the NTA of WAM Leaders as at the Calculation Date, calculated and Confirmed in accordance with clauses 5.3(l), 5.2(r)(i) and, where applicable, 5.3(m)(ii) of the Scheme Implementation Agreement. For the avoidance of doubt, the WAM Leaders Transaction Costs are considered a liability of WAM Leaders in calculating the WAM Leaders NTA.

**WAM Leaders Registry** means Boardroom Pty Limited of Level 12, 225 George Street, Sydney NSW 2000.

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

**WAM Leaders Share Register** means the register of members of WAM Leaders maintained by the WAM Leaders Registry in accordance with the Corporations Act.

**WAM Leaders Transaction Costs** means, unless otherwise agreed pursuant to the Scheme Implementation Agreement, all of WAM Leaders' costs associated with implementing the Transaction (including registry, court and other filing fees, fees for WAM Leaders' financial, taxation, legal and other professional advisers, counsel fees, accrued management and performance fees as at the Calculation Date and any other contractual liabilities, including GST paid on such costs to the extent not reduced by an input tax credit) that have been incurred but remain unpaid as at the Calculation Date.

## **1.2. Interpretation**

In this Scheme, headings and bold type are for convenience only and do not affect interpretation. Unless the contrary intention appears:

- (a) the singular includes the plural and vice versa;
- (b) a reference to a document includes any agreement or other legally enforceable arrangement created by it (whether the document is in the form of an agreement, deed or otherwise);
- (c) a reference to a document also includes any variation, replacement or novation of it;

- (d) a reference to a party, clause, annexure or schedule is a reference to a party to, clause in or annexure or schedule to this agreement;
- (e) the meaning of general words is not limited by specific examples introduced by "including", "for example", "such as" or similar expressions;
- (f) words importing a gender include any gender;
- (g) other parts of speech and grammatical forms of a word or phrase defined in this Scheme have a corresponding meaning;
- (h) a reference to "person" includes an individual, a body corporate, a joint venture, an unincorporated association, an authority or any other entity or organisation;
- (i) a reference to a particular person includes the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (j) a reference to a time of day is a reference to Sydney time;
- (k) if an act under this Scheme to be done by a party on or by a given day is done after 5.00pm on that day, it is taken to be done on the next day;
- (l) if a day on which a party must do something under this agreement is not a Business Day, the party must do it on the next Business Day;
- (m) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (n) a reference to dollars, \$ or A\$ is a reference to the currency of Australia;
- (o) a reference to "law" includes common law, principles of equity and legislation (including regulations);
- (p) a reference to any legislation includes regulations under it and any consolidations, amendments, re-enactments or replacements of any of them;
- (q) a reference to "regulations" includes instruments of a legislative character under legislation (such as regulations, rules, by-laws, ordinances and proclamations);
- (r) a reference to a group of persons is a reference to any two or more of them jointly and to each of them individually; and
- (s) a reference to any thing (including an amount) is a reference to the whole and each part of it.

## **2. PRELIMINARY MATTERS**

### **2.1. AEG**

- (a) AEG is a public company limited by shares incorporated in Australia and registered in New South Wales, Australia, and has been admitted to the official list of the ASX. AEG Shares are quoted for trading on the ASX.



- (b) As at the date of the Scheme Implementation Agreement, 90,264,949 AEG Shares were on issue and were officially quoted on the ASX.

## **2.2. WAM Leaders**

- (a) WAM Leaders is a public company limited by shares, incorporated in Australia and registered in New South Wales and has been admitted to the official list of the ASX. WAM Leaders Shares are quoted for trading on the ASX.
- (b) As at the date of the Scheme Implementation Agreement, 1,034,044,884 WAM Leaders Shares were on issue and were officially quoted on the ASX.

## **2.3. General**

- (a) AEG and WAM Leaders have agreed by executing the Scheme Implementation Agreement to implement the Scheme.
- (b) This Scheme attributes actions to WAM Leaders but does not itself impose an obligation on it to perform those actions. WAM Leaders has agreed, by executing the Deed Poll, to perform the actions attributed to it in respect of this Scheme and set out in the Scheme Implementation Agreement, including providing or procuring the provision of the Scheme Consideration to the Scheme Participants and procuring the WAM Leaders Share Register be updated to reflect the provision of the Scheme Consideration to the Scheme Participants. A copy of this Deed Poll forms part of the disclosure materials provided to AEG's Shareholders prior to the Scheme Meeting.

## **2.4. Consequence of this Scheme becoming Effective**

If this Scheme becomes Effective, then on the Implementation Date:

- (a) WAM Leaders will provide or procure the provision of the Scheme Consideration to Scheme Participants in accordance with this Scheme and the Deed Poll (noting that Ineligible Overseas Shareholders will be dealt with in accordance with clause 5.4 below); and
- (b) all the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares, will be transferred to WAM Leaders, and AEG will enter WAM Leaders or WAM Custodian in the AEG Share Register as the holder of the Scheme Shares, with the result that AEG will become a wholly-owned Subsidiary of WAM Leaders.

# **3. CONDITIONS**

## **3.1. Conditions precedent**

This Scheme is conditional on, and will not become Effective until, the satisfaction of each of the following conditions precedent:

- (a) all the conditions precedent in clause 3.1 of the Scheme Implementation Agreement (other than the condition precedent in clause 3.1(c) of the Scheme Implementation Agreement relating to Court approval of this Scheme) having been satisfied or waived in accordance with the terms of the Scheme Implementation Agreement (unless they cannot be waived, in which case they must be satisfied);
- (b) neither the Scheme Implementation Agreement nor the Deed Poll having been terminated in accordance with their terms before the Delivery Time;

- (c) approval of this Scheme by the Court under section 411(4)(b) of the Corporations Act, including with any alterations or conditions made or required by the Court under section 411(6) of the Corporations Act and agreed to by AEG and WAM Leaders in writing, and any such conditions having been satisfied or waived;
- (d) the orders approving this Scheme made by the Court under section 411(4)(b) (and, if applicable, section 411(6)) of the Corporations Act coming into effect, pursuant to section 411(10) of the Corporations Act, on or before the End Date.

### **3.2. Certificate**

- (a) Each of AEG and WAM Leaders will provide to the Court on the Second Court Date a certificate executed in accordance with Scheme Implementation Agreement clauses 5.2(t) and 5.3(n) respectively, or such other evidence as the Court requests, confirming (in respect of matters within their knowledge) whether or not all of the conditions precedent in clauses 3.1(a) and 3.1(b) for which it is responsible, as noted in clause 3.1 of the Scheme Implementation Agreement, have been satisfied or waived.
- (b) The certificate referred to in clause 3.2(a) constitutes conclusive evidence that such conditions precedent are satisfied, waived or taken to be waived as at the Delivery Time.

### **3.3. Effective Date**

Subject to clause 3.1 and 3.4, this Scheme will come into effect pursuant to section 411(10) of the Corporations Act on and from the Effective Date.

### **3.4. End Date**

This Scheme will lapse and be of no further force or effect if:

- (a) the Effective Date does not occur on or before the End Date; or
- (b) before the Effective Date, the Scheme Implementation Agreement or the Deed Poll is terminated in accordance with its terms.

## **4. IMPLEMENTATION OF THIS SCHEME**

### **4.1. Lodgement of Court orders with ASIC**

AEG must lodge with ASIC, in accordance with section 411(10) of the Corporations Act, an office copy of the Court order approving this Scheme as soon as possible, and in any event by no later than 5.00pm on the first Business Day after the day on which the Court approves this Scheme, or such later time as AEG and WAM Leaders agree in writing.

### **4.2. Transfer of the Scheme Shares**

On the Implementation Date, subject to WAM Leaders issuing the Scheme Consideration under clause 5.2 and providing AEG with written confirmation that this has occurred:

- (a) the Scheme Shares, together with all rights and entitlements attaching to the Scheme Shares at the Implementation Date, must be transferred to WAM Leaders or a WAM Custodian (as determined by WAM Leaders), without the need for any further act by any Scheme Participant (other than acts performed by AEG, WAM Leaders or their respective officers as agent and attorney of the Scheme Participants under clause 6.3(a) clause 6.3(b) or otherwise) by:

- (i) Scheme Shares are held in a CHES holding, AEG causing a message to be transmitted to ASX Settlement in accordance with the ASX Operating Rules to transfer all Scheme Shares held in a CHES holding from the CHES sub-register to the issuer sponsored subregister operated by AEG;
  - (ii) AEG delivering to WAM Leaders a duly completed and executed share transfer form (which may be a master transfer) to transfer all the Scheme Shares to WAM Leaders; and
  - (iii) WAM Leaders or a WAM Custodian duly executing such transfer form and delivering it to AEG for registration; and
- (b) immediately after receipt of the executed share transfer form in accordance with clause 4.2(a), AEG must enter, or procure the entry of, the name and address of WAM Leaders or WAM Custodian in the AEG Share Register as the holder of all Scheme Shares.

#### **4.3. Title to and rights in Scheme Shares**

- (a) Immediately upon the provision of the Scheme Consideration to each Scheme Participant or to the Sale Nominee (as applicable, and in accordance with clause 5), WAM Leaders will be beneficially entitled to the Scheme Shares transferred to it under this Scheme pending registration by AEG of the name and address of WAM Leaders or WAM Custodian in the AEG Share Register as the holder of all Scheme Shares.
- (b) To the extent permitted by law, the Scheme Shares (including all rights and entitlements attaching to the Scheme Shares) transferred under this Scheme to WAM Leaders will, at the time of transfer to WAM Leaders, vest in WAM Leaders free from all:
  - (i) Encumbrances and interests of third parties of any kind, whether legal or otherwise; and
  - (ii) restrictions on transfer of any kind.
- (c) To avoid doubt, notwithstanding clause 4.3(a), to the extent that clause 5.6(a) applies to any Scheme Participant, WAM Leaders will be beneficially entitled to any Scheme Shares held by that Scheme Participant immediately upon compliance with clause 5.6 on the Implementation Date as if WAM Leaders had provided the Scheme Consideration to that Scheme Participant.

## **5. SCHEME CONSIDERATION**

### **5.1. Entitlement to Scheme Consideration**

On the Implementation Date, in consideration for the transfer to WAM Leaders of the Scheme Shares by each Scheme Participant under the terms of this Scheme, each Scheme Participant will be entitled to receive the Scheme Consideration for each Scheme Share in accordance with this clause 5 and the Deed Poll.

### **5.2. Provision of Scheme Consideration**

Subject to clauses 5.3 to 5.6 and Schedule 1, WAM Leaders must:

- (a) on the Implementation Date:

- (i) issue to each Scheme Participant and, in respect of each Ineligible Overseas Shareholder, the Sale Nominee, the applicable Scheme Consideration in accordance with this Scheme and the Deed Poll; and
  - (ii) procure that the name and Registered Address of each Scheme Participant, and, in respect of the Ineligible Overseas Shareholders, the name and address of the Sale Nominee, is entered in the WAM Leaders Share Register as the holder of the applicable New WAM Leaders Shares; and
- (b) no later than five Business Days after the Record Date, send or procure the dispatch to each Scheme Participant (other than Ineligible Overseas Shareholders), to their Registered Address, a holding statement (or equivalent document) representing the New WAM Leaders Shares issued to that Scheme Participant.

### **5.3. Joint holders**

In the case of Scheme Shares held in joint names:

- (a) any New WAM Leaders Shares must be issued to and registered in the name of the joint holders and entry in the WAM Leaders Share Register must take place in the same order as the holders' names appear in the AEG Share Register;
- (b) any bank cheque required to be paid by or on behalf of AEG or WAM Leaders must be payable to the joint holders and be forwarded to the Registered Address of the holder whose name appears first in the AEG Share Register as at the Record Date; and
- (c) any other document required to be sent under this Scheme (including holding statements or equivalent documents under clause 5.2(b)), will be issued in the names of the joint holders and forwarded to the Registered Address of the holder whose name appears first in the AEG Share Register as at the Record Date.

### **5.4. Ineligible Overseas Shareholders**

- (a) WAM Leaders is under no obligation to issue, and must not issue, any New WAM Leaders Shares under this Scheme to any Ineligible Overseas Shareholders and instead, subject to this clause 5.4, WAM Leaders must:
  - (i) issue the New WAM Leaders Shares which would otherwise be required to be issued to any Ineligible Overseas Shareholder under this Scheme, if they were eligible to receive them, (**Ineligible Shares**) to the Sale Nominee; and
  - (ii) procure that the Sale Nominee:
    - (A) sells the Ineligible Shares as soon as reasonably practicable and in any event no more than 25 Business Days (on which the Ineligible Shares are capable of being traded on ASX) after the Implementation Date, in the manner, and on the terms, the Sale Nominee determines in good faith (and at the risk of the Ineligible Overseas Shareholder); and
    - (B) as soon as reasonably practicable and in any event no more than five Business Days after settlement of all the sales of the Ineligible Shares under clause 5.4(a)(ii)(A), remits to AEG (or the AEG Registry) the Net Proceeds.

- (b) Promptly after receipt of the Net Proceeds, AEG must pay each Ineligible Overseas Shareholder, or procure the payment to each Ineligible Overseas Shareholder of, such proportion of the Net Proceeds to which that Ineligible Overseas Shareholder is entitled (rounded down to the nearest cent), to be determined in accordance with the following formula:

$$\mathbf{A = (B/C) \times D}$$

Where:

**A** = the proportion of the Net Proceeds to which that Ineligible Overseas Shareholder is entitled;

**B** = the number of Ineligible Shares attributed to that Ineligible Overseas Shareholder;

**C** = the total number of Ineligible Shares which were issued to and sold by the Sale Nominee; and

**D** = the Net Proceeds.

- (c) AEG must pay or procure that each Ineligible Overseas Shareholder is paid any amounts owing under clause 5.4(b) by either (in the absolute discretion of AEG):
- (i) direct credit to that Ineligible Overseas Shareholder's nominated bank account as noted in the AEG Share Register at the Record Date; or
  - (ii) cheque mailed to that Ineligible Overseas Shareholder's Registered Address as at the Record Date (in the case of joint holders, the cheque will be drawn in the name of the joint holders and dispatched in accordance with the procedures set out in clause 5.3(b)).
- (d) Each Ineligible Overseas Shareholder appoints AEG, and each director and officer of AEG, as its agent to receive on its behalf any financial services guide (or similar or equivalent document) and any other notices (including any updates of those documents) that the Sale Nominee is required to provide to Ineligible Overseas Shareholders under the Corporations Act or any other applicable law.
- (e) Payment of the relevant amounts calculated in accordance with clauses 5.4(b) and 5.6 to an Ineligible Overseas Shareholder in accordance with this clause 5.4 satisfies in full WAM Leaders' obligations to the Ineligible Overseas Shareholder under this Scheme in respect of the Scheme Consideration.
- (f) The sale of the Ineligible Shares will be at the risk of the Ineligible Overseas Shareholders and:
- (i) none of AEG, WAM Leaders or the Sale Nominee makes any representation as to the cash amount that will be received by Ineligible Overseas Shareholders in accordance with this clause 5.4; and
  - (ii) AEG, WAM Leaders and the Sale Nominee each expressly disclaim any fiduciary duty to any Ineligible Overseas Shareholder which may arise in connection with this clause 5.4.

## **5.5. Unclaimed monies**

- (a) AEG may cancel a cheque issued under clause 5.4(c) if the cheque:
  - (i) is returned to AEG; or
  - (ii) has not been presented for payment within six months after the date on which the cheque was sent.
- (b) During the period of 12 months commencing on the Implementation Date, on request in writing from a Scheme Participant to AEG (or the AEG Registry) (which request may not be made until the date which is 20 Business Days after the Implementation Date), AEG must reissue a cheque that was previously cancelled under clause 5.5(a).
- (c) The *Unclaimed Money Act 1995* (NSW) will apply in relation to any Scheme Consideration which becomes "unclaimed money" (as defined in section 7 of that Act).

## **5.6. Orders of a court or Regulatory Authority**

- (a) If AEG (or the AEG Registry) or WAM Leaders receives written notice of an order or direction made by a court of competent jurisdiction or by a Regulatory Authority that:
  - (i) requires consideration to be provided to a third party (either through payment of a sum or the issuance of a security) in respect of Scheme Shares held by a particular Scheme Participant, which would otherwise be payable or required to be issued to that Scheme Participant by AEG or WAM Leaders in accordance with this clause 5, then AEG or WAM Leaders (as applicable) will be entitled to procure that provision of that consideration is made in accordance with that order or direction; or
  - (ii) prevents AEG or WAM Leaders from providing consideration to any particular Scheme Participant in accordance with this clause 5, or the payment or issuance of such consideration is otherwise prohibited by applicable law, AEG or WAM Leaders (as applicable) will be entitled to:
    - (A) in the case of any Ineligible Overseas Shareholder, retain an amount, in Australian dollars, equal to the relevant Ineligible Overseas Shareholder's share of the Net Proceeds received by AEG pursuant to clause 5.4(a)(ii)(B); and
    - (B) not issue (or, in the case of AEG, direct WAM Leaders not to issue), or issue (or, in the case of AEG, direct WAM Leaders to issue) to a permitted trustee or nominee, such number of New WAM Leaders Shares as that Scheme Participant would otherwise be entitled to under clause 5.2, until such time as provision of the Scheme Consideration in accordance with this clause 5 is permitted by that (or another) order or direction or otherwise by law.
- (b) To avoid doubt, any payment or retention by AEG or WAM Leaders (as applicable) under clause 5.6(a) will constitute the full discharge of AEG's or WAM Leaders' obligations under clause 5 with respect to the amount so paid or retained until, in the case of clause 5.6(a)(ii), the amount is no longer required to be retained.

## **5.7. New WAM Leaders Shares to rank equally**

- (a) WAM Leaders covenants in favour of each Scheme Participant that:
- (i) the New WAM Leaders Shares to be issued as the Scheme Consideration will, on issue:
    - (A) be duly issued and fully paid;
    - (B) be free from any Encumbrances and interests of third parties of any kind, whether legal or otherwise, or restriction on transfer of any kind, other than as provided for in the constitution of WAM Leaders; and
    - (C) rank equally in all respects, including for future dividends, with all existing WAM Leaders Shares then on issue (for the avoidance of doubt, other than in respect of any dividend already declared or determined and not yet paid by WAM Leaders, where the record date for entitlement to that dividend occurred prior to the Record Date); and
  - (ii) it will apply to ASX for the official quotation of the New WAM Leaders Shares and use all reasonable endeavours to ensure that the New WAM Leaders Shares are approved for official quotation on ASX by 8.00am (Sydney time) on the Business Day prior to the Implementation Date, such that trading in the New WAM Leaders Shares commences on and from the first Business Day after the Implementation Date (which approval may be conditional on the issue of those New WAM Leaders Shares and other conditions customarily imposed by ASX).

## **6. GENERAL SCHEME PROVISIONS**

### **6.1. Scheme Participants' agreements**

Under this Scheme, each Scheme Participant (including those Scheme Participants who do not attend the Scheme Meeting, do not vote at that meeting or vote against the Scheme):

- (a) agrees to the transfer of their Scheme Shares together with all rights and entitlements attaching to those shares in accordance with this Scheme;
- (b) (for all purposes including section 231 of the Corporations Act) if they are to receive New WAM Leaders Shares under the Scheme, agrees to become a shareholder of WAM Leaders, to have their name and address entered into the WAM Leaders Share Register, accepts the New WAM Leaders Shares issued to them and agrees to be bound by the constitution of WAM Leaders; and
- (c) agrees and acknowledges that the issue of the New WAM Leaders Shares in accordance with clause 5 constitutes satisfaction of all that person's entitlements under this Scheme.

### **6.2. Quotation of AEG Shares**

- (a) AEG must apply to ASX for AEG Shares to be suspended with effect from the close of trading on the Effective Date.
- (b) After the Scheme has been fully implemented and on a date after the Implementation Date to be determined by WAM Leaders, AEG must apply for termination of the official quotation of AEG Shares and to have itself removed from the official list of ASX.

### **6.3. Appointment of agent and attorney**

- (a) Each Scheme Participant, without the need for any further act, irrevocably appoints AEG as its agent and attorney for the purpose of executing any document or doing any other act necessary or desirable to give effect to the terms of this Scheme, including without limitation:
- (i) executing any document or doing any other act necessary to give effect to the terms of this Scheme, including, without limitation, the communication of the Scheme Participant's consent, agreement, notifications under clauses 6.1, 6.4, 6.5 or 6.6; and
  - (ii) the enforcement of the Deed Poll against WAM Leaders,
- and AEG accepts such appointment.
- (b) Each Scheme Participant, without the need for any further act, irrevocably appoints WAM Leaders and each of its directors and officers, jointly and severally, as its agent and attorney for the purpose of the execution of any form or documentation required to effect the issue of the New WAM Leaders Shares to Scheme Participants, the Sale Nominee or any other person in accordance with the terms of the Scheme, and WAM Leaders accepts such appointment.
- (c) Where any provision of this Scheme is expressed to create a right, obligation or benefit by a Scheme Participant in favour of any person or entity that is not a party (**Person**) to the Scheme, then:
- (i) any such right, obligation or benefit may be assured, or further and better assured, in favour of any such Person by deed (between the relevant Scheme Participant and Person) or by deed poll in favour of any such Person; and
  - (ii) on and from the Effective Date, AEG is by this Scheme expressly appointed by each Scheme Participant as each Scheme Participant's true and lawful agent and attorney with full power and authority to execute as their act and as a deed and deliver on behalf of the Scheme Participant a deed assuring or, further and better assuring, any such right, obligation or benefit.
- (d) The authority given by this clause is irrevocable and as if it were made under seal and by a deed and may be exercised more than once and from time to time.
- (e) AEG, as agent of each Scheme Participant, may sub-delegate its functions under clause 6.3(a) to all or any of its directors and secretaries (jointly and severally).

### **6.4. Instructions to AEG**

Binding instructions or notifications between a Scheme Participant and AEG relating to Scheme Shares or an AEG Shareholder's status as a Scheme Participant (including without limitation, any instructions in relation to payment of dividends or communications from AEG) will (to the extent permitted by law), from the Record Date, be deemed by reason of this Scheme to be similarly binding instructions and notifications in respect of the New WAM Leaders Shares. WAM Leaders will accept any such instructions or notifications until they are, in each case, revoked or amended in writing addressed to WAM Leaders at the WAM Leaders Registry.



## **6.5. Scheme Participants' consent and agreement**

Each Scheme Participant

- (a) irrevocably consents to AEG doing all things necessary, incidental or expedient to the implementation and performance of the Scheme and acknowledges that the Scheme binds AEG and all of the Scheme Participants from time to time (including those who do not attend the Scheme Meeting, do not vote at that meeting or vote against the Scheme); and
- (b) agrees to the variation, cancellation or modification of the rights attached to their Scheme Shares, as relevant, constituted by or resulting from this Scheme.

## **6.6. Scheme Participants' warranties**

- (a) Each Scheme Participant is taken to have warranted to AEG and WAM Leaders on the Implementation Date, and to have appointed and authorised AEG as its attorney and agent to warrant to WAM Leaders on the Implementation Date, that:
  - (i) all their Scheme Shares (including any rights and entitlements attaching to their Scheme Shares) which are transferred under this Scheme will, at the time of transfer of them to WAM Leaders, be fully paid and free from all:
    - (A) Encumbrances and interests of third parties of any kind, whether legal or otherwise; and
    - (B) restrictions on transfer of any kind;
  - (ii) they have full power and capacity to transfer their Scheme Shares to WAM Leaders, together with any rights and entitlements attaching to those Scheme Shares, under this Scheme; and
  - (iii) as at the Record Date, they have no existing right to be issued any other Scheme Shares or any other form of securities in AEG.
- (b) AEG undertakes that it will provide such warranties to WAM Leaders as agent and attorney of each Scheme Participant.

## **6.7. Appointment of sole proxy**

Immediately upon the Scheme Consideration being issued by WAM Leaders to each Scheme Participant under clause 5 and until AEG registers WAM Leaders as the holder of all Scheme Shares in the AEG Share Register:

- (a) each Scheme Participant is deemed to have appointed WAM Leaders as attorney and agent (and to have directed WAM Leaders in that capacity) to appoint any director, officer, secretary or agent nominated by WAM Leaders as its sole proxy and where applicable or appropriate, corporate representative to attend shareholders' meetings, exercise the votes attaching to the Scheme Shares registered in their name and sign any shareholders' resolution whether in person, by proxy or by corporate representative;
- (b) no Scheme Participant may itself attend or vote at any shareholders' meetings or sign any shareholders' resolutions, whether in person, by proxy or by corporate representative (other than under clause 6.7(a));

- (c) each Scheme Participant must take all other actions in the capacity of a registered holder of Scheme Shares as WAM Leaders reasonably directs; and
- (d) each Scheme Participant acknowledges and agrees that in exercising the powers conferred by clause 6.7(a), WAM Leaders and any director, officer, secretary or agent nominated by WAM Leaders under that clause may act in the best interests of WAM Leaders as the intended registered holder of the Scheme Shares.

#### **6.8. Amendments to the Scheme**

AEG may, by its counsel and with the consent of WAM Leaders, consent, on behalf of all persons concerned (including a Scheme Participant), to any alterations or conditions to this Scheme as the Court thinks just to impose.

#### **6.9. Further Steps**

AEG will (on its own behalf and on behalf of each Scheme Participant) promptly execute all documents and do all acts and things necessary or desirable for the implementation of, to give full effect to, and for the performance of its obligations under, this Scheme and the transactions contemplated by it and will, on behalf of Scheme Participants, procure WAM Leaders to execute all documents and do all acts and things necessary or desirable for the implementation of, to give full effect to, and for the performance of the steps attributed to WAM Leaders under this Scheme, the Deed Poll and the transactions contemplated by those documents.

#### **6.10. Scheme binding**

To the extent of any inconsistency between this Scheme and the AEG constitution, this Scheme overrides the AEG constitution and binds AEG and all Scheme Participants.

#### **6.11. Enforcement of Deed Poll**

AEG undertakes in favour of each Scheme Participant that it will enforce the Deed Poll against WAM Leaders on behalf of and as agent and attorney for Scheme Participants.

### **7. DEALING IN AEG SHARES**

#### **7.1. Determination of Scheme Participants**

To establish the identity of the Scheme Participants, AEG will only recognise dealings in Scheme Shares if:

- (a) in the case of dealings of the type to be effected using CHESS, the transferee is registered in the AEG Share Register as the holder of the relevant AEG Share on or before the Record Date; and
- (b) in all other cases, registerable transfer or transmission applications in respect of those dealings, or valid requests in respect of other alterations, are received by the AEG Registry on or before the Record Date,

and AEG will not accept for registration, nor recognise for any purpose, any transfer or transmission application or other request received after such times, or received prior to such times but not in registrable or actionable form, as appropriate, except a transfer to WAM Leaders pursuant to this Scheme and any subsequent transfer by WAM Leaders.

## **7.2. No issue**

AEG must not issue any AEG Shares after the Effective Date.

## **7.3. Register**

- (a) AEG must register registerable transmission applications or transfers of the AEG Shares in accordance with clause 7.1(b) on or before the Record Date provided that, for the avoidance of doubt, nothing in this clause 7.3(a) requires AEG to register a transfer that would result in an AEG Shareholder holding a parcel of AEG Shares that is less than a 'marketable parcel' (for the purposes of this clause 7.3(a) 'marketable parcel' has the meaning given in the operating rules of ASX).
- (b) If this Scheme becomes Effective a holder of Scheme Shares (and any person claiming through that holder) must not dispose of or purport to agree to dispose of, any Scheme Shares or any interest in them after the Record Date otherwise than pursuant to this Scheme, and any attempt to do so will be void and have no legal effect and AEG shall be entitled to disregard any such disposal.
- (c) For the purpose of determining entitlements to the Scheme Consideration, AEG must close and maintain the AEG Share Register as at the Record Date in accordance with the provisions of this clause 7.3, until the Scheme Consideration has been paid to the Scheme Participants.
- (d) The AEG Share Register in the form described in clause 7.3(c) will solely determine entitlements to the Scheme Consideration.
- (e) Subject to the provision of the Scheme Consideration contemplated in clause 5, all statements of holding for AEG Shares will cease to have effect after the Record Date as documents of title in respect of those shares and, as from the Record Date, each entry current as at the Record Date on the AEG Share Register will cease to have effect except as evidence of entitlement to the Scheme Consideration in respect of the AEG Shares relating to that entry.
- (f) As soon as possible on or after the Record Date, and in any event within one Business Day after the Record Date, AEG will ensure that a copy of the AEG Share Register as at the Record Date, including details of the names, Registered Addresses and holdings of Scheme Shares for each Scheme Participant as shown in the AEG Share Register, is available to WAM Leaders in the form WAM Leaders reasonably requires.

## **8. GENERAL**

### **8.1. Scheme binding on all Scheme Participants**

It is acknowledged that this Scheme binds AEG and all Scheme Participants (including those who do not attend the Scheme Meeting or those who do not vote, or vote against this Scheme at the Scheme Meeting).

### **8.2. Stamp duty**

- (a) WAM Leaders will pay all stamp duty (if any) and any related fines and penalties payable on, or in connection with, the transfer by the Scheme Participants of the Scheme Shares to WAM Leaders pursuant to this Scheme or the Deed Poll.

- (b) Subject to clause 8.2(c), WAM Leaders will indemnify each Scheme Participant against any liability from a failure to comply with clause 8.2(a).
- (c) However, WAM Leaders need not pay, reimburse or indemnify against any fees, fines, penalties or interest to the extent they have been imposed because of AEG's delay.

### **8.3. Notices**

- (a) If a notice, transfer, transmission application, direction or other communication referred to in this Scheme is sent by post to AEG, it will not be taken to be received in the ordinary course of post or on a date and time other than the date and time (if any) on which it is actually received at AEG's registered office or at the office of the AEG Registry.
- (b) The accidental omission to give notice of the Scheme Meeting or the non-receipt of such notice by an AEG Shareholder will not, unless so ordered by the Court, invalidate the Scheme Meeting or the proceedings of the Scheme Meeting.

### **8.4. Governing law and jurisdiction**

- (a) This Scheme is governed by the laws in force in the State of New South Wales.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New South Wales and courts competent to hear appeals from those courts.

### **8.5. No liability when acting in good faith**

Each Scheme Participant agrees that neither AEG or WAM Leaders nor any director, officer or secretary of AEG or WAM Leaders will be liable for anything done or omitted to be done in the performance of this Scheme or the Deed Poll in good faith.

## **SCHEDULE 1 SCHEME CONSIDERATION**

- 1.1 The New WAM Leaders Shares to be issued to each Scheme Participant (or the Sale Nominee, in respect of each Ineligible Overseas Shareholder) as Scheme Consideration is calculated on the following basis:

$$CU = (A/B) \times D$$

Where:

**CU** = the number of New WAM Leaders Shares to be issued to each Scheme Participant (rounded to the nearest whole number in accordance with paragraph 1.2 of this schedule).

**A** = the AEG NTA per AEG Share on the Calculation Date (calculated and Confirmed in accordance with the Scheme Implementation Agreement).

**B** = the WAM Leaders NTA per WAM Leaders Share on the Calculation Date (calculated and Confirmed in accordance with the Scheme Implementation Agreement).

**D** = the number of Scheme Shares held by the Scheme Participant at the Record Date.

- 1.2 Where the calculation of a particular Scheme Participant's entitlement to Scheme Consideration would result in an entitlement to a fraction of a New WAM Leaders Share, then, any such fractional entitlement will be rounded to the nearest whole number as follows:

- (a) fractional entitlements of 0.5 or more to a New WAM Leaders Share will be rounded up to the nearest whole number; and
- (b) fractional entitlements of less than 0.5 to a New WAM Leaders Share will be rounded down to the nearest whole number.

- 1.3 If the Scheme becomes Effective, AEG must no later than 8am on the Business Day prior to the Implementation Date, notify WAM Leaders of the New WAM Leaders Shares to be issued to each Scheme Participant and the Sale Nominee as Scheme Consideration.

## **Annexure C    Deed Poll**

# DEED POLL

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**WAM Leaders Limited**  
(ACN 611 053 751)



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**BY**

WAM Leaders Limited (ACN 611 053 751) of Level 26, Governor Phillip Tower, 1 Farrer Place, Sydney NSW 2000 (**WAM Leaders**)

In favour of each Scheme Participant

**RECITALS:**

- A. AEG and WAM Leaders have entered into the Scheme Implementation Agreement.
- B. In the Scheme Implementation Agreement, WAM Leaders agreed to enter into this Deed Poll.
- C. WAM Leaders is entering into this Deed Poll for the purpose of covenanting in favour of the Scheme Participants to perform its obligations under the Scheme and the Scheme Implementation Agreement.
- D. AEG has agreed in the Scheme Implementation Agreement, subject to the satisfaction or waiver of certain conditions, to propose the Scheme.
- E. The effect of the Scheme will be that the AEG Shares will be transferred to WAM Leaders in exchange for the issue of New WAM Leaders Shares to Scheme Participants in accordance with the Scheme.

## **1. DEFINITIONS AND INTERPRETATION**

### **1.1. Definitions**

Capitalised terms in in this Deed Poll have the meaning set out in this clause 1.1 or unless the context otherwise requires the meaning given in the Scheme:

**AEG** means Absolute Equity Performance Fund Limited (ACN 608 552 496) of Level 12, Grosvenor Place, 225 George Street, Sydney NSW 2000.

**AEG Registry** means Boardroom Pty Limited of Level 12, 225 George Street, Sydney NSW 2000.

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

**AEG Shareholder** means each person registered in the AEG Share Register as a holder of AEG Shares.

**AEG Share Register** means the register of members of AEG maintained by the AEG Registry in accordance with the Corporations Act.

**Controller** has the meaning given in the Corporations Act.

**Court** means the Federal Court of Australia or such other court of competent jurisdiction under the Corporations Act as AEG and WAM Leaders agree on in writing.

**Effective** means, when used in relation to the Scheme, the coming into effect, under section 411(10) of the Corporations Act, of the order of the Court made under section 411(4)(b) in relation to the Scheme.

**Effective Date** means the date on which the Scheme becomes Effective.

**Encumbrance** means any security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement and any "security interest" as defined in sections 12(1) or 12(2) of the *Personal Property Securities Act 2009* (Cth) or any agreement to create any of them or allow them to exist.

**End Date** means 30 November 2022 or such other date agreed by WAM Leaders and AEG in writing.

**Excluded Shareholder** means WAM Leaders and includes any custodian of WAM Leaders to the extent it is acting in that capacity.

**Ineligible Overseas Shareholder** means any person who:

- (a) holds AEG Shares and to whom WAM Leaders would be prohibited from issuing Scheme Consideration pursuant to any act, rule or regulation of Australia which prohibits WAM Leaders from issuing Scheme Consideration to foreign persons;
- (b) holds AEG Shares and does not have a registered address in Australia, or such other jurisdiction where AEG and WAM Leaders may determine it would be lawful and practicable for that registered shareholder to receive an offer under or to participate in the Scheme and receive Scheme Consideration in compliance with applicable laws; or
- (c) is acting on behalf of or for the account of a person who holds AEG Shares beneficially and resides in a jurisdiction outside of Australia, except, with the consent of AEG and WAM Leaders, such a beneficial shareholder residing in another jurisdiction where AEG and WAM Leaders may determine it would be lawful and practicable for that beneficial holder to receive an offer under or to participate in the Scheme and receive Scheme Consideration in compliance with applicable laws.

**Insolvency Event** occurs in relation to a person if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it is in liquidation, in provisional liquidation, under administration or wound up or has had a Controller appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other parties to this agreement); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 14 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of the things described in paragraphs (a), (b) or (c); or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to this agreement reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

**New WAM Leaders Share** means a WAM Leaders Share to be issued to Scheme Participants as Scheme Consideration.

**Record Date** means the record date for the Scheme, being 5:00pm on the 2<sup>nd</sup> Business Day following the Effective Date or such other date as AEG and WAM Leaders agree or as may be required by ASX.

**Regulatory Authority** includes:

- (a) ASX, ASIC and the Takeovers Panel;
- (b) a government or governmental, semi-governmental or judicial entity or authority, including the Australian Taxation Office;
- (c) a minister, department, office, commission, delegate, instrumentality, agency, board, authority or organisation of any government; and
- (d) any regulatory organisation established under statute.

**Scheme** means the scheme of arrangement under Part 5.1 of the Corporations Act under which all Scheme Shares held by the Scheme Participants will be transferred to WAM Leaders substantially in the form of Annexure B of the Scheme Implementation Agreement together with any amendment or modification made under section 411(6) of the Corporations Act and agreed to in writing by AEG and WAM Leaders.

**Scheme Consideration** means for each Scheme Share, that number of New WAM Leaders Shares determined and issued in accordance with the Scheme.

**Scheme Implementation Agreement** means the scheme implementation agreement dated 13 June 2022 between AEG and WAM Leaders relating to (among other things) the implementation of this Scheme.

**Scheme Participant** means each person who is an AEG Shareholder as at the Record Date (other than Excluded Shareholders).

**Scheme Share** means an AEG Share held by a Scheme Participant at the Record Date.

**Second Court Date** means the first day on which the Court hears an application for an order to be made pursuant to section 411(4)(b) of the Corporations Act approving the Scheme or, if the application is adjourned or subject to appeal for any reason, means the day on which the adjourned application or appeal is heard.

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

## **1.2. Interpretation**

Clauses 1.2 and 1.3 of the Scheme apply to the interpretation of this Deed Poll, except that references to 'this Scheme' in those clauses are to be read as references to 'this Deed Poll'.

## **1.3. Nature of Deed Poll**

WAM Leaders acknowledges that:

- (a) this Deed Poll may be relied on and enforced by any Scheme Participant in accordance with its terms even though the Scheme Participants are not party to it; and
- (b) under the Scheme, each Scheme Participant irrevocably appoints AEG and each of its directors, officers and secretaries (jointly and each of them severally) as its attorney and agent for the purpose of enforcing this Deed Poll against WAM Leaders.

## **2. CONDITIONS TO OBLIGATIONS**

### **2.1. Conditions**

This Deed Poll and the obligations of WAM Leaders under this Deed Poll are subject to the Scheme becoming Effective.

### **2.2. Termination**

This Deed Poll and the obligations of WAM Leaders under this Deed Poll will automatically terminate and this Deed Poll will be of no force or effect if:

- (a) the Scheme Implementation Agreement is terminated in accordance with its terms; or
- (b) the Scheme is not Effective by the End Date.

### **2.3. Consequences of termination**

If this Deed Poll is terminated under clause 2.2, then in addition and without prejudice to any other rights, powers or remedies available to AEG, WAM Leaders or the Scheme Participants:

- (a) WAM Leaders is released from its obligations to further perform this Deed Poll except those obligations which by their nature survive termination; and
- (b) each Scheme Participant retains the rights, powers or remedies they have against WAM Leaders in respect of any breach of this Deed Poll which occurred before it was terminated.

## **3. PERFORMANCE OF OBLIGATIONS GENERALLY**

- (a) Subject to clause 2, WAM Leaders covenants in favour of Scheme Participants to perform the actions attributed to it under, and otherwise comply with, the Scheme as if WAM Leaders was a party to the Scheme.
- (b) Subject to clause 2, WAM Leaders undertakes in favour of each Scheme Participant to provide or procure the provision of the Scheme Consideration to (or to be held on behalf of) each Scheme Participant, and undertake all other actions attributed to it, in accordance with the terms of the Scheme.

## **4. CONSIDERATION SHARES**

WAM Leaders covenants in favour of each Scheme Participant that each New WAM Leaders Share will, on issue:

- (a) be duly issued and fully paid;
- (b) be free from any Encumbrances and interests of third parties of any kind, whether legal or otherwise, or restriction on transfer of any kind other than as provided for in the constitution of WAM Leaders;
- (c) rank equally in all respects, including for future dividends, with all existing WAM Leaders Shares then on issue (for the avoidance of doubt, other than in respect of any dividend already declared or determined and not yet paid by WAM Leaders, where the record date for entitlement to that dividend occurred prior to the Record Date); and
- (d) be approved for official quotation by ASX, subject to any conditions which ASX may reasonably require and which are acceptable to both WAM Leaders and AEG, acting reasonably and promptly.

## **5. WARRANTIES**

WAM Leaders represents and warrants that:

- (a) it is a corporation validly existing under the law of its place of registration;
- (b) it has the corporate power to enter into and perform its obligations under this Deed Poll and to carry out the transactions contemplated by this Deed Poll and the Scheme;
- (c) it has taken all necessary corporate action to authorise its entry into this Deed Poll and has taken or will take all necessary corporate action to authorise the performance of this Deed Poll and carry out the transactions contemplated by this Deed Poll and the Scheme;
- (d) this Deed Poll is valid and binding on it and enforceable against it in accordance with the terms of this Deed Poll;
- (e) neither its execution of this Deed Poll nor the carrying out by it of the transactions contemplated by this Deed Poll and the Scheme contravenes or will contravene:
  - (i) any law to which it is subject;
  - (ii) any order of any Regulatory Authority that is binding on it;
  - (iii) any undertaking or instrument binding on it; or
  - (iv) its constitution; and
- (f) neither it nor any of its subsidiaries is affected by an Insolvency Event.

## **6. CONTINUING OBLIGATIONS**

This Deed Poll is irrevocable and, subject to clause 2, remains in full force and effect until:

- (a) WAM Leaders has fully performed its obligations under this Deed Poll; or
- (b) the earlier termination of this Deed Poll under clause 2.2.

## **7. NOTICES**

### **7.1. Form of notice**

Any communication to WAM Leaders under or in connection with this Deed Poll:

- (a) must be in writing;
- (b) must be addressed as shown below, or as otherwise advised by WAM Leaders from time to time:

Address: Level 26, Governor Phillip Tower, 1 Farrer Place, Sydney NSW  
2000

Attention: Jesse Hamilton

Email: jesse@wilsonassetmanagement.com.au

- (c) must be signed by the party making the communication or by a person duly authorised by that party;

- (d) must be delivered by hand, posted by prepaid post to the address, or sent by email to the email address, of WAM Leaders, in accordance with clause 7.1(b), or given in any other way permitted by law; and
- (e) is regarded as received by WAM Leaders:
  - (i) if sent by prepaid post, on the third Business Day after the date of posting (if posted to an address in the same country), and on the tenth Business Day after the date of posting (if posted to an address in a different country);
  - (ii) if sent by email:
    - (A) when the sender receives an automated message confirming delivery; or
    - (B) subject to the email being sent within the hours of 9am and 5pm on a Business Day, six hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that delivery failed,whichever happens first; and
- (iii) if delivered by hand, on delivery at the address of the addressee as provided in clause 7.1(b), unless delivery is not made on a Business Day, or after 5.00pm on a Business Day, when that communication will be regarded as received at 9.00am on the next Business Day.

## **8. GENERAL**

### **8.1. Governing law and jurisdiction**

- (a) This Deed Poll is governed by the laws in force in the State of New South Wales.
- (b) WAM Leaders irrevocably submits to the non-exclusive jurisdiction of the courts of the State of New South Wales and courts competent to hear appeals from those courts.

### **8.2. Cumulative rights**

The rights, powers and remedies of WAM Leaders and the Scheme Participants under this Deed Poll are cumulative with and do not exclude the rights, powers or remedies provided by law independently of this Deed Poll.

### **8.3. Waiver**

- (a) Failure to exercise or enforce, or a delay in exercising or enforcing, or the partial exercise or enforcement, of a right provided by law or under this Deed Poll by WAM Leaders or a Scheme Participant does not preclude, or operate as a waiver of, the exercise or enforcement, or further exercise or enforcement, of that or any other right provided by law or under this Deed Poll.
- (b) WAM Leaders may not rely on the words or conduct of any Scheme Participant as a waiver of any right unless the waiver is in writing and signed by the Scheme Participant granting the waiver.
- (c) No Scheme Participant may rely on words or conduct of WAM Leaders as a waiver of any right unless the waiver is in writing and signed by WAM Leaders.
- (d) The meanings of the terms used in this clause 8.3 are set out below:

**conduct** includes delay in the exercising of a right;

**right** means any right arising under or in connection with this Deed Poll and includes the right to rely on this clause; and

**waiver** includes an election between rights and remedies, and conduct which might otherwise give rise to an estoppel.

#### **8.4. Variation**

A provision of this Deed Poll may not be varied unless:

- (a) if before the Second Court Date, the variation is agreed to by AEG and WAM Leaders in writing and the variation, alteration or amendment does not itself preclude approval of the Scheme by the Court; or
- (b) if on or after the Second Court Date, the variation is agreed to by AEG and WAM Leaders in writing and is approved by the Court,

in which event WAM Leaders will enter into a further Deed Poll in favour of the Scheme Participants giving effect to the variation.

#### **8.5. Duty**

WAM Leaders must:

- (a) pay all stamp duty payable or assessed as being payable in connection with this Deed Poll, the Scheme, or the transfer by the Scheme Participants of the Scheme Shares pursuant to the Scheme (including any fees, fines, penalties and interest in connection with any of these amounts); and
- (b) indemnify each Scheme Participant against any liability arising from any failure by WAM Leaders to comply with clause 8.5(a),

however, WAM Leaders need not pay, reimburse or indemnify against any fees, fines, penalties or interest to the extent they have been imposed because of AEG's delay.

#### **8.6. Operation of this Deed Poll**

- (a) The rights created by this Deed Poll are personal to WAM Leaders and each Scheme Participant under this Deed Poll and cumulative with, and do not exclude, any other rights, powers or remedies provided by law independently of this Deed Poll.
- (b) Any provision of this Deed Poll that is void, illegal or unenforceable:
  - (i) in a particular jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions of this Deed Poll in that or any other jurisdiction; and
  - (ii) is, where possible, to be severed to the extent necessary to make this Deed Poll valid, legal or enforceable, unless this would materially change the intended effect of this Deed Poll.

#### **8.7. Assignment**

- (a) The rights created by this Deed Poll are personal to WAM Leaders and each Scheme Participant and must not be assigned, novated, encumbered, charged or otherwise dealt with at law or equity without the prior written consent of WAM Leaders.
- (b) Any purported dealing in contravention of clause 8.7(a) is invalid.

### **8.8. Consent**

WAM Leaders consents to AEG producing this deed poll to the Court.

### **8.9. Further action**

WAM Leaders must, at its own expense, promptly do all things and execute all further documents necessary or expedient to give full effect to this Deed Poll, the Scheme and the transactions contemplated by it.

### **8.10. Severability**

If the whole or any part of a provision of this Deed Poll is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Deed Poll has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause 8.10 has no effect if the severance alters the basic nature of this Deed Poll or is contrary to public policy.



Executed as a **Deed Poll**:

**EXECUTED** by **WAM Leaders Limited** )  
(ACN 611 053 751) in accordance with )  
section 127 of the Corporations Act: )  
)  
)  
)

\_\_\_\_\_  
Director/Secretary

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name (please print)

\_\_\_\_\_  
Name (please print)